

APPENDIX VOLUME I OF III

TO THE REPORT OF INVESTIGATION INTO ALLEGATIONS OF SEXUAL HARASSMENT BY GOVERNOR ANDREW M. CUOMO



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
LETITIA JAMES

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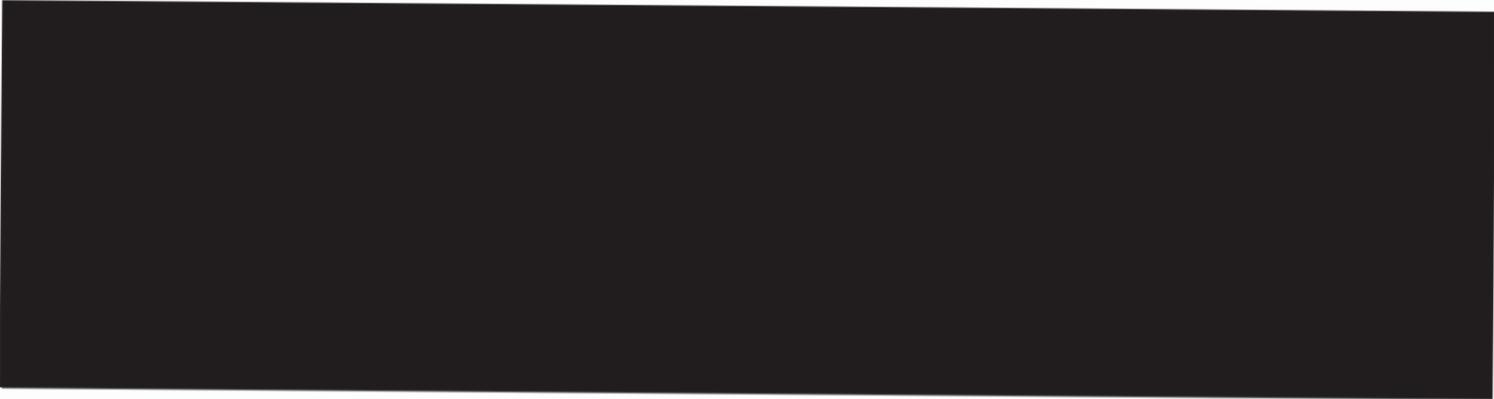
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August 3, 2021

EXHIBIT 1



From: Senior Investigator #1
Sent: Friday, November 17, 2017 8:40 AM
To: Trooper #1
Subject: Fw: FILE 14 - PSU TRANSFER CANVAS

Ha ha they changed the minimum from 3 years to 2. Just for you.
Please complete the transfer memo and cc me when you send it.
As far as the abstract; done is more important than perfect.

Thanks


From: LEATSO, KATHLEEN (TROOPERS)
Sent: Friday, November 17, 2017 8:17:51 AM
To: troopers.dl.divisionwide
Subject: FILE 14 - PSU TRANSFER CANVAS

Please see the attached.

CONFIDENTIALITY NOTICE: This e-mail, including any attachments, may contain highly sensitive and confidential information. It is intended only for the individual(s) named. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.

TO: ALL TROOPS AND STATIONS

IT IS ANTICIPATED THAT VACANCIES WILL EXIST IN THE NEAR FUTURE FOR THE POSITIONS OF INVESTIGATOR AND TROOPER IN THE PROTECTIVE SERVICES UNIT IN ALBANY AND NEW YORK CITY.

MEMBERS REQUESTING ASSIGNMENT MUST POSSESS A SATISFACTORY PERFORMANCE EVALUATION RATING. TROOPERS MUST HAVE A MINIMUM OF TWO (2) YEARS OF SERVICE AS A UNIFORM TROOPER. AS PER ARTICLE 2B5 OF THE ADMINISTRATIVE MANUAL, A REQUEST FOR ASSIGNMENT TO THE PROTECTIVE SERVICES UNIT IS INDEPENDENT OF ANY OTHER TROOP TRANSFER REQUEST.

MEMBERS ARE SELECTED TO SERVE IN THE UNIT AT THE DISCRETION OF THE SUPERINTENDENT AND ARE SUBJECT TO REASSIGNMENT AT ANY TIME. ASSIGNMENT TO THIS DETAIL REQUIRES A MINIMUM COMMITMENT OF ONE YEAR.

MEMBERS ARE SUBJECT TO REASSIGNMENT AND TRANSFER TO THEIR TROOP OF ORIGIN OR OTHER TROOP CONSISTENT WITH THE NEEDS OF DIVISION AND CURRENT COLLECTIVE BARGAINING AGREEMENTS.

MEMBERS EXPRESSING AN INTEREST IN SERVING WITH THE UNIT SHOULD FORWARD A MEMORANDUM ELECTRONICALLY THROUGH CHANNELS, OUTLINING THEIR QUALIFICATIONS, TO THE OFFICE OF THE FIRST DEPUTY SUPERINTENDENT NO LATER THAN DECEMBER 1, 2017.

ABSTRACTS SHALL BE SCANNED AND SUBMITTED SEPARATELY IN A FOLLOW UP EMAIL TO THE FIRST DEPUTY SUPERINTENDENT AS SOON AS POSSIBLE. IN ADDITION, SUPERVISORY ENDORSEMENTS ARE TO INCLUDE A DEFINITIVE RECOMMENDATION BY TROOP OR DETAIL COMMANDER RELATIVE TO THE CANDIDACY OF THOSE MEMBERS WHO REQUEST ASSIGNMENT TO THIS DETAIL.

BASED UPON A REVIEW OF THE MATERIAL SUBMITTED, MEMBERS MAY BE SUBJECT TO AN INTERVIEW.

TROOP AND DETAIL COMMANDERS SHALL BRING THE CONTENTS OF THIS MESSAGE TO THE ATTENTION OF ALL MEMBERS IN THEIR COMMAND.

AUTHORITY: CHRISTOPHER FIORE
FIRST DEPUTY SUPERINTENDENT

EXHIBIT 2

①

Intro:

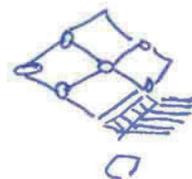
heard that she had an experience that made her uncomfortable - need to hear in her own words what happened exactly
engage treated same way - no exceptions
W

I addressed it pretty early - the planting of a seed - I feel like like this or ok - the transition has been good - taking step away

- The gov had a series of personal conversations - asked what I wanted to do professionally -

did a lot of work as my Campus Title IX - life changing moment -

got into a convo - felt comfortable as to how personal it was - but on some of a few convos - I felt it was taking a different direction.



I was in his office - asked how gov - asked to be keynote speaker at Alma Mater -

talked about how I was sexually assaulted in college + on my life -

he kept say - you were raped you were raped - a person "some men just see women as little playthings"

-> strange - he had to know I was in workplace

Confidential

rel w/ gov - how much contact - what kind how frequent how long in job - alone etc? discuss personal things? COVID? change stuff - what incident day - when, where what - when was she sitting? where was he

exact words - what did you say - he say - touch - how did it end? other incidents / instances - unusual?

still

(2)

then he said he was lonely and look for a girl friend -

a few weeks later I ended up back in his office -

staffing - we were doing dictation + stuff finished chat -

brought up my speech - a k how it went - then said wait - turn off your tape recorder very long conversation -

Stephane - were you ~~the~~ working that whole time -
what are you really about

look for a girlfriend -

not linear -
he asked me about how being sexually assaulted affected the way I was attracted to men -

Kida
Pindot
Smith
Chelna
Handler

Sandy not talk to him / really had not
lonely / had pushed
not sleep well / woman in north -

find me a girl friend - "daughter's son?"
he asked me how I felt about a girl difference
→ he pushed off -

I think age ≠ matter > about 22
he knew I was 25 (speech on B-day)
I said like you daughter

talked about monogamy -

3

asked about recent holidays
Boy friend in Loma -
last serious relation
he wanted to know who I had been
seeing -
if I was sharing w/ other people
if they were sharing w/ other people
longest relationship since X-boy in
Loma -

Repeated

lonely -
didn't know what to do
get drunk
got on motorcycle
take a woman into the mountains -

forgot about pandemic for a few hours -
I don't know how you have time for
a relationship -
privacy, ≠ a problem -

next day - just me - everyone else
left -
felt like a job was to have
he would find privacy -

he asked if I had found a BF for
him yet -
he said I looked like Taryn Dulas -
+ then he left

asked a lot of questions in my sexual
history -

4

~~1/17~~ Incident Friday the 5th + Saturday the 6th
Stalked in city on Tuesday 9th

a lot of Red flag -

do you know what a cone of silence
is -

yes -
we have had personal conversation

we have a cone of silence here -

blatant example of grooming -
+ clearing -

Original conversation was June 10, ^{Jill} follow up 12th -

Started Jan 2019 →

knifes to
direct contact w/ him - ?

no - more in my role staff - got more control
boundaries got ...

John v left in May - that's when I met
him -

Staffing - means:

really staff Steph - helps her
manage calls / comments

he'll call - dictate - or make edit to
work + manage the in + out

opt - 1/2 the week -

whenever he was in the city - I was at desk
flew w/ him a few a times

First personal convo → first week I met him -
asked me if I was single -
why - "a lot of closers" - tried to make light of it

(5)

he asked me if I would go to this -
I told him I would go to school
X - boyfriend - after a year of breakups
fell into a coma - I moved +
nursed him back to health -
he asked questions -
respectful -

pretty
early

first
month
or
2

we could be chatty together -
he is always interested in what people are
up to - I was night train -
talked mostly about the gym
he asked me to do push ups for him -
I was not uncomfortable -
I did push ups until he told me to stop -
technically a competition -
he would say he would do 20 L
back + forth -

Generally alone -
more often than not speak there -
person when speak there -
more likely to chat when other not around -

more often - chats at end of work -

talked about parents - lining up them - similar
interests to my father - motorcycles -
showed him
YouTube video - longest plank ever

6

Soccer v. his daughter -
on farms or don -

relationship status came up 1 or 2 more times -
it was pretty brief -
wonder if muscles being intimate dated -
ask about my trainer - "I don't bench press" -

enough is enough -

derry bridge
I went to his house to pick up a porn point -
writing in command center -

he was in pool house -

then look at PP - watch TV -

seem bored - unfocused -

chatty mood -

he likes to gossip about office - a little bit raw

what's going on - he knows he is a bit isolated

no "so off" -

I didn't say anything - I had nothing to say -

"tell me something" - anything -

in 2015 you signed enough is enough -
it changed my life -

I told him the story of my life -
how I lost my virginity:

abusive relationship in college
how he sexually assaulted me
how I reported it

what happened in my life at

my organization I started

my investigation started a couple of months

7

after he signed the bill -
spice reviews + under proposed -
after midnight -> I started looking at fed
guidance state policy -
research - ended up being my thesis -

Jim -

should he respond? - he was interested

he asked a lot of Qs about why
BF abuse -

what I wanted to do long term -
he wanted me to take a step back - not
one bad experience -

I told him I was raped at 16 -

Do you know what a love of silence is -

[REDACTED]
if you do this for your career will always
be fighting people in power - never win -
you have to take power -

"That's why I am here"

That's why I am here -

we talked about [REDACTED]
didn't want to talk about it -

he pushed her a lot -

asked how it affected CB relationships w/ father
he was very serious -

[REDACTED]
my parents didn't support

total shit show - had said it made

8

relationships stronger -

Jim - handed in my did not make you
uncomfortable -

Unusual to talk about my sex life -
but not surprising
very personal words that he took seriously -

Sunday afternoon around 2:00 before the
budget speech -

Jim - ~~other~~ other personal words before June

during Covid - did not see him until May -

7. first mtg was first
took place - at Capital in his office -
unusual setting -

lays on couch w/ feet up -

put down a folder - tried to turn out - (6:45)

he stopped you - still lays down - I am at door -

front of couch -
he what are you doing - haven't seen you
I've been here

how long -

60 days -

who is interested in you? - nobody - I deflected

I DK the phrase he used (sleeping with?)
who are you hanging out with? - elected folks -

talked about Gump's office -

Are you going to Mary Beth -

Isn't he great - he's fantastic? Gonna get married?

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talked about Jack to - ...
he asked me to sit down -
he sat up -
I pulled over a chair - on other side of
coffee table -

I mentioned to speech → appropriate follow up
to January convo -

I D.R. spiritually -

Commencement Speech -
for the women's college about my work -
the what I was going to say -
what are you thinking - say -

I said
don't know if I brought up sexual violence
for sentences -

made a thoughtful correction -
I said -

Showing up in spite of pain -"
not pain - injustice + betrayal -
you were raped; you were raped; you were raped -
you were abused -
force + repetition was very odd -

Men treat women as sexual playthings -
felt odd

didn't sit right w/ me - More than 3 times
feels like you are not saying for my sake - to hear -
felt like a test - wants to see if he could sit
under your skin -

by end of convo - it felt like a turning point

This is what you should say...
 he gets up + moves to his desk -
 still in chair - turned my body towards him -
 he asked me to move a chair for
 desk -
 he continued his version of my speech -
 it was so ~~odd~~ odd -

So then I said to him that one thing I
 was thinking about when I was trying to write -
 such a painful thing on a global
 become greatest achievement

Pandemic - must be for him -

Strongly agreed this on hand -

My work at home - totally changed
 look of life I am wondering if you are doing -

How do you think I am doing -
 seemed unclear.

wondering about when to end -
 exposed where people less interested in
 books - can I do any differently?

crabby
No -

Why are people losing interest -

"A lot - was fear + anticipation of clearly
 maintain - deflated, tired - people less
 went -

May convo
May 15 - Friday 6:45 am

11

we talked about what worked -
what resonated
"personal touches" - say him really
experientially -
genuine emotions - real New York -
pugman scandal - kids getting sick
fear star at mountain

front long tv 6# -

I said how are you doing -

Tired + lonely -

wants to get on a bike ^{with a woman} go into a mountain
with large convo -

Convo
how -

Melissa came into the office - so he handed
me pp

then to the team - threw them slide
near fears -
aggressive + repeated you were raped,
you were a band + inquiries

first time distressed -

November - had a bad week -

when he said a b33 - why are you saying
you feel like that -

he didn't talk to me all day -
didn't say anything - asked me why I was

Me

13

my hair -
because misty -
he walked away -
I said "he doesn't like my hair" -
upset + annoyed -

Next convo →

June 5

19

went into office of Frank - 1/2 dictation
sent out - I stayed ~~at~~ -
wearing masks -

Post tape recorder
Mask kept sucking his face -
made a comment like predator -
if someone asked me -

if I was being investigated for sexual
harassment - she looks like a predator ->
he was making a joke how his comment re my appearance
how could you say I was sexually - strange comment
word -

Post tape recorder -

talked about speech - I said it
went really well - talked about sucking beef on
Zoom - had champagne at the end -
may have dismissed substance -

did she give speech he had recorded -> yeh -
the speech that we wrote together

next topic

short break - not totally clear betw
multiple conversations -

left + called back -

he brought his ex - before we got into Q's about
my history -

find me a girlfriend ->

I didn't know what to say - fairly quick

no touch - ...

What about you - My pants don't let me be

honest -

I don't remember

Want to
destroy
myself -
don't want to
be alone -
Jill has
been
amazing
don't want to
make waves -
want to
make as

~~easy duties~~ -
I pretended that
I did -
referenced my
shorts -

~~xxx~~

talked about tattoos -
birth day

I want this tattoo - silhouette of woman + flower
"put it on your chest or your ~~side~~ "huff"

does age matter? paused ready to go on and
cut me off + said it didn't

you should have a party -
then what

Groom => June 5 -
Gone of Silence they
do you know what this is -
no one will know -
I won't say anything + you won't say anything -
groom - when questions became more personal -

sexual advm - no
age difference
specific age

anything else -

Not that I can think of -

Anything else -
he likes my make-up - he talked
about on the Tuesday aft
evening or Friday - she arrived + departed -
Wings - buffer's to eye

6 30 20

TC w/ Charlotte Bennett + Jill Desrosiers

JM: heard interaction that made you uncomfortable -
know its difficult - but I need to understand
exactly what happened - ~~not~~ important to tell the truth
and tell me everything - everyone held to same standard

CB: what are you going to do

JM: Don't know - don't know what happened

CB: I addressed it pretty early - the planting of
a seed - I feel like things are OK
the transition has been good - taking a step away

the Gov had a series of personal conversations
asked what I wanted to do professionally
told him I did a lot of work on my campus Title IX
life changing moment -
I felt comfortable with how personal it was
but over the course of a few conversations I felt it
was taking a different direction.

~~May 15~~
May 15

A: I was in his office - he asked how I was
doing how it was going. I told him I was asked
to be the keynote speaker at my alma mater
~~the~~ I talked about how I was sexually assaulted
in college and over my life
he kept saying "you were raped, you were
raped". very aggressive - "some men just see women
as little playthings" It was a strange comment. he
had to know I was uncomfortable
then he said he was lonely and that he was
looking for a girlfriend

Background:

Started Jan 2019 (same orientation as Jan)
briefer - no direct contact
once she started staffing him boundaries between
briefer + staffer got...

started staffing when John V left in May 2019
that's when I ~~met~~ met him

Staffing means - really helping Stephanie staff -
helps her manage calls, communication -
he'll call, dictate, make edit to things he wrote
Manage the ins and outs

about 1/2 the week - whenever he was in the city
I was at the desk

I flew w/ him a couple of times

First
Personal
Convo

~~First personal conversation~~

First personal conversation? → first week I met him
he asked me if I was single - asked me why -
I tried to make light of it - said "then are a lot of losers"
he asked me if I commit to things. I told him I ^{losers"}
commit to school. he said that didn't count - something
else - I told him my ex boyfriend had fallen into a
coma a year after we broke up and I moved all the way
across the country and nursed him back to health
he asked questions - it was respectful

Q - frequency of personal conversations?

we could be chatty together - he is always
interested in what people are up to
I was weight training - we talked mostly about the gym
he asked me to do pushups for him - did that make you uncomfortable
I was not uncomfortable - I did pushups until he told me
to stop - we had a competition he would ask how many
could do and then tell me he could do 20 more

Q - how often was you alone w/ him?
more often than not Stephanie was there

Q personal convos when Steph there?
~~the~~ sometimes - he was more willing to chat
when others were not around

~~minutes~~
Q - did he ever just call you in to have
personal discussions?

Q topics?

most chats were at end of work
we talked about my parents - I was living with
them. ~~the~~ My father had similar interests -
^{he + my} motorcycles -

we talked about motorcycles
I showed him a utube video of a man doing longest plank.
we talked about soccer - I play soccer w/ his
daughters. our towns are close

my relationship status came up one or two
times - it was pretty brief - he said something
about women w/ muscles being intimidating
asked about my training - I told him I don't bench press

January 2020 (Sunday ~ 2:00 pm before Budget speech)
Q - you referred to a convo about "enough is enough"

It was during budget. I went to his house to pick up a power point. I was waiting in the command center. He was in the pool house. He was there looking at the power point + watching TV. He seemed bored and unfocused - he was in a chatty mood - he likes to gossip about the office he is a little bit ~~isolated~~ isolated.

→ He always asks about different people or doing I didn't say anything. I had nothing to say. He said - "tell me something - anything" so I said - "In 2015 you signed enough is enough" and it changed my life." he said what do you mean. So I told him the story of my life. How I lost my virginity - about my abuse in relationships in college - how he sexually assaulted me - how I reported it - what happened with the investigation - the organization I started. My investigation started a couple of months after he signed the law.

Q - you told him law affected env?

The office was nervous + unprepared - after the inv. I started working at federal + state policy I did a lot of research. It ended up becoming my thesis.

Q - how did he respond?

He was interested - he asked a lot of questions about abuse - about what I wanted to do long term he wanted me to take a step back - not let one bad experience define... I told him I was raped at 16 that's how I lost my virginity.

he said - Do you know what a cone of silence is? He told me

→ Confidential behavior

→

[REDACTED]
he said if you do this for your career you will always be fighting people in power + never win. he said "you have to take poms"
I said that's why I am here

→ he said that's why am here -

We talked about how [REDACTED] - that she didn't want to talk about it. He pushed her a lot he asked me how it affected my relationship with [REDACTED] parents. I lied. He was very serious. [REDACTED]

[REDACTED] my parents didn't support me. It was a total shit show - so I lied and said I made our relationship stronger

Q - handled in way that did NOT make you uncomfortable. It was unusual to talk about my sex life but not inappropriate. It was a very personal conversation that he took seriously

Q other personal convos before scene?

May 15, 2020

It was during Covid - I did not see him until May. The first meeting was → [fine?]

took place at the Capitol in his office.

Q Seabhy?

he was lying on the couch ≈ (6:45 am) feet up

→

I put down the folder + tried to run out - I am at the door - he stopped me
she said P.J.'s → really legging + a sweatshirt
Steph away

he said what have you been doing? I said "I've been here"; "For how long?" "60 days" - I haven't seen you -

→ who are you sleeping with? JM → did he say "sleeping with?" I don't know the phrase he used. who are you hanging with, he listed folks. talked about the group in the office. he said "are you going to marry Noah?" he said "isn't he great?" I said he is fantastic. he said are you going to get married. I said "he has a serious girlfriend!" we talked about Jack too I think

he asked me to sit down. I pulled a chair over and sat on the other side of his coffee table. I mentioned I was going to give a speech. It was an appropriate follow up to our January conversation. I don't specifically recall how introduced. I don't know if I brought up sexual abuse - I said I was giving a commencement speech at the women's college about my work - he asked what I was going to say - he made a thoughtful correction that I used. I said something about showing up in spite of pain and he said not pain - injustice and betrayal.

→ ~~he~~ he said - "you were raped, you were raped, you were raped. you were abused. forceful, rebellious - it was very odd. then he said "Men treat women as sexual playthings." & didn't sit right with me. he said it more than 3 times. I said to myself "It feels like you are not saying this for my sake"

it felt like a test - like he wants to get under my skin. by the end of the conversation it felt like a tiny point.

he said this is what you should say - he got up and moved to his desk and dictated what the speech should be. he asked me to move across from his desk he continued his version of my speech. It was so odd.

So then I said to him that one of the things I was thinking about was that such a painful thing can quickly become ones greatest accomplishment and that that's how the pandemic must be for him. Its showing up when things are hard. My work at Hamilton totally changed the course of my life. I told him I am wondering how you are doing. he said "how do you think I am doing?" he seemed insecure + he was crabby. he was wondering when to end the briefings. he expressed concern that people were less interested in briefings. he asked "Am I doing anything different?"

CB said no

he asked why are people less interested

CB offered - a lot was fear + anticipation of climbing mountain - they are now deflated, tired, less urgent. we talked about what worked, what resonated.

I said the "personas touches" - seeing him really experiencing it - showing genuine emotion - that he was a real New Yorker - people were scared, kids were getting sick. Fear staying at the mountain.

Q- when did he introduce that he was looking for a girlfriend?

C/o asked "How are you doing?"

he said - he was tired + lonely and wants to get on a bike with a woman and go into the mountains - it was part of a larger conversation

→

ended when MDR came into the office. he handed her the power point and she ran to the team, threw the slide - she was ~~near~~ near tears - why?

→ he was aggressive, his repeated statement you were raped, abused, ~~abused~~

was this the first time you were distressed -

→ no - seems petty - back in November she was having a bad week and she had her hair [in a bun?] - he arrived at 6:33 and said why is your hair like that and then he didn't talk to her all day - then when having asked a year why my hair was like that - as he walked away I said loudly so others could hear - "he doesn't like my hair." she was upset and annoyed.

next convo post 5/15

June 5

I went into his office with Farrah - both wearing masks. Farrah took first half of dictation and then left to transcribe - the mask kept sucking into my face - he made a comment that it looked like predator - he said if someone asked if he was being investigated for sexual harassment and he says "she looks like a predator" he was making a joke how his comment about my appearance - how would you say that was sexual harassment. It was a strange comment. After I finished dictation he asked how my speech went and then said turn off the tape recorder - which was OK because it was personal not work - we had a very long conversation. Steph asked - were you working that whole time? dictating? what were you talking about?

