

110TH CONGRESS  
1ST SESSION

# H. R. 4015

To provide job protection for victims of domestic violence, dating violence,  
sexual assault, or stalking.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 2007

Ms. ROYBAL-ALLARD (for herself and Mr. POE) introduced the following bill;  
which was referred to the Committee on Education and Labor, and in  
addition to the Committees on Oversight and Government Reform, the  
Judiciary, and House Administration, for a period to be subsequently de-  
termined by the Speaker, in each case for consideration of such provisions  
as fall within the jurisdiction of the committee concerned

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## A BILL

To provide job protection for victims of domestic violence,  
dating violence, sexual assault, or stalking.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Job Protection for Sur-  
5 vivors Act”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act, the following definitions apply:

1           (1) DISCRIMINATE.—The term “discriminate”,  
2       used with respect to the terms, conditions, or privi-  
3       leges of employment, includes failing to implement a  
4       request from an individual, in response to actual or  
5       threatened domestic violence, dating violence, sexual  
6       assault, or stalking, for a reasonable safety proce-  
7       dure or a job-related modification to enhance the se-  
8       curity of that individual or safeguard the workplace  
9       (such as installation of a lock, change of a telephone  
10      number or seating assignment, provision of a trans-  
11      fer, provision of leave, modification of a schedule, or  
12      adjustment of a work requirement), unless the em-  
13      ployer can demonstrate that granting the request  
14      would impose an undue hardship on the operation of  
15      the employer, or would significantly disrupt other  
16      employee’s performance of their core job functions.

17          (2) DOMESTIC VIOLENCE.—The terms “domes-  
18      tic violence”, “dating violence”, “sexual assault”,  
19      and “stalking” have the meanings given such terms  
20      in section 40002 of the Violence Against Women Act  
21      of 1994 (42 U.S.C. 13925).

22          (3) EMPLOYEE.—

23              (A) IN GENERAL.—The term “employee”  
24      means any person employed by an employer. In  
25      the case of an individual employed by a public

1 agency, such term means an individual em-  
2 ployed as described in section 3(e)(2) of the  
3 Fair Labor Standards Act of 1938 (29 U.S.C.  
4 203(e)(2)).

5 (B) BASIS.—The term includes a person  
6 employed as described in subparagraph (A) on  
7 a full- or part-time basis, for a fixed time pe-  
8 riod, on a temporary basis, pursuant to a detail,  
9 or as a participant in a work assignment as a  
10 condition of receipt of Federal or State income-  
11 based public assistance.

12 (4) EMPLOYER.—The term “employer”—

13 (A) means any person engaged in com-  
14 merce or in any industry or activity affecting  
15 commerce who employs 15 or more individuals;

16 (B) includes any person acting directly or  
17 indirectly in the interest of an employer in rela-  
18 tion to an employee; and

19 (C) includes a public agency that employs  
20 individuals as described in section 3(e)(2) of the  
21 Fair Labor Standards Act of 1938, but does  
22 not include any labor organization (other than  
23 when acting as an employer) or anyone acting  
24 in the capacity of officer or agent of such labor  
25 organization.

1           (5) EMPLOYMENT BENEFITS.—The term “em-  
2       ployment benefits” means all benefits provided or  
3       made available to employees by an employer, includ-  
4       ing group life insurance, health insurance, disability  
5       insurance, sick leave, annual leave, educational bene-  
6       fits, and pensions, regardless of whether such bene-  
7       fits are provided by a practice or written policy of  
8       an employer or through an “employee benefit plan”,  
9       as defined in section 3(3) of the Employee Retirement  
10      Income Security Act of 1974 (29 U.S.C.  
11      1002(3)).

12          (6) FAMILY OR HOUSEHOLD MEMBER.—The  
13      term “family or household member”, used with re-  
14      spect to a person, means an individual who is a  
15      spouse, former spouse, parent, son or daughter, or  
16      person residing or formerly residing in the same  
17      dwelling unit as the person.

