Protection of Domestic Violence Victims
Under the New York City Human Rights Law’s Provisions Prohibiting Discrimination on the Basis of Disability

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Abstract

This Article analyzes the need to create a new protected class of domestic violence victims to
shield them from discrimination in employment. The Article examines arguments for and against
proposed legislation to revise the human rights law governing disability, section 8-107 of the New
York City Administration Code. The Article concludes that this legislation is unnecessary because
the law already provides sufficient protection to domestic violence victims without requiring that
victims disclose their domestic violence status to their employers.

KEYWORDS: domestic violence, human rights, discrimination, disability, employment
PROTECTION OF DOMESTIC VIOLENCE VICTIMS UNDER THE NEW YORK CITY HUMAN RIGHTS LAW'S PROVISIONS PROHIBITING DISCRIMINATION ON THE BASIS OF DISABILITY

Marta B. Varela*

INTRODUCTION

The problem of “domestic violence” — the term that has come to describe violence directed at women perpetrated by their intimate partners — is a vexing one for the legal system, whether under a criminal or civil law framework. Until recently, most states did not convey to police officers called to the scene of a domestic dispute the authority to take the perpetrator into custody on the strength of circumstantial evidence of “wife battering,” as the behavior is also known. For example, in Duluth, Minnesota, only after a concerted campaign by feminist activists in 1982 did the city entrust police officers with that authority by instituting a mandatory arrest policy for misdemeanor assaults — the criminal charge filed in most domestic violence cases.1 When it instituted the mandatory arrest policy, Duluth was the first jurisdiction in the fifty states to do so.2

New York State instituted a mandatory arrest policy in 1996.3 The definition of family under the governing Family Court statute,4 however, is narrower than that utilized by the police department of the City of New York and the five District Attorneys’ offices. As a result, the latter definition includes more potential perpetrators.5

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2. See id.
3. See N.Y. CRIM. PRO. LAW § 140.10(4) (McKinney 1998).
5. See N.Y. CRIM. PRO. LAW § 140.10(4).
Domestic violence is a crime against women that is not committed by a stranger, but that is, by its very definition, a crime perpetrated by a person with whom the victim is on intimate terms. Like sexual harassment, domestic violence is a manifestation of one person's desire to dominate and control another, rather than the outgrowth of strictly sexual phenomena between two persons. Domestic violence is a contemporary crime that, due to the historically chattel status of women in many countries (including many "modern" ones), was traditionally not a crime.

Conventionally viewed as a problem affecting primarily the poor, domestic violence has been redefined as a problem that af-

7. See id. at xxi.
8. See R. Emerson Dobash & Russell Dobash, Violence Against Wives: A Case Against the Patriarchy 56-57 (1979); Andrea Brenneke, Civil Rights for Battered Women: Axiomatic and Ignored, 11 Law & Ineq. J. 1, 22-26 (1992). From the seventeenth through the nineteenth centuries, "there was little objection within the community to a man's using force against his wife as long as he did not exceed certain tacit limits." Dobash & Dobash, supra, at 56-57.

Community tolerance of such behavior was great indeed. A woman could be beaten if she behaved "shamelessly" and caused jealousy, was lazy, unwilling to work in the fields, became drunk, spent too much money, or neglected the house. The community agreed that these were offenses that merited, even required, punishment as long as the physical force was restricted to "blows, thumps, kicks or punches on the back if they leave no lasting traces." . . . It was the moderate use of physical punishment that separated the "reasonable husband from the brute."

The violence could be quite severe before the community would take collective offense and even then they might not intervene but only express disapproval because to intervene directly was to interfere in the private sphere of family life, which was the rightful arena of the patriarch. The community's stance then, as today, permitted women to be continually subjected to the most extraordinary degree and forms of physical abuse.

Id. at 56-57 (footnotes omitted). Further, Dobash and Dobash also stated that: [i]n the case of marital chastisement, the husband's traditional right to beat his wife, established under English and European law, was neither confirmed nor denied in the United States. That omission, however, was eventually remedied. In 1824 wife beating was made legal in Mississippi. Court cases in several other states reaffirmed the traditional right of a man to beat his wife and did so in language identical to that of the English common law.

Id. at 4 (footnotes omitted).
9. See Lenore E. A. Walker, Foreword to Barnett & LaViolette, supra note 6, at vii ("In the early 1970s, when I first became aware of battered women, it was clear that the average person, even the average professional, believed it only happened to poor, passive women with lots of children and little education."); see also Baracebridge Hemyng, Thieves' Women, in 4 London Labour and the London Poor: A Cyclopaedia of the Condition and Earnings of Those That Will Not Work, Comprising Prostitutes, Thieves, Swindlers and Beggars 236,
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fects women from all strata of the socio-economic ladder. In its reconfigured state, the problem of domestic violence has become the object of new scrutiny by lawmakers. These lawmakers are wrestling with the question of whether current provisions of the criminal law that apply to domestic violence perpetrators go far enough to stanch those societal attitudes that may abet its spread.

In New York City, prompted by advocates for domestic violence victims, members of the City Council of the City of New York have proposed legislation, Introduction No. 400 ("Int. No. 400"), to amend the New York City Human Rights Law prohibiting employment discrimination by adding domestic violence victims to the city's list of thirteen protected classes.

This Article analyzes the need to create a new protected class in order to shield domestic violence victims from workplace discrimination. Part I provides general background on domestic violence. Part II presents the terms and implications of Int. No. 400 to section 8-107 of the New York City Administration Code (the "Human Rights Law") governing disability. Part III analyzes the arguments for and against Int. No. 400. Part IV presents the new revision of the proposed legislation embodied in Introduction No. 400-A ("Int. No. 400-A"), and analyzes the changes made in the new draft. This article concludes that the proposed legislation is an unnecessary piece of legislation because the Human Rights Law's provision prohibiting discrimination based on disability already

236-39 (Henry Mayhew ed., 1968) (providing a concrete example of how the problem is typically viewed).

10. See generally BARNETT & LAVIOLETTE, supra note 6.
12. See id. at 43-44.
13. See Draft of Introduction No. 400 (introduced Aug. 6, 1998) [hereinafter Int. No. 400] (proposing an amendment to section 8-107 of the New York City Administration Code introduced by the Public Advocate, Mr. Green, and Council Members Eldridge, DiBrienza, Leffler, Cruz, Boyland, Marshall, Duane, Robinson, Freed, Henry, Linares, Lopez, Perkins, Pinkett and Reed, as well as Council Members Carrion, Clarke, Eisland, Fisher, Foster, Koslowitz, Michels, Miller, Quinn, Rivera and Sabini, which was referred to the Committee on General Welfare).
14. See id. Presently, there are 13 protected classes under the New York City Human Rights Law. See N.Y.C. ADMIN. CODE § 8-107 (1996). They are "actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation or alienage or citizenship status or any person." Id.
15. See Draft of Introduction No. 400-A (introduced Jan. 26, 2000) [hereinafter Int. No. 400-a] (proposing an amendment to Section 8-107 of the New York City Administration Code introduced by the Public Advocate, Mr. Green, and Council Members Eldridge, DiBrienza, Leffler, Cruz, Boyland, Marshall, Robinson, Freed, Henry, Linares, Lopez, Perkins, Pinkett and Reed, as well as Council Members Carrion, Clarke, Eisland, Fisher, Foster, Koslowitz, Michels, Miller, Quinn, Rivera and Sabini).
provides substantial protection to domestic violence victims and without requiring that victims disclose their domestic violence sta-
tus to the employer.

