

Spring 5-22-2018

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

Tristan C. Fretwell

*Indiana University Maurer School of Law*, [tfretwel@indiana.edu](mailto:tfretwel@indiana.edu)

Follow this and additional works at: <https://www.repository.law.indiana.edu/ijlse>

 Part of the [Law Commons](#)

## Recommended Citation

Fretwell, Tristan C. (2018) "Is "Zero Tolerance" the Solution? Using Non-Punitive Policies in the Workplace to Reduce Domestic Violence," *Indiana Journal of Law and Social Equality*: Vol. 6 : Iss. 2 , Article 5.

Available at: <https://www.repository.law.indiana.edu/ijlse/vol6/iss2/5>

This Student Note is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Journal of Law and Social Equality* by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact [wattn@indiana.edu](mailto:wattn@indiana.edu).



**JEROME HALL LAW LIBRARY**

INDIANA UNIVERSITY  
Maurer School of Law  
Bloomington

## 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,”<sup>1</sup> is not a new problem. Since the beginning of human relationships, violence has existed between partners.<sup>2</sup> It is only over the past few decades that it has been recognized for what it is—a crime.<sup>3</sup> 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<sup>4</sup> 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.<sup>5</sup> As research has demonstrated that domestic violence does, indeed, influence the work environment, there have been calls for punishment or “zero tolerance” policies for

---

\* Editor-in-Chief, *Indiana Journal of Law & Social Equality* Volume 6; Indiana University Maurer School of Law, J.D. 2018; Asbury University, B.A. 2009. I would like to thank Professor Deborah Widiss for her advice and feedback, Samuel Seeds and Ollie Ashe Kulak for their amazing editing and cite-checking, all the members of the *Indiana Journal of Law & Social Equality*, and to my amazing wife, Katie Fretwell, who has been the best editor and supporter any law student could have.

1 *Domestic Violence*, U.S. DEP’T OF JUST., [www.justice.gov/ovw/domestic-violence](http://www.justice.gov/ovw/domestic-violence) (last updated June 16, 2017).

2 See Reva B. Siegel, “*The Rule of Love*”: *Wife Beating as Prerogative and Privacy*, 105 *YALE L.J.* 2117 (1996).

3 See, e.g., Susan A. Lentz, *Revisiting the Rule of Thumb: An Overview of the History of Wife Abuse*, in *WOMEN AND DOMESTIC VIOLENCE: AN INTERDISCIPLINARY APPROACH* 12 (Lynette Feder ed., 1999).

4 See MATTHEW J. BREIDING, KATHLEEN C. BASILE, SHARON G. SMITH, MICHELE C. BLACK & RESHMA MAHENDRA, NAT’L CTR. FOR INJURY PREVENTION & CONTROL, *INTIMATE PARTNER VIOLENCE SURVEILLANCE: UNIFORM DEFINITIONS AND RECOMMENDED DATA ELEMENTS 1* (2d ed. 2015), <https://www.cdc.gov/violenceprevention/pdf/intimatepartnerviolence.pdf>.

5 See, e.g., Stephen R. Arnott & Margaret C. Hobday, *It’s a Human Right: Using International Human Rights Principles to Assist Employees Experiencing Domestic Violence*, 18 *EMP. RTS. & EMP. POL’Y J.* 1 (2014); Jessie Bode Brown, *The Costs of Domestic Violence in the Employment Arena: A Call for Legal Reform and Community-Based Education Initiatives*, 16 *VA. J. SOC. POL’Y & L.* 1 (2008); Lisalyn R. Jacobs & Maya Raghu, *The Need for a Uniform Federal Response to the Workplace Impact of Interpersonal Violence*, 11 *GEO. J. GENDER & L.* 593 (2010); Deborah A. Widiss, *Domestic Violence and the Workplace: The Explosion of State Legislation and the Need for a Comprehensive Strategy*, 35 *FLA. ST. U.L. REV.* 669 (2008).

domestic violence perpetrators in the workplace.<sup>6</sup> 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.<sup>7</sup> 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.”<sup>8</sup> 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.

