



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
SUBPOENA AD TESTIFICANDUM
THE PEOPLE OF THE STATE OF NEW YORK
GREETINGS

TO: Michael N. Volforte
Director
Governor's Office of Employee Relations
2 Empire State Plaza
Albany, New York 12223

YOU ARE HEREBY COMMANDED, pursuant to Executive Law § 63(8) and New York Civil Practice Law and Rules § 2302(a), to appear and attend before the Special Deputies to the First Deputy Attorney General, on June 21, 2021 at 9:30 AM, or any agreed upon adjourned date or time, at One Liberty Plaza, 38th Floor, New York, New York 10006 to testify in connection with an investigation into allegations of and circumstances surrounding sexual harassment claims made against Governor Cuomo, or any matter that the Attorney General deems pertinent thereto.

TAKE NOTICE that the Attorney General deems the testimony commanded by this Subpoena to be relevant and material to an investigation and inquiry undertaken in the public interest.

TAKE NOTICE that the examination may be recorded by stenographic, videographic and/or audio means.

TAKE FURTHER NOTICE that Your disobedience of this Subpoena, by failing to appear and attend and testify on the date, time and place stated above or on any agreed upon adjourned date or time, **may subject You to penalties and other lawful punishment** under Executive Law § 63(8), New York Civil Practice Law and Rules § 2308 and/or other statutes.

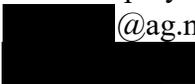
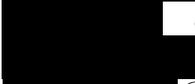
Volforte

Exhibit

1

WITNESS, The Honorable Letitia James, Attorney General of the State of New York,
this 11th day of June, 2021.

By: 

Joon H. Kim
Jennifer Kennedy Park
Abena Mainoo
Special Deputies to the
First Deputy Attorney General
@ag.ny.gov
ag.ny.gov
@ag.ny.gov

By: /s/ Anne L. Clark

Anne L. Clark
Yannick Grant
Special Deputies to the
First Deputy Attorney General
@ag.ny.gov
ag.ny.gov



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

SUBPOENA DUCES TECUM
THE PEOPLE OF THE STATE OF NEW YORK
GREETINGS

TO: Governor's Office of Employee Relations
2 Empire State Plaza
Albany, New York 12223

YOU ARE HEREBY COMMANDED, under Executive Law § 63(8), N.Y. Civil Practice Law and Rules § 2302(a), and/or other statutes, to deliver and turn over to the Special Deputies to the First Deputy Attorney General, on **the 24th day of June, 2021, at 9:30 a.m.**, or any agreed upon adjourned date or time, at One Liberty Plaza, 38th Floor, New York, New York 10006, all documents and information requested in the attached Schedule in accordance with the instructions and definitions contained therein.

TAKE NOTICE that the Attorney General deems the documents and information commanded by this Subpoena to be relevant and material to an investigation and inquiry undertaken in the public interest.

TAKE FURTHER NOTICE that Your disobedience of this Subpoena, by failing to deliver the documents and information requested in the attached Schedule on the date, time, and place stated above or on any agreed upon adjourned date or time, **may subject You to penalties and other lawful punishment** under Executive Law § 63(8), New York Civil Practice Law and Rules § 2308, and other statutes.

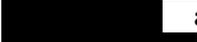
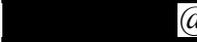
Voforte

Exhibit

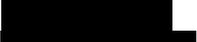
2

WITNESS, The Honorable Letitia James, Attorney General of the State of New York, this 14th day of June, 2021.

By: 

Joon H. Kim
Jennifer Kennedy Park
Abena Mainoo
Special Deputies to the
First Deputy Attorney General
@ag.ny.gov
ag.ny.gov
@ag.ny.gov

By: /s/ Anne L. Clark

Anne L. Clark
Yannick Grant
Special Deputies to the
First Deputy Attorney General
@ag.ny.gov
ag.ny.gov

SCHEDULE

A. General Definitions and Rules of Construction

1. “All” means each and every.
2. “Any” means any and all.
3. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Subpoena all information or Documents that might otherwise be construed to be outside of its scope.
4. “Communication” means any conversation, discussion, letter, email, call, text message, instant message, memorandum, meeting, note, or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means, and shall include any Document that abstracts, digests, transcribes, records, or reflects any of the foregoing.
5. “Concerning” means, directly or indirectly, in whole or in part, relating to, referring to, describing, evidencing, or constituting.
6. “Custodian” means any Person or Entity that, as of the date of this Subpoena, maintained, possessed, or otherwise kept or controlled such Document.
7. “Document” is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced, or stored (manually, mechanically, electronically, or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail (“email”), instant messages, text messages, Blackberry or other wireless device messages, posts on any social media account You control (including but not limited to Facebook, Instagram, and Twitter), all other Communications, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, code (*e.g.*, C/C++/C#, SQL, JavaScript), algorithms, code repositories (*e.g.*, GitHub), commit messages, audit logs, data or databases (*e.g.*, Oracle, postgres, or other SQL or non-SQL systems), plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices, and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, commit messages, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking

made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof.

8. “Entity” means without limitation any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or other firm or similar body, or any unit, division, agency, department, or similar subdivision thereof.
9. “Identify” or “Identity,” as applied to any Document means the provision in writing of information sufficiently particular to enable the Attorney General to request the Document’s production through subpoena or otherwise, including but not limited to: (a) Document type (letter, memo, etc.); (b) Document subject matter; (c) Document date; and (d) Document author(s), addressee(s), and recipient(s). In lieu of identifying a Document, the Attorney General will accept production of the Document, together with designation of the Document’s Custodian, and identification of each Person You believe to have received a copy of the Document.
10. “Identify” or “Identity,” as applied to any Entity, means the provision in writing of such Entity’s legal name, any d/b/a, former, or other names, any parent, subsidiary, officers, employees, or agents thereof, and any address(es) and any telephone number(s) thereof.
11. “Identify” or “Identity,” as applied to any natural person, means and includes the provision in writing of the natural person’s name, title(s), position(s), any aliases, place(s) of employment, telephone number(s), email address(es), mailing addresses, and physical address(es).
12. “Person” means any natural person, or any Entity.
13. “Sent” or “received” as used herein means, in addition to their usual meanings, the transmittal or reception of a Document by physical, electronic, or other delivery, whether by direct or indirect means.
14. “Subpoena” means this subpoena and any schedules or attachments thereto.
15. The use of the singular form of any word used herein shall include the plural and vice versa. The use of any tense of any verb includes all other tenses of the verb.

B. Particular Definitions

1. “Complainant” means Jessica Bakeman, Charlotte Bennett, Lindsey Boylan, Karen Hinton, Ana Liss, Alyssa McGrath, Anna Ruch, Sherry Vill, and any other individual who has made any Complaints known to You, any member of the Executive Chamber, or the public, whether anonymously or otherwise. For the avoidance of doubt, to the extent additional allegations come to light following

the issuance of this Subpoena, individuals who make such allegations should be included in this definition.

