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NOT JUST DOMESTIC VIOLENCE: THE ROLE OF THE WORKPLACE IN MITIGATING ABUSERS

Katherine Soledad Martinez*

Prevailing views of intimate partner violence place it behind the private doors of the home. Such violence, however, does not stop there. Intimate partner violence seeps into the workplace in a variety of manners. Intimate partner violence does not only affect the work performance of the victim, but also that of the perpetrator. Moreover, perpetrators can have a damaging impact on the workplace by reducing productivity, affecting workplace safety, and missing time at work. Despite these negative outcomes, few states and workplaces have established policies to manage or penalize the perpetrators of violence against an intimate partner.¹

This Comment addresses the need for setting clear policies at the workplace to sanction and reduce the conduct of a perpetrator of intimate partner violence. Part I identifies the statistics of incidents and the effects of intimate partner violence nationwide, specifically the general effects of this kind of violence at the workplace. Part II discusses the effects of a perpetrator of intimate partner violence in the workplace environment. Part III briefly describes some federal, state, and workplace remedies regarding perpetrators of intimate partner violence at work. Part IV explains possible solutions that states and workplaces can implement to address intimate partner violence in the workplace.

I. THE STATISTICS OF INTIMATE PARTNER VIOLENCE

Intimate partner violence affects millions of individuals in the United States.² The Centers for Disease Control and Prevention (CDC) describes intimate partner violence as psychological, physical, or

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¹ See *infra* Part I–IV.

² *Intimate Partner Violence: Definitions*, CTR. FOR DISEASE CONTROL & PREVENTION (Nov. 25, 2014), <http://www.cdc.gov/violenceprevention/intimatepartnerviolence/definitions.html>.

sexual harm by a current or former intimate partner or spouse.³ Abuse against an intimate partner includes behaviors that range from intentionally shoving to raping or murdering a partner.⁴ However, intimate partner violence can, and often does, include less obvious behaviors such as isolating, intimidating, or economically abusing a victim.⁵ Intimate partner violence affects and is perpetrated by individuals of all ethnicities, income levels, religions, education levels, and sexual orientations.⁶

On average, nearly twenty individuals are victims of physical abuse by an intimate partner per minute in the United States.⁷ That equals more than ten million victims of physical violence yearly.⁸ While men are victims of intimate partner violence, most victims of this kind of violence are women.⁹ In fact, more than one in three women, and more than one in four men in the United States report experiencing “rape, physical violence, and/or stalking by an intimate partner in their lifetime.”¹⁰ Intimate partner violence accounted for 15% of all violent crime in the nation from 2003 to 2012.¹¹

³ *Id.*

⁴ *Id.* (citing LINDA E. SALTZMAN ET AL., INTIMATE PARTNER VIOLENCE SURVEILLANCE: UNIFORM DEFINITIONS AND RECOMMENDED DATA ELEMENTS 11–13 (2002)); *Homicide and Domestic Violence*, STRENGTHEN OUR SISTERS, http://www.strengthenoursisters.org/homicide_domestic_violence.html (last visited Feb. 13, 2015).

⁵ *Power and Control Wheel*, DOMESTIC ABUSE INTERVENTION PROJECT, <http://www.theduluthmodel.org/pdf/PowerandControl.pdf> (last visited Feb. 13, 2015).

⁶ DOMESTIC VIOLENCE AND THE WORKPLACE: A POLICY GUIDE FOR EMPLOYERS, CAMBRIDGE PUB. HEALTH DEP’T 4 (2013) [hereinafter CAMBRIDGE PUB. HEALTH DEP’T], http://www.cambridgepublichealth.org/lifestyle/domestic-violence-prevention/DV_Guidebook_Web.pdf.

⁷ *The National Intimate Partner and Sexual Violence Survey*, CTR. FOR DISEASE CONTROL & PREVENTION (SEPT. 4, 2014), <http://www.cdc.gov/violenceprevention/nisvs/>.

⁸ *Id.*

⁹ *The Facts About Domestic Violence*, ALA. COALITION AGAINST DOMESTIC VIOLENCE, <http://www.acadv.org/facts.html> (last visited Feb. 13, 2015).

¹⁰ NAT’L CENTER FOR INJ. PREVENTION & CONTROL, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 2 (2010), available at http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

¹¹ U.S. DEP’T OF JUSTICE, NCJ 244697, NONFATAL DOMESTIC VIOLENCE, 2003–2012 1 (2014), available at <http://www.bjs.gov/content/pub/pdf/ndv0312.pdf>.

Contrary to the prevalent view of society, however, intimate partner violence does not only occur behind the closed doors of the home; it frequently spreads to the workplace in a variety of manners. Incidents of abuse occurring at the workplace include, “harassment by phone or in person, stalking, damage to property, physical assault, and even murder” of an intimate partner.¹² In 2004, the Society for Human Resource Management indicated that 11% of employees reported facing violence from a girlfriend or boyfriend at work, 10% reported violence from a spouse, and 7% reported violence from a former spouse.¹³ Moreover, 74% of employed battered women reported being harassed by their abusers while at work.¹⁴ More alarmingly, 22% of women who were murdered in the workplace in the United States, between 2003 and 2008, were killed by a former or current partner.¹⁵

Momentarily putting aside the impact on victims themselves, victims’ workplaces are also negatively affected by the effects of intimate partner violence. The CDC estimates that the annual cost for the loss of productivity due to this kind of violence is \$727.8 million.¹⁶ Nearly 8 million paid workdays are lost yearly due to intimate partner violence.¹⁷ Intimate partner violence increases the cost of healthcare to an employer; the direct medical and mental healthcare cost incurred for this kind of violence amounts to nearly \$4.1 billion each year.¹⁸ A

¹² JOHNNY LEE, COUNTING THE COST: ADDRESSING DOMESTIC VIOLENCE IN THE WORKPLACE 18 (Suzanne Bay et al eds., 2005).

