

No. 12-AA-1441

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

E.C.,
PETITIONER,

v.

RCM OF WASHINGTON, INC.,
RESPONDENT.

ON PETITION FOR REVIEW OF AN ORDER OF THE OFFICE OF
ADMINISTRATIVE HEARINGS

**BRIEF FOR THE DISTRICT OF COLUMBIA
ON INVITATION OF THE COURT**

EUGENE A. ADAMS
Chief Deputy Attorney General for the District of
Columbia

ARIEL B. LEVINSON-WALDMAN
Senior Counsel to the Attorney General for the
District of Columbia

TODD S. KIM
Solicitor General

LOREN L. ALIKHAN
Deputy Solicitor General

RICHARD S. LOVE
Senior Assistant Attorney General
Office of the Solicitor General

Office of the Attorney General
441 4th Street, NW, Suite 600S
Washington, D.C. 20001
(202) 724-6635
Richard.Love@dc.gov

TABLE OF CONTENTS

STATEMENT OF THE ISSUES 1

SUMMARY OF ARGUMENT 1

ARGUMENT..... 2

 I. This Court Should Broadly Interpret The Phrase “Due To Domestic
 Violence” In D.C. Code § 51-131 To Require A Claimant To Prove
 That Domestic Violence Was A Substantial Or Significant Cause Of
 Job Loss. 2

 A. The language of the Act supports a broad reading. 4

 B. The remedial purpose of the Act specifically and the District’s
 unemployment compensation scheme generally, supports a
 broad reading..... 7

 C. The legislative history of the Act supports a broad reading..... 8

CONCLUSION 12

TABLE OF AUTHORITIES*

Cases

Barnhart v. Peabody Coal Co., 537 U.S. 149 (2003)..... 10

Burton v. Office of Emp. Appeals, 30 A.3d 789 (D.C. 2011)..... 4

Cisneros v. Alpine Ridge Grp., 508 U.S. 10 (1993)..... 4, 9, 10

Columbia Plaza Tenants' Ass'n v. Columbia Plaza L.P., 869 A.2d 329 (D.C. 2005) 3

Cruz v. D.C. Dep't of Emp't Servs., 633 A.2d 66 (D.C.1993)..... 7

**Cruz-Foster v. Foster*, 597 A.2d 927 (D.C. 1991)..... 5, 6, 7

Goodyear Atomic Corp. v. Miller, 486 U.S. 174 (1988) 5

Grayson v. AT&T Corp., 15 A.3d 219 (D.C. 2011) 3

Jackson v. D.C. Bd. of Elections & Ethics, 999 A.2d 89 (D.C. 2010)..... 4

James Parecco & Son v. D.C. Rental Hous. Comm'n, 567 A.2d 43 (D.C. 1989)..... 3

Jeffrey v. United States, 892 A.2d 1122 (D.C. 2006)..... 3

Peoples Drug Stores v. District of Columbia, 470 A.2d 751 (D.C. 1983)..... 3

**Tenley & Cleveland Park Emergency Comm. v. D.C. Bd. of Zoning Adjustment*,
550 A.2d 331 (D.C. 1988) 4

The Wash. Times v. D.C. Dep't of Emp't Servs., 724 A.2d 1212 (D.C. 1999) 7

**U.S. Postal Serv. v. Postal Regulatory Comm'n*, 640 F.3d 1263 (D.C. Cir. 2011) 4

Statutes and Regulations

D.C. Code § 16-1001(8) 2

* Authorities upon which we chiefly rely are marked with asterisks.

D.C. Code § 51-131	1, 2, 4-6, 7, 11
D.C. Code § 51-132	3, 8
D.C. Code § 51-133	3
D.C. Code § 16-1001(6)-(9)	3
D.C. Code § 16-1001(8)	2
Ind. Code Ann. § 22-4-15-1(c)(8).....	10

STATEMENT OF THE ISSUES

In its order of October 7, 2013, the Court invited the District of Columbia to submit a brief addressing two questions:

1. How should the Court interpret the phrase “due to domestic violence” in D.C. Code § 51-131? In addressing this question, the Court asked how it should “construe the statute’s requirement that ‘domestic violence’ be defined as an ‘intrafamily offense,’” whether it should “be influenced by the requirement” to “consider the ‘entire mosaic’ of an abusive relationship,” and what “causal nexus” is required to prove that a claimant’s “separation from employment was ‘due to domestic violence’”?