I. DOMESTIC VIOLENCE BACKGROUND

The more we know about domestic violence, the more the phe-
nomenon emerges as a complex welter of psychosocial phenomena. A recent article in the New York Times indicates that one-quarter of arrests for domestic violence assaults are of women.\textsuperscript{16} While this does not indicate that men are victims in one-quarter of all domest-
ic violence cases, it does suggest that some female victims of do-
monic violence are also perpetrators of domestic violence.

Extrapolating from the New York Times article, three-quarters of all domestic violence victims are women. Whether the woman is guilty of violence or the object thereof, however, blaming the vic-
tim is not an option. Questioning whether the complex problems of domestic violence victims could be ameliorated by creating a protected class for them, however, is.

Under the broad definition contained in Int. No. 400, “victims of domestic violence” not only can be sexually intimate partners, but also can be family members whose intimate relationship is not a sexually intimate one.\textsuperscript{17} While battered spouse syndrome is usually associated with male-female relationships, heterosexuals do not have a lock on the pathology.\textsuperscript{18} There is lesbian and gay partner battering, and undoubtedly transgender partner battering, as well.\textsuperscript{19} In other words, if the relationship is intimate, the possibility of violence is more likely than in any other type of relationship.\textsuperscript{20}

\textsuperscript{17} See Int. No. 400, supra note 13, § 2. A “victim of domestic violence” is defined as:

\begin{quote}
a person who has been subjected to acts or threats of violence, not including acts of self-defense, committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim, by a person who is or has been in continuing social relationship of a romantic or intimate nature with the victim, or a person who is or has continually or at regular intervals lived in the same households as the victim.
\end{quote}

\textit{Id.}

\textsuperscript{19} See id.; see also Angela West, Prosecutorial Activism: Confronting Heterosex-
\textsuperscript{20} See DOBASH & DOBASH, supra note 8, at 17.
After all, as the history of homicide bears out, most murders are of victims who knew their killer well, often, very well.\textsuperscript{21}

Stalking, also, is a form of intimate violence, although it springs into being after the woman has taken steps to withdraw from a partner with the intention of ending the relationship.\textsuperscript{22} These terrible threats to a person's life merit our compassion and tap into our capacity to be empathetic. It seems appropriate to ask, then, whether the law is well suited to the task of bringing comfort to the sorely-tested domestic violence victim.

Barnett and LaViolette describe domestic violence as a dynamic phenomenon that demonstrates that:

battered women have learned to endure abuse and remain in their unhealthy relationships . . . . Experiences that cause stress-induced symptoms in other populations (e.g., Vietnam veterans) can be likened to the experiences of a battered woman. She is a human being responding to a crisis brought on by abuse, and her response is like the response of other human beings who experience similar intense and/or prolonged trauma.\textsuperscript{23}

Community outreach to the battered woman can undoubtedly be a sustaining source of the will to break with the pattern of violence. If the woman is working, employers are a logical point of contact for information about domestic violence victim services offered by social service agencies, such as Victim Services or a battered women's shelter. Educating employers as to their ability to keep valued employees who are domestic violence victims by facilitating contact with these agencies is certainly imperative. Nonetheless, employers do not wish to be punished for not being social workers, and any scenario that punishes them for not taking an active interest in their employees' personal problems will surely generate an outcry by employers. Whether punishing employers can be a progressive response to employee problems whose after-effects may disrupt workplace operations is, therefore, open to question.

Many ask, why do domestic violence victims remain in abusive relationships? Barnett and LaViolette quote earlier research by Barnett and Lopez-Real that "quantified several reasons that battered women stay in abusive relationships that fall under the rubric of attachment: (a) 'You loved your partner'; (b) '[Y]ou thought you would feel lonely without your partner'; (c) '[Y]ou were afraid to

\begin{itemize}
  \item \textsuperscript{21} See \textit{id.} at 15-17.
  \item \textsuperscript{22} See \textsc{Marian Betancourt}, \textsc{What To Do When Love Turns Violent} 90-92 (1997).
  \item \textsuperscript{23} \textsc{Barnett & LaViolette}, supra note 6, at xxvi.
\end{itemize}
live without a man." These beliefs are, for those caught up in them, compelling rationales for self-destructive behavior. They also suggest just how difficult the presence on the staff of an employee who is being victimized by domestic violence can be for an employer. If an employee identifies herself as a domestic violence victim and an employer accommodates her as such by, for example, acceding to accommodation requests that ostensibly should provide the employee with a feeling of safety during the workday, what can the employer do when the employee returns to the partner who battered her? Nothing. What will the employer do when on account of her return to the batterer her work suffers, or she misses work, or the sudden presence of her partner around lunch hour becomes a source of anxiety for the employer, whose fears now extend beyond his battered employee to himself and his other employees?

If terminating an employee who presented the fact pattern outlined above constituted discrimination against a domestic violence victim and a violation of the Human Rights Law, the protections afforded domestic violence victims would in effect trounce an employer’s prerogative to control his workplace by punishing him after he made an accommodation after which the employee was unable to perform the essential functions of the job.

Such an interpretation of the parameters of a “domestic violence victim” protected class may seem outlandish. Nevertheless, if domestic violence victims are to be afforded protection qua domestic violence victims rather than as members of a class of persons disabled by domestic violence, it seems inevitable that not only domestic violence victims with documented disability claims, but domestic violence victims who cannot get away from the batterer must be accommodated by the employer.

A. Domestic Violence Scenarios

The problem of domestic violence would be easier to address if it was limited to case studies of women who had been victimized by domestic violence and, with the benefit of accommodation by their employers, were able to break the cycle of violence, pick up their lives and go on to a violence-free future. The research about domestic violence does not, unfortunately, indicate that a majority of

24. Id. at 4 (quoting Ola W. Barnett & D. I. Lopez-Real, Women’s Reactions To Battering and Why They Stay (1985)).
domestic violence victims track that uplifting scenario. A few examples suffice to make the point:

1. **Scenario #1: Case History — Karen and Michael**

Michael Connell visited his estranged wife Karen and their son Ward. Karen and Michael had been separated for more than a year but were seeing each other again. A friend of Ward's was also visiting and the four of them were going on a picnic. They never made it.

At around noon, Karen staggered from the house, bleeding profusely from the neck. She collapsed into a neighbor's arms, gasping that her husband had stabbed her and was still in the house with their 5-year old son and his friend.

