
Volume 25 | Issue 2

Summer 2022

Domestic Violence and Leave Laws: How New York Can Improve Its Leave Policies Based on the Laws of Washington, D.C. and New Jersey

Nusrat J. Khan

CUNY School of Law, nusrat.mowla@live.law.cuny.edu

Follow this and additional works at: <https://academicworks.cuny.edu/clr>



Part of the [Law Commons](#)

Recommended Citation

Nusrat J. Khan, Domestic Violence and Leave Laws: How New York Can Improve Its Leave Policies Based on the Laws of Washington, D.C. and New Jersey, 25 CUNY. L. Rev. 336 (2022).

The CUNY Law Review is published by the Office of Library Services at the City University of New York. For more information please contact cunylr@law.cuny.edu.

Domestic Violence and Leave Laws: How New York Can Improve Its Leave Policies Based on the Laws of Washington, D.C. and New Jersey

Acknowledgements

The author would like to thank Professor Julie Goldscheid for her tremendous help with developing and offering feedback throughout the writing process and the editors and staff of CUNY Law Review, especially Yulia Marshak, for her steadfast encouragement throughout the process. This Comment is dedicated to Nasima Khan for being my constant source of inspiration in everything I do, thank you.

DOMESTIC VIOLENCE AND LEAVE LAWS: HOW NEW YORK CAN IMPROVE ITS LEAVE POLICIES BASED ON THE LAWS OF WASHINGTON, D.C. AND NEW JERSEY

By Nusrat J. Khan†

ABSTRACT

Although intimate partner violence often starts in the privacy of one's home, its impact spills over in almost all aspects of the survivor's life.¹ The effects of violence are tangible – physical and emotional harm to the person and their dependents, loss of educational or employment opportunities, financial problems, interactions with the criminal justice system, and ongoing legal issues.² To address the loss of employment, federal and state governments have implemented leave laws to offer job protection for survivors of intimate partner violence.³

Leave laws are an essential aspect of employment as the ability to take leave from work provides job security to employees who need to take time off to care for themselves and their families.⁴ However, differences in federal and state laws determine which type of employee is covered, for what length of time, and if they will be paid during their leave.⁵ While federal and some state laws provide job security for survivors of intimate partner violence, there are many survivors who are not protected under any law or the leave time afforded to them is inaccessible due to various factors.⁶ This Comment seeks to analyze the current state of leave laws in New York and propose improvements to better protect survivors of intimate partner violence. The author would like to thank Professor Julie Goldscheid for her tremendous help with developing and offering feedback throughout the writing process and the editors and staff of CUNY Law Review, especially Yulia Marshak, for her steadfast encouragement throughout the process. This Comment is dedicated to Nasima Khan for being my constant source of inspiration in everything I do, thank you.

¹ See *infra* Part I. The terms "victim" and "survivor" are often used interchangeably in the intimate partner violence world and the author would like to acknowledge the difficulty and the importance in using the proper term when referring to people who endured IPV. Although referring to oneself as a "victim" versus a "survivor" is a personal choice, both terms can hold a lot of meaning to the person who has experienced the trauma.

² See *infra* Part I.

³ See *infra* Parts II-IV.

⁴ See *infra* Part II.

⁵ See *infra* Parts II-IV.

⁶ See *infra* Parts II-IV.

Medical Leave Act (“FMLA”) leave laws in New York and their impact on survivors of intimate partner violence, and compare them to the leave laws of Washington, D.C. and New Jersey.⁷ Both Washington, D.C. and New Jersey offer more comprehensive and holistic protection for survivors of intimate partner violence and should serve as a model for New York and the federal government.⁸

INTRODUCTION	337
I. INTIMATE PARTNER VIOLENCE AND ITS EFFECT ON THE LABOR FORCE.....	338
II. THE FAMILY MEDICAL LEAVE ACT AND GAPS IN THE CURRENT LAW	341
III. LEAVE LAWS IN NEW YORK	345
IV. LEAVE LAWS IN WASHINGTON, D.C. AND NEW JERSEY.....	348
A. <i>Washington, D.C.</i>	348
B. <i>New Jersey</i>	348
V. COMPARISON OF LEAVE LAWS IN NEW YORK, WASHINGTON, D.C., AND NEW JERSEY	349
VI. SOLUTIONS TO ADDRESS THE GAPS IN NEW YORK’S PAID LEAVE POLICIES	351
CONCLUSION.....	352

INTRODUCTION

Economic abuse is a major component of intimate partner violence (“IPV”). When survivors of IPV are asked why they stay in abusive relationships, one of the most common answers is lack of financial resources.⁹ Economic abuse plays a role in up to 99% of abusive relationships.¹⁰ To help, both federal and state governments have implemented leave laws that allow qualifying employees to take time off to pursue legal, medical, and psychological services to address the violence and trauma suffered.¹¹ On the national level, the federal government passed

⁷ See *infra* Parts III, IV.

⁸ See *infra* Part V.

⁹ *Why Do Victims Stay?*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE (Apr. 12, 2017) [hereinafter *Why Do Victims Stay*], <https://perma.cc/JTE4-T9RL>.

¹⁰ *Quick Guide: Economic and Financial Abuse*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE, <https://perma.cc/LSC4-5437> (last visited Apr. 9, 2022).

¹¹ See *Family and Medical Leave Act*, U.S. DEP’T OF LAB., <https://perma.cc/DQ6P-AW5M> (last visited Apr. 9, 2022); see also *Frequently Asked Questions*, U.S. DEP’T OF LAB., <https://perma.cc/UB68-PXFV> (last visited Apr. 9, 2022); Assemb. B. A5618, 2019 Assemb., 2019-2020 Reg. Sess. (N.Y. 2019).

the FMLA, which offers unpaid job protection for eligible employees and many states have passed their own versions of leave laws.¹² However, despite these strides, many survivors of IPV are not covered by these laws or are unable to access them for various reasons.¹³ Ensuring survivors have access to leave laws is vital to their economic stability, especially in the midst of an ongoing pandemic that has resulted in increased rates of IPV¹⁴ and unemployment.¹⁵

This Comment focuses on leave laws in New York and compares them to the paid leave laws implemented in Washington, D.C. and New Jersey. Although all three jurisdictions offer robust leave laws compared to the rest of the country, New Jersey, followed by Washington, D.C., offers the most expansive paid leave laws out of the three and should serve as a model for other states to follow. Part I of this comment provides an overview of financial abuse in the context of IPV and its effect on the economy; Part II briefly explains the structure of the FMLA; Part III describes the current state of the leave laws in New York; Part IV describes the current state of the leave laws for Washington, D.C. and New Jersey; and Part V offers policy solutions that New York and other states can implement.