---

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).

7 See Lew Bank & Bert Burraston, *Abusive Home Environments as Predictors of Poor Adjustment During Adolescence and Early Adulthood*, 29 J. CMTY PSYCHOL. 195 (2001); Vangie A. Foshee, Heathe Luz McNaughton Reyes & Sarah C. Wyckoff, *Approaches to Preventing Psychological, Physical, and Sexual Partner Abuse*, in PSYCHOLOGICAL AND PHYSICAL AGGRESSION IN COUPLES: CAUSES AND INTERVENTIONS 165 (K. Daniel O’Leary & Erica M. Woodin eds., 2009). See generally Renee McDonald, Ernest N. Jouriles, Suhasini Ramisetty-Mikler & Raul Caetano, *Estimating the Number of American Children Living in Partner-Violent Families*, 20 J. FAM. PSYCHOL. 137 (2006).

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,<sup>9</sup> although differing levels of reporting may contribute to misperceptions that domestic violence occurs at higher rates among the poor.<sup>10</sup>

Many domestic violence perpetrators have a criminal history, including a history of violent crimes.<sup>11</sup> 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.<sup>12</sup> One study of 4,032 male subjects

---

9 Gregg W. Etter Sr. & Michael L. Birzer, *Domestic Violence Abusers: A Descriptive Study of the Characteristics of Defenders in Protection from Abuse Orders in Sedgwick County, Kansas*, 22 J. FAM. VIOLENCE 113, 113 (2007); see Toby D. Goldsmith, *The Physical and Emotional Injuries of Domestic Violence*, PSYCHCENTRAL, <http://psychcentral.com/lib/the-physical-and-emotional-injuries-of-domestic-violence> (last updated July 17, 2016).

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

11 See ANDREW R. KLEIN, U.S. DEP'T OF JUST. NAT'L INST. OF JUST., PRACTICAL IMPLICATIONS OF CURRENT DOMESTIC VIOLENCE RESEARCH: FOR LAW ENFORCEMENT, PROSECUTORS AND JUDGES 22 (2009).

12 *Understanding Domestic Abusers*, N.Y. OFF. FOR THE PREVENTION OF DOMESTIC VIOLENCE, <https://web.archive.org/web/20170322033154/http://www.opdv.ny.gov/professionals/abusers/abuserscsjstem.html> (last visited Dec. 15, 2016).

who had assaulted their female partners found that there was a 250% to 330% greater likelihood of re-offending by abusers with previous arrests.<sup>13</sup> Domestic violence perpetrators also have a history of misdemeanor and felony offenses unrelated to direct abuse.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup> There is also research that indicates that mental health issues appear in perpetrators at a higher frequency than in the overall population.<sup>17</sup> 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.<sup>18</sup> The same study also indicated that one-third had received previous treatment for mental health or substance abuse.<sup>19</sup>

The research indicates that antisocial personality disorder and borderline personality disorder traits are associated with the perpetration of intimate partner violence.<sup>20</sup> 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).<sup>21</sup> Additionally, several studies over the past three

---

13 Christopher D. Maxwell, Joel H. Garner & Jeffrey A. Fagan, *The Preventive Effects of Arrest on Intimate Partner Violence: Research, Policy and Theory*, 2 CRIMINOLOGY & PUB. POL'Y 51, 73 (2002).

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.

16 See CLAUDIA GARCIA-MORENO, ALESSANDRA GUEDES & WENDY KNERR, WORLD HEALTH ORGANIZATION, UNDERSTANDING AND ADDRESSING VIOLENCE AGAINST WOMEN 7 (Sarah Ramsay ed., 2012).

