Is "Zero Tolerance" the Solution? Using Non-Punitive Policies in the Workplace to Reduce Domestic Violence

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NOTE

Is “Zero Tolerance” the Solution? Using Non-Punitive Policies in the Workplace to Reduce Domestic Violence

Tristan C. Fretwell*

INTRODUCTION

Domestic violence, defined as “a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner,” is not a new problem. Since the beginning of human relationships, violence has existed between partners. It is only over the past few decades that it has been recognized for what it is—a crime. While this recognition has brought progress, there are still many areas of domestic violence that need to be studied and addressed. Failing to do so would continue to put millions of people at serious risk of harm and could have serious consequences on the shaping of our society.

In fact, the effects of domestic violence are beginning to be studied and recognized in several areas outside of the immediate family, including the workplace. As research has demonstrated that domestic violence does, indeed, influence the work environment, there have been calls for punishment or “zero tolerance” policies for

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domestic violence perpetrators in the workplace.\textsuperscript{6} While calling for such policies seems natural given the criminal nature of the behavior, one question should be asked: does adopting punitive or “zero tolerance” policies in the workplace decrease domestic violence? Put another way, while having these types of policies communicates that an organization repudiates domestic violence, does it play any role in directly addressing domestic violence?

The purpose of this Note is to explore these questions and the unique characteristics of the workplace. A work environment and the criminal justice system are two different systems that serve different roles. To apply the same rules and standards to each, even as it relates to domestic violence, could be detrimental.

A work environment involves four groups of people when addressing domestic violence: (1) victims, (2) perpetrators, (3) coworkers, and (4) supervisors. Much of the research, and the policies that followed, has focused on addressing the needs of victims and educating coworkers and supervisors on recognizing domestic violence. While these policies are incredibly positive and necessary advances in addressing domestic violence, a holistic approach must also include policies focused on perpetrators.

While there has been some debate on the origins of violence, most social scientists agree that it is a learned behavior.\textsuperscript{7} But if violence is a learned behavior, punishment alone does not cause one to unlearn that behavior. Psychiatrist James Gilligan once wrote, “The purpose of violence is to diminish the intensity of shame and replace it as far as possible with its opposite, pride, thus preventing the individual from being overwhelmed by the feeling of shame.”\textsuperscript{8} But if violence is an avoidance of shame, then punitive policies only amplify and broadcast this shame, potentially leading to additional violence. This Note presents an overview of domestic violence perpetrators and explores the possible consequences of punitive policies, including increased risks to victims and failure to prevent future violent behavior. As an alternative, policies to address the issues of perpetrators and victims are presented. These policies include comprehensive education for supervisors and providing treatment for employees.

Part II of this Note provides a look at the demographics of domestic violence perpetrators and explores historical and current treatment methods for domestic violence perpetrators. This section provides a broad demographic overview that includes socioeconomic status, race, criminal history, mental health, substance abuse, and career-type. Additional similarities and findings among perpetrators are also presented.

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\textsuperscript{6} See Deseriee A. Kennedy, Using the NFL as a Model? Considering Zero Tolerance in the Workplace for Batterers, 45 U. BALT. L. REV. 293 (2016).


\textsuperscript{8} James Gilligan, VIOLENCE: OUR DEADLY EPIDEMIC AND ITS CAUSES 111 (1996).
Part III presents a background of domestic violence, including the effect that domestic violence plays in the work environment, with specific emphasis on domestic violence perpetrators. Additionally, this section presents an overview of existing organizational responses to domestic violence and identifies gaps such as methods or strategies for addressing domestic violence perpetrators directly.

Part IV explores the effect that punitive policies could have on a workplace environment and possible negative consequences from implementing such policies. This section also includes a discussion of alternative strategies and policies for specifically addressing domestic violence perpetrators in the workplace, including educational strategies and accommodations for time off to receive treatment.

Given the plethora of terms used in research surrounding domestic violence, this Note uses the terms “domestic violence” and “intimate partner violence” interchangeably depending on the term used by the referenced source. Both are used to describe the specific act of abuse between a victim and a perpetrator. Additionally, while many terms exist for the individual inflicting the abuse, this Note uses the term “domestic violence perpetrator” except when referring to specific research or programs that use the term “batterer” or “domestic abuser.”