The South Pasadena Police arrived on the scene to investigate. After several attempts to make contact with Michael or the children failed, they contacted the L.A. Sheriff's SWAT team. The SWAT team, using a bullhorn, requested that anyone inside the house come out.

Two boys walked out of the house with their hands up, pleading, "Don't shoot; we're the good guys." The SWAT team forced entry into the house at about 3:00. They found a man lying on the bathroom floor. He had massive slash wounds to his neck area and a stab wound to his chest. The wounds were self-inflicted. Michael Ward Connell was dead.

At the same time, Karen was undergoing an operation at Huntington Memorial Hospital. She had lost seven pints of blood, and her vocal cords had been severed. Her young son Ward had saved her life by jumping on his father's back and hitting him, screaming, "Don't hurt my Mom!"

The coroner's report stated, "Decedent apparently had marital problems with his wife for quite some time." Karen and Ward had been residents of Haven House, a refuge for battered women and their children. At the time of the attack, Karen had been a member of their outreach counseling group.25

2. **Scenario #2: A Scottish study**

From a Scottish study, in which a mother recounts her experience:

25. See Barnett & LaViolette, supra note 6, at xiv-xv.
Oh yes, they've seen me be hit. He used to delight in lifting them up out of their beds so that they could watch.

And this was 2 A.M. and he sat on the chair and sat and told me everything he thought about me and he dragged the full three kids out their beds and made them all sit. He lined them right up against the couch and told them all what I was. He says to them, "Now you see her, she's a whore." And he'd say to Chris, "See her, she's a cow." And the baby was only months old, and he'd say to him, "See her, she's no good. She's dirt. That's what women are. They're all dirt. There's your daddy been out working all day and there's no tea ready for him. See how rotten she is to your daddy." And all the babies were dragged out of their beds for no reason at all.\textsuperscript{26}

3. Scenario #3: Drinking

Drinking often prompted the violence, but there were certainly times when he was sober. I know he loved me, and sometimes he was able to say it or show it, but the violence is what defined our relationship.

I began secretly saving money from each paycheck and opened my own bank account. I went to the library to research divorce. It took me three years to get out, to find a secure job and a place I could afford to live, and provide care for my children. During those three years my husband continued to threaten and abuse me. One afternoon, while he lingered at a neighborhood bar, I stole away with my children and a suitcase.

He demanded that I bring his children back or he would not support them. He stalked the home I now shared with another woman and her three children. (We worked rotating shifts, so one of us was always home with five children.) He stood outside at night watching, making sure I would not go out with another man. Was he out there with a gun? I did not feel safe leaving my house. He had often bragged threateningly about his hidden guns. Many years later my son confirmed that he indeed had at least two guns hidden in the basement.\textsuperscript{27}

\textsuperscript{26} See Dobash \& Dobash, supra note 8, at 151.

\textsuperscript{27} See Betancourt, supra note 22, at xxii-xxiv.
B. Analysis of Scenarios

These three scenarios illustrate the ugly diversity of domestic violence. They also illustrate that each woman's experience of domestic violence — and her responses to it — will not be identical. This also makes the task of identifying "how the employer discriminated" against the domestic violence victim a dizzying one for lawyers and judges.

Aside from considering the difficulties of determining, as a legal matter, exactly what employer conduct consisted of discrimination, the potentially negative psychological consequence of the victim's revealing to her employer that she identifies herself as a domestic violence victim inhabiting psychic space somewhere along the spectrum described in the three scenarios above is also worth considering. Why couple that identity with a demand based upon a claim of right that the employer do something she asks? Why, if her physical and psychological injury on account of domestic violence is already provided for in a high degree of specificity under the disability law, is it necessary to overlay onto it a new, "domestic violence victim" protected class, fraught as its addition will be with analytical difficulties unbalanced by a significant, corresponding benefit for the domestic violence victim?

II. The New York City Human Rights Law's Disability Provision and Introduction No. 400

A. The Human Rights Law Disability Provision

The Human Rights Law contains a provision that protects against unlawful discriminatory practices in the employment setting. 28 In pertinent part, this provision states:

It shall be an unlawful discriminatory practice . . . [f]or an employer . . . because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation or alienage or citizenship status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment. 29

For purposes of this section of the statute, "disability" is defined as "any physical, medical, mental or psychological impairment, or a history or record of such impairment." 30 The phrase "physical,

29. Id. § 8-107(a).
30. Id. § 8-102.16(a).
medical, mental, or psychological impairment” is defined as “an impairment of any system of the body.” This definition covers both physical and mental injury.

B. Introduction No. 400

Int. No. 400 is legislation that would, if enacted, create a new protected class of domestic violence victims for purposes of the Human Rights Law protecting against unlawful employment discrimination. The first draft of the bill, on which most of the discussion in this article will be based, reads, in pertinent part, as follows:

Victims of Domestic Violence. (a) It shall be an unlawful discriminatory practice for an employer, or an employee or agent thereof, to refuse to hire or employ an individual or to discharge from employment or to discriminate against in compensation or other terms, conditions, or privileges of employment an individual because of the actual or perceived status of such individual as a victim of domestic violence.

The legislation defines “victim of domestic violence” as:

any person who is the victim of an act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, menacing, reckless endangerment, kidnapping, assault, or attempted murder; and (i) such act or acts have resulted in an actual physical or emotional injury or have created a substantial risk of physical or emotional harm to such person; and (ii) such act or acts are or are alleged to have been committed by a family or household member, which shall mean a person related by blood or marriage; a person who is legally married to the victim of domestic violence, or who is such victim's domestic partner; a person formerly married to the victim of domestic violence, or who was the victim's domestic partner regardless of whether such person still resides in the same household as the victim of domestic violence; a person who has a child in common with the victim of domestic violence, regardless of whether such person is or was married or has lived together with such victim of domestic violence at any time; an unrelated person who is continually or at regular intervals living in the same household as the victim of domestic violence; or who has in the past continually or at regular intervals lived in such same household; or a person unrelated to the victim of domestic violence who has had intimate or continuous

31. Id. § 8-102.16(b)(1) & (2).
32. Int. No. 400, supra note 13, § 2.
social contact with such victim and who has access to such victim's household.33

C. Application/Enforcement of the Proposed Legislation

There are those who believe that the symbolic effect of a particular piece of legislation is as important, or nearly as important, as its practical consequences because it signifies a recognition of the ascendance of a traditionally disadvantaged group. Consequently, proponents argue that the disadvantaged group benefits from the power elite's recognition that the status quo is changing.