17 See AM. PSYCHIATRIC ASS'N, THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (4th ed. 2000); Wilson M. Compton, Yonette F. Thomas, Frederick S. Stinson & Bridget F. Grant, *Prevalence, Correlates, Disability, and Comorbidity of DSM-IV Drug Abuse and Dependence in the United States: Results from the National Epidemiologic Survey on Alcohol and Related Conditions*, 64 ARCHIVES GEN. PSYCHIATRY 566, 566 (2007). See generally Ronald C Kessler, Patricia Berglund, Olga Demler, Robert Jin, Kathleen R. Merikangas & Ellen E. Walters, *The Prevalence and Age-of-Onset Distributions of DSM-IV Disorders in the National Comorbidity Survey Replication*, 62 ARCHIVES GEN. PSYCHIATRY 593 (2005).

18 EDWARD W. GONDOLF, MINN. CTR AGAINST VIOLENCE, CHARACTERISTICS OF BATTERERS IN A MULTI-SITE EVALUATION OF BATTERER INTERVENTION SYSTEMS 20 (1996).

19 *Id.*

20 See Donald G. Dutton, Andrew Starzomski & Lee Ryan, *Antecedents of Abusive Personality and Abusive Behavior in Wife Assaulters*, 11 J. FAM. VIOLENCE 113, 115 (1996); see also Gregory L. Stuart, Jeff R. Temple, Katherine W. Follansbee & Meggan M. Bucossi, *The Role of Drug Use in a Conceptual Model of Intimate Partner Violence in Men and Women Arrested for Domestic Violence*, 22 PSYCHOL. ADDICTIVE BEHAVS. 12 (2008) [hereinafter Stuart et al., *The Role of Drug Use*].

21 Kathryn M. Bell & Holly K. Orcutt, Commentary, *Posttraumatic Stress Disorder and Male-Perpetrated Intimate Partner Violence*, 302 J. AM. MED. ASS'N 562, 562 (2009).

decades indicated that male perpetrators of domestic violence demonstrate more symptoms of depression than non-perpetrators.<sup>22</sup>

There is also significant research indicating a link between substance abuse and domestic violence perpetrators.<sup>23</sup> The prevalence of drug and alcohol disorders appear at a higher rate among perpetrators as compared to the rest of the population.<sup>24</sup> 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.<sup>25</sup> Additionally, of those with a current diagnosis, more than half reported a pattern of multiple substance dependency involving both alcohol and drugs.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup> 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.<sup>30</sup>

- 
- 22 See, e.g., Edward W. Gondolf, *MCMI-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 B. 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-Referred to Batterers’ Intervention Programs*, 24 SUBSTANCE ABUSE 107, 117 (2003) [hereinafter Stuart et al., *Substance Abuse and Relationship Violence*].
- 23 See, e.g., Todd M. Moore, Gregory L. Stuart, Jeffrey C. Meehan, Deborah L. Rhatigan, Julianne C. Hellmuth & Stefanie M. Keen, *Drug Abuse and Aggression Between Intimate Partners: A Meta-Analytic Review*, 28 CLINICAL PSYCHOL. REV. 247, 256 (2008); Stuart et al., *Substance Abuse and Relationship Violence*, *supra* note 22, at 107.
- 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).
- 25 Thomas G. Brown, Annette Werk, Tom Caplan & Peter Seraganian, *Violent Substance Abusers in Domestic Violence Treatment*, 14 VIOLENCE & VICTIMS 179, 186 (1999).
- 26 *Id.*
- 27 Stuart et al., *Substance Abuse and Relationship Violence*; see also DOUGLAS WILSON & ANDREW KLEIN, U.S. DEP’T OF JUST., *A LONGITUDINAL STUDY OF A COHORT OF BATTERERS ARRAIGNED IN A MASSACHUSETTS DISTRICT COURT 1995 TO 2004*, at 18 (2006).
- 28 See, e.g., *id.* at v.
- 29 E.g., Ryan C. Shorey, Jeniimarie Febres, Hope Brasfield & Gregory L. Stuart, *The Prevalence of Mental Health Problems in Men Arrested for Domestic Violence*, 27 J. FAM. VIOLENCE 741, 746 (2012).
- 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.<sup>31</sup> 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.<sup>32</sup> Another study found that domestic violence is two to four times more common among police families than American families generally.<sup>33</sup> 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.”<sup>34</sup> 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.”<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup>

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

---

31 Alfred Blumstein & Jeff Benedict, *Criminal Violence of NFL Players Compared to the General Population*, 12 CHANCE 12, 14 (1999).