I. DOMESTIC VIOLENCE PERPETRATORS

A. Demographics

To effectively respond to domestic violence perpetrators, there first must be an understanding of who they are and the issues they present. While domestic violence may be thought of as primarily a problem for those of lower socioeconomic status, research indicates that domestic violence involves perpetrators from all races and social classes, although differing levels of reporting may contribute to misperceptions that domestic violence occurs at higher rates among the poor.

Many domestic violence perpetrators have a criminal history, including a history of violent crimes. These histories include police reports by victims, prior domestic violence arrests or orders of protection, multiple offenses against the same partner, and offenses against multiple partners. One study of 4,032 male subjects

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10 Etter & Birzer, supra note 9, at 115.


who had assaulted their female partners found that there was a 250% to 330% greater likelihood of re-offending by abusers with previous arrests.\textsuperscript{13} Domestic violence perpetrators also have a history of misdemeanor and felony offenses unrelated to direct abuse.\textsuperscript{14} Additionally, for batterers convicted of a misdemeanor domestic violence charge, 31% were arrested again within a year of being released, and 44% were arrested again within two years of being released.\textsuperscript{15}

Many domestic violence abusers also have a history of mental-health issues. Men who were victims of child maltreatment are three to four times more likely to perpetrate intimate partner violence.\textsuperscript{16} There is also research that indicates that mental health issues appear in perpetrators at a higher frequency than in the overall population.\textsuperscript{17} In one study, the results indicated that 25% of men in batterer treatment programs showed evidence of a severe personality disorder—schizotypal, borderline, or paranoid—or a major mental-health disorder, such as depression.\textsuperscript{18} The same study also indicated that one-third had received previous treatment for mental health or substance abuse.\textsuperscript{19}

The research indicates that antisocial personality disorder and borderline personality disorder traits are associated with the perpetration of intimate partner violence.\textsuperscript{20} Studies have also shown that there is an increased risk of domestic violence among those that suffer from a mental-health problem, such as post-traumatic stress disorder (PTSD).\textsuperscript{21} Additionally, several studies over the past three

14 Nora K. Puffett & Chandra Gavin, CTR. FOR COURT INNOVATION, PREDICTORS OF PROGRAM OUTCOME & RECIDIVISM AT THE BRONX Misdemeanor Domestic Violence COURT 2, 14 (2004) (finding that 72% of batterers convicted of a misdemeanor domestic violence charge had a prior criminal arrest history, including felony arrests (59%), drug possession/sale arrests (44%), assault arrests (38%), and gun and weapon arrests (35%).).
15 Id. at 19.
19 Id.
decades indicated that male perpetrators of domestic violence demonstrate more symptoms of depression that non-perpetrators.²²

There is also significant research indicating a link between substance abuse and domestic violence perpetrators.²³ The prevalence of drug and alcohol disorders appear at a higher rate among perpetrators as compared to the rest of the population.²⁴ One study of perpetrators receiving treatment found that 63.3% were currently struggling with substance abuse and dependence disorders and 92.5% experience those issues at some time during their life.²⁵ Additionally, of those with a current diagnosis, more than half reported a pattern of multiple substance dependency involving both alcohol and drugs.²⁶ Another study found that 31% of men arrested for domestic violence met the criteria for a drug use disorder and 53% met criteria for an alcohol use disorder.²⁷ When looking at substance abuse in connection to criminality, studies have also observed that men who abuse substances are more violent and have longer criminal histories.²⁸

Of the studies considering the connection between domestic violence perpetrators and substance abuse, the research overwhelmingly indicates that alcohol use disorders are the most prevalent mental health issue.²⁹ In fact, there are several studies that not only show a connection between alcohol use and domestic violence, but also seem to indicate that limiting and reducing alcohol has shown positive correlations in reducing violence.³⁰