¹³ Julie Goldscheid, *Gender Violence And Work: Reckoning With The Boundaries Of Sex Discrimination Law*, 18 COLUM. J. GENDER & L. 61, 75 (2008) (citing SOC’Y FOR HUMAN RES. MGMT., WORKPLACE VIOLENCE SURVEY 5 (2004)).

¹⁴ *Effects on the Workplace: How does Intimate Partner Violence Affect the Workplace?*, EMPLOYERS AGAINST DOMESTIC VIOLENCE, <http://employersagainstdomesticviolence.org/effects-on-workplace/workplace-dv-stats/> (last visited Sept. 28, 2014).

¹⁵ *New Study Examines the Role of Intimate Partner Violence in Workplace Homicides Among U.S. Women*, CTR. FOR DISEASE CONTROL & PREVENTION (May 3, 2012), <http://www.cdc.gov/niosh/updates/upd-05-03-12.html>.

¹⁶ NAT’L CENTER FOR INJ. PREVENTION & CONTROL, CTR. FOR DISEASE CONTROL & PREVENTION, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 31 (Mar. 2003), *available at* <http://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf>.

¹⁷ *Id.* at 1.

¹⁸ *Id.* at 2.

study also reported that employers spend about \$2000 more in healthcare costs on victims of intimate partner violence compared to the rest of employees enrolled in a general plan.¹⁹

II. THE IMPACT OF THE PERPETRATOR ON THE WORKPLACE

When dealing with intimate partner violence at the workplace, the emphasis heretofore has most often been concentrated on protecting victims.²⁰ Yet, attention must also be paid to the perpetrators, as their conduct impacts and derives from the workplace too. Given the number of victims of intimate partner violence, it is self-evident that the number of abusers in the workforce is significant nationwide.²¹ There are three major ways in which an abuser's conduct can affect the workplace: misuse of company resources to abuse a victim; reduced focus and productivity at work; and, periods of absence from work.

Perpetrators of violence can negatively affect the workplace by using workplace resources to abuse and contact their intimate partners. This behavior was examined in a 2004 study conducted by the Maine Department of Labor and Family Crisis Services, whose investigators concluded that the effects of intimate partner violence have a significant impact on its business community.²² The study included 152 perpetrators of intimate partner violence.²³ Among the participants, 124 were employed, 22 self-employed, 5 unemployed,

¹⁹ 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, 25 (2008) (citing Angela M. Moe & Myrtle P. Bell, *Abject Economics: The Effects of Battering and Violence on Women's Work and Employability*, 10 VIOLENCE AGAINST WOMEN 34, 48 (2004)).

²⁰ Arthur Caplan & Carolyn Plunkett, *Domestic Violence: The NFL Isn't the Only Workplace With a Problem*, NBC NEWS (Sept. 22, 2014), <http://www.nbcnews.com/storyline/nfl-controversy/domestic-violence-nfl-isnt-only-workplace-problem-n209046>.

²¹ See LEE, *supra* note 12, at 38.

²² ME. DEP'T OF LABOR & FAMILY CRISIS SERVS., IMPACT OF DOMESTIC VIOLENCE OFFENDERS ON OCCUPATIONAL SAFETY & HEALTH: A PILOT STUDY ii (Feb. 2004) [hereinafter ME. DEP'T OF LABOR], *available at* http://www.maine.gov/labor/labor_stats/publications/dvreports/domesticoffendersreport.pdf.

²³ *Id.* at 8.

and 1 was retired.²⁴ The participants had a wide range of occupations.²⁵ The investigators found the following:

- 78% of the 124 offenders who were employed had used “workplace resources at least once to express remorse or anger, check up on, pressure, or threaten the victim.”²⁶
- 77% of perpetrators had used a company phone to contact the victim during work time.²⁷
- 24% of the perpetrators employed a company cellphone to contact the victim during working hours.²⁸
- 25% of the perpetrators used their company’s cars to drive home to contact the victim during work time.²⁹

An analogous study by the Massachusetts organization, Employers Against Domestic Violence (EADV), which focused on the conduct of a group of 29 perpetrators enrolled in batterer interventions programs, found similar results.³⁰ In that study, almost all of the participants who had access to a company phone used it to check on their victims during the workday.³¹ Several of those abusers whose jobs involved driving a company’s vehicle used it to stop at the victim’s home and check up on her.³² One of the participants even admitted to enlisting a coworker to aid him in monitoring the victim during working hours.³³

The Maine study also found that 48% of the offenders had difficulty concentrating at work, thus possibly endangering their own

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 1, 13.

²⁷ *Id.* at 13, Figures 6 & 7 (finding that 89 of 115 of the participants used a company phone).