32 *Police Family Violence Fact Sheet*, NAT'L CTR. FOR WOMEN & POLICING, <http://womenandpolicing.com/violencefs.asp> (last visited Jan. 14, 2018) (citing MURRAY A. STRAUS & RICHARD J. GELLES, PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE IN 8,145 FAMILIES (1990); Peter H. Neidig, Harold E. Russell & Albert F. Seng, *Interspousal Aggression in Law Enforcement Families: A Preliminary Investigation*, 15 POLICE STUD. INT'L REV. POLICE DEV. 30 (1992)).

33 *Id.* (citing Peter H. Neidig, Harold E. Russell & Albert F. Seng, *Interspousal Aggression in Law Enforcement Personnel Attending the FOP Biennial Conference*, 1992 NAT'L FOP J. 25 (1992)).

34 Common Dreams Staff, *Report: U.S. Soldiers Bringing Their Violence Home from Overseas*, COMMONDREAMS (Jan. 20, 2012), <http://www.commondreams.org/news/2012/01/20/report-us-soldiers-bringing-their-violence-home-overseas>.

35 *The Facts on the Military and Violence Against Women*, FUTURES WITHOUT VIOLENCE, [www.futureswithoutviolence.org/userfiles/Military%20Factsheet%20update%2003%2003%2013.pdf](http://www.futureswithoutviolence.org/userfiles/Military%20Factsheet%20update%2003%2003%2013.pdf) (last visited Jan. 15, 2018).

36 MICHAEL L. BENSON & GREER L. FOX, U.S. DEPT' 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.

rates,<sup>38</sup> men and women can be involved in the initiation of abusive behavior.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup> The primary recommended treatment is group counseling, with several states limiting individual counseling.<sup>43</sup>

One study indicated that there are around 2,000 Batterer Intervention Programs (BIPs) in the United States.<sup>44</sup> 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.<sup>45</sup> These BIPs have similar curricula that involve intake and assessment.<sup>46</sup> The BIP approach, which typically involves group

---

38 See Maxwell et al., *supra* note 13, at 56–57.

39 See Terrie E. Moffitt, Richard W. Robins & Avshalom Caspi, *A Couples Analysis of Partner Abuse with Implications for Abuse-Prevention Policy*, 1 CRIMINOLOGY & PUB. POL'Y 5, 6 (2001).

40 See David Adams, *Treatment Programs for Batterers*, 5 CLINICS IN FAM. PRAC. 159, 160 (2003).

41 See SHELLY JACKSON, LYNETTE FEDER, DAVID R. FORDE, ROBERT C. DAVIS, CHRISTOPHER D. MAXWELL & BRUCE G. TAYLOR, U.S. DEP'T JUST. NAT'L INST. JUST., BATTERER INTERVENTION PROGRAMS: WHERE DO WE GO FROM HERE? 1 (2003).

42 Roland D. Maiuro & Jane A. Eberle, *State Standards for Domestic Violence Perpetrator Treatment: Current Status, Trends, and Recommendations*, 23 VIOLENCE & VICTIMS 133, 134 (2008).

43 *Id.* at 138.

44 MELISSA LABRIOLA, MICHAEL REMPEL, CHRIS S. O'SULLIVAN & PHYLLIS B. FRANK, CTR. FOR CT. INNOVATION, COURT RESPONSES TO BATTERER PROGRAM NONCOMPLIANCE 1 (2007)  
[http://www.courtinnovation.org/sites/default/files/Court\\_Responses\\_March2007.pdf](http://www.courtinnovation.org/sites/default/files/Court_Responses_March2007.pdf).