2. In interpreting the statute, what weight should the Court give to the “requirement to liberally construe the District’s unemployment compensation benefits statutory scheme to further its remedial purpose?”

SUMMARY OF ARGUMENT

This Court should broadly construe the phrase “due to domestic violence” in D.C. Code § 51-131 to require an unemployment compensation claimant to prove just that domestic violence was a substantial or significant cause of job loss in order to gain the protection of this provision. A broad reading of “due to” is warranted because it is consistent with the language, purpose, and legislative history of the Unemployment Compensation and Domestic Violence Amendment Act of 2004. Under this amendment, benefits are authorized even where barred or limited by other provisions of the unemployment compensation statute. The amendment, like the Intrafamily Offenses Act to which it refers to define domestic violence, is a remedial statute designed to protect

against abuse. Moreover, in enacting the amendment, the Council of the District of Columbia considered the many reasons domestic violence victims leave their jobs and did not, as it did in some pre-existing similar legislation, require that domestic violence be a direct cause of the job loss. Therefore a broad causation standard, which requires a claimant to establish that separation from employment was due, in substantial or significant part, to domestic violence, is warranted.

ARGUMENT

I. This Court Should Broadly Interpret The Phrase “Due To Domestic Violence” In D.C. Code § 51-131 To Require A Claimant To Prove That Domestic Violence Was A Substantial Or Significant Cause Of Job Loss.

The District’s unemployment compensation statute provides, in relevant part, that: “[n]otwithstanding any other provision . . . no otherwise eligible individual shall be denied benefits . . . because the individual was separated from employment . . . due to domestic violence against the individual or any member of the individual’s immediate family.” D.C. Code § 51-131(a). The purpose of this provision, enacted in the Unemployment Compensation and Domestic Violence Amendment Act of 2004 (“Act”), is to authorize “unemployment compensation to individuals who leave work because of domestic violence.” *See* D.C. Council, Report on Bill 15-436 (“Comm. Report”) at 1 (Jan. 28, 2004). The Act was amended in 2010 to expand the domestic violence exception to individuals who separate from employment due to domestic violence against any member of their family, while excluding coverage if the individual was the perpetrator. D.C. Law 18-192, § 2(d), 57 D.C. Reg. 22 (May 28, 2010).

The Act directs that “domestic violence” be given the same meaning as that provided in D.C. Code § 16-1001(8) for the term “intrafamily offense.” D.C. Code § 51-131(b). That provision indicates that “[i]ntrafamily offense means interpersonal, intimate partner, or intrafamily violence,” each of which require an “act punishable as a criminal offense.” D.C. Code §§ 16-1001(6)-(9). The Act’s requirement of some documentation of a claim of domestic violence may be supported in a variety of ways, including by a report or record from the court, police, or other government agency, or a written statement from a shelter official, social worker, counselor, therapist, attorney, medical doctor, or cleric attesting that the claimant has sought assistance for domestic violence. D.C. Code § 51-132. The Act created a separate fund for unemployment benefits awarded to domestic violence victims, freeing most employers from liability for employees separated from work due to domestic violence. D.C. Code § 51-133.

“In interpreting a statute, the judicial task is to discern, and give effect to, the legislature’s intent.” *Grayson v. AT&T Corp.*, 15 A.3d 219, 237 (D.C. 2011) (en banc). “The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used.” *Peoples Drug Stores v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983). If the words of a statute are clear and unambiguous, courts give effect to its plain meaning. *James Parecco & Son v. D.C. Rental Hous. Comm’n*, 567 A.2d 43, 45 (D.C. 1989). “The literal words of a statute, however, are not the sole index to legislative intent, but rather, are to be read in the light of the statute taken as a whole, and are to be given a sensible construction and one that would not work an obvious injustice.” *Jeffrey v. United States*, 892 A.2d 1122, 1128

(D.C. 2006) (quoting *Columbia Plaza Tenants' Ass'n v. Columbia Plaza L.P.*, 869 A.2d 329, 332 (D.C. 2005) (alterations omitted)). “The statutory meaning of a term must be derived from a consideration of the entire enactment against the backdrop of its policies and objectives.” *Tenley & Cleveland Park Emergency Comm. v. D.C. Bd. of Zoning Adjustment*, 550 A.2d 331, 334-35 n. 10 (D.C. 1988). Applying these principles, the Court should conclude that the language, purpose, and legislative history of the Act support a broad interpretation of the term “due to domestic violence.”

