

Consultation on Private Member's Bill on domestic abuse leave Submission by Northern Ireland Women's European Platform to Rachel Woods MLA

January 2021

Introduction

Northern Ireland Women's European Platform (NIWEP) welcomes the Private Member's Bill on domestic abuse leave as an important proposal that would strengthen protection and support for domestic abuse victims and survivors. NIWEP welcomes the opportunity to contribute to the consultation.

NIWEP is a membership organisation of women's NGOs in Northern Ireland. Established as the Northern Ireland link to the European Women's Lobby, the EU's expert body on women's rights and gender equality, NIWEP also has special consultative status with the UN. A key role for NIWEP is promoting gender responsive policy and decision making at local, regional and national level taking account of the state's international obligations, while also ensuring women and girls are engaged in policy and decision making. NIWEP also works to share information and good practice at international level with local members and stakeholders, and highlight local learning and good practice internationally.

NIWEP's core objectives involve raising awareness and promoting implementation of key international human rights treaties and initiatives, including the Convention on the Elimination of All Discrimination against Women (CEDAW). NIWEP views implementing the recommendations of CEDAW as a clear roadmap and mechanism to ensuring women's human rights are fully met and upheld in Northern Ireland. The comments in this submission are made within this context.

Summary

NIWEP welcomes and strongly supports the proposal to introduce legislation on paid leave for victims and survivors of domestic abuse. The proposal is in line with international law, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which requires State Parties to the treaty to take action to protect women from violence¹. More recently, ILO Convention C190 - Violence and Harassment Convention² adopted in 2019 requires UN Member States to take action to address violence and harassment in the workplace, including measures to mitigate the impact on victims and survivors.

¹ [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW, 1979), articles 1 and

2. The UK signed the Convention in 1981 and ratified in 1986

² [C190 - Violence and Harassment Convention](#)

As the consultation indicates, domestic violence does not stop at the front door, and a feature of domestic violence is that abusers seek to control their victims by disrupting their working lives. As such, domestic violence is a workplace issue, and addressing domestic violence in a variety of ways forms part of an employer's duty of care towards staff. However, it is essential that policies are well prepared and supported, take into account the traumatic nature of domestic abuse and are sufficiently sensitive and supportive to encourage and enable victims and survivors to come forward. This is relevant in particular to requirements regarding notification, proof and time of service requirements, which should be tailored to avoid retraumatising victims and survivors and deterring them from disclosure.

A survey by the Irish Congress of Trade Unions (ICTU) on domestic violence and the workplace highlighted that respondents felt domestic violence is a barrier to work, as abusers may try to prevent their victim from getting to work in a variety of ways, or create difficulties for them at work, by making them late or continuing abuse at work through phone calls, abusive emails or turning up at their workplace. Respondents also reported that the impact of domestic abuse, including lateness and other performance related issues, could lead to disciplinary action or dismissal, which was a significant worry for many. The survey also showed that respondents felt action in the workplace, including paid leave, would help address domestic violence and support victims and survivors.³ In particular, current evidence emphasises that the workplace can be one of the few places of relative safety for victims and survivors of domestic violence, and supportive workplace laws, policies and measures can effectively help them deal with their situation, mitigating harm and contributing to tackling domestic abuse⁴, which is overwhelmingly rooted in misogynistic patriarchal norms. This survey is reflected in international evidence, collated by UN Women, which also notes that the cost of domestic violence globally was €1.6tn in 2016.⁵

This survey also highlights that addressing domestic violence and mitigating harm is directly associated with economic outcomes, as domestic violence directly impacts on employees' ability to carry out their duties effectively. No figures exist for Northern Ireland, but a recent study for the UK government estimated the cost of domestic violence and harassment in England and Wales to £66 billion per year in 2017. This figure includes £14bn for lost output at work, as well as £47bn for physical and emotional harm, £3bn for health and victim services and a total of around £2bn for response costs, including police and judicial costs.⁶ Paid leave for domestic violence victims and survivors could contribute to reducing some of these costs, by reducing other absence and enabling victims and survivors to take action in ways that might otherwise be difficult or even impossible.