Laws outlawing discrimination on the basis of membership in a protected class — usually referred to as “minority group members”34 — may appear to reflect this thinking. Nevertheless, many laws outlawing discrimination were not merely symbolic indicia of progress. These laws were wedded to powerful and dynamic enforcement mechanisms that changed American society.35 The success of civil rights laws in addressing discrimination in public accommodations and housing and employment on the basis of race is rooted largely in the enforcement power aligned behind them.36

33. Id. § 2(b).
35. See Jack E. White, Martin Luther King, Jr., in PEOPLE OF THE CENTURY 354, 355 (1999). The federal laws desegregating public accommodations were the culmination of the bus boycotts and lunch counter sit-ins in the South which galvanized American opinion in favor of desegregation of public accommodations and led the way to other reforms:
   Even after the Supreme Court struck down segregation in 1954, what the world now calls human rights offenses were both law and custom in much of America. Before [Martin Luther] King and his movement, a tired and thoroughly respectable Negro seamstress like Rosa Parks could be thrown into jail and fined simply because she refused to give up her seat on an Alabama bus so a white man could sit down. . . Even highly educated blacks were routinely denied the right to vote or serve on juries. They could not eat at lunch counters, register in motels, or use whites-only rest rooms; they could not buy or rent a home wherever they chose. In some rural enclaves in the South, they were even compelled to get off the sidewalk and stand in the street if a Caucasian walked by.
   Id. The original focus of enforcement mechanisms have shifted because, although public accommodation suits are still brought, most advocates today are concentrating on employment and housing discrimination.
36. For example, the U.S. Supreme Court has held that Congress, acting with its discretion and judgment, has the power under the commerce clause to ban racial discrimination. See Heart of Atlanta Motel v. United States, 379 U.S. 241, 277 (1964) (reviewing the constitutionality of Title II of Civil Rights Act of 1964). For a local enforcement perspective, see Marta B. Varela, The Effectiveness of Equal Treatment in Employment: the Human Rights Law of New York City, in NON-DISCRIMINATION
Therefore, it is a fundamental premise of this Article that any proposal for the extension of a legal right to a newly-defined minority group must establish the workability of the enforcement mechanism and its consistency with established enforcement mechanisms, or else be consigned to the ash heap.

Int. No. 400 is legislation that would, if enacted, create a new protected class of domestic violence victims. Int. No. 400 would require the New York City Commission on Human Rights (the "Commission"), which enforces the City's Human Rights Law, to determine whether the person filing a complaint is a "domestic violence victim."\(^37\) In all cases, the proposed legislation would require the Commission to determine, as a threshold matter, whether the employee is the victim of conduct that "would constitute a violation of the penal law."\(^38\) Once the Commission makes such a determination, the Commission would then need to decide if the employer or its agents discriminated against the domestic violence victim. The victim's employer is prohibited from discriminating against the victim because of the victim's actual or perceived status as a victim of domestic violence.\(^39\) As a result, Int. No. 400 would confer on the Commission the authority to determine, in the absence of a criminal conviction, or even a protective order, whether the complainant has been the victim of a criminal act committed by someone with whom she has an intimate relationship. District Attorney's offices in the five boroughs would likely see the exercise of such authority by the Commission as a usurpation of their prerogatives. In addition, it is highly unlikely that the Commission could compel the alleged perpetrator of domestic violence to testify concerning his alleged criminal acts.

Because Int. No. 400 would be enforced by the Commission, any reasoned analysis of the benefits that might inure to domestic violence victims must evaluate the practicalities of giving special status to domestic violence victims. Specifically, there must be an evaluation of whether the new enforcement burdens that would be placed on the Commission could be discharged effectively. If the law cannot be effectively enforced, legislating a fourteenth protected class into Human Rights Law will be nothing more than an empty show.

\(^{37}\) See Int. No. 400, supra note 13, § 2.
\(^{38}\) Id.
\(^{39}\) See id. § 1.
Int. No. 400 is offered to provide domestic violence victims with recourse against an employer who discriminates against them because they are domestic violence victims.\textsuperscript{40} By its very framework, however, this proposed legislation actually impedes the goals it sets out to achieve on behalf of domestic violence victims. A complaint based on a claim that has no supporting judgment from a state criminal court boldly illustrates the perils of the legislation.

In the absence of a criminal conviction and a supporting record establishing that (1) the complainant was the victim of a crime; and (2) the perpetrator and his victim had had an intimate relationship, on what basis should the agency determine that an act which would constitute a violation of the penal law took place between them? Int. No. 400 will naturally lead employer-respondents to challenge the agency's authority to so determine, in the absence of a criminal conviction or a protective order. Employers will also argue that by not requiring the domestic violence victim to produce a criminal judgement or protective order, the proposed legislation's actual effect is to inhibit employers from helping domestic violence victims and focuses employers instead on defensive strategies to avoid frivolous complaints lodged by defendants colluding with domestic partners to punish employers.

In the case where there is a protective order or a criminal conviction and supporting documentation establishing the intimate relationship between the complainant and the object of the criminal sanction, the existence of domestic violence in the employee's life is not in question. Whether a discrimination framework is the best one to encourage employers to assist domestic violence victims, however, is.

Assume for the moment that: 1) an employer learns that an employee is being victimized by a present or former intimate; 2) the employer rejects the employee's request for assistance, such as a change in her work schedule; and, 3) the employer acts adversely towards the employee. It is certainly deplorable that an employer would behave in such a way solely because an employee is being victimized, but it is also hard to believe. Any employer who has been satisfied with the performance of an employee will be loath to terminate or take other adverse action against her, because old and new employees are not fungible. Recruitment of new employees is time-consuming and training drains the bottom line. Moreover, if an employer intentionally discriminates against a domestic violence

\textsuperscript{40} See id.
victim, that employee already has a cause of action for disability, as discussed in Part III below.\footnote{See infra Part III; see also N.Y.C. ADMIN. CODE § 8-107.}

III. ARGUMENT — DUPLICATION OF REMEDIES

Unlike discrimination that originates in the workplace, where the employer can reasonably be said to be a prime influence in sustaining or inhibiting the activity, domestic violence takes place outside of it. If there is subsequent workplace discrimination against a domestic violence victim, then the provisions of the Human Rights Law that ban discrimination based on disability already prohibit any such discrimination.\footnote{See N.Y.C. ADMIN. CODE § 8-107 (1996).} Under the Human Rights Law, any injury, whether psychological or physical, suffices for the filing of a complaint alleging discrimination on the basis of disability.\footnote{See id. § 8-102(16)(a) & (b).} Further, the Human Rights Law requires the employer to accommodate the disability unless the employer can satisfy the court that to do so would constitute an undue hardship to the employer.\footnote{See id. § 8-102(18).}

Advocates for the enactment of legislation of a "domestic violence victim" protected class argue that there are domestic violence victims unmarked by any physical or psychological disability as a result of the violence, and that those victims will be left unprotected and could be discriminated against without this legislation.\footnote{See Int. No. 400, supra note 13, § 1.} In addition to aiding this atypical group of domestic violence victims, the proposed legislation would also presumably bring within its ambit those stigmatized by the perception that they are domestic violence victims.\footnote{See id.} Thus, the legislation's proponents argue that the legislation will close the loophole in coverage not addressed by the current disability law framework.\footnote{See id.}

In other words, advocates for the "domestic violence victim" protected class believe there is a gap in protection from discrimination that works to the disadvantage of those domestic violence victims who are physically or psychologically unscathed.\footnote{See id.} Furthermore, advocates assert that the law in its current state leaves remediless individuals wrongly perceived to be domestic violence victims and discriminated against on account of that percep-
tion.49 If there is no physical or psychological injury of any kind, how are these individuals victims? If, as advocates maintain, there are domestic violence victims with psychological and physical injuries, and who will neither approach police nor the courts, then what meaningful accommodation could the addition of a special protected class that simply mimics protections already provided under the disability rubric add? Of course, the inefficiency of a duplicative filing aside, in those cases where there is documentation of physical or psychological disability, what victim would be properly advised not to avail herself of its broad protections on account of the injury to her dignity implied in being a claimant under the disability category?