I. INTIMATE PARTNER VIOLENCE AND ITS EFFECT ON THE LABOR FORCE

The National Coalition Against Domestic Violence defines IPV as “willful infliction of intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by an intimate partner against another.”¹⁶ IPV includes “physical violence, sexual violence, threats, economic, and emotional/psychological abuse” with varying degrees of frequency and

¹² See *Family Medical Leave*, NAT’L CONF. OF STATE LEGISLATURES, <https://perma.cc/7PB3-G7YE> (last visited Apr. 9, 2022).

¹³ See U.S. DEP’T OF LAB., NEED TIME? THE EMPLOYEE’S GUIDE TO THE FAMILY AND MEDICAL LEAVE ACT 2 [hereinafter EMPLOYEE’S GUIDE TO FMLA], <https://perma.cc/YE42-X2SQ> (last visited Apr. 9, 2022).

¹⁴ See Jeffrey Kluger, *Domestic Violence Is a Pandemic Within the COVID-19 Pandemic*, TIME (Feb. 3, 2021, 11:15 AM), <https://perma.cc/367E-57VE>.

¹⁵ See N.Y.C. DEP’T OF CONSUMER AND WORKER PROT., UNEVEN IMPACT: WHAT JOB LOSS DURING COVID-19 MEANS FOR NEW YORKERS NOW AND INTO THE FUTURE 6 (Dec. 2020), <https://perma.cc/68EC-RRMB>.

¹⁶ NAT’L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE 1 (2020), <https://perma.cc/R842-YUR8>.

severity.¹⁷ In the United States, one in four women and one in ten men experience IPV.¹⁸

Although there are numerous reasons for why people remain in abusive relationships, some of the most common reasons include lack of financial resources, children in common, and immigration status.¹⁹ Some form of financial abuse is present in 99% of all abusive relationships.²⁰ Abusers block or control their partner's access to financial assets as a way to force them to remain in the abusive relationship or make them return if they had left.²¹ Other tactics may include: sabotaging employment opportunities, accumulating debt in the survivor's name, withholding funds to obtain necessities, refusing to pay child support, and stealing the survivor's identity.²² This is not a comprehensive list as abusers often combine financial abuse with other forms of abuse, creating in the survivor a sense of dependency and fear.²³

A 2003 study found a correlation between IPV and housing instability,²⁴ while another study found 38% of survivors fleeing abuse encounter homelessness.²⁵ This demonstrates the volatility and uncertainty that exists for survivors of IPV. When faced with the harsh reality of not bringing home enough money to meet daily living expenses for themselves and their families, survivors must choose between experiencing financial hardships or an abusive relationship.²⁶ This is especially true for undocumented survivors or for survivors whose status rests on their

¹⁷ *Id.*

¹⁸ *Preventing Intimate Partner Violence*, CTNS. FOR DISEASE CONTROL & PREVENTION, <https://perma.cc/5A3M-5LWE> (last visited Apr. 9, 2022).

¹⁹ *Why Do Victims Stay*, *supra* note 9; see also *Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts About Immigrating on a Marriage-Based Visa Fact Sheet*, U.S. CITIZENSHIP & IMMIGRATION SERV. (Jan. 11, 2011), <https://perma.cc/5QBB-JEWY>.

²⁰ ADRIENNE E. ADAMS, *MEASURING THE EFFECTS OF DOMESTIC VIOLENCE ON WOMEN'S FINANCIAL WELL-BEING 1* (2011), <https://perma.cc/A6RE-49KG>.

²¹ *How Money Traps Victims of Domestic Violence*, ATLANTIC, <https://perma.cc/5Z9J-7BPX> (last visited Apr. 9, 2022).

²² See Kelly Anne Smith, *3 Warning Signs of Financial Abuse – And How Victims Can Recover*, FORBES (Oct. 21, 2021, 7:00 AM), <https://perma.cc/9PCG-7GVE>; see also *Financial Abuse and Empowerment*, NAT'L NETWORK TO END DOMESTIC VIOLENCE [hereinafter *Financial Abuse and Empowerment*], <https://perma.cc/3EVD-93X2> (last visited Apr. 9, 2022).

²³ See *Financial Abuse and Empowerment*, *supra* note 22.

²⁴ INST. FOR WOMEN'S POL'Y RSCH., *FACT SHEET B367, THE ECONOMIC COST OF INTIMATE PARTNER VIOLENCE, SEXUAL ASSAULT, AND STALKING 4* (2017), <https://perma.cc/C5DB-CCXU> (describing the results of the 2003 California Women's Health Survey).

²⁵ *Id.* (citing the study conducted among 110 victims in Georgia).

²⁶ See, e.g., Press Release, Terrence Murphy, *Senator Murphy Recognizes Domestic Violence Awareness Month with \$5k Grant for Hope's Door*, N.Y. STATE SENATE (Oct. 1, 2018), <https://perma.cc/ZK8C-FLD5>.

continued relationship with their abusers (e.g., if the survivor entered the United States on a marriage or fiancé-based visa).²⁷ Due to their immigration status, undocumented survivors lack work authorization and are unable to work legally in the United States,²⁸ leaving them often to work manual, low-wage jobs,²⁹ rendering the welfare system and most other state-funded resources inaccessible to them.³⁰ When there are children in the relationship, survivors may fear being unable to support their children or depriving them of the life to which they are accustomed.³¹ Often, survivors do not realize they are being abused,³² do not know if they can sustain themselves and their children, and fear losing their children to their abusive partner or children protection services; these considerations play a dominant role in their decision whether to stay or leave the relationship.³³

IPV also has a substantial impact on the economy. In its 2003 report, the Centers for Disease Control and Prevention found that the cost of intimate partner rape, physical abuse, and stalking exceeds \$5.8 billion each year, of which \$4.1 billion goes towards medical and mental health services.³⁴ The lifetime economic cost of medical services, lost

²⁷ See *Abuse in Immigrant Communities*, NAT'L NETWORK TO END DOMESTIC VIOLENCE (Dec. 18, 2020), <https://perma.cc/9536-VBPY>.

²⁸ See Lisa Guerin, *Documentation Required to Work in the United States*, NOLO, <https://perma.cc/Y5HR-EA86> (last visited Apr. 15, 2022).

²⁹ See John Burnett, *Employers Struggle with Hiring Undocumented Workers: 'You Cannot Hire American Here'*, NAT'L PUB. RADIO (Aug. 21, 2019, 5:00 AM), <https://perma.cc/EWT6-U9YR>.

³⁰ See NAT'L IMMIGR. F., FACT SHEET: IMMIGRANTS AND PUBLIC BENEFITS 1, <https://perma.cc/K7JY-U9JF> (last visited May 9, 2022).