²⁸ *Id.* (indicating that 27 of 115 of the participants used a company cellphone).

²⁹ *Id.* (noting that 29 of 115 of the participants used a company car).

³⁰ EMPLOYERS AGAINST DOMESTIC VIOLENCE, HOW EMPLOYEES WHO BATTER AFFECT THE WORKPLACE: AN EMPLOYERS AGAINST DOMESTIC VIOLENCE INITIATIVE iii (2001) [hereinafter EMPLOYEES WHO BATTER], available at <http://www.standingfirmswpa.org/docs-all/Perpetrators-EADV.pdf>.

³¹ *Id.* at 3.

³² *Id.*

³³ *Id.*

lives and those of their co-workers.³⁴ Furthermore, 19% of offenders reported that intimate partner violence was a factor in workplace accidents or nearly missing getting into an accident.³⁵ Workplace accidents ranged from a perpetrator who injured his hand by not using the proper tools (requiring twelve stitches), to more serious accidents such as suffering burns due to forgetting a crucial safety step while working with explosive materials.³⁶

Perpetrators' tardiness and absences from work also directly affect the workplace. The results of the Maine study indicated that 42% of the offenders were late to work.³⁷ 11% left their jobs early to check on the victim.³⁸ Perhaps most striking is the fact that, together, seventy of the perpetrators in the Maine study lost a total of 15,222 hours of work due to matters of intimate partner violence.³⁹ Put another way, among these abusers, over 1900 days of full-time work were lost. Abusers tended to miss work due to arrests that ranged from speedy bails to lengthy incarcerations for abusing their partners.⁴⁰ At Maine's average hourly wage, this equals approximately \$200,000 lost for this number of hours of work.⁴¹ And that only quantifies the wages lost, without accounting for the lost business value due to absenteeism or the cost of hiring a replacement.⁴²

In the Massachusetts study, perpetrators reported missing an average of seven business days dealing with the justice system for their behavior.⁴³ Employees who did not miss full days of work reported that they lost about twenty to twenty-five hours of work monthly dealing with the ramifications of their violent behavior.⁴⁴

³⁴ ME. DEP'T OF LABOR, *supra* note 22, at 8 (noting that 59 of 123 of the participants reported lacking concentration at work due to domestic violence matters).

³⁵ *Id.* (indicating that 23 of 123 of the participants reported domestic abuse as a factor on accidents or near missed accidents).

³⁶ *Id.*

³⁷ *Id.* at 1, 11 (noting that 51 of 123 of the participants reported being late for work).

³⁸ *Id.* at 11 (noting that 13 of 123 of the participants reported leaving work early to check on an intimate partner).

³⁹ *Id.* at 17.

⁴⁰ *Id.*

⁴¹ *Id.* at 1.

⁴² *Id.* at 18.

⁴³ EMPLOYEES WHO BATTER, *supra* note 30, at 2.

⁴⁴ *Id.*

Some employees missed weeks of work while others lost months.⁴⁵

An analogous study from the North Carolina Council for Women and Domestic Violence Commission also presented alarming information.⁴⁶ The survey covered 188 perpetrators of intimate partner violence enrolled in batterers' intervention programs.⁴⁷ 81% of the abusers in this study reported that they were employed while wreaking violence against their partners.⁴⁸ The investigators found that 25% of perpetrators of intimate partner violence worked at the same place as the victim.⁴⁹ Perpetrators working at the same place as their victim can increase the likelihood of incidents of abuse at the workplace. Abuse "rarely stops once the shift starts."⁵⁰

Additional studies indicate that the prevalence of violence could be related to the kind of job the offender performs.⁵¹ For example, it has been reported that, when compared to abusers who work in white-collar, managerial positions, men in traditionally female-dominated positions such as office clerk or classroom aide were 47% more likely to commit abuse against their intimate partners.⁵² Meanwhile, the same study found that men working in violence-prevention areas such as law enforcement or prison security were 42% more likely than an office supervisor to abuse their intimate partners.⁵³

⁴⁵ *Id.*

⁴⁶ *See* LEE, *supra* note 12, at 41–42.

⁴⁷ *Id.* at 41.

⁴⁸ *Id.* at 41–42.

⁴⁹ *Id.* at 42.

⁵⁰ *Id.*

⁵¹ *See id.* at 38–39 (discussing a 2002 study by Scott Melzer, a research sociologist at the University of California, on the correlation between abusers and the type of jobs they have).

⁵² *Id.* at 39.