A. The language of the Act supports a broad reading.

The phrase “due to domestic violence” is not clear and unambiguous. The degree of causality necessary to support a finding that a consequence is “due to” a specific action varies: “due to” “can mean ‘due *in part* to’ as well as ‘due *only* to.’” *U.S. Postal Serv. v. Postal Regulatory Comm’n*, 640 F.3d 1263, 1268 (D.C. Cir. 2011). However, consideration of the language of the entire enactment reflects the Council’s intent for an expansive reading.

The Council’s objective was to allow broad access to unemployment compensation benefits to victims of domestic violence who otherwise might not qualify for benefits. When separation from employment is “due to domestic violence,” D.C. Code § 51-131 authorizes benefits even where other provisions of the statute would limit or bar them. Under D.C. Code § 51-131(a), the terms of the Act apply “[n]otwithstanding any other provision” of the unemployment compensation statute. *See Burton v. Office of Emp. Appeals*, 30 A.3d 789, 796 (D.C. 2011) (“[I]t is well established that ‘the use of such a ‘notwithstanding’ clause *clearly* signals the drafter’s intention that the provisions

of the ‘notwithstanding’ section override conflicting provisions of *any other section.*” (quoting *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993)); *Jackson v. D.C. Bd. of Elections & Ethics*, 999 A.2d 89, 114 (D.C. 2010) (en banc) (recognizing that such “[n]otwithstanding . . . any other law’ language . . . is ‘strong stuff’”).

The objective to expand financial support for employees who are victims of domestic violence is also evident from the wide variety of documents that may be utilized to support a claim of domestic violence and the fact that most employers are insulated from financial liability for unemployment benefits granted to domestic violence victims. D.C. Code §§ 51-132, 51-133. Only a broad reading of the term “due to domestic violence” would be consistent with this expansive purpose and the language of the entire Act.

A broad interpretation of the term “due to domestic violence” is also supported by the Council’s decision to define “domestic violence” in the same way the Intrafamily Offenses Act defines “intrafamily offense.” D.C. Code § 51-131(b). Like the Act at issue here, the Intrafamily Offenses Act “was designed to protect victims of family abuse from acts and threats of violence.” *Cruz-Foster v. Foster*, 597 A.2d 927, 929 (D.C. 1991). Both statutes were designed to counteract abuse and both are remedial legislation that “must be liberally construed in furtherance of [their] remedial purpose.” *Id.*

In addition, this Court in applying the Intrafamily Offenses Act has held that the effect of domestic violence cannot be determined “simply by examining the most recent episode” but instead requires consideration of the “the entire mosaic” of abuse. *Id.* at 930. The Court should presume that the Council acted with knowledge of how the

Intrafamily Offenses Act has been interpreted. *See Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1988) (“We generally presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts.”). Absent any contrary indication in the statutory text or legislative history, the Court thus should hold that the Council similarly intended consideration of the “entire mosaic” in determining under the Act whether any separation from work was “due to” domestic violence. That does not mean that a claimant can show just that the separation was due to *a relationship* that had ever been marked by domestic violence: the causal connection must be made to the *domestic violence* itself, not just the relationship. But a factfinder should consider the entire mosaic in determining whether that causal connection has been made where, for instance, an employee commits a terminable offense in order to appease her abuser or stalker. The factfinder should not limit the causal analysis to the time immediately preceding the offense.

The requirement to consider the entire mosaic of abuse also supports a broad construction of the “due to” language. A narrower reading, for example by requiring domestic violence to be the sole proximate cause of job loss, would impose “an unduly narrow focus” in the “context of a marital or similar relationship” where “past conduct is important evidence—perhaps the most important evidence.” *Cruz-Foster*, 597 A.2d at 929. Accordingly, the Act’s requirement that domestic violence be defined in the same way as an “intrafamily offense” provides additional support for concluding that the “due to” language in D.C. Code § 51-131 should be broadly interpreted to require a claimant to

obtain benefits if he/she can establish that the separation from employment was due, in substantial or significant part, to domestic violence.

