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# COMPARATIVE RESEARCH ON WORKPLACE LAWS TO COMBAT DOMESTIC VIOLENCE

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## ABOUT

### LED BY HER

Led By HER aims to empower women who have experienced any form of violence by supporting and accompanying them in their entrepreneurial projects. We serve women of any age, socio-demographic background, or nationality who have suffered from violence and who seek to rebuild their lives around a professional project. Our programme supports their entrepreneurial initiatives and projects through courses with business school instructors and company experts, individual mentoring and coaching, as well as events and networking.

### KERING FOUNDATION

Worldwide, 1 in 3 women is or will be a victim of violence during her lifetime. Since 2008, the Kering Foundation combats this violence that affects all cultures and all social classes. To maximize its impact, the Foundation works hand in hand with a limited number of local partners in the three main regions where the Group operates: the American continent, Western Europe and Asia. The Foundation supports local survivor-centered organizations that provide comprehensive services to women, and, since 2018, has begun working with younger generations, particularly young men and boys, to combat violence against women through prevention programs. The Foundation also seeks to change behaviors within Kering and in society in general. It offers training sessions on domestic violence for Kering employees and created, in 2018, alongside the FACE Foundation, "One in Three Women", the first European network of companies engaged against gender-based violence. The Foundation also organizes international awareness campaigns, all the while involving Kering's 35,000 employees worldwide.

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## ACKNOWLEDGEMENTS

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## FOREWORD

Recent data collated by UN Women shows that since the outbreak of COVID-19, violence against women and girls, and particularly domestic violence, has intensified. Several countries have reported dramatic increases, for example France has reported a 30% rise in incidents since March (UN Women, 2020).

Although domestic violence existed long before the pandemic, the significant increase in cases worldwide has shone a light on the severity of the problem and the gaps in protection for those who are experiencing this abuse.

The consequences of domestic violence are severe, far-reaching and can leave physical, emotional and psychological scars. Domestic violence impacts individuals in multiple ways; and with the average person spending around 90,000 hours in employment over a lifetime, it is unsurprising that this often hidden and shaming abuse can destabilise a victim's performance at work and endanger their livelihood and economic empowerment. Enduring abuse at home can disrupt attendance, work fulfilment, productivity, peer relationships, career and salary progression. It is time that domestic violence is recognised as needing a collective approach, in which employers, lawmakers and civil society work together to combat the crisis and support the victims.

Unfortunately, as domestic violence typically occurs between two individuals behind closed doors, it is commonly recognised as a 'private matter' and has therefore fallen outside the scope of legal frameworks governing the workplace. However, adopting the right laws, regulations and workplace policies can help to protect and support victims.

This research highlights the key workplace laws and obligations that exist to support and protect victims of such abuse in six jurisdictions: the UK, France, Italy, Australia, New Zealand and Canada (Ontario). As well as providing a clear overview of the legal mechanisms that currently exist, it also highlights the opportunities for legal reform. Our hope is that this guide can be used as a powerful tool to urge companies to adopt better workplace policies and to advocate for improved laws that recognise and, crucially, protect victims of domestic violence.

Core to the work of the Thomson Reuters Foundation is promoting and protecting human rights and fostering more inclusive economies. Domestic violence is a violation of human rights and combatting the issue is key to building more equitable, participatory and sustainable economies. The role of businesses and governments in helping to address and mitigate domestic violence is critical.

We are proud to have supported Led By HER and the Kering Foundation to develop this research through our global pro bono legal network TrustLaw, and we thank Dentons and the in-house legal counsel of Thomson Reuters for their outstanding pro bono legal contributions to this project.



Giulia Corinaldi  
Director of Inclusive Economies  
Thomson Reuters Foundation



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# INTRODUCTION

## DOMESTIC VIOLENCE: AFFECTING WOMEN AND THEIR WORKPLACES

Today, 1 out of 3 women is or will be a victim of some form of intimate partner violence in their lifetime (WHO 2020). Although this violence takes place in the private sphere, it has an impact on the professional lives of the woman survivor and her colleagues.

Worldwide an estimated 2 out of 10 full-time female employees are currently victims of domestic violence<sup>1</sup>, and approximately 1 in 3 female employees report that they have experienced domestic violence by an intimate partner during their working lives (ILO/UN Women 2019).

The social and economic costs of domestic violence are significant. Research has started to reveal the direct impact that domestic violence has on the workplace. The One In Three Women network, which the Kering Foundation co-founded in 2018 alongside the Fondation FACE, released the first company study of its kind in Europe,<sup>1</sup> analyzing employees' experiences of domestic violence and its impacts on their companies. Its findings confirmed that domestic violence affects employee survivors, as well as their co-workers and the companies that employ them in multiple ways. According to the WHO (2020), women may suffer isolation, inability to work, loss of wages, lack of participation in regular activities and limited ability to care for themselves and their children. Domestic violence can hinder the safety and security of employee survivors, co-workers, clients, customers, contractors and anyone else who comes into the workplace. It also has an impact on employees' productivity and well-being: affecting their job performance due to what is happening at home.

The adoption in June 2019 of the new International Labour Organisation (ILO) Convention on eliminating violence and harassment in the world of work (C.190) and the accompanying Recommendation (R.206) places new responsibilities on governments and on employers to implement measures to prevent and address through social dialogue all forms of violence and harassment, including domestic violence when it affects the workplace.

Some countries have already put into place state-level legislation to protect their employees who have suffered from domestic violence. Some companies have also developed protection measures, going beyond the requirements of current legislation. Today it is important that all countries and companies address this issue so that women survivors benefit from equal protection, regardless of their employer.