⁵³ *Id.*

III. LAWS AND POLICIES AGAINST PERPETRATORS OF INTIMATE PARTNER VIOLENCE AT THE WORKPLACE

A. *Federal Response to Perpetrators of Intimate Partner Violence at the Workplace*

The federal government has responded to intimate partner violence by establishing guidelines for federal agencies on how to handle this kind of violence in the workplace. In 2012, President Obama ordered the establishment of these guidelines through a presidential memorandum.⁵⁴ The memorandum indicates that the federal government, as the largest employer in the nation “should act as a model in responding to the effects of domestic violence on its workforce.”⁵⁵ It ordered federal agencies to make available their then-existing policies and practices (if any) to the Director of the Office of Personal Management (OPM), and, consistent with the guidance of the OPM, to develop or modify their policies.⁵⁶

As mandated by the presidential memorandum, in 2013 the OPM established guidelines so that each agency could achieve the goals set by the President.⁵⁷ In these guidelines, the OPM indicated that legal and disciplinary considerations against a perpetrator should be taken into account when agencies develop policies and procedures for intimate partner violence.⁵⁸ Specifically, the guidelines indicate that “if agency officials determine that an employee has engaged in acts of domestic violence, sexual assault, or stalking, the agency may take disciplinary action proportionate to the offense, to the extent that there is a nexus between the conduct and the ‘efficiency of the

⁵⁴ Memorandum Establishing Policies for Addressing Domestic Violence in the Federal Workforce, 77 Fed. Reg. 76, 24339 (Apr. 23, 2012), <http://www.whitehouse.gov/the-press-office/2012/04/18/presidential-memorandum-establishing-policies-addressing-domestic-violen>.

⁵⁵ *Id.*

⁵⁶ *Id.* at 24340.

⁵⁷ U.S. OFFICE OF PERSONAL MGMT., GUIDANCE FOR AGENCY-SPECIFIC DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND STALKING POLICIES 3 (2013), *available at* <http://www.opm.gov/policy-data-oversight/worklife/reference-materials/guidance-for-agency-specific-dvsas-policies.pdf>.

⁵⁸ *Id.* at 15.

service.”⁵⁹ Notably, such a nexus may be presumed if misconduct occurs at the workplace or during duty hours.⁶⁰

Conversely, when misconduct occurs outside of the workplace, the agency must be able to establish the nexus by showing that “there is a clear and direct relationship between the grounds for the adverse action and the employee’s ability to perform his or her duties or some other legitimate governmental interest promoting the ‘efficiency of the service.’”⁶¹ As noted, the proportion of the offense determines the kind of penalty for the employee-perpetrator, but the guidelines also suggest that removal from the federal agency is possible in certain situations, as federal case law indicates.⁶²

The Department of Justice (DOJ) was the first major federal agency to release a final policy in accordance with the requirements of the presidential memorandum.⁶³ The DOJ adopted a policy that enumerates the disciplinary actions and legal implications against a perpetrator of intimate partner violence at the workplace and outside of it, granted that a connection exists between the abuse and performance.⁶⁴ The penalties include possible termination.⁶⁵

B. Maryland’s Response to Perpetrators of Intimate Partner Violence

Some states have implemented policies against perpetrators of intimate partner violence at the workplace. Maryland, for example, has implemented a policy that addresses a perpetrator of intimate partner violence at the government level.⁶⁶ In 1998, by Executive Order, Maryland’s governor instructed state agencies to adopt policies and

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* (citing 5 U.S.C. §7513(a)).

⁶² *Id.*

⁶³ COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE, AM. BAR ASS’N, REPORT TO THE HOUSE OF DELEGATES 6 (2014), http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/resolutions/2014_hod_annual_meeting_112a.authcheckdam.pdf.

⁶⁴ *Id.* at 7.

⁶⁵ *Id.*

⁶⁶ *See* Md. Exec. Order No. 01.01.1998.25 (1998).

procedures against intimate partner violence.⁶⁷ Following this Executive Order, Maryland adopted policies and procedures against perpetrators of intimate partner violence at its agencies.⁶⁸ The policy indicates that Maryland has zero tolerance for intimate partner violence “at the workplace and will take appropriate disciplinary action and/or criminal prosecution against any employee or non-employee who commits an act of domestic violence in state offices, facilities, worksite, vehicles, or while conducting any state business.”⁶⁹ Disciplinary action against an employee who commits an act of intimate partner violence in the workplace or uses the employers’ resources to commit intimate partner violence includes possible termination.⁷⁰ Moreover, an employee who is a perpetrator of intimate partner violence must “contact the State’s Employee Assistance Program office for confidential consultation and resources and contact an abuser’s intervention program.”⁷¹

C. Few Workplaces Have Created any Kind of Policy Against Perpetrators of Intimate Partner Violence

In general, though, few workplaces have established policies that address intimate partner violence.⁷² In a survey by the Society for Human Resources Management, it was reported that 65% of companies do not have formal domestic violence prevention policies.⁷³ The study also found that only 20% of workplaces train employees on intimate partner violence.⁷⁴ It is likely that the number of workplaces

⁶⁷ See Domestic Violence and the Workplace, 25 Md. Reg. 1684 (Nov. 6, 1998).

⁶⁸ Michael Dresser, *Maryland to Adopt Plan to Help Combat Domestic Violence*, BALTIMORE SUN, Oct. 1, 1999, at 2B, available at http://articles.baltimoresun.com/1999-10-01/news/9910010177_1_domestic-violence-signs-of-domestic-policy-on-domestic.

⁶⁹ MD. DEPT. OF BUDGET AND MGMT., STATE OF MARYLAND PERSONNEL POLICY: DOMESTIC VIOLENCE AND THE WORKPLACE (Oct. 1, 1999), <http://www.dbm.maryland.gov/employees/Pages/DomesticViolencePolicy.aspx>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Roy Maurer, *When Domestic Violence Comes to Work: 65 Percent of Employers Don’t Have a Plan for Domestic Violence*, SOCIETY FOR HUMAN RESOURCES MANAGEMENT, (Sept. 9, 2014) <http://www.shrm.org/hrdisciplines/safetysecurity/articles/pages/domestic-violence-workplace-nfl-ray-rice.aspx>.