18          (7) PARENT; SON OR DAUGHTER.—The terms  
19      “parent” and “son or daughter” have the meanings  
20      given the terms in section 101 of the Family and  
21      Medical Leave Act of 1993 (29 U.S.C. 2611).

22          (8) REDUCED LEAVE SCHEDULE.—The term  
23      “reduced leave schedule” means a leave schedule  
24      that reduces the usual number of hours per work-  
25      week, or hours per workday, of an employee.

1           (9) SECRETARY.—The term “Secretary” means  
2     the Secretary of Labor.

3           (10) UNDUE HARDSHIP.—

4           (A) IN GENERAL.—The term “undue hard-  
5     ship” means an action requiring significant dif-  
6     ficulty or expense, when considered in light of  
7     the factors set forth in subparagraph (B).

8           (B) FACTORS TO BE CONSIDERED.—In de-  
9     termining whether a reasonable accommodation  
10    would impose an undue hardship on the oper-  
11    ation of an employer or public agency, factors  
12    to be considered include—

13           (i) the nature and cost of the request  
14    of an employee for an accommodation;

15           (ii) the overall financial resources of  
16    the facility involved, the number of persons  
17    employed at such facility, the effect on ex-  
18    penses and resources, or the impact other-  
19    wise of such accommodation on the oper-  
20    ation of the facility;

21           (iii) the overall financial resources of  
22    the employer or public agency, the overall  
23    size of the business of an employer or pub-  
24    lic agency with respect to the number of  
25    employees of the employer or public agen-

1 cy, and the number, type, and location of  
2 the facilities of an employer or public agen-  
3 cy; and

4 (iv) the type of operation of the em-  
5 ployer or public agency, including the com-  
6 position, structure, and functions of the  
7 workforce of the employer or public agen-  
8 cy, the geographic separateness of the fa-  
9 cility from the employer or public agency,  
10 and the administrative or fiscal relation-  
11 ship of the facility to the employer or pub-  
12 lic agency.

13 (11) VICTIM OF DOMESTIC VIOLENCE, DATING  
14 VIOLENCE, SEXUAL ASSAULT, OR STALKING.—The  
15 term “victim of domestic violence, dating violence,  
16 sexual assault, or stalking” includes a person who  
17 has been a victim of domestic violence, dating vio-  
18 lence, sexual assault, or stalking and a person whose  
19 family or household member has been a victim of do-  
20 mestic violence, dating violence, sexual assault, or  
21 stalking.

22 (12) VICTIM SERVICES ORGANIZATION.—The  
23 term “victim services organization” means a non-  
24 profit, nongovernmental organization that provides  
25 assistance to victims of domestic violence, dating vio-

1        lence, sexual assault, or stalking, or to advocates for  
2        such victims, including a rape crisis center, an orga-  
3        nization carrying out a domestic violence program,  
4        an organization operating a shelter or providing  
5        counseling services, or a legal services organization  
6        or other organization providing assistance through  
7        the legal process.

8    **SEC. 3. EMPLOYMENT PROTECTION FOR VICTIMS OF DO-**  
9                    **MESTIC VIOLENCE, DATING VIOLENCE, SEX-**  
10                   **UAL ASSAULT, OR STALKING.**

11        An employer shall not fail to hire, refuse to hire, dis-  
12        charge, or harass any individual, or otherwise discriminate  
13        against any individual with respect to the compensation,  
14        terms, conditions, or privileges of employment of the indi-  
15        vidual (including retaliation in any form or manner) be-  
16        cause—

17                (1) the individual involved is or the employer or  
18        public agency involved perceives that individual to be  
19        a victim of domestic violence, dating violence, sexual  
20        assault, or stalking;

21                (2) that individual attended, participated in,  
22        prepared for, or requested leave to attend, partici-  
23        pate in, or prepare for, a criminal or civil court pro-  
24        ceeding relating to an incident of domestic violence,  
25        dating violence, sexual assault, or stalking of which

1 the individual, or the family or household member of  
 2 the individual, was a victim;

3 (3) that individual, in response to actual or  
 4 threatened domestic violence, dating violence, sexual  
 5 assault, or stalking, requested that the employer or  
 6 public agency implement a reasonable safety proce-  
 7 dure or a job-related modification to enhance the se-  
 8 curity of that individual or safeguard the workplace  
 9 involved; or

10 (4) the workplace is disrupted or threatened by  
 11 the action of a person whom that individual states  
 12 has committed or threatened to commit domestic vi-  
 13 olence, dating violence, sexual assault, or stalking  
 14 against that individual, or that individual's family or  
 15 household member.