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²² See, e.g., Edward W. Gondolf, MCMII-III Results for Batterer Program Participants in Four Cities: Less “Pathological” Than Expected, 14 J. FAM. VIOLENCE 1, 12 (1999); Roland D. Maiuro, Timothy S. Cahn, Peter P. Vitaliano, Barbara C. Wagner & Joan Zegree, Anger, Hostility, and Depression in Domestically Violent Versus Generally Assaultive Men and Nonviolent Control Subjects, 56 J. CONSULTING & CLINICAL PSYCHOL. 17, 20 (1988); Gregory L. Stuart, Todd M. Moore, Christopher W. Kahler & Susan E. Ramsey, Substance Abuse and Relationship Violence Among Men Court-Refereed to Batterers’ Intervention Programs, 24 SUBSTANCE ABUSE 107, 117 (2003) [hereinafter Stuart et al., Substance Abuse and Relationship Violence].


²⁴ Stuart et al., The Role of Drug Use, supra note 20, at 21; see also Anne O'Leary-Kelly, Emily Lean, Carol Reeves & Jane Randel, Coming into the Light: Intimate Partner Violence and Its Effects at Work, 22 ACAD. MGMT. PERSP. 57, 69 (2008).


²⁶ Id.


²⁸ See, e.g., id. at v.


³⁰ See, e.g., Timothy J. O'Farrell, William Fals-Stewart, Marie Murphy & Christopher M. Murphy, Partner Violence Before and After Individually Based Alcoholism Treatment for Male Alcoholic Patients, 71 J. CONSULTING & CLINICAL PSYCHOL. 92, 92, 99 (2003); Stuart et al., Substance Abuse and Relationship Violence, supra note 22, at 107.
There has also been some research regarding the prevalence of domestic violence perpetrators and career type, which can be valuable for identifying and tailoring the types of organizational responses an employer should take. Despite both the attention and criticism the National Football League (NFL) receives, rates of domestic violence are lower among players when compared to the general population.31 Several studies have also looked at the prevalence of domestic violence among police officers. While around 10% of families in the general population experience domestic violence, around 40% of police officer families experience it.32 Another study found that domestic violence is two to four times more common among police families than American families generally.33 Similar results have been found for military families. A 2011 Pentagon report showed that PTSD was a contributing factor to family violence and that, “[s]oldiers with PTSD are up to three times more likely to be aggressive with their female partners than those without such trauma.”34 According to the Department of Defense, among the various branches, “the Army has consistently shown the highest rates of domestic violence, followed by the Marines, Navy, and Air Force.”35 While updated and current research is needed, these findings may indicate a need for specific interventions designed for high-risk, male-dominated careers that may engage in aggression or violence as a method of control.

In addition to these demographics, there are also additional factors that correlate with domestic violence perpetrators. Those couples that report having high levels of financial strain are three and a half times more likely to be involved in domestic violence when compared to those that report low levels of financial strain.36 Additionally, domestic violence perpetrators also report experiencing high levels of stress or frustration, as well as a higher level of adherence to gendered roles or learned behavior.37

However, it is also important to recognize that domestic violence perpetrators are not solely male. While research clearly indicates that men tend to abuse at higher

36 Michael L. Benson & Greer L. Fox, U.S. DEP’T OF JUST., CONCENTRATED DISADVANTAGE, ECONOMIC DISTRESS, AND VIOLENCE AGAINST WOMEN IN INTIMATE RELATIONSHIPS 6 (2004).
37 See generally O’Leary-Kelly et al., supra note 24.
men and women can be involved in the initiation of abusive behavior. This is especially important in addressing domestic violence in the workplace so that implemented methods are not tailored based on gender and do not exclude same-sex couples or individuals who identify outside of the gender binary. However, research specifically addressing women as perpetrators is limited, potentially because of the gendered perspective that domestic violence is often seen from.

B. Treatment of Domestic Violence Perpetrators

In addition to understanding who domestic violence perpetrators are, it is important to explore the methods that are currently being used outside of the work context to address domestic violence. The history of domestic violence offender treatment began around 1977 when victims expressed their desire for more than just jail time for their significant others. The result was, in 1980, the development of the “Duluth Model,” which assumed that all offenders shared a similar need to dominate their partners and that changing this attitude was the key to treatment. Today, most states have set forth legislative or regulatory standards to address domestic violence perpetrator treatment standards. Specifically, forty-five states and the District of Columbia have legislated standards, which include oversight of treatment methodology, length of treatment, and needed safety responses. The primary recommended treatment is group counseling, with several states limiting individual counseling.