³¹ *Why Do Victims Stay*, *supra* note 9.

³² See Michelle Pugle, *5 Lesser-Known Warning Signs of an Abusive Relationship*, EVERYDAY HEALTH (Oct. 26, 2021), <https://perma.cc/L5XQ-MVQZ>.

³³ See *Power and Control: Break Free from Abuse*, NAT'L DOMESTIC VIOLENCE HOTLINE, <https://perma.cc/2BQN-DGLR> (last visited Apr. 16, 2022); see also Leslie Morgan Steiner, Transcript, *Why Domestic Violence Victims Don't Leave*, TED.COM (Nov. 2012), <https://perma.cc/5ZXX-ZY2A>.

³⁴ CTRS. FOR DISEASE CONTROL & PREVENTION ET AL., COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 2 (2003), <https://perma.cc/A8PJ-SRW2> (assessing the financial consequences of IPV). As exemplified by the only data on the economic impact of intimate partner violence being a CDC report from 2003, little comprehensive and current nationwide data on the effects of IPV exists. Routine data collection is key to both understanding the prevalence and impacts of IPV and to developing strategies to combat barriers to victims seeking support, such as those imposed by leave laws discussed herein. See generally MATTHEW J. BREIDING, ET AL. CTRS. FOR DISEASE CONTROL & PREVENTION, INTIMATE PARTNER VIOLENCE SURVEILLANCE UNIFORM DEFINITIONS AND RECOMMENDED DATA ELEMENTS (2015), <https://perma.cc/ZY3K-7FWS>. The 2022 reauthorization of the Violence Against Women Act ("VAWA") contains provisions designed to aid data collection on cross-cutting aspects of IPV from its economic impact on communities to housing insecurity. See generally *VAWA 2022 Reauthorization: Section-by-Section Sum-*

productivity from paid work, numerous interactions with the legal system, and other services that survivors utilize cost the U.S. economy \$3.6 trillion (as valued in 2014).³⁵ Unfortunately, while there are many resources available on both the federal and state level for survivors of IPV,³⁶ leave policies, which were designed to offer job protection for employees facing family or medical issues,³⁷ are still inadequate; most leave laws provide for unpaid leave³⁸ and do not cover all survivors of IPV,³⁹ forcing many to forgo essential services when choosing between relative financial stability and leaving the abuser.⁴⁰

II. THE FAMILY MEDICAL LEAVE ACT AND GAPS IN THE CURRENT LAW

Leave time is vital to ensuring everyone can participate in the workforce and contribute to a robust economy. Research shows that almost half the workforce consists of women,⁴¹ a stark contrast from the first half of the 20th century when women were considered temporary workers, who upon marriage would leave their jobs to care for their family and children.⁴² The participation rate of women in the labor force

mary, OFF. OF U.S. SENATOR MURKOWSKI (Feb. 9, 2022), <https://perma.cc/KR7K-DLC6>. VAWA also authorizes the CDC's Rape Prevention and Education Program, which funds state and territorial health departments "to guide the implementation and evaluation of their state sexual violence prevention efforts." See *Rape Prevention and Education Program*, CTRES. FOR DISEASE CONTROL & PREVENTION (Feb. 9, 2022) [hereinafter *Rape Prevention and Education Program*], <https://perma.cc/7YLW-RC54>. Data collected through efforts such as these can quantify and qualify the impact that leave laws such as those discussed in this article have on victims seeking support, and support initiatives to change them. See generally *Rape Prevention and Education Program*, *supra* note 34.

³⁵ Cora Peterson et al., *Lifetime Economic Burden of Intimate Partner Violence Among U.S. Adults*, 55 AM. J. OF PREVENTIVE MED., 433, 438 (2018) ("The present-value, per-victim IPV lifetime cost was \$81,960, or \$3.6 trillion for all victims, based on 32 million U.S. females and 12 million males with any lifetime victimization.").

³⁶ See, e.g., NAT'L DOMESTIC VIOLENCE HOTLINE, <https://perma.cc/V5BQ-KGVA> (last visited Apr. 24, 2022); *New York State Domestic Violence Program Overview*, N.Y. STATE COAL. AGAINST DOMESTIC VIOLENCE, <https://perma.cc/K4H7-YMTA> (last visited Apr. 24, 2022).

³⁷ See Amelia Figueroa, *History of FMLA*, LAB. L. CTR. (May 16, 2016), <https://perma.cc/9PY7-DRFZ>.

³⁸ See *Paid Leave in the U.S.*, KAISER FAM. FOUND. (Dec. 17, 2021), <https://perma.cc/XUR5-5577>.

³⁹ *But see* EMPLOYEE'S GUIDE TO FMLA, *supra* note 13, at 4 (based on 2014 data).

⁴⁰ See *Why Do Victims Stay*, *supra* note 9, at 2.

⁴¹ THE COUNCIL OF ECON. ADVISERS, EXEC. OFF. OF THE PRESIDENT, THE ECONOMICS OF PAID AND UNPAID LEAVE 3 (2014) [hereinafter THE ECONOMICS OF PAID AND UNPAID LEAVE], <https://perma.cc/U5AZ-W5EE>.

⁴² See Megan A. Sholar, *The History of Family Leave Policies in the United States*, ORG. OF AM. HISTORIANS, <https://perma.cc/QNG2-B9AJ> (last visited Apr. 2, 2022).

steadily rose beginning in the 1960s, hitting a 60% peak in 1999⁴³ and the U.S. Bureau of Labor Statistics projects that there will be 77.2 million women working by 2024.⁴⁴ According to the Center for American Progress, women's labor contributes \$7.6 trillion to the United States' annual GDP.⁴⁵ However, when compared to men, women are more likely to both need and take leave time,⁴⁶ bolstering the importance of leave time for the workforce.

Nationwide formal leave policy includes the FMLA, which allows eligible employees to take unpaid, job-protected leave for specified family and medical purposes.⁴⁷ New York has its own version of paid family leave—the New York Paid Family Leave and the New York Paid Sick Leave, programs which were passed into law on April 3, 2020.⁴⁸ This new law went into effect September 30, 2020, with employees set to start using their accrued time on January 1, 2021.⁴⁹ Despite these initiatives, state and federal leave policies are insufficient for survivors of IPV, especially for those who are low-income, and raising their families in single parent households.⁵⁰

The FMLA was signed into law by President Bill Clinton in 1993.⁵¹ Prior to the Act, nearly forty states had adopted their own family and medical leave laws, but there was little uniformity among them and nothing existed on a national level.⁵² The FMLA enables eligible employees of covered employers⁵³ to “take unpaid, job-protected leave for

⁴³ MITRA TOOSI & TERESA L. MORISI, U.S. BUREAU OF LAB. STAT., *WOMEN IN THE WORKFORCE BEFORE, DURING, AND AFTER THE GREAT RECESSION 2* (2017), <https://perma.cc/D59A-AHSB>.