16 **SEC. 4. ENTITLEMENT TO LEAVE FOR ADDRESSING DOMES-**  
 17 **TIC VIOLENCE, DATING VIOLENCE, SEXUAL**  
 18 **ASSAULT, OR STALKING.**

19 (a) ENTITLEMENT TO LEAVE.—

20 (1) IN GENERAL.—An employee who is a victim  
 21 of domestic violence, dating violence, sexual assault,  
 22 or stalking shall be entitled to a total of 15 days of  
 23 unpaid leave during any 12-month period for any of  
 24 the following:



1           (A) To obtain services from a victim serv-  
2           ices organization related to an incident of do-  
3           mestic violence.

4           (B) To obtain psychological or other coun-  
5           seling for the employee or the employee's family  
6           or household member related to experiences of  
7           domestic violence, dating violence, sexual as-  
8           sault, or stalking.

9           (C) To participate in safety planning or  
10          take other actions to increase the safety of the  
11          employee or the employee's family or household  
12          member from future domestic violence, dating  
13          violence, sexual assault, or stalking or ensure  
14          economic security, including temporarily or per-  
15          manently relocating.

16          (D) To seek medical attention for injuries  
17          caused by domestic violence or sexual assault.

18          (2) LEAVE FOR COURT PROCEEDINGS.—An em-  
19          ployee who is a victim of domestic violence, dating  
20          violence, sexual assault, or stalking shall be entitled  
21          to such leave as is necessary to enable the employee  
22          to attend or participate in any civil or criminal legal  
23          proceeding resulting from an incident of domestic vi-  
24          olence, dating violence, sexual assault, or stalking  
25          against that employee, including, seeking to obtain a

1 temporary restraining order, restraining order, or  
2 other injunctive relief, or to help ensure the health,  
3 safety, or welfare of the victim or his or her child.

4 (b) SCHEDULE.—Leave described in subsection (a)  
5 may be taken intermittently or on a reduced leave sched-  
6 ule. The taking of leave intermittently or on a reduced  
7 leave schedule shall not result in a reduction of the total  
8 amount of leave to which the employee is entitled under  
9 subsection (a).

10 (c) CALCULATION OF 12-MOTNH PERIOD.—An em-  
11 ployer is permitted to choose any 1 of the following meth-  
12 ods for determining the 12-month period in which the 15  
13 days of leave entitlement occurs:

14 (1) The calendar year.

15 (2) Any fixed 12-month “leave year” such as a  
16 fiscal year, a year required by State law, or a year  
17 starting on the date that is 1 year after the date on  
18 which an employee begins employment with that em-  
19 ployer.

20 (3) The 12-month period measured forward  
21 from the first date on which an employee’s takes  
22 leave under subsection (a).

23 (d) RELATIONSHIP TO PAID LEAVE.—An employee  
24 who is entitled to take paid or unpaid leave (including  
25 family, medical, sick, annual, personal, or similar leave)

1 from employment, pursuant to Federal, State, or local law,  
2 a collective bargaining agreement, or an employment bene-  
3 fits program or plan, may elect to substitute any period  
4 of such leave for an equivalent period of leave provided  
5 under subsection (a).