→ clarify/confirm
w/ JDR

→ [UNCLEAR response]

was we talked about the speech. I said it went really well. we talked about how it sucks to be on Zoom. I told him I had [a bottle of?] Champagne at the end - we may have discussed the substance of the speech. he asked if I gave to speech we wrote together.

There was a short break - co in + out of office + doesn't know what happened before/ After she is not totally clear between multiple convos.

he ~~said~~ brought up his ex - he said Sandy was not talking to him, that he was lonely, that he was not sleeping well. he said he was looking for a G.F.

he told (C) she was in charge of finding him a girl friend

he asked her about how she felt about age differences + brushed off her concern and said age doesn't matter as long as she is about 22. he knew she was 25. Speak on her 25th bday C/B said like your daughter

→ we talked about monogamy → she did not think
→ all that important. he asked how being sexually assaulted affected the way I was attracted to men

he asked about recent hookups
he knew my ex BF was in a coma - he asked if that was my last serious relationship. he wanted to know who I had been seeing - if I was sleeping with other people, if they were sleeping with other people. he wanted to know the worst relationship I had had since my ex.

[recalled later] ~~he wanted to know~~ he said it is hard not to bring someone in months. I said are your daughters gone, he asked me and I said my parents wouldn't let me in the house because of Covid and

I had not even had a hug.
The convo about the girlfriend was fairly quick,
I didn't know what to say. I suggested Jaeda
Pinkett Smith + Chelsea Handler. he said
CH was crazy

Q Anyth' else you can recall?

we talked about Tattoos - my birthday I
wanted to get a tattoo - w/ a silhouette of a woman
and flowers - I was goin' to put on my back. he
said put on your chest or ass. Ass? - he said "putt"

→ I said you should have a party

he

I had not even had a hug, the convo about the girlfriend was fairly quick. I didn't know what to say. I suggested Jaeda Pinkett Smith + Chelsea Handler. he said CH was crazy.

he repeated that he was lonely + didnt know what to do. he wants to get drunk and get on his motorcycle and take a woman as into the mountains and forget about the pandemic for a few hours.

CR said I don't know how you do that - how you have time for a relationship + would find privacy. he said privacy is not a problem.

Q - anything else?

We talked about tattoos - I wanted a tattoo for my birthday of a silhouette of a woman with flowers - he was getting on my back and he said no, get it on your chest or ass. Ass? no - he said butt.

June 7

The next day - it was just me. Everyone else (MDR + Steph) left - it felt like a follow up to show me he could find privacy. he asked me if I had found a girl friend for him. he said I looked like daisy dukes + then he left.

There were a lot of red flags - he asked if I knew what a cone of silence was - I said yes - he said we can have a private conversation - we have a cone of silence. that is a blatant example of grooming - charity -

I won't say anything - you won't say anything - when

questions became more personal,
besides line of silence
what made you uncomfortable
the age difference ~~and~~ question and
his picking a specific age.

→ did he evr make an ~~explicit~~ sexual
advme - No

Did he evr touch you? -
NO

~~Is there anything else you can think of?~~

Is there anything else you can think of?

→ he said he liked my make up on ~~me~~
5/9 when stalked in city - called me work -
everything else was fine

Anything else I haven't asked - anything else
Not that I can think of

→ I want to distance myself - I don't want
others to become this vis. thing. want to keep small
Jill has been amazing
I don't want to make waves
I want to make as little of this as possible

Charlotte Bennett follow up w/ Jill

Confidential

You wanted to speak again - not worth
a whole call - increasingly anxious
read the

employee handbook - think there might need to be
an investigation and am very anxious about that -
do you know more yet?

[JM says piece]

everything you said I agree with -

I acted ~~the way~~ before anything happened

JM - let me ask you - don't want words but it sounds like he was ^{a supportive} friend

we had a lot of meaningful conversations
and I felt he was acting as my friend

Still feel that way -
prefer new position

this is my dream job -

Charlotte Bennett followup (w/ Jill)

Charlotte texted: Hey there! It's Charlotte. would you mind hopping on the phone sometime this pm for a quick check in?"

JM: you wanted to speak again?

CB: Not sure its worth a whole call but I am anxious - need the ee handbook and am worried there might need to be an investigation. was wondering if you had further idea of what might happen next -

JM - Glad you called. Don't want you to be anxious. Have gone over everything you said. Am familiar w/ handbook. Here's what I think - want to make sure am understanding what she told us. - correct me if I am wrong. Really important that I not put words in your mouth - but my conclusion is that you had some very personal discussions with B that you were comfortable with and that at the point where you started to become less comfortable, you took control and acted to remove yourself ~~from the situation~~ "to address the situation" as you told us - before anything happened that you were concerned about.

CB - Yes - I agree w/ everything you just said. I was worried it might be going in the wrong direction - in a direction I didn't want - and I asked to be moved before anything bad happened.

JM So ~~if~~ in that case, then there doesn't need to be an investigation because you are ~~not~~ saying she took any unwanted step.

CB Yes

JM - Again don't want to put words in your mouth, but it

sounds to me like when you were discussing personal experiences w/ G he was acting as a friend, being supportive -

CB - Yes! We had a lot of very meaningful conversations and I felt he was acting as my friend - I still feel that way - that he is my friend - that's what makes this so hard. He is the Governor but he was also my friend - my job - it's very hard.

JM - just want to make sure you don't feel you were in anyway forced out of a job you would have preferred to stay in. No - this is my dream job. JM: OK because if you wanted - and it \neq sound like yours - We would arrange for you to keep that job and make sure you were comfortable - that you would not have to deal w/ him. No - \forall

CB - I am so relieved - I was very anxious before I spoke to you. Now I feel so much better.

JM - Good - we don't want you to be anxious Jill and I always are - know you will do great things - want the state to be part of it.

EXHIBIT 3

JD goes to get CB from office (June 30)
Says talks through ^{all} personnel
decisions with JM. Would
it be ok to set JM on the
telephone. JM would like to
hear directly from CB.

CB - YES

JM - Don't know what JD told you
but I'm sorry to pull you
out of a meeting just important
that we speak to you. Want
to hear in your own words what
happened.

CB - pause - what will you do?
what happens next

Jim - Unfortunately I can't really
say without knowing from you
what happened.

CB That makes sense

Interaction 1 - pre budget - 2 days before
January.

CB

- was in the command center
compiling book to leave for you

- he told Sporhouse staff? that I
should go to pool house

- AC was sitting on the couch
doing work. looked up. asked me
to tell him something - asked
about staff/gossip

- CB said she didn't have anything
to say - said often AC would
ask about staff. Who is talking to
whom - any gossip what

- She didn't have anything to say about

- AC asked her to tell him something else.

- CB shared that possibly enough is enough changed her life.

- AC sat up and asked her to sit down - asked her what she meant

- CB said that she was sexually assaulted in college - also had lost her virginity - and she had a bad experience

with trying to get her college to look at it. and enough is enough was at approx the same time

and she believes the law forced her school to take her case seriously and look into it.

→

AC said Do you know what the
cone of silence is? What gets
said here stays here -

CB said that was odd.

AC told her that [REDACTED]

had been the victim of a sexual
assault at her college too.

[REDACTED]

AC asked CB if the experience
made her closer to her father.

CB said she didn't answer honestly
because she said she did just
want to get into it. she said
yes it brought her closer to her
family. In reality her parents
werent supportive of her making an
issue out of it.

to ~~the~~
interaction 2 - may 15th.

CB had been up in Albany assisting the front office w/ staffing and also working on the book.

AC came into office early one morning 6:15h and CB came in earlier to get her PPT. She was in pajamas - (later said leggings and a sweatshirt) because she should have been up but didn't have time to get ready.

CB says she was just planning on going into ~~the~~ AC office dropping the ppt and ~~running out~~. was going to run out.

CB says when she went to his back office AC was laying on

Couch with feet up

CB says AC was surprised to

see her and asked how long she had been up there (in Albany)

CB says that she said she had been up in Albany for 60 days. She said AC was

surprised and asked her who she was hanging out w/
who she was sleeping w/.

JM asked - who you were sleeping w/?

CB corrected - no not who ~~was~~ was sleeping w/ who I was hanging out w/ then AC asked her if she was interested in Noah or Jade

and proposed that she marry
Noah.

(at some point he asked her to sit)

CB says she told him about
her upcoming speech ~~about~~ ^{she}
was going to the women's group
at her college. She said it was
on her experience.

CB said at some point of the
discussion AC said loudly and
repeatedly - 'You were raped! You
were raped! You were raped!'

I'm asked if he said it 3 times
CB said more than 3

CB said it made her uncomfortable
and that she felt like he
said that to get under her
skin or get in her head.

JM said why

CB - Because it didn't seem like
it was for benefit that she get
help it was meant to unsettle her

at some point Al gets up and
goes to sit at his desk and tells
her to move chairs

CB says ~~that~~ she makes connection
that her speech is like ~~what~~ similar
to watch Governor in dealing
w/ conrd.

taking something that causes pain
and turning it into meaningful
things?

~~When~~ CB reads a line from the
speech to AC. He makes what CB
called a thoughtful connection
that she ended up using.
CB said something about how this
is important to speak about because
of pain → he craved to be raped
and in prison. He also
told her what he thought the
speech should say.

- record - AC says that he wants
to understand why different now
why less people paying attention

- CB says that people were scared

at the beginning and then they
aren't anymore as much.

AC says that he wants to
be touched. and is ~~the~~ lonely.

CB says aren't you daydreaming
here.

AC says he wants to ^{get on his}
~~get on his~~ motorcycle and ride to the north
w/ a woman.

CB says at some point Melissa
walked in because she had
arrived at work. ^{CB} she takes the
ppt from his desk and leaves
at that point.

Interaction 3 - June 5

AC was dictating to Fannah and CB. Fannah left room.

CB stayed back.

CB talked about how her speed had gone and said that it went really well. ~~AC~~ AC said her speed increased to mean that he helped her write it.

Do not remember exact order -

- CB said it felt like ~~she~~ AC was grooming her.

- CB says AC said he was lonely that Sandra wasn't talking to him and he wanted to get on his motorcycle

and ride into the mountains
w/ a woman.

AC asked CB about who she was
sleeping with. He had previously
discussed w/ CB her ex boyfriend
was in a coma and CB moved
back to be near him. They then
talked about monogamy - whether
CB knew of the people she was sleeping
with were sleeping with other people.

~~monogamy~~ CB says casually
to JD+JM that she doesn't really
believe in monogamy. But ~~she then~~
Bullock goes back to the interaction
w/ AC and says it was a serious
conversation.

DB says AC again said he
was lonely.

CB then says she deflects
by saying he should have friends
next and have dates.

CB says AC asked her to find him a girlfriend. She says she ~~present~~ deflected and said Jada Pinkett Smith or Chelsea Handler. He said Jada is married and Chelsea is nuts.

~~AC~~ AC then asks CB what the criteria should be for prospective girlfriends. ~~AC~~ AC said to her ~~that~~ ~~age~~ what should the age cutoff be?

CB says she was paused and didn't respond yet.

AC jumped in and said as long as they are over 22.

CB says that she was taken
aback by that answer because
AC knew she had just turned
25.

(order?)

CB said don't you think that
it would be hard to date
you can't really have any
privacy. AC said privacy
wouldn't be an issue for
him.

CB said ~~she~~ - no good notes on how
this conversation ended -

CB says she felt in this conversation
that AC was starting to "grope" her
by some of the topics they covered
and questions AC asked her

in particular - CB ~~at~~ that when
AC was asking about age and whether
age mattered that was a leading
question. She says CB said
22 or over because she he
knew she was 25. Also
because she used to play soccer
~~with~~ against his daughters when
she was growing up because she
lived in the neighborhood. So he
knew they would be roughly the
same age.

CB felt concerned after this interview

CB said this was approx an
hour long interaction. When
she left his office SB asked
her if AC had been dictating
that entire time. CB said no
we were talking. SB asked
about that. CB says she didn't
really answer.

Interaction 4. June 7

CB was staffing AC that day

Jim asked what staffing entailed -

CB said answer phones, pulling together meetings, typing things up for him. It didn't include some more high level work.

CB was ~~was~~ called in to help

staff. MD + SB left the office

so CB was alone with AC.

CB says she felt like AC orchestrated the private situation as a way to show power and that he could get her alone.

She felt like it was a follow up to her conversation w/ him on the 3rd about finding a girlfriend where he said he would be able to have a private situation.

- Do not have good notes on this conversation

- Ac person called CB Daisy Drake's ~~background~~. CB had to look on the internet but sees that he was likely referring to her shorts that she was wearing to the office.

Ac left office soon after daisy's date

At some point of the
conversation they discussed
a tattoo that CB wanted
to get of a woman holding
to ~~the~~ flowers. CB said
she was going to get it on her
back. CB said AC said
you should get on chest or arm
JM said → he said as?
CB said no he said butt

— June 9 - CB stopped AC in
NYC office. She didn't have
any particular interactions w/
AC that caused alarm.

June 10 - CB goes to see JD.

CB requests to be removed from
staffing rotation and moved to
do a different job. ~~She~~ CB
tells JD that their conversations
had become personal to the point
where she was uncomfortable and that
AC had told her he was lonely.

June 12 - JD/CB come to agreement about
new position in ~~help~~ health.

portfolio. CB does not staff
AC again. Transition to new
position begins the following
Monday.

JM g - Did AC ever make
any sexual advances or touch
you?

CB - no

JM - Because you took control
~~and~~ before any they could happen

CB - yes.

JM - any additional information

→ Not sure of sequence

Some of text stories may have

happened earlier

- One day (staffing in MYC)
CB was having a bad day.
SB says she didn't feel like
she was pulled together
and her hair was in a bun.

CB says AC came in and
made a comment about
her hair and not liking it
that way. AC then went
to work in his office and
CB didn't really see him again
until he was on the way out
the door. AC ~~has~~ remarked
again that he didn't like
her hair and called her Brun

CB says she got up out of her chair as he was walking out and remarked loud enough so he could hear "he doesn't like my hair"

- CB said that AC had personal conversations w/ her. CB had told him once that she was getting into body building.

~~AC told her~~ AC asked her how many push ups she could do. They then had a push up contest. AC did one more than her. AC told her men don't like women that are stronger than they are.

JM asked CB twice if there was anything else she wanted to tell us.

CB said not that she can think of. She was interested in what would happen next.

JM informed CB that she was grateful to her for sharing her story and that if she felt ever that she needed to talk to someone there are resources available there is EAP and counselors that she can access.

CB thanked her. JM ended the call. CB was in person in JD office. She was tearing up.

She said thank you and left
to go back to her office.

Approx meeting time 2hrs. 15/20 mins

Followup Phone Call - July 1st

~~DM~~ CB texts JM ask if there
are any updates

JM, JD call CB at 7pm.

- JM starts conversation by saying
I got your text that you wanted
an update and wanted to call
to check in

- CB says I've been really
anxious. I've been reading

the handbook, went to the doctors today and guess I just want to know what happens next.

JM says: ^(last exact) OK ~~there~~ to set your mind at ease. I am very familiar with the handbook. I have read through my notes and reviewed the ~~law~~ ^{law} and it sounds like based on what you shared that while there were conversations that became ~~too~~ too personal and unfortunately that most of your interactions were appropriate and that

once the conversations became uncomfortable you took control of the situation. Asked immediately to go to JD to be moved out of the situation and that she moved you to do something else quickly. The conduct you described does not rise to the level of harassment and no further inquiry appears to be necessary at this time. Do you agree with what I just said?

CB: Yes, and it's a relief. I was worried that he ~~would~~ would

be mad he's a powerful person.
But yes agree w/ what you
described.

JM- and from what you
described would you say
that most of your interactions
were positive and support
and that you considered AC a
friend

CB- yes and I still consider
him my friend.

JM- You are very courageous.
One more question - you asked
to be moved to transition to a
new job. I want to make sure

that you are happy and that
your new position is something
that you would want to be
doing. Because if you wanted
to remain on the briefing
team we could work something
out where you could do that
comfortably.

CB. - This is my dream job
I had previously spoken to
Megan and told about my desire
to work in the health professions
this is a dream job

M. - Good we want you to be successful
and there should be nothing here
that would hold you back. And

no one can retaliate against
you for what you told us
today.

CS- I am relieved I had a lot of
anxiety.

JM- ~~the~~ Please feel free to reach
out to us if anything else comes
up or you need to speak to
us about anything. My door
is open. Julie's door is open.
Let call.

EXHIBIT 4



Governor Cuomo Inappropriate Touching

To: State Entity Employee #1 [redacted] Sep [redacted] 2019 at 7:56 PM

On [redacted] Governor Andrew Cuomo led a press release about a commitment to [redacted] After his recorded talk on the [redacted] and [redacted] groups were shaking Governor Cuomo's hand and taking pictures. My boss and I introduced ourselves and said thank you to Governor Cuomo and he suggested that we, [redacted] take a picture with him. My boss and I stood on either side of Governor Cuomo and we took a couple pictures with the Governor's photographer. When departing from taking the picture, Governor Cuomo tapped my butt cheek two times (to quick pats) with what felt to be the palm of his hand. I was very surprised and so as I made a few steps forward with my boss, [redacted] I told her immediately that Governor Cuomo patted my butt. She looked confused and maybe said "what?" or "huh?" so I repeated myself and said, "The governor just patted my butt." She was then silent and just looked at me, while [redacted] who happened to be very close and seemed to hear me made an uncomfortable laugh. I then felt a lot of emotions around Cuomo's inappropriate touching of my body, mostly shock and anger, but I didn't say anything further about his touching and continued to mingle / say thanks and goodbyes [redacted]

[redacted]
9/ [redacted] 19

Sent from my iPhone



EXHIBIT 5





EXHIBIT 6



EXHIBIT 7



Fri, Jun 5, 1:15 PM

I MISS YOU SO MUCH

I will watch everything so soon I'm so sorry

My life is spiraling out of control

I MISS YOU SO MUCH

DONT WORRY

IDK HOW YOURE DOING ANYTHING RN

Something just happened and I can't even type it out or put it in a video

Not sure I'm even comfortable saying it over the phone

NOT SURE

GOING TO BURST INTO TEARS

THIS WORLD IS A HORRIBLR PLACE

WHY IS EVERYONE RACIST

OH MY GOD WHAT

OH FUCK

ARE YOU OKAY



iMessage



1:33



< 248



OH FUCK

ARE YOU OKAY

I feel like

Think of what you THINK it could be

oh jesus

That I wouldn't be able to put in technology

I don't know if I'm making sense

But

are they watching your phones like what the fuck is going on

are you okay???

like are you safe

I just would be like very uncomf typing things out but

safe don't worry totally safe I'm just being paranoid

okay don't worry don't type it

i doubt that but OKAY



iMessage



1:33



< 248



i doubt that but OKAY

no way you're just being paranoid

Talked about age differences in relationships

can you write it on a piece of paper take a picture of it and then burn the paper

oh FUCK

WAIT WHAT

DID HE DO SOMETHING

No but it was like the most explicit it could be

OH MY GOD

OHHHH MY GOD

LIKE HIM HIM

THE HIM

Him him him

Oh my god are you in the office

oh my fucking god



iMessage





Him him him

Oh my god are you in the office

oh my fucking god

Yes like shaking

charlotte you need to leave

you need to get out right fucking now

i know it feels like you can't but even just say you're taking a walk

I'm so upset and so confused

Fuck you're right

please try to leave

say you're getting a coffee or talking a walk or calling your mom

please please please leave the office

just at least for a few minutes

Leaving

okay great



iMessage



1:33



< 248



Leaving

okay great

holy shit

holy fucking shit

can you go to your hotel room

or just somewhere safe i don't know

also it's friday - is there any possibility of taking the weekend and going to katonah

Okay I'm going to take tomorrow off

I can't do this

You're right

okay good good

you won't be able to think clearly if you stay there

why is this the world

What is going on

Seriously is this it? Like is this what it is?

no



iMessage





why is this the world

What is going on

Seriously is this it? Like is this what it is?

no

this is not what it is

this is how it is sometimes

but no

this workplace has been toxic from the start in every possible way and i PROMISE you this is not all there is

i fucking promise this is not it

even in politics

can you go home tonight

I think I need to

you have to

I know this is a lot to ask but i need you to go to your hotel pack up everything and drive home

pack like your not coming back. you don't have to commit to that right now, but at

248



pack like your not coming back. you don't have to commit to that right now, but at least it'll be an option in a few days if that's what you decide to do

i'm coming home

i'm going to come home within the next few weeks i'm going to drive

also write down everything - somehow just on a piece of paper, time date what exactly he said etc

And then put the paper in your phone case or somewhere else super secure/private

THAT IS A GREAT IDRA THANK YOU

I CANT WAIT TO SEE YOU WHENEVER THAT IS IT WILL BE GREAT

He called me back

I got a call

oh fuck

did it help or hurt the situation

I feel Better but I shouldn't because it wasn't



iMessage



EXHIBIT 8

**STATE OF NEW YORK
EXECUTIVE DEPARTMENT**



**EQUAL EMPLOYMENT OPPORTUNITY
In New York State**

RIGHTS AND RESPONSIBILITIES

A Handbook for Employees of New York State Agencies

**Andrew M. Cuomo
Governor**

May 2020

EMPLOYEE RIGHTS AND RESPONSIBILITIES

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INTRODUCTION

New York State has long been committed to the principle that all individuals in the State should have an equal opportunity to enjoy a full and productive life, including in their occupational pursuits. Under New York State's Human Rights Law, the first of its kind in the nation, employees are protected from acts of discrimination. Such acts have no place in the workplace.

All State employees have the right to be free from unlawful discrimination in the workplace, together with a responsibility to ensure their actions do not contribute to an atmosphere in which the State's policy of promoting a bias-free work environment is frustrated. In this Handbook, the term "employee" includes interns and non-employees, such as contractors and consultants working in the State workplace and their employees. This Handbook is intended to provide employees of the State of New York with information on their rights and responsibilities under State and federal law with respect to equal employment opportunity. Emphasis will be placed on New York State's Human Rights Law because the protections it provides are generally greater than those granted under federal law. In addition, this Handbook will cover related State laws and Executive Orders.

This Handbook comprises the statewide anti-discrimination policy applicable to State workplaces. Conduct that may not amount to a violation of State or federal law or an Executive Order may nonetheless constitute a violation of the State's anti-discrimination policy, as set forth in this Handbook.

As part of the process of implementing the provisions of this Handbook, Governor Andrew M. Cuomo issued Executive Order 187, to promote more effective, complete and timely investigations of complaints of employment-related protected class discrimination in agencies and departments over which the Governor has executive authority. Effective December 1, 2018, Executive Order 187 transferred the responsibility for conducting investigations of all employment-related discrimination complaints to the Governor's Office of Employee Relations ("GOER"). These investigations include complaints filed by employees, contractors, interns and other persons engaged in employment at these agencies and departments concerning discrimination, retaliation and harassment under federal and New York State law, Executive Orders and policies of the State of New York. All such complaints of protected class employment-related discrimination will be investigated by GOER. A copy of the New York State Employee Discrimination Complaint Form is located on the GOER website (<https://goer.ny.gov/>) at <https://antidiscrimination.goer.ny.gov/>.

PROTECTED AREAS

The Human Rights Law applies to all State agencies and employees and provides very broad anti-discrimination coverage. The Human Rights Law provides, in section 296.1(a), that it is an unlawful discriminatory practice “[f]or an employer or licensing agency, because of the age, race, creed, color, national origin, sexual orientation, , gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status or status as a victim of domestic violence [of any individual], to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.” Persons with disabilities, and persons with pregnancy-related conditions, are entitled to reasonable accommodation as provided in section 296.3. Accommodation of sabbath observance or other religious practices is required by section 296.10. The Human Rights Law further provides, in sections 296.15 and 296.16, protections from employment discrimination for persons with prior conviction records, or prior arrests, youthful offender adjudications or sealed records.

Each of these protected areas are discussed below, as well as other protections provided by Governor’s Executive Orders and other state laws and policies.

AGE

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person’s age, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

While most cases of age discrimination concern allegations that an employee was perceived to be “too old” by an employer, under the Human Rights Law it is also discriminatory to base an employment decision on a perception that a person is “too young,” as long as the person is at least 18. However, basing a decision on lack of experience or ability is not discriminatory.