One study indicated that there are around 2,000 Batterer Intervention Programs (BIPs) in the United States. The majority of these treatment programs are attended by hundreds of thousands of convicted offenders who are mandated to receive treatment through the court system. These BIPs have similar curricula that involve intake and assessment. The BIP approach, which typically involves group

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38 See Maxwell et al., supra note 13, at 56–57.
40 See David Adams, Treatment Programs for Batterers, 5 CLINICS IN FAM. PRAC. 159, 160 (2003).
43 Id. at 138.
45 See id.
sessions that meet between one to two hours per week and from eight to fifty-two weeks at a time, focuses on changing sexist attitudes to alter behavioral patterns.\textsuperscript{47} 

One of the more recent developments in treatment is the use of cognitive behavioral therapy (CBT).\textsuperscript{48} The addition of this methodology attempts to challenge men’s perceived right to dominate their partners and to re-educate offenders to respect their partners and form more egalitarian relationships.\textsuperscript{49} CBT primarily achieves this goal by “focusing on [an individual’s] thoughts, images, beliefs, and attitudes that are held (a person’s cognitive processes) and how these processes relate to the way a person behaves, as a way of dealing with emotional problems.”\textsuperscript{50}

However, there is some research that seems to indicate that there is no universal type of treatment that works for every domestic violence perpetrator.\textsuperscript{51} In fact, some studies seem to indicate that BIPs are ineffective or only have a minimal impact on curbing abuse.\textsuperscript{52} One study found “no difference” in recidivism between offenders who did and did not have treatment.\textsuperscript{53} The same study also found no modification in the participant’s attitude toward domestic violence.\textsuperscript{54} There also seems to be little evidence that one approach is superior to others. Whether a program uses a more traditional approach or incorporates CBT elements, or some combination, several studies have concluded that BIP does not, or only to a small degree, reduce future incidents of violence.\textsuperscript{55}

Treatment itself can be obstructed by substance abuse. The use of several substances can complicate evaluation and intervention efforts, as well as limiting posttreatment outcomes when compared to alcohol use alone.\textsuperscript{56} Additionally, despite the prevalence of mental health and substance abuse issues in domestic violence

\textsuperscript{47} Id.


\textsuperscript{49} Babcock et al., supra note 48, at 1026.


\textsuperscript{51} See Babcock et al., supra note 48, at 1045.


\textsuperscript{53} Jackson et al., supra note 41, at 2.

\textsuperscript{54} Id. at 3.

\textsuperscript{55} See, e.g., Babcock et al., supra note 48, at 1023; Dunford, supra, note 52, at 427; Edward W. Gondolf & Alison Snow Jones, The Program Effect of Batterer Programs in Three Cities, 16 VIOLENCE & VICTIMS 693, 693 (2001).

\textsuperscript{56} See Thomas G. Brown, Peter Seraganian & Jacques Tremblay, Alcohol and Cocaine Abusers 6 Months After Traditional Treatment: Do They Fare as Well as Problem Drinkers?, 10 J. SUBSTANCE ABUSE TREATMENT 545, 548 (1993).
perpetrators, only 63% of states require substance abuse screenings as a part of treatment and only a little over half require mental health screenings. This finding is especially significant given the research that suggests that domestic violence perpetrators would benefit from a mental health screening.

II. Domestic Violence in the Workplace

A. Overview

The reach of domestic violence is broad and pervasive; however, measuring domestic violence can be a difficult task. One study found that over ten million men and women experience physical violence each year by a current or former intimate partner. The same survey found that nearly twenty-nine million women and sixteen million men have experienced physical violence in their lifetime.

