



Irish Congress of Trade Unions

Submission on Paid Leave in Cases of Domestic Violence

March 2021

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Introduction

We continue to grapple with the shameful reality that far too many people (predominantly women) face violence, harassment and abuse in their lives, something that has unfortunately increased during public health restrictions due to the pandemic.

The EU Fundamental Rights Agency¹ Survey on Violence against Women has found that in Ireland:

- 14% of women have experienced physical violence by a partner (current or ex)
- 6% of women have experienced sexual violence by a partner (current or ex)
- 31% of women have experienced psychological violence by a partner (current or ex)

The FRA data explorer also provides data for Ireland which is dis-aggregated by employment status. Of relevance:

- 13% of **Employed** women have experienced sexual and/or physical violence by a partner since age 15 and **3% in the last 12 months**²
- 31% of **employed** women have experienced psychological violence by a partner since age 15 (12 months data not available)
- 24% of **employed** women know a victim of domestic violence where they work (or study). This suggests that information on how to respond and support colleagues experiencing violence could be very useful.

While we haven't yet been able to eradicate all violence against women, we can work towards eliminating barriers that prevent people from leaving abusive relationships.

This is why the trade union movement has been calling on the government to legislate for paid leave for those experiencing domestic violence. This was first mooted in a [trade union guide](#) to domestic abuse produced by our Women's Committee in 2009, and a motion calling for such a right was debated and passed at our March 2020 Women's Conference. The guide also outlined model workplace agreements on this issue – a key element of the comprehensive response needed.

It was a call reiterated by the General Secretaries of the trade union centres on these islands to mark the International Day Against Violence Against Women just last November.

1 European Union Agency for Fundamental Rights, Violence Against Women: an EU-wide survey Main results, 2014

2 FRA data explorer, accessed 1st March 2021

<https://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-violence-against-women-survey>, selecting Employed as Employment status.

And, of course it has been on the international trade union agenda for many years, most recently in the negotiations of ILO Convention 190 on Violence and Harassment in the World of Work and the accompanying recommendation which specifies measures that should be taken to mitigate the impacts of domestic violence at work including leave for the victims of domestic violence, flexible work arrangements, and the inclusion of domestic violence in workplace risk assessments.

A few Governments have been rising to the challenge, including developments in Australia, Canada and also New Zealand – from where we will hear the story from Jan Logie, MP.

We were therefore very pleased to welcome Minister O’Gorman’s announcement on 8 December last that he had secured Government agreement to establish a statutory entitlement to paid domestic violence leave here. The Minister agreed to the action following a Bill brought forward by Louise O’Reilly T.D., Sinn Féin.

Domestic violence is more than a personal problem — it affects the workplace

Domestic violence has a significant impact – directly and indirectly – on work attendance and productivity. In 2014 the Irish Congress of Trade Unions participated in a UK and Ireland wide survey into the impact that Domestic Violence has on the workplace, which found that domestic violence doesn’t just shatter the home lives of victims and families; it also impacts hugely on the workplace affecting the health, safety and performance of victims and work colleagues.

Respondents also reported that the abuse continued at their workplace including being harassed through phone calls and emails. Many people said that their partner physically turned up to their workplace. Co-workers were also affected by being harmed or threatened and nearly 100% of those who had experienced domestic violence stated that the violence caused conflict and tension with their colleagues.

Research in Canada has similar findings.³

Paid leave provides security and promotes safety

Most women living in violent relationships experience some form of financial control and monitoring by their partners – a form of coercive control. If taking domestic violence leave results in the reduction of income, the unintended result of unpaid leave might be the escalation of violence and risk. Women living with or escaping from domestic abuse may have a number of urgent and important matters to attend related to the abuse they experience. These include: medical visits, attending and preparing for a number of criminal and civil legal proceedings, counseling for themselves or their children, looking for a new home, relocating, changing children’s school, and visiting specialist domestic violence services.

It may not be possible to attend to these matters outside of working hours because the services are not available or because the woman may need to hide her activities from the abuser. Women do not have a choice of time for specialist medical appointments or for court proceedings.

³ http://dvatworknet.org/sites/dvatworknet.org/files/DVwork_ResearchBriefSeries2.pdf

Currently women may have to take Annual Leave or often, when that is exhausted, unpaid leave. Many women already have a limited income and a wage cut due to unpaid leave may be very difficult to manage. In certain cases, they may leave or lose their job.