This leaves only the case in which the employer took adverse employment action against the employee for perceiving her (rightly or wrongly) to be a domestic violence victim. These reasons do not, in the last analysis, constitute a compelling rationale for the legislation of a protected class of domestic violence victims. The danger of the proposed legislation is that it permits an employee to make an allegation against an employer that may or may not be true and that need not be substantiated. Therefore, the proposed legislation in effect compels employers to take an adversarial view of the domestic violence victim rather than encouraging accommodations that could help them.50

Even though analysis reveals the weakness of the legislation, if a domestic violence victim protected class is enacted, any domestic violence victim with physical or psychological injuries will certainly file both a disability and a domestic violence victim claim. Despite this duplication, proponents of the proposed legislation strenuously insist that it will address a gap in coverage under disability law. It is therefore instructive to examine their claim that there is a class of domestic violence victims for which the disability protected class provides no protection.

A. Refusal To Hire

Any applicant for a job who shows physical signs of possible domestic violence — bruising on exposed areas of the skin being the most obvious — sends a signal to an employer that there may be a disability issue. It may be assumed, for the sake of the discussion, that an employer who is familiar with the federal, state and local

49. See id.
50. See id.
laws\textsuperscript{51} prohibiting discrimination on the basis of disability and will not commit disability discrimination in the course of the hiring process.

As a legal matter, therefore, for a domestic violence victim complainant who makes no claim of disability to prevail in her domestic violence victim action, she would have to be able to prove either: (a) that her employer refused her an accommodation not required by the disability law, but that would be required under the domestic violence victim category; or (b) that only her domestic violence victim status, or, the perception that she is a domestic violence victim, motivated the employer's adverse employment action against her.\textsuperscript{52}

In the first case, not to be overlooked is the possibility that an employer could be obliged to provide accommodations for domestic violence victim employees that the employer would not have to provide under the disability framework. This raises troubling questions as to whether a judge might read the proscription on disability discrimination to require employers to install new security systems built for the protection of a single employee.

The second case is unlikely to arise because the disability law's proscriptions have conditioned most employers not to ask questions about anything not strictly related to the work to be done.\textsuperscript{53} Whatever the employer thinks caused the bruises displayed, the employer will keep his own counsel. Therefore, the only way the employer could learn the reason for the obvious signs of injury is if the applicant communicates the fact to the employer herself. The foregoing is also true with respect to domestic violence victim applicants bearing no outward signs of abuse. An employer will naturally be circumspect in response to the disclosure of a domestic violence problem, and if the domestic violence victim is not hired, the employer may anticipate the possibility of a discrimination suit.

Let us examine the instance where an employer's representative in the hiring process does make a remark that indicates a bias against domestic violence victims. The damages issue aside, such a case is aberrational since the preponderant number of filers will have physical and/or mental disabilities. Therefore, most employers named as respondents could also be named as respondents


\textsuperscript{53} See, e.g., 42 U.S.C. § 12112(d); N.Y.C. Admin. Code § 8-107.
under a disability framework. The only reason for a "domestic violence victim" category in such cases appears to be to provide domestic violence victims a way to seek damages against an employer for failing to accommodate them without having to make the claim on the basis of disabled status.

In the case of the putatively non-disabled domestic violence victim, because there will be no claim for a workplace accommodation based on a disability caused by the violence, there are two possible underlying theories that would support such a claim. The first would be based on the employer's unresponsiveness to the domestic violence victim's request for an accommodation having to do with her physical safety. The other theory would be a claim for compensatory damages for adverse employment actions taken against the survivor solely on the basis of her status as a domestic violence victim.

In the first case, the claim of lack of accommodation would oblige the court to determine whether a complainant is not entitled to an accommodation because it constitutes an "undue hardship," as provided in the disability law. In the second case, the "stigma" theory, in the absence of an uncorroborated remark about a victim's status, it will be difficult to prove that the employer took the adverse action complained of because the complainant was a domestic violence victim or perceived to be one. It will be difficult to sever one cause of action from the other when this cause of action is coupled with a disability claim. This is indicative of the legislation's redundancy.

In addition, if some percentage of the employer population is found to have engaged in discrimination against domestic violence victims and is compelled to pay out damages based on the income that would have been earned and the psychological injury implied by the rejection, will the institution of monetary penalties against the employer actually impede the likelihood of domestic violence? Clearly not. Furthermore, it is difficult to analogize discrimination against domestic violence victims to discrimination based on race, gender or national origin because proponents of the legislation admit they want accommodations for domestic violence, just as advocates for the disabled do.

Opponents of the legislation do not question the need for employers to accommodate domestic violence victims. Rather, they point out two things. First, the disability laws already provide pow-

54. See N.Y.C. ADMIN. CODE § 8-102(18).
erful protections for domestic violence victims. Second, the disability laws provide a framework within which the most adversarial aspects of disagreements between employers and employees can be navigated by educating employers to their existing obligations; rather than by creating a new protected class for them to worry about.

B. Security Concerns

The proposed legislation does not, as the disability law does, require employers to provide employees with a reasonable accommodation. Rather, it prohibits discrimination against domestic violence victims, while not specifying anything other than a regime of monetary compensation for refusal to hire, terminate, or fail to supply the domestic violence victim with benefits comparable to those being generally enjoyed by other co-workers. While the Human Rights Law provides for, in addition to compensatory damages, injunctive relief and civil penalties as additional remedies, whether an employer could be compelled to provide any accommodations to the domestic violence victim on the basis of the proposed legislation alone is open to question.

Under a disability framework, an employer could be required to accommodate an employee with a psychological or physical disability caused by domestic violence. Significantly, it would be available without requiring the Commission to determine whether the third-party perpetrator’s conduct would constitute a violation of the penal law, thereby facilitating the incentive for employers to provide the accommodation requested.