⁴⁴ *Id.* at 3.

⁴⁵ Kate Bahn & Annie McGrew, *A Day in the U.S. Economy Without Women*, CTR. FOR AM. PROGRESS (Mar. 7, 2017), <https://perma.cc/QJ9W-VC2B>.

⁴⁶ JANE HERR ET AL., *GENDER DIFFERENCES IN NEEDING AND TAKING LEAVE 1* (2020), <https://perma.cc/5WLQ-XHAL>.

⁴⁷ See generally DONNA R. LENHOFF & LISSA BELL, NAT'L P'SHIP FOR WOMEN & FAM., *GOVERNMENT SUPPORT FOR WORKING FAMILIES AND FOR COMMUNITIES: FAMILY AND MEDICAL LEAVE AS A CASE STUDY*, <https://perma.cc/E6MH-VWWL>, (last visited May 7, 2022).

⁴⁸ *New York Paid Sick Leave*, N.Y. STATE [hereinafter *New York Paid Sick Leave*], <https://perma.cc/VUC8-VWGK> (last visited May 9, 2022).

⁴⁹ *Id.*

⁵⁰ See Gary Claxton & Larry Levitt, *Paid Sick Leave is Much Less Common for Lower-Wage Workers in Private Industry*, KAISER FAM. FOUND. (Mar. 10, 2020), <https://perma.cc/DXF2-Y2ZZ>.

⁵¹ LENHOFF & BELL, *supra* note 47, at 1.

⁵² Sholar, *supra* note 42 at 2.

⁵³ U.S. DEP'T OF LAB. WAGE AND HOUR DIV., *THE EMPLOYER'S GUIDE TO THE FAMILY AND MEDICAL LEAVE ACT*, <https://perma.cc/DK22-V6W9> (last visited May 8, 2022).

specified family and medical reasons.”⁵⁴ Although it is unpaid leave, employees are able to use their accrued sick and vacation time for some or all of the FMLA leave period, combining the two.⁵⁵ Employees who work for local, state, and federal agencies are eligible for coverage, as well as private sector employees whose employers employ 50 or more employees per workday for at least 20 workweeks in the current or preceding calendar year.⁵⁶

Eligible employees in the private sector must work for an employer with at least 50 employees to be covered by the FMLA.⁵⁷ Private sector employers with fewer than 50 employees are not covered under the FMLA⁵⁸ but may be covered under state family and medical leave laws.⁵⁹ Local, state, and federal agencies, regardless of the number of employees, are covered.⁶⁰ Employees must have worked for the employer for at least 1,250 hours for 12 months⁶¹ (which is about 24 hours per week). The 12 months of employment does not require 12 months of continuous service, but the gap in employment should not exceed seven years.⁶² Employees must also work at a location where the employer has at least 50 employees within 75 miles of the worksite.⁶³

FMLA leave is available to employees who are survivors of IPV to address any health-related issues that stem from the abuse or for employees to care for a qualifying family member⁶⁴ with a serious health condition due to the IPV they endured.⁶⁵ If an employee believes their rights under the FMLA were violated, they can file a complaint with the

⁵⁴ *Family and Medical Leave Act*, U.S. DEP’T OF LAB., <https://perma.cc/L77X-NNNE> (last visited Apr. 10, 2022).

⁵⁵ *FMLA Frequently Asked Questions*, U.S. DEP’T OF LAB. [hereinafter *FMLA FAQ*], <https://perma.cc/746Z-Q5UH> (last visited Apr. 10, 2022).

⁵⁶ See 29 U.S.C. § 2611(4)(A)(i) (2019).

⁵⁷ See *id.*

⁵⁸ See 29 U.S.C. § 2611(2)(B)(ii) (2019).

⁵⁹ See *Comparative Chart of Paid Family and Medical Leave Laws in the United States*, A BETTER BALANCE (Mar. 24, 2022), <https://perma.cc/KX8P-NRK8>.

⁶⁰ See EMPLOYEE’S GUIDE TO FMLA, *supra* note 13, at 2; see also 29 U.S.C. § 2611(2)(B)(i) (2019).

⁶¹ See 29 U.S.C. § 2611(2)(A)(ii) (2019).

⁶² See *FMLA FAQ*, *supra* note 55.

⁶³ See 29 U.S.C. § 2611(2)(B)(ii).

⁶⁴ Qualifying family members are spouses, parents, children, and individuals standing *in loco parentis* to a child or children. U.S. DEP’T OF LAB., FACT SHEET #28F: QUALIFYING REASONS FOR LEAVE UNDER THE FAMILY AND MEDICAL LEAVE ACT 1 (2015), <https://perma.cc/LE87-B7E8>.

⁶⁵ See *FMLA FAQ*, *supra* note 55.

Department of Labor or file a private suit pursuant to Section 107 of the FMLA.⁶⁶

The FMLA is a valuable resource to the workforce because it offers job protection to employees in times of trauma and distress, allowing for peace of mind as they care for themselves and their families. However, access to FMLA leave is heavily restricted: an employee in the private sector needs to work for an organization with 50 or more employees, for 1,250 hours for 12 months, at a worksite where the organization has at least 50 employees within 75 miles of the worksite.⁶⁷ Realistically, these are not considerations most people factor in when applying for or accepting employment.⁶⁸ These restrictions also deprive employees who work in smaller, private organizations of job security if they need time off.⁶⁹ While these employees may still have access to leave time under state laws, if they reside in a state without leave laws, such as Mississippi⁷⁰ or Alabama,⁷¹ they are left unprotected.⁷²

In Mississippi, Alabama, Wyoming, and a handful of other states, there are no state laws offering leave time, leaving it to the discretion of employers to offer it.⁷³ Additionally, as the FMLA provides unpaid leave time, survivors of IPV who left their abusive partners and are now the sole earner in the household, may be unable to afford to take time off.⁷⁴ In many IPV cases, abusers often refuse to pay child or spousal

⁶⁶ See *id.* (“If you have questions, or you think that your rights under the FMLA may have been violated, you can contact the Wage and Hour Division (WHD) at 1-866-487-9243. You will be directed to the WHD office nearest you for assistance.”).

⁶⁷ *Family and Medical Leave Act (FMLA)*, ASS’N OF THE BAR OF THE CITY OF N.Y. (June 2020), <https://perma.cc/JX3T-N7RC>.