The effect of domestic violence is especially pervasive in the workplace. One study found that 44% of full-time employed adults personally experienced the effect of domestic violence in their workplace and 21% identified themselves as victims of intimate partner violence. Another found that 19% of male employees and 30% of female employees had experienced domestic violence sometime in their life. These domestic violence incidents can have a significant impact on a victim’s job, including making an employee late or causing them to lose their job, but there are also consequences for the business itself. While these consequences affect every aspect of a business, there are three areas that are especially affected: (1) productivity, (2) misuse of company or organizational resources, and (3) employee safety.

Domestic violence leads to a reduction in productivity. This is most definitively seen through absenteeism. The annual cost of lost productivity due to...
domestic violence is estimated at $727.8 million. Most of these studies have focused on the issues of victims. According to the National Employment Law Project (NELP), domestic violence caused 56% of victimized employees to be late for work at least five times per month. NELP also found that 28% of victims leave work early at least five times per month and 54% miss at least three days of work per month. One study showed that between 35% and 56% of domestic violence victims were harassed at work by their abuser. Another study found that 74% of battered women reported being harassed at work, either in person or over the phone. Additionally, 75% use company time to handle domestic violence related matters, 54% miss a minimum of three days per month, 56% are late for work on several occasions per month, and 28% leave work early at least five times per month.

For domestic violence perpetrators in particular, at least two studies have shown that they frequently take time off work to either engage in domestic abuse activities or to smooth the fallout from a previous abuse incident. Domestic abusers also report being late to work, having difficulty concentrating while at work, and self-reporting that their performance at work was negatively affected due to their domestic violence actions. Domestic violence also causes a misuse of company resources. These misused resources included cellphones or landlines, work computers and email accounts, and

almost eight million days of paid work each year are lost due to domestic violence issues, which is equivalent to about 32,000 jobs).

67 Id. at 31.
69 Id.
72 E.g., Nat’l Emp. L. Project, supra note 68, at 1; see Vaughn, supra note 71, at 236 (noting the frequency with which corporate security and safety directors reported seeing incidents of stalking and domestic violence).
74 E.g., Reckitt & Fortman, supra note 73, at 11 (40% reported being late to work).
75 E.g., Schmidt & Barnett, supra note 73, at 21 (75% reported difficulties concentrating).
76 Id. (55% reported negatively affected job performance); see also Reckitt & Fortman, supra note 73, at 11 (11% reported leaving work early, 3% reported an altered attendance record, and over 25% reported stopping by the partner’s home while still on the clock).
even company vehicles. In one study, 78% of offenders used workplace resources at least once to express remorse or anger, check up on, pressure, or threaten their victim.

There are also significant safety risks to employees directly related to domestic violence. One of the primary effects is the violence inflicted on potential victims in the workplace. One study found that 33% of women killed at work between 2003 and 2008 were at the hands of an intimate partner. But there are also indirect safety issues that do not directly result from the domestic violence perpetrator’s violent behavior. Perpetrators admit that they are often distracted at work. In one study, 48% of offenders reported having difficulties concentrating at work. This distraction has resulted in real, on-the-job accidents, as well as some situations that almost turned into accidents. The same study found that employed perpetrators made dangerous mistakes while on the job as a result of perpetrating domestic violence. Both types of safety risks also have a significant impact on the cost of health care insurance.

B. Organizational Responses to Domestic Violence

Primarily because domestic violence as a workplace issue has only been recognized over the last decade and a half, organizational responses are limited. In fact, several studies indicated that many workplaces lack procedures that directly address domestic violence. One study showed that more than 70% of the United States workplaces do not have a formal program or policy that addresses workplace violence. The mixed responses may be a disconnect between the experiences of employees and the perceptions of employers of their role in addressing domestic violence. While around 91% of employees say that domestic violence has a negative impact on their company’s bottom line, only 43% of corporate executives agree. While around 91% of corporate leaders believe that domestic violence affects both the private and working lives of their employees, only 32% say that it has had a negative impact on their company’s bottom line. One study of Fortune 1500 executives found

