



Human Rights and Domestic Violence Fact Sheet Workplace

What is the purpose of this fact sheet?

Domestic and family violence is a serious violation of human rights and a substantial barrier to achieving gender equality. This fact sheet outlines human rights obligations relevant to domestic violence and the workplace.^[1] Service providers can use this information to advocate for individual clients, or to support arguments for changes to law, policy and practice.

There may be specific workplace instruments or laws relating to domestic violence, such as enterprise agreements, that apply to individual clients. These instruments and laws are not considered in this fact sheet. You should contact your local community legal centre if you would like to discuss these.^[2]

What are the relevant human rights?

The *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) recognises that violence against women is a form of discrimination. It requires governments to exercise 'due diligence' to prevent and respond to violence against women, including domestic and family violence.^[3] This means that governments must take reasonable and effective measures to prevent, investigate, punish and redress domestic violence.^[4]

Obligations under other human rights treaties may also be relevant to domestic and family violence and the workplace. For example, the right to safe and healthy working conditions and the right to the highest attainable standard of physical and mental health are protected under the *International Covenant on Economic, Social and Cultural Rights*.

How do these rights relate to domestic violence and the workplace?

Under CEDAW, States must take all appropriate measures to eliminate discrimination against women (which includes violence against women) in the field of employment and to ensure that women have access to safe and healthy working conditions.^[5]

The United Nations (UN) Special Rapporteur on Violence Against Women has stated that in order to act with 'due diligence', governments must establish measures to provide 'immediate material assistance' to survivors of domestic violence, including by providing adequate opportunities for employment.^[6]

The UN has also recommended that States enact legislation to protect the employment rights of victims of violence so that employers are prohibited from discriminating against them or penalising them for the consequences of abuse.^[7]

1. For information and resources on domestic violence at work, go to <http://www.dvandwork.unsw.edu.au/>
2. To find your local community legal centre, go to: <http://www.naclc.org.au/>. Contact details for women's legal services are available here: http://www.wlsa.org.au/contact_us
3. Committee on the Elimination of Discrimination Against Women, General Recommendation no. 19: *Violence Against Women*, (1992) 5, (General Recommendation 19); *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women: Report of the Special Rapporteur on Violence Against Women, its causes and consequences*, Yakin Ertürk, 20 January 2006
4. Ibid
5. CEDAW, Article 11
6. *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women: Report of the Special Rapporteur on Violence Against Women, its causes and consequences*, Yakin Ertürk, 20 January 2006 [19]
7. United Nations, Department of Economic and Social Affairs, "Handbook for Legislation on Violence against Women"



Mary's Story

Mary had worked in her new job for two months and in that time had been promoted to a managerial position. One day Mary's husband came into the workplace and caused problems. After another incident at home, Mary rang her boss to say she would be in a bit late as she was at the police station reporting a domestic violence incident and had been delayed. Her boss sacked her and said she was just too difficult.

In this case, there were reasonable, practical steps the employer should have taken to ensure that Mary could continue in her job. The government also has an obligation to ensure, through legislation and regulation, that Mary is not disadvantaged and discriminated against in any employment, including private employment, because of her experience of domestic violence.

How do I make a complaint about a human rights violation?

If the government has failed to meet its human rights obligations the following complaints mechanisms may be available:

1. If you are in Victoria or the ACT you may be able to challenge the act or decision under state-based human rights laws that require public authorities to give consideration to and act in accordance with human rights.^[8]
2. If the complaint is against the Commonwealth Government or one of its agencies, you may be able to make a complaint to the Australian Human Rights Commission.^[9]
3. In some cases, you may be able to make an individual complaint to the UN Committee on the Elimination of Discrimination Against Women Alternatively, if the issue is 'grave or systematic', you could ask the Committee to conduct an inquiry. These procedures are available under the *Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women*.^[10]

hrlc.org.au/women

Thanks

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Contact

For more information please contact Rachel Ball, Director of Advocacy & Campaigns, at the Human Rights Law Centre on (03) 8636 4433

8. *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, s.38; *Human Rights Act 2004 (ACT)*, s.40B

9. For more information see: <http://www.humanrights.gov.au/complaints-about-breaches-human-rights>

10. For more information see: <http://www.humanrights.gov.au/publications/mechanisms-advancing-women-s-human-rights-guide-using-optional-protocol-cedaw-and-other>

* Case study adapted from Safe at Work, Safe at Home publication 'Domestic Violence and the Workplace: Real Life Stories', www.dvandwork.unsw.edu.au/download/file/fid/8