Decisions about hiring, job assignments or training must never be based on age-related assumptions about an employee’s abilities or willingness to learn or undertake new tasks and responsibilities.

All employees must refrain from conduct or language that directly or indirectly expresses a preference for employees of a certain age group. Ageist remarks must be avoided in the workplace.

Statutory protection.

Age discrimination is made unlawful by Human Rights Law § 296.1, § 296.3-a, § 296-c (for interns) and § 296-d (for non-employees working in the workplace), and by the

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federal Age Discrimination in Employment Act (“ADEA”).¹ Under New York law, age discrimination in employment is prohibited against all persons eighteen years of age or older. Under the ADEA, age discrimination is prohibited only against persons forty years of age or older.

Executive Order concerning State workers.

On January 1, 2011, Governor Andrew M. Cuomo issued Executive Order No. 2, reissuing Executive Order No. 96,² which prohibits Age Discrimination in the workplace. The Executive Order notes that every State employee is entitled to work in an age-neutral environment with equal opportunity for hiring, promotion and retraining opportunities.

Retirement.

Mandatory retirement of employees at any specific age is generally prohibited, except as noted below.³ However, retirement plans may contain an age component for eligibility. Thus, retirement plans may require that persons attain a certain age or have some combination of age and years of service, before being eligible for retirement benefits.⁴

Incentive programs intended to induce employees to retire by granting them greater retirement benefits than those to which they would normally be entitled in order to reduce the size of the work force have generally been found to be lawful. Being eligible for “early retirement” is not coercion based on age. Similarly, that an employee may not be eligible for a retirement benefit or incentive because he or she has not attained a certain age (i.e., “too young”) is also not considered discriminatory.

Exceptions.

The Civil Service Law⁵ mandates minimum and maximum hiring ages for police officers. Correction Officers must be at least 21 years of age in order to be appointed.⁶ These are lawful exceptions to the provisions of the Human Rights Law.

¹ 29 U.S.C. § 621 et seq.

² Issued by Gov. Mario M. Cuomo on April 27, 1987.

³ Human Rights Law § 296.3-a(d) but see exceptions below.

⁴ Human Rights Law § 296.3-a(g).

⁵ N.Y. Civil Service Law § 58; see also N.Y. Executive Law § 215.3.

⁶ N.Y. Correction Law § 7(4).

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There are certain limited exceptions to the prohibition on mandatory retirement.⁷ For example, officers of the New York State Police are required to retire at age 60,⁸ and State park police officers are required to retire at age 62.⁹

In the area of employee benefits, the Human Rights Law does not “preclude the varying of insurance coverage according to an employee's age.”¹⁰

RACE AND COLOR

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's race or color, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

Discrimination because of a person's membership in or association with an identifiable class of people based on ancestry or ethnic characteristics can be considered racial discrimination.

There is no objective standard for determining an individual's racial identity. Therefore, as an employer, the State defers to an employee's self-identification as a member of a particular race.

The Human Rights Law explicitly provides that the definition of race includes traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.¹¹ Protective hairstyles include such hairstyles as braids, locks and twists.

“Color” can be an independent protected class, based on the color of an individual's skin, irrespective of their race.

Statutory protection.

Race and color discrimination are unlawful pursuant to the Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace), and the federal Civil Rights Act of 1964, Title VII.¹²

⁷ Human Rights Law § 296.3-a(g).

⁸ N.Y. Retirement and Social Security Law § 381-b(e).

⁹ N.Y. Park, Recreation and Historic Preservation Law § 13.17(4).

¹⁰ Human Rights Law § 296.3-a(g).

¹¹ Human Rights Law § 292.37 and § 292.38.

¹² 42 U.S.C. § 2000e et seq.

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CREED

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's creed, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

"Creed" encompasses belief in a supreme being or membership in an organized religion or congregation. Atheism and agnosticism are considered creeds as well. A person is also protected from discrimination because of having no religion or creed. An individual's self-identification with a particular creed or religious tradition is determinative.

Statutory protection.

Discrimination based on creed is unlawful pursuant to the Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace), and the federal Civil Rights Act of 1964, Title VII.¹³

Sabbath or holy day observance.

An employee is entitled to time off for religious observance of a sabbath or holy day or days, in accordance with the requirements of their religion, provided it does not impose an undue hardship to their employer, as explained below.¹⁴ Time off shall also be granted to provide a reasonable amount of time for travel before and after the observance.

The Human Rights Law provides that any such absence from work shall, wherever practicable in the reasonable judgment of the employer, be made up by an equivalent amount of time and work at a mutually convenient time, or shall be charged against any available personal, vacation or other paid leave, or shall be taken as leave without pay.¹⁵ Agencies are not required to permit such absence to be made up at another time, but may agree that the employee may do so.

Leave that would ordinarily be granted for other non-medical personal reasons shall not be denied because the leave will be used for religious observance.¹⁶ Under no circumstances may time off for religious observance be charged as sick leave.¹⁷

The employee is not entitled to premium wages or benefits for work performed during hours to which such premium wages or benefits would ordinarily be applicable, if the

¹³ 42 U.S.C. § 2000e et seq.

¹⁴ Human Rights Law § 296.10(a).

¹⁵ Human Rights Law § 296.10(b).

¹⁶ Human Rights Law § 296.10(c).

¹⁷ Human Rights Law § 296.10(b).

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employee is working during such hours only to make up time taken for religious observance.¹⁸

Civil Service Law § 50(9) provides that candidates who are unable to attend a civil service examination because of religious observance can request an alternate test date from the Department of Civil Service without additional fee or penalty.

Religious observance or practices.

An employee who, in accordance with their religious beliefs, observes a particular manner of dress, hairstyle, beard, or other religious practice, should not be unreasonably required to compromise their practice in the workplace. The employer is required by law to make a bona fide effort to accommodate an employee's or prospective employee's religious observance or practice. Employers are required to reasonably accommodate the wearing of attire, clothing, or facial hair in accordance with the requirements of an employee's religion, provided it does not impose an undue hardship on the employer.¹⁹

Request for accommodation.

All New York State agencies have adopted a procedure for requesting a religious accommodation.²⁰ An applicant or employee requesting time off or other accommodation of religious observance or practice should clearly state the religious nature of the request and should be willing to work with the employer to reach a reasonable accommodation of the need. Supervisors should consult with their human resources and/or legal departments, as necessary, with respect to requests for accommodation of religious observance or practices.

Conflicts with seniority rights.

In making the effort to accommodate sabbath observance or religious practices, the employer is not obliged to initiate adversarial proceedings against a union when the seniority provisions of a collective bargaining agreement limit its ability to accommodate any employee's religious observance or practice, but may satisfy its duty under this

¹⁸ Human Rights Law § 296.10(a). "Premium wages" include "overtime pay and compensatory time off, and additional remuneration for night, weekend or holiday work, or for standby or irregular duty." § 296.10(d)(2). "Premium benefit" means "an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, or an educational or pension benefit that is greater than the employment benefit due to the employee for an equivalent period of work performed during the regular work schedule of the employee." § 296.10(d)(3).

¹⁹ Human Rights Law § 296.10(a).

²⁰ With respect to policy and procedures relative to religious accommodation generally, employees should consult the publication "Procedures for Implementing Reasonable Accommodation of Religious Observance or Practices for Applicants and Employees," and the accompanying "Application to Request Reasonable Accommodation of Religious Observance or Practice."

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section by seeking volunteers willing to waive their seniority rights in order to accommodate their colleague's religious observance or practice. This waiver must be sought from the union that represents the employees covered by such agreement.

Undue hardship.

Before the employer can deny a religious accommodation, the employer must be able to show that accommodating the employee's religious observance or practice would result in undue hardship to the employer. The undue hardship standard applies generally to all accommodation requests, not only those for time off for religious observance. "Undue hardship" means an accommodation requiring significant expense or difficulty, including one that would cause significant interference with the safe or efficient operation of the workplace. Factors that are specifically to be considered are the identifiable costs (such as loss of productivity, or the cost to transfer or hire additional personnel), and the number of individuals who will need time off for a particular sabbath or holy day in relation to available personnel.²¹

Furthermore, in positions that require coverage around the clock or during particular hours, being available even on sabbath or holy days *may* be an essential function of the job. Also, certain uniform appearance standards *may* be essential to some jobs. A requested accommodation will be considered an undue hardship, and therefore not reasonable, if it will result in the inability of an employee to perform an essential function of the job.²²

Exceptions.

None with regard to employment decisions. Accommodation is limited by reasonableness, conflicting seniority rights and undue hardship, as set forth above.

NATIONAL ORIGIN

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's national origin, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

National origin is defined as including ancestry, so an individual born in the United States is nonetheless protected against discrimination based on their ancestors' nationality.²³ An individual's self-identification with a particular national or ethnic group is determinative.

²¹ Human Rights Law § 296.10(d)(1).

²² Human Rights Law § 296.10(d)(1).

²³ Human Rights Law § 292.8.

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Statutory protection.

National origin discrimination is unlawful pursuant to the Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace), and the federal Civil Rights Act of 1964, Title VII.²⁴

Language issues.

Fluency in English may be a job requirement. However, requiring that a person speaks English as their primary language, or be a “native speaker,” may be considered national origin discrimination. In some circumstances, where a particular level of fluency in English is not necessary for job performance, requiring such fluency might also constitute national origin discrimination. The only lawful requirement is for a level of English fluency necessary for the job.

Requiring employees to speak only English at all times in the workplace may be national origin discrimination. Any specific workplace rule about language use must be reasonable and necessary to the efficient conduct of State business. Any such reasonable rule that prohibits or limits the use of a language other than English in the workplace must be clearly communicated to employees before it can be enforced.²⁵

Requiring fluency in a language other than English, such as for employment in bilingual positions, is not discriminatory. However, a job qualification of language fluency must be based on an individual’s ability, not on national origin. A requirement that an individual be a “native speaker” of a language other than English is discriminatory.

Proof of identity and employment eligibility.

All New York State employees hired after November 6, 1986 must be able to complete a verified federal Form I-9, which establishes the employee’s identity and eligibility for employment in the United States. Rescinding an offer of employment or terminating employment based upon lack of current employment authorization is required by federal law and is not unlawful discrimination.²⁶

Citizenship requirements.

Employees serving in positions designated as “public offices,” as well as peace and police officer positions defined in the New York State Criminal Procedure Law, must be United States citizens.²⁷

²⁴ 42 U.S.C. § 2000e et seq.

²⁵ See the federal Equal Employment Opportunity Commission’s regulation at 29 CFR § 1606.7.

²⁶ US Immigration and Nationality Act § 274A, as modified by the Immigration Reform and Control Act of 1986, Immigration Act of 1990 and Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

²⁷ Public Officers Law § 3(1); Criminal Procedure Law § 1.20(34) (police officers); Criminal Procedure Law § 2.10 (peace officers).

MILITARY STATUS

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's military status, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

"Military status" is defined in the Human Rights Law as a person's participation in the military service of the United States or the military service of the State, including, but not limited to, the armed forces of the United States, the Army National Guard, the Air National Guard, the New York Naval Militia, or the New York Guard.²⁸

Statutory protection.

Discrimination on the basis of military status is unlawful pursuant to the Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace). The federal Uniformed Services Employment and Reemployment Rights Act (USERRA)²⁹ provides additional protections.

Military leave provisions for State workers (and all public employees) are contained in N.Y. Military Law § 242 and § 243. Under the 2008 amendments to the federal Family and Medical Leave Act (FMLA), employees with a family member who is on active duty or on call to active duty status may be eligible for qualifying exigency leave or military caregiver leave of up to 26 weeks in a 12-month period, based upon the family member's military service.

Military leave and job retention rights.

N.Y. Military Law entitles State employees to a leave of absence for "ordered military duty"³⁰ or "military duty."³¹ Both provisions entitle State employees to return to their jobs with the same pay, benefits, and status they would have attained had they remained in their position continuously during the period of military duty. State employees on leave for military duty continue to accrue years of service, increment, and any other rights or privileges. Under both Military Law and the Human Rights Law, those called to military duty, or who may be so called, may not be prejudiced in any way with reference to promotion, transfer, or other term, condition or privilege of employment. Military Law § 243(5) provides: "State employees on leave for military duty shall suffer no loss of time, service, increment, or any other right or privilege, or be prejudiced in any way with reference to promotion, transfer, reinstatement or

²⁸ Human Rights Law § 292.28.

²⁹ 38 U.S.C. §§ 4301-35.

³⁰ N.Y. Military Law § 242; pertains to members of the militia, the reserve forces, or reserve components of any branch of the military.

³¹ N.Y. Military Law § 243; pertains to active duty in the armed forces or reservists called to active duty.

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continuance in office. Employees are entitled to contribute to the retirement system in order to have leave time count toward determining length of service.”

Similarly, under USERRA, service members who leave their civilian jobs for military service are entitled to return to their jobs with the same pay, benefits, and status they would have attained had they not been away on duty. USERRA also prohibits employers from discriminating against these individuals in employment because of their military service, or for exercising their rights under USERRA.

SEX

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person’s sex, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

Sex/gender discrimination also includes discrimination on the basis of gender identity, pregnancy, childbirth or prenatal leave, sexual orientation and sexual harassment. Each of these is discussed in more depth below.

Statutory protection.

Sex discrimination is unlawful pursuant to the Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace), and the federal Civil Rights Act of 1964, Title VII.³²

Sex stereotyping.

Stereotyping based upon sex or gender occurs when conduct, personality traits, or other attributes are considered inappropriate simply because they may not conform to general societal norms or other perceptions about how individuals of either sex should act or look. Making employment decisions based on sex-stereotyped evaluations of conduct, looks or dress can be considered discrimination on the basis of sex or gender.

Discrimination because a person does not conform to gender stereotypes is discrimination based upon sex or gender and may constitute sexual harassment. Derogatory comments directed at a person who has undergone gender dysphoria-related medical treatment could constitute sexual harassment, just as comments about secondary sex characteristics of any person could be sexual harassment.

Sex discrimination can also arise in the context of gender transition issues such as an employer’s refusal to recognize an employee’s sex after transition. For more information on transgender issues, see below: Gender Identity and Disability.

³² 42 U.S.C. § 2000e et seq.

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Sexual harassment.

Sexual harassment constitutes sex discrimination. (See below: Sexual Harassment).

Pregnancy and childbirth discrimination.

Discrimination on the basis of pregnancy or childbirth constitutes sex discrimination. (See below: Pregnancy, Childbirth and Parental Leave).

Exceptions.

Both State and federal law permit consideration of sex in employment decisions when it is a bona fide occupational qualification (BFOQ). This is, however, an **extremely narrow** exception to the anti-discrimination provisions of the Human Rights Law. Neither customer preference nor stereotyped and generalized views of ability based on sex can form the basis for a BFOQ. However, proof that employing members of a particular sex would impinge on the legitimate personal privacy expectations of an agency's clients, particularly in a custodial environment, may make out a case for a BFOQ.

SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination and is unlawful. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Statutory protection.

Sexual harassment is prohibited as a form of sex discrimination under the Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace), and the federal Civil Rights Act of 1964, Title VII.³³

Executive Order concerning State workers.

On January 1, 2011, Governor Andrew M. Cuomo issued Executive Order No. 2 reissuing Executive Order No. 19,³⁴ which established State policy on sexual harassment in the workplace.

Sexual harassment defined.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

³³ 42 U.S.C. § 2000e et seq.

³⁴ Issued by Gov. Mario M. Cuomo on May 31, 1983.

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- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

Actions that may constitute sexual harassment based upon a hostile work environment may include, but are not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient's job performance.

Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Sexual harassment need not be severe or pervasive to be unlawful, and can be any sexually harassing conduct that consists of more than petty slights or trivial inconveniences.

It is not a requirement that an individual tell the person who is sexually harassing them that the conduct is unwelcome. In fact, the Human Rights Law now provides that even if a recipient of sexual harassment did not make a complaint about the harassment to the employer, the failure of the employee to complain shall not be determinative of whether the employer is liable.³⁵

Sexual harassment can also occur when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is called "quid pro quo" harassment. Only supervisors are deemed to engage in this kind of harassment, because co-workers do not have the authority to grant or withhold benefits.

Every employer in New York State must have a policy on sexual harassment prevention, which includes a procedure for the receipt and investigation of complaints of sexual harassment. This policy and procedure should be distributed to new employees and made available to all staff as needed. Also, each agency must provide appropriate sexual harassment training to its staff.

³⁵ Human Rights Law § 296.1(h).

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Reporting sexual harassment.

As with all forms of discrimination and harassment, if an employee, including an intern or contractor working in a State workplace, experiences sexual harassment, or observes it in the workplace, the employee should complain promptly to GOER via the New York State Employee Discrimination Complaint form located at www.goer.ny.gov, or by contacting an equal employment officer. If the employing agency is not subject to Executive Order 187, the employee should file a complaint in accordance with their employer's discrimination complaint procedure. The employee may also report such conduct to a supervisor, managerial employee, or personnel administrator. The complaint can be verbal or in writing. If the complaint is verbal, a written complaint will be requested from the employee in order to assist in the investigation. If the employee refuses to reduce the complaint to writing, the supervisor or other individual who received an oral complaint should file it in writing on the NYS Employee Discrimination Complaint Form. Any complaint, whether verbal or written, must be investigated by GOER, or pursuant to the employing agency's policy. Furthermore, any supervisory or managerial employee who observes or otherwise becomes aware of conduct of a sexually harassing nature must report such conduct so that it can be investigated.

If an employee is harassed by a co-worker or a supervisor, it is very important that a complaint be made to a higher authority promptly. An agency cannot stop sexual harassment unless it has knowledge of the harassment. Once informed, the conduct must be reported to GOER or the employing agency, which is required to initiate an investigation and recommend prompt and effective remedial action where appropriate.

See below: Harassment.

Sexual harassment by a non-employee.

The employing agency has the duty to prevent harassment of its employees in the workplace including harassment by individuals who its employees come in contact with, including, but not limited to, vendors, consultants, clients, customers, visitors or interns.

Sexual harassment of non-employees.

Individuals in the workplace, who are performing work under contract, are explicitly protected from sexual harassment (and all other types of workplace discrimination) by Human Rights Law § 296-d.

In accord with statewide policy, employees and interns are subject to discipline for harassment of *anyone* in the workplace, including contractors, clients, vendors, or any members of the public.

SEXUAL ORIENTATION

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's sexual orientation, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

The term "sexual orientation" means heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived.³⁶

Statutory protection.

Discrimination on the basis of sexual orientation is unlawful pursuant to the Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace). Sexual orientation is not a separate protected class under federal law. However, sexual orientation discrimination may also be considered sex discrimination under federal law.

Same-sex spouses or partners.

The New York State Marriage Equality Act, signed by Governor Cuomo on June 24, 2011, and effective on July 24, 2011, authorizes marriages between same-sex couples in the State of New York. New York State also recognizes marriages between same-sex couples performed in any jurisdiction where such marriages are valid. Spousal benefits will be provided to same-sex spouses in the same manner as to opposite-sex spouses of State employees. Failure to offer equal benefits, or to discriminate against an employee in a marriage with a same-sex spouse, is considered discrimination on the basis of sexual orientation.

Domestic partners.

Same-sex partners who are not married may also qualify for benefits. The employee and their partner can fill out the "Application for Domestic Partner Benefits" and "Affidavit of Domestic Partnership and Financial Interdependence," which is available online from the Department of Civil Service. Opposite-sex domestic partners can also qualify for benefits on the same basis as same-sex partners.

³⁶ Human Rights Law § 292.27.

GENDER IDENTITY OR EXPRESSION

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's gender identity or expression, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

"Gender identity or expression" means an individual's actual or perceived gender-related identity, appearance, behavior, expressions other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender.

A transgender person is an individual who has a gender identity different from the sex assigned to that individual at birth.

Gender dysphoria is a recognized medical condition related to an individual having a gender identity different from the sex assigned at birth.

Statutory protection.

Effective February 24, 2019, the Human Rights Law § 296.1 was amended to explicitly state that discrimination on the basis of gender identity or expression is unlawful. Gender identity or expression may also form the basis of Human Rights Law sex and disability discrimination claims. These protections are explained in regulations promulgated by the Division of Human Rights.³⁷ Gender identity or expression discrimination may also be considered sex discrimination under federal law. Individuals who are not employees, but work in the State workplace (e.g. interns and contractors) are protected from discrimination on the basis of gender identity or expression by § 296-d.

Executive Order concerning State workers.

On January 1, 2011, Governor Andrew M. Cuomo issued Executive Order No. 2, reissuing Executive Order No. 33,³⁸ which prohibits discrimination in employment by executive branch agencies on the basis of gender identity.

What protection against discrimination is provided by the Human Rights Law?

As of February 24, 2019, it is unlawful for an employer to discriminate on the basis of "gender identity or expression."

The term "sex" when used in the Human Rights Law includes gender identity or expression and the status of being transgender, and discrimination on either basis is

³⁷ 9 N.Y.C.R.R. § 466.13

³⁸ Issued by Gov. David A Paterson on December 16, 2009.

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sex discrimination. Harassment on either basis qualifies as sexual harassment. (See above: Sex Stereotyping.)

The term “disability” when used in the Human Rights Law includes gender dysphoria or other condition meeting the definition of disability in the Human Rights Law and discrimination on that basis is disability discrimination. Refusal to provide reasonable accommodation for persons with gender dysphoria, where requested and necessary, is also disability discrimination. (See above: Disability.)

While discrimination on the basis of gender identity or expression can take many forms, it includes, but is not limited to, unwelcome verbal or physical conduct, such as derogatory comments, jokes, graffiti, drawings or photographs, touching, gestures, or creating or failing to remedy a hostile work environment. Retaliation is also prohibited. (See below: Harassment and Retaliation.)

Rights with regard to name, title and pronoun.

An employee is entitled to be addressed by the name, title and pronoun that the employee prefers. Managers, supervisors and other employees should comply with such requests, regardless of the employee’s appearance, anatomy, medical history, sex assigned at birth, or legal name, and without requiring identification or other forms of “proof” of gender identity. It is lawful to use an employee’s legal name in employment related documents, such as for payroll and tax records, and insurance and retirement benefits. Once the employee obtains a court order legally changing their name and gender marker, they are entitled to have all records changed to the employee’s legal name upon presentation of the court order to the Director of Human Resources or their designee.

Failure to use the name, title or pronoun preferred by the employee may constitute discrimination on the basis of gender identity or expression.

Access to gender-segregated facilities and programs.

An employee is entitled to use gender-segregated facilities (e.g. changing rooms, locker rooms, showers, restrooms), and participate in gender-separated programs, consistent with that employee’s gender identity, regardless of appearance, anatomy, medical history, sex assigned at birth, or gender indicated on identification, and without requiring any “proof” of gender identity. An employee is entitled to be free from any discrimination or harassment because of the employee’s use of a particular gender-separated facility. State agencies are not required to change existing facilities to all-gender facilities, or to construct new facilities.

Where single-occupancy facilities exist, any individual may use such facilities, regardless of the gender-designation of such facility. However, an employee may not be required to use a single-occupancy facility because of the employee’s gender identity or expression, including, but not limited to, transgender, gender non-conforming, non-binary, or because of another individual’s concerns.

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Dress codes, uniforms, grooming, and appearance standards.

State agencies may not require dress, uniforms, grooming, or appearance that differ based on gender, sex, or sex stereotypes. Any dress code must be applied consistently, regardless of gender or gender identity.

Equal access to employee benefits, leave, and reasonable accommodations.

An employee is entitled to equal access to benefits, leave, and reasonable accommodations regardless of gender identity. The State offers its employees access to health benefit plans that cover gender dysphoria-related medical treatment, and agencies provide reasonable accommodations to people undergoing gender transition. Requests for leave or reasonable accommodations related to gender should be treated in the same manner as all requests for other health or medical conditions.

DISABILITY

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's disability, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

All employees must be able to perform the essential functions of their jobs in a reasonable manner, with or without a reasonable accommodation. Consideration of requests for accommodation of applicants or employees with disabilities is required and should be granted where reasonable.