⁷³ *Id.*

⁷⁴ *Id.*

around the country that have policies against a perpetrator is very low, given the number of workplaces that reported any kind of policy that addresses intimate partner violence.

While the leaders of many workplaces recognize that intimate partner violence affects their companies, few leaders believe that the workplace has the responsibility of addressing this issue.⁷⁵ In a 2002 survey conducted for Liz Claiborne Inc., 91% of senior corporate executives acknowledged that intimate partner violence affects their employees' private and working lives.⁷⁶ Sixty-six percent of the leaders in the survey identified intimate partner violence as a major social problem.⁷⁷ However, in the same survey, only 12% of corporate leaders indicated that corporations should play a major role in addressing intimate partner violence.⁷⁸ Most corporate leaders believe that the family, social service organizations, the police, or the judicial system should handle intimate partner violence.⁷⁹ It is not surprising that corporate leaders believe that institutions other than the workplace should address intimate partner violence, as intimate partner violence has long been considered a private matter. However, with intimate partner violence in the public spotlight recently, more people are giving it serious attention.

D. The National Football League's Response to Perpetrators of Intimate Partner Violence

The National Football League (NFL) has received significant attention because of the way it administers penalties against its employees who perpetrate intimate partner violence. From 2006 to 2014, law enforcement handled fifty cases of intimate partner violence

⁷⁵ See 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, 599–600 (2010) (noting that although 43% of CEOs acknowledged that intimate partner violence affects their businesses, only 13% believe that employers have a major role in addressing intimate partner violence); See also, *Leaders See Domestic Violence As a Major Problem That Affects Their Employees*, CORP. ALLIANCE TO END PARTNER VIOLENCE (Oct. 16, 2002) [hereinafter CORP. ALLIANCE TO END PARTNER VIOLENCE], <http://www.caepv.org/about/releasedetail.php?prID=49>.

⁷⁶ CORP. ALLIANCE TO END PARTNER VIOLENCE, *supra* note 75.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

committed by NFL players.⁸⁰ In 2007, the NFL established a new personal conduct policy, which granted the league commissioner with the authority to impose discipline as warranted upon the conclusion of an investigation of certain situations, including intimate partner violence.⁸¹ In other words, it allowed the commissioner to handle perpetrators in a discretionary manner. Discipline could take several forms including “fines, suspension, or banishment from the League and may include a probationary period and conditions that must be satisfied prior to or following reinstatement.”⁸²

This policy on intimate partner violence, which was in effect until August 2014, produced controversial results.⁸³ Under Commissioner Roger Goodell, who took charge of the NFL in 2006, three trends emerged: a “brief suspension,” “no suspension”, and “grand stand justice.”⁸⁴ The league or the team suspended or deactivated players mostly for one game in at least 14 cases.⁸⁵ Prior to July 2014, a perpetrator was punished for two games in only one of those cases.⁸⁶ In 16 cases, the players did not face any suspension.⁸⁷ In 15 cases, the players were either released from their contract or not resigned by their teams.⁸⁸ The players in the last group have never

⁸⁰ Brent Schrottenboer, *History of Leniency: NFL Domestic Cases Under Goodell*, USA TODAY (Oct. 2, 2014, 11:43 AM), <http://www.usatoday.com/story/sports/nfl/2014/10/01/nfl-domestic-abuse-history-under-roger-goodell/16566615/>.

⁸¹ See Bill Pennington & Steve Eder, *In Domestic Violence Cases, N.F.L. Has a History of Lenience*, N.Y. TIMES (Sept. 19, 2014), <http://www.nytimes.com/2014/09/20/sports/football/in-domestic-violence-cases-nfl-has-a-history-of-lenience.html>; See also NAT'L FOOTBALL LEAGUE, PERSONAL CONDUCT POLICY, <http://nfllabor.files.wordpress.com/2013/06/personal-conduct-policy.pdf> (last visited May 5, 2015).

⁸² NAT'L FOOTBALL LEAGUE, *supra* note 81.

⁸³ Jane McManus, *Severe Penalties for Domestic Violence*, ESPN W (Aug. 29, 2014), <http://espn.go.com/espnw/news-commentary/article/11425377/nfl-implements-domestic-violence-penalties>.

⁸⁴ Schrottenboer, *supra* note 80.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

played another NFL game.⁸⁹ However, in that group, the players “often had marginal talent.”⁹⁰

The NFL’s lack of clear established policies produced inconsistent and unfair results for its players who perpetrate intimate partner violence.⁹¹ Take for example, the case of former Minnesota Vikings cornerback Anthony Ray “A.J.” Jefferson, Jr.⁹² In November 2013, Jefferson was arrested on a “felony count of domestic assault by strangulation.”⁹³ His girlfriend accused him of yelling at her and grabbing her neck.⁹⁴ After his arrest, the NFL suspended Jefferson for four games, and his team terminated him.⁹⁵ Soon thereafter, however, the NFL lifted his suspension, without any explanation.⁹⁶ In March 2014, Jefferson pleaded guilty to a misdemeanor count of domestic assault and was sentenced to ninety days in jail, all suspended except three days. Jefferson later signed with the Seattle Seahawks.⁹⁷