6 (e) NOTICE TO EMPLOYER AND CERTIFICATION.—

7 (1) NOTICE TO EMPLOYER AND DUTIES OF EM-  
8 PLOYEE.—In any case in which the necessity for  
9 leave under subsection (a) is foreseeable based on a  
10 scheduled appointment or planned activity, the em-  
11 ployee shall—

12 (A) make a reasonable effort to schedule  
13 the appointment or activity so as not to disrupt  
14 unduly the operations of the employer; and

15 (B) provide the employer with not less  
16 than 15 days notice before the date the leave is  
17 to begin, of the employee's intention to take  
18 leave under such subsection, except that if such  
19 15 days' notice is not practicable, the employee  
20 shall provide the employer with such advanced  
21 notice as is practicable.

22 (2) CERTIFICATION.—

23 (A) IN GENERAL.—The employer may re-  
24 quire the employee to provide certification to

1 the employer, within a reasonable period after  
2 the employer requests the certification, that—

3 (i) the employee or the employee's  
4 family or household member is a victim of  
5 domestic violence, dating violence, sexual  
6 assault, or stalking; and

7 (ii) the leave is for 1 of the purposes  
8 enumerated in subsection (a).

9 (B) CONTENTS.—An employee may satisfy  
10 the certification requirement of subparagraph  
11 (A) by providing to the employer—

12 (i) a sworn statement of the employee;

13 (ii) documentation from an employee,  
14 agent, or volunteer of a victim services or-  
15 ganization, an attorney, a member of the  
16 clergy, or a medical or other professional,  
17 from whom the employee or the employee's  
18 family or household member has sought as-  
19 sistance in addressing domestic violence,  
20 dating violence, sexual assault, or stalking  
21 and the effects of domestic violence, dating  
22 violence, sexual assault, or stalking; or

23 (iii) a police or court record.

24 (3) CONFIDENTIALITY.—All information pro-  
25 vided to the employer pursuant to paragraphs (1) or

1 (2), including a statement of the employee or any  
2 other documentation, record, or corroborating evi-  
3 dence, and the fact that the employee has requested  
4 or obtained leave pursuant to subsection (a), shall be  
5 retained in the strictest confidence by the employer,  
6 except to the extent that disclosure is—

7 (A) requested or consented to by the em-  
8 ployee in writing; or

9 (B) otherwise required by applicable Fed-  
10 eral or State law.

11 (f) EMPLOYMENT AND BENEFITS.—

12 (1) RESTORATION TO POSITION.—Except as  
13 provided in paragraph (3), any employee who takes  
14 leave under this section for the intended purpose of  
15 the leave shall be entitled, on return from such  
16 leave—

17 (A) to be restored by the employer to the  
18 position of employment held by the employee  
19 when the leave commenced; or

20 (B) to be restored to an equivalent position  
21 with equivalent employment benefits, pay, and  
22 other terms and conditions of employment.

23 (2) LOSS OF BENEFITS.—The taking of leave  
24 under this section shall not result in the loss of any

1 employment benefits accrued prior to the date on  
2 which the leave commenced.

3 (3) LIMITATIONS.—Nothing in this subsection  
4 shall be construed to entitle any restored employee  
5 to—

6 (A) the accrual of any seniority or employ-  
7 ment benefits during any period of leave; or

8 (B) any right, benefit, or position of em-  
9 ployment other than any right, benefit, or posi-  
10 tion to which the employee would have been en-  
11 titled had the employee not taken the leave.

12 (4) CONSTRUCTION.—Nothing in this sub-  
13 section shall be construed to prohibit an employer  
14 from requiring an employee on leave under this title  
15 to report periodically to the employer on the status  
16 and intention of the employee to return to work.

17 **SEC. 5. PROHIBITED ACTS.**

18 (a) INTERFERENCE WITH RIGHTS.—

19 (1) EXERCISE OF RIGHTS.—It shall be unlawful  
20 for any employer to interfere with, restrain, or deny  
21 the exercise of or the attempt to exercise, any right  
22 provided under section 4.

23 (2) EMPLOYER DISCRIMINATION.—It shall be  
24 unlawful for any employer to discharge or harass  
25 any individual, or otherwise discriminate against any

1 individual with respect to compensation, terms, con-  
2 ditions, or privileges of employment of the individual  
3 (including retaliation in any form or manner) be-  
4 cause the individual—

5 (A) exercised any right provided under sec-  
6 tion 4 ; or

7 (B) opposed any practice made unlawful by  
8 this Act.