Statutory protection.

Disability discrimination is unlawful pursuant to Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace). Reasonable accommodation is required of employers pursuant to Human Rights Law § 296.3(a). New York State law has a very broad definition of disability, and generally protects persons with any disabling condition, including temporary disabilities. Disability discrimination is also unlawful under federal law. However, the scope of disability under the provisions of the Americans with Disability Act (ADA) is not as broad.³⁹ The Federal Rehabilitation Act of 1973 § 503 and § 504⁴⁰ also apply to many State workers. Federal law also requires reasonable accommodation.

³⁹ 42 U.S.C. § 12111 et seq.

⁴⁰ 29 U.S.C. § 793 and § 794.

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Guide dog, hearing dog, and service dog provisions are found in Human Rights Law § 296.14. An employee who uses a guide, hearing or service dog is also protected by Civil Rights Law § 47-a and § 47-b.

What is a “disability” under the Human Rights Law?

A “disability” is:

- a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques; or
- a record of such an impairment; or
- a condition regarded by others as such an impairment.⁴¹

Because this definition includes any impairment that is demonstrable by clinical or laboratory diagnostic techniques, it includes most disabling conditions.

Reasonable performance.

An employee with a disability must be able to achieve “reasonable performance” in order to be protected by the Human Rights Law. Reasonable performance is not perfect performance or performance unaffected by the disability, but job performance reasonably meeting the employing agency’s needs to achieve its governmental functions. An employee with a disability is entitled to reasonable accommodation if it will permit the employee to achieve reasonable job performance.

Essential functions.

A function is essential if not performing it would fundamentally change the job for which the position exists. If a function is not essential to the job, then it can be reassigned to another employee, and the employee with a disability may not be required to perform that function.

Employers may ask applicants with disabilities about their ability to perform specific job functions and tasks, as long as all applicants are asked in the same way about their abilities. Employers may require applicants/employees to demonstrate capacity to perform the physical demands of a particular job, in the same way as applicants are asked to demonstrate competence and qualifications in other areas. Such tests of capacity, agility, endurance, etc. are non-discriminatory as long as they can be demonstrated to be related to the specific duties of the position applied for and are uniformly given to all applicants for a particular job category.

⁴¹ Human Rights Law § 292.21.

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Reasonable accommodation.⁴²

A reasonable accommodation is an adjustment or modification made to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. Some examples of reasonable accommodation include:

- A modified work schedule;
- Reassignment of the non-essential functions of the job;
- Acquisition or modification of equipment; and
- Provision of an accessible worksite.

All otherwise qualified applicants and employees are entitled to reasonable accommodation of disability. Accommodation is required if it is reasonable and will assist in overcoming an obstacle caused by the disability that prevents the person from applying for the position, from performing the essential functions of the position, or from receiving equal terms, conditions or privileges of the position.

Unless the disability is obvious (e.g. employee's use of a wheelchair) the applicant or employee must inform the employing agency of the need for accommodation. The employee also must provide reasonable medical documentation as requested by the agency and engage in an interactive process with the agency in order to reach an effective and reasonable accommodation.

Once an accommodation has been requested, the agency has an obligation to verify the need for the accommodation. If the need for accommodation exists, then the employing agency has an obligation to seek an effective solution through an interactive process between the agency and the employee.

While the employee can request a particular accommodation, the obligation to provide a reasonable accommodation is satisfied where the accommodation is effective in addressing the individual's limitations such that they can perform their essential job duties in a reasonable manner. The agency has the right to decide which reasonable accommodation will be granted, so long as it is effective in enabling the employee to perform the job duties in a reasonable manner.

An agency may require a doctor's note to substantiate the request, or a medical examination where appropriate, but must maintain the confidentiality of an employee's medical information. The Human Rights Law requires that the employee cooperate in

⁴² With respect to policy and procedures relative to reasonable accommodation generally, employees should consult the publication Procedures for Implementing Reasonable Accommodation for Applicants and Employees with Disabilities and Pregnancy-related Conditions in New York State Agencies.

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providing medical or other information needed to verify the disability, or any additional information that is otherwise necessary for consideration of the accommodation.⁴³

Information provided for purposes of reasonable accommodation cannot be used by the agency for another purpose, such as a basis for referring an employee for a medical examination to determine fitness for duty pursuant to Civil Service Law section 72(1), placing the employee on an involuntary leave of absence pursuant to Civil Service Law section 72(5), or other personnel actions.

Many common questions about reasonable accommodation are explained in the reasonable accommodation regulations⁴⁴ of the New York State Division of Human Rights, which are available on the Division's website. These regulations may be used by applicants, employees, and agency personnel in order to better understand the reasonable accommodation process.

Exceptions.

The Human Rights Law does not require accommodation of behaviors that do not meet the employer's workplace behavior standards that are consistently applied to all similarly situated employees, even if these behaviors are caused by a disability.⁴⁵

Reasonable accommodation is not required where the disability or the accommodation itself poses a direct threat, which means a significant risk of substantial harm to the health or safety of the employee or others that cannot be eliminated or reduced by reasonable accommodation.⁴⁶

Family Medical Leave Act (29 USC sections 2601 to 2654).

The State as an employer cannot take adverse action against employees who exercise their rights to medical leave for the birth, adoption, or foster care placement of a child, for their own serious health condition, or to care for a family member with a serious health condition which qualifies under the Act. The Act entitles eligible employees to take up to a total of 12 weeks of unpaid leave during a 12-month period. (Military caregivers may be entitled to up to 26 weeks of leave. See above: Military Status.)

Civil Service Law §§ 71 and 73.

The Civil Service Law allows an agency to terminate an employee after one cumulative year of absence for a disability resulting from an occupational injury or disease as defined in the Workers' Compensation Law.⁴⁷ This is extended to two years for an individual injured in an assault that causes such injury or disease. The Civil Service

⁴³ Human Rights Law § 296.3.

⁴⁴ 9 N.Y.C.R.R. § 466.11.

⁴⁵ 9 N.Y.C.R.R. § 466.11(g)(1).

⁴⁶ 9 N.Y.C.R.R. § 466.11(g)(2).

⁴⁷ Civil Service Law § 71.

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Law also allows an agency to terminate an employee who has been continuously absent for one year for a personal injury or illness.⁴⁸

Drug and Alcohol-Free Workplace Policy.

New York State employees are subject to criminal, civil, and disciplinary penalties if they distribute, sell, attempt to sell, possess, or purchase controlled substances while at the workplace or while acting in a work-related capacity. Such illegal acts, even if engaged in while off duty, may result in disciplinary action. In those locations where it is permitted, an employee may possess and use a controlled substance that is properly prescribed for the employee by a physician. Employees are also prohibited from on-the-job use of, or impairment from, alcohol. If a supervisor has a reasonable suspicion that an employee is unable to perform job duties due to the use of controlled substances or alcohol, that employee may be required to undergo medical testing.⁴⁹ If the employee has a disability that is drug- or alcohol-related, the employee may be referred to voluntary and confidential participation in the statewide Employee Assistance Program. Other available options include pursuing disability leave procedures or disciplinary measures. On-line supervisory training regarding a drug- and alcohol-free workplace is available through the GOER's Online Learning Center at <https://nyslearn.ny.gov/>.

The Federal Drug-Free Workplace Act of 1988, amended in 1994, requires that all agencies that have contracts with the United States Government that exceed \$100,000, and all agencies that receive federal grants, maintain a drug-free workplace. If an employee is involved in work on a contract or grant covered by this law, they are required to notify their employer of any criminal drug statute conviction, for a violation occurring in the workplace, not less than five days after the conviction. Agencies covered by this law must notify the federal government of the conviction and must take personnel action against an employee convicted of a drug abuse violation.

Drug addiction and alcoholism under the Human Rights Law and Regulations.⁵⁰

An individual who is currently using drugs illegally is not protected under the disability provisions of the Human Rights Law. The law protects individuals who are recovered or recovering drug addicts or alcoholics and may protect alcoholics if the alcoholism does not interfere with job performance.

⁴⁸ Civil Service Law § 73.

⁴⁹ For agencies that do not have their own drug/alcohol testing procedures, this test must be done pursuant to Civil Service Law § 72.

⁵⁰ See *generally* 9 N.Y.C.R.R. § 466.11(h).

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Intoxication or use of alcohol on the job is not protected. A test to determine the illegal use of drugs is not considered a medical test that is governed by the Human Rights Law. Agencies have differing requirements and policies with regard to drug testing.

If an individual is protected by the Human Rights Law, adjustment to work schedules, where needed to allow for ongoing treatment, is allowed as an accommodation where reasonable, if the individual is still able to reasonably perform the essential functions of the job, including predictable and regular attendance.

See above: Drug and Alcohol-Free Workplace Policy.

Guide dogs, hearing dogs, and service dogs.

Users of guide dogs, hearing dogs, or service dogs that are trained as provided in the Human Rights Law are given protection by the Human Rights Law.⁵¹

The use of such a dog is not considered a “reasonable accommodation,” but a right protected separately under the Human Rights Law, and the dog owner need not specifically request permission to bring the dog into the workplace. This specific provision has no parallel in the federal ADA, under which the matter would instead be analyzed to determine whether a reasonable accommodation is appropriate.

This right to be accompanied by such dogs in the workplace applies only to dogs that meet the definitions found in the Human Rights Law.

A “guide dog” or “hearing dog” is a dog that is trained to aid a person who is blind, deaf or hard of hearing, is actually used to provide such aid, and was trained by a guide or hearing dog training center or professional guide or hearing dog trainer.⁵²

A “service dog” may perform a variety of assistive services for its owner. However, to meet the definition, the dog must be trained by a service dog training center or professional service dog trainer.⁵³

Dogs that are considered therapy, companion or other types of assistance dogs, but who have not been professionally trained as stated in the definitions above, are not covered by this provision.⁵⁴

⁵¹ Human Rights Law § 296.14.

⁵² Human Rights Law § 296.14.

⁵³ Human Rights Law § 296.14.

⁵⁴ A dog may be licensed as a “service” dog, and nevertheless not meet the definition of service dog for purposes of the Human Rights Law. N.Y. Agriculture & Markets Law § 110, which requires the licensing of dogs, permits municipalities to exempt from licensing fees various categories of dogs, including “service” and “therapy” dogs, but the section provides no definitions of those categories.

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The provision also does not apply to animals other than dogs, regardless of training.

Dogs not meeting one of the definitions, or animals other than dogs, may provide assistance or companionship to a person with a disability. However, they are generally **not** permitted into the workplace as a reasonable accommodation, because the workplace and other employees can be adversely impacted by animals that are not professionally trained by guide, hearing or service dog trainers, as provided above. The New York State Civil Service Law provides qualified employees with special leave benefits for the purposes of obtaining service animals or guide dogs and acquiring necessary training.⁵⁵

PREDISPOSING GENETIC CHARACTERISTICS

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of the applicant or employee having a predisposing genetic characteristic, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

Testing for such genetic characteristics is prohibited in most circumstances.

Statutory protection.

Discrimination on the basis of a genetic characteristic is unlawful pursuant to Human Rights Law § 296.1, § 296.19, § 296-c (for interns) and § 296-d (for non-employees working in the workplace). It is also covered by the federal Genetic Information Nondiscrimination Act (GINA).⁵⁶

What is a predisposing genetic characteristic?

A predisposing genetic characteristic is defined as “any inherited gene or chromosome, or alteration thereof, . . . determined by a genetic test or inferred from information derived from an individual or family member that is scientifically or medically believed to predispose an individual or the offspring of that individual to a disease or disability, or to be associated with a statistically significant increased risk of development of a physical or mental disease or disability.”⁵⁷

⁵⁵ Civil Service Law § 6(1).

⁵⁶ As with Title VII, the ADA and the ADEA, the Genetic Information Nondiscrimination Act is enforced by the federal Equal Employment Opportunity Commission. When codified, GINA was distributed throughout various sections of Titles 29 and 42 of the United States Code. For more details on GINA, see <http://www.eeoc.gov/laws/types/genetic.cfm>.

⁵⁷ Human Rights Law § 292.21-a.

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How is the employee or applicant protected?

It is an unlawful discriminatory practice for any employer to directly or indirectly solicit, require, or administer a genetic test to a person, or solicit or require information from which a predisposing genetic characteristic can be inferred as a condition of employment or pre-employment application.⁵⁸ It is also unlawful for an employer to buy or otherwise acquire the results or interpretation of an individual's genetic test results or information from which a predisposing genetic characteristic can be inferred or to make an agreement with an individual to take a genetic test or provide genetic test results or such information.⁵⁹

An employee may give written consent to have a genetic test performed, for purposes of a worker's compensation claim, pursuant to civil litigation, or to determine the employee's susceptibility to potentially carcinogenic, toxic, or otherwise hazardous chemicals or substances found in the workplace environment. The employer may not take any adverse action against an employee on the basis of such voluntary test.⁶⁰

Exceptions.

An employer may require a specified genetic test as a condition of employment where such a test is shown to be directly related to the occupational environment, such that the employee or applicant with a particular genetic anomaly might be at an increased risk of disease as a result of working in that environment.⁶¹ However, the employer may not take adverse action against the employee as a result of such testing.

FAMILIAL STATUS

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's familial status, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

"Familial status" includes being pregnant, having a child under the age of 18, having legal custody of any person under the age of 18, or having a person under the age of 18 residing in the home of the designee of the parent, or being in the process of securing custody, adoption or foster care placement of any person under 18.

⁵⁸ Human Rights Law § 296.19(a)(1).

⁵⁹ Human Rights Law § 296.19(a)(2).

⁶⁰ Human Rights Law § 296.19(c) and (d).

⁶¹ Human Rights Law § 296.19(b).

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Statutory protection.

Discrimination on the basis of familial status is unlawful pursuant to Human Rights Law § 296.1 and § 296-d (for non-employees working in the workplace). Familial status is not a protected class under federal law.

Familial status does not include the identity of the children.

Parents or guardians of children are protected from discrimination on the basis of the **status** of being a parent or guardian, not with regard to who their children are. Therefore, actions taken against an employee because of who their child is, or what that child has done, do not implicate familial status discrimination.

Nepotism.

Nepotism means hiring, granting employment benefits, or giving other favoritism based on the identity of a person's family member. Anti-nepotism rules do not implicate familial status discrimination, because anti-nepotism rules involve the **identity** of the employees as relatives, not their **status** as parent, child, or spouse. The Public Officers Law provides that a State employee may not control or influence decisions to hire, fire, supervise or discipline a family member.⁶² Moreover, other acts of nepotism not specifically governed by this provision may violate more general conflict of interest provisions in the New York ethics statutes.

What is familial status discrimination?

Familial status discrimination would include, but not be limited to, making employment decisions about an employee or applicant because:

- they are pregnant;
- they have children at home, or have "too many" children;
- of a belief that someone with children will not be a reliable employee;
- they are a single parent;
- they are a parent, regardless of living arrangements;
- they are living with and caring for a grandchild;
- they are a foster parent, or are seeking to become a foster parent, or to adopt a child;
- a father has obtained custody of one or more of his children and will be the primary caretaker;
- of a belief that mothers should stay home with their children; or
- of any other stereotyped belief or opinion about parents or guardians of children under the age of 18.

⁶² Anti-nepotism rules for all State government workplaces are found in N.Y. Public Officers Law § 73.14.

No requirement of reasonable accommodation.

The Human Rights Law explicitly states that the familial status provisions do not create any right to reasonable accommodation on that basis.⁶³ Therefore, the employer is not required to accommodate the needs of the child or children and is not required to grant time off for the parent to attend school meetings, concerts, sporting events, etc., as an accommodation. However, the employer must grant such time off to the same extent that time off is granted to employees for other personal reasons.

The familial status protections do not expand or decrease any rights that a parent or guardian has under the federal Family Medical Leave Act or the New York State Paid Family Leave Act (where these are applicable) to time off to care for family members. (See above: Family Medical Leave Act and Paid Family Leave.)

Pregnancy and childbirth discrimination.

Discrimination on the basis of pregnancy constitutes familial status discrimination. (See below: Pregnancy, Childbirth and Parental Leave.)

MARITAL STATUS

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's marital status, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

"Marital status" is the condition of being single, married, separated, divorced, or widowed.

Statutory protection.

Discrimination on the basis of marital status is unlawful pursuant to Human Rights Law § 296.1 and § 296-c. Marital status is not covered by federal law.

Marital status does not include the identity of the spouse.

Discrimination based on the identity of the individual to whom a person is married is not marital status discrimination, as it is only the status of being married, single, divorced, or widowed that is protected. Thus, terminating employment because of the actions of a spouse would not be considered marital status discrimination, because the action was taken not based on the fact that the employee was married but that the employee was married to a particular person.

⁶³ Human Rights Law §296.3

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Nepotism.

Nepotism means hiring, granting employment benefits, or other favoritism based on the identity of a person's spouse or other relative. The Public Officers Law provides that a State employee may not control or influence decisions to hire, fire, supervise or discipline a spouse or other relative.⁶⁴ Moreover, other acts of nepotism not specifically governed by this provision may violate more general conflict of interest provisions in the New York ethics statutes. Such anti-nepotism rules do not implicate marital status discrimination.

What is marital status discrimination?

Some examples of marital status discrimination are:

- expecting an employee to work a disproportionate number of extra shifts or at inconvenient times because he or she is not married, and therefore won't mind.
- selecting a married person for a job based on a belief that married people are more responsible or more stable.
- giving overtime or a promotion to a married person rather than a single person based on a belief that the single person does not have to support anyone else.

STATUS AS A VICTIM OF DOMESTIC VIOLENCE

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's status as a victim of domestic violence, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis. A victim of domestic violence is "any person over the age of sixteen, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of an act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted assault, attempted murder, criminal obstruction of breathing or blood circulation, strangulation, identity theft, grand larceny or coercion; and (i) such act or acts have resulted in actual physical or emotional injury or have created a substantial risk of physical or emotional harm to such person or such person's child; and (ii) such act or acts are or are alleged to have been committed by a family or household member."⁶⁵

⁶⁴ Anti-nepotism rules for all State government workplaces are found in N.Y. Public Officers Law § 73.14.

⁶⁵ N.Y. Social Service Law §459-a.

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Statutory protection.

Discrimination based on status as a victim of domestic violence is unlawful pursuant to Human Rights Law § 296.1, § 296.22, § 296-c (for interns) and § 296-d (for non-employees working in the workplace). There is no similar federal protection.

Executive Order concerning State workers.

On January 1, 2011, Governor Andrew M. Cuomo issued Executive Order No. 2, reissuing Executive Order No. 19,⁶⁶ which requires adoption of domestic violence and the workplace policies by all executive branch State agencies.

Purpose of domestic violence and the workplace policies.

Domestic violence permeates the lives and compromises the safety of New York State residents with tragic, destructive, and sometimes fatal results. Domestic violence occurs within a wide spectrum of relationships, including married and formerly married couples, couples with children in common, couples who live together or have lived together, gay, lesbian, bisexual and transgender couples, and couples who are dating or who have dated in the past.

Domestic violence often spills over into the workplace, compromising the safety of both victims and co-workers and resulting in lost productivity, increased health care costs, increased absenteeism, and increased employee turnover. The purpose of the policy is to address the impacts of domestic violence already being felt in the workplace.

The workplace can sometimes be the one place where the victim is not cut off from outside support. The victim's job, financial independence, and the support of the workplace can be part of an effective way out of the abusive situation. Therefore, the domestic violence and the workplace policy aims to support the victim in being able to retain employment, find the resources necessary to resolve the problem, and continue to serve the public as a State employee.

Meeting the needs of domestic violence victims.

A victim of domestic violence can ask the employer for accommodations relating to their status, which can include the following:

- Employee's need for time off to go to court, to move, etc., should be granted at least to the extent granted for other personal reasons.
- If an abuser of an employee comes to the workplace and is threatening, the incident should be treated in same manner as any other threat situation. It is not to be treated as just the victim's problem which the victim must handle on her or his own. The victim of domestic violence must not be treated as the "cause" of the problem and supervisory employees must take care that no negative action is

⁶⁶ Issued by Gov. Eliot L. Spitzer on October 22, 2007.

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taken against the victim because, for example, the abuser comes to the workplace, the victim asks the employer to notify security about the potential for an abuser to come to the workplace, or the victim provides an employer with information about an order of protection against the abuser.

- If a victim needs time off for disability caused by the domestic violence, it should be treated the same as any temporary disability. This includes time off for counseling for psychological conditions caused by the domestic violence. (See above: Disability. Note: temporary disabilities are covered under the Human Rights Law.)
- The State's Domestic Violence and the Workplace Policy requires this and more. Employees should consult their agency's policy to understand the support it affords to victims of domestic violence, which may include the following:
- Assistance to the employee in determining the best use of his/her attendance and leave benefits when an employee needs to be absent as a result of domestic violence.
- Assistance with enforcement of all known court orders of protection, particularly orders in which the abuser has been ordered to stay away from the work site.
- Refraining from any unnecessary inquiries about domestic violence.
- Maintenance of confidentiality of information about the domestic violence victim to the extent possible.
- Establishment of a violence prevention procedure, such as a policy to call "911" if an abuser comes to the workplace.
- Working with the domestic violence victim to develop a workplace safety plan.

In addition, the policy also sets out standards for the agency to hold employees accountable who utilize State resources or use their position to commit an act of domestic violence.

Human Rights Law reasonable accommodation requirements for leave time.

State employees have the protections described above, which are more extensive than the protections explicitly afforded employees generally in the State (public and private) by the Human Rights Law. The Law provides for leave time as a reasonable accommodation for the following needs related to the domestic violence:

- Medical attention for the victim, or a child who is the victim;
- Obtaining services from a domestic violence shelter, program or rape crisis center;
- Obtaining psychological counseling, including for a child who is a victim;
- For safety planning, or taking action to increase safety, including temporary or permanent relocation;
- Obtaining legal services, assisting with prosecution, or appearing in court.

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Time off for legal proceedings.

In addition to the requirement of the domestic violence and the workplace policy that victims be granted reasonable time off to deal with domestic violence, time off for legal proceedings is addressed by the Penal Law. It is illegal for an employer to take any adverse action against an employee who is a victim of a crime for taking time off to appear in court as a witness, to consult with a district attorney, or to obtain an order of protection.⁶⁷

Unemployment insurance benefits.

If a victim must leave a job because of domestic violence, he or she is not necessarily barred from receiving unemployment insurance benefits. Circumstances related to domestic violence may be “good cause” for voluntarily quitting a job. Also, job performance problems related to domestic violence (such as absenteeism or tardiness) will not necessarily bar benefits.⁶⁸

Further information and support.

Dealing with domestic violence requires professional assistance. Domestic violence can be a dangerous or life-threatening situation for the victim and others who may try to become involved. Both victims and employers may contact the NYS Office for the Prevention of Domestic Violence for further information.

PREGNANCY, CHILDBIRTH AND FAMILY LEAVE

Discrimination on the basis of pregnancy constitutes discrimination on the basis of sex and familial status. Furthermore, medical conditions related to pregnancy or childbirth must be reasonably accommodated in the same manner as any temporary disability. Parental leave is available to employees on a gender-neutral basis.

Statutory protection.

Discrimination based on sex and familial status is unlawful pursuant to Human Rights Law § 296.1, § 296-c (for interns based on sex) and § 296-d (for non-employees working in the workplace). Sex, but not familial status, is a protected class under federal law. Reasonable accommodation of pregnancy-related conditions is required by the Human Rights Law.⁶⁹ There is no similar requirement under federal law, unless the pregnancy-related condition meets the definition of “disability” under federal law. Also, the federal Family Medical Leave Act and the New York State Paid Family Leave Act

⁶⁷ N.Y. Penal Law § 215.14.

⁶⁸ N.Y. Labor Law § 593.

⁶⁹ Human Rights Law § 296.3(a).

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(where these are applicable) may entitle an employee leave. (See: Family Medical Leave Act and Paid Family Leave.)

Pregnancy discrimination.