45 See *id.*

46 Linda G. Mills, Briana Barocas & Barak Ariel, *The Next Generation of Court-Mandated Domestic Violence Treatment: A Comparison Study of Batterer Intervention and Restorative Justice Programs*, 9 J. EXPERIMENTAL CRIM. 65, 68 (2013).



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.<sup>47</sup>

One of the more recent developments in treatment is the use of cognitive behavioral therapy (CBT).<sup>48</sup> 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.<sup>49</sup> 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."<sup>50</sup>

However, there is some research that seems to indicate that there is no universal type of treatment that works for every domestic violence perpetrator.<sup>51</sup> In fact, some studies seem to indicate that BIPs are ineffective or only have a minimal impact on curbing abuse.<sup>52</sup> One study found "no difference" in recidivism between offenders who did and did not have treatment.<sup>53</sup> The same study also found no modification in the participant's attitude toward domestic violence.<sup>54</sup> 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.<sup>55</sup>

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.<sup>56</sup> Additionally, despite the prevalence of mental health and substance abuse issues in domestic violence

---

47 *Id.*

48 See Julia C. Babcock, Charles E. Green & Chet Robie, *Does Batterers' Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment*, 23 CLINICAL PSYCHOL. REV. 1023, 1026 (2004); Lynette Feder & David B. Wilson, *A Meta-Analytic Review of Court-Mandated Batterer Intervention Programs: Can Courts Affect Abusers' Behavior?*, 1 J. EXPERIMENTAL CRIMINOLOGY 239, 241 (2005); Gregory L. Stuart, Jeff R. Temple & Todd M. Moore, *Improving Batterer Intervention Programs Through Theory-Based Research*, 298 J. AM. MED. ASS'N 560, 560 (2007) [hereinafter Stuart et al., *Improving Batterer Intervention Programs*].

49 Babcock et al., *supra* note 48, at 1026.

50 Ben Martin, *In-Depth: Cognitive Behavioral Therapy*, PSYCH CENTRAL <http://psychcentral.com/lib/in-depth-cognitive-behavioral-therapy> (last updated July 17, 2016).

51 See Babcock et al., *supra* note 48, at 1045.

52 See, e.g., MELISSA LABRIOLA, MICHAEL REMPEL & ROBERT C. DAVIS, CTR. FOR CT. INNOVATION, TESTING THE EFFECTIVENESS OF BATTERER PROGRAMS AND JUDICIAL MONITORING vii–viii (2005) <http://www.courtinnovation.org/sites/default/files/battererprogramseffectiveness.pdf>; Franklyn W. Dunford, *Determining Program Success: The Importance of Employing Experimental Research Designs*, 46 CRIME & DELINQ. 425, 426 (2000); Feder & Wilson, *supra* note 48, at 240.

53 JACKSON ET AL., *supra* note 41, at 2.

54 *Id.* at 3.

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).

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,<sup>57</sup> only 63% of states require substance abuse screenings as a part of treatment and only a little over half require mental health screenings.<sup>58</sup> This finding is especially significant given the research that suggests that domestic violence perpetrators would benefit from a mental health screening.<sup>59</sup>

## 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.<sup>60</sup> The same survey found that nearly twenty-nine million women and sixteen million men have experienced physical violence in their lifetime.<sup>61</sup>

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.<sup>62</sup> Another found that 19% of male employees and 30% of female employees had experienced domestic violence sometime in their life.<sup>63</sup> 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,<sup>64</sup> 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.<sup>65</sup> This is most definitively seen through absenteeism.<sup>66</sup> The annual cost of lost productivity due to

---

57 See *Understanding Domestic Abusers*, *supra* note 12; see also Babcock et al., *supra* note 48, at 1048–49 (suggesting targeting treatments to specific subsamples to improve the efficacy of treatment programs).