2. “Complaint” means any and all complaints, allegations, comments, accusations, or other statements of workplace misconduct, sexual harassment, sex- or gender-based misconduct, or other behavior or comments of a sexual, abusive, or otherwise inappropriate or uncomfortable nature, whether made formally or informally.
3. “Executive Chamber” means the Executive Chamber of the State of New York, including but not limited to Governor Andrew M. Cuomo, and all other officers, directors, supervisors, personnel, employees, secretaries, interns, fellows, agents, contractors, consultants, representatives, and attorneys of the Executive Chamber, or any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing at any point during the relevant time.
4. “Governor” means the New York State Governor Andrew M. Cuomo.
5. “New York Attorney General” or “Attorney General” means the New York State Office of the Attorney General.
6. “Respondent,” “You,” “Your Office,” “Your,” or “GOER” means the Governor’s Office of Employee Relations, including all officers, directors, supervisors, personnel, employees, secretaries, interns, fellows, agents, contractors, consultants, representatives, and attorneys of GOER, or any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing at any point during the relevant time.
7. “State” or “New York” means the State of New York.

C. Instructions

1. Preservation of Relevant Documents and Information; Spoliation. You are reminded of Your obligations under law to preserve Documents and information relevant or potentially relevant to this Subpoena from destruction or loss, and of the consequences of, and penalties available for, spoliation of evidence. No agreement, written or otherwise, purporting to modify, limit, or otherwise vary the terms of this Subpoena, shall be construed in any way to narrow, qualify, eliminate, or otherwise diminish Your aforementioned preservation obligations. Nor shall You act, in reliance upon any such agreement or otherwise, in any manner inconsistent with Your preservation obligations under law. No agreement purporting to modify, limit, or otherwise vary Your preservation obligations under law shall be construed as in any way narrowing, qualifying, eliminating, or otherwise diminishing such aforementioned preservation obligations, nor shall You act in reliance upon any such agreement, unless a Special Deputy to the First

Deputy Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.

2. Possession, Custody, and Control. The Subpoena calls for all responsive Documents or information in Your possession, custody, or control. This includes, without limitation, Documents or information possessed or held by You or any of Your officers, employees, staff, agents, representatives, attorneys, consultants, divisions, affiliates, subsidiaries, or Persons from whom You could request Documents or information. If Documents or information responsive to a request in this Subpoena are in Your control, but not in Your possession or custody, You shall promptly Identify the Person with possession or custody and notify that Person of the Person's obligation to preserve such Documents and provide them to You for production.
3. Documents No Longer in Your Possession. If any Document requested herein was formerly in Your possession, custody, or control but is no longer available, or no longer exists, You shall submit a statement in writing under oath that: (a) describes in detail the nature of such Document and its contents; (b) Identifies the Person(s) who prepared such Document and its contents; (c) Identifies all Persons who have seen or had possession of such Document; (d) specifies the date(s) on which such Document was prepared, transmitted, or received; (e) specifies the date(s) on which such Document became unavailable; (f) specifies the reason why such Document is unavailable, including without limitation whether it was misplaced, lost, destroyed, or transferred; and if such Document has been destroyed or transferred, the conditions of and reasons for such destruction or transfer, and the Identity of the Person(s) requesting and performing such destruction or transfer; and (g) Identifies all Persons with knowledge of any portion of the contents of the Document.
4. No Documents Responsive to Subpoena Requests. If there are no Documents responsive to any particular Subpoena request, You shall so state in writing under oath in the Affidavit of Compliance attached hereto, identifying the paragraph number(s) of the Subpoena request concerned.
5. Format of Production. You shall produce Documents and information responsive to this Subpoena in the format requested by the Office of the New York State Attorney General, as set out in Attachments 1 and 2 or as otherwise agreed upon.
6. Databases. To the extent that any data responsive to the requests herein is maintained in an electronic repository of records, such as a detailed transcription report, such information should be produced by querying the database for responsive information and generating a report or a reasonably usable and exportable electronic file (for example, *.csv and/or *.xls formats) for review. If it is not possible to export data in this format, You must make the database available to the undersigned for meaningful inspection and review of the information.

7. Existing Organization of Documents to be Preserved. Regardless of whether a production is in electronic or paper format, each Document shall be produced in the same form, sequence, organization, or other order or layout in which it was maintained before production, including but not limited to production of any Document or other material indicating filing or other organization. Such production shall include without limitation any file folder, file jacket, cover, or similar organizational material, as well as any folder bearing any title or legend that contains no Document. Likewise, all Documents that are physically attached to each other in Your files shall remain so attached in any production; or if such production is electronic, shall be accompanied by notation or information sufficient to indicate clearly such physical attachment.
8. Manner of Compliance – Custodians/Search Terms/Technology-Assisted Review. Prior consultation with the Special Deputies to the First Deputy Attorney General is required concerning selection of custodians for document searches (whether electronic or otherwise) or for use of search term filters, predictive coding, or other forms of technology-assisted review. The Office of the Attorney General reserves the right to approve, disapprove, modify, or supplement any proposed list of custodians, search terms, and/or review methodology. The selection or use of custodians, search term filters, and/or technology-assisted review in no way relieves You of Your obligation to fully respond to these requests for Documents or information.
9. Document Numbering. All Documents responsive to this Subpoena, regardless of whether produced or withheld on ground of privilege or other legal doctrine, and regardless of whether production is in electronic or paper format, shall be numbered in the lower right corner of each page of such Document, without disrupting or altering the form, sequence, organization, or other order or layout in which such Documents were maintained before production. Such number shall comprise a prefix containing the producing Person's name or an abbreviation thereof, followed by a unique, sequential, identifying document control number.
10. Privilege Placeholders. For each Document withheld from production on ground of privilege or other legal doctrine, regardless of whether a production is electronic or in hard copy, You shall insert one or more placeholder page(s) in the production bearing the same document control number(s) borne by the Document withheld, in the sequential place(s) originally occupied by the Document before it was removed from the production.
11. Privilege. If You withhold or redact any Document responsive to this Subpoena on ground of any privilege or other legal doctrine, You shall submit with the Documents produced a statement in writing under oath, stating: (a) the document control number(s) of the Document withheld or redacted; (b) the type of Document; (c) the date of the Document; (d) the author(s) and recipient(s) of the Document; (e) the general subject matter of the Document; and (f) the legal ground for withholding or redacting the Document. If the legal ground for withholding or redacting the Document is attorney-client privilege, You shall

indicate the name of the attorney(s) whose legal advice is sought or provided in the Document.