No decision regarding hiring, firing or the terms, condition and privileges of employment may be based on the fact that an applicant or employee is pregnant or has recently given birth. A pregnant individual may not be compelled to take a leave of absence unless pregnancy prevents that individual from performing the duties of the job in a reasonable manner.⁷⁰ Disability discrimination may also be implicated where discrimination is based on limitations or perceived limitations due to pregnancy.

Reasonable accommodation of pregnancy-related conditions.

Any medical condition related to pregnancy or childbirth that does prevent the performance of job duties entitles the individual to reasonable accommodation, including time off consistent with the medical leave policies applicable to any disability. The mere fact of being pregnant does not trigger the requirement of accommodation. But, any condition that “inhibits the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques”⁷¹ must be accommodated, when necessary, to allow the employee to perform the essential functions of the job.

An agency may require a doctor’s note to substantiate the request but must maintain the confidentiality of an employee’s medical information. The Human Rights Law requires that the employee cooperate in providing medical or other information needed to verify the pregnancy-related condition, or that is otherwise necessary for consideration of the accommodation.⁷² (See above: Disability.)

While pregnancy-related conditions are treated as temporary disabilities for purposes of applying existing regulations under the Human Rights Law, pregnancy-related conditions need not meet any definition of disability to trigger an employer’s obligation to accommodate under the law. Any medically-advised restrictions or needs related to pregnancy will trigger the need to accommodate, including such things as the need for extra bathroom breaks, or increased water intake. The Human Rights Law specifically provides that a pregnancy-related condition includes lactation.

Right to express breast milk in the workplace.

Lactating mothers have the right to express breast milk in the workplace, as follows:

An employer shall provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to allow an employee to express

⁷⁰ Human Rights Law § 296.1(g) and § 296-c(2)(e).

⁷¹ Human Rights Law § 292.21-f.

⁷² Human Rights Law § 296.3.

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breast milk for her nursing child for up to three years following child birth. The employer shall make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy. No employer shall discriminate in any way against an employee who chooses to express breast milk in the work place. (See N.Y. Labor Law § 206-c)

The right to express breast milk in the workplace is NOT an accommodation. However, the employing agency may require lactating mothers to use a procedure to notify the employer that the employee will be expressing breast milk to ensure appropriate scheduling of breaks and use of any lactation facility.

Parental leave.

Any parent of a newborn child, a newly adopted child, or a sick child is entitled to available child care leave without regard to the sex of the parent. Only the woman who gives birth, however, is entitled to any medical leave associated with pregnancy, childbirth and recovery.

In general, the State as an employer cannot take adverse action against employees who take qualifying medical leave for the birth or adoption of a child, for their own serious health condition, or to care for a family member with a serious health condition which qualifies under the federal Family and Medical Leave Act.⁷³ The Act entitles eligible employees to take up to a total of 12 weeks of unpaid leave during a calendar year.

Paid Family Leave.

The New York State Paid Family Leave Law⁷⁴ provides for paid leave to bond with a newly born, adopted or fostered child; care for a close relative with a serious health condition; or assist loved ones when a family member is deployed abroad on active military service. The amount of paid leave available increases to a total of 12 weeks by 2021. State employees not represented by a union in bargaining units 06, 18, 46 and 66 are covered by the law. State employees represented by a union may be covered if Paid Family Leave is collectively bargained for.

More information is available on the New York State website at <https://www.ny.gov/new-york-state-paid-family-leave/paid-family-leave-information-employees>. This includes information on who is eligible, and how to apply.

⁷³ 29 U.S.C. § 2601 et seq.

⁷⁴ Workers Compensation Law, art. 9, §§ 200, et seq.

PRIOR ARREST RECORDS, YOUTHFUL OFFENDER ADJUDICATIONS AND SEALED CONVICTION RECORDS

It is an unlawful discriminatory practice for an employer to make any inquiry about any arrest or criminal accusation of an individual, not then pending against that individual, which has been resolved in favor of the accused or adjourned in contemplation of dismissal or resolved by a youthful offender adjudication or resulted in a sealed conviction. It is unlawful to require any individual to divulge information pertaining to any such arrest, criminal accusation or sealed conviction, or to take any adverse action based on such an arrest, criminal accusation or sealed conviction.

Statutory protection.

This protection is provided by Human Rights Law § 296.16.

What is unlawful?

It is generally unlawful to ask an applicant or employee whether he or she has ever been arrested or had a criminal accusation filed against him or her. It is also generally unlawful to inquire about youthful offender adjudications or sealed records. It is *not* unlawful to ask if a person has any currently pending arrests or pending criminal charges. It is also not unlawful to inquire about convictions. (See below: Previous Conviction.)

It is generally unlawful to require an individual to divulge information about the circumstances of an arrest or accusation no longer pending. In other words, the employer cannot demand information from the individual accused in order to “investigate” the circumstances behind an arrest. It is *not* unlawful to require an employee to provide information about the outcome of the arrest, i.e. to demonstrate that it has been terminated in favor of the accused. The agency may be able to take action against an employee for the conduct that led to the arrest but Human Rights Law §296.16 provides that no person “shall be required to divulge information” pertaining to the arrests resolved as set out below.

Pending arrest or charges.

As long as an arrest or criminal accusation remains pending, the individual is not protected. The agency may refuse to hire or may terminate or discipline the employee in accordance with applicable law or collective bargaining agreement provisions. The agency may also question the employee about the pending arrest or accusation, the underlying circumstances, and the progress of the matter through the criminal justice system.

However, if the employee is arrested while employed, is not terminated by the employer, and the arrest is subsequently terminated in favor of the employee, the

EMPLOYEE RIGHTS AND RESPONSIBILITIES

employee cannot then initiate an adverse action against the employee based on the arrest and cannot question the employee about the matter. The employer can require that the employee provide proof of the favorable disposition in a timely manner.

What specific circumstances are protected?

The arrest or criminal accusation must have been:

- dismissed, pursuant to Criminal Procedure Law § 160.50;
- adjourned in contemplation of dismissal (unless such dismissal has been revoked) pursuant to Criminal Procedure Law §§ 170.55, 170.56, 210.46, 210.47, or 215.10;
- disposed of as a youthful offender adjudication, pursuant to Criminal Procedure Law § 720.35 (which are automatically sealed);
- resulted in a conviction for a violation, which was sealed pursuant to Criminal Procedure Law § 160.55 (pertaining to certain violations);
- resulted in a conviction, which was sealed pursuant to Criminal Procedure Law § 160.58 (pertaining to controlled substances); or
- resulted in a conviction, which was sealed pursuant to Criminal Procedure Law § 160.59 (pertaining to certain convictions which may be sealed ten or more years after the end of incarceration).

Sealed records.

Whether or not a record is sealed is a factual question. Many records that could be sealed are not in fact sealed. Sealing a record requires that the court specifically order that the record be sealed. The applicant or employee is responsible to know the status of a sealable conviction. If it is not in fact sealed, then it is a conviction record that can be required to be disclosed. (See below: Previous Conviction.)

Exceptions.

The Human Rights Law explicitly states that arrest inquiries, requests for information, or adverse actions may be lawful where such actions are “specifically required or permitted by statute.”⁷⁵

These provisions do not apply to an application for employment as a police officer or peace officer.⁷⁶

The provisions do not fully apply to an application for employment or membership in any law enforcement agency. For those positions, arrests or criminal accusations that are dismissed pursuant to Criminal Procedure Law § 160.50 may not be subject to inquiry, demands for information, or be the basis of adverse action. However, the other types of

⁷⁵ Human Rights Law § 296.16; see e.g. Civil Service Law § 50(4).

⁷⁶ Police and peace officer as defined in Criminal Procedure Law §§ 1.20 and 2.10, respectively.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

terminations (youthful offender adjudication or sealed convictions) may be inquired into and taken into consideration for jobs with law enforcement agencies.

PREVIOUS CONVICTION RECORDS

It is unlawful to deny any license or employment, to refuse to hire, or terminate, or take an adverse employment action against an applicant or employee, by reason of their having been convicted of one or more criminal offenses, if such refusal is in violation of the provisions of Article 23-A of the Correction Law. The Correction Law provides the standards to be applied and factors to be considered before an employment decision may be based on a previous conviction, including the factor that it is the public policy of the State of New York to encourage the licensure and employment of those with previous criminal convictions

Statutory protection.

This protection is provided by Human Rights Law § 296.15, in conjunction with Article 23-A of the N.Y. Correction Law.

Factors from the Correction Law.

The Correction Law provides that an employer may not refuse to hire, or terminate an employee, or take an adverse employment action against an individual, because that individual has been previously convicted of one or more criminal offenses, or because of a belief that a conviction record indicates a lack of "good moral character," **unless** either there is a direct relationship between one or more of the previous criminal offenses and the specific employment sought or held, or employment of the individual would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.⁷⁷

In order to determine whether there is either a direct relationship or unreasonable risk (as mentioned above), the employer must apply the factors set forth in the Correction Law, as follows:

- (a) The public policy of this State, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.

⁷⁷ N.Y. Correction Law § 752.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.⁷⁸

Also, in making the determination, the employer must give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the individual, which creates a presumption of rehabilitation in regard to any offense specified in the certificate.⁷⁹

The factors must be applied on a case-by-case basis and each of the factors must be considered. The employing agency must take into account the individual's situation by analyzing factors (d) through (g) and must also analyze the specific duties and responsibilities of the job pursuant to factors (b), (c) and (h). If any additional documentation is needed, it must be requested of the applicant or employee before any adverse determination is made. A justification memorandum that merely tracks the statute but without rational application of the factors to the facts of the case may lead to a finding that an adverse determination was arbitrary and capricious.

Conviction must be “previous.”

Individuals are protected for *previous* convictions. A conviction that occurs during employment does not entitle the individual to these protections.

Inquiries and misrepresentation.

Unlike many other areas covered by the Human Rights Law, an employer is not prevented from asking an individual to disclose prior convictions as part of the employment application process or at any time during employment.

If the employer learns at any time that that an applicant or employee has made a misrepresentation with regard to any previous conviction, it may be grounds for denial or termination of employment.⁸⁰

⁷⁸ N.Y. Correction Law § 753.1.

⁷⁹ N.Y. Correction Law § 753.2.

⁸⁰ N.Y. Correction Law § 751; see also Civil Service Law section 50(4).

Interaction with the arrest provisions.

The arrest provisions⁸¹ of the Human Rights Law interact with the conviction provisions. Although it is **lawful to ask** about previous convictions, it is **unlawful to ask** about previous arrests resolved in an individual's favor, or adjourned in contemplation of dismissal, or about youthful offender adjudications, or about convictions that have been sealed pursuant to Criminal Procedure Law § 160.55 or § 160.58. If any individual with a youthful offender record or a sealed conviction states that he or she has no previous convictions, this is not a misrepresentation. The employer is not entitled to any information about youthful offender records or sealed convictions. (See above: Prior Arrest.)

Enforcement only by court action.

A State employee or an applicant for State employment cannot file a complaint with the Division of Human Rights regarding denial of employment due to a previous conviction. An individual can pursue enforcement under the Human Rights Law only by filing an Article 78 proceeding in State Supreme Court.⁸² However, State employees may file complaints with respect to the Prior Arrest provisions of the Human Rights Law with the Division of Human Rights. (See above: Prior Arrest.)

Exceptions.

It is not unlawful to deny employment if, upon weighing the factors set out above, the previous criminal offense bears a direct relationship to the job duties, or if employment of the individual would involve an unreasonable risk to safety or welfare, as explained in more detail above.

An individual may be required to disclose previous convictions, unless they are sealed, as explained in more detail above.

These protections do not apply to "membership in any law enforcement agency."⁸³

HARASSMENT PROHIBITED

Harassment in the workplace based upon an individual's protected class status is prohibited. Harassment that creates a hostile work environment, based on the protected categories discussed in this Handbook, is unlawful pursuant to the Human Rights Law. (See above: Sexual Harassment.) State employees, interns, contractors, and individuals doing business with State employees are entitled to a work environment

⁸¹ Human Rights Law § 296.16.

⁸² N.Y. Correction Law § 755.1.

⁸³ N.Y. Correction Law § 750.5.

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which promotes respect for all, and actions that demonstrate bias, harassment, or prejudice will not be tolerated.

Harassment consists of words, signs, jokes, pranks, intimidation or physical violence that is directed at an employee or intern because of their membership in any protected class, or perceived class. It also includes workplace behavior that is offensive and based on stereotypes about a particular protected group, or which is intended to cause discomfort or humiliation on the basis of protected class membership.

Harassment is unlawful in all workplaces in New York State, when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment need not be severe or pervasive to be unlawful, and can be any harassing conduct that consists of more than petty slights or trivial inconveniences.⁸⁴ In fact, the Human Rights Law now provides that even if a recipient of harassment did not make a complaint about the harassment to the employer, the failure of the employee to complain shall not be determinative of whether the employer is liable.⁸⁵

Appropriate supervision is not harassment.

Normal workplace supervision, such as enforcing productivity requirements, requiring competent job performance, or issuing disciplinary warnings or notices, is *not* harassment. If these actions are imposed on the basis of protected class membership, then this may be discrimination in the terms, condition or privileges of employment.

Harassment by a non-employee.

The employing agency has the duty to prevent harassment in the workplace including harassment by non-employees, such as vendors, consultants, clients, customers, visitors or interns.

Harassment of non-employees.

Non-employees in the workplace, who are performing work under contract, are explicitly protected from sexual harassment (and all other types of workplace discrimination) by Human Rights Law § 296-d.

In accord with statewide policy, employees and interns are subject to discipline for harassment of *anyone* in the workplace, including contractors, clients, vendors, or any members of the public.

⁸⁴ Human Rights Law § 296.1(h).

⁸⁵ Human Rights Law § 296.1(h).

RETALIATION

Retaliation is prohibited. Retaliation occurs when an adverse action or actions are taken against the employee as a result of filing a discrimination complaint or participating in the filing of, or investigation of, a discrimination complaint, or requesting an accommodation. The adverse action does not need to be job related or occur in the workplace. Retaliation can be any action, more than trivial, that would have the effect of dissuading a reasonable person from making or supporting an allegation of discrimination. Such action may be taken by an individual employee.

Actionable retaliation by an employer can occur after the individual is no longer employed by that employer. This can include giving an unwarranted negative reference for a former employee.

An adverse action is not retaliatory merely because it occurs after the employee engaged in protected activity. Employees continue to be subject to all job requirements and disciplinary rules after having engaged in such activity. In order to make a claim of retaliation, the individual must be able to substantiate the claim that the adverse action was retaliatory.

The prohibition against retaliation protects any individual who has filed a complaint, testified or assisted in any discrimination complaint investigation, or opposed any discriminatory practices forbidden by the Human Rights Law, federal anti-discrimination laws or pursuant to the anti-discrimination provisions of this Handbook. Even if a discrimination complaint is not substantiated as a violation of state or federal law or the policies set forth in this Handbook, the individual is protected if they filed a discrimination complaint, participated in a discrimination-related investigation, or opposed discrimination with good faith belief that the practices were discriminatory on the basis of a protected class status.

Administrative or court proceedings.

A complainant or witness is absolutely protected against retaliation for any oral or written statements made to the Division of Human Rights, the Equal Employment Opportunity Commission, or a court in the course of proceedings, regardless of the merits or disposition of the underlying complaint.

Opposing discriminatory practices.

Opposing discriminatory practices includes:

- Filing an internal complaint of discrimination with GOER, with the employing agency or reporting discriminatory actions to a supervisor or other appropriate person, either verbally or in writing;
- Participating in an investigation of discrimination complaints;

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- Complaining that another person's rights under the Human Rights Law, federal anti-discrimination statutes or this Handbook were violated; or
- Encouraging a fellow employee to report discriminatory practices.

However, behaving inappropriately towards a person whom an employee deems to be engaged in discriminatory or harassing conduct is not protected opposition to alleged discriminatory practices. Employees should instead file a complaint with GOER, or may complain to a supervisor, manager, or human resources officer, who are then required to report the complaint to GOER, or in accordance with any applicable complaint procedure.

Retaliation by an employer is also unlawful pursuant to the Human Rights Law and the Civil Service Law.⁸⁶ The federal statutes mentioned in this Handbook also prohibit retaliation.

There is no protection for a person who opposes practices the person finds merely distasteful or wrong, while having no reasonable basis to believe those practices were in violation of the applicable State or federal law, or State policy, as set forth in this Handbook. Furthermore, the prohibition against retaliation does not protect individuals from making false charges of discrimination. An example of this would include filing a complaint with GOER, the Division of Human Rights, the EEOC, or any court, simply because another employee filed a complaint against you or another employee.

REPORTING DISCRIMINATION IN THE WORKPLACE

As noted throughout this Handbook, any State employee who has been subject to any discrimination, bias, prejudice, harassment or retaliation based on any of the protected classes covered by the Handbook, may file a discrimination complaint with GOER. The New York State Employee Discrimination Complaint Form ("Complaint Form") is located at <https://goer.ny.gov> under the "Anti Discrimination Investigations" heading.

The Complaint Form is a web-based, fillable form, and after inserting the required information, employees can send the complaint directly to GOER. When GOER receives a Complaint Form, the individual submitting the complaint will receive an acknowledgment. The Complaint Form may also be filled out and sent to GOER via email or regular mail at:

⁸⁶ Human Rights Law § 296.7; see also Civil Service Law § 75-B, which gives protection to "whistleblowers."

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Antidiscrimination@goer.ny.gov

or

Governor's Office of Employee Relations
Anti Discrimination Investigations Division
2 Empire State Plaza
Albany, NY 12223

Employees are not required to (but may) report their allegations of discrimination to their supervisor, upper level management, or their Human Resources Department. Individuals with supervisory duties are required to report the allegations to GOER and should request that the employee file the complaint directly with GOER. The link to this Handbook and the complaint procedure, including the Complaint Form, should also be available on every agency's intranet site and/or employee handbook. If you cannot locate the Complaint Form or the Handbook, please contact your supervisor or manager or the agency's Human Resources Department and they will assist you in obtaining this information.

Confidentiality and cooperation.

All discrimination complaints and investigations will be kept confidential to the extent possible. Documentation and reports will not be disclosed, except to the extent required to implement the policies in this Handbook. Any individual involved in an investigation is advised to keep all information regarding the investigation confidential. Breaches of confidentiality may constitute retaliation, which is a separate and distinct category of discrimination. Any individual who reports discrimination, or who is experiencing discrimination, must cooperate so that a full and fair investigation can be conducted, and any necessary remedial action can be promptly undertaken.

Employees filing a Complaint Form should describe the connection between their protected class and the conduct and/or statement that is the subject of the complaint. Investigations will evaluate whether the conduct found to have occurred violates the policies as set forth in this Handbook, not whether the conduct violates the law. If, after investigation, it is determined that a violation of this Handbook has occurred, appropriate administrative action, up to and including termination, will be recommended.

The procedures for reporting discrimination complaints are designed to ensure the State's anti-discrimination policies are followed, including the State's policies forbidding retaliation. The complaint investigation procedures provide for a prompt and complete investigation as to the complaint of discrimination, and for prompt and effective remedial action where appropriate.

An employee with supervisory responsibility has a duty to report any discrimination that they observe or otherwise know about. A supervisor who has received a report of

EMPLOYEE RIGHTS AND RESPONSIBILITIES

workplace discrimination has a duty to report it to GOER, or in accordance with the employing agency's policy, even if the individual who complained requests that it not be reported. Any discrimination or potential discrimination that is observed must be reported, even if no complaint has been made. Failure to comply with the duty to report may result in disciplinary and/or administrative action.

Discrimination must be investigated and appropriate corrective action taken.

The employer has the duty to ensure that complaints of workplace discrimination are investigated promptly. If, after investigation, it is determined that discriminatory behavior is occurring, the employing agency has a duty to take prompt and effective corrective action to stop the discriminatory conduct and take such other steps as are appropriate.

Employers cannot take steps to prevent or correct discriminatory or harassing behavior unless the employer knows of the conduct.

PURSUING DISCRIMINATION COMPLAINTS EXTERNALLY

The employing agency's internal complaint procedures are intended to address all complaints of discrimination. Any State employing agency which does not participate in the GOER complaint investigation process is required to have a well-documented and widely disseminated procedure for employees to file, and to ensure investigation of discrimination complaints.

These internal complaint procedures are not intended to satisfy, replace or circumvent options available to employees through negotiated union contracts; federal, state or other civil rights enforcement agencies; and/or the judicial system. Thus, the use of these internal complaint procedures will not suspend any time limitations for filing complaints set by law or rule and will not fulfill any other requirements set by law or rule.

Employees are not required to pursue their employing agency's internal complaint procedure before filing a complaint with any external agency or with a court, based on federal or state or local law.

Listed throughout the Handbook are citations to the various laws that pertain to discrimination. Employees may be able to file complaints pursuant to these laws with administrative agencies and/or in court. There may also be additional remedies available to employees, and employees may wish to seek an attorney's advice prior to determining appropriate steps to take.

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The following agencies can provide information to employees and receive and investigate complaints of employment discrimination pursuant to the New York State Human Rights Law (State Division of Human Rights) or Title VII, ADEA, ADA or GINA (U.S. Equal Employment Opportunity Commission).

- New York State Division of Human Rights (“SDHR”)
Website: www.dhr.ny.gov
Telephone: (888)392-3644
TTY number: (718)741-8300
- United State Equal Employment Opportunity Commission (“EEOC”)
Website: www.eeoc.gov
Telephone: (800)669-4000
TTY number: (800)669-6820

GENERAL PROHIBITIONS AND PROVISIONS

Unlawful inquiries.

It is an unlawful discriminatory practice for an employer to print, circulate, or use any form of application, or to make any inquiry which expresses directly or indirectly, any limitation, specification or discrimination as to any protected class, unless based upon a bona fide occupational qualification.⁸⁷

Even if an inquiry is not asked with the apparent intent to express a limitation, it can become evidence of discriminatory intent in a subsequent action, by creating an appearance of discriminatory motivation. Those interviewing candidates for State positions or promotions should exercise extreme caution so as not to ask any unnecessary question or make any comment that could be interpreted as expressing a discriminatory motivation. This is simply a good employment practice.

Information gathered in furtherance of an affirmative action plan may be lawful, so long as the affirmative action is pursued in a lawful manner (which is beyond the scope of this booklet). Information on protected class membership which is collected for statistical purposes should be retained separately from a candidate’s other information.

Interns.

Paid interns are employees, and all provisions relating to employees explained in this document apply to paid interns. Unpaid interns are explicitly protected by Human

⁸⁷ Human Rights Law § 296.1(d) and § 296-c(2)(c).

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Rights Law § 296-c, and are entitled to the same protections as employees, in most areas, wherever § 296-c is referenced in the sections above.

Unpaid interns are protected from discrimination in hiring, discharge, or the terms, conditions or privileges of employment as an intern because of the intern's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status. Unpaid interns are also explicitly protected from harassment.

Non-employees working in the workplace.

Non-employees working in any workplace in New York State are entitled to the same protections from discrimination and harassment as employees, pursuant to Human Rights Law § 296-d. Protected non-employees include independent contractors, those receiving their paycheck from a temp agency, vendors, consultants, contracted service providers such as electricians, janitorial workers, and so on.

Political activities.

The Civil Service Law provides that no appointment or selection or removal from employment shall relate to the political opinions or affiliations of any person. No person in the civil service of the State is under any obligation to contribute to any political fund or render any political service and no person shall be removed or otherwise prejudiced for refusing to do so. No person in the civil service shall discharge or promote or reduce or in any manner change the rank or compensation of another for failing to contribute money or any other valuable thing for any political purpose. No person in the civil service shall use their official authority or influence to coerce the political action of any person or body or to interfere with any election.⁸⁸ This law is enforced by the New York State Joint Commission on Public Ethics. Complaints regarding this provision should not be filed with the Division of Human Rights or GOER.

Diversity.

New York State is committed to a nondiscriminatory employment program designed to meet all the legal and ethical obligations of equal opportunity employment. Each department develops affirmative action policies and plans to ensure compliance with equal opportunity laws. To assist in building cooperative work environments, which welcome an increasingly diverse workforce, the Department of Civil Service Staffing Services Division, and courses on diversity in the workplace, are available to agencies through GOER. Contact your personnel office for more information about specific agency affirmative action policies and plans. Diversity training information is available under Training & Development on the GOER website at www.goer.ny.gov.

