



CUPE SUBMISSION ON AMENDMENTS TO THE
EMPLOYMENT STANDARDS ACT PERTAINING TO
DOMESTIC VIOLENCE, INTIMATE PARTNER OR
SEXUAL VIOLENCE LEAVE

PRESENTED TO:

The Department of Post-Secondary Education, Training and Labour (PETL)

PREPARED BY
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Introduction

The Canadian Union of Public Employees (CUPE) welcomes this opportunity to present our comments and recommendations to the Department of Post-Secondary Education Training and Labour.

The Canadian Union of Public Employees is Canada's largest union, with over 650,000 members across the country. In New Brunswick, CUPE represents over 27,000 workers in hospitals, school boards, municipalities, long-term care facilities, libraries, child care centers, provincial libraries, public housing, recreational centres, group homes, universities, and several other public-sector workplaces.

We want to commend the Department for officially recognizing domestic violence as a serious workplace issue, and we want to thank the Women's Equality Branch for the hard work they have been doing on this file.

We know that domestic violence affects New Brunswickers. In 2015, 2,122 survivors reported intimate partner violence to the police, 77% of which were women¹. Also, in 2015-16, 1,033 individuals sought support from the province's 14 Domestic Violence Outreach workers in the province².

It's important to note that sexual violence, intimate partner violence and domestic violence crimes are widely under-reported. In 2014, only 19% of those who had suffered intimate partner violence reported the abuse to police³. To gain a better understanding of the issue, a brief was commissioned in 2015 by the Federal-Provincial-Territorial Senior Officials for the Status of Women on sexual violence against women in Canada. In the brief, the authors cite several studies that indicate that sexual violence is significantly under-reported, and they highlight three reasons that are most commonly cited to explain the under-reporting:

- 1) Thinking the incident is not serious enough to report,
- 2) Misunderstanding of what constitutes sexual violence, and
- 3) Fear or embarrassment of not being believed or of being judged⁴.

Canada's Chief Public Health Officer highlighted in 2016 challenges with data on family violence, such as how difficult it is to measure. This may be because population surveys don't measure all forms of family violence, or that changes overtime can reflect changes in attitudes or available reporting mechanisms, among others⁵. In addition, there may be specific barriers to reporting sexual violence in rural areas in

¹ Statistics Canada (2017). Table 3.6 Victims of police-reported intimate partner violence, by sex of victim and province or territory, 2015, <https://www.statcan.gc.ca/pub/85-002-x/2017001/article/14698/tbl/tbl3.6-eng.htm>.

² Women's Equality Branch, Executive Council Office (2016). Equality Profile: Women in New Brunswick, http://www2.gnb.ca/content/gnb/en/departments/women/Equality_Profile.html.

³ Statistics Canada (2017). Family violence: how big is the problem in Canada? <https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/problem-canada.html>.

⁴ Benoit, C., Shumka, L., Phillips, R., Kennedy, M. C. & Belle-Isle, L. (2015). *Issue Brief: Sexual Violence Against Women in Canada*, <http://www.swc-cfc.gc.ca/svawc-vcsfc/issue-brief-en.pdf>.

⁵ Chief Public Health Officer (2016). A Focus on Family Violence in Canada, <http://www.healthycanadians.gc.ca/publications/departement-ministere/state-public-health-family-violence-2016-etat-sante-publique-violence-familiale/alt/pdf-eng.pdf>.

Canada, such as a culture of self-sufficiency, community denial, victim blaming and geographical remoteness⁶.

We also know domestic violence is a workplace issue. A recent survey by the University of Western Ontario and the Canadian Labour Congress shows the huge impact of domestic violence as a workplace issue. Over a third of respondents reported experiencing domestic violence in their lifetime. Over 80 per cent of those individuals said it had a negative effect on their work performance, and over a third reported that coworkers were affected as well. Nearly one in ten of those who experienced it lost a job because of the violence. Women, Indigenous workers, persons with disabilities and LGBTTTQI workers were more likely than other respondents to have experienced domestic violence. These workers are also more likely to be in precarious or lower paid employment situations⁷.

CUPE has been advocating for greater recognition of domestic violence issues for several years, by negotiating strong collective agreement language for survivors, and by providing education for our members on this issue^{8,9,10}. Survivors of domestic violence need stable, ongoing paid employment to enable them to leave violent relationships and seek safety, and it is the employers' duty to support this process.

Below, we will offer input on the five specific questions the Department circulated on February 15, 2018, referring to possible amendments to the *Employment Standards Act*.

1. How long should the leave be? Should there be some combination of lengths that can be used continuously or intermittently?

