

SAFE Act Will Bankrupt Companies and Hobble Economic Recovery

Rep. Lucille Roybal-Allard (D-CA) and Ted Poe (R-TX) have introduced H.R. 739, the Security and Financial Empowerment (SAFE) Act. The bill creates four new entitlements for alleged victims of domestic violence: lifetime employment, health insurance, 30 days annual emergency leave, and unemployment insurance. The first two entitlements have no means testing, verification of need, or time limits. These entitlements represent a substantial unfunded government mandate to be subsidized by companies with 15 or more employees. The law would spur the growth in false allegations of domestic violence.

RADAR's analysis of the SAFE Act reveals it will substantially harm the financial well-being of employers and may create severe dislocations in the American economy, for three reasons:

1. It will require employers to hire millions more employees than needed
2. It will make it far more difficult to terminate workers
3. It will render the American economy less robust

An analysis of the SAFE Act can be seen here: <http://www.mediadar.org/docs/RADARanalysis-HR739-SAFE-Act.pdf> .

1. Require Employers to Hire Millions More Employees than Needed

H.R. 739 guarantees job security to any person who claims to be a victim of domestic violence: “*An employer shall not fail to hire, refuse to hire, discharge, or harass*” such person (Section 303). Domestic violence is defined broadly to include “substantial emotional distress or psychological harm” (Section 402). A restraining order or an affidavit are considered acceptable forms of certification (Sections 102(c) and 202(a)). An affidavit is merely a statement, not proof. And as Elaine Epstein, former president of the Massachusetts Women's Bar has noted, “restraining orders are granted to virtually all who apply.”¹ Under H.R. 739, any unemployed person who claims to be experiencing partner-inflicted “substantial emotional distress” would qualify, regardless of the merits of their claim.

To calculate the cost to employers, we reviewed reports compiled by the U.S. Bureau of Labor Statistics on unemployment rates, earnings, fringe benefits, and the average duration of unemployment. All calculations are shown in the table at the end of this report.

The analysis reveals the SAFE Act would initially cost American business and industry \$28.8 billion a year. The costs would increase over time as more persons become unemployed. The \$28.8 billion figure is believed to be conservative because the bill:

1. Mandates that employers provide 30 days of emergency leave (Title I)
2. Would require larger payments to the state unemployment insurance fund (Title II)
3. Exposes employers to punitive damages up to three times the actual amount of damages sustained (Section 304).
4. Places health insurance companies at risk of claims for which the evidentiary standard is a preponderance of evidence. Even if the claim is baseless, the plaintiff is entitled to a \$5,000 payment (Section 408)

These costs would likely bankrupt some companies.

2. Make it Far More Difficult to Terminate Workers

As market forces evolve, business and industry needs the flexibility to downsize its workforce, and non-performing employees may need to be discharged. Section 303 of the SAFE Act states “*An employer shall not...discharge*” a self-designated victim of abuse. This provision would handcuff employers’ ability to respond to marketplace changes.

For example if a worker is placed on probation or suspects she (or he) will be terminated, the person could easily obtain certification as a victim of domestic violence, as broadly defined by the law. With certification in hand, the employee can never be terminated, with or without cause. As a result, employers would find themselves laying off the more qualified workers in order to retain the certified abuse victims.

The cost of this factor is difficult to estimate. During times of economic dislocation, this provision of the SAFE Act could impose billions of dollars of unwanted costs on companies. In some cases, it would force companies into bankruptcy.

3. Render the American Economy Less Robust

The costs described above would eventually be passed along to consumers who purchase goods and services. In the longer run, SAFE Act requirements would serve to discourage employers from hiring new workers. Fewer new jobs would be created, business and industry would be slower in responding to marketplace opportunities, and economic recovery stalled. Companies and investors will come to view the American economy as a less attractive place to do business.

The cost of this factor is also difficult to calculate, but is likely to represent a substantial negative impact to the economy as a whole. Eventually we would see the situation faced in many European countries where employers are reluctant to respond to marketplace opportunities because of the financial liabilities associated with hiring new employees.

Costs of SAFE Act Requirement to Hire Unemployed Abuse Victims

A	B	C	D	E	F	H	I
	Occupation	Number Unemployed²	Number of Certified Abuse Victims³	Median Weekly Earnings⁴	Total Weekly Compensation incl. Fringe Benefits⁵	Number of Weeks Unemployed⁶	Total⁷
1	Management, professional, and related occupations	1,463,000	351,120	\$1,025	\$1,250	19.3	\$8,470,770,000
2	Service occupations	1,769,000	424,560	\$475	\$579	17.2	\$4,228,108,100
3	Sales and office occupations	2,006,000	481,440	\$614	\$749	18.4	\$6,635,013,500
4	Natural resources, construction, and maintenance occupations	1,421,000	341,040	\$702	\$856	16.1	\$4,700,076,800
5	Production, transportation, and material moving occupations	1,474,000	353,760	\$594	\$724	18.8	\$4,815,098,100
6	Totals	8,133,000	1,951,920				\$28,849,065,000

¹ Epstein E. Speaking the unspeakable. *Massachusetts Bar Association Newsletter*, 1993.

² Bureau of Census. Current Population Survey. Table 32. Unemployed persons by occupation, industry, and duration of unemployment. 2008. <http://www.bls.gov/cps/cpsaat32.pdf>

³ To calculate the number of certified abuse victims, it is likely that in a time of high unemployment and bleak economic prospects, a large percentage of unemployed persons would seek entitlements afforded by the SAFE Act. After all, almost every person in an intimate partner relationship has experienced "substantial emotional distress" at one time or another.

Since the SAFE Act is not yet law, it is not possible to measure its effect. Therefore it was necessary to look to other situations in which the assertion of intimate partner violence provides significant financial reward. An analogous case can be found in divorce proceedings, where significant awards (property and child support) are often granted to persons who allege partner violence. Research has found about one-quarter of divorces involve an allegation of partner abuse:

- Chandler DB. Violence, fear, and communication: The variable impact of domestic violence on mediation. *Mediation Quarterly*, Vol. 7, No. 4, 1990, pp. 331–346. Reported a 23% frequency.
- Allen DW, Brinig M. Anticipated and unanticipated legal changes: The case of joint parenting. Unpublished manuscript, February 2007, Table 7, Column 2. Reported a 24% frequency.

Compared to persons undergoing divorce, the SAFE Act affords even stronger incentives (lifetime employment, health insurance, and other entitlements) to file a claim, so the percentage of unemployed persons is likely to be higher than in the divorce context. Nonetheless, Column D utilizes the conservative 24% figure.

⁴ Bureau of Census. Current Population Survey. Table 39. Median weekly earnings of full-time wage and salary workers by detailed occupation and sex. 2008. <http://www.bls.gov/cps/cpsaat39.pdf>

⁵ Fringe benefits represent 18% of this amount. Bureau of Labor Statistics. *Report on the American Workforce 2001*. Chapter 2, p. 65. <http://www.bls.gov/opub/rtaw/rtawhome.htm>

⁶ Bureau of Census. Current Population Survey. Table 32. Unemployed persons by occupation, industry, and duration of unemployment. 2008. <http://www.bls.gov/cps/cpsaat32.pdf>

⁷ Columns D x F x H = I