⁸⁸ Civil Service Law § 107.

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NOTE

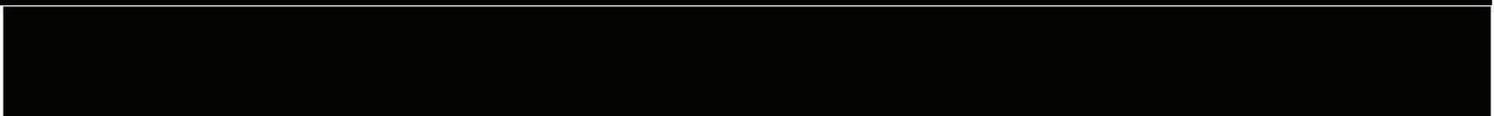
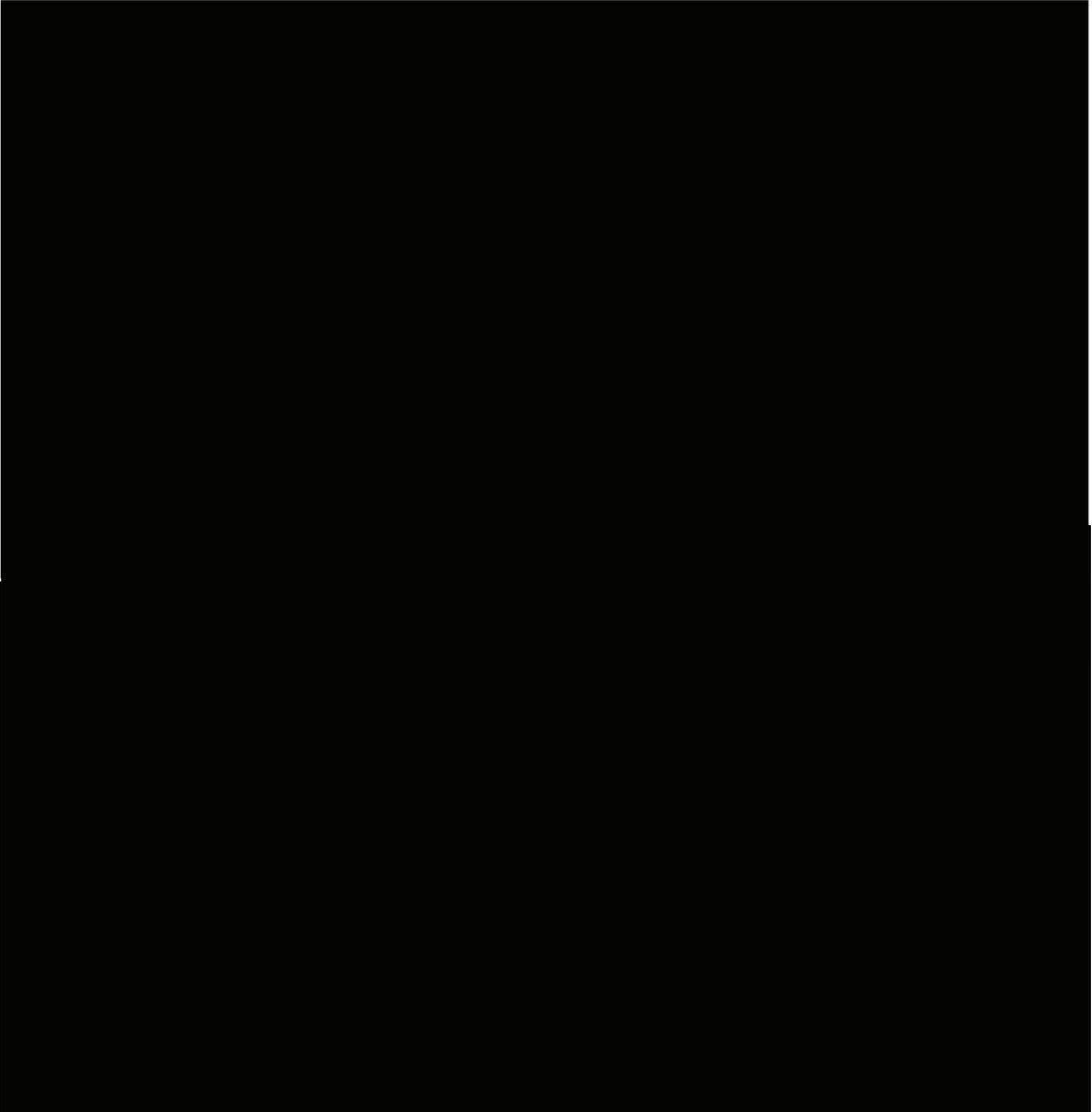
This Handbook has been prepared for the general information of State employees as a summary of the various federal and state laws, executive orders, and policies that provide protection from discrimination for State employees and comprises the anti-discrimination policy of the State of New York. Employees should also refer to specific laws and executive orders, together with any employee manual and policies of their employing agency for any additional policies and protections that may apply to them.

This Handbook does not grant any legal rights to any employee, nor is it intended to bind the State in any way. Where there is a conflict between any law, regulation, order, policy or collective bargaining agreement and the text of this Handbook, such law, regulation, order, policy or agreement shall be controlling.

The State reserves the right to revise, add to, or delete any portion of this Handbook at any time, in its sole discretion, without prior notice to employees. Moreover, this Handbook is not intended to, and does not create any right, contractual or otherwise, for any employee, not otherwise contained in the particular law or executive order the Handbook summarizes.

This Handbook has been written so as to not conflict with any collective bargaining agreement that the State has entered into with any union representing its unionized employees. If there is any conflict between this Handbook and any collective bargaining agreement, the provisions of the collective bargaining agreement will control. This Handbook shall not constitute a change in any existing term and condition of employment.

EXHIBIT 9



2/27/2021, 11:14 AM

What's crazy is if you or I did what is alleged we'd be fired on the spot no questions asked...and it would be the right thing to do



2/27/2021, 11:20 AM

That's the damn truth



EXHIBIT 10

2/28/2021, 10:31 AM

[REDACTED]
Yeah that's the issue. I think we just have to say let investigation take its course and make judgement then. I'm not exactly sure what else to say

2/28/2021, 10:31 AM

[REDACTED]
The admin knows it's true!!

2/28/2021, 10:32 AM

[REDACTED]
Yes they are already at true equals resign

2/28/2021, 10:32 AM

[REDACTED]
Our side have lost their way

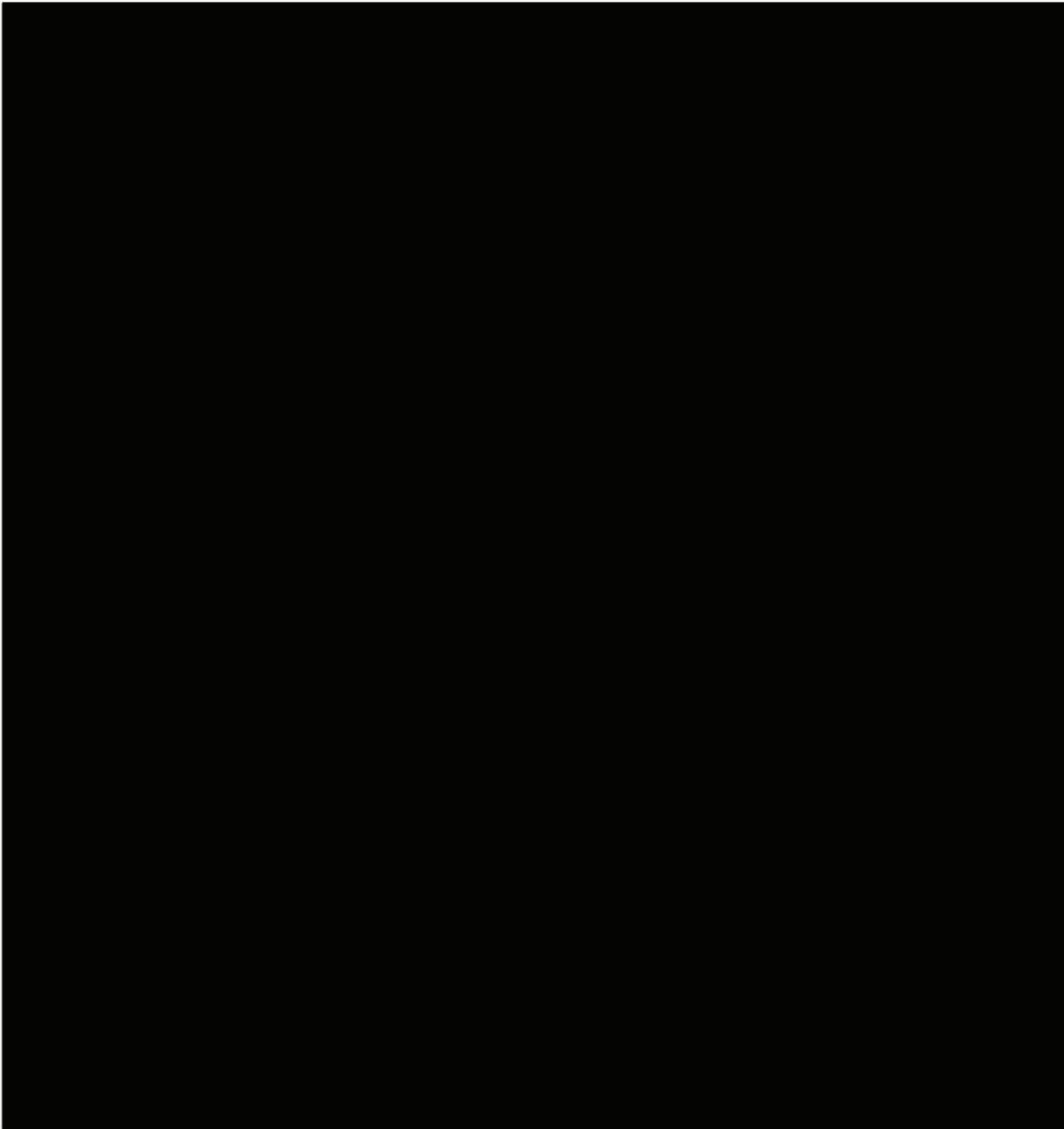


EXHIBIT 11

Messages in chronological order (times are shown in GMT -05:00)



CHAT - 03893 - 2021/02/28



And this is just horrible

2/28/2021, 10:53 AM

The Lindsey stuff I rolled my eyes. But that NY times story really really upset me

2/28/2021, 10:53 AM

I believe her 100%

2/28/2021, 10:53 AM

Same

2/28/2021, 10:53 AM

It left me with a pit in my stomach

2/28/2021, 10:53 AM

And his stmt was gross

2/28/2021, 10:53 AM

Trying to mentor

2/28/2021, 10:53 AM

That made me SO mad

2/28/2021, 10:53 AM

You creep

2/28/2021, 10:53 AM

It's such bullshit

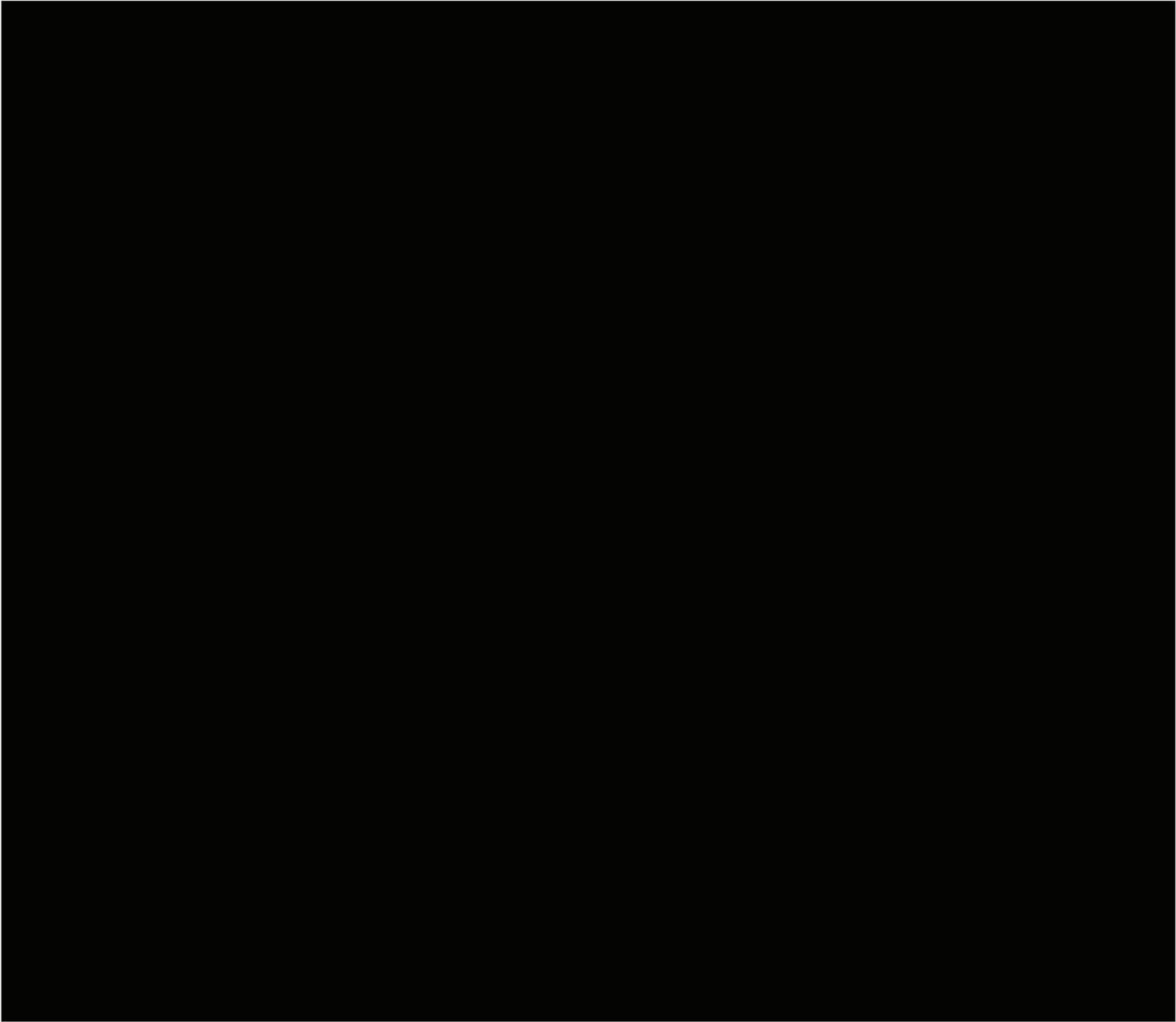
2/28/2021, 10:53 AM



EXHIBIT 12



CHAT - 03747 - 2021/03/02



[Redacted]

3/2/2021, 5:42 PM

Hopefully when this is all done people will realize the culture -even outside the sexual harassment stuff - is not something you can get away with

[Redacted]

3/2/2021, 5:42 PM

Agreed! I think they will. If they feel it helps.

[Redacted]

3/2/2021, 5:43 PM

Like you can't berate and terrify people 24/7

[Redacted]

3/2/2021, 5:43 PM

Yup. I think it's a big generational difference too.



EXHIBIT 13

Date: Friday, March 12 2021 02:28 PM

Subject: [Chat#35561]

From: Josh [REDACTED]

To: [REDACTED]

The odd part about these workplace stories

-----METADATA INFORMATION-----

Device Owner:

[REDACTED] Josh Vlasto

ICCID:

8914800006264344092



Date: Friday, March 12 2021 02:28 PM

Subject: [Chat#35562]

From: Josh [REDACTED]

To: [REDACTED]

It's not even close to what it was really like to work there day to day

-----METADATA INFORMATION-----

Device Owner:

[REDACTED] Josh Vlasto

ICCID:

8914800006264344092



Date: Friday, March 12 2021 02:28 PM

Subject: [Chat#35563]

From: Josh [REDACTED]

To: [REDACTED]

It was so much worse

-----METADATA INFORMATION-----

Device Owner:

[REDACTED] Josh Vlasto

ICCID:

8914800006264344092



Date: Friday, March 12 2021 02:29 PM

Subject: [Chat#35564]

From: [REDACTED]

To: [REDACTED] [Josh (owner)] [REDACTED]

How so?

-----METADATA INFORMATION-----

Device Owner:

[REDACTED] Josh Vlasto

ICCID:

89148000006264344092



Date: Friday, March 12 2021 02:29 PM

Subject: [Chat#35565]

From: Josh [REDACTED]

To: [REDACTED]

The abuse and mind games

-----METADATA INFORMATION-----

Device Owner:

[REDACTED] Josh Vlasto

ICCID:

8914800006264344092



Date: Friday, March 12 2021 02:29 PM

Subject: [Chat#35566]

From: Josh [REDACTED]

To: [REDACTED]

But for me it never really bothered me. It was part of the deal

-----METADATA INFORMATION-----

Device Owner:

[REDACTED] Josh Vlasto

ICCID:

8914800006264344092



EXHIBIT 14

Reflections as I Stare Over the Railing of the Sinking Titanic
(Or, Processing the Cuomo Scandals from the Inside)

[March 8, 2021]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

Diary Entry

[REDACTED]

When Azzo released my 2018 HR type memo about the Lindsay's exit counseling session I was surprised and not surprised at the same time. I knew that senior staff had the documents and my files from that time, but I was not told it was going to the press until after it was out. Also I thought it was attorney client privilege and I assumed I would have been told if the Governor decided to waive that privilege. I also was kind of surprised because I didn't think it was a great rebuttal to what she was saying – the counseling session didn't have anything to do with sexual harassment (there was none alleged at the time).

[REDACTED]

I was however not prepared for how widely my memo went out – I was dismayed when my memo was picked up in papers literally around the world and domestically – this was not how I wanted to find my name in People Magazine.

[REDACTED]

[REDACTED]

[REDACTED]

Diary Entry

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] I'm disgusted that Andrew Cuomo – a man who understands subtle power dynamics and power plays better than almost anyone on the planet – is giving this loopy excuse of not knowing he made women feel uncomfortable. Either he knew exactly what he was doing (likely) or he is so narcissistic that he thought all women wanted these kinds of questions (crazy excuse even to write it). [REDACTED]

[REDACTED]

[REDACTED] There are several orders of victims in this issue: first and foremost the women who experienced these things with him. Second though, and unrecognized, are the staff. We are almost uniformly good people who killed ourselves (I worked 3 days in a row once with no sleep so close a bill), to accomplish his agenda – for his political glory, and for the feeling that he would make decisions with public service as his driving goal. I feel cheated out of that. [REDACTED]

[REDACTED]

[REDACTED]

Diary Entry

[REDACTED]

[REDACTED]

EXHIBIT 15



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

ANDREW M. CUOMO
GOVERNOR

BETH GARVEY
SPECIAL COUNSEL AND
SENIOR ADVISOR TO THE GOVERNOR

March 1, 2021

Hon. Letitia James
Attorney General of the State of New York
State Capitol
Albany, New York 12224

Dear Attorney General James,

The Governor is hereby making a referral pursuant to Executive Law Section §63 (8) for you to select an independent law firm to conduct an inquiry into allegations of and circumstances surrounding sexual harassment claims made against the Governor.

As provided in Executive Law § 63(8), that private attorney or private attorneys, may be designated as Special Deputy Attorney General or Assistant Deputy Attorney General, to conduct the review.

Nothing in this letter is intended to constrain or limit any of the powers inherent in Executive Law § 63(8). Due to the nature of this review, however, the weekly reports contemplated by Executive Law § 63(8) will not be approved by or transmitted to the Executive. At the close of the review, the findings will be disclosed in a public report.

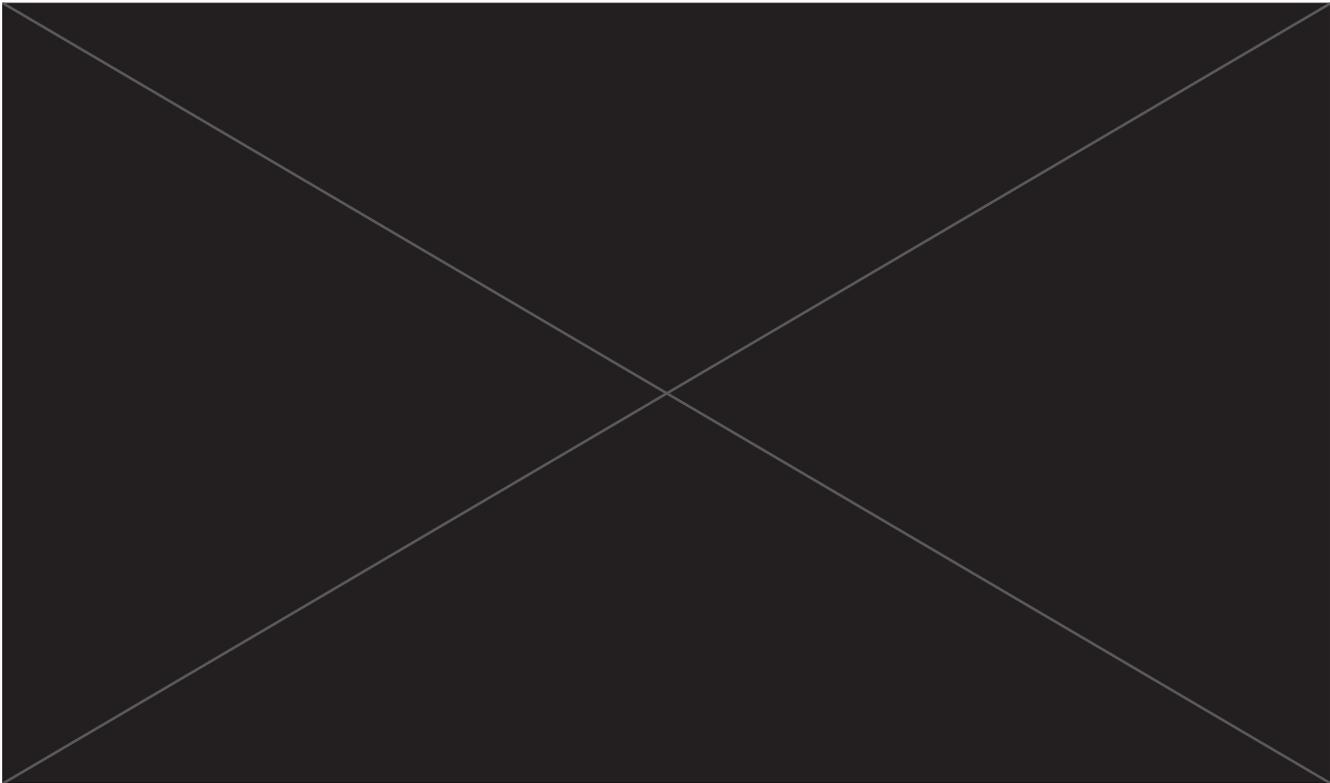
All New York State employees have been directed to cooperate fully with this review. I will serve as point of contact for any witness interviews or document production for the Executive Chamber and will connect you with appropriate counsel in any other agency or entity for any documents or witnesses necessary for the review.