We recommend 10 days of paid leave, followed by 17 weeks of unpaid leave. This is consistent with CUPE's recommendations for Bill C-63 at the Federal level. Clause 206 seeks to provide up to 10 days unpaid leave for employees who are victims of family violence or who are parents of children who are victims.

In addition, survivors should be able to take the leave intermittently and in partial day increments. Survivors require flexibility to be able to take partial days or days spread out over time to address the many tasks they must carry out to ensure their safety and healing. The discretion to decide whether or not the leave can be less than one day's duration should not be left up to employers – it should be stated in the amendments. Employer discretion to deem part of a day as a full day is a hardship for survivors, who may typically require only an hour or two at a time to, for example, attend a medical or counselling appointment, quickly open a bank account or meet with legal counsel.

⁶ Northcott, M. (2015). Domestic Violence in Rural Canada, *Victims of Crime Research Digest*, Issue No. 4, <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd4-rr4/p2.html#sec2>.

⁷ Western Education Center for Research and Education on Violence Against Women & Children, Canadian Labour Congress, and Western Faculty of Information and Media Studies, *Can Work Be Safe When Home Isn't? Initial Findings of a Pan-Canadian Survey on Domestic Violence and the Workplace*, 2014, <https://goo.gl/BhW63F>.

⁸ CUPE (2015). *Domestic Violence and the Workplace: A Bargaining Guide*, <https://cupe.ca/domestic-violence-and-workplace-bargaining-guide>.

⁹ Canadian Labour Congress (2017). *Model Language*, <http://canadianlabour.ca/model-language>.

¹⁰ Canadian Labour Congress (2018). *Domestic Violence at Work Resource Centre*, <http://canadianlabour.ca/issues-research/domestic-violence-work>.

Workplace flexibility is an important part of how employers can support survivors of sexual violence. In fact, discussing flexible hours or workload is part of employer actions recommended by the Public Services Health & Safety Association: A Health & Safety Ontario Partner¹¹. Additionally, YWCA Toronto, a leading women's organization in the country, gives insight to why flexibility is so important for survivors¹²:

During consultations with women in our programs who have experienced violence, legal support is often raised as a common theme. [This] can mean protection, which often comes through criminal court proceedings; it can mean financial security, which often comes through family court proceedings for custody and child support proceedings; and it can mean stability as immigrants through protecting their legal status in Canada. These legal processes often require women to be available for legal procedures during regular work hours. Women often can arrive at court at 10:00 am and it is possible that their case will not go forward until well into the day. Also, courts generally do not operate in the evenings. In this context, providing up to 10 days of paid leave from work is critically important as it will help to enable women to enforce their legal rights, find safety and stability.

2. Should the leave be paid, unpaid or a combination of the two?

A significant portion of the leave should be paid, and there should be an additional option of unpaid leave. Family violence leave that is unpaid defeats the purpose of the leave to ensure financial security during an extremely disruptive and challenging time in a worker's life.

Ensuring uninterrupted payments of wages may spell the difference between a worker's choice to seek necessary help and supports or remain in an abusive situation. In fact, according to the Woman Abuse Council of Toronto, income security is an indicator for women's safety, along with safe and affordable housing, freedom from discrimination and persecution, child access and custody, access to supports and access to legal representation. These measures help to measure safety for women who experience violence. On income security, the Council states¹³:

Income security may include access to savings, employment, social assistance and child support. Economic security is often the primary factor that influences a woman's decision to leave an abuser and/or to not return to an abusive situation. Women leaving violent relationships struggle to re-establish themselves and their children and face dramatic financial barriers in doing so.

¹¹ Public Services Health & Safety Association (2010). Addressing Domestic Violence in the Workplace: A Handbook, p. 9, <http://makeitourbusiness.ca/sites/makeitourbusiness.ca/files/OHSCC-Addressing%20DV%20in%20the%20Workplace.pdf>.

¹² YWCA Toronto (2017). Submission to the Standing Committee on Finance and Economic Affairs regarding Bill 148: Fair Workplaces, Better Jobs Act, 2017, <https://www.ywcatoronto.org/TakeAction/additional/bill148>.

¹³ Woman Abuse Council of Toronto (2013). The Blueprint Project: Generating Knowledge and Action to Address Violence Against Women, A Discussion Paper, http://www.womanact.ca/uploads/1/8/6/8/18687524/discussion_paper_forum_may_16_2013.pdf.

Supporting survivors of domestic violence with a paid leave could help alleviate the cost of family violence for society and employers. Though there is a personal cost to domestic violence that is immeasurable, there is an economic impact of violence. According to a 2012 study: “Victim costs (\$6.0 billion/year) accounted for the largest proportion (80.7%) of the total economic impact for cost items such as medical attention, lost wages, lost education, the value of stolen/damaged property, and pain and suffering”¹⁴. This same study puts the total cost of domestic violence to \$7.4 billion per year.