12. Your Production Instructions to Be Produced. You shall produce a copy of all written or otherwise recorded instructions prepared by You concerning the steps taken to respond to this Subpoena. For any unrecorded instructions given, You shall provide a written statement under oath from the Person(s) who gave such instructions that details the specific content of the instructions and any Person(s) to whom the instructions were given.
13. Cover Letter, Index, and Identifying Information. Accompanying any production(s) made pursuant to this Subpoena, You shall include a cover letter that shall at a minimum provide an index containing the following: (a) a description of the type and content of each Document produced therewith; (b) the paragraph number(s) of the Subpoena request(s) to which each such Document is responsive; (c) the Identity of the Custodian(s) of each such Document; and (d) the document control number(s) of each such Document. As further set forth in Attachment 2, information must also be included in the metadata and load files of each production concerning the identity of each Document's custodian, as well as information identifying the particular Document requests and/or information to which each document is responsive.
14. Affidavit of Compliance. A copy of the Affidavit of Compliance provided herewith shall be completed and executed by all natural persons supervising or participating in compliance with this Subpoena, and You shall submit such executed Affidavit(s) of Compliance with Your response to this Subpoena.
15. Identification of Persons Preparing Production. In a schedule attached to the Affidavit of Compliance provided herewith, You shall Identify the natural person(s) who prepared or assembled any productions or responses to this Subpoena. You shall further Identify the natural person(s) under whose personal supervision the preparation and assembly of productions and responses to this Subpoena occurred. You shall further Identify all other natural person(s) able to competently testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine, and what they purport to be.
16. Continuing Obligation to Produce. This Subpoena imposes a continuing obligation to produce the Documents and information requested. Documents located or created and information learned, acquired, or created at any time after Your response is due shall be promptly produced at the place specified in this Subpoena.
17. No Oral Modifications. No agreement purporting to modify, limit, or otherwise vary this Subpoena shall be valid or binding, and You shall not act in reliance upon any such agreement, unless a Special Deputy to the First Deputy Attorney

General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.

18. Time Period. Unless otherwise specified, the time period covered by this Subpoena shall be from January 1, 2013 forward.

D. Documents to Be Produced

1. Any and all Documents concerning Communications with any current or former member of the Executive Chamber relating to the release or disclosure of personnel files, information from such files, or other information about current or former State employees to any member of the media or the public.

2. Any and all Documents concerning any Complainant, including but not limited to any Communication relating to any statement made or information provided to the media or the public.

ATTACHMENT 1
Electronic Document Production Specifications

Unless otherwise specified and agreed to by the Office of Attorney General, all responsive documents must be produced in LexisNexis® Concordance® format in accordance with the following instructions. Any questions regarding electronic document production should be directed to the Special Deputy to the First Deputy Attorney General whose telephone number appears on the subpoena.

1. **Concordance Production Components.** A Concordance production consists of the following component files, which must be produced in accordance with the specifications set forth below in Section 7.
 - A. ***Metadata Load File.*** A delimited text file that lists in columnar format the required metadata for each produced document.
 - B. ***Extracted or OCR Text Files.*** Document-level extracted text for each produced document or document-level optical character recognition (“OCR”) text where extracted text is not available.
 - C. ***Single-Page Image Files.*** Individual petrified page images of the produced documents in tagged image format (“TIF”), with page-level Bates number endorsements.
 - D. ***Opticon Load File.*** A delimited text file that lists the single-page TIF files for each produced document and defines (i) the relative location of the TIF files on the production media and (ii) each document break.
 - E. ***Native Files.*** Native format versions of non-printable or non-print friendly produced documents.
2. **Production Folder Structure.** The production must be organized according to the following standard folder structure:
 - data\ (contains production load files)
 - images\ (contains single-page TIF files, with subfolder organization)
 \0001, \0002, \0003...
 - native_files\ (contains native files, with subfolder organization)
 \0001, \0002, \0003...
 - text\ (contains text files, with subfolder organization)
 \0001, \0002, \0003...
3. **De-Duplication.** You must perform global de-duplication of stand-alone documents and email families against any prior productions pursuant to this or previously related subpoenas.
4. **Paper or Scanned Documents.** Documents that exist only in paper format must be scanned to single-page TIF files and OCR’d. The resulting electronic files should

be pursued in Concordance format pursuant to these instructions. You must contact the Special Deputy to the First Deputy Attorney General whose telephone number appears on the subpoena to discuss (i) any documents that cannot be scanned, and (ii) how information for scanned documents should be represented in the metadata load file.

5. Structured Data. Before producing structured data, including but not limited to relational databases, transactional data, and xml pages, you must first speak to the Special Deputy to the First Deputy Attorney General whose telephone number appears on the subpoena. Structured data is data that has a defined length and format and includes, but is not limited to, relational databases, graphical databases, JSON files, or xml/html pages.

A. Relational Databases

1. Database tables should be provided in CSV or other delimited machine-readable, non-proprietary format, with each table in a separate data file. The preferred delimiter is a vertical bar “|”. If after speaking with the Special Deputy to the First Deputy Attorney General and it is determined that the data cannot be exported from a proprietary database, then the data can be produced in the proprietary format so long as the Office of the Attorney General is given sufficient access to that data.
2. Each database must have an accompanying Data Dictionary.
3. Dates and numbers must be clearly and consistently formatted and, where relevant, units of measure should be explained in the Data Dictionary.
4. Records must contain clear, unique identifiers, and the Data Dictionary must include explanations of how the files and records relate to one another.
5. Each data file must also have an accompanying summary file that provides total row counts for the entire dataset and total row counts.

B. Compression

1. If Documents are provided in a compressed archive, only standard lossless compression methods (e.g., gzip, bzip2, and ZIP) shall be used. Media files should be provided in their original file format, with metadata preserved and no additional lossy encoding applied.

6. Media and Encryption. All documents must be produced on CD, DVD, or hard-drive media. After consultation with the Special Deputy to the First Deputy Attorney General, Documents may also be produced over a secure file transfer protocol (FTP) or a pre-approved cloud-based platform (e.g., Amazon Web Services S3 bucket). All production media must be protected with a strong, randomly generated password containing at least 16 alphanumeric characters and encrypted using Advanced Encryption Standard with 256-bit key length (AES-256). Passwords for electronic documents, files, compressed archives, and encrypted media must be provided separately from the media.