Finally, NIWEP would like to note that NIWEP acts as the secretariat for the NI Assembly All Party Group on UNSCR 1325, Women, Peace and Security⁷. The APG has engaged with the Feminist Recovery Plan developed by the women's sector⁸, and facilitated a shared response from Departments. This was recently followed up with a series of written Assembly Questions, one of which submitted to the Minister for the Economy concerned paid leave for domestic abuse. The response suggests that the Minister and Department are aware of the issue and are recognising the need for support. It also states that the Department is awaiting

³ Irish Congress of Trade Unions (2015) [Domestic violence and the workplace: Findings from a survey](#)

⁴ CIPD and EHRC (September 2020) [Managing and supporting employees experiencing domestic abuse](#)

⁵ UN Women (May 2020) [The COVID-19 shadow pandemic: Domestic violence in the world of work; A Call to action for the private sector](#)

⁶ Oliver, R et al (2019) [The economic and social costs of domestic abuse](#). London: The Home Office.

⁷ [All Party Group on UNSCR 1325, Women, Peace and Security details \(niassembly.gov.uk\)](#)

⁸ Women's Policy Group (July 2020) [COVID-19 Feminist Recovery Plan](#)

results from a review of support for domestic violence victims and survivors in England to assist with this.⁹

International legislation

As outlined in the consultation, the best known example of legislation currently in place is in New Zealand, where provision is 10 days' paid leave per employee per year, for employees with at least six months' service¹⁰. However, legislation in Australia also provides for five days' unpaid leave per year, while the law allows for and encourages employers to provide more extensive offers as part of workplace policies.¹¹ A proposal to extend this to 10 days' paid leave is currently going through the Australian Parliament, with support for the move across parties.¹² In both New Zealand and Australia, the cost of domestic violence to the national economy in lost workdays and productivity is highlighted as a driver for legislation, in addition to human rights and a duty of care towards victims and survivors.

Legislation is currently also in place in the provinces of Ontario and Manitoba in Canada. In Ontario, the law covers domestic and sexual violence, and provides for five days' paid leave and up to 15 weeks of unpaid leave in a calendar year.¹³ Provision in Manitoba is similar, with five days' paid leave and up to 17 weeks' unpaid leave in a calendar year.¹⁴ In the US, legislation in a number of states including California, Washington and Washington DC also require employers to give employees leave to deal with issues related to domestic abuse; provisions vary across states and are mostly unpaid, except for in Washington, DC which mandates paid leave.¹⁵

A common theme across existing laws is that they prohibit discrimination against or dismissal of an employee taking time off work to deal with domestic violence. They also set out the purposes for which employees can take leave, typically to seek medical attention, access counselling or other support, deal with moving house, and/or access legal advice and support. Most laws also include leave to support a child experiencing domestic violence for similar purposes. UN Women has urged governments across the world to introduce a universal right to paid leave due to domestic abuse, for specific purposes including accessing care, advice and support¹⁶.

In the UK, in particular larger individual employers have begun highlighting policies providing up to 10 days' paid leave for domestic abuse victims and survivors. The Welsh government has encouraged all public bodies in Wales to offer paid leave to employees experiencing domestic abuse.¹⁷ The CIPD and the Equality and Human Rights Commission (for England

⁹ [Written Assembly Question 12253/17-22](#)

¹⁰ New Zealand Domestic Violence — Victims' Protection Act 2018, information accessed through [Domestic violence leave | New Zealand Government \(www.govt.nz\)](#), last accessed 7 January 2021

¹¹ Australian New Employment Standards, information accessed through [Fair Work Ombudsman](#) Australia, last accessed 7 January 2021

¹² The Sydney Morning Herald 30 November 2020 '[Labor considers mandating paid leave for domestic violence victims](#)' ([smh.com.au](#))

¹³ Ontario Employment Standards Act, information accessed through [Your guide to the Employment Standards Act: Domestic or sexual violence leave | Ontario.ca](#), last accessed 7 January 2021

¹⁴ [The Domestic Violence and Stalking Act](#), Manitoba

¹⁵ Information from

¹⁶ UN Women (May 2020) [The COVID-19 shadow pandemic: Domestic violence in the world of work; A Call to action for the private sector](#)