If women are trying to leave, they'll need financial security, particularly if they need to sort out new living arrangements, legal expenses, counselling or other costs.

Clear workplace policies and a range of supports, including paid leave and safety planning, can help employers fulfil their workplace safety obligations and manage risk.

Employers can afford this

The costs to employers are likely to be offset by benefits, including reduced turnover and improved productivity. Studies of Australian employers who administer paid domestic violence leave have shown that the average number of days absent is between two and three.

Supporting employees in these circumstances will ultimately help keep everyone safe

No one is expecting employers or unions to fix or end domestic violence, but workplaces can be an important source of support to a worker who is struggling with a difficult situation.

Congress urges the Department to move quickly towards the process of designing the scheme and looks forward to participating in the consultation process with other stakeholders.

The legislation

Congress hopes that the all-party cooperation in recent debates on the Sinn Féin Bill (which has passed Second Stage in the Dáil) signal the intention to legislate along the lines outlined in that [Bill](#). That is, to provide for a statutory annual entitlement of up to 10 days' domestic violence paid leave.

As outlined above, such a provision would enable victims to take the necessary time off work they need to seek support, find accommodation or attend court in a structured and supported environment. It also addresses unpredictable absenteeism and reduced productivity for employers.

Congress would like to see the legislation addressing the following:

i. Broad coverage

Domestic Violence Paid leave should be a statutory entitlement available to all employees.

It should not be restricted to permanent employees. The majority of victims of domestic abuse are women, who are also more likely than men to be in non-permanent, part-time and casual work. Women experiencing domestic abuse are more likely to have disrupted work history and are more likely to be in casual or part-time employment than women who

do not experience such violence⁴. It is therefore essential that leave is available to all employees including casual staff.

It should not impact on an employee's leave record so it needs to be treated in a similar fashion to Force Majeure.

ii. **Minimize barriers**

While employees should be required to give advanced notice of leave when possible, there may be emergency situations when this is not possible (for example when having to attend court for an urgent ex-parte order, when having to escape to a refuge) and this should be allowed for.

It should be designed to ensure that there will not be too many barriers to paid Leave for domestic violence being requested or granted including:

- employers requiring high level of proof of domestic violence such as accepting only Police reports or court orders (see below)
- lack of awareness of paid leave
- fear that confidentiality will not be maintained
- stigma and shame
- lack of protections for victims of domestic violence in the workplace from discrimination on the grounds of being a victim

In order to limit these barriers, it is important that once Domestic Violence Leave is introduced, there should be an awareness raising campaign to promote it and to reassure employees that confidentiality will be maintained, and that there will be no repercussion on an employee performance record for availing of the domestic violence leave or disclosing abuse – as per legislation in New Zealand. Records of domestic violence leave must be confidential and only shared on a need to know basis.

iii. **The issue of requiring proof**

There should not be an emphasis on requiring proof for employees to avail of this leave.

Special leave for Domestic Violence is about granting leave for a survivor to attend to necessary activities to deal with the abuse they experience.

The legislation in New Zealand does not include a requirement for proof to be provided but does include a right for employers to request proof if they have reasonable grounds to believe that the domestic violence leave is not being sought for its actual purpose but for some other unrelated reason. It may be acceptable to ask the employee to specify a general

4 McFerran, L (2011) 'Safe at Home, Safe at Work', National Domestic Violence and the Workplace Survey, Australian Domestic and Family Violence Clearinghouse, A Project of the Centre for Gender- Related Violence Studies and Micromex Research, University of New South Wales (National Domestic Violence Workplace Survey 2011), page 2.

domestic violence related reason when applying for domestic violence leave, but the details of the abuse itself should neither be sought, nor recorded, by the employer.

If it is absolutely necessary for proof of the reasons why domestic violence leave was sought to be provided, for instance on foot of an employer's decision to refuse it on the basis that s/he has reasonable grounds to believe it is being sought for unrelated reasons. Congress agrees with the Safe Ireland suggestion that it should be sufficient for the person needing the domestic violence leave to provide proof from a trusted intermediary that the leave is needed, giving at most an outline of the reasons – this trusted intermediary could be domestic violence support service, or where applicable, a rape crisis centre.