⁶⁸ See, e.g., Ben Wigert, *The Top 6 Things Employees Want in Their Next Job*, GALLUP (Feb. 21, 2022), <https://perma.cc/32AL-FRRE>; see also Rebecca Knight, *How to Evaluate, Accept, Reject, or Negotiate a Job Offer*, HARV. BUS. REV. (Apr. 17, 2017), <https://perma.cc/4MKT-9AC3>; see also Ashley Cobert, *6 Things to Consider When Accepting a Job Offer*, THE MUSE, <https://perma.cc/F3G6-SZW4> (last visited Apr. 23, 2022).

⁶⁹ See 29 U.S.C. § 2611(4)(A)(i) (2019).

⁷⁰ *Mississippi Leave Laws*, EMP. L. HANDBOOK, <https://perma.cc/P6BH-U9DR> (last visited Apr. 23, 2022).

⁷¹ *Alabama Leave Laws*, EMP. L. HANDBOOK, <https://perma.cc/J2VL-DDSL> (last visited Apr. 23, 2022).

⁷² See generally KATHLEEN ROMIG & KATHLEEN BRYANT, CTR. ON BUDGET & POL’Y PRIORITIES, A NATIONAL PAID LEAVE PROGRAM WOULD HELP WORKERS, FAMILIES 4 (Apr. 27, 2021), <https://perma.cc/PLA9-8H6V>.

⁷³ But see *Family Medical Leave*, *supra* note 12.

⁷⁴ See generally Sarah Jane Glynn, *Working Parents’ Lack of Access to Paid Leave and Workplace Flexibility*, CTR. FOR AM. PROGRESS (Nov. 20, 2012), <https://perma.cc/VP7S-PVKE> (providing an overview of the limitations of the sick leave possibilities for (single) parents); see THE ECONOMICS OF PAID AND UNPAID LEAVE, *supra* note 41, at 14 (“[T]hose who are their family’s primary breadwinner, cannot forego wages from taking unpaid leave.”); see also Nikki Graf, *Why Workers Don’t Always Take Family or Medical Leave*

support or drag out litigation to financially burden the survivor.⁷⁵ These situations might force the survivor to continue working, despite needing the time off to receive legal, social, and mental health assistance.⁷⁶

Lastly, the FMLA is silent about the immigration status of eligible employees. However, many immigrant and undocumented employees work in the service, construction, and agricultural industry.⁷⁷ The employers in these sectors are likely not to meet the strict requirements of the FMLA.⁷⁸ Accordingly, immigrant and undocumented workers are more likely than not to be disqualified from receiving FMLA leave.⁷⁹ As immigrant women often experience higher rates of intimate partner violence than U.S.-born citizens,⁸⁰ their lack of access to a federally backed job protection program is a major setback for survivors and the workforce.⁸¹

III. LEAVE LAWS IN NEW YORK

Recognizing the importance of leave laws on its employees, New York passed its own version of leave laws. As of February 2022, New York State has the following leave laws: Paid Family Leave⁸² and Paid

When They Need To, PEW RSCH. CTR. (Apr. 4, 2017), <https://perma.cc/X3NM-RPKU> (presenting the results of 2017 Pew Research study on workers and family and medical leave).

⁷⁵ See Emmaline Campbell, *How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims, and How Courts Can Put a Stop to It*, 24 UCLA WOMEN'S L.J. 41, 42, 54 (2017).

⁷⁶ See Simmons et al., *Should Programs Designed to Help IPV Survivors Screen for Mental Health Problems: Voices from the Field*, 23 VIOLENCE AGAINST WOMEN 603, 605 (2017), <https://perma.cc/JQ6J-A24Q> ("Common mental health concerns documented among women IPV survivors include posttraumatic stress disorder, excessive generalized anxiety, depression, and substance abuse and dependence.") (citations omitted).

⁷⁷ See Mary Jo Dudley, *These U.S. Industries Can't Work Without Illegal Immigrants*, CBS NEWS (Jan. 10, 2019), <https://perma.cc/DA87-64WB>.

⁷⁸ Cf. *FMLA 25: States are Covering Workers Left Out of the FMLA*, A BETTER BALANCE (Mar. 23, 2018), <https://perma.cc/52PH-A747> (explaining FMLA employer requirements).

⁷⁹ See *id.*; see generally JEFFREY S. PASSEL & D'VERA COHN, PEW RSCH. CTR., *SIZE OF U.S. UNAUTHORIZED IMMIGRANT WORKFORCE STABLE AFTER THE GREAT RECESSION* (2016), <https://perma.cc/YM3G-3X3J> (analyzing the undocumented workforce in the U.S. up to 2016).

⁸⁰ See FUTURES WITHOUT VIOLENCE, *THE FACTS ON IMMIGRANT WOMEN AND DOMESTIC VIOLENCE 1*, <https://perma.cc/259L-EF4V> (last visited Apr. 10, 2022).

⁸¹ See *id.*

⁸² The Paid Family Leave Law, which was signed into law in 2016, is to be used by employees to take time to bond with a newborn, adopted or fostered child, care for a family member with a serious health condition, or take care of the family when a spouse, domestic partner, child, or parent is deployed abroad on active military service. See *Paid Family Leave*, N.Y. STATE, <https://perma.cc/2ZF2-3Q2R> (last visited May 9, 2022). As this leave law does not directly pertain to all victims of IPV, it is not the focus of this Comment.

Sick Leave. The New York Paid Sick Leave was signed into law on April 3, 2020.⁸³ Qualifying employees are allowed to use their paid sick time off to care for themselves or a qualifying family member's illness, injury, medical condition, need for diagnosis or treatment,⁸⁴ which includes both physical and mental health care.⁸⁵ Qualifying family members include the "employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent; and the child or parent of an employee's spouse or domestic partner."⁸⁶ These relationships include biological, adoption, step, and foster care relationships.⁸⁷ "Child" includes "a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis."⁸⁸

In New York, employees who work for an organization with four or fewer employees in any calendar year are entitled to up to 40 hours of unpaid sick leave.⁸⁹ However, if the employer has a net income of more than one million dollars in the previous tax year, they are required to provide employees with a maximum of 40 hours of paid sick leave.⁹⁰ Employers with five to 99 employees in any calendar year are required to provide "up to forty hours of paid sick leave in each calendar year"⁹¹ and employers with 100 or more employees must provide "up to fifty-six hours of paid sick leave each calendar year."⁹² For the purpose of Paid Sick Leave, leave time began accruing on September 30, 2020 (date when the law took effect) or the starting date of employment, whichever would be later, and one hour of leave is accrued for every 30 hours worked.⁹³ However, employers also have the option of providing the full amount of sick leave required by law at the beginning of the calendar year.⁹⁴ Paid Sick Leave covers all private sector employees in New York State, "regardless of the industry, occupation, part-time status, overtime exempt status, [or] seasonal status"⁹⁵ Public sector employees are not covered under this law, but all charter school, private

⁸³ *New York Paid Sick Leave*, *supra* note 48.