Now, in the midst of the covid-19 pandemic and the consequences of nation-wide lockdowns, it is more urgent than ever to act on this issue. According to the WHO (2020), stress, the disruption of social and protective networks, loss of income and decreased access to services all can exacerbate the risk of violence for women. We have seen an increase in domestic violence cases around the world. The UN reported a "horrifying global surge of domestic violence" with the number of women calling helplines as much as doubling in certain countries. This is also confirmed by Google Trends data, showing a +143% increase in queries on the search engine related to domestic violence cases worldwide (data at 2 May 2020). As a result an increasing number of workplaces will feel the impacts as women return to work. This is the time to put into place needed protective measures for all survivors of domestic violence.

The following report by Led By HER and the Kering Foundation compares the legal framework that certain countries--Italy, the United Kingdom England and Wales, France, Australia, New Zealand, and Ontario Canada--have put in place to support women victims of domestic violence in the workplace. The report was compiled with the support of legal teams from Dentons and Thomson Reuters, and TrustLaw, the Thomson Reuters Foundation's global legal pro bono network.

Our hope is that this report inspires best practices at the national level but also in individual companies, to implement effective measures to support victims of domestic abuse. Making the workplace a safe and supportive environment for women survivors is our shared responsibility.

Céline Bonnaire  
Executive Director  
Kering Foundation

Chiara Condi  
President and Founder  
Led by HER

## EXECUTIVE SUMMARY

According to the World Health Organization, almost one third (30%) of women worldwide who have been in a relationship report having experienced some form of physical or sexual violence from an intimate partner. The problem is widespread in both developed and developing countries. Intimate partner violence (also known as domestic violence) is defined by the United Nations as “behaviour by an intimate partner or ex-partner that causes physical, sexual or psychological harm, including physical aggression, sexual coercion, psychological abuse and controlling behaviours.”

Domestic violence has a hugely detrimental impact on the personal sphere and responsible employers recognise that they can play a positive role in protecting the physical and emotional well-being of their employees. Although employers are not responsible for domestic violence that occurs outside the workplace, they can be very helpful by mitigating its effects through the workplace. Moreover, domestic violence also carries a significant cost to the economy and for employers, amounting to a toll of billions of dollars in many countries. Domestic violence can cause career interruption, absenteeism, and many other problems at work. Those affected often have less capacity to carry out their job effectively or to reach their full potential. They may risk losing their jobs and can experience difficulties reintegrating into the workplace following an absence. All of this, in turn, can exacerbate inequality and vulnerability. Women who experience domestic violence are employed in higher numbers in casual and part-time work, and their earnings are up to 60 per cent lower, compared to women who do not experience such violence.

It is critical that lawmakers and employers act to protect and support employees who are affected by domestic violence. Some countries are beginning to take steps through national legislation, but there is much more work to be done. It is important for this legislation to be adopted at the national level rather than in company policies so that all women who suffer from domestic violence benefit from equal protection, regardless of the company they work for.

To support efforts aimed at introducing national legislation in this sphere, this report comparatively explores practices in workplace laws to protect and support victims of domestic violence in six jurisdictions: Australia, New Zealand, Canada - Ontario, United Kingdom - England and Wales, Italy and

France. In relation to each jurisdiction, the research sought to address two questions:

1. *What legal mechanisms exist to protect or support workers<sup>2</sup> in relation to family and domestic violence?*
2. *Do employers have a positive obligation to take steps to prevent domestic violence from occurring in the workplace (i.e. where a worker may be exposed to physical injury occurring in the workplace as a result of domestic or family violence) and/or to raise awareness about the risks and warning signs of domestic violence?*

In part 1 of the report, drawing on six national studies (included at Annex 1), we find that across the studied jurisdictions, multiple legal mechanisms do exist to support workers in relation to domestic and family violence. The standard of legal protection is generally higher in the non-European jurisdictions studied compared to the European jurisdictions. From flexible working arrangements to paid or unpaid leave, measures taken across the different jurisdictions are often similar in nature, but their conditions differ from one country to another. Laws in Australia, New Zealand, Canada and Italy provide specific mechanisms to protect workers experiencing domestic and family violence. The protections across these jurisdictions are similar, including, for example, flexible working arrangements and paid or unpaid leave in line with the International Labour Organisation Convention (No. 190) concerning the elimination of violence and harassment in the world of work.<sup>3</sup> Some jurisdictions offer no such legal protections to workers experiencing domestic and family violence (UK and France). However, some individual employers in these jurisdictions have implemented policies offering workers similar protections.

More rarely, protections against discrimination or against unfair dismissal exist (as in New Zealand and Australia). In general, where protective measures do exist in law, their scope is often limited to employees, excluding contractors, consultants or volunteers (although there are some exceptions in Canada - Ontario, New Zealand and Italy).

The report also reveals that, out of the studied jurisdictions, only one (Canada - Ontario) had legislated to provide for a positive obligation on employers to take steps to prevent domestic (and family) violence from occurring

in the workplace and raise awareness about the risks and warning signs of domestic violence (outside of the workplace). While not imposing positive obligations on employers, Australia, New Zealand and Italy provide legal mechanisms to protect workers experiencing domestic and family violence, recognising such violence impacts the “world of work”. Further, Australia, New Zealand, UK, France and Italy have enacted legislation aimed at protecting the health and safety of workers generally. These mechanisms are potentially applicable in circumstances of domestic and family violence. However, the national reports suggest that they are untested in relation to domestic violence.