7. Production File Requirements.
 - A. ***Metadata Load File***
 - Required file format:
 - ASCII or UTF-8
 - Windows formatted CR + LF end of line characters, including full CR + LF on last record in file.
 - .dat file extension
 - Field delimiter: (ASCII decimal character 20)
 - Text Qualifier: þ (ASCII decimal character 254). Date and pure numeric value fields do not require qualifiers.
 - Multiple value field delimiter: ; (ASCII decimal character 59)
 - The first line of the metadata load file must list all included fields. All required fields are listed in Attachment 2.
 - Fields with no values must be represented by empty columns maintaining delimiters and qualifiers.
 - ***Note:*** All documents must have page-level Bates numbering (except documents produced only in native format, which must be assigned a document-level Bates number). The metadata load file must list the beginning and ending Bates numbers (BEGDOC and ENDDOC) for each document. For document families, including but not limited to emails and attachments, compound documents, and uncompressed file containers, the metadata load file must also list the Bates range of the entire document family (ATTACHRANGE), beginning with the first Bates number (BEGDOC) of the “parent” document and ending with the last Bates number (ENDDOC) assigned to the last “child” in the document family.
 - Date and Time metadata must be provided in separate columns.
 - Accepted date formats:
 - mm/dd/yyyy
 - yyyy/mm/dd
 - yyyymmdd
 - Accepted time formats:
 - hh:mm:ss (if not in 24-hour format, you must indicate am/pm)

- hh:mm:ss:mmm

B. ***Extracted or OCR Text Files***

- You must produce individual document-level text files containing the full extracted text for each produced document.
- When extracted text is not available (for instance, for image-only documents) you must provide individual document-level text files containing the document's full OCR text.
- The filename for each text file must match the document's beginning Bates number (BEGDOC) listed in the metadata load file.
- Text files must be divided into subfolders containing no more than 500 to 1000 files.

C. ***Single-Page Image Files (Petrified Page Images)***

- Where possible, all produced documents must be converted into single-page tagged image format ("TIF") files. See Section 7.E below for instructions on producing native versions of documents you are unable to convert.
- Image documents that exist only in non-TIF formats must be converted into TIF files. The original image format must be produced as a native file as described in Section 7.E below.
- For documents produced only in native format, you must provide a TIF placeholder that states "Document produced only in native format."
- Each single-page TIF file must be endorsed with a unique Bates number.
- The filename for each single-page TIF file must match the unique page-level Bates number (or document-level Bates number for documents produced only in native format).
- Required image file format:
 - CCITT Group 4 compression
 - 2-Bit black and white
 - 300 dpi
 - Either .tif or .tiff file extension.
- TIF files must be divided into subfolders containing no more than 500 to 1000 files. Where possible documents should not span multiple subfolders.

D. ***Opticon Load File***

- Required file format:
 - ASCII
 - Windows formatted CR + LF end of line characters
 - Field delimiter: , (ASCII decimal character 44)
 - No Text Qualifier
 - .opt file extension

- The comma-delimited Opticon load file must contain the following seven fields (as indicated below, values for certain fields may be left blank):
 - ALIAS or IMAGEKEY – the unique Bates number assigned to each page of the production.
 - VOLUME – this value is optional and may be left blank.
 - RELATIVE PATH – the filepath to each single-page image file on the production media.
 - DOCUMENT BREAK – defines the first page of a document. The only possible values for this field are “Y” or blank.
 - FOLDER BREAK – defines the first page of a folder. The only possible values for this field are “Y” or blank.
 - BOX BREAK – defines the first page of a box. The only possible values for this field are “Y” or blank.
 - PAGE COUNT – this value is optional and may be left blank.
- **Example:**
 ABC00001,,IMAGES\0001\ABC00001.tif,Y,,,2
 ABC00002,,IMAGES\0001\ABC00002.tif,,,,
 ABC00003,,IMAGES\0002\ABC00003.tif,Y,,,1
 ABC00004,,IMAGES\0002\ABC00004.tif,Y,,,1

E. ***Native Files***

- Non-printable or non-print friendly documents (including but not limited to spreadsheets, audio files, video files, and documents for which color has significance to document fidelity) must be produced in their native format.
- The filename of each native file must match the document’s beginning Bates number (BEGDOC) in the metadata load file and retain the original file extension.
- For documents produced only in native format, you must assign a single document-level Bates number and provide an image file placeholder that states “Document produced only in native format.”
- The relative paths to all native files on the production media must be listed in the NATIVEFILE field of the metadata load file.
- Native files that are password-protected must be decrypted prior to conversion and produced in decrypted form. In cases where this cannot be achieved the document’s password must be listed in the metadata load file. The password should be placed in the COMMENTS field with the format Password: <PASSWORD>.
- You may be required to supply a software license for proprietary documents produced only in native format.

ATTACHMENT 2
Required Fields for Metadata Load File

FIELD NAME	FIELD DESCRIPTION	FIELD VALUE EXAMPLE¹
DOCID	Unique document reference (can be used for de-duplication).	ABC0001 or ###.#####.###
BEGDOC	Bates number assigned to the first page of the document.	ABC0001
ENDDOC	Bates number assigned to the last page of the document.	ABC0002
BEGATTACH	Bates number assigned to the first page of the parent document in a document family (<i>i.e.</i> , should be the same as BEGDOC of the parent document, or PARENTDOC).	ABC0001
ENDATTACH	Bates number assigned to the last page of the last child document in a family (<i>i.e.</i> , should be the same as ENDDOC of the last child document).	ABC0008
ATTACHRANGE	Bates range of entire document family.	ABC0001 - ABC0008
PARENTDOC	BEGDOC of parent document.	ABC0001
CHILDDOCS	List of BEGDOCs of all child documents, delimited by ";" when field has multiple values.	ABC0002; ABC0003; ABC0004...
DOCREQ	List of particular Requests for Documents to be Produced in the subpoena	1; 2; 3 . . .
INTERROG	List of particular Requests for Information or interrogatories in the subpoena	1; 2; 3 . . .
COMMENTS	Additional document comments, such as passwords for encrypted files.	

¹ Examples represent possible values and not required format unless the field format is specified in Attachment 1.

NATIVEFILE	Relative file path of the native file on the production media.	.\Native_File\Folder\...\BEGDOC.ext
SOURCE	For scanned paper records this should be a description of the physical location of the original paper record. For loose electronic files this should be the name of the file server or workstation where the files were gathered.	Company Name, Department Name, Location, Box Number...
CUSTODIAN	Owner of the document or file.	Firstname Lastname, Lastname, Firstname, User Name; Company Name, Department Name...
FROM	Sender of the email.	Firstname Lastname < FLastname @domain >
TO	All to: members or recipients, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ...
CC	All cc: members, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ...
BCC	All bcc: members, delimited by ";" when field has multiple values	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ...
SUBJECT	Subject line of the email.	
DATERCVD	Date that an email was received.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMERCVD	Time that an email was received.	hh:mm:ss AM/PM or hh:mm:ss
DATESENT	Date that an email was sent.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd

TIMESENT	Time that an email was sent.	hh:mm:ss AM/PM or hh:mm:ss
CALBEGDATE	Date that a meeting begins.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
CALBEGTIME	Time that a meeting begins.	hh:mm:ss AM/PM or hh:mm:ss
CALENDDATE	Date that a meeting ends.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
CALENDTIME	Time that a meeting ends.	hh:mm:ss AM/PM or hh:mm:ss
CALENDAR DUR	Duration of a meeting in hours.	0.75, 1.5...
ATTACHMENTS	List of filenames of all attachments, delimited by ";" when field has multiple values.	AttachmentFileName.; AttachmentFileName.doc x; AttachmentFileName.pdf; ...
NUMATTACH	Number of attachments.	1, 2, 3, 4....
RECORDTYPE	General type of record.	IMAGE; LOOSE E- MAIL; E-MAIL; E-DOC; IMAGE ATTACHMENT; LOOSE E-MAIL ATTACHMENT; E- MAIL ATTACHMENT; E-DOC ATTACHMENT
FOLDERLOC	Original folder path of the produced document.	Drive:\Folder\...\...\
FILENAME	Original filename of the produced document.	Filename.ext
DOCEXT	Original file extension.	html, xls, pdf
DOCTYPE	Name of the program that created the produced document.	Adobe Acrobat, Microsoft Word, Microsoft Excel, Corel WordPerfect...
TITLE	Document title (if entered).	
AUTHOR	Name of the document author.	Firstname Lastname; Lastname, First Name; FLastname
REVISION	Number of revisions to a document.	18

DATECREATED	Date that a document was created.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMECREATED	Time that a document was created.	hh:mm:ss AM/PM or hh:mm:ss
DATEMOD	Date that a document was last modified.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMEMOD	Time that a document was last modified.	hh:mm:ss AM/PM or hh:mm:ss
FILESIZE	Original file size in bytes.	128, 512, 1024...
PGCOUNT	Number of pages per document.	1, 2, 10, 100...
IMPORTANCE	Email priority level if set.	Low, Normal, High
TIFFSTATUS	Generated by the Law Pre-discovery production tool (leave blank if inapplicable).	Y, C, E, W, N, P
DUPSTATUS	Generated by the Law Pre-discovery production tool (leave blank if inapplicable).	P
MD5HASH	MD5 hash value computed from native file (a/k/a file fingerprint).	BC1C5CA6C1945179FE E144F25F51087B
SHA1HASH	SHA1 hash value	B68F4F57223CA7DA358 4BAD7ECF111B8044F86 31
MSGINDEX	Email message ID	

AFFIDAVIT OF COMPLIANCE WITH SUBPOENA

State of _____ }
County of _____ }

I, _____, being duly sworn, state as follows:

1. I am employed by Respondent in the position of _____
_____;
2. Respondent’s productions and responses to the Subpoena of the Attorney General of the State of New York, dated _____, 20_____ (the “Subpoena”) were prepared and assembled under my personal supervision;
3. I made or caused to be made a diligent, complete, and comprehensive search for all Documents and information requested by the Subpoena, in full accordance with the instructions and definitions set forth in the Subpoena;
4. Respondent’s productions and responses to the Subpoena are complete and correct to the best of my knowledge and belief;
5. No Documents or information responsive to the Subpoena have been withheld from Respondent’s production and response, other than responsive Documents or information withheld on the basis of a legal privilege or doctrine;
6. All responsive Documents or information withheld on the basis of a legal privilege or doctrine have been identified on a privilege log composed and produced in accordance with the instructions in the Subpoena;
7. The Documents contained in Respondent’s productions and responses to the Subpoena are authentic, genuine, and what they purport to be;
8. Attached is a true and accurate record of all persons who prepared and assembled any productions and responses to the Subpoena, all persons under whose personal supervision the preparation and assembly of productions and responses to the Subpoena occurred, and all persons able competently to testify: (a) that such productions and responses are complete and correct to the best of such person’s knowledge and belief; and (b) that any Documents produced are authentic, genuine, and what they purport to be; and

9. Attached is a true and accurate statement of those requests under the Subpoena as to which no responsive Documents were located in the course of the aforementioned search.

Signature of Affiant

Date

Printed Name of Affiant

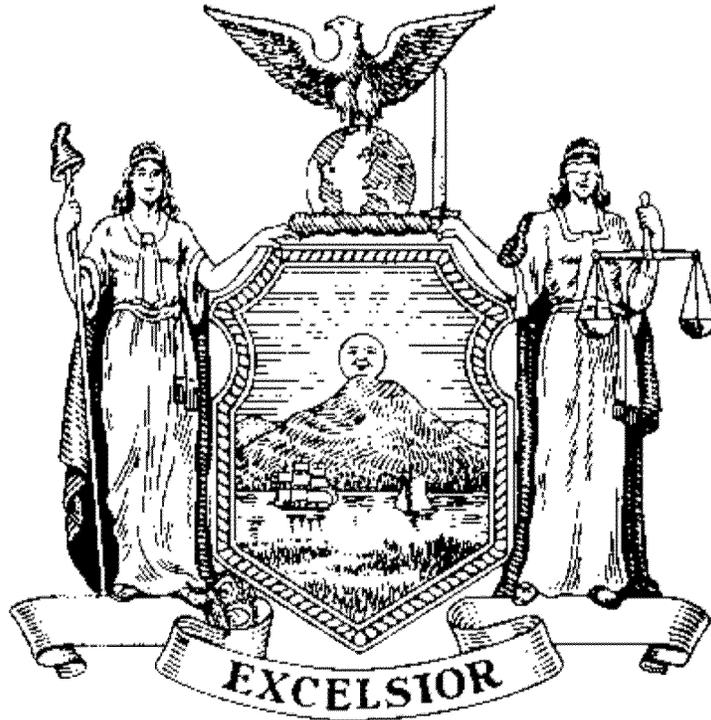
* * *

Subscribed and sworn to before me this _____ day of _____, 20__.

_____, Notary Public

My commission expires: _____

**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

Volforte

Exhibit

3

EMPLOYEE RIGHTS AND RESPONSIBILITIES

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EMPLOYEE RIGHTS AND RESPONSIBILITIES

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, 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

EMPLOYEE RIGHTS AND RESPONSIBILITIES

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.

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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

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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.

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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.

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- (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).

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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

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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.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

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).

EMPLOYEE RIGHTS AND RESPONSIBILITIES

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.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

NOTE

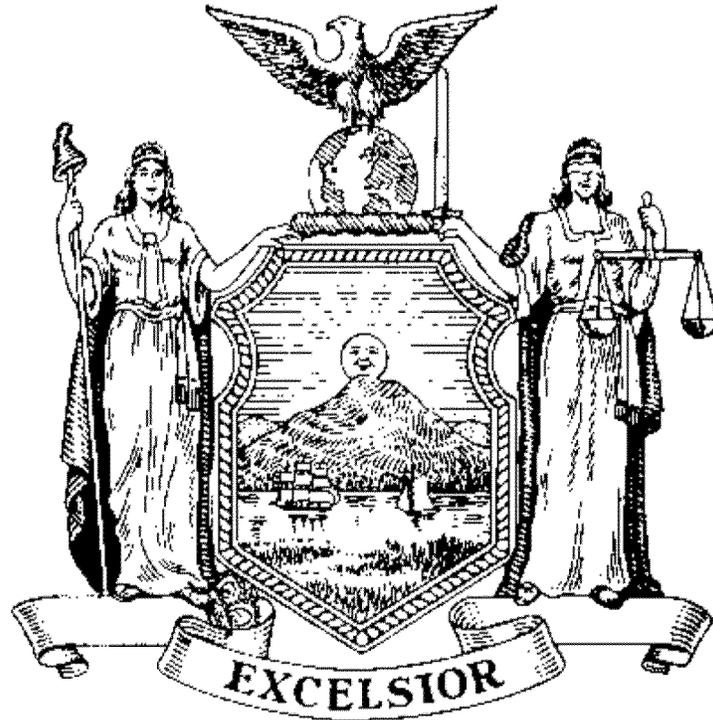
This Handbook has been prepared for the general information of State employees as a summary of the various federal and state laws, executive orders, and policies that provide protection from discrimination for State employees and comprises the anti-discrimination policy of the State of New York. Employees 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.