⁸⁴ N.Y. LAB. LAW § 196-b (4)(a)(i)-(ii) (McKinney 2022).

⁸⁵ N.Y. LAB. LAW § 196-b (4)(a) (McKinney 2022).

⁸⁶ N.Y. LAB. LAW § 196-b (4)(b) (McKinney 2022).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ N.Y. LAB. LAW § 196-b (1)(a) (McKinney 2022).

⁹⁰ *Id.*

⁹¹ N.Y. LAB. LAW § 196-b (1)(b) (McKinney 2022).

⁹² N.Y. LAB. LAW § 196-b (1)(c) (McKinney 2022).

⁹³ N.Y. LAB. LAW § 196-b (3) (McKinney 2022).

⁹⁴ N.Y. LAB. LAW § 196-b (2) (McKinney 2022).

⁹⁵ U.S. DEP'T OF LAB., FACT SHEET PSL_EMP (12/20), NEW YORK STATE PAID SICK LEAVE FOR EMPLOYEES, <https://perma.cc/N5LH-MUGL> (last visited June 20, 2022).

school, and nonprofit employees are.⁹⁶ Employees may use their sick leave time after notifying their employers verbally or with a written request.⁹⁷

Paid Sick Leave time can also be used for Safe Leave, a program which allows employees to take their accrued time off if they, or their family member, has been a survivor of domestic violence, family offense, sexual offense, stalking, or human trafficking.⁹⁸ This time off can be used to obtain services from domestic violence agencies, participate in safety planning, relocate or take other necessary actions to increase safety, meet with attorneys or social service providers regarding legal or civil proceedings, meet with the district attorney's office, file a complaint with law enforcement, and take any actions necessary to ensure the safety and health of the employee or their family members.⁹⁹

If a survivor of IPV loses their job due to domestic violence and through no fault of their own, they can also file for unemployment benefits from New York State for up to 26 weeks.¹⁰⁰ Unemployment benefits are a joint federal and state program,¹⁰¹ and to qualify, the law requires that employees provide "reasonable and confidential documentation" of the violence.¹⁰² In certain cases, the spoken details and the written statement in the Unemployment Insurance claim may be sufficient, but if not, employees can submit documents such as a domestic incident report, a police report, an arrest report, a letter from a prosecutor indicating that the employee is a survivor of violence, a doctor's report, medical files, or a letter from a social worker or domestic violence advocate to strengthen their claim.¹⁰³ If an employee does not have any documentation of the abuse, they must be prepared to explain why.¹⁰⁴ Unfortunately, undocumented workers who lose their jobs due to IPV are not eligible for this benefit due to their lack of status.¹⁰⁵

⁹⁶ *Id.*

⁹⁷ N.Y. LAB. LAW § 196-b (4)(a) (McKinney 2022).

⁹⁸ U.S. DEP'T OF LAB., FACT SHEET PSL_SL (12/20), NEW YORK STATE PAID SICK AND SAFE LEAVE, <https://perma.cc/BN2C-XP6X> (last visited June 20, 2022).

⁹⁹ N.Y. LAB. LAW § 196-b (4)(a)(iii)(a)-(g) (McKinney 2022).

¹⁰⁰ See *Domestic Violence and UI Benefits Frequently Asked Questions*, N.Y. DEP'T OF LAB [hereinafter *Domestic Violence and UI Benefits FAQ*], <https://perma.cc/C943-78V6> (last visited Apr. 23, 2022).

¹⁰¹ See *Unemployment Insurance in New York*, BALLOTPEDIA, <https://perma.cc/F7Y3-NMMK> (last visited Apr. 23, 2022).

¹⁰² N.Y. LAB. LAW § 593(b)(i) (McKinney 2022).

¹⁰³ *Domestic Violence and UI Benefits FAQ*, *supra* note 100.

¹⁰⁴ See *id.*

¹⁰⁵ See *Covered or Excluded Employment*, N.Y. DEP'T OF LAB., <https://perma.cc/AD7P-6LAH> (last visited Apr. 15, 2022); see also Rebecca Smith, *Immigrant Workers' Eligibility for Unemployment Insurance*, NAT'L EMP. L. PROJECT (Mar. 31, 2020), <https://perma.cc/4UW6-P96F>.

IV. LEAVE LAWS IN WASHINGTON, D.C. AND NEW JERSEY

A. *Washington, D.C.*

Other jurisdictions also have their own version of leave time, with many similarities to New York's. Washington, D.C. offers paid leave based on the size of the organization, mandating that an employer with 100 or more employees must provide up to seven days of paid leave per calendar year.¹⁰⁶ Employers with 25 to 99 employees are required to provide up to five days and employers with 24 or fewer employees must provide up to three days.¹⁰⁷ Employees can use their time to take care of their own or their family member's physical or mental illness, injury or medical conditions, or to seek diagnosis for any of these conditions.¹⁰⁸ Leave time can also be used if they, or a family member, are survivors of stalking, domestic violence, or sexual abuse to seek social, legal, and medical services.¹⁰⁹ The Washington, D.C. Department of Employment Services enforces the paid leave law.¹¹⁰ Additionally, Washington, D.C., like New York, allows survivors of IPV to file for unemployment benefits if they lose their job due to the violence, regardless of whether they were discharged or voluntarily or involuntarily resigned.¹¹¹ Yet, like in New York, undocumented employees do not qualify for unemployment relief since to apply, employees must produce valid work authorization, a social security number, and other supporting documents.¹¹²

B. *New Jersey*

New Jersey has an Earned Sick Leave that went into effect on October 29, 2018.¹¹³ Earned Sick Leave offers paid time off regardless of how many employees the employer has.¹¹⁴ Employers of all sizes are covered and out-of-state employers with employees in New Jersey must also provide earned sick leave for the employees who work in New Jer-

¹⁰⁶ D.C. CODE § 32-531.02 (a)(1) (2022) (providing that leave is accrued in three-, five-, and seven-days per calendar year increments depending on the employer's size).

¹⁰⁷ D.C. CODE § 32-531.02 (a)(2) (2022).

¹⁰⁸ D.C. CODE § 32-531.02 (b)(1)-(3) (2022).

¹⁰⁹ D.C. CODE § 32-531.02 (b)(4) (2022).

¹¹⁰ A BETTER BALANCE, OVERVIEW OF PAID SICK TIME LAWS IN THE UNITED STATES 6 (Dec. 22, 2021), <https://perma.cc/74DN-NY5H>.

¹¹¹ D.C. CODE § 51-131.02 (b)(4) (2022).