58 Maiuro & Eberle, *supra* note 42, at 142.

59 Shorey et al., *supra* note 29, at 747.

60 BREIDING ET AL., *supra* note 4, at 1.

61 *Id.*

62 *Workplace Statistics*, CORP. ALLIANCE TO END PARTNER VIOLENCE, [http://www.caepv.org/getinfo/facts\\_stats.php?factsec=3](http://www.caepv.org/getinfo/facts_stats.php?factsec=3) (last visited Feb. 7, 2018).

63 O’Leary-Kelly et al., *supra* note 24, at 61.

64 See Jennifer Moyer Gaines, Comment, *Employer Liability for Domestic Violence in the Workplace: Are Employers Walking a Tightrope Without a Safety Net?*, 31 TEX. TECH. L. REV. 139, 143 (2000); Margaret C. Hobday, *Protecting Economic Stability: The Washington Supreme Court Breathes New Life in the Public-Policy Exception to At-Will Employment for Domestic Violence Victims*, 17 WM. & MARY J. WOMEN & L. 87, 91 (2010).

65 See Jill C. Robertson, *Addressing Domestic Violence in the Workplace: An Employer’s Responsibility*, 16 L. & INEQ. J 633, 637–38 (1998).

66 See DEP’T OF HEALTH & HUM. SERVS., COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES, at v (2003), <https://www.cdc.gov/violenceprevention/pdf/ipvbook-a.pdf> (estimating

domestic violence is estimated at \$727.8 million.<sup>67</sup> 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.<sup>68</sup> 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.<sup>69</sup> One study showed that between 35% and 56% of domestic violence victims were harassed at work by their abuser.<sup>70</sup> Another study found that 74% of battered women reported being harassed at work, either in person or over the phone.<sup>71</sup> 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.<sup>72</sup>

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.<sup>73</sup> Domestic abusers also report being late to work,<sup>74</sup> having difficulty concentrating while at work,<sup>75</sup> and self-reporting that their performance at work was negatively affected due to their domestic violence actions.<sup>76</sup>

Domestic violence also causes a misuse of company resources.<sup>77</sup> 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.

68 NAT'L EMP. L. PROJECT, UNEMPLOYMENT INSURANCE FOR SURVIVORS OF DOMESTIC VIOLENCE: EXPANDING UI FOR WOMEN, LOW-WAGE & PART-TIME WORKERS 1 (2003), <http://www.nelp.org/content/uploads/2015/03/DVUI-fact-sheet-120403.pdf>.

69 *Id.*

70 Marie Amelia Calaf, Note, *Breaking the Cycle: Title VII, Domestic Violence, and Workplace Discrimination*, 21 L. & INEQ. 167, 170 (2003).

71 *E.g.*, Robin Runge, *The Legal Response to the Employment Needs of Domestic Violence Victims*, 37 HUM. RTS. MAG. 13, 14 (2010) (citing FAMILY VIOLENCE PREVENTION FUND, *The Workplace Guide for Employers, Unions and Advocates* (1998)); Lea B. Vaughn, *Victimized Twice—The Intersection of Domestic Violence and the Workplace: Legal Reform Through Curriculum Development*, 47 LOY. L. REV. 231, 236 (2001).

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).

73 *See* LOIS GALGAY RECKITT & LAURA A. FORTMAN, ME. DEP'T OF LABOR FAMILY CRISIS SERVS., *IMPACT OF DOMESTIC VIOLENCE OFFENDERS ON OCCUPATIONAL SAFETY & HEALTH: A PILOT STUDY* 13 (2004), [https://www.maine.gov/labor/labor\\_stats/publications/dvreports/domesticoffendersreport.pdf](https://www.maine.gov/labor/labor_stats/publications/dvreports/domesticoffendersreport.pdf); MICHAEL CRANWELL SCHMIDT & AUTUMN BARNETT, VT. COUNCIL ON DOMESTIC VIOLENCE, *HOW DOES DOMESTIC VIOLENCE AFFECT THE VERMONT WORKPLACE?: A SURVEY OF MALE OFFENDERS ENROLLED IN BATTERER INTERVENTION PROGRAMS IN VERMONT* 19 (2011).