In part 2 of the report, a “gap analysis” is presented, exploring the current legal protections for workers who have suffered domestic violence in the UK, Italy and France in comparison to the legal protections existing in Australia, New Zealand and Canada - Ontario. A brief summary of the International Labour Organisation (ILO) framework addressing violence against women in the world of work is set out. From the ILO Discrimination Convention (No. 111) and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy to the recently adopted ILO Convention (No. 190) on the elimination of violence and harassment in the world of work,<sup>4</sup> the ILO has articulated a positive obligation on States to “take appropriate measures to recognize the effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work.”<sup>5</sup> Recommendation 206 further elaborates on the provisions of the ILO Convention by establishing a list of possible measures (from within the world of work) to mitigate the effect of domestic violence.

Thereafter the gap analysis highlights “gaps” in each of the European legal frameworks (with respect to legal protections for workers who have suffered domestic and family violence) relative to the legal protections within the non-European jurisdictions. While Italian law provides for paid leave and part-time work for workers who have suffered domestic violence, neither French nor English law recognize domestic violence as a “world of work” issue. Various possible reforms to all three legal frameworks are suggested including: establishing a specific statutory obligation on employers to protect workers who are victims of domestic violence; establishing statutory leave for victims of domestic and family violence; establishing a statutory right to flexible working; mandating organizational domestic violence policies; mandating reporting obligations; and ensuring protection from unfair dismissal/ unlawful termination.

## PART 1: WORKPLACE LAWS TO COMBAT DOMESTIC VIOLENCE: A COMPARATIVE ANALYSIS

This comparative analysis summarises the legal mechanisms in a number of countries to protect or support workers in relation to family and domestic violence.

Generally, where legal mechanisms to protect workers exist, their source is federal/national legislation (that is, applying equally across the jurisdiction) regulating workers employed by an employer (for example in Canada, New Zealand, Australia and Italy). An exception is legislation specific to employees in the province of Ontario, Canada. References to Canada in this report are references to the laws in the province of Ontario, unless otherwise stated.

### SECTION 1. Comparison of legal mechanisms to protect or support workers in relation to family and domestic violence

Laws in Australia, New Zealand, Canada and Italy provide specific mechanisms to protect workers experiencing domestic and family violence. The protections across these jurisdictions are similar, including, for example, flexible working arrangements and paid or unpaid leave in line with the ILO Convention (No.190) concerning the elimination of violence and harassment in the world of work - 21 June 2019.

#### 1. Types of protections offered to workers in relation to family and domestic violence

- The ability for workers to take leave when they experience domestic, family or sexual violence (Canada, New Zealand, Australia and Italy).<sup>6</sup> This can be in the form of paid leave (Canada, New Zealand and Italy) or unpaid leave (Australia). Some jurisdictions (Canada and New Zealand) require a minimum service period before an employee can take family or domestic violence leave (Canada - 13 weeks or 3 months continuous service depending on the type of leave taken, New Zealand - 6 months of continuous service).



- Flexible working arrangements for workers experiencing domestic and family violence (Canada, New Zealand).<sup>7</sup>
- Protection from discrimination (New Zealand), giving sufferers of domestic violence similar protections to those facing workplace discrimination on other protected grounds such as race or gender.<sup>8</sup>
- An obligation on employers to take reasonable precaution to protect workers (Canada).<sup>9</sup> This protection is described more fully in section 2 of this report.

Offering leave and flexible working arrangements is in line with recommendation 206 of the ILO Convention. Some jurisdictions offer no such legal protections to workers experiencing domestic and family violence (UK and France). While individual employers in these jurisdictions have implemented policies offering workers similar protections, there is limited legislative coverage.

## 2. To whom are these protections offered?

Where the legal mechanisms described above exist, they generally extend only to employees, who are people hired by the employer, and do not apply to contractors, consultants or volunteers. The exceptions are:

- Canada, where the Ontario *Occupational Health and Safety Act 1990 (OHSA)* requires employers to take reasonable precautions to protect workers, which extends to contractors and consultants. These protections are set out in section 2 of this report.
- Italy and New Zealand, where the protections extend to domestic or homeworkers. In New Zealand, a homemaker obtains protections by virtue of the fact that a person is an employer if they employ a homemaker.<sup>10</sup> Autonomous and domestic workers in Italy are entitled to abstain from work where they are included in protection programs relating to domestic violence.<sup>11</sup> These protections are not available to similar workers in other jurisdictions.

## SECTION 2. Comparison of the positive obligations to take steps to prevent domestic violence from occurring in the workplace (i.e. where a worker may be exposed to physical injury occurring in the workplace as a result of domestic or family violence) and/or to raise awareness about the risks and warning signs of domestic violence

The national reports for Australia, Canada, France, Italy, New Zealand and the UK indicate that Canada is the only jurisdiction that has implemented positive obligations on employers to take steps to prevent domestic violence from occurring in the workplace and raise awareness about the risks and warning signs of domestic violence. This is illustrated by section 32.0.4 of the OHSA Ontario.

While not imposing positive obligations on employers, Australia, New Zealand and Italy provide legal mechanisms to protect workers experiencing domestic and family violence, recognising such violence impacts the “world of work”. Further, Australia, New Zealand, UK, France and Italy have enacted legislation aimed at protecting the health and rights of workers generally. These mechanisms are potentially applicable in circumstances of domestic and family violence. However, based on each national report, they are untested in relation to domestic violence. As such, this section of the comparative analysis focuses primarily on the obligations that exist in Canada.