78 Reckitt & Fortman, supra note 73, at 2, 13; Schmidt & Barnett, supra note 73, at 19.
79 Reckitt & Fortman, supra note 73, at 1.
81 Reckitt & Fortman, supra note 73, at 8.
82 Id. at 2, 12.
83 O’Leary-Kelly et al., supra note 24, at 63.
85 Id. at 3.
86 See Workplace Statistics, supra note 62.
87 See id.
that while many acknowledged that domestic violence affected their businesses, only 13% believed that corporations had a major part to play in addressing it.\(^88\)

But while not all companies have failed to address the issues, those that have focus primarily on addressing domestic violence from the victim’s perspective. The Corporate Alliance to End Partner Violence (CAEPV) was created in 1995 with the mission to prevent “partner violence by leveraging the strength and resources of the corporate community.”\(^89\) The strategies used by this, and similar organizations, primarily focus on education and, specifically, recognizing and reporting domestic violence.\(^90\) The Family Violence Prevention Fund also implemented its Corporate Citizenship initiative in 2000, which invited employers, unions, and advocates to create partnerships in the workplace to respond to domestic violence.\(^91\) The Fund “offered technical assistance to ten statewide domestic violence coalitions, providing curriculum, travel money, and resources for a direct outreach effort to employers in their respective states.”\(^92\) There has also been a new recognition of the need for policies that support domestic violence victims.\(^93\) This same recognition has led to some states passing legislation directly for the benefit of domestic violence victims.\(^94\)

Organizational responses and research regarding those responses, as they relate to domestic violence perpetrators, are limited. The research that has been done, however, seems to indicate that domestic violence perpetrators’ behaviors are often being ignored, or worse, reinforced. According to one study of perpetrators, 41% of coworkers and 21% of supervisors either blamed or talked poorly about the perpetrator’s partner.\(^95\) Studies have also revealed that supervisors often know that their employees have been arrested for a domestic violence related crime, but that only a few speak to their employees about their behavior being criminal.\(^96\) One study found that 83% of supervisors were aware that their employees took off work due to their domestic violence offense, but only 32% of supervisors gave any response to the employee about his domestic violence incident, his behavior, or his relationship in

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88 O’Leary-Kelly et al., supra note 24, at 57.
89 Our Purpose, CORP. ALLIANCE TO END PARTNER VIOLENCE, http://www.caepv.org/about/purpose.php (last visited Feb. 7, 2018); see O’Leary-Kelly et al., supra note 24, at 69 (noting CAEPV’s primary mission to prevent intimate partner violence).
90 See O’Leary-Kelly et al., supra note 24, at 69.
91 RECKITT & FORTMAN, supra note 73, at 2.
92 Id.
94 See N.J. STAT. ANN. § 34:11C-1 (West Supp. 2015) (enabling employers to mandate employment leave for domestic violence victims); N.Y. EXEC. LAW § 296 (Consol. 2017) (preventing an employer from firing or refusing to hire an individual based on their status as a victim of domestic violence).
95 SCHMIDT & BARNETT, supra note 73, at 18.
96 See, e.g., RECKITT & FORTMAN, supra note 73, at 14 (73% reported that their supervisors were aware of the arrest).
general. Some supervisors have even knowingly posted bail for their employee or provided paid leave to the perpetrator. At best these behaviors demonstrate a knowing ignorance to the issue of domestic violence and, at worst, a system that enables and encourages the abuse to continue.

III. RESPONDING TO DOMESTIC VIOLENCE PERPETRATORS

A. Possible Consequences of Punitive Policies

If corporations and organizations were to adopt punitive policies, what would be the effect? Would these changes reduce domestic violence? There is little research to answer affirmatively. In fact, the research suggests that punitive policies might increase the likelihood of abuse. One study suggests that a domestic violence victim could become the focus of blame and punishment if the abuser were to lose his or her job. There are also several studies that show that job-related stress increases the likelihood of domestic abuse. The loss of a job also seems to increase recidivism for abusive behavior.

There are also additional concerns that punitive policies bring. Reporting of incidents may decrease because of the higher risk of jeopardizing a coworker’s job. Both victims and coworkers may be discouraged to come forward if negative employment consequences are possible. Especially in a male-dominated field, where domestic violence perpetrators may be found in a higher number, barriers to reporting should be limited to ensure that domestic violence is being addressed. These occupations may suffer from a “culture of silence” that discourages coworkers from reporting due to fear of being “outcast, marginalized, [and] shunned.”