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.* (53% 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).

77 *See, e.g.*, Ralph Henry, *Domestic Violence and the Failure of Welfare Reform: The Role of Work Leave Legislation*, 20 WIS. WOMEN'S L.J. 67, 83 (2005).

even company vehicles.<sup>78</sup> 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.<sup>79</sup>

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.<sup>80</sup> 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.<sup>81</sup> 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.<sup>82</sup> Both types of safety risks also have a significant impact on the cost of health care insurance.<sup>83</sup>

### 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.<sup>84</sup> One study showed that more than 70% of the United States workplaces do not have a formal program or policy that addresses workplace violence.<sup>85</sup> 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.<sup>86</sup> 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.<sup>87</sup> 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.

80 Hope M. Tiesman, Kelly K. Gurka, Srinivas Konda, Jeffrey H. Coben & Harlan E. Amandus, *Work Homicides Among U.S. Women: The Role of Intimate Partner Violence*, 22 ANNALS EPIDEMIOLOGY 277, 277 (2012).

81 RECKITT & FORTMAN, *supra* note 73, at 8.

82 *Id.* at 2, 12.

83 O’Leary-Kelly et al., *supra* note 24, at 63.

84 See U.S. DEP’T OF LABOR BUREAU OF LABOR STAT., SURVEY OF WORKPLACE VIOLENCE PREVENTION, 2005, at 1 (2006), <https://www.bls.gov/iif/oshwc/osnr0026.pdf>.

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.<sup>88</sup>

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."<sup>89</sup> The strategies used by this, and similar organizations, primarily focus on education and, specifically, recognizing and reporting domestic violence.<sup>90</sup> 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.<sup>91</sup> 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."<sup>92</sup> There has also been a new recognition of the need for policies that support domestic violence victims.<sup>93</sup> This same recognition has led to some states passing legislation directly for the benefit of domestic violence victims.<sup>94</sup>

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.<sup>95</sup> 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.<sup>96</sup> 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

---

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.*

93 *See, e.g.*, Jacobs & Raghu, *supra* note 5, at 594–96; Nicole Buonocore Porter, *Victimizing the Abused?: Is Termination the Solution When Domestic Violence Comes to Work?*, 12 MICH. J. GENDER & L. 275, 276–77 (2006); Jennifer E. Swanberg, Mamta U. Ojha & Caroline Macke, *State Employment Protection Statutes for Victims of Domestic Violence: Public Policy's Response to Domestic Violence as an Employment Matter*, 27 J. INTERPERSONAL VIOLENCE 587, 588–89 (2012).

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.<sup>97</sup> Some supervisors have even knowingly posted bail for their employee or provided paid leave to the perpetrator.<sup>98</sup> 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.<sup>99</sup> There are also several studies that show that job-related stress increases the likelihood of domestic abuse.<sup>100</sup> The loss of a job also seems to increase recidivism for abusive behavior.<sup>101</sup>

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.”<sup>102</sup>

Additionally, given the correlation between prior convictions and domestic violence perpetrators,<sup>103</sup> 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.

100 See, e.g., Jacquelyn C. Campbell, Daniel Webster, Jane Koziol-McLain, Carolyn Block, Doris Campbell, Mary Ann Curry, Faye Gary, Nancy Glass, Judith McFarlane, Carolyn Sachs, Phyllis Sharps, Yvonne Ulrich, Susan A. Wilt, Jennifer Manganello, Xiao Xu, Janet Schollenberger, Victoria Frye & Kathryn Laughon, *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 AM. J. PUB. HEALTH 1089, 1092 (2003); Daniel G. Saunders, *Group Interventions for Men Who Batter: A Summary of Program Descriptions and Research*, 23 VIOLENCE & VICTIMS 156, 158 (2008); Donald L. Yates, Vijayan K. Pillai & Phyllis E. Berry, *Mediation Verses [sic] Arrest Approaches to Domestic Assault: Policy Implications for Addressing Domestic Abuse Among Under-Educated and Jobless Offenders*, 33 AM. J. CRIM. JUST. 282, 286 (2008).