**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**

December 2018

Volforte

Exhibit

4

EMPLOYEE RIGHTS AND RESPONSIBILITIES

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INTRODUCTION

New York State has long been committed to the proposition 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 bias, harassment, prejudice and discrimination. Such acts have no place in the workplace, State or otherwise.

All State employees have the right to be free from unlawful discrimination as well as the responsibility to assure that their actions do not contribute to an atmosphere in which the State's policy of promoting a bias-free work environment is frustrated. This also applies to interns. This Handbook is intended to provide employees and interns 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 does not cover agency-specific policies and procedures related to discrimination. That information is provided to employees by their respective agencies.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

PROTECTED AREAS

The Human Rights Law (“Law”) applies to all State agencies and employees and provides very broad anti-discrimination coverage. The 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, military status, sex, disability, predisposing genetic characteristics, familial status, marital status or domestic violence victim status 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 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 areas will be discussed in order 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 New York State 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.

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Statutory protection.

Age discrimination is made unlawful by Human Rights Law § 296.1, § 296.3-a and § 296-c, and by the 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).

EMPLOYEE RIGHTS AND RESPONSIBILITIES

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, the State defers to an employee's self-identification as a member of a particular race.

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

Statutory protection.

Race and color discrimination are unlawful pursuant to the Human Rights Law § 296.1 and § 296-c, and the federal Civil Rights Act of 1964, Title VII.¹¹

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.

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 42 U.S.C. § 2000e et seq.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

“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 and § 296-c, and the federal Civil Rights Act of 1964, Title VII.¹²

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 his or her religion, provided it does not impose an undue hardship to his or her employer, as explained below.¹³ 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.¹⁴ 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.¹⁵ Under no circumstances may time off for religious observance be charged as sick leave.¹⁶

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 employee is working during such hours only to make up time taken for religious observance.¹⁷

¹² 42 U.S.C. § 2000e et seq.

¹³ Human Rights Law § 296.10(a).

¹⁴ Human Rights Law § 296.10(b).

¹⁵ Human Rights Law § 296.10(c).

¹⁶ Human Rights Law § 296.10(b).

¹⁷ 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).

EMPLOYEE RIGHTS AND RESPONSIBILITIES

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 his or her religious beliefs, observes a particular manner of dress, hairstyle, beard, or other religious practice, should not be unreasonably required to compromise his or her 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.¹⁸

Request for accommodation.

The employee needing 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 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.¹⁹

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

¹⁸ Human Rights Law § 296.10(a).

¹⁹ Human Rights Law § 296.10(d)(1).

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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.²⁰

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 his or her ancestors' nationality.²¹ An individual's self-identification with a particular national or ethnic group is determinative.

Statutory protection.

National origin discrimination is unlawful pursuant to the Human Rights Law § 296.1 and § 296-c, and the federal Civil Rights Act of 1964, Title VII.²²

Language issues.

Fluency in English may be a job requirement. However, requiring that a person speaks English as his or her 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

²⁰ Human Rights Law § 296.10(d)(1).

²¹ Human Rights Law § 292.8.

²² 42 U.S.C. § 2000e et seq.

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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.²³

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.²⁴

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.²⁵

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.²⁶

Statutory protection.

Discrimination on the basis of sexual orientation is unlawful pursuant to the Human Rights Law § 296.1 and § 296-c. Sexual orientation is not a protected class under

²³ See the federal Equal Employment Opportunity Commission's regulation at 29 CFR § 1606.7.

²⁴ 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.

²⁵ Public Officers Law § 3(1); Criminal Procedure Law § 1.20(34) (police officers); Criminal Procedure Law § 2.10 (peace officers).

²⁶ Human Rights Law § 292.27.

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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 employer and his or her 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.

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.²⁷

Statutory protection.

Discrimination on the basis of military status is unlawful pursuant to the Human Rights Law § 296.1 and § 296-c. The federal Uniformed Services Employment and Reemployment Rights Act (USERRA)²⁸ 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

²⁷ Human Rights Law § 292.28.

²⁸ 38 U.S.C. §§ 4301-35.

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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"²⁹ or "military duty."³⁰ 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 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.

Statutory protection.

Sex discrimination is unlawful pursuant to the Human Rights Law § 296.1 and § 296-c, and the federal Civil Rights Act of 1964, Title VII.³¹

²⁹ N.Y. Military Law § 242; pertains to members of the militia, the reserve forces, or reserve components of any branch of the military.

³⁰ N.Y. Military Law § 243; pertains to active duty in the armed forces or reservists called to active duty.

³¹ 42 U.S.C. § 2000e et seq.

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Sex stereotyping.

Sex stereotyping occurs when conduct or personality traits 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. For example, conduct may be considered “too aggressive” only because the individual is female, a person may be considered to be “too sensitive” only because that person is male, or a person might not look or dress in a manner consistent with another person’s views of how a man or woman should look or dress. Making employment decisions based on sex-stereotyped evaluations of conduct, looks or dress can be considered sex discrimination.

Harassment because a person does not conform to gender stereotypes is sexual harassment. Derogatory comments directed at a person who has undergone sex reassignment surgery can be sexual harassment, just as comments about secondary sex characteristics of any person can be sexual harassment.

Non-harassment related 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.

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 and § 296-c, and the federal Civil Rights Act of 1964, Title VII.³²

Executive Order concerning State workers.

On January 1, 2011, Governor Andrew M. Cuomo issued Executive Order No. 2 reissuing Executive Order No. 19,³³ which established State policy on sexual harassment in the workplace.

Sexual harassment.

Sexual harassment is both offensive and unlawful. Every State employee and intern is entitled to a working environment free from sexual harassment and its negative economic, psychological and physical effects. Allowing sexual harassment to go unchecked in State workplaces would create significant costs to the State in both human and financial terms, including the replacement of personnel who leave their jobs, increased use of health benefit plans due to emotional and physical stress, absenteeism, and decline in individual and workgroup productivity.

Every employer in New York State must have in place 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.

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:

- 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

³² 42 U.S.C. § 2000e et seq.

³³ Issued by Gov. Mario M. Cuomo on May 31, 1983.

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- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

Hostile environment sexual harassment includes, but is 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 also occurs 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 also 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.