¹⁷ Welsh Government press release 14 January 2020 '[Public sector in Wales encouraged to offer paid leave for victims of domestic abuse](#)'

and Wales) has also called for legislation putting in place paid leave for domestic abuse victims and survivors, highlighting the increased incidence of domestic abuse during lockdown and also stressing that the workplace may be one of the few places where a victim of domestic abuse is separate from their abuser and can seek help and support.¹⁸ The trade union movement is also supporting a change in legislation to provide paid leave for domestic abuse victims and survivors, with robust workplace policies in place to support this.¹⁹

Comments – meeting the UK’s obligations in international law

1. Do you agree that victims/survivors of domestic abuse should be entitled to paid leave?

- Yes
- No
- Unsure

Comments: NIWEP welcomes the proposal to introduce legislation on paid leave for domestic abuse victims and survivors. This is one important mechanism to support victims and survivors access vital support, care and assistance, while removing or at least reducing concerns over repercussions at work.

2. Do you believe that paid leave for victims/survivors of domestic abuse should be enshrined in law?

- Yes
- No
- Unsure

Comment: Enshrining provision in law is important to ensure equitable provision for all, and to set clear standards and procedures that employers are expected to meet and follow. Voluntary provision will not go far enough and will result in uneven provision across workplaces and sectors, which will create new inequalities between those who can access support and those who cannot. This would also likely disadvantage people in lower paid and skilled jobs and sectors, in particular female dominated sectors such as care, hospitality and retail. Current evidence indicates policies are predominantly provided by organisations with higher profit margins, and therefore voluntary provision appears to disadvantage people in lower paid and lower skilled jobs and sectors.

¹⁸ CIPD and EHRC (September 2020) [Managing and supporting employees experiencing domestic abuse](#)

¹⁹ TUC (September 2020) [Support in the workplace for victims of domestic abuse: TUC response to BEIS call for evidence](#)

3. Do you agree that victims/survivors of domestic abuse face barriers to accessing support services because of work?

- **Yes**
- **No**
- **Unsure**

Comment: The ICTU survey highlights that victims and survivors are concerned about missing work to seek support; stoking fears about disciplinary action or dismissal is also a common behaviour for abusers as part of controlling their victims. Lack of understanding and knowledge about the nature of domestic violence among employers and managers also adds to barriers, as this often creates workplaces cultures where disclosing abuse is difficult, and may increase the risk of employees being disciplined or penalised for seeking help.

4. Do you agree that many victims/survivors of domestic abuse are concerned about how seeking help and attempting to change their circumstances will affect their financial situation?

- **Yes**
- **No**
- **Unsure**

Comment: There is ample evidence to show that concern about finances is a primary reason why victims and survivors do not seek to change their circumstances. This is also another common threat employed by abusers, who may for example suggest that children will be taken into care if the victim's/survivor's financial situation changes. The situation is particularly acute for those victims/survivors experiencing financial abuse, as their abusers often saddle them with significant debt, and/or leave them with no disposable income.

5. Do you agree that paid leave for victims/survivors of domestic abuse will enable them to seek help?

- **Yes**
- **No**
- **Unsure**

Comment: Paid leave is one relatively straightforward mechanism that will support help seeking, particularly by reducing concerns about work. This, in turn, can create a space where victims/survivors can feel sufficiently safe and confident to consider their situation and make informed choices for themselves.

6. Do you agree that paid leave for victims/survivors of domestic abuse will improve their ability to access emergency and specialist support services?

- **Yes**
- **No**
- **Unsure**

Comment: The reasons outlined above also apply here. Paid leave and overall legislation regarding domestic violence leave can be particularly important for seeking help in an emergency, as this by definition is urgent and makes it difficult to utilise other channels, such as annual leave. In addition, introducing domestic violence leave can contribute to enabling and opening up discussion about domestic violence in the workplace, thus making it easier for employees to disclose abuse without fear of stigma or practical repercussions at work.

Consideration should be given to making employees eligible for paid leave for emergency care and assistance regardless of time of service with an employer, to ensure all victims and survivors can access timely support in an emergency.

7. Do you agree that paid leave for victims/survivors of domestic abuse will help them access healthcare services, treatment and therapy to deal with the long-term effects of abuse?

- **Yes**
- **No**
- **Unsure**

Comment: Paid leave can support access to long term support, by enabling victims/survivors to plan work and support more effectively, without being forced to use annual leave or take unpaid time off work for this purpose. It can also contribute to making accessing services more affordable, as leave is paid.