On the other end of the spectrum is the case of former Baltimore Ravens running back Ray Rice. Rice was accused of assaulting his then-fiancée in early 2014.⁹⁸ In May 2014, prosecutors allowed Rice to enter a pretrial intervention program instead of going to trial.⁹⁹ Then, in July of that year, the NFL suspended Rice for two games.¹⁰⁰ However, on September 8, 2014, after a video capturing the

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ See generally Michael Martinez & Priscilla Rojas, *NFL's Past Penalties for Intimate Partner Violence 'A Different Story,'* CNN (Sept. 16, 2014, 10:37 AM), <http://www.cnn.com/2014/09/09/us/nfl-players-domestic-violence-accusations/>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* Jefferson was placed on injured reserve on August 2014. Clare Farnsworth, *Seahawks Reach 75-Man Roster Limit by Making Moves with Injured Players*, SEAHAWKS (Aug. 26, 2014), <http://www.seahawks.com/news/articles/article-1/Seahawks-reach-75-man-roster-limit-by-making-moves-with-injured-players/b4f7a21a-77d2-4bc6-9b85-947b69000308>.

⁹⁸ Louis Bien, *A Complete Timeline of the Ray Rice Assault Case*, SB NATION (Nov. 28, 2014, 2:08 PM), <http://www.sbnation.com/nfl/2014/5/23/5744964/ray-rice-arrest-assault-statement-apology-ravens>.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

incident surfaced, triggering substantial public outcry, Rice was suspended indefinitely from the league.¹⁰¹ The NFL claimed that Commissioner Goodell was misled when he issued the first punishment, and that upon receiving “new evidence” about the incident, he made the decision to suspend Rice indefinitely.¹⁰² Rice’s team also released him from his contract on the same day.¹⁰³

Rice appealed the decision of the NFL to a neutral arbitrator, and was reinstated to the league on November 28, 2014.¹⁰⁴ Rice’s attorneys argued, among other things, that by re-adjudicating his punishment from a two-game suspension to an indefinite suspension, the NFL subjected him to “double jeopardy and violated his due process rights under the collective-bargaining agreement.”¹⁰⁵ Former federal judge Barbara Jones, who handled the appeal held that the “indefinite suspension was an abuse of discretion.”¹⁰⁶ In her decision, Judge Jones also stated that the “Commissioner needed to be fair and consistent in his imposition of discipline.”¹⁰⁷ As of the writing of this Comment, Rice has yet to be signed by another NFL team. While the conduct of both Jefferson and Rice is condemnable and deserves punishment, their behaviors should have been punished on the same level and not by picking and choosing.

¹⁰¹ *Id.*

¹⁰² Don Van Natta, Jr., et al., *Ray Rice Wins Appeal, Eligible to Sign*, ESPN (Dec. 1, 2014), http://espn.go.com/nfl/story/_/id/11949855/ray-rice-baltimore-ravens-wins-appeal-eligible-reinstatement; Kavitha A. Davidson, *Ray Rice's Misdeed, and the NFL's*, CHICAGO TRIBUNE (Dec. 2, 2014, 9:47 AM), <http://www.chicagotribune.com/news/opinion/commentary/ct-ray-rice-roger-goodell-nfl-perspec-1203-20141202-story.html>.

¹⁰³ Bien, *supra* note 98.

¹⁰⁴ Van Natta, Jr., *supra* note 102.

¹⁰⁵ Tom Pelissero & Lorenzo Reyes, *Ray Rice Appeal Begins: What to Expect from Case*, USA TODAY (Nov. 5, 2014, 2:43 PM), <http://www.usatoday.com/story/sports/nfl/2014/11/04/ray-rice-appeal-primer-roger-goodell/18494797>.

¹⁰⁶ Van Natta, Jr., *supra* note 102.

¹⁰⁷ *Id.*

IV. SOLUTIONS TO DECREASE THE EFFECTS OF INTIMATE PARTNER VIOLENCE AT THE WORKPLACE

A. States Must Pass Laws that Address the Conduct of a Perpetrator of Intimate Partner Violence at the Workplace

States must take a stand against intimate partner violence, and should make it mandatory for workplaces to have policies that address intimate partner violence. While some states have passed laws that aid the victim, states should also pass laws that mandate workplaces to establish clear policies addressing perpetrators of intimate partner violence. Because it might be difficult for states to create a specific set of laws that addresses the needs of every workplace, like the federal government has done with government agencies, states could consider making loose guidelines for each workplace to follow. As noted earlier, a perpetrator's occupation correlates to the likelihood of his involvement in intimate partner violence.¹⁰⁸ Some workplaces might require more stringent policies than others.

B. Each Workplace Must Take a Position Against Intimate Partner Violence

Every workplace, nationwide, must take a position against intimate partner violence, and address this problem.¹⁰⁹ Taking a stand against this kind of violence sends the message that intimate partner violence is unacceptable not only in the workplace, but also in society. Thus, each workplace should promote a clear position regarding perpetrators of intimate partner violence among its employees by clearly establishing how far the action against a perpetrator of intimate partner violence will be taken, and making it mandatory for perpetrators of intimate partner violence to be enrolled in a batterers' intervention program.