In addition, there is research that suggests there are limited increased burdens to employers when paid leave is provided. Jim Stanford’s 2016 paper, “Economic Aspects of Paid Domestic Violence Leave Provisions” written for the Centre for Future Work at the Australia Institute, provides key findings:

- Only about 1.5 percent of female employees, and around 0.3 percent of male employees, are likely to utilise paid domestic leave provisions in any given year.
- Incremental wage payouts to workers on domestic violence leaves associated - with the universal extension of a 10-day paid domestic violence leave policy - will be modest - in the order of \$80-\$120 million per year for the whole economy.
- Those incremental wage payouts are equivalent to less than one-fiftieth of one percent of existing payrolls (0.02 percent).
- The costs to employers associated with those payouts are likely to be largely or completely offset by benefits to employers associated with the provision of paid domestic violence leave – including reduced turnover and improved productivity¹⁵.

3. Should an employer be permitted to request proof or verification of the leave request? If yes, what evidence should be required?

There should be some limits on the employers’ right to request documentation as to the reason for taking the leave. For example, it is unlikely that a survivor will be able to provide relevant documentation to show that she has met with a landlord to view a rental property or moved belongings into a new residence.

The Minister should be given power to regulate under what circumstances an employer may ask for documentation and what kind of documentation is reasonably practical for survivors to obtain and provide.

The government should also consult widely with women’s organizations and service providers to survivors of domestic violence in order to determine what is practicable and non-intrusive

¹⁴ Zhang, T., Hoddenbagh, J., McDonald, S., and Scrim, K. (2012). "[An Estimation of the Economic Impact of Spousal Violence in Canada, 2009](#)", Department of Justice Canada. Ottawa.

¹⁵ Jim Stanford (2016). Economic Aspects of Paid Domestic Violence Leave Provisions, http://www.futurework.org.au/economic_benefits_of_paid_domestic_violence_leave.

documentation for a survivor to provide. At minimum, if a list of “recognized professionals” is developed as sources to provide evidence, this list should include “intake worker from a women’s shelter or other crisis service”.

4. Should there be a requirement to maintain confidentiality?

There should be a requirement to maintain the confidentiality of survivors taking leave under these potential amendments.

Confidentiality is especially important for refugees, newcomer or immigrant women, especially those in a period of resident status uncertainty. Referring again to the Woman Abuse Council of Toronto’s Blueprint report, one of the safety indicators for women facing violence is freedom from discrimination and persecution. On this subject, they write:

Newcomer and immigrant women, particularly those without permanent resident status, are especially vulnerable to abusive relationships. Dependent upon their partners and employers for immigration status and economic support, these women face threats of withdrawal of work contracts, difficult access to legal representation due to economic and language barriers, communication and cultural roadblocks. Further, immigrant/refugee women who experience violence and seek support often end up being re-victimized or criminalized¹⁶.

We take this opportunity to note that immigrant, newcomer and refugee women are at particular risk to face sexual violence, domestic violence and intimate partner violence. There is a local and recent needs assessment report produced by the New Brunswick Multicultural Council details rich data on the experience of immigrant women in New Brunswick and the issue of domestic violence. Several gaps exist in providing public service supports to these women, such as a lack of gendered settlement services and culturally sensitive domestic violence services for immigrants¹⁷.

Conclusion

We believe that everyone should be able to feel safe in their workplaces. Survivors of sexual violence, domestic violence and intimate partner violence in New Brunswick currently face several barriers in ensuring they feel safe and supported by their employers. Bringing well-researched amendments to the *Employment Standards Act* will help alleviate these barriers. CUPE hopes that the Department of Post-Secondary Education, Training and Labour will pay close attention to the recommendations submitted from organizations, activists and unions who actively work on this issue and support survivors, predominantly women, on a daily basis.

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¹⁶ Woman Abuse Council of Toronto (2013). The Blueprint Project: Generating Knowledge and Action to Address Violence Against Women, A Discussion Paper, http://www.womanact.ca/uploads/1/8/6/8/18687524/discussion_paper_forum_may_16_2013.pdf.

¹⁷ New Brunswick Multicultural Council (2016). A Coordinated Community Response to Domestic and Intimate Partner Violence Experienced by Immigrant and Newcomer Women in New Brunswick, http://www.unb.ca/fredericton/arts/centres/mmfc/resources/pdfs/annexa_swc-cfc174915v1nb15133_newbrunswickmulticulturalcouncilinc_needsassessmentreport_final.pdf.