8. Do you think that there should be any limits on the number of times that an employee, who is a victim/survivor of domestic abuse, can take paid leave throughout the course of their employment?

- **Yes**
- **No**
- **Unsure**

Comment: Domestic violence is by its very nature unpredictable, and victims/survivors may need to access specialist support and care on more than one occasion. Women typically try to leave an abusive relationship seven times, before eventually being able to do so; this is in addition to individual incidents of abuse that may lead to healthcare or other support needs. Therefore, setting a limit on the number of times an employee can take paid leave would appear both unethical and unhelpful. A more helpful approach would be to require employers to signpost employees who disclose abuse to support services, as part of the employer's duty of care and as a practical way of both offering support and reducing absences.

This would also offer a constructive approach to addressing concerns over misuse of the provision; it should be noted, however, that disclosing abuse is traumatic and it is unlikely that a victim/survivor would do this frivolously. Conversely, it should be noted that the trauma caused by abuse will have a deep, long term impact on victims/survivors, which means victims/survivors may need to access leave on multiple occasions regardless of the amount of time that has passed since the abuse.

9. Do you agree with any of these options on how many times an employee can take domestic abuse leave?

- **As many times as they need (no limit)**
- **Two or more times per year**
- **Only once per year**
- **Only once throughout their entire employment**
- **None of these**

Comment: See comments under Q8.

10. If entitlement to domestic abuse leave were to be on a yearly basis, similar to other statutory paid leave, how many days do you think that an employee should be entitled to?

- **Less than 10 days per year**
- **10 days per year**
- **More than 10 days per year**
- **None of these**

Comment: Ten days per year is a minimum standard that will enable a victim/survivor to effectively seek care, support and assistance. Employers should be enabled to provide more generous schemes, on the understanding that domestic abuse is neither time bound nor linear; however, care must be taken to ensure equity across social and income groups.

11. What level of remuneration do you think is appropriate for domestic abuse leave?

- **Full pay (the normal rate of pay according to an employee's contract)**
- **National Minimum Wage (according to employee's age)**
- **90% of their pay or £150.20 per week, whichever is lower (equal to parental leave)**
- **None of these**

Comment: Full pay is appropriate, to ensure that all victims/survivors can access the provision with confidence. As noted in relation to Q4, financial concerns are a main reason why victims/survivors do not seek a change in their circumstances, and for many a cut in wage would make their situation untenable, thus rendering the provision ineffective and also creating false hope for victims/survivors. Consideration should be given to a scheme where the state can cover an element of pay, similar to arrangements during the first six weeks of parental leave. Such schemes could be limited to cover primarily or only small employers, for whom the financial impact may be more onerous.

12. Do you think that there should be a paid and unpaid element to domestic abuse leave, similar to sick leave or maternity leave?

- Yes
- No
- Unsure

Comment: See question 13.

13. If you answered yes to Question 12, please briefly outline your thoughts on how to incorporate paid and unpaid elements to domestic abuse leave.

Comment: : Legislation in Ontario²⁰ and Manitoba²¹ in Canada includes up to 17 weeks' unpaid leave, in addition to paid leave. While the focus should be on paid leave, for at least the ten days suggested, it may be relevant to consider an additional, unpaid element for a period of a number of weeks in a calendar year. This would add flexibility to legislation, and would enable those who may need a longer period of leave to have greater confidence in being able to retain their job (although the affordability issue remains; ideally this should be looked at in conjunction with benefit policy). It should be noted that in Ontario, the 15 weeks do not need to be sequential, but leave can be taken in chunks of one or more days per week throughout the year (in negotiation with the employer; however, the employer cannot deny leave except on very narrow grounds).

It can also be noted that the legislation in New Zealand includes provision to request short term flexible working for up to two months²². Consideration should be given to including such a provision in any legislation in Northern Ireland as well, as this can support some victims/survivors and does not involve the financial burden of taking unpaid leave. Flexible working arrangements can also contribute to business continuity for the employer, which may strengthen employer support for the legislation.