¹¹² D.C. DEP'T OF EMP. SERVS., ACCESSING UNEMPLOYMENT BENEFITS: QUICK GUIDE TO APPLYING 1, <https://perma.cc/58ZT-EZGN> (last visited June 20, 2022).

¹¹³ William R. Horwitz & Gregg Settembrino, *New Jersey Paid Sick Law Becomes Effective on October 29, 2018*, NAT'L L. REV. (July 23, 2018), <https://perma.cc/6CNC-RCXT>; see generally N.J. ADMIN. CODE § 12:69-3.5 (2020).

¹¹⁴ N.J. ADMIN. CODE § 12:69-1.1(b) (2020).

sey.¹¹⁵ The accrued sick leave time¹¹⁶ can be used to seek domestic violence services for the employee or their family members¹¹⁷ and, unlike the laws in New York¹¹⁸ and Washington, D.C.,¹¹⁹ covers undocumented, domestic, and temporary workers.¹²⁰ Employees who are not covered under this law are construction workers under contract pursuant to a collective bargaining agreement, per diem healthcare workers, and public employees who already receive paid sick time.¹²¹ Employees who take three or more consecutive days of sick leave may be required to provide reasonable documentation for the leave.¹²² Similarly to those in New York and Washington, D.C., New Jersey workers who are discharged or leave employment after experiencing domestic violence are able to apply for unemployment benefits, as long as they provide supporting documents of the abuse (police report, medical documentation, paperwork filed in court, etc.).¹²³

V. COMPARISON OF LEAVE LAWS IN NEW YORK, WASHINGTON, D.C., AND NEW JERSEY

The New York Paid Sick Leave is a good first step to expanding leave time because it allows employees to take time off to care for their family members while potentially getting paid.¹²⁴ It also offers some level of job protection to undocumented employees who work for small businesses, allowing employees who work for employers with fewer than four employees to access job-protected time off.¹²⁵ Although this is sound policy, since requiring paid leave for employers who operate small businesses with minimal staff and do not bring in much revenue would greatly burden them, the problem that IPV survivors face when forced to decide whether to take unpaid leave to secure medical or legal services for themselves and their family members remains. Forty hours of unpaid leave translates to five days in a calendar year, which is insufficient time to receive the necessary ongoing mental health services or

¹¹⁵ N.J. DEP'T OF LAB., EARNED SICK LEAVE FAQs 2 [hereinafter EARNED SICK LEAVE FAQs], <https://perma.cc/J5SW-35EZ> (last visited Apr. 10, 2022).

¹¹⁶ *See id.* at 5 (describing that an hour of sick leave is accrued for every 30 hours the employee works and “[t]he employer is not required to permit the employee to accrue more than 40 hours of earned sick leave in any benefit year.”).

¹¹⁷ *Id.* at 9.

¹¹⁸ *See generally* N.Y. LAB. LAW § 196-b (McKinney 2022).

¹¹⁹ *See generally* D.C. CODE § 32-531.02 (2022).

¹²⁰ EARNED SICK LEAVE FAQs, *supra* note 115, at 1.

¹²¹ *Id.* at 3.

¹²² N.J. ADMIN. CODE § 12:69-3.5(j) (2022).

¹²³ N.J. STAT. ANN. § 43:21-5(j) (West 2022).

¹²⁴ *See generally* N.Y. LAB. LAW § 196-b (McKinney 2020).

¹²⁵ *Id.* at § (1)(a).

pursue legal remedies, as these services can be lengthy and complicated.¹²⁶

In contrast to New York, the length of paid leave that Washington, D.C. provides is less than New York's Paid Sick Leave. Nonetheless, what distinguishes it from New York's program is that employers with fewer than 24 employees must still offer paid leave. Furthermore, the income requirement for New York employers does not exist in D.C.'s program. Although this may burden smaller businesses and organizations, the absence of such a requirement offers protection to employees and does not penalize them for working for these businesses, which the FMLA and New York's Paid Sick Leave Law do. Like New York, D.C. allows survivors of IPV to file for unemployment and goes a step further by not penalizing employees who are discharged after suffering IPV, as long as they can provide proof of the violence they suffered.¹²⁷ Also, evidence of IPV may include police reports, governmental agency or court record, a written statement that the survivor has sought assistance for domestic violence from a shelter official, social worker, counselor, attorney, medical doctor, or cleric.¹²⁸ This is crucial, as many survivors who experience financial abuse are often forced to resign from their jobs for safety purposes and receiving unemployment funds can lessen the financial stress survivors experience. However, the necessity of proving one's status as a survivor of violence can be further traumatizing to survivors that never sought assistance or prefer not to share their story. And again, unemployment benefits are still out of reach for undocumented employees—to qualify, employees must produce proof of valid work authorization, something undocumented workers do not have.

Compared to New York and Washington, D.C., New Jersey's leave law is much more holistic and friendlier to survivors of IPV and undocumented workers. While 40 hours a year translates only to five days, it is five days of paid time off for all employees, regardless of the size of the company, presenting a sharp contrast to the leave policies under the FMLA, New York, and Washington, D.C. Furthermore, New Jersey's definition of qualified family member includes any individual "whose close association with the employee is the equivalent of a family relationship" and "any other individual related by blood to the employee,"¹²⁹

¹²⁶ See generally AM. PSYCH. ASS'N, HOW LONG WILL IT TAKE FOR TREATMENT TO WORK? (2017), <https://perma.cc/M74N-A22W> (addressing the length of the mental health treatments which are usually more than 5 days); see also Jessica Migala, *How Long Does a Divorce Take*, WOMEN'S HEALTH (June 5, 2018), <https://perma.cc/3EJH-SDCN> (describing how it takes months to get a divorce).

¹²⁷ See generally D.C. CODE § 51-132 (2022).

¹²⁸ *Id.*

¹²⁹ N.J. ADMIN. CODE § 12:69-2.1 (2022).

emphasizing the fluidity of what family is. Although New York's definition of who constitutes as a qualifying family member is very inclusive, New Jersey's would cover friends, close relatives, and anyone who is the equivalent of a family member to the employee. This definition is an important addition to leave laws since many people in current society wait longer to marry, forgo marriage and decide to cohabitate, live in blended families, or find friends to be a stronger support system.¹³⁰

VI. SOLUTIONS TO ADDRESS THE GAPS IN NEW YORK'S PAID LEAVE POLICIES

There are many gaps in New York's paid leave laws that can be resolved by borrowing components from both New Jersey's and Washington, D.C.'s leave policies. New York should eliminate the income requirement of one million dollars in revenue for employers that employ four or fewer employees and require paid time off for all their employees. While this creates a financial burden on smaller businesses, forcing employees to choose between taking necessary time off to pursue their mental health and legal needs or working to sustain themselves and their families is not a choice at all. This is especially true knowing the impact finances have on a survivor's ability to leave their abusive partner and for households where the survivor is now the primary breadwinner due to the IPV. Not having access to paid leave further victimizes employees who are suffering from IPV, leaving them defenseless.