It is important that a wide range of proof is allowed and that evidence is not limited to Court Orders or Garda reports, as many women do not report the abuse and do not have Domestic Violence Orders.

Congress believes that it is unlikely this would be an abused provision, as there is still a lot of stigma about domestic abuse.

In fact, in Australia research by the University of New South Wales⁵ investigating the implementation of domestic violence clauses in selected workplaces, shows that both the **uptake** of domestic violence leave and the **number of days** taken are low.

The UNSW Report found that **only** 35.3% of employers offering Domestic Violence leave had received a request for this leave in the previous 12 months. Of those that had requests, the average time off for paid leave in the previous 12 months was 43 hours (ranging between 8 and 202 hours).

The Australian Council of Trade Unions confirms this is consistent with what other employers have identified. For example, Telstra, which has approximately 33,000 employees, stated that for the period November 2014 (when the family violence policy was introduced) to July 2015, only 17 individuals across Australia had used the leave entitlement (12 women and 5 men), taking a total of 45 days leave.⁶

iv. Purpose of the leave

The purpose of the leave is to facilitate survivors in attending activities directly related to their experience of violence, which they cannot attend outside of working hours. This could be because these activities are at a specific time which cannot be changed, (e.g. Court), because they are not open after hours, or because it is safer for the survivor to attend while the perpetrator thinks them at work.

Domestic Violence leave should include activities which are not already covered by other forms of leave such as Sick leave or Force Majeure. This can include for example: visits to

5 Implementation of Domestic Violence Clauses – An Employer's Perspective, Gendered Violence Research Network, University of NSW, Sydney, November 2015 (jointly funded by UNSW and the ACTU) (UNSW Report). Available here <https://www.actu.org.au/media/886612/implementation-of-dv-clauses-an-employers-perspective.pdf>

6 Australian Council of Trade Unions submission to The Fair Work Commission on Family and Domestic Violence Leave, 1 June 2016, available here: <https://www.actu.org.au/media/886617/actu-submission-to-fwc-family-and-domestic-violence-leave.pdf>

support services, Garda, solicitors, court hearings, medical or counselling appointments, accompanying children to support services, looking for a new home and moving, changing children's school or creche.

The list of activities should not be exhaustive, and should remain open to the needs of the individual survivor. The test should be if the activity is related to the domestic violence the employee is experiencing and needs to be done during working hours.

v. Terms of Leave

Congress believes that a minimum 10 days per year would be an appropriate number of paid days' leave.

This is not overly-generous, for example in Australia and in the UK Collective Bargaining Agreements grant 20 days paid leave. In Italy the law provides for 3 months over 3 years of paid leave⁷.

There is also a need for flexibility here as often, no more than a few hours leave is needed (to attend a consultation with a solicitor for example). Congress therefore suggests that it is important that the domestic violence leave can also be taken in hours rather than days at a time.

In certain cases, 10 days may not be enough, and additional unpaid leave may be necessary. This could work similarly to Maternity Leave provisions and could be more generous than 10 days.

vi. Part of a broader approach

Congress believes that paid leave should be part of a broader Domestic Violence and Work policy that would also support survivors in other way.

What should a Workplace Policy cover?

- a policy statement that has clear aims and states the organisation's commitment to treat domestic abuse seriously;
- a clear definition of domestic violence and an acknowledgement that the majority of victims are women but that men are also affected as are women and men in same-sex relationships;
- a clear statement that the organisation is committed to the principle that domestic abuse and violence is unacceptable behaviour and that everyone has a right to live free from fear;
- a statement that, where domestic abuse occurs or has the potential to occur in the workplace, the paramount consideration of the employer is to ensure the health and well-being of employees and to ensure that, where appropriate, perpetrators of abuse are challenged and held to account to reduce the potential for re-offending;

⁷ Pillinger, Jane, 2017 Safe at Work Safe at Home, Trade union strategies to prevent, manage and eliminate work-place harassment and violence against women, ETUC