B. The remedial purpose of the Act specifically and the District's unemployment compensation scheme generally, supports a broad reading

This Court should give significant weight to the remedial purposes of both the domestic violence exception and the unemployment compensation statute. “The District’s unemployment compensation law was designed to protect employees against economic dependency caused by temporary unemployment.” *The Wash. Times v. D.C. Dep’t of Emp’t Servs.*, 724 A.2d 1212, 1216 (D.C. 1999). It is “‘remedial humanitarian legislation of vast import’ and its provisions must be ‘liberally and broadly construed.’” *Id.* at 1217 (quoting *Cruz v. D.C. Dep’t of Emp’t Servs.*, 633 A.2d 66, 69 (D.C.1993)). The domestic violence amendment set forth in D.C. Code § 51-131, like the Intrafamily Offenses Act to which it refers, is also remedial legislation designed to counteract abuse. It too must be liberally construed. *Cruz-Foster*, 597 A.2d at 929.

Given the remedial purposes of both the unemployment compensation statute and the domestic violence exception, the “due to” language in D.C. Code § 51-131 should be read to require a claimant to establish that separation from employment was due, in substantial or significant part, to domestic violence. Application of a broad causation standard furthers the remedial purpose of the entire unemployment compensation scheme by expanding eligibility for benefits, without making benefits available to those who can establish that a separation from employment bore only an insubstantial or insignificant connection to domestic violence.

C. The legislative history of the Act supports a broad reading.

The Committee Report and testimony at the Council hearing¹ considering the Act also support a broad interpretation of the term “due to domestic violence” in D.C. Code § 51-131. In describing the purpose of the Act—“to provide unemployment compensation benefits to individuals who leave work because of domestic violence”—the Council recognized that expanding access to unemployment compensation benefits would provide needed resources to domestic violence victims seeking to flee abusive situations. Comm. Report 1. The Report observed that a “lost job and income makes it even more difficult to leave the violent relationship” and that the legislation “will minimize how money factors into the decision to leave an abusive situation.” Comm. Report 1. And in introducing the legislation, Councilmember David A. Catania, Chairperson of the Committee on Public Services, stated:

Studies have shown that 96% of employed domestic violence victims experience problems at work related to the abuse and that 30% lose their jobs due to domestic violence. The violence experienced at home clearly impacts their ability to maintain and obtain employment. Victims of domestic violence are often stalked by their batterers at work, miss work due to injuries caused by domestic violence, and/or need time off to obtain legal services . . . Importantly, if a battered individual, especially a woman, loses her income, she is more likely to be forced to remain with or return to the batterer because she is unable to support herself and her family.

Council Hearing 27:07-26:26. As the legislative history reflects, the Act seeks to create a financial safety net by providing unemployment compensation benefits to domestic

¹ The District has obtained a video recording of the hearing and submits a copy along with this brief.

violence victims who lose or leave their job due to that violence. A narrow reading of “due to domestic violence” would be inconsistent with this purpose.

Although the Council surely was aware of the need to ensure that the domestic-violence exception would not allow claims by those who were not truly victims of domestic violence, the hearing suggests that the Council addressed this concern by adopting a documentation requirement now codified at D.C. Code § 51-132 rather than by adopting a restrictive causal standard. Councilmember Catania discussed at the hearing at length the documentation requirement and what precisely it should say in order to prevent inappropriate claims. Council Hearing 6:10-2:54, 29:16-25:00. There was, by contrast, no discussion of what precisely “due to” means.

The testimony at the Council hearing also supports broadly interpreting “due to domestic violence.” Witnesses at the hearing testified that domestic violence victims lose their jobs for a variety of reasons, including being stalked by their batterers at work and other associated problems the victim brings to the workplace. Comm. Report 5; *see also* Brief for Amici Curiae Domestic Violence Legal Empowerment And Appeals Project. Lydia Watts, Executive Director of the non-profit organization Women Empowered Against Violence, testified that “many survivors will be fired for bringing violence to their workplace,” while others “must quit their jobs because of a campaign of harassment and abuse at the workplace.” Council Hearing 17:20-16:58. Ms. Watts testified about women she assisted who were not eligible for unemployment compensation benefits but would be with the passage of the Act. Comm. Report 4. She spoke about a woman who worked for the United States Postal Service for 17 years whose batterer tracked her every