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,<sup>104</sup> 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,<sup>105</sup> 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.<sup>106</sup> 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);<sup>107</sup> however, alcohol abuse and substance abuse are treated differently under the Act, which may affect employer responses.<sup>108</sup>

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*, PSYCHOL. TODAY (Oct. 1, 2014), [www.psychologytoday.com/blog/the-web-violence/201410/guess-how-many-domestic-violence-offenders-go-jail](http://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.

107 U.S. EQUAL EMP. OPPORTUNITY COMM’N, EEOCM1A, A TECHNICAL ASSISTANCE MANUAL ON THE EMPLOYMENT PROVISIONS (TITLE I) OF THE AMERICANS WITH DISABILITIES ACT § 8.4 (1992), <https://askjan.org/links/ADAtam1.html#VIII>.

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.<sup>109</sup> 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.<sup>110</sup> However, given that employees with other compelling needs—leave time for pregnancy or time to care for relatives—struggle to receive time off,<sup>111</sup> advocacy specifically for domestic violence perpetrators may be difficult.

---

109 See SCHMIDT & BARNETT, *supra* note 73, at 4.

110 See, e.g., DEP’T OF HEALTH & HUM. SERVS., *supra* note 66, at 2.

111 See generally STEPHANIE BORNSTEIN, CTR. FOR WORKLIFE LAW, POOR, PREGNANT, AND FIRED: CAREGIVER DISCRIMINATION AGAINST LOW-WAGE WORKERS 2, 10–11 (2011) (discussing the struggles that pregnant and caregiving workers have in receiving time off); JOAN C. WILLIAMS & HEATHER BOUSHEY, CTR. FOR AM. PROGRESS, THE THREE FACES OF WORK-FAMILY CONFLICT: THE POOR, THE PROFESSIONALS, AND THE MISSING MIDDLE 1 (2010) (discussing the struggles of receiving time off for workers from all three major socioeconomic classes).



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,<sup>112</sup> “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,<sup>113</sup> 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.<sup>114</sup> In general, these claims could include claims of negligence or wrongful death.<sup>115</sup> By adopting policies and procedures that acknowledge these issues, employers may expose themselves to liability for more damages.<sup>116</sup> 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 VII<sup>117</sup> or the Occupational Safety and Health Act (OSHA),<sup>118</sup> or state statutes, such as claims of harassment.<sup>119</sup>

## 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

---

112 See *Police Family Violence Sheet*, *supra* note 32; Common Dreams Staff, *supra* note 34.

113 See, e.g., *Family Advocacy Program*, U.S. ARMY, <http://www.myarmyonesource.com/FamilyProgramsandServices/FamilyPrograms/FamilyAdvocacyProgram/default.aspx> (last visited Feb. 7, 2018).

114 See John E. Matejkovic, *Which Suit Would You Like? The Employer’s Dilemma in Dealing with Domestic Violence*, 33 CAP. U. L. REV. 309, 312 (2004).

115 See *Carroll v. Shoney’s, Inc.*, 775 So. 2d 753, 755–57 (Ala. 2000) (the claims made in *Carroll* were ultimately unsuccessful).

116 See *Brown*, *supra* note 5, at 21–22 (2008).

117 42 U.S.C. §§ 2000e–2000e-17 (LEXIS through Pub. L. No. 115-117).

118 29 U.S.C. §§ 651–678 (LEXIS through Pub. L. No. 115-117).

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.