With respect to inappropriate questions during the hiring process or during employment, see below: Unlawful Inquiries.

Employees should consult their agency's sexual harassment policy for further discussion of what constitutes sexual harassment.

As with all discrimination and harassment, if an employee is a victim of sexual harassment, or observes it in the workplace, the employee should complain promptly to a supervisor, managerial employee, personnel administrator, or equal employment officer. The complaint can be verbal or in writing. If the complaint is verbal, a written complaint may be required in order to assist in the investigation. Any complaint, whether verbal or written, must be investigated by the agency. 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 agency is required to initiate an investigation and take prompt and effective remedial action where appropriate.

See below: Harassment.

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.

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Harassment of non-employees.

Non-employees in the workplace, who are performing work under contract, are explicitly protected from sexual harassment 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.

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 and § 296-c. 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.³⁴ The Federal Rehabilitation Act of 1973 § 503 and § 504³⁵ also apply to many State workers. Federal law also requires reasonable accommodation.

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

³⁴ 42 U.S.C. § 12111 et seq.

³⁵ 29 U.S.C. § 793 and § 794.

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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.³⁶

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.

Reasonable Accommodation.³⁷

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;

³⁶ Human Rights Law § 292.21.

³⁷ 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 in New York State Agencies*.

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- 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 needs of the person with the disability are met. 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 providing medical or other information needed to verify the disability, or any additional information that is otherwise necessary for consideration of the accommodation.³⁸

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) or 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 regulations³⁹ 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.

³⁸ Human Rights Law § 296.3.

³⁹ 9 N.Y.C.R.R. § 466.11.

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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.)

Paid Family Leave.

The New York State Paid Family Leave Law⁴⁰ 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.

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.⁴¹ This is extended to two years for an individual injured in an assault that causes such injury or disease. The Civil Service Law also allows an agency to terminate an employee who has been continuously absent for one year for a personal injury or illness.⁴²

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 a disability which may be caused by the use of controlled substances or alcohol, that employee may be required

⁴⁰ Workers Compensation Law, art. 9, §§ 200, et seq.

⁴¹ Civil Service Law § 71.

⁴² Civil Service Law § 73.

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to undergo medical testing.⁴³ If the cause of the disability is found to be 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.⁴⁴

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.

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.⁴⁵

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

⁴³ For agencies that do not have their own drug/alcohol testing procedures, this test must be done pursuant to Civil Service Law § 72.

⁴⁴ See *generally* 9 N.Y.C.R.R. § 466.11(h).

⁴⁵ Human Rights Law § 296.14.

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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.⁴⁶

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.⁴⁷

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.⁴⁸

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.⁴⁹

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.⁵⁰

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

⁴⁶ Human Rights Law §§ 292.31-32.

⁴⁷ Human Rights Law § 292.33.

⁴⁸ 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.

⁴⁹ Civil Service Law § 6(1).

⁵⁰ 9 N.Y.C.R.R. § 466.11(g)(1).

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health or safety of the employee or others that cannot be eliminated or reduced by reasonable accommodation.⁵¹

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, and § 296-c. It is also covered by the federal Genetic Information Nondiscrimination Act (GINA).⁵²

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.”⁵³

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.⁵⁴ 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

⁵¹ 9 N.Y.C.R.R. § 466.11(g)(2).

⁵² 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>.

⁵³ Human Rights Law § 292.21-a.

⁵⁴ Human Rights Law § 296.19(a)(1).

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an agreement with an individual to take a genetic test or provide genetic test results or such information.⁵⁵

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.⁵⁶

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.⁵⁷ 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.

Statutory protection.

Discrimination on the basis of familial status is unlawful pursuant to Human Rights Law § 296.1. 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.

⁵⁵ Human Rights Law § 296.19(a)(2).

⁵⁶ Human Rights Law § 296.19(c) and (d).

⁵⁷ Human Rights Law § 296.19(b).

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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.⁵⁸ 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 she is pregnant;
- because she or he has children at home, or has "too many" children;
- based on belief that someone with children will not be a reliable employee;
- because she or he is a single parent;
- because she or he is a parent, regardless of living arrangements;
- because she or he is living with and caring for a grandchild;
- because she or he is a foster parent, or is seeking to become a foster parent, or to adopt a child;
- because a father has obtained custody of one or more of his children and will be the primary caretaker;
- based on the belief that mothers should stay home with their children; or
- because of any other stereotyped belief or opinion about parents or guardians of children under the age of 18.

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.⁵⁹ 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.)

⁵⁸ Anti-nepotism rules for all State government workplaces are found in N.Y. Public Officers Law § 73.14.

⁵⁹ Human Rights Law §296.3

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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.

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.⁶⁰ 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.

⁶⁰ Anti-nepotism rules for all State government workplaces are found in N.Y. Public Officers Law § 73.14.

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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.

DOMESTIC VIOLENCE VICTIM STATUS

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.

Statutory protection.

Discrimination based on domestic violence victim status is unlawful pursuant to Human Rights Law § 296.1 and § 296-c. 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. 19,⁶¹ 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.

⁶¹ Issued by Gov. Eliot L. Spitzer on October 22, 2007.

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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 his or her 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 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.

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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.

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.⁶²

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.⁶³

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 PARENTAL 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 and § 296-c. 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.⁶⁴ There is no similar requirement under federal law, unless the pregnancy-related condition meets the definition of “disability” under federal law. Also,

⁶² N.Y. Penal Law § 215.14.

⁶³ N.Y. Labor Law § 593.

⁶⁴ Human Rights Law § 296.3(a).

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the federal Family Medical Leave Act and the New York State Paid Family Leave Act (where these are applicable) may entitle an employee leave. (See above: 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.⁶⁵ 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”⁶⁶ 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.⁶⁷ (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.

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.

⁶⁵ Human Rights Law § 296.1(g) and § 296-c(2)(e).

⁶⁶ Human Rights Law § 292.21-f.

⁶⁷ Human Rights Law § 296.3.

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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.⁶⁸ The Act entitles eligible employees to take up to a total of 12 weeks of unpaid leave during a calendar year.

PRIOR ARREST RECORDS, YOUTHFUL OFFENDER ADJUDICATIONS AND SEALED 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 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 or criminal accusation or to take any adverse action based on such an arrest or criminal accusation.

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 accusations. 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 accusation.

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

⁶⁸ 29 U.S.C. § 2601 et seq.

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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 then becomes protected. After a favorable termination, the employer cannot 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;
- disposed of as a youthful offender adjudication, pursuant to Criminal Procedure Law § 720.35;
- resulted in a conviction for a violation, which was sealed pursuant to Criminal Procedure Law § 160.55; or
- resulted in a conviction, which was sealed pursuant to Criminal Procedure Law § 160.58 or § 160.59.

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.”⁶⁹

These provisions do not apply to an application for employment as a police officer or peace officer.⁷⁰

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

⁶⁹ Human Rights Law § 296.16; see e.g. Civil Service Law § 50(4).