It is critical that the proposed legislation includes clauses to mandate non discrimination and prohibit sanctions at work for anyone disclosing abuse and/or making use of domestic violence leave. This is vital to ensure that employers do not use disclosure against an employee, for example to limit their progression opportunities, refuse a reference or manoeuvre them out of their role or post because they are seen as 'difficult'. Examples of this occurring exist, and have been outlined for example by the Australian Human Rights Commission.²³

²⁰ Ontario Employment Standards Act, information accessed through [Your guide to the Employment Standards Act: Domestic or sexual violence leave | Ontario.ca](#), last accessed 7 January 2021

²¹ *The Domestic Violence and Stalking Act*, Manitoba

²² [Domestic violence leave | New Zealand Government \(www.govt.nz\)](#), last accessed 7 January 2021

²³ Australian Human Rights Commission (2014)

14. In terms of eligibility for paid leave, do you think that victims/survivors of domestic abuse need to have worked for their employer for a minimum period of time?

- Yes
- No
- Unsure

Comment: Domestic violence is unpredictable in nature and therefore an employee may need to take leave at any time, regardless of the time of service with an employer. Imposing a time limit may prevent some victims/survivors from seeking assistance when they need it, which may reduce confidence in the legislation. However, it is also reasonable to provide employers with a degree of certainty, and therefore a time limit similar to those used for other types of leave, such as parental leave, may be acceptable.

As noted under Q6, consideration should be given to excluding emergency leave, of periods of 1-2 days, from any time limit to ensure all victims and survivors can seek assistance, care and support at a time of critical need. This would strengthen confidence for victims/survivors to seek help, and could also reduce sickness absence as well as unexplained absence. Self certification for such emergency leave, aligned with current self certification provision for short periods of illness, should be the only reporting and proof requirement, in order to ensure all victims and survivors can access emergency support and care.

15. With regard to the amount of time spent working for an employer, what option do you think is most appropriate in order to assess eligibility?

- Should be available immediately
- Less than 6 months
- 6 months
- More than 6 months

Comment: Further to comments under Q14, a period of six months may be appropriate, as it is in line with provisions for parental leave and some other types of leave. Setting a limit is not ideal; however, it may be acceptable to ensure employer support for the legislation should a flexible approach prove a block to legislation.

16. Do you think that a victim/survivor of domestic abuse should have to provide evidence or proof to their employer in order to be granted paid leave?

- Yes
- No
- Unsure

Comment: Disclosing domestic abuse to anyone is difficult, and it is likely to be particularly difficult to tell an employer, in the current context of limited understanding of domestic violence, and occasionally unhelpful attitudes. A requirement to provide evidence or proof is likely to act as an additional barrier, especially for victims and survivors who may not have disclosed abuse to anyone else, or who are not in contact with support services at the time they seek paid leave. Therefore, personal testimony **in the form of self certification** should

be retained as an option for proof, should it be decided that it is necessary. It should also not be made a requirement to provide proof, but rather mandate employers to request proof; this adds a degree of flexibility while providing a symbolic function to ensure victims and survivors do not feel proof is a prerequisite for applying for leave. This is the provision in the legislation in New Zealand, as well as in Australia, Ontario and Manitoba.

NIWEP also appreciates the need for certainty for employers, as well as the importance of adequate record keeping as part of providing effective support. Therefore, it may be acceptable to include an option to request proof (within a reasonable timeframe), particularly if this is a key question for employer support and helps ensure appropriate monitoring and analysis of how the legislation operates. Any forms used within human resources processes should, however, be succinct and sensitive, requiring the minimum amount of detail to avoid retraumatising victims and survivors. Guidance should also be made available to employers regarding responding to disclosure and seeking proof, to ensure a consistent approach. For example, managers should have clear templates they can rely on, to avoid overreaching and intrusive questioning.

17. If you answered yes to Question 16, what sort of evidence do you think would be appropriate?

- Personal testimony
- Communication from a friend or relative
- Communication from a support service/organisation
- Communication from a health professional
- Police report
- Legal documents
- Other (please specify):

Comment: All of these would be appropriate in principle; however, consideration must be given to how employers should deal with disclosure, particularly in the case of violence that would meet the criteria for assault occasioning actual bodily harm or gross bodily harm. Recent guidance by the Northern Ireland Attorney General clarifies that in the majority of sexual violence cases, failure to report will not be considered an offence under Section 5 of the Criminal Law (Northern Ireland) Act 1967, as victims or someone they have confided in, including relevant professionals, are considered to have a reasonable excuse not to report²⁴. However, full clarity is needed regarding domestic violence cases and employers, to ensure both victims and survivors and employers can have confidence in making and hearing disclosure. The above guidance recognises that many victims and survivors are reluctant to report to police, for a variety of reasons, this issue must be given due consideration.