If employers with fewer than four employees cannot afford to provide paid leave, New York State should create a program or subsidy to help these employers. This can take form in tax credits for employers or a state-funded program that splits the cost of the paid leave with the employer. These initiatives would result in both the employer and New York State sharing this burden and go a long way in protecting survivors and ensuring they get the assistance they need to deal with the lingering consequences of IPV. In addition, the State should partner with employers to ensure survivors get more than five to eight days a year to address their legal and medical needs. This can be done by offering some type of tax incentives to organizations or using State funds to pay survivors their daily wages so that they take the additional time needed (after they run out of the time given to them by their employers), without changing current policy. Furthermore, these funds must be available to undocu-

¹³⁰ See *The Many Faces of the American Family*, ATLANTIC, <https://perma.cc/WG8G-RDSR> (last visited Apr. 8, 2022); see also Rhaina Cohen, *What if Friendship, Not Marriage, Was at the Center of Life?*, ATLANTIC (Oct. 20, 2020), <https://perma.cc/VB3D-EW5D> (describing unconventional family arrangements).

mented workers since they are deprived of financial protection and would go a long way in providing security to survivors of IPV.

Due to the ongoing pandemic, New York, New Jersey, Washington, D.C., and a handful of other states have implemented COVID-19-related financial relief for employees that do not qualify for federal and state unemployment benefits. Washington, D.C. started a program called *DC Cares* to provide direct cash assistance to formerly incarcerated people who were released during the pandemic, undocumented workers who experienced loss of income during the pandemic, and for employees who work for cash in the informal economy and have experienced loss of income due to the pandemic, such as domestic workers, day laborers, or street vendors.¹³¹ Similarly, New York State passed a \$2.1 billion Excluded Workers Fund to provide unemployment benefits to undocumented workers and workers who work in nontraditional employment.¹³² New Jersey Governor Phil Murphy announced a \$40 million fund for undocumented workers and other workers who were excluded from the federal economic unemployment fund.¹³³

The passage of these programs shows that states could finance comprehensive programs to help undocumented workers receive paid leave time, which would lessen the burden on smaller employers and help undocumented workers receive paid time off. While these programs now exist to help undocumented workers, it is unclear how much longer this aid will continue. As of March 2022, with vaccination rates increasing and states hoping to fully reopen soon, it is doubtful the financial aid will continue. Therefore, the same problems concerning unemployment and who can access it will continue.

CONCLUSION

For many years, intimate partner violence was regarded as a family matter to be dealt with behind closed doors.¹³⁴ However, with advocacy to recognize IPV as a public health problem and increased numbers of women joining the workforce, becoming more than part-time, temporary

¹³¹ Kenrick Thomas, *DC Cares Funding is Now Available!*, BREAD FOR THE CITY (Jan. 25, 2021), <https://perma.cc/DXN2-JXZG>; see also *DC Cares Program \$5M Undocumented Worker Relief Package*, THE CMTY. FOUND. (June 5, 2020), <https://perma.cc/6JH2-B925>.

¹³² N.Y. DEP'T OF LAB., EXCLUDED WORKERS FUND 2, <https://perma.cc/FP5P-YPNP> (last visited May 9, 2022); see also *Excluded Workers Fund*, N.Y. DEP'T OF LAB., <https://perma.cc/UC2X-HYAT> (last visited Apr. 8, 2022).

¹³³ Sophie Nieto-Munoz, *Murphy Announces \$40 Million for Undocumented Immigrants, Others Excluded from Benefits*, NJ.COM, (May 7, 2021, 6:01 PM), <https://perma.cc/DYA2-9QNR>.

¹³⁴ Sandra Horley, *Opinion: Why Domestic Violence is Never a Private Issue*, CNN (June 19, 2013, 10:50 AM), <https://perma.cc/UF5B-T7BD>.

workers,¹³⁵ violence behind closed doors has become recognized as a “serious and persistent life-threatening criminal and public health problem.”¹³⁶ Federal and state governments passed legislation and dedicated resources to helping survivors, including making leave laws that offer job protection accessible to survivors.¹³⁷ The passage of the FMLA and various state leave laws were monumental in allowing employees to take time to care for themselves and their loved ones, while knowing their jobs were waiting for them.

However, many people are unable to take FMLA leave because it is unpaid and state leave law policies vary, with access to paid leave dependent on a variety of factors that generally do not apply to all employees.¹³⁸ To provide full support to all survivors of IPV, the FMLA needs to be reformed so that all employees can access paid leave, regardless of the size of their employer or immigration status. Research has shown that although 60% of the workforce is eligible for FMLA leave, “nearly half of workers who qualify for this leave but do not take it say they are unable to for financial reasons, and two-thirds of those who do take leave report experiencing financial difficulties as a result.”¹³⁹ This is a strong indicator that the FMLA, as it currently exists, does not work for a large number of employees that need it and despite needing time off, taking unpaid leave is unfeasible. The FMLA has too many restrictions and is not a practical option for many survivors of IPV. Likewise, despite New York State’s more lax approach to leave time, New York’s Paid Sick Leave Law does not protect all employees, especially survivors of IPV who work for employers who do not meet the threshold amount to qualify for paid time off.

Leave laws are important additions to the resources available to helping survivors break the cycle of violence and federal and state governments need to go further and guarantee this protection to all survivors of IPV, independent of their employment or immigration status. Job-protection that is unpaid and contingent upon a survivor’s immigration status or the type, size, and income of their employer denies protection to many employees. It forces many survivors to choose between financial hardships not just for themselves, but their children, or staying in an abusive relationship that results in physical, mental, and psychological

¹³⁵ See THE ECONOMICS OF PAID AND UNPAID LEAVE *supra* note 41, at 5.

¹³⁶ MELVIN H. WILSON & RITA WEBB, SOCIAL WORK’S ROLE IN RESPONDING TO INTIMATE PARTNER VIOLENCE 1 (2018), <https://perma.cc/83YG-3QGL>.

¹³⁷ EMPLOYEE’S GUIDE TO FMLA, *supra* note 13, at 8.

¹³⁸ See Julie Ajinkya, *Who Can Afford Unpaid Leave?*, CTR. FOR AM. PROGRESS (Feb. 5, 2013), <https://perma.cc/4V3S-SG99> (addressing the challenges that many in the U.S. face with regards to taking leave, even when they are qualifying for it).

¹³⁹ *Id.*

trauma. These are not choices born out of deliberation but further sacrifices that the survivors must make, trapping them in the cycle of violence.