- details of the first point of contact for employees who need to discuss issues around domestic abuse;
- a commitment to early intervention by identifying ways of creating a supportive environment and to creating confidential mechanisms for employees experiencing domestic abuse to seek help and information in order to empower them to make their own decisions;
- a commitment to offering ongoing support to employees experiencing domestic abuse including time off, for example, for counselling, visits to a solicitor or support agencies, for re-housing or re-organising childcare;
- the possibility of relocation or redeployment where this would be appropriate and supportive of the employee;
- a commitment to training and educating on domestic abuse issues. This might involve some basic awareness training for all staff and more detailed training for certain staff e.g. personnel or welfare staff;
- provision of resources within the workplace, such as posters, leaflets etc to raise awareness about the domestic abuse helpline and other support services; and
- mechanisms for monitoring and reviewing the policy's effectiveness and for regularly updating information on help available and how to contact support services.

Congress has been campaigning over the last number of years to ensure the issue of domestic abuse is seen as a workplace issue. Our affiliates have been working with employers to recognise having a workplace policy that supports employees experiencing domestic abuse is also of benefit to them. It is a good investment, helping them to ensure the health, safety and welfare of the workforce and reduce absence related costs and increase productivity. While there has been some success in convincing employers of this there are still many who remain to be convinced. Some key arguments that are used in negotiating a workplace policy, may also be useful in countering any employer resistance to the introduction of the statutory right to paid leave and include:

- **Recruitment and Retention** Creating a team of trained and experienced staff costs money. Having a workplace policy is a good investment for an employer, helping to retain skilled, trained and experienced staff and thereby reducing the cost that occurs when staff leave.
- **Staff Morale and Productivity** A workplace policy on domestic abuse can help create a positive working environment. If staff feel that they are fully supported and confident in approaching their employer for help then this can increase their morale, loyalty and commitment which in turn can have a positive impact on productivity.
- **Disciplinary Action** The effects of domestic abuse can impact on attendance, punctuality, work performance, health and safety and productivity. A clear policy on domestic abuse that enables employees to confide in workplace reps at an early stage can prevent unnecessary disciplinary action against an employee.
- **Public Image and Reputation** Employers who have a policy on domestic violence are communicating a powerful message to employees, potential employees and the wider community that they are committed to supporting employees, the principles of equal opportunities and community investment.

DCEDIY officials are aware of some initiatives in this regard, including an agreed policy between EIR and the CWU. Its purpose is to support those who may be the victims of domestic violence and to ensure that they create a safe environment whereby those

affected can feel comfortable speaking about the issue. This will assist impacted employees in getting the appropriate help they may need in a confidential manner.

This policy also recognises the severe impact that domestic violence can have on EIR employees and their families. The company will facilitate up to two weeks paid leave for legal meetings, to attend court hearings, for hospital/medical appointments, to mind family members, or for any other incidents related to domestic violence. This leave will be in addition to other leave entitlements and may be taken in consecutive days or broken down.

Employees may also request the following:

- Flexible working arrangements
- Change of work telephone number, mobile number, or email address as appropriate
- Change in work location as deemed necessary
- Financial assistance upon request in the form of advances to salary
- Protection for the impacted employee against unnecessary disciplinary action or discriminatory treatment when work duties cannot be performed

Given the increase in domestic violence reports during lockdown and the terrible effect this can have on working lives, such agreements are a very welcome development. Two further agreements (CWU and An Post, plus FSU and Danske Bank) are due to be published within weeks.

Similar policies exist in other companies, including Vodafone, who launched a new global policy in 2019, specifically designed to support those experiencing domestic violence and abuse, and a toolkit to enable managers to help any affected employees to get the support they need. They also commissioned research to review progress on the implementation of the domestic violence and abuse policy across Vodafone markets, drawing on learning, promising practices, and particularly the new challenges and risks in the changing world of work brought about by the COVID-19 pandemic.

The key findings from this research identify ways that both Vodafone and other companies can continue to build tools, awareness and leadership strategies to help ensure the safety of their employees globally through these unprecedented times. They are publicly available here⁸.

The Canadian Labour Congress Domestic violence at work resource centre⁹ is also a valuable source of material and research on the impact of domestic violence on the workplace and on the key role collective bargaining can play in this area.

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⁸ <https://www.vodafone.com/our-purpose/operating-responsibly/domestic-violence-and-abuse>

⁹ <https://canadianlabour.ca/issues-research/domestic-violence-work/>