For instance, if an employee reports that whenever her ex-husband calls, she experiences panic attacks and requests that her employer instruct the switchboard operator not to put the calls through, such a request would fit squarely within the framework of the disability law. There is another advantage to using the disability framework: the disability law requires employers to maintain confidentiality regarding the employee’s disability. The proposed legislation, on the other hand, requires the employee to disclose to

55. See Int. No. 400, supra note 13, § 2.
56. See N.Y.C. ADMIN. CODE § 8-125.
57. See Int. No. 400, supra note 13; N.Y.C. ADMIN. CODE § 8-107.
59. While confidentiality is not covered by the Human Rights Law, the Americans with Disabilities Act requires the employer to keep the employee’s disability confidential. See 42 U.S.C. § 12112(d)(3)(B).
the employer not only the accommodation required, but also the domestic violence scenario that gave rise to the need for it.

Domestic violence discrimination, as characterized in the legislation, is like racial or national origin discrimination in employment; like treating domestic violence victims differently from other applicants or employees, solely on the basis of their status as a domestic violence victims. The remedy, as provided by the proposed legislation, is compensatory, in line with theories about remedies for discrimination based on race, national origin and gender, which seek to incentivize employers to treat equally all equally qualified applicants and employees, even though they belong to different protected classes. In disability discrimination, however, as with discrimination based on creed, the remedy is to provide special treatment to the member of the protected class. By its terms, the proposed legislation seeks to make employers treat domestic violence victims like everyone else — when arguably they need the special treatment that the disability protected class already makes available to them.

The need for preservation of the employee’s confidentiality is also not to be underestimated. While under the disability framework, the employee may disclose that calls from her former husband make her so nervous she has had to see a psychiatrist who says she is suffering from “panic attacks,” she need not disclose to the employer exactly why, and may still receive the benefit of the requested accommodation.

In sum, by creating an adversarial relationship between the domestic violence victim and the employer, the proposed legislation would actually discourage an employer from making an independent judgment about the individual and instead, force the employer to take a defensive posture towards an employee’s disclosure of the details of domestic violence. The proposed legislation is an effort to help domestic violence victims but it will do nothing substantive to change patterns of domestic violence and will drain off agency resources that could be better applied in other ways. Unlike the changes wrought by the laws prohibiting discrimination in public accommodations, housing and employment, the legislation scapegoats employers without advancing progress against domestic violence. The legislation is, therefore, in addition to its infelicities as a matter of public policy, deeply flawed as a legal matter.
IV. INTRODUCTION NO. 400-A – THE NEW REVISION AND RECENT ACTIVITY

A. The Advocates' Perspective

Advocates are unswayed by the foregoing arguments.60 Their chief concern is illustrated by the following example, wherein the disability analysis would not protect a domestic violence victim, and the proposed legislation would:

_Hypothetical_

A working woman who terminated her abusive relationship five years ago is tracked down to her place of work by the former boyfriend. The boyfriend starts making pestering calls to the woman at her place of work. The woman speaks to her employer about the situation, requesting the accommodation of receiving a new telephone number. Her employer, fearful that the ex-boyfriend might be a threat to his workplace, fires the woman.

Under such a scenario, the advocates point out (and the Commission on Human Rights agrees) that the working woman is not going to be able file a complaint with the Human Rights Commission for having been denied a reasonable accommodation under the City's law prohibiting discrimination on the basis of disability.

B. The Labor and Employment Committee of the Bar Association of the City of New York

Advocates brought their campaign on behalf of Int. No. 400 to the Labor and Employment Committee of the Bar Association of the City of New York. After hearing presentations from its committees regarding a relevant piece of legislation a committee has earmarked for consideration by the Bar, the Bar Association may formally endorse legislation it believes will reasonably serve the public interest. For that reason, advocates arranged a meeting with the Labor and Employment Law Committee at which they would make a presentation and take questions from the Committee's members. The Committee heard the presentation and discussed

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60. A joint hearing on Int. No. 400-A was held by the General Welfare and the Committee on Wednesday, January 26, 2000. Advocates for the legislation testified extensively. The Mayor's Office of City Legislative Affairs, which acts as the Mayor's spokesman on city legislative matters, submitted a Memorandum in Opposition to the legislation in lieu of testimony. As of January 27, 2000, the transcript of those hearings was in preparation as a public document. A copy of the transcript will be deposited with the Council's legislative offices at City Hall. The telephone number for the office of the Chief, Legislative Document Unit, Stephen C. Stark, is (212) 788-7104.
the proposed legislation. At this time, however, the Bar Association has not taken a public position on the bill.

C. City Council Revisions Embodied in Int. No. 400-A

Like any legislative body, in the early life of a legislative proposal, the City Council of the City of New York will incorporate comments from interested parties whose views it shares that will eliminate any errors in draftsmanship, including ambiguities, contradictions and omissions.

The City Council, working alongside the advocates, revised the language of the August 6, 1998 draft and issued a new draft bill, Int. No. 400-A, on January 26, 2000.\textsuperscript{1} In addition to amending the language to the proposed new section of the Human Rights Law, the new draft bill replaced the preamble preceding section 2, regarding legislative findings and intent.\textsuperscript{62} However, because that language will not be incorporated into the Human Rights Law, it need not concern us here, and the balance of the article will analyze the language of the proposed new section 8-107.21 of the Human Rights Law.

Section 2 of Int. No. 400-A, the section of the bill that would amend the Human Rights law to add "domestic violence victim" as a protected class, contains a typographical error would should be pointed out at the outset. The old section 2 states that "Section 8-107 of the administrative code of the city of New York, is amended by adding a new subdivision 21, to read as follows . . ."\textsuperscript{63} The new section 2 of Int. No. 400-A states that "Title 8 of the administrative code of the city of New York is amended by adding a new section 8-107.1 which shall read as follows . . ."\textsuperscript{64}

The drafters might have meant that Title 8 of the administrative code should be amended by adding a new section 8-107.21, because adding this section of Int. No. 400-A as section 8-107.1 would cause this language to precede and supplant the current 8-107.1, which introduces the concept of unlawful discriminatory practices in employment.\textsuperscript{65} There is no reason why the drafters of the revised bill

\textsuperscript{1} See Int. No. 400-A, supra note 15. The relevant sections of the August 6, 1998 version of the bill are set forth infra in Appendix A. The relevant sections of the January 26, 2000 draft are set forth infra in Appendix B.

\textsuperscript{2} Compare Int. No. 400, supra note 13, Legislative Intent and Findings, with Int. No. 400-A, supra note 15, Legislative Findings and Intent.

\textsuperscript{3} See Int. No. 400, supra note 13, § 2.

\textsuperscript{4} See Int. No. 400-A, supra note 15, § 2.

would have to subvert the order of the law as currently printed to achieve their goals, so it is reasonable to suppose that the enumeration in the second draft of Int. No. 400 is due to a typographical error.

The new draft takes subsection (b), which defines "victim of domestic violence" and moves the subsection to the beginning of the section, as appropriate for the definitional section of a piece of legislation. Are there any changes to the definition of domestic violence victim? Let us compare the text, phrase by phrase.

First, the old draft of Int. No. 400 defines "victim of domestic violence" as a "person who is the victim of an act which would constitute a violation of the penal law...."