9 (b) INTERFERENCE WITH PROCEEDINGS OR INQUIR-  
10 IES.—It shall be unlawful for any person to discharge or  
11 in any other manner discriminate (as described in sub-  
12 section (a)(2)) against any individual because such indi-  
13 vidual—

14 (1) has filed any charge, or has instituted or  
15 caused to be instituted any proceeding, under or re-  
16 lated to this Act;

17 (2) has given, or is about to give, any informa-  
18 tion in connection with any inquiry or proceeding re-  
19 lating to any right provided under this Act; or

20 (3) has testified, or is about to testify, in any  
21 inquiry or proceeding relating to any right provided  
22 under this Act.

23 **SEC. 6. ENFORCEMENT.**

24 (a) CIVIL ACTION BY AFFECTED INDIVIDUALS.—

1           (1) LIABILITY.—Any employer who violates sec-  
2           tion 3 or 5 of this Act shall be liable to any indi-  
3           vidual affected—

4                   (A) for damages equal to—

5                           (i) the amount of—

6                                   (I) any wages, salary, employ-  
7                                   ment benefits, or other compensation  
8                                   denied or lost to such individual by  
9                                   reason of the violation; or

10                                  (II) in a case in which wages,  
11                                  salary, employment benefits, or other  
12                                  compensation has not been denied or  
13                                  lost to the individual, any actual mon-  
14                                  etary losses sustained by the indi-  
15                                  vidual as a direct result of the viola-  
16                                  tion;

17                                  (ii) the interest on the amount de-  
18                                  scribed in clause (i) calculated at the pre-  
19                                  vailing rate; and

20                                  (iii) an additional amount as liq-  
21                                  uidated damages equal to the sum of the  
22                                  amount described in clause (i) and the in-  
23                                  terest described in clause (ii), except that,  
24                                  in the case of an alleged violation of sec-  
25                                  tion 5, if an employer that has violated



1 section 5 proves to the satisfaction of the  
2 court that the act or omission that violated  
3 section 5 was in good faith and that the  
4 employer had reasonable grounds for be-  
5 lieving that the act or omission was not a  
6 violation of section 5, such court may, in  
7 the discretion of the court, reduce the  
8 amount of the liability to the amount and  
9 interest determined under clauses (i) and  
10 (ii), respectively; and

11 (B) for such equitable relief as may be ap-  
12 propriate, including employment, reinstatement,  
13 and promotion.

14 (2) RIGHT OF ACTION.—An action to recover  
15 the damages or equitable relief prescribed in para-  
16 graph (1) may be maintained against any employer  
17 in any Federal or State court of competent jurisdic-  
18 tion by any 1 or more affected individuals for and  
19 on behalf of—

20 (A) the individuals; or

21 (B) the individuals and other individuals  
22 similarly situated.

23 (3) FEES AND COSTS.—The court in such an  
24 action shall, in addition to any judgment awarded to  
25 the plaintiff, allow a reasonable attorney's fee, rea-

sonable expert witness fees, and other costs of the action to be paid by the defendant.

(4) LIMITATIONS.—The right provided by paragraph (2) to bring an action by or on behalf of any affected individual shall terminate—

(A) on the filing of a complaint by the Secretary in an action under subsection (d) in which restraint is sought of any further delay in the payment of the amount described in paragraph (1)(A) to such individual by an employer responsible under paragraph (1) for the payment; or

(B) on the filing of a complaint by the Secretary in an action under subsection (b) in which a recovery is sought of the damages described in paragraph (1)(A) owing to an affected individual by an employer liable under paragraph (1),

unless the action described in subparagraph (A) or (B) is dismissed without prejudice on motion of the Secretary.

(b) ACTION BY THE SECRETARY OF LABOR.—

(1) ADMINISTRATIVE ACTION.—The Secretary shall receive, investigate, and attempt to resolve complaints of violations of section 3 or 5 in the same

1 manner as the Secretary receives, investigates, and  
2 attempts to resolve complaints of violations of sec-  
3 tions 6 and 7 of the Fair Labor Standards Act of  
4 1938 (29 U.S.C. 206 and 207).