### 1. Positive obligations to prevent domestic and family violence in the workplace and raise awareness about the risks and warning signs of domestic violence

In Canada, employers have a positive obligation to prevent domestic violence pursuant to section 32.0.4 of the OHSA Ontario. This provision requires “employers to protect workers when they become *reasonably* aware of any domestic violence or the risk of same” [emphasis added]. This obligation requires employers to take *every reasonable precaution* to protect workers if they are aware, or ought to be aware of domestic violence.<sup>12</sup> Determining whether precautions are reasonable depends upon the particular circumstances of each case. Extensive actions may be required, such as:

- specific measures and procedures to protect a worker (for example, summoning immediate assistance and reporting violent incidents);
- a safety plan (for example, escorts between workplace and vehicle, priority parking closer to the entrance of a worksite, and screening calls and emails for a worker);
- reasonable modification of work duties and flexible accommodations of work schedules; and
- relocating a worker to another area of the workplace.<sup>13</sup>

These employer obligations are in addition to the requirement to create a workplace violence and harassment policy and program, and to provide domestic and violence leave to employees under section 49.7 of the *Employment Standards Act 2000* and section 206.7(1) of the *Canada Labour Code*. Workplace violence and harassment policies must be reviewed annually, be posted in a conspicuous place in the workplace and signed by the highest level of management at the workplace.<sup>14</sup>

### 2. Sanctions

In Canada, if an employer contravenes or fails to comply with the requirements of section 32.0.4 of the OHSA Ontario they may be liable for monetary penalties and/or imprisonment. An individual in breach of section 32.0.4 is guilty of an offence and on conviction is liable to a fine of up to \$100,000 or imprisonment for up to 12 months, or both.<sup>15</sup> If a corporation is convicted under the same provision, the maximum fine is \$1,500,000.<sup>15</sup>

### 3. General obligations to protect the rights, health and safety of employees

While only Canada has implemented positive obligations on employers specific to domestic violence, laws in Australia, New Zealand, UK, France and Italy place general obligations on employers aimed at protecting the health and rights of workers. These mechanisms are potentially applicable in circumstances of domestic and family violence and can be grouped as follows:

- Obligations of good faith

In New Zealand, employers are under an obligation of good faith pursuant to the *Employment Relationships Act 2000*. This obligation may extend to communications in relation to domestic and family violence which may impact an employee’s work.<sup>17</sup>

- General protections, unfair dismissal and unlawful termination

In Australia, the *Fair Work Act 2009* provides that employers shall protect workplace rights and protect employees from unfair dismissal and unlawful termination. As domestic violence leave is a recently implemented workplace right, these provisions extend a positive obligation to protecting employees from domestic violence.<sup>17</sup> UK legislation also provides employees with protection from unfair dismissal. However, there is no specific legislative protection for domestic abuse victims in circumstances of dismissal from employment.<sup>19</sup>

- Reporting requirements

Australian non-public sector employers with 100 or more employees must submit an annual report to the Workplace Gender Equality Agency. This report includes a section that requires employers to outline how domestic and family violence issues are addressed in the workplace. Whilst the implementation of domestic and family violence policies is not a positive obligation on relevant employers (unlike that imposed in Canada), the reporting process aims to encourage positive action in relation to domestic and family violence.<sup>20</sup>

- Duty of care

The laws of Australia, New Zealand, France, Italy, and the UK impose upon employers a duty of care to employees in relation to their health and safety at work.<sup>21</sup> The Australian Law Reform Commission<sup>22</sup> and WorkSafe in New Zealand<sup>23</sup> have recognised that risks posed to the health and safety of employees at work may include risks posed by domestic and family violence. However, in France<sup>24</sup> and Italy<sup>25</sup> there is doubt as to whether this duty extends to acts of violence committed outside the workplace and therefore may do little to impose obligations on employers to protect employees from domestic and family violence. Various governmental bodies in the UK have recommended that employers put in place specific family and domestic violence policies to uphold the health and safety duties owed by employers to employees in respect of domestic abuse survivors. However, these measures are not expressly required by law.<sup>26</sup>

In Canada, employers owe a duty of care to persons to whom they direct work or require to perform a task. This duty is to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or those tasks. It is possible that an employer could face a criminal conviction pursuant to section 217.1 of the *Criminal Code* in the event that a workplace violence issue led to the death of a worker (including where the cause is domestic violence).<sup>27</sup>

## PART 2. GAP ANALYSIS

The below gap analyses (for Italy, France and the United Kingdom – England and Wales i.e. the “base frameworks”) examine legal protections for workers who have suffered domestic violence (both within and beyond the workplace) in comparison to the legal frameworks of Canada, Australia, New Zealand (and Italy, where relevant) (i.e. the “comparator frameworks” - these 4 countries having adopted workplace laws to protect victims of domestic violence) and the ILO Convention on the elimination of violence and harassment. The analysis is divided into three sections: (1) the ILO conventions and recommendations (2) the current legal frameworks and (3) possible reforms.

### SECTION 1. Summary of the International Labour Organization Conventions and Recommendations

The ILO Discrimination Convention (No. 111)<sup>28</sup> adopted in 1958 is an essential treaty providing a framework to address sexual harassment.<sup>28</sup>

It covers sexual harassment, understood by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) as a form of discrimination based on sex. In its general observation from 2003, the CEACR “urges governments to take appropriate measures to prohibit sexual harassment in employment and occupation” and notes that sexual harassment “undermines equality at work by calling into question integrity and dignity and the well-being of workers [and]...damages the enterprise by weakening the bases upon which work relationships are built and impairing productivity.”