¹⁰⁸ See *supra* Part II.

¹⁰⁹ Caplan & Plunkett, *supra* note 20.

C. Workplaces Must Establish Clear Policies That Indicate the Penalties of Being a Perpetrator of Intimate Partner Violence

In taking a stand against intimate partner violence, workplaces should establish well-defined policies to sanction perpetrators. By implementing well-defined policies, workers will be treated more equally. These policies should be shaped depending on the needs of the workplace, but all of them should clearly indicate the conduct that is prohibited by the company, and the specific penalties that an employee will receive if he or she is found to be a perpetrator of intimate partner violence. Once the policy is established, the workplace has the duty of applying the mandated penalties against a perpetrator fairly.

Policies that could be effective are those that discipline the employee-perpetrator gradually. Those penalties could be demotion, suspension, or a reduction in the perpetrator's paycheck.¹¹⁰ For example, the first time an employee is found to have inflicted violence on an intimate partner, the employee could be penalized with a short suspension, or a decrease in his paycheck. If more incidents of abuse occur, the perpetrator could then be let go. These policies should be announced to the employee when he or she is hired so that the employee is aware of the consequences of his or her actions from the beginning.

The NFL, for example, has moved towards implementing a clearer policy against perpetrators of intimate partner violence. After the Rice scandal, the NFL adjusted its policy on intimate partner violence in August 2014, and issued an updated Personal Conduct Policy in December of the same year.¹¹¹ For a first incident of intimate partner violence, NFL players now face a baseline suspension of six games without pay, with consideration given to mitigating and

¹¹⁰ LEE, *supra* note 12, at 51.

¹¹¹ McManus, *supra* note 83; See also NAT'L FOOTBALL LEAGUE, PERSONAL CONDUCT POLICY 1 (Dec., 2014) [hereinafter DEC. 2014 PERSONAL CONDUCT POLICY], <http://static.nfl.com/static/content/public/photo/2014/12/10/0ap3000000441637.pdf>.

aggravating factors.¹¹² Aggravating factors include, but are not limited to, a “prior violation of the Personal Conduct Policy, similar misconduct before joining the NFL, violence involving a weapon, choking, repeated striking.”¹¹³ For a second offense, suspension from the league is mandated.¹¹⁴ Although the policy is in its nascent stages and requires refining and polishing through experience, it is a positive step towards ensuring that all players receive a fairer treatment.

In some cases, the employee might have to be terminated immediately. In fact, some individuals advocate for a zero-tolerance approach that mandates immediate termination in high-profile cases. A few days after the NFL announced its new intimate partner violence policy, sixteen United States Senators requested that the NFL commissioner implement a “real zero-tolerance policy.”¹¹⁵ Other professional sports organizations, in light of the NFL’s scandal, such as the World Wrestling Entertaining (WWE) organization, have indeed moved towards such a zero-tolerance approach.¹¹⁶ The WWE policy indicates that upon an arrest for intimate partner violence, members will be suspended, and if convicted, immediate termination will occur.¹¹⁷

Nevertheless, zero-tolerance policies that mandate immediate termination upon a finding that an employee is a perpetrator of intimate partner violence must be approached carefully. Some victim’s advocates believe that such zero-tolerance policies do not take into account the complexities of intimate partner violence.¹¹⁸

¹¹² DEC. 2014 PERSONAL CONDUCT POLICY, *supra* note 111, at 6.

¹¹³ *Id.*

¹¹⁴ *Id.* at 7.

¹¹⁵ Aaron Wilson, *Sixteen Female Senators Urge Roger Goodell to Adopt Zero-Tolerance Policy Against Domestic Violence*, BALTIMORE SUN (Sept. 11, 2014), http://articles.baltimoresun.com/2014-09-11/sports/bal-sixteen-women-senators-urge-roger-goodell-to-adopt-zero-tolerance-policy-against-domestic-violence-20140911_1_nfl-player-roger-goodell-domestic-violence.

¹¹⁶ Marissa Payne, *Stephanie McMahon Announces Sweeping Change to WWE’s Domestic Violence Policy*, WASH. POST (Oct. 21, 2014), <http://www.washingtonpost.com/blogs/early-lead/wp/2014/10/21/stephanie-mcmahon-announces-sweeping-change-to-wwes-domestic-violence-policy/>.

¹¹⁷ *Id.*

¹¹⁸ Rick Maese, *NFL Players’ Wives Seek Role in Shaping League’s Domestic Violence Policy*, WASH. POST (Sept. 27, 2014),

Victims who fear that their partner will be fired could be less likely to report abuse. Victims might not report abuse because they do not want the perpetrator to lose his job, as victims are often financially dependent on their abusers.¹¹⁹ More importantly, abusers who are upset about losing a job might be more likely to attack the victim again, ultimately, increasing the risk of violence for a victim.¹²⁰ Thus, such policies should be handled with caution.