Sincerely,

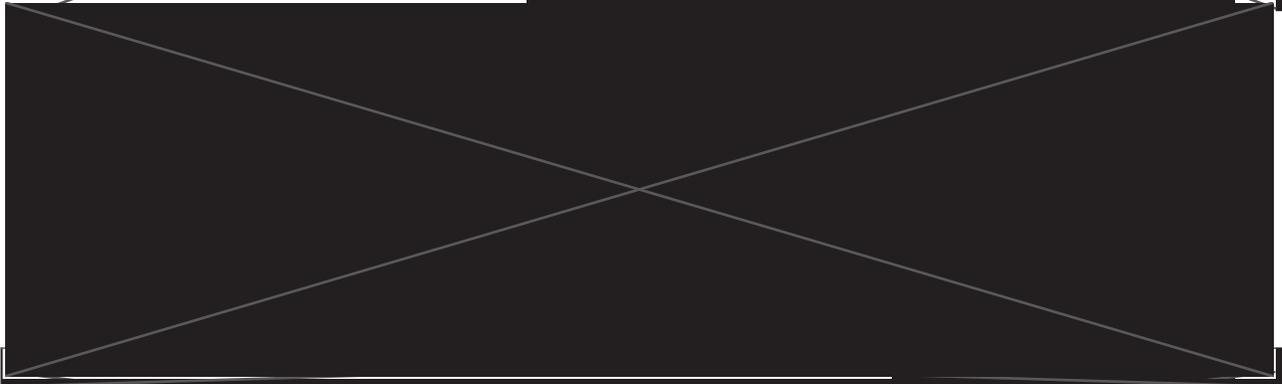
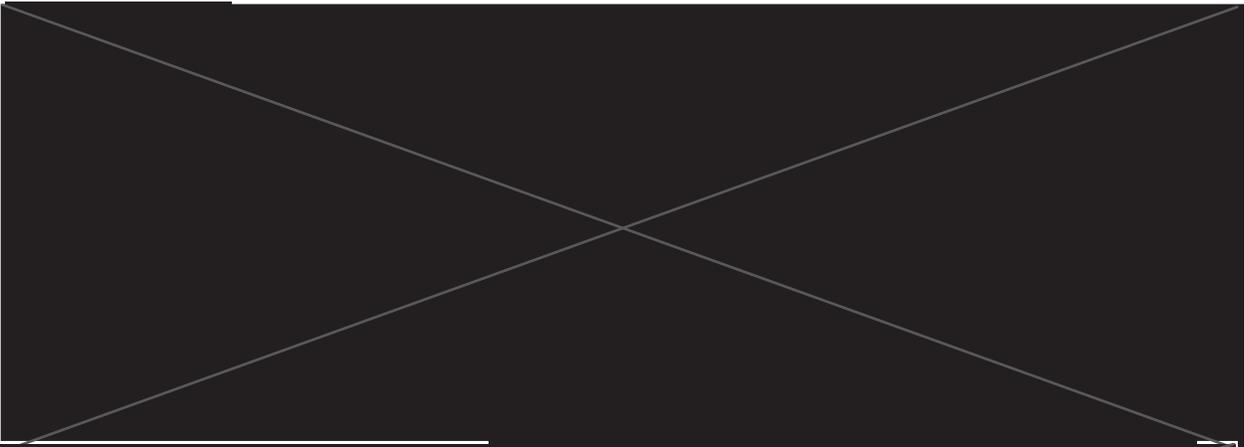
A handwritten signature in cursive script that reads "Beth Garvey".

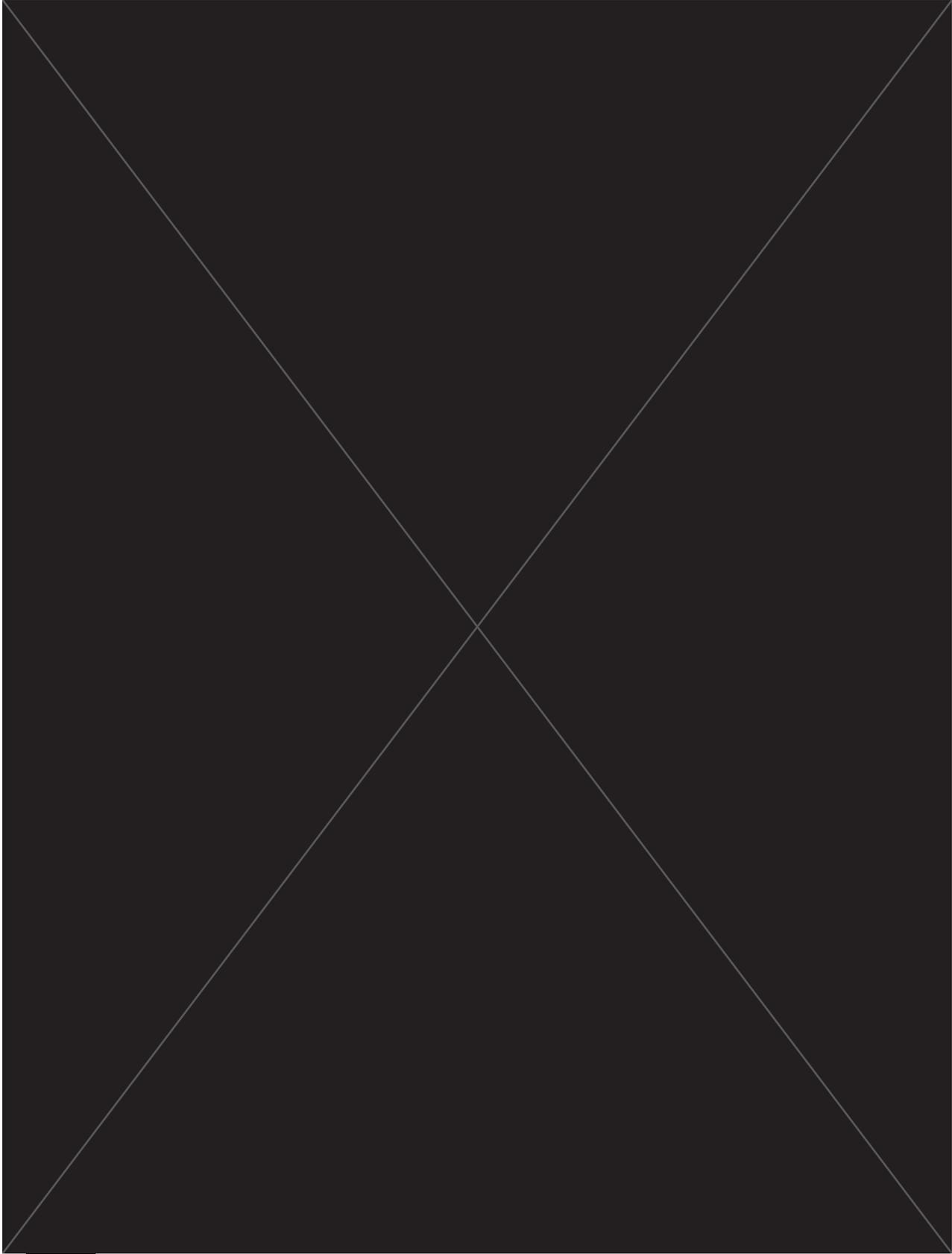
Beth Garvey
Special Counsel and Senior Advisor

EXHIBIT 16



3/2/20, 8:15 AM





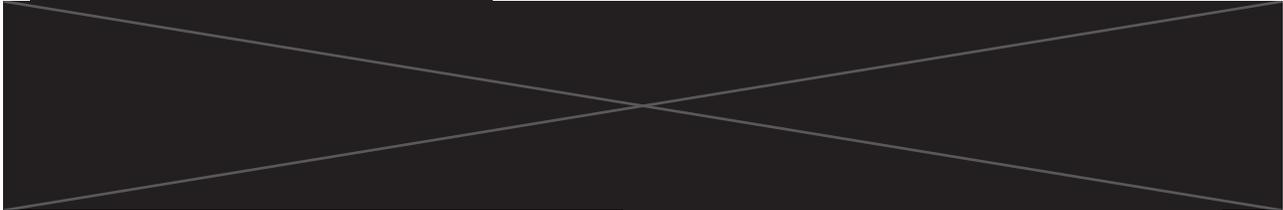
(You got a book too!!)



You better have

Yes ma'am

What did he write lol mingle mama 🤔



3/3/20, 5:43 PM

Still here

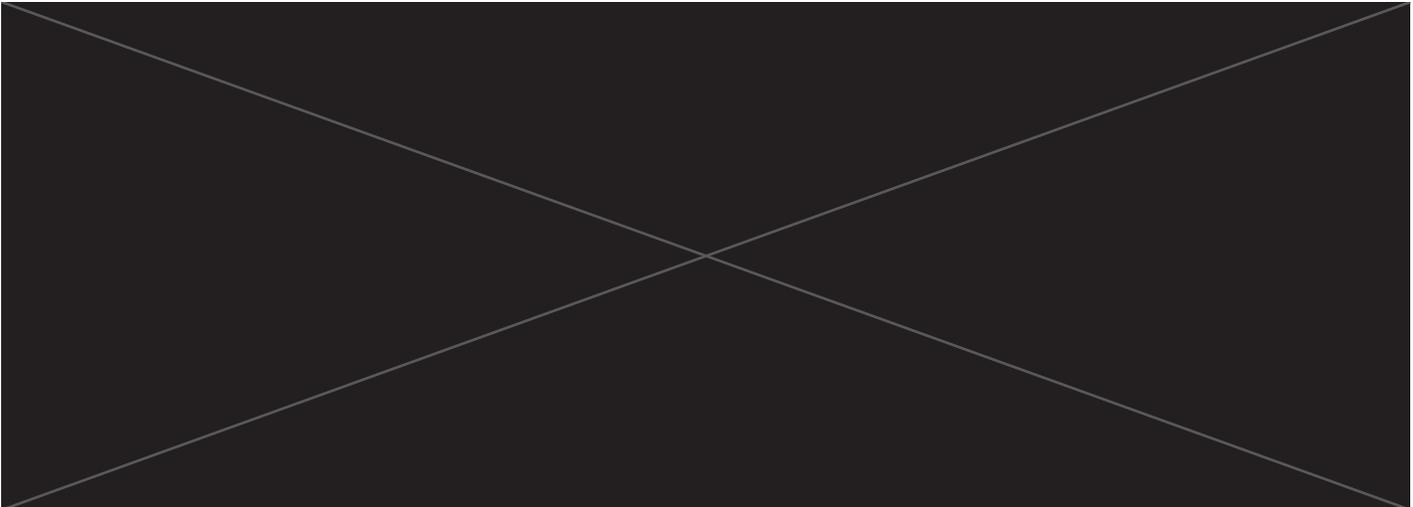
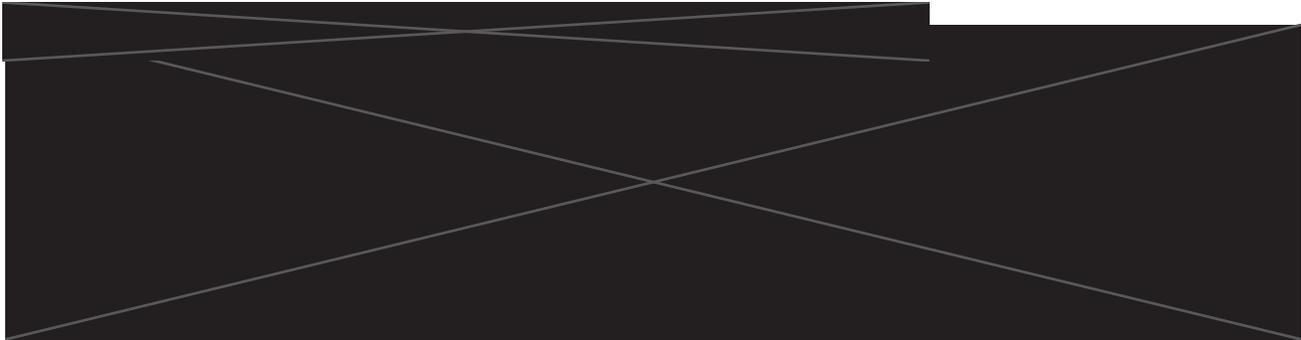


EXHIBIT 17



EXHIBIT 18



EXHIBIT 19



EXHIBIT 20

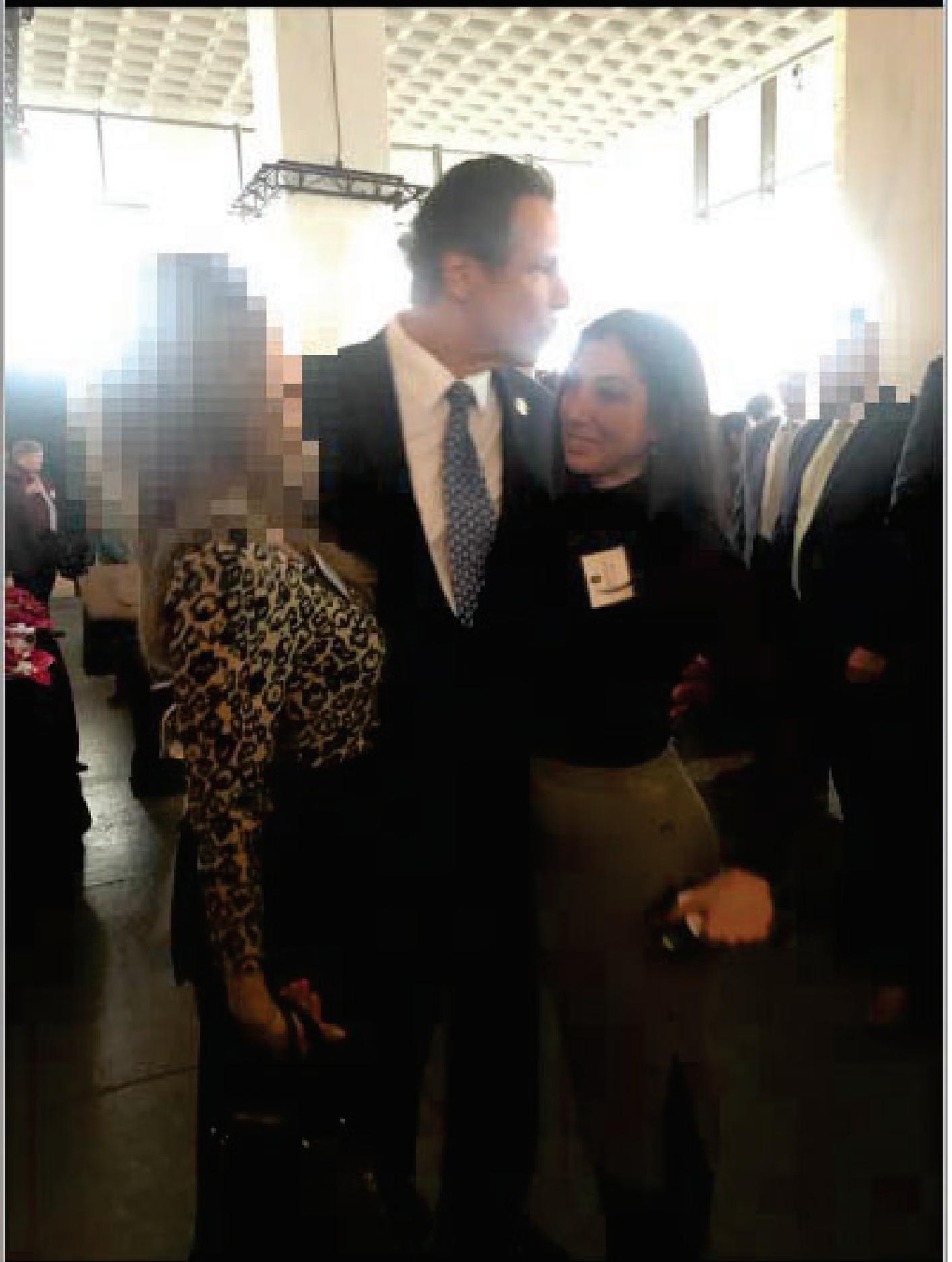


EXHIBIT 21



EXHIBIT 22

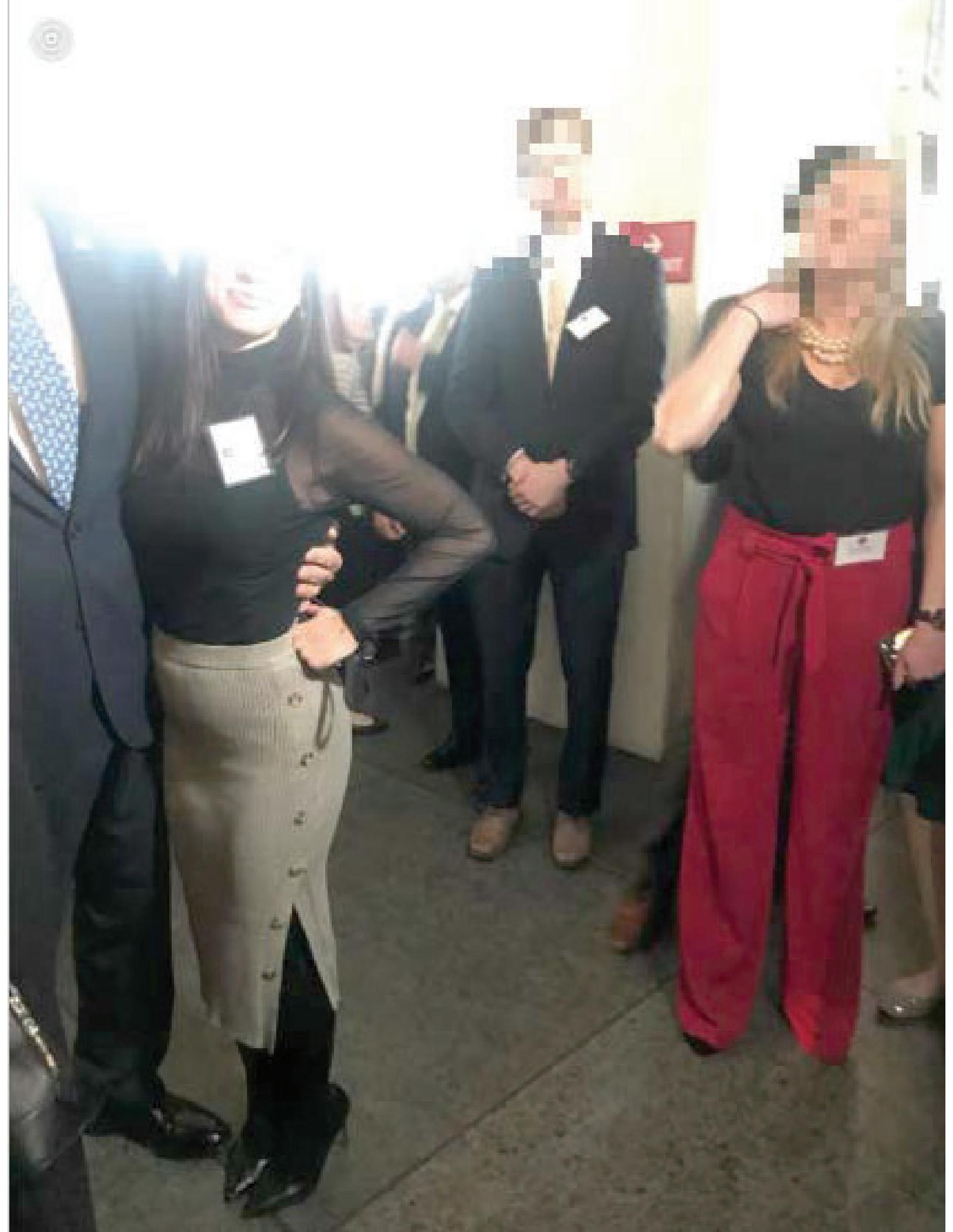


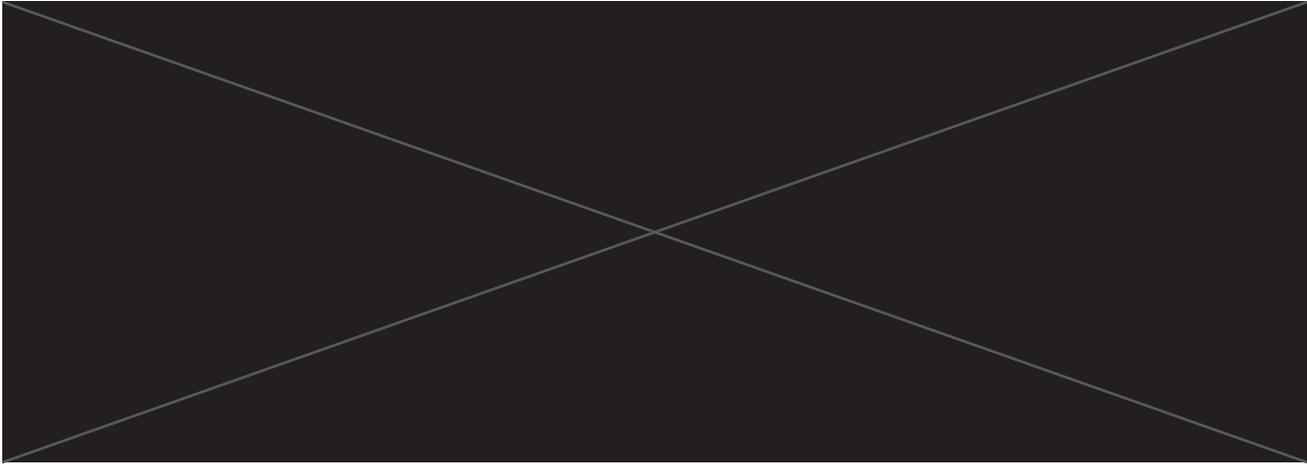
EXHIBIT 23



EXHIBIT 24



EXHIBIT 25



12/31/19, 1:52 PM

Still there

12/31/19, 3:19 PM



Alyssa McGrath

Um where is my pic!!

I'm officially jealous!!!