move, stalked her at work, and, she suspected, vandalized her car when she drove it to work. Council Hearing 12:21-11:25. She “felt so unsafe at work that she quit.” *Id.* 11:25-11:23. Karen Minatelli, Coordinator for the D.C. Employment Justice Center’s Program on Women’s Employment Rights, testified about a woman who worked for a company for 18 months and was in a supervisory position when her husband started working at the same place. *Id.* 16:00-15:52. She had a civil protection order, which she showed to her boss, that specified she was not to work on the same shift and, if possible, the same day as her husband. *Id.* 15:52-15:43. Her husband started showing up at her workplace on days he was not scheduled to work in order to harass her. *Id.* 15:43-15:35. Eventually the employer fired her because they said they had no reason to fire him even though he was the one to bring security issues into the workplace. *Id.* 15:35-15:25. These and other “accounts of how domestic violence spills into the workplace” presented some of “the many reasons that a victim of domestic violence may need to leave her job” and the broad range of situations and victims for whom this legislation was intended to “provide much needed economic stability.” Comm. Report 4-5. As Ken Noyse, Deputy Director of the D.C. Coalition Against Domestic Violence testified, this “legislation will support victims . . . and allow them to focus on staying safe and not worrying about losing their income.” Council Hearing 7:24-7:16.

In enacting the statute, moreover, the Council was also aware that similar legislation had been enacted in over twenty states, some of which required that domestic violence be a direct cause of the job loss. *See, e.g.,* Ind. Code Ann. § 22-4-15-1(c)(8) (requiring that the separation be “directly” caused by domestic violence); *see also*

██████████ Br. 28. Tellingly, the Council did not use such restrictive language, instead opting for the “due to” language. The Council observed that “state legislatures around the country have been responding to the needs of the domestic violence victims” and that with this legislation “the District will join these other jurisdictions in providing unemployment compensation to victims of domestic violence when they lose their jobs.” Comm. Report 2. The Council’s decision not to require that domestic violence be a direct cause reasonably implies that it rejected such strict limitations in favor of a broad causation standard. *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (noting that the *expressio unius* doctrine applies where “it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it”).

Still further support for a broad causation standard is provided by the Council’s amendments in 2010, which, among other changes, expanded the domestic violence exception authorized by D.C. Code § 51-131 to include individuals who separate from employment due to domestic violence against a member of their family (as opposed to just themselves), provided that they were not the perpetrator. A broad construction of the term “due to domestic violence” is required to further the goal of protecting domestic violence victims and their families by minimizing “how money factors into the decision to leave an abusive situation” experienced by the employee or a family member. Comm. Report 1.

* * *

All of the indicia of the legislature’s intent—from the plain language of the statute, to its remedial purpose, to the Committee Report and comments on the legislation—point

inexorably to the conclusion that D.C. Code § 51-131 must be interpreted broadly. Under an appropriately broad reading, a claimant can establish that he/she is entitled to unemployment benefits if he/she can demonstrate that the separation from employment was due, in substantial or significant part, to domestic violence.

CONCLUSION

This Court should liberally construe “due to domestic violence” under the statute to authorize benefits if a claimant can establish that separation from employment was due, in substantial or significant part, to domestic violence.

Respectfully submitted,

EUGENE A. ADAMS
Chief Deputy Attorney General for the District of
Columbia

ARIEL B. LEVINSON-WALDMAN
Senior Counsel to the Attorney General for the
District of Columbia

TODD S. KIM
Solicitor General

LOREN L. ALIKHAN
Deputy Solicitor General

RICHARD S. LOVE
Senior Assistant Attorney General
Office of the Solicitor General

Office of the Attorney General
441 4th Street, NW, Suite 600S
Washington, D.C. 20001
(202) 724-6635

November 2013

CERTIFICATE OF SERVICE

I certify that on November 27, 2013, this brief was served by first-class mail, postage prepaid, to:

Jennifer Mezey
Drake Hagner
John C. Keeney, Jr.
Legal Aid Society of the District of Columbia
1331 H Street, N.W., Suite 350
Washington, D.C. 20005

Joan S. Meier
DV LEAP
George Washington University Law School
2000 G Street, N.W.
Washington, D.C. 20052

Matthew A. Eisenstein
Christa D. Forman
Adele M.K. Gilpin
ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206

RCM of Washington, Inc.
ATTN: Stacey Whitted
900 2nd Street, N.E., Suite 8
Washington, D.C. 20002

RICHARD S. LOVE