In 2012 the CEACR clarified that ‘the scope of the protection against sexual harassment should cover all employees, male and female, with respect not only to employment and occupation, but also vocational education and training, access to employment and conditions of employment’.

Furthermore, other ILO standards address certain elements or forms of violence and harassment against women, particularly where this affects specific groups of workers, such as: the Indigenous and Tribal Peoples Convention, 1989 (No. 169); the Maternity Protection Convention (No. 183) and Recommendation

(No. 191), 2000; the HIV and AIDS Recommendation, 2010 (No. 200); and the Domestic Workers Convention, 2011 (No. 189).

It follows from the above that the ILO framework on violence and harassment was, until recently, only addressed to specific groups in specific contexts through various instruments. Moreover, as violence in the world of work was only “partially” addressed in the Discrimination Convention (No.111), the question of the employer’s responsibility toward domestic violence arose. Experts recognized that, although employers were not responsible for domestic violence that occurred outside the workplace, they could be very helpful in mitigating its effects through the workplace. The ILO consequently carried out a standard-setting process with a view to the adoption of a Convention supplemented by a Recommendation, specifically addressing violence and harassment in the world of work.<sup>30</sup> The ILO also released a handbook addressing violence against women in the workplace.<sup>31</sup>

This new convention specifically addressing violence against women in the world of work was adopted in June 2019: ILO Convention (No. 190) *concerning the elimination of violence and harassment in the world of work* – 21 June 2019.<sup>32</sup> The Convention will come into force 12 months after 2 member States have ratified it. Nevertheless, the Convention will have an effect even before it comes into force as member states are required to bring the Convention to the attention of national authorities.<sup>33</sup>

The decision-making process was led by governments, employers and employees. Inevitably, the interests of these groups were sometimes divergent and some resistant, mainly from employers and to a lesser extent from governments, in relation to the specific situation of domestic violence. During the elaboration of the Convention, many employers and some governments could not envisage how they were responsible in these specific situations and stated that they had difficulty endorsing these aspects.<sup>34</sup>

However, some consensus has been reached. Already in the preamble of the Convention reference is made to domestic violence: “Noting that domestic violence can affect employment, productivity and health and safety, and that governments, employers’ and workers’ organizations and labour market institutions can help, as part of other measures, to recognize, respond to and address the impacts of domestic violence.” Thus, recognizing domestic violence as one of the forms of violence against which workers should be protected.

As a preliminary remark, the notion of “world of work” should be interpreted broadly. Several ILO instruments consider the notion of the workplace to go beyond the physical place where work is done to include situations arising out of, or in the course or connection to, employment including commuting to and from work.<sup>35</sup>

As for the scope of application of this convention:

Article 2.1 provides that the convention protects “workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer.”

Under this provision, every worker is deemed to be protected, including the most vulnerable such as precarious workers.

Article 2.2 provides that “the Convention applies to all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas.”

As for the content of the positive obligation imposed on States, Article 10 (f) requires “Each Member [to] take appropriate measures to recognize the effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work.”<sup>37</sup>

ILO Recommendation 206 *concerning the elimination of violence and harassment in the world of work* – 21 June 2019 further details the provisions of the ILO Convention and more specifically sets out standards for how governments should mitigate the effects of domestic violence in the world of work.

The Recommendation 206 reiterates in paragraph 4, that members should take appropriate measures to: (a) [...], to the extent possible, mitigating the impact of domestic violence in the world of work.

Under the heading “Enforcement, Remedies and Assistance” paragraph 18, Recommendation 206 specifies the seven appropriate measures to mitigate the impacts of domestic violence in the world of work referred to in Article 10(f) of the Convention could include:

- (a) leave for victims of domestic violence;
- (b) flexible work arrangements and protection for victims of domestic violence;

- (c) temporary protection against dismissal for victims of domestic violence, as appropriate, except on grounds unrelated to domestic violence and its consequences;
- (d) the inclusion of domestic violence in workplace risk assessments;
- (e) a referral system to public mitigation measures for domestic violence, where they exist; and
- (f) awareness-raising about the effects of domestic violence.

The 2018 reports of the Standard-Setting Committee, “Resolutions and proposed conclusions submitted for adoption by the conference” seemed to establish more protective measures. Firstly, the 2018 report provided for “paid” leave for victims of domestic violence. Secondly, another protective measure allowing for temporary or “permanent transfers of victims of domestic violence to other workplaces was included in the 2018 report.

Finally, it must be noted that the Recommendation 206 is not legally binding but provides guidelines on how the Convention could be applied.

Other international instruments exist to protect women’s rights in the world of work, such as the 2017 ILO non-binding instrument, the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration).<sup>38</sup>

The MNE Declaration has been adopted by Governments and employers’ and workers’ organizations in 1977 and revised in 2017. It provides guidance to multinationals and other enterprises on respecting workers’ rights and contributing more broadly to economic and social development, as well as guidance to governments on creating an enabling environment to encourage all companies to do so. It forms the framework for the ILO’s work on corporate social responsibility, containing principles derived mainly from international labour standards, and incorporates the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Enterprises are encouraged to help promote equality of opportunity and treatment in employment and occupation.<sup>39</sup> The Convention stipulates that “Governments should pursue policies designed to promote equality of opportunity and treatment in employment, with a view to eliminating any discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin”<sup>40</sup> and, should progressively achieve a safe and healthy working environment, which includes “steps to combat workplace violence against women and men and attention to building safety.”<sup>41</sup>

## SECTION 2. Current national legal frameworks

### 1. Italy

In Italy, from a statutory point of view, the notion of domestic violence is relatively recent. Since 2013, when the Istanbul Convention (2011) on preventing and combating violence against women and domestic violence was implemented, Italy has introduced a series of preventive measures to combat this type of violence. However, only a few regulatory provisions protect or support employees who are victims of domestic violence.