The new draft, Int. No. 400-A, states:

§ 8-107.1 Victims of Domestic Violence. 1. Definitions. Whenever used in this section the following terms shall have the following meanings:

a. "Acts or threats of violence" shall include. But not be limited to, acts which would constitute violations of the penal law. The revision has made it explicit that the Commission need not limit the complaints from putative domestic violence victims to acts that are manifestly violations of the penal law as in the first draft.

Second, the old draft of Int. No. 400 defined the acts that constitute domestic violence by citing examples. For example, it stated that "'victim of domestic violence' shall be defined as any person who is the victim of any act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, menacing, reckless endangerment, kidnapping, assault or attempted murder. . . ." Setting aside for a moment the philosophical arguments made against legislating a "domestic violence victim" protected class, the revised draft of the bill embodied in Int. No. 400-A, is, as a matter of draftsmanship, inferior to the first on account of its vagueness. Int. No. 400-A now includes threats that may not constitute violations of the penal law. Thus, the net effect of the legislation is that there are no criteria under which the Commission could reject a complaint from an individual, whereas under the earlier draft it could exercise some discretion in determining whether to assert jurisdiction. Be-

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66. Int. No. 400, supra note 13, § 2.
68. See Int. No. 400, supra note 13, § 2.
69. Id.
70. See Int. No. 400-A, supra note 15, § 2.
cause it is the employer that is the "bad guy" named in the complaint, it is clear that the proposed legislation, if enacted, can be used to harass them with impunity. This is because the Commission will not be able to turn away those borderline cases, but will have to investigate the nature of the employer's conduct, where under the stricter definition, the complainant's assertion of domestic violence would have to point to some affirmative act that can be likened to disorderly conduct, harassment, menacing, reckless endangerment, kidnapping, assault, or attempted murder. Effectively, under the revised Int. No. 400-A, the employee's request for accommodation, however flimsily supported — as in the case of requests based on putative "threats" — triggers the employer's liability for failure to accommodate.

Third, the new legislation also provides no guidance as to when a complainant can no longer be considered a domestic violence victim. In the hypothetical of the woman who broke off with her abuser five years ago, while it is true that she could not hold her employer liable for failing to accommodate her under the disability law, is it good public policy to continue to impose an obligation on an employer on the basis of a claim deriving from the alleged psychological after-shocks of domestic violence that occurred five years ago?

The remaining portion of Int. No. 400-A emphasizes that threats of violence can be sufficient to trigger coverage under the law, and reiterates the prohibition on discrimination against domestic violence victims. The new draft also arguably narrows the potential list of persons who could be considered perpetrators of domestic violence by excluding persons whose "contact" with the victim is (exclusive of the violence) social and continuous, if not intimate.

71. See id. (stating "b. "Victim of domestic violence" shall mean a person who has been subjected to acts or threats of violence . . . ").
72. See id. (stating "2. It shall be an unlawful discriminatory practice for an employer, or an agent thereof, to refuse to hire or employ or to bar or to discharge from employment, or to discriminate against an individual in compensation or other terms, conditions, or privileges of employment because of the actual or perceived status of said individual as a victim of domestic violence.").
73. Compare Int. No. 400, supra note 13, § 2, proposed as § 8-107.21(b)(ii), with Int. No. 400-A, supra note 15, to become § 8-107.1.b (actually § 8-107.21.b, as discussed above). The old draft, Int. No. 400, states that the perpetrator can be: a family or household member, which shall mean a person related by blood or marriage; which shall mean a person related by blood or marriage; a person who is legally married to the victim of domestic violence, or who is such victim's domestic partner; a person formerly married to the victim of domestic violence, or who was the victim's domestic partner regardless of whether
D. The Administration’s Position on Int. No. 400-A

The Giuliani administration opposes the enactment of Int. No. 400-A in its latest draft and has filed a Memorandum in Opposition. The “Reasons for Opposition” allude to some of the arguments raised against the bill in this article. However, another argument is also raised, which bears directly on the definitional issue that has such significance for employers, as well as the Commission. The relevant section of the Memorandum of Opposition states it as follows:

While the Administration applauds the Council’s efforts and concern with the problem of domestic violence, this legislation is problematic and discriminatory in that it does not go far enough in protecting the victims of all serious crimes. Furthermore, this bill may serve to dilute protections currently afforded the victims of domestic violence under the Human rights law. It is clear from this administration’s efforts and record on domestic violence, and its support of domestic violence legislation at all levels of government, that we would support any measure that offers real promise of preventing domestic violence and helping its victims. This bill does not meet this standard.

The bill would create an unwise precedent in the law by conferring a unique status upon the victims of a particular crime. No one would disagree that victims of domestic violence deserve to

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\[\text{Int. No. 400, supra note 13, } \S\ 2. \text{ The new subsection of Int. No. 400-A reads:}\]

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\text{a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim, by a person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, or a person who is or has continually or at regular intervals lived in the same household as the victim.}\]

\[\text{Int. No. 400-A, supra note 15, } \S\ 2. \]

74. See Memorandum in Opposition of the City of New York, Office of the Mayor [hereinafter Mem. Opp.]. The Mem. Opp. has been deposited with the Council’s legislative offices at City Hall. The telephone number for the office of the Chief, Legislative Document Unit, Stephen C. Stark, is (212) 788-7104.
be protected from job discrimination. But why shouldn’t the victims of other crimes enjoy the same protections?\textsuperscript{75}

In other words, assuming it is possible that some employers will terminate employees requesting accommodations who have had the misfortune to be victims of the crime of domestic violence, why should the burdens of being a domestic violence victim entitle that victim to more rights than the victim of a rape by a stranger?

The argument is not so much about which victims are most deserving of special treatment under law, as it is about whether providing domestic violence victims with a special status under the law is the best way to help them, and whether the burdens imposed on employers by conferring special rights under the law on the basis of their victimhood really makes sense, particularly when the employer is not the direct perpetrator of the violence on the victims.

\textbf{Conclusion}

When existing legal structures can serve to protect broadly the rights of several classes of persons, it serves no goal of public policy to enact legislation that redundantly provides another basis of protection to an already adequately protected group. As a matter of public policy, it is in fact inefficient to enact such legislation. What is more, the practical effect of such legislation can only be to mire lawyers and judges in thorny attempts to interpret it correctly.

\textsuperscript{75} \textit{Id.} Other relevant portions of the Mem. Opp. reads as follows:

A brief example is in order. suppose that on the same night, two different women are raped or assaulted, and both suffer identical, serious. But one is attacked by her husband, and the other is attacked by a stranger. Under this bill, only the woman attacked by her husband would be entitled to anti-discrimination protection. . . By protecting only one class of crime victims, this bill effectively discriminates against all other victims. It is therefore unfair, and counterproductive. Moreover, this bill jeopardizes victims’ privacy. The current Human Rights Law bars discrimination based on any physical, medical, mental or psychological impairment. Thus domestic violence victims who are in any way impaired because of the crimes they’ve suffered are protected and granted the right to seek accommodations. Importantly, the current law does not require those seeking accommodations to disclose the cause of their impairments. That is, victims are not forced to reveal personal and highly sensitive information. They need only provide employers with documentation of their physical or mental impairments. Under the proposed legislation, however, employees would be forced to identify themselves as domestic violence victims in order to seek an accommodation or file a grievance. Legislation requiring domestic violence victims to divulge this deeply personal and sensitive information is burdensome and intrusive.