Workplaces should also establish a set of policies regarding misuse of company resources to abuse an intimate partner.¹²¹ First, the workplace should have a policy that indicates that employees may not use company resources to threaten, harass, or intimidate an intimate partner.¹²² Second, the workplace must indicate the penalties for those actions. By not taking action against a perpetrator who is using company resources to inflict violence on an intimate partner, the employer could be subject to liability if the abuse escalates to an actual assault.¹²³

D. Workplaces Should Mandate that Perpetrators of Intimate Partner Violence be Enrolled in BIP's

Workplaces should require that perpetrators attend a Batterer's Intervention Program (BIP) in the hopes that perpetrators will change their conduct. The conduct of the perpetrator does not stop when a victim leaves.¹²⁴ Most perpetrators abuse multiple partners.¹²⁵ Thus, besides helping the victim, changing the conduct of the perpetrator is a crucial step to ending this kind of violence. BIP's are "educational, therapeutic groups for intimate partner violence offenders."¹²⁶ Some

http://www.washingtonpost.com/sports/redskins/nfl-players-wives-seek-role-in-shaping-leagues-domestic-violence-policy/2014/09/27/dd73a608-45ac-11e4-8042-aaff1640082e_story.html.

¹¹⁹ Caplan & Plunkett, *supra* note 20.

¹²⁰ *Id.*

¹²¹ CAMBRIDGE PUB. HEALTH DEP'T, *supra* note 6, at 8.

¹²² *Id.*

¹²³ LEE, *supra* note 12, at 22.

¹²⁴ *Employees Who Batter*, CORP. ALLIANCE TO END PARTNER VIOLENCE, <http://www.caepv.org/getinfo/docdetail.php?docID=96&catID=7> (last visited Mar. 3, 2015).

¹²⁵ *Id.*

¹²⁶ EMILY F. ROTHMAN ET AL., WORLD HEALTH ORG., INTERVENING WITH PERPETRATORS OF INTIMATE PARTNER VIOLENCE: A GLOBAL PERSPECTIVE 2 (2003),

organizations that fight against intimate partner violence believe that violence is a learned and chosen behavior.¹²⁷ Mental illness and poor self-control are not the causes of intimate partner violence.¹²⁸ In fact, “male children who witness the abuse of mothers by fathers are more likely to become men who batter in adulthood than those male children from homes free of violence.”¹²⁹ In other words, abusers are not born, but instead have learned to be abusive through their upbringing and environment. If violence is a learned behavior, it is also a behavior that can be “unlearned” when perpetrators take responsibility for their actions.¹³⁰

Such programs have the objective of changing the behavior of abusers by challenging their belief system.¹³¹ Different models for BIPs exist nationwide, including programs for both male and female perpetrators.¹³² As of 2012, forty-six states in the United States had certification standards or practice guidelines for these programs.¹³³ Abusers usually attend a BIP by order of the legal system, but they can also attend voluntarily.¹³⁴

One of the limitations of BIP’s is post-program outcomes. Controversy over their effectiveness exists, but studies have concluded that BIP’s “are at least modestly successful at preventing further abuse

available at

http://www.who.int/violence_injury_prevention/resources/publications/en/intervenin_g_full.pdf.

¹²⁷ *Domestic Violence is Complex*, DOMESTIC ABUSE PROJECT,

<http://www.domesticabuseproject.com/get-educated/dynamics-of-domestic-abuse/> (last visited Mar. 3, 2015).

¹²⁸ *Myths and Realities of Domestic Abuse*, EMERGE! (July 2008),

http://www.emergecenter.org/pdfs/myths_and_realities_of_domestic_abuse.pdf.

¹²⁹ *The Effects of DV on Children*, ALA. COALITION AGAINST DOMESTIC VIOLENCE, <http://www.acadv.org/children.html> (last visited Mar. 10, 2015) (citing Rosenbaum & O’Leary, *Children: The Unintended Victims of Marital Violence*, 51 AM. J. OF ORTHOPSYCHIATRY 692 (1981)).

¹³⁰ *Domestic Violence 101*, BUILDING FUTURES,

<http://www.bfwc.org/pdf/DV%20101.pdf> (last visited Mar. 10, 2015).

¹³¹ Lisa Nitch & Jesús Rivera, House of Ruth, HRM Comprehensive Intimate Partner Violence Training 4 (Mar. 5, 2012).

¹³² *Id.* at 5–6.

¹³³ *Id.* at 8.

¹³⁴ *Batterers’ Intervention Programs*, STOP VIOLENCE AGAINST WOMEN (OCT. 9, 2008), http://www.stopvaw.org/batterers_intervention_programs.

by abusers.”¹³⁵ One study found, for example, that between 50% and 90% of abusers in the United States and the United Kingdom who completed a BIP remained non-violent during a follow-up period of six months to three years.¹³⁶ However, others have indicated that between 22% and 42% of abusers do not complete their programs.¹³⁷ By mandating and monitoring employee completion, the workplace could help ensure that a perpetrator finishes and receives the full benefits of attending such programs.

V. CONCLUSION

Violence against an intimate partner affects millions of individuals in the United States every year. This kind of violence, however, extends beyond the home, and frequently seeps into the workplace. And while some states and workplaces have pursued policies that aid victims, the conduct of the perpetrator has largely been ignored. Because it affects the workplace directly, state-level actors as well as business leaders have both a moral and an economic imperative to take deliberate action against the perpetrators of intimate partner violence in order to truly halt its varied repercussions.

¹³⁵ ROTHMAN ET AL., *supra* note 126, at 3.

¹³⁶ *Id.*

¹³⁷ *Id.*