²⁴ Attorney General for Northern Ireland (2020) [Guidance by the Attorney General for Northern Ireland pursuant to Section 8 of the Justice \(Northern Ireland\) Act 2004 No. 16](#) Human Rights Guidance for the Public Prosecution Service and the Police Service of Northern Ireland: The Application of Section 5 of the Criminal Law Act (Northern Ireland) 1967 to Victims of Serious Sexual Offences and Those to Whom They Make Disclosures

While personal testimony may be viewed as less reliable than third party evidence, consideration should be given to including this as an option, to allow for situations where an employee has not disclosed abuse to anyone else. As noted above in relation to Q16, self certification would appear an appropriate approach.

If required, it may be possible to require initial self certification to be followed up by written proof by a support organisation, health professional or legal professional, to strengthen and corroborate the validity of personal testimony. This could be included particularly in the case that the legislation will specify the purposes for which paid leave can be sought. It can be noted that existing examples of paid domestic violence leave legislation do specify such purposes, which typically focus on seeking care, counselling, advice or support, or taking time to arrange a house move. In these cases, corroborating evidence will be relatively easy to obtain (whilst maintaining appropriate privacy and sensitivity). Such an arrangement could also assist monitoring of the legislation, by providing a picture of how leave is being used.

18. Do you think that eligibility for paid leave should be tied to the amount of time since the abuse occurred?

- Yes
- No
- Unsure

Comment: Domestic violence causes trauma, which takes time to process, while recovery is not linear. Therefore, eligibility should not be tied to the amount of time since the abuse occurred, as this will create inequalities between victims/survivors and may prevent some victims/survivors from seeking help at a time they are ready to do so.

It should also be noted that legislation in New Zealand, Ontario and Manitoba does not impose any time limit. Rather, the guidance to victims and survivors in New Zealand emphasises that no time limit is imposed.

19. If you answered yes to Question 18, what do you think the limit should be with regard to historical abuse?

- Within the last 12 months
- Between 1 year and 5 years
- More than 5 years

N/A

20. Do you agree that introducing paid leave for victims/survivors of domestic abuse will help to reduce the number of sick days and periods of absence due to sickness?

- **Yes**
- **No**
- **Unsure**

Comment: This is very likely to be the case, as victims and survivors are forced to take time off for reasons including injury, trauma and seeking urgent assistance. Introducing paid leave, as part of wider work to strengthen understanding of domestic violence in the workplace and among employers, is likely to reduce the stigma of disclosure, which will enable victims and survivors to seek support from their employer more readily.

In a practical sense, paid leave offers victims and survivors a more secure way of seeking support, as using sick absence can be fraught with concern in the current context where many employers are introducing sanctions associated with what is perceived as excessive sick absence. For example, repeated absence on a Monday may lead to disciplinary action as employers are concerned about employees' weekend behaviour affecting attendance. However, for victims and survivors of domestic violence weekends can be the most dangerous time, and may experience harm that makes attendance at work impossible.

21. Do you think that the effectiveness of paid leave for victims/survivors of domestic abuse should be monitored and evaluated, specifically with regard to the impacts on victims/survivors and the economy?

- **Yes**
- **No**
- **Unsure**

Comment: This is critical to gather evidence on how the legislation is operating, and whether it has any unforeseen and/or unintended consequences.

22. Not applicable to NIWEP

23. Please comment below if you have any experience of effective workplace policies that have helped to support victims and survivors of domestic abuse.

Comment: Please see comments above and the introductory section on existing legislation on paid domestic violence leave and provisions within these. UN Women has also outlined a model workplace policy on domestic violence, which includes ensuring appropriate policies are in place, engaging specialist service providers, trade unions and other stakeholders to ensure managers have an appropriate understanding of domestic violence and how to support victims and survivors, and addressing perpetrators through workplace policies. This model also includes a recommendation for employers to fund support services, as a last resort.²⁵

²⁵ UN Women (May 2020) [The COVID-19 shadow pandemic: Domestic violence in the world of work; A Call to action for the private sector](#)