\textit{Id.}
The enactment of a "domestic violence victim" protected class as an addition to the Human Rights Law would constitute such a legislative enactment. Domestic violence victims are already served under the disability-protected class on account of the city's overarching definition of disability, including as it does any physical or psychological disability. To attempt to grant domestic violence victims more by legislating a protected class just for them, is a misguided effort which, if brought to fruition, will only raise the expectations of domestic violence victims without exceeding the protections they already enjoy under the city's disability law, as well as unfairly punish employers.
APPENDIX A

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to employment discrimination against domestic violence victims.

Be it enacted by the Council as follows:

Section 1. Declaration of legislative intent and findings. The persuasiveness of domestic violence in the City of New York cannot be ignored. New York Police Department statistics show that although the overall crime rate in 1997 was down nine percent and the murder rate was down twenty-three percent, rapes and assaults connected with domestic violence increased eight and nine percent respectively, and so-called "domestic violence murders" increased thirteen percent.

While the criminal justice system has focused on new ways to protect victims and punish abusers, little attention has been paid to the economic security of the victims which is often drastically and negatively affected by their condition as abused individuals. It is important to recognize that a domestic violence victim's ability to work and support herself and her children (over ninety percent of domestic violence victims are women) is crucial to whether or not a victim is able to escape an abusive relationship.

New York State Labor Department statistics reflect the scope of the problem. Individual acts of domestic violence occur more frequently than muggings, rapes and automobile accidents combined. Such statistics indicate the devastating effect domestic violence has on a victim's access to employment opportunities. Seventy-four percent of employed battered women are harassed by their abusers on the job and seventy-five percent of domestic violence victims must use company time to call for medical and legal services, shelters or counselors, or to talk with family and friends, out of fear of doing so at home. Additionally, United States Department of Labor statistics reveal that homicide is the leading cause of death for women on the job, and that ex-partners commit fifty percent of the workplace homicides. Furthermore one study conducted indicates that over one-half of the women surveyed who were in abusive relationships stayed with their abusers because they lacked the resources to support themselves and their children.

Studies have also shown that between twenty-four and thirty percent of battered women surveyed had lost their job, at least in part, due to domestic violence. Anecdotal reports indicate that
some employers have taken adverse action against the employee, including termination, demotion, suspension, involuntary transfer, or loss of pay and/or benefits. Others are reported to have fired or suspended employees when they showed the physical “signs” of abuse at home, citing “worker moral” as justification for denying the employee the work she is capable of performing. Domestic violence victims also lose jobs because employers refuse to grant time off from work so that the victim can obtain an order of protection or attend a civil or criminal proceeding against the perpetrator.

Many of the devastating consequences to victims of domestic violence could often be avoided without placing undue hardship on business operations by simple steps taken by employers, such as moving a work desk or changing a phone extension, to ensure safety and to avoid harassment of the victims. The Council finds that this local law protecting the employment rights of domestic violence victims is essential to ensure that employers do take these reasonable steps to guarantee the safety of domestic violence victims. The attainment of this protection will afford domestic violence victims the opportunity to be productive individuals and to achieve economic security for themselves and their families.

This local law addresses many of the problems domestic violence victim face at the workplace by making it unlawful for an employer to take discriminatory action against an employee based on that employee’s actual or perceived status as a victim of domestic violence.
To amend the administrative code of the city of New York, to prohibit employment discrimination against victims of domestic violence.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. The City Council finds and declares that domestic violence is a widely recognized problem in New York City. Indeed New York City Police Department Statistics indicate that although the overall crime rate has decreased in recent years, incidents of domestic violence have increased. However, little attention has been paid to the impact of domestic violence on the work lives of victims and on the City economy as a whole. In recent years, a growing body of evidence has documented the devastating impact of domestic violence on the ability of victims – over 90% of whom are women – to participate fully in the economy. Yet a victim’s capacity to escape an abusive relationship is dependent in large part on economic factors such as finding and keeping a job and gaining economic security and independence. One study found that over one half of women surveyed who were victims of domestic violence stayed with their abusers because they lacked alternative resources with which to support themselves and their children. Other studies have determined that between twenty-four and fifty-two percent of battered women surveyed had lost their jobs at least in part due to domestic violence, which included harassment by the batterers both on and off the job.

Employers are also affected by domestic violence. It has been estimated that absenteeism caused by domestic violence costs the nation’s employers between three and five billion dollars annually. In a survey conducted by Roper Starch Worldwide for the Women’s Work Program at Liz Claiborne, Inc. forty percent of the senior executives at Fortune 1000 companies surveyed reported that domestic violence had a harmful effect on their company’s productivity, and sixty-six percent believed that their company’s financial performance would benefit by addressing the issue. In response, several corporations have established policies and programs to assist employees struggling with domestic violence, and the State of New York has enacted legislation, that established an executive office to develop model domestic violence policies for counties, state agencies and private employers, as well as an advi-
sory council to develop strategies for domestic violence prevention. (N.Y. Exec. Law Section 575). Further, the State of Maine has enacted legislation requiring employers to provide unpaid leaves of absence to victims of domestic violence, and similar legislation has been enacted in the City of Miami and is pending in the State of Pennsylvania.

Because they are embarrassed or because they fear losing their jobs, victims are often reticent about informing their employers about incidents of domestic violence or about requesting simple accommodations that might assist them in fulfilling their job duties. A growing body of anecdotal evidence suggests that the fear of negative employment actions such as demotion, suspension, loss of pay and/or benefits or termination against employees who have revealed that they are victims of domestic violence is not unwarranted. For example, victims of domestic violence have been terminated or demoted after requesting simple protective measures such as time off or flexible hours to confer with an attorney or a domestic violence counselor, obtaining order of protection or obtain medical or other services for themselves or other family members.

The City Council finds that it is in the best interests of the City of New York to protect the economic viability of victims of domestic violence and to support their efforts to gain independence from their abusers. Victims of domestic violence who are receiving medical treatment or therapy for the physical and/or psychological effects of domestic violence may be covered under the disability provisions of sections 8-102(16) and 8-107 of the Human Rights Law. However, not all victims of domestic violence need or obtain such treatment and would therefore not be considered disabled. Further many victims of domestic violence do not consider themselves disabled.

Accordingly, the Council further finds that in order to enable victims of domestic violence to speak with their employers without fear of reprisal, about a domestic violence incident or about possible steps that will enhance their ability to perform their job without causing undue hardship to the employer, the Human Rights Law should be amended to provide employment protection for New Yorkers who are actual or perceived victims of domestic violence.