Additionally, given the correlation between prior convictions and domestic violence perpetrators, the overall effect of punishment on reducing domestic violence seems to be limited. While there will always be a need for a criminal punishment, it is important to distinguish between a criminal punishment and an

97 SCHMIDT & BARNETT, supra note 73, at 4.
98 RECKITT & FORTMAN, supra note 73, at 2.
99 Kennedy, supra note 6, at 338.
101 Kennedy, supra note 6, at 338.
102 MICHAEL KIMMEL, GUYLAND 61 (2008).
103 See KLEIN, supra note 11, at 16.
employment punishment. While a criminal arrest and conviction can involve an arrest or jail time, separating a victim from a perpetrator, a “zero tolerance” policy that results in a perpetrator being fired offers no protection to the victim. In fact, this type of response by an employer not only potentially places blame on the victim but also gives the perpetrator additional time to participate in abuse.

B. Alternative Strategies for Employers

If punitive policies are not the answer, or simply present too many risks, then there must be alternatives to addressing the behavior of domestic violence perpetrators while still seeking to limit domestic violence. After reviewing the demographics of perpetrators, as well as the methods used for treatment, it is vital to adapt policies that address these findings and realities. While BIPs have had mixed results regarding their effectiveness, given the personal investment and levels of continuity a workplace can provide to an employee, using non-punitive policies in the workplace environment may lead to a reduction of domestic violence.

One important strategy to be used by employers will be addressing any mental health and substance abuse issues that their employees may have. In fact, in looking at current recommendations for domestic violence perpetrator treatment, many researchers are advocating for an integrated approach that includes, at least, alcohol use treatment. Given the comorbidity between perpetrators and substance abuse issues, employers can play a key role in both screening for these concerns and either directly providing or referring employees to appropriate treatment. This could involve providing employees with a health insurance plan that provides coverage for mental health and substance abuse screening and treatment. It could also involve providing those services through an employee benefits or human resources initiative.

Employers may already be required to provide some accommodations to employees under the Americans with Disabilities Act (ADA); however, alcohol abuse and substance abuse are treated differently under the Act, which may affect employer responses.

104 Although it should be noted that few domestic violence convictions include jail time. See Sherry Hamby, Guess How Many Domestic Violence Offenders Go to Jail, PSYCHOLOGY TODAY (Oct. 1, 2014), www.psychologytoday.com/blog/the-web-violence/201410/guess-how-many-domestic-violence-offenders-go-jail (“Less than 2% of domestic violence offenders ever received any jail time.”).

105 See supra text accompanying note 52.

106 See Stuart et al., Improving Batterer Intervention Programs, supra note 48, at 561–62.


108 Id. § VIII. A person who is currently using alcohol is not automatically denied protection simply because of alcohol use. Id. § 8.2. An alcoholic is a person with a disability under the ADA and may be entitled to consideration of accommodation if he or she is qualified to perform the essential functions of a job. Id. Persons addicted to drugs, but who are no longer using drugs illegally and are receiving treatment for drug addiction or who have been rehabilitated successfully, are protected by the ADA from discrimination based on past drug addiction. Id. § 8.5. However, a drug test that shows the employee is using an illicit substance qualifies as “illegal drug use” and bars him or her from ADA protections. Id. § 8.9. An alcoholic employee can only be bared when the use of alcohol adversely affects their job performance. Id. § 8.4.
Additionally, education and awareness efforts should be included and expanded to help individuals recognize domestic violence perpetrator behaviors in themselves and others. Abuse can be nonphysical, including mental and emotional abuse. Additionally, abuse can involve nonviolent behavior such as stalking or verbal harassment. This training should include how to seek help and resources through the company, as well as how to have a conversation with someone you believe might need these types of resources. This training should also include a component regarding how to notify the business or supervisor if you suspect this type of behavior. This could include providing an anonymous method of reporting, perhaps through an online system.