The main protection afforded to workers in relation to family and domestic violence is the possibility to take up to three months' paid leave when a worker has been subjected to such violence. In this regard, female victims of domestic violence, included in protection programs related to gender-based violence, have the right to a paid leave of absence.<sup>42</sup> This protection applies to all employees, both in the private and public sector, and is also extended to self-employed and autonomous workers included in specific protection programs. The law does not only cover employees hired with an open-ended and full-time employment contract, but also part-time employees and employees hired with fixed-term employment contracts. Therefore, the paid leave extends also to people in more precarious employment relationships.

In addition, to better protect employees who are victims of domestic violence, Italian law provides that these workers are entitled to have their full-time employment relationships converted into part-time employment, provided that there are available job positions within the company's workforce. The part-time employment relationship must be converted back into a full-time employment relationship at the request of the employee.

This kind of working arrangement and the ability for workers to take paid leave when they experience domestic violence are currently the only forms of protection provided for under Italian law.

In terms of broader obligations on employers to protect workers, Italian law provides for regulations under which workers have the right to a safe workplace and employers are under a duty to consider and minimize actual and potential risks to their employees' physical and mental health<sup>43</sup>. However, there is no specific regulation applicable to the protection or support of workers who are victims of domestic violence and the question of whether the

law positively obliges employers to take specific action in relation to domestic violence has unfortunately not been tested in case law. Italian law does not provide protection against unfair dismissal either.

### 2. France

The current legal framework in France does not recognize domestic violence as a "world of work" issue. Consequently, no legal mechanisms exist to support employee victims of domestic violence nor are there any obligations on the employer to take steps to prevent domestic violence and support employees affected by it. Under French employment law, preventive measures must be put in place by the employer against certain types of violence. However, these measures are only applicable to victims of certain types of violence such as moral harassment, sexual harassment, and sexist behavior. These measures are only applicable if relevant acts are committed "at the workplace". Inevitably, the law does not address violence outside the company but rather in the "world of work" in the strict sense. As a consequence, a victim of domestic violence which is, most of the time, committed in the ambit of private life cannot benefit from these preventive measures.

French employment law also imposes on the employer a duty to efficiently preserve the health and security of its employees<sup>44</sup>. The Court (*Cour de Cassation*) has held that no exoneration from the safety obligation could be granted on the basis that the act was committed by a third person.<sup>45</sup> However, this ruling seems to be applicable only in the scope of the workplace therefore excluding acts of domestic violence often committed outside the company.

The only successful attempt to take into account domestic violence as a world of work issue relates to the very specific situation of dismissal where the victim and the perpetrator of the domestic violence acts were employees of the same company. For example, the Court (*Cour de Cassation*) held that dismissal can occur if the employee's behavior has created serious disturbance to the company<sup>46</sup> or when the acts were committed near the company.<sup>47</sup>

Therefore, the jurisprudence considers the issue of domestic violence sporadically and only when there is a close link with the world of work.

French employment law does not require employers to create a workplace violence and harassment policy and program. However, some French companies have adopted and implemented policies related to domestic violence



protection in the workplace. Other measures present in some jurisdictions, such as temporary protection against dismissal or from discrimination and reporting obligations, have not been introduced in French law either.

### 3. England and Wales

English law does not recognize domestic violence as a “world of work” issue. Consequently, no legal mechanisms exist to support employee victims of domestic violence. No statutory provisions on domestic violence leave or flexible working arrangements have been implemented under English law.

English law recognizes no specific obligation on employers to protect victims of domestic violence. However, The *UK’s Health and Safety at Work Act 1974* states that employers have a duty of care to consider and minimise actual and potential risks to employees’ physical and mental health so far as reasonably practicable. Employers must prepare a written health and safety policy and (under the Management of Health and Safety at Work Regulations 1992) they must consider risks to employees and ensure these are minimised. However, the application of these provisions to domestic violence has not been fully considered in policy discussions or case law.

English law does not provide for the mandatory adoption of a written policy to prevent and mitigate domestic violence in the workplace. However, many British companies have introduced such policies. Other measures present in some jurisdictions, such as temporary protection against dismissal or from discrimination and reporting obligations, have not been introduced in English law either.

## SECTION 3. Possible reforms

This section of the analysis considers the legal mechanisms in each of the comparator framework jurisdictions that protect workers who have experienced domestic violence. These are: the worker’s rights on revealing the abuse to their employer; entitlement to domestic violence leave; access to flexible working arrangements; and general obligations to protect workers. Possible reforms within the base frameworks are suggested.

### 1. Workers’ rights on revealing domestic violence

In Ontario, the OHSA Ontario section 32.0.4 requires employers to take any reasonable precaution to protect workers experiencing domestic violence. This may include a safety plan, flexible working arrangements (both discussed further below), directing the worker to community resources, and issuing trespass warnings to the perpetrator (whether s/he is a fellow employee or not).<sup>48</sup> The express requirement to take reasonable action to protect employees is unique to Ontario among the jurisdictions under discussion.

#### Possible reforms

The ILO Convention (No. 190) imposes a positive obligation on States to “take appropriate measures to recognize the effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work.”<sup>49</sup> Making the workplace as safe as possible and ensuring that the employee has somewhere they feel secure (especially when revealing domestic violence) is critical. The steps taken by the employer may be crucial first steps in helping the worker change their long-term situation. Employees may also feel more comfortable requesting specific measures if their employers are under a legal obligation to take reasonable action.