I need to be photoshopped in to the right of him 🤔

Love this so much

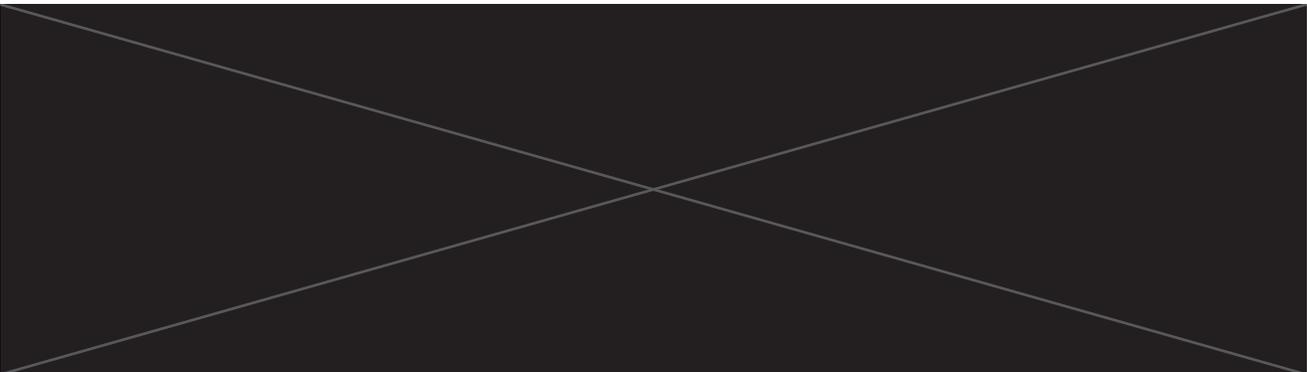


EXHIBIT 26



Executive Assistant #1

Freakin tough right

He brought up the selfie and definitely only supposed to stay between you and me. I'm glad I didn't show it to maggiore

Alyssa McGrath

I would never show anyone promise

Executive Assistant #1

Thanks girl

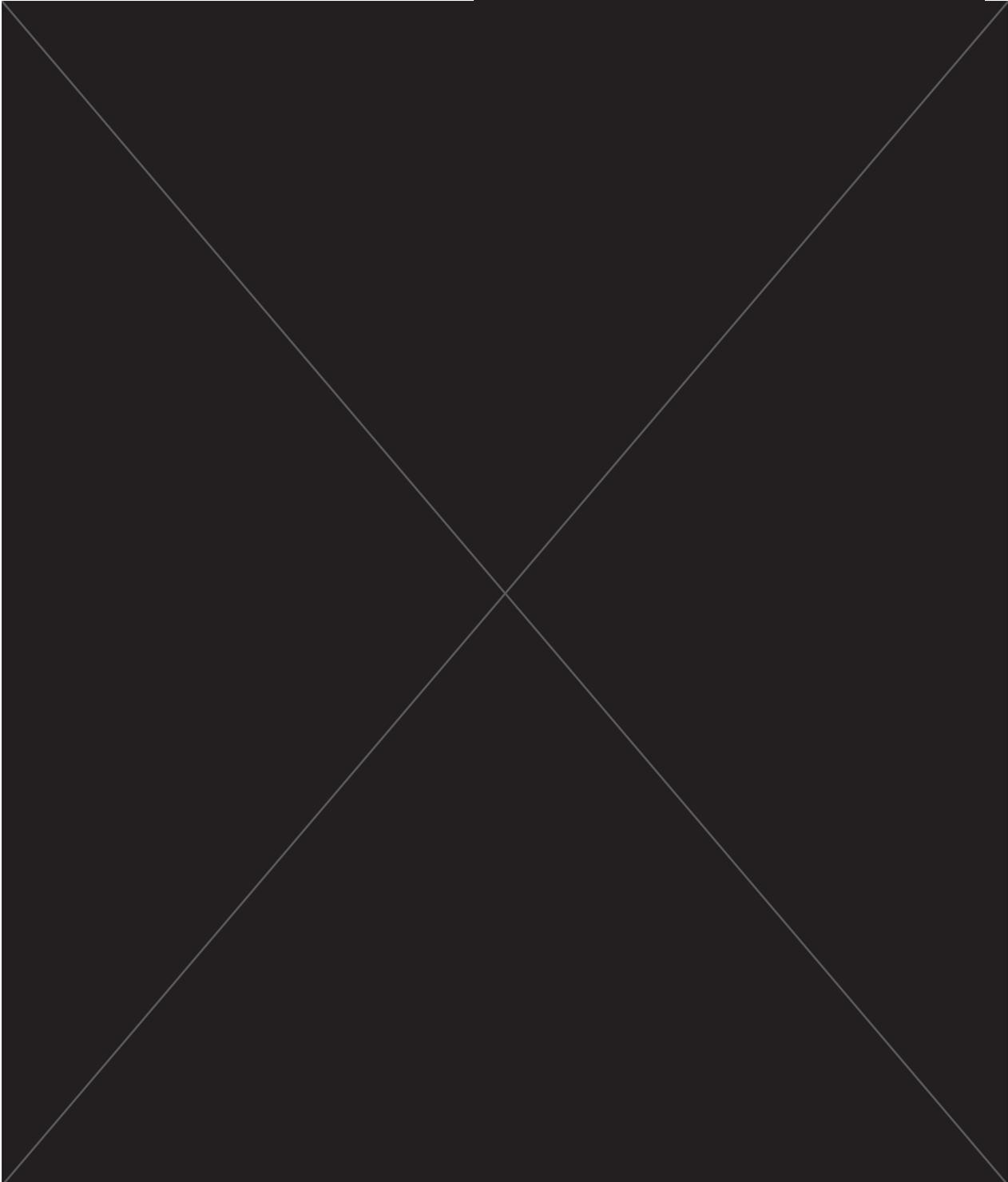


EXHIBIT 27

Sent: Mon, 16 Nov 2020 11:59:54
Subject: Executive Aide #1 arrived at the EM. House staffers notified. As per Benton. Tpr Bernard.
From: Albany [REDACTED]
Sent: Mon, 16 Nov 2020 16:59:54 +0000
To: "Vincent Straface" [REDACTED], "David Dively" [REDACTED], "Jill DesRosiers" [REDACTED],
"PETE ALNWICK" [REDACTED], "Michael Augeri" [REDACTED], "Stephanie Benton" [REDACTED],
"Melissa DeRosa" [REDACTED], "Christopher Long" [REDACTED], "Joseph Metcalfe" [REDACTED], "DJ
Grant" [REDACTED], "Dana Walton" [REDACTED], "John Colon" [REDACTED], "Marquita Sanders" [REDACTED]
[REDACTED]

EXHIBIT 28



Mark.2

Mar 6, 2021 12:13:16 PM



To: Mark.2

Subject: Re:

I will come.

Original Message

From: Mark.2

Sent: Saturday, March 6, 2021 9:31 AM

To: Stephanie Benton

Subject: Re:

No. **Redacted: Privileged**

Redacted: Privileged



Reply

Reply All

Forward





Mark.2

Mar 6, 2021 12:13:16 PM



Original Message

From: Mark.2

Sent: Saturday, March 6, 2021 9:36 AM

To: Stephanie Benton

Subject: Re:

No not u.

Redacted: Privileged

Original Message

From: Stephanie Benton

Sent: Saturday, March 6, 2021 9:35 AM

To: Mark.2

Subject: Re:



Reply



Reply All



Forward





Mark.2

Mar 6, 2021 12:13:16 PM



EA #3 better?

Original Message

From: Stephanie Benton

Sent: Saturday, March 6, 2021 9:39 AM

To: Mark.2

Subject: Re:

Redacted: Privileged

EA #1 is on call today. Want her now?

Original Message



Reply

Reply All

Forward





Mark.2

Mar 6, 2021 12:13:16 PM



Sent: Saturday, March 6, 2021 9:40 AM

To: Mark.2

Subject: Re:

I called EA #3. She can do. I'm telling her to head there now.

Original Message

From: Mark.2

Sent: Saturday, March 6, 2021 9:40 AM

To: Stephanie Benton

Subject: Re:

EA #3 better?



Reply

Reply All

Forward

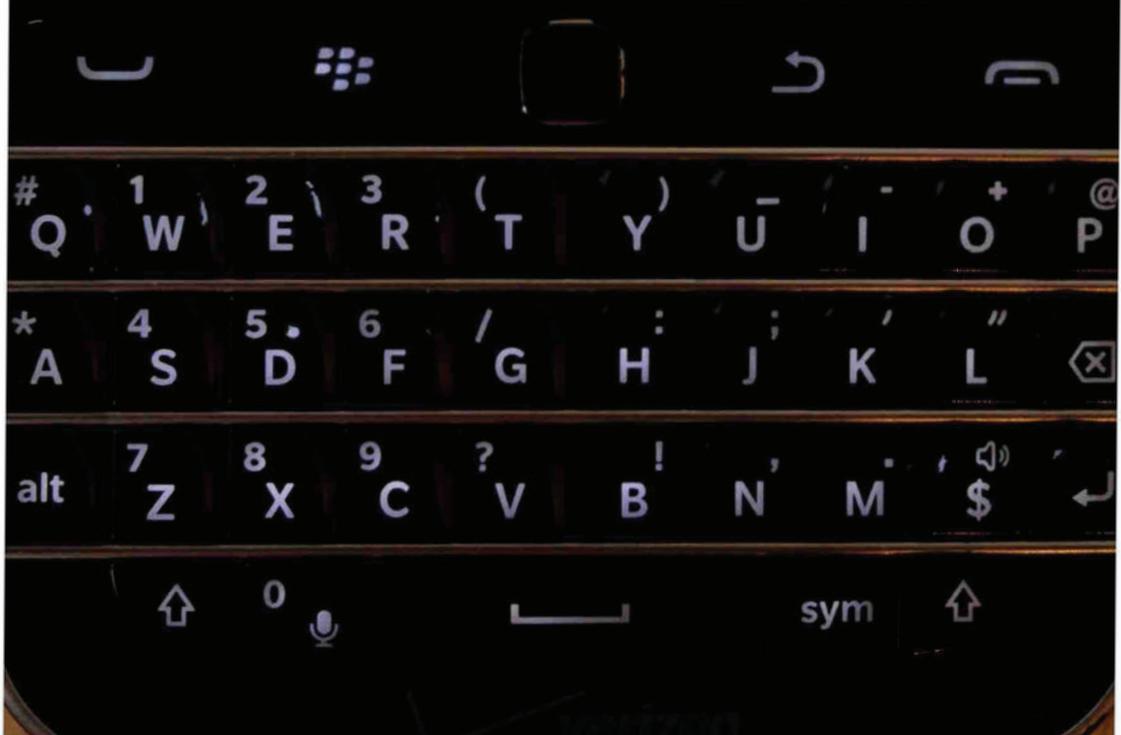


EXHIBIT 29

-----Original Message-----

From: Senior Investigator #1

Sent: Sunday, November 5, 2017 10:38 AM

To: Trooper #1

Subject: What did you say to him???????

There is talk of drafting you. Give me a call when you get a chance

If you don't want to go I can get you out of it. But definitely worth considering.

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EXHIBIT 30

From: [DUFFY, WILLIAM \(TROOPERS\)](#)
To: [Lyons, Brendan](#)
Subject: RE: [EXTERNAL] RE: <no subject>
Date: Friday, December 18, 2020 1:11:00 PM
Attachments: [image001.png](#)

Thank you

From: Lyons, Brendan <[REDACTED]>
Sent: Friday, December 18, 2020 12:52 PM
To: DUFFY, WILLIAM (TROOPERS) <[REDACTED]>
Subject: Re: [EXTERNAL] RE: <no subject>

ATTENTION This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

It's my understanding that around the time she was appointed to the detail the requirement for four years on the job was changed to three.

From: "DUFFY, WILLIAM (TROOPERS)" <[REDACTED]>
Date: Friday, December 18, 2020 at 12:51 PM
To: "Lyons, Brendan" <[REDACTED]>
Subject: RE: [EXTERNAL] RE: <no subject>

In case you missed my email – is someone suggesting she was appointed to PSU based on something other than merit? If so, what?

From: DUFFY, WILLIAM (TROOPERS)
Sent: Friday, December 18, 2020 10:35 AM
To: Lyons, Brendan <[REDACTED]>
Subject: RE: [EXTERNAL] RE: <no subject>

Ok, is that the subject of some speculation?

From: Lyons, Brendan <[REDACTED]>
Sent: Friday, December 18, 2020 9:56 AM
To: DUFFY, WILLIAM (TROOPERS) <[REDACTED]>
Subject: Re: [EXTERNAL] RE: <no subject>

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Trying to pinpoint how she was picked to get on the detail.

From: "DUFFY, WILLIAM (TROOPERS)" <[REDACTED]>
Date: Friday, December 18, 2020 at 9:45 AM
To: "Lyons, Brendan" <[REDACTED]>
Subject: [EXTERNAL] RE: <no subject>

I will check. Why do you ask?

From: Lyons, Brendan <[REDACTED]>
Sent: Friday, December 18, 2020 9:14 AM
To: DUFFY, WILLIAM (TROOPERS) <[REDACTED]>
Subject: <no subject>

ATTENTION This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Good morning, Beau,

Are you able to provide the date that [REDACTED] joined the governor's security detail and her current status?



[Brendan J. Lyons](#)

Managing Editor Enterprise, Investigations/Capitol Bureau

[REDACTED]
645 Albany Shaker Rd, Albany, NY 12211
[REDACTED]

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EXHIBIT 31

From: [DUFFY WILLIAM \(TROOPERS\)](#)
To: [Bruen Kevin \(TROOPERS\)](#); [STRAFACE VINCENT \(TROOPERS\)](#)
Cc: [LOWMAN KRISTIN \(TROOPERS\)](#)
Subject: RE: Brendan Lyons inquiry -- [REDACTED]
Date: Friday, December 18, 2020 3:04:00 PM
Attachments: [image001.png](#)
Importance: High

Have an update on this:

[REDACTED] was appointed to PSU on January 25, 2018 with two other troopers, one of which had the same date of entry – Inv. [REDACTED]. I found the File 14 for that transfer.

P&R checked into the members manual and found that the three year requirement has existed since June of 2012 when that section first appeared (Article 2B5). I asked P&R to double check and they came back with the same answer. I've amended my response:

[REDACTED] joined the Protective Services Unit in January 25, 2018, along with another Trooper with the same exact amount of experience. Since June of 2012, State Police has required three years of Division service in order to qualify for appointment to the PSU.

Her assignment was based on her performance while assisting the PSU at an event in November of 2017. A Senior Investigator on the detail was impressed by her work and attitude, and recommended her as a possibility to fill an opening on the unit. PSU conducted a standard review of her work as a Trooper, which included interviews with her supervisors, who praised her work and agreed that she would be a good candidate for PSU. In the Senior Investigator's words she was "squared away." High praise indeed in the State Police parlance. [REDACTED] expressed an interest in joining the unit, and wrote a memo requesting a transfer.

Based on her performance as Trooper on the PSU, [REDACTED] was promoted to the rank of Investigator on December 26, 2019.

Any suggestion that [REDACTED] assignment to the PSU and subsequent promotion was based on anything other than her hard work and abilities is false. Such a suggestion an insult to [REDACTED] and the New York State Police.

Thanks -- Beau

From: DUFFY, WILLIAM (TROOPERS)
Sent: Friday, December 18, 2020 1:11 PM
To: Bruen, Kevin (TROOPERS) [REDACTED] STRAFACE, VINCENT (TROOPERS)
[REDACTED]
Cc: LOWMAN, KRISTIN (TROOPERS) [REDACTED]
Subject: RE: Brendan Lyons inquiry -- [REDACTED]
Importance: High

Brendan got back to me – he says that it's his understanding that around the time of her appointment, the requirement to join PSU was changed from four years to three. So, maybe he's being told that the rules were changed for her, or at least the modification of the rule in the same time frame as her appointment could appear to be more than coincidental.

What is the background on that requirement? Was her initial appointment temporary, and would a temporary assignment land outside of the requirement until it's permanent?

Her EOD is 3/2/2015.

Thanks!

From: Bruen, Kevin (TROOPERS) [REDACTED]
Sent: Friday, December 18, 2020 12:22 PM
To: DUFFY, WILLIAM (TROOPERS) [REDACTED]; STRAFACE, VINCENT (TROOPERS)
[REDACTED]
Cc: LOWMAN, KRISTIN (TROOPERS) [REDACTED]
Subject: RE: Brendan Lyons inquiry -- [REDACTED]

From: DUFFY, WILLIAM (TROOPERS) [REDACTED]
Sent: Friday, December 18, 2020 12:15 PM
To: STRAFACE, VINCENT (TROOPERS) [REDACTED]; Bruen, Kevin (TROOPERS)
[REDACTED]
Cc: LOWMAN, KRISTIN (TROOPERS) [REDACTED]
Subject: RE: Brendan Lyons inquiry -- [REDACTED]

Sirs:

Brendan has not yet told me the reason he's interested in why she was appointed to PSU, but I think we should be specific about how she ended up on the unit and then provide the last sentence stating that any other suggestions about the reason for her appointment are lies. Let me know your thoughts:

[REDACTED] joined the Protective Services Unit in January of 2018.

Her assignment was based on her performance while assisting the PSU at an event in November of 2017. A Senior Investigator on the detail was impressed by her work and attitude, and recommended her as a possibility to fill an opening on the unit. PSU conducted a standard review of her work as a Trooper, which included interviews with her supervisors, who praised her work and agreed that she would be a good candidate for PSU. In the Senior Investigator's words she was "squared away". High praise indeed in the State Police palance. [REDACTED] expressed an interest in joining the unit, and wrote a memo requesting a transfer. She was appointed by the Superintendent on January 28, 2018.

Based on her performance as Trooper on the PSU, [REDACTED] was promoted to the rank of Investigator on December 26, 2019.

Any suggestion that Investigator [REDACTED] assignment to the PSU and subsequent promotion was based on anything other than her hard work and abilities is false. Such a suggestion an insult to [REDACTED] and the New York State Police.

From: DUFFY, WILLIAM (TROOPERS)
Sent: Friday, December 18, 2020 9:45 AM
To: STRAFACE, VINCENT (TROOPERS) [REDACTED]; Bruen, Kevin (TROOPERS)
[REDACTED]
Subject: FW: Brendan Lyons inquiry -- [REDACTED]

Sirs:

Brendan Lyons from the TU asking when [REDACTED] joined PSU. I've asked him why he's asking, awaiting a response. Is there something going on with her?

Thx -- Beau

From: Lyons, Brendan [REDACTED]
Sent: Friday, December 18, 2020 9:14 AM
To: DUFFY, WILLIAM (TROOPERS) [REDACTED]
Subject: <no subject>

ATTENTION This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Good morning, Beau,

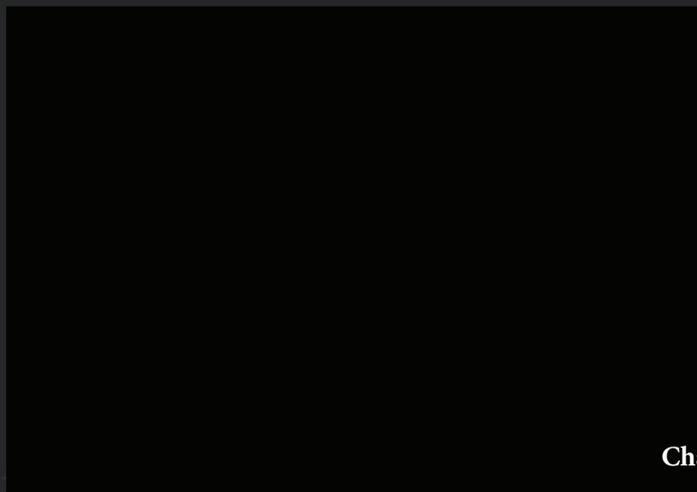
Are you able to provide the date that Trooper [REDACTED] joined the governor's security detail and her current status?



Brendan J. Lyons
Managing Editor Enterprise, Investigations/Capitol Bureau
[REDACTED]
645 Albany Shaker Rd, Albany, NY 12211
[REDACTED]

EXHIBIT 32

May 16, 2019, 3:01 PM



Charlotte Bennett

HELLO ARE YOU STILL THERE

was with gov when you texted

He asked me if I honored my commitments

LOL OH

HAHAHAHAHHAHAHAHA OH

JESUS CHRIST

HAHAHAHAHHAHAHAH

He asked me to name commitments

Askedme how long my relationships were

If I stayed at the same school

OMFG

HAHAHAHAHAHAHAHAH

He asked me to name commitments

Askedme how long my relationships were

If I stayed at the same school

OMFG

are you kidding

that's WILD

like how do you respond to questions like that

He's making me learn the lyrics to Danny Boy

And keeps coming out to quiz me and I've failed every time

at least all of your relationships last longer than they actually should

LOL OH

HAHHAAAAAAAAAAAAAAAAAAAAH YEAH

HAHAHAHHAAAAAAAAHAH

HAHAHAHHAAAAAAAAHAA

< 228



...told every time

at least all of your relationships last longer than they actually should

LOL OH

HAHHAAAAAAAAAAAAAAAAAAAA YEAH

HAHAHAHHAAAAAAAAAAAAH

HAHAHAHHAAAAAAAAAAAAH

I told him I stuck by the people in my life and told him about [redacted] and he asked what happened

And waslolo yep once he [redacted] I met Jill (the chief) and now I'm here

And he was like omg

And I was like yeah. So I honor my commitments and stick by my people

HAHAHAHHAAAAAAAAAAAAH

HUAHAHAHAHAHAAAAAAAA

And he seemed very satisfied and impressed

LIKE LISTENNTO THIS

iMessage input area with camera, app store, microphone icons

EXHIBIT 33

May 15, 2019, 9:34 PM



May 16, 2019, 1:58 PM



May 16, 2019, 3:22 PM

Charlotte Bennett

Sorry. Gov is in. Can't talk rn

Going to be a late night. Admin party 6-7 and then going to gym

He's making me memorize the lyrics to Danny Boy

He keeps coming out to quiz me and this is not a problem I ever saw coming in my life

May 16, 2019, 9:40 PM

Are u alive? Know all the verses yet?

Barely

To both

EXHIBIT 34

| | | | |
|---------------------------------|---------------------------------|-------------------------------|---|
| [REDACTED] Charlotte Bennett | [REDACTED] Staffer #5 | 1/1/2020 3:08:33 PM(UTC-5) | He just asked me to sing bohemian rhapsody so |
| [REDACTED] Charlotte Bennett | [REDACTED] Staffer #5 | 1/1/2020 3:08:37 PM(UTC-5) | We aren't far off from bedtime story |
| [REDACTED] Staffer #5 | [REDACTED] Charlotte Bennett | 1/1/2020 3:08:46 PM(UTC-5) | Good lord |
| [REDACTED] Staffer #5 | [REDACTED] | 1/1/2020 3:08:50 PM(UTC-5) | The hazing never ends |
| [REDACTED] Charlotte Bennett | [REDACTED] Staffer #5 | 1/1/2020 3:08:58 PM(UTC-5) | It doesn't. It truly doesn't |

EXHIBIT 35

Conversation Between Charlotte Bennett and The Governor

October 4, 2019

This transcript has been prepared by the investigative team and reflects an attempt to best capture the substance of the conversations. The exact words reflected in the transcript may not always be accurate. We have also endeavored to identify the names of individuals on the recordings, but this information may not always be accurate.

The Governor: Hello.

Bennett: Hi, Governor?

The Governor: Yeah.

Bennett: This is Charlotte.

The Governor: Ok, hun. [*singing*] Are you reaaaaaady? do do do do do do do do.

Bennett: [*laughing*] I am ready.

The Governor: You don't know that song?

Bennett: No.

The Governor: Before your time.

Bennett: It's before my time but I appreciated the singing.

The Governor: [*singing*] Do you love me, do you really love me? Do you love me, do you care?

Bennett: I'll have to listen, yeah.

The Governor: Yeah, it's like a 50's. It's before even my time.

Bennett: Oh, there you go. Now I have less than an excuse.

The Governor: You ready?

Bennett: Yes.

The Governor: This is to [unintelligible] board of directors.

Bennett: Mm hum.

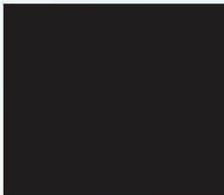
The Governor: The . . .

EXHIBIT 36

2:13



< 13



Charlotte Bennett

Ugh

Gov and I are going to lift together in his mansion gym

Mom

That photo wasn't enough

It wasn't

Mom

? Lift with Gov? Oh god. Don't box with him. Please

Hahahahaha

Mom

How did this plan hatch?

He asked what I do for sports. We got talking about skiing. Told him he was at a soccer game

Said I ran for a while and now i lift and box

He started asking what I lift etc. how many push-ups can I do. Are they real. How far down do I go though

Mom

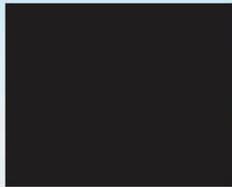
Oh no. I feel a push-up contest coming.



iMessage



< 13



Real push-ups

He said he will triple whatever I lift



Mom



He does not know who he is messing with

He laughed so hard

He was like no you don't that's crazy

Mom



Oh god

He was like do you have a bf
I said no
he said well that's why. you could beat
them all up
So I said yeah, there are a lotta fools out
there. They have to squat more than I can.
It was easier a few years ago

He kept going back to the pushups though
so I told him dad would make me practice
during commercials

Mom



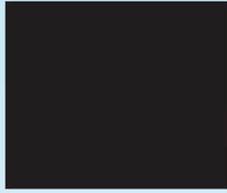
All our dirty secrets 😏. 🙄



iMessage



< 13



Mom

All our dirty secrets 🤔. 🤔

Talked about skiing

Told him you kept the dogs and the fudge locked down

Mom

Chatty day

I was also the driver when everyone got injured. Someone had to stay whole

Are you doing push-ups now, I fear?

I was like please don't make me do them now

I've lost five pounds of muscle this month. Been busy

He asked if I went up to vt 🤔

Said I have duties in ny haha

Then he asked how much I bench

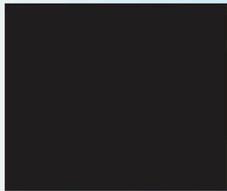
What my circuits look like

How often I box

Told him I'm leaving equinox

Hahahaha

iMessage input field with camera, app store, and voice recording icons



Hahahaha

Mom

Good

What did he say to that?

Show your boxing video?

Hahahaha that would be mortifying

Cannot believe that convo just happened

He was like yeah, gotta leave equity

Equinox

Haha! Not equity

This all started because he wanted to dictate a letter

So he goes

"Letter to..." and paused

And then goes

YOUR MAMA!

So I laugh and say OKAY. To

Mom



iMessage



EXHIBIT 37

Instagram

0:00 / 0:03

Aug 9, 2019, 9:01 PM

The governor invited me to lift weights with him Life complete He challenged me to a push-up competition



Instagram



Aug 9, 2019, 1:58 PM