This educational component should also include specific training for supervisors in how to address the issue directly, providing support and encouragement for the employee who needs treatment while at the same time addressing and condemning domestic violence behaviors. As seen in the section on organizational responses, supervisors often intentionally or unknowingly reinforce or ignore the behavior of domestic violence perpetrators. It is important to teach supervisors to care about this issue and train them to dialogue with their employees. This training should also include keeping these employees directly accountable for how their domestic abuse behaviors directly impact the company. While efforts should be made to encourage treatment, no excuses should be made when an employee misuses company property or is too distracted because of their perpetrating behaviors. In those instances, they should be held to the same standard as every other employee, with greater emphasis on encouraging treatment during the disciplinary conversation.

The discussion of leave associated with domestic violence should also be expanded to include those domestic violence perpetrators who are voluntarily seeking help. As it relates to treatment and taking responsibility for one’s behavior, an employer should encourage this type of behavior and attempt to remove any barrier. This may also include allowing employees to temporarily adjust their schedule based on their treatment. While there may be concern with the costs associated with this type of accommodation, it is important to remember the costs of continued domestic violence at the workplace. However, given that employees with other compelling needs—leave time for pregnancy or time to care for relatives—struggle to receive time off, advocacy specifically for domestic violence perpetrators may be difficult.

109 See SCHMIDT & BARNETT, supra note 73, at 4.
110 See, e.g., DEPT OF HEALTH & HUM. SERVS., supra note 66, at 2.
Instead, general advocacy for personal leave might prove more effective and include those perpetrators seeking treatment.

There may also be a need to craft employer approaches to domestic violence based on specific career fields. Given the studies that indicate a higher prevalence of domestic violence among police officers and the military,112 “zero tolerance” policies would have an even greater negative impact by disrupting those organizations and institutions that play key roles in maintaining societal safety. Instead, education and training that begins during recruitment and continues throughout the training process could positively impact the overall culture of these work environments. Greater emphasis could also be placed on accommodating and recommending treatment after experiencing especially traumatic events, such as police shootings or post deployment. Additionally, while there are some resources directly dealing with domestic violence in the military,113 similar resources should be made for police officers and their families.

There are potential risks with not adopting punitive policies. One of those could be potential lawsuits from victims in the workplace. There have been cases of victims, or their families, filing successful tort claims that result in settlements.114 In general, these claims could include claims of negligence or wrongful death.115 By adopting policies and procedures that acknowledge these issues, employers may expose themselves to liability for more damages.116 There are also several statutory concerns and claims that could be brought against the employer if a victim and the perpetrator happen to work for the same employer. These could include federal statutes, such as Title VII117 or the Occupational Safety and Health Act (OSHA),118 or state statutes, such as claims of harassment.119

**CONCLUSION**

Attempting to reduce domestic violence is no easy task. This is especially true as a business or organization, where one plays no direct role in the violence and has a limited level of authority. But the difficulty of the task only begs for greater thought and effort in moving toward a solution. Domestic violence is clearly a workplace issue, given the large effect it has on employees directly, as well as the overall effect on an employer. And while very clear and direct messages need to communicate that

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112 See Police Family Violence Sheet, supra note 32; Common Dreams Staff, supra note 34.
115 See Carroll v. Shoney’s, Inc., 775 So. 2d 753, 755–57 (Ala. 2000) (the claims made in Carroll were ultimately unsuccessful).
119 See Matejkovic, supra note 115, at 313.
domestic violence is not acceptable in any form, punitive policies and other policies based on punishment might not be the most effective means of reducing domestic violence overall.

Instead of “zero tolerance,” it is possible that a therapeutic approach built on addressing and treating the underlying behaviors of a domestic violence perpetrator may be a more effective way to approach this issue. This approach will require a delicate balance to facilitate the treatment of perpetrators while continuing to protect victims. It may also require a reallocation of resources in the beginning, during implementation of a policy, before long-term cost savings by decreased absenteeism and increased productivity might be seen. But these intentional and conscious steps could prove vital in both decreasing domestic violence and improving the outcomes and environment of a workplace.

Domestic violence has been around for a long time, but as the research in this area builds, the closer our society moves toward ending it. Employers can play a vital part in this movement and be a key player in finding a solution.