Neither the UK, Italy nor France have legislation imposing positive duties upon employers that specifically address domestic and family violence.

Measures that could be considered in each of those jurisdictions include **establishing a specific statutory obligation on employers to protect workers who are victims of domestic violence**. As mentioned, this may include a safety plan (e.g. escorts between workplace and vehicle, priority parking closer to the entrance of a worksite and screening calls and emails for the victim), flexible working arrangements (working from different office in another geographical location, working part-time or working from home), directing the worker to community resources (e.g. national, regional or local programs for victims of domestic violence), taking security precautions (e.g. summoning immediate assistance for the worker or relocating the worker to another area in the workplace and/or issuing trespass letters to the perpetrator), including domestic violence as part of the workplace risk assessment.

Adopting some of the abovementioned measures to protect employees who are victims of domestic violence would bring the relevant domestic legislation more in line with the principles established by the ILO Convention (No. 190) and ILO Recommendation 206.

### 2. Leave

All of the jurisdictions under discussion have specific statutory provisions on domestic violence leave other than England, Wales and France. The ILO Convention (No. 190) also identifies leave as one of the appropriate measures to mitigate the impact of domestic violence on employees.<sup>50</sup>

Whilst domestic violence leave in Italy<sup>51</sup> and New Zealand<sup>52</sup> is fully paid, Ontarian employees are paid for up to five days (the rest is unpaid).<sup>53</sup> Australian leave is unpaid.<sup>54</sup> It is likely that a reasonable proportion of women would be economically restricted from taking unpaid leave – particularly if they had also been victims of economic abuse. If paid leave was financially unviable for UK and French companies, access to statutory payments may facilitate greater uptake of entitlement to unpaid leave.

The jurisdictions’ provisions on the length of leave vary considerably. The Italian provisions are particularly generous – employees can take up to three months paid leave over a period of three years.<sup>55</sup> Ontarian provisions permit up to 10 days per year of leave,<sup>56</sup> and New Zealand employees must have a minimum of 10 days leave<sup>57</sup> (i.e. employers can contractually agree a longer period). The Australian provisions are more restrictive (up to five days, although employers can agree to an extended period in individual cases).<sup>58</sup> There are also variations in the required duration of employment before the employee is entitled to leave. Whilst there is no minimum period in Australia,<sup>59</sup> the relevant period is 13 weeks in Ontario<sup>60</sup> and six months in New Zealand.<sup>61</sup>

The jurisdictions vary as to whether employees are only entitled to leave if they state the purpose of the leave. In Ontario, a leave of absence will only be granted for a listed purpose, such as seeking counselling, consulting with a victim services organisation, and preparing for a criminal trial.<sup>62</sup> Australian employees must demonstrate that the leave is for a specific task which would be impractical to complete out with working hours.<sup>63</sup> Employees may not, however, have developed a full plan as to how to escape an abusive relationship.

New Zealand<sup>64</sup> and Australian<sup>65</sup> employers can ask for proof that the employee has experienced domestic violence. Such a requirement should be considered alongside practical matters such as developing a mechanism for employers to request relevant legal/ medical records without unnecessarily compromising the employee’s right to confidentiality.

In terms of mitigating the impact on employers, the Italian provisions state that employers must be informed at least seven days before the start of the leave.<sup>66</sup> A similar notice period would help protect employers from the effects of staffing issues. Alternatively, some laws provide that the employee should notify their employer as soon as practicable (the Australian<sup>67</sup> and New Zealand<sup>68</sup> position). The latter may be more practical, as police and medical appointments are unlikely to be predictable.

#### Possible reforms

The introduction of domestic violence leave in France or England and Wales would require careful consideration of these issues. Policy discussions would need to be underpinned by empirical research. The frameworks in France and England and Wales lack any form of statutory leave. Currently, employees in England and Wales would not be restricted from taking time off for urgent medical care, but victims of domestic violence may benefit from access to additional leave to address housing and legal issues.

Measures that could be considered in each of these jurisdictions include: **establishing statutory leave for victims of domestic and family violence**.

### 3. Flexible working arrangements

New Zealand and Canada - Ontario are the only countries which also entitle employees affected by domestic violence to request flexible working arrangements. The *Domestic Violence Victims Protection Act 2018* allows employees to request a variation to their working arrangements for up to two months.<sup>69</sup> The OHSA offers similar measures as part of the employer’s obligation to take any reasonable precaution to protect workers experiencing domestic violence.<sup>70</sup>

In New Zealand, employers can decline workers’ requests for reasons related to business convenience, such as the burden of additional costs, an inability to recruit additional staff, and insufficiency of work during the employee’s preferred working hours.<sup>71</sup> This is similar to England

and Wales: employers must handle requests for flexible working (for any reason) in a ‘reasonable manner’, and employers can refuse the employees’ request if they have a “good business reason” to do so.<sup>72</sup> As mentioned, the Italian legal framework provides for the possibility of the employees to have their full-time employment relationship converted into part-time employment. However, no other flexible working arrangements exist, such as: geographical mobility, functional mobility and accommodation of the work schedule.

#### Possible reforms

In no jurisdiction are there guarantees that employers will provide flexible working arrangements when requested. However, express statutory recognition of flexible working for reasons related to domestic violence may possibly encourage greater numbers of victims to ask for such measures. Flexible working allows employees who have suffered domestic violence much-needed time to attend legal appointments, secure alternative accommodation, and engage with counselling services. Additionally, the ILO specifically recognises (in Article 10(f) of the ILO Convention (No. 190)) that appropriate measures to assist workers who have experienced domestic violence include “flexible work arrangements”.