5 (2) CIVIL ACTION.—The Secretary may bring  
6 an action in any court of competent jurisdiction to  
7 recover the damages described in subsection  
8 (a)(1)(A).

9 (3) SUMS RECOVERED.—Any sums recovered by  
10 the Secretary pursuant to paragraph (2) shall be  
11 held in a special deposit account and shall be paid,  
12 on order of the Secretary, directly to each individual  
13 affected. Any such sums not paid to such an indi-  
14 vidual because of inability to do so within a period  
15 of 3 years shall be deposited into the Treasury of  
16 the United States as miscellaneous receipts.

17 (c) LIMITATION.—

18 (1) IN GENERAL.—Except as provided in para-  
19 graph (2), an action may be brought under this sub-  
20 section not later than 2 years after the date of the  
21 last event constituting the alleged violation for which  
22 the action is brought.

23 (2) WILLFUL VIOLATION.—In the case of such  
24 action brought for a willful violation of section 5,  
25 such action may be brought within 3 years after the

1 date of the last event constituting the alleged viola-  
2 tion for which such action is brought.

3 (3) COMMENCEMENT.—In determining when an  
4 action is commenced by the Secretary under this  
5 subsection for the purposes of this paragraph, it  
6 shall be considered to be commenced on the date  
7 when the complaint is filed.

8 (d) ACTION FOR INJUNCTION BY SECRETARY.—The  
9 district courts of the United States shall have jurisdiction,  
10 for cause shown, in an action brought by the Secretary—

11 (1) to restrain violations of section 3 or 5, in-  
12 cluding the restraint of any withholding of payment  
13 of wages, salary, employment benefits, or other com-  
14 pensation, plus interest, found by the court to be  
15 due to affected individuals; or

16 (2) to award such other equitable relief as may  
17 be appropriate, including employment, reinstatement,  
18 and promotion.

19 (e) SOLICITOR OF LABOR.—The Solicitor of Labor  
20 may appear for and represent the Secretary on any litigation  
21 brought under this subsection.

22 (f) CERTAIN PUBLIC AGENCY EMPLOYERS.—

23 (1) AGENCIES.—Notwithstanding any other  
24 provision of this section, in the case of a public  
25 agency that employs individuals as described in sub-

1 paragraph (A) or (B) of section 3(e)(2) of the Fair  
2 Labor Standards Act of 1938 (29 U.S.C. 203(e)(2)),  
3 paragraph (2) shall apply.

4 (2) **AUTHORITY.**—In the case described in  
5 paragraph (1), the powers, remedies, and procedures  
6 provided in the case of a violation of chapter 63 of  
7 title 5, United States Code, in that title to an em-  
8 ploying agency, in chapter 12 of that title to the  
9 Merit Systems Protection Board, or in that title to  
10 any person alleging a violation of chapter 63 of that  
11 title, shall be the powers, remedies, and procedures  
12 this subsection provides in the case of a violation of  
13 section 3 or 5 to that agency, that Board, or any  
14 person alleging a violation of section 3 or 5, respec-  
15 tively, against an employee who is such an indi-  
16 vidual.

17 **SEC. 7. SECRETARY OF LABOR REGULATIONS.**

18 Not later than 120 days after the date of the enact-  
19 ment of this Act, the Secretary of Labor shall prescribe  
20 such regulations as are necessary to carry out this Act.

21 **SEC. 8. RELATIONSHIP TO STATE LAWS.**

22 This Act supersedes any provision of a statute, regu-  
23 lation, or rule of a State or political subdivision of a State  
24 which provides similar protections and entitlements as

1 provided by this Act, except to the extent that such stat-  
2 ute, regulation, or rule provides—

3 (1) greater protection to an individual than that  
4 provided by section 3; or

5 (2) an entitlement to leave that exceeds that  
6 provided under section 5.

○