In light of the benefits to victims of domestic violence and the fact that flexible working arrangements in such cases would not be indefinite, measures that could be considered in each of these jurisdictions therefore include: **establishing a statutory right to flexible working.**

#### 4. General obligations to protect the worker

All of the jurisdictions under discussion have general statutory principles requiring employers to protect their employees from physical and mental harm.

Under the French and Italian laws, there is doubt as to whether the provisions on the employer’s duty of care<sup>73</sup> are applicable to acts of domestic violence committed outside the workplace.

In English law the application of the similar duty of care<sup>74</sup> to domestic violence has not been fully considered in policy discussions or case law. The ILO Convention (No. 190) notes that domestic violence could be mitigated in the workplace by the inclusion of domestic violence in workplace risk assessments.<sup>75</sup> The position in Australia, New Zealand and Ontario, Canada is broadly aligned with the UK: employers

are under similarly worded duties of care to protect their employees, but the scope and applicability of these duties in the context of domestic violence is unclear.<sup>76</sup> The exception is Ontario. The protections available to employees in Ontario are discussed above, and employers who fail to take such reasonable precautions to protect their workers face financial penalties and imprisonment.<sup>77</sup> Notably, these provisions do not apply only where the employee expressly discloses the abuse: employers can also be sanctioned where they ought to have been aware of any domestic violence.<sup>78</sup> If Italy, France or England and Wales were to mirror these provisions, this would constitute a significant change in the law. This would perhaps be justifiable where the employee expressly discloses the abuse. If law were updated to require employers to take specific measures to identify domestic violence victims, this would need to be carefully balanced against the employees’ right to privacy and the extent to which it is reasonable to expect those in managerial positions to identify the signs of abuse.

#### Possible reforms

Measures that could be considered in each of these jurisdictions include:

##### i. Mandating organizational domestic violence policies

In Ontario, employers must create a Workplace Violence Policy and a Workplace Harassment Policy, together with a Workplace Violence and Harassment Program to implement the policies.<sup>79</sup> The Workplace Violence Policy should, according to the Ontario Ministry of Labour, address violence from all possible sources, including domestic partners.<sup>80</sup> None of the other jurisdictions under discussion has similar requirements.

Requiring that employers have in place a domestic violence policy may encourage employees to seek assistance from their employer. Such policy could also outline the role and responsibilities of the workplace parties in supporting the policy and program, include different statements encouraging workers to report any incidents and that any incident will be investigated, provide information about other resources for a worker to seek help. It could foster an environment of support and open communication; whereas those working in companies which do not have policies may be concerned that disclosing domestic violence will lead to adverse professional consequences. It might also communicate to employees that domestic abuse would not be tolerated in the workplace. Compared

with the introduction of mandatory leave/ flexible working arrangements, this may also be a relatively low-cost requirement for employers.

##### ii. Mandating reporting obligations

Only one of the jurisdictions under discussion requires that employers report on their procedures to protect domestic violence victims: Australian employers must submit a report to the Workplace Gender Equality Agency.<sup>81</sup>

This is most likely a useful method of monitoring employers’ progress and compliance with relevant legislation. A reporting obligation would, however, place an additional burden on employers, and there would be no obvious body to which compliance reports could be submitted.

##### iii. Ensuring protection from unfair dismissal/ unlawful termination

In Australia, it is thought that domestic violence may be a factor in determining whether an employee was unfairly dismissed.<sup>82</sup> Similarly, Australian employees are protected from unlawful termination based on a temporary absence due to illness or injury, and domestic violence may amount to an illness or injury if certain conditions are met.<sup>83</sup> Relying on the application of general provisions to domestic violence in case law does not provide clarity for victims of domestic abuse. Additionally, it is clear from the England and Wales report, for example, that many UK workers did not disclose to their employers that they had experienced abuse, because they feared negative repercussions at work. Statutory protection may alleviate the perceived stigma. The ILO Convention (No. 190) recognises that temporary protection from dismissal (unless for reasons unrelated to domestic violence) may lessen the impact of domestic violence on employees.<sup>84</sup>

##### iv. Ensuring protection against discrimination

New Zealand has a unique statutory protection for workers: a clear statement in the *Human Rights Act 1993*<sup>85</sup> that employees who have suffered domestic violence are protected from discrimination and have access to a personal grievance mechanism. This operates in a similar manner to the protections for those who face discrimination on other protected grounds, such as race and gender.



## ENDNOTES

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2. Domestic Violence, is considered for the purposes of this report to be intimate partner violence as defined by the WHO, one of the most common forms of violence against women and includes physical, sexual, and emotional abuse and controlling behaviours by an intimate partner. IPV refers to any behaviour within an intimate relationship that causes physical, psychological or sexual harm to those in the relationship. Examples of types of behaviour are listed below. Acts of physical violence, such as slapping, hitting, kicking and beating. Sexual violence, including forced sexual intercourse and other forms of sexual coercion. Emotional (psychological) abuse, such as insults, belittling, constant humiliation, intimidation (e.g. destroying things), threats of harm, threats to take away children. Controlling behaviours, including isolating a person from family and friends; monitoring their movements; and restricting access to financial resources, employment, education or medical care (WHO 2020).
3. The meanings of the terms 'worker' and 'employee' vary slightly across the jurisdictions under discussion; these terms are used interchangeably in this guide.
4. Offering leave and flexible working arrangements is also in line with recommendation 206 of the ILO Convention (No. 190).
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