⁷⁰ 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 his or her 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.⁷¹

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.

⁷¹ N.Y. Correction Law § 752.

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- (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.⁷²

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.⁷³

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.⁷⁴

Interaction with the arrest provisions.

The arrest provisions⁷⁵ 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

⁷² N.Y. Correction Law § 753.1.

⁷³ N.Y. Correction Law § 753.2.

⁷⁴ N.Y. Correction Law § 751; see also Civil Service Law section 50(4).

⁷⁵ Human Rights Law § 296.16.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

previous arrests resolved in an individual's favor, 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 previous conviction. An individual can pursue enforcement under the Human Rights Law only by filing an Article 78 proceeding in State Supreme Court.⁷⁶ 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 discriminate 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."⁷⁷

GENDER IDENTITY

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, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

"Gender identity" means an individual's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex or gender assigned to an individual at birth.

⁷⁶ N.Y. Correction Law § 755.1.

⁷⁷ N.Y. Correction Law § 750.5.

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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.

Gender identity is protected under the Human Rights Law as gender identity may form the basis of sex and disability discrimination claims. These protections are explained in regulations promulgated by the Division of Human Rights.⁷⁸ Gender identity discrimination may also be considered sex discrimination under federal law.

Executive Order concerning State workers.

On January 1, 2011, Governor Andrew M. Cuomo issued Executive Order No. 2, reissuing Executive Order No. 33,⁷⁹ which prohibits discrimination in employment by executive branch agencies on the basis of gender identity.

What protection against discrimination is provided by Executive Order?

The Executive Order seeks to root out employment discrimination on the basis of gender identity in order to help attract and retain competent and effective employees.

No State agency, employee or agent thereof, shall discriminate on the basis of gender identity against any individual in any matter pertaining to employment by the State including, but not limited to, hiring, termination, retention, job appointment, promotion, tenure, recruitment, compensation and benefits, and other terms and conditions of employment. Under the Executive Order, harassment and retaliation based on gender identity are also prohibited. (See below: Harassment and Retaliation.) All complaints alleging harassment and retaliation under Executive Order 33 can be made under an agency's internal discrimination complaint procedure.

The prohibition on gender identity discrimination extends to actions based upon an individual's actual or perceived gender identity. While gender identity discrimination 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.

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

The term "sex" when used in the Human Rights Law includes gender identity and the status of being transgender and either basis is sex discrimination. Harassment on either basis qualifies as sexual harassment. (See above: Sex Stereotyping.)

⁷⁸ 9 N.Y.C.R.R. § 466.13

⁷⁹ Issued by Gov. David A Paterson on December 16, 2009.

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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, and harassment of persons with gender dysphoria are also disability discrimination. (See above: Disability.)

GENERAL PROHIBITIONS

Harassment

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 and interns are entitled to a work environment 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 his or her 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 when it becomes severe or frequent enough to alter the terms or conditions of an individual’s employment or internship.

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 by Human Rights Law § 296-d.

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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.

Harassment must be reported.

The employing agency is not responsible for harassment by co-workers or non-employees, unless the agency knows about the harassment and fails to take appropriate steps to correct the situation. Harassment should be reported to a supervisor, manager, human resources officer, or EEO officer. The individual who reports harassment, or who is experiencing the harassment, needs to cooperate with any investigation into the harassment so that a full and fair investigation can be conducted, and any necessary remedial action can be promptly undertaken.

An employee with supervisory responsibility has a duty to report harassment that he or she observes or otherwise knows about. A supervisor who has received a report of harassment from an employee or intern has a duty to report it to management, even if the employee or intern who complained has asked that it not be reported. Any harassment or potential harassment that is observed must be reported, even if no one is complaining about it.

Harassment must be investigated and appropriate corrective action taken.

The employer has the duty to investigate any report of harassment. If it is determined that the harassing behavior is occurring, the employing agency has a duty to take prompt and effective corrective action to stop the harassment and take such other steps as are appropriate.

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.⁸⁰

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

⁸⁰ Human Rights Law § 296.1(d) and § 296-c(2)(c).

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this booklet). Information on protected class membership which is collected for statistical purposes should be retained separately from a candidate's other information.

Retaliation

Retaliation by an employer is unlawful pursuant to the Human Rights Law and the Civil Service Law.⁸¹ The federal statutes mentioned in this handbook also prohibit retaliation.

The Human Rights Law protects any individual who has filed a complaint, testified or assisted in any proceeding under the Law, as well as one who has opposed any practices forbidden by the Law. Even if the practices the individual has opposed are not in fact a violation of the Human Rights Law, the individual is protected if he or she had a good faith belief that the practices were unlawful.

Division or court proceedings.

A complainant or witness is absolutely protected against retaliation for any oral or written statements made to the Division 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 the employing agency or reporting discriminatory actions to a supervisor or other appropriate person, either verbally or in writing. It also includes complaining that another person's rights under the Law were violated or encouraging a fellow employee to report unlawful discriminatory practices.

However, behaving inappropriately towards a person deemed to be engaged in discrimination or harassment does not constitute protected opposition to unlawful practices. Employees should instead complain to a supervisor, manager, human resources officer, or EEO officer.

There is no protection for a person who opposes practices the person finds merely distasteful or wrong, despite having no reasonable basis to believe those practices were in violation of the Law or State policy. Furthermore, the retaliation provision is not intended to protect persons making false charges of discrimination.

Adverse employment action.

Retaliation occurs when an adverse action or actions is taken against the employee by the employer. The action need not be job-related or occur in the workplace. Unlawful retaliation can be any action, more than trivial, that would have the effect of dissuading a reasonable worker from making or supporting a charge of discrimination.

⁸¹ Human Rights Law § 296.7; see also Civil Service Law § 75-B, which gives protection to "whistleblowers."

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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.

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 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.

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 his or her official authority or influence to coerce the political action of any person or body or to interfere with any election.⁸² 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.

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

⁸² Civil Service Law § 107.

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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 the Governor's Office of Employee Relations (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.

Reporting Discrimination Complaints Internally

As noted throughout this Handbook, any employee who has been subjected to any discrimination, bias, prejudice, harassment or retaliation, based on any of the protected classes covered by the Handbook, should promptly report the matter to his or her supervisor or manager, to the agency's human resources department, or to the Equal Opportunity Officer (also referred to as Affirmative Action Officer) assigned to the agency.

Each agency has policies and procedures in place to respond to such complaints and can advise employees as to appropriate steps to take pursuant to the agency's procedures. All agency procedures are designed to ensure that the State's anti-discrimination policies are followed, including the State's policies forbidding retaliation, as set out above. All agency procedures provide for a prompt and complete investigation as to the complaint of discrimination, and for prompt and effective remedial action where appropriate. These policies and procedures, and discrimination complaint form, should be available on your agency's intranet site or employee handbook. If you cannot locate them, please contact your supervisor or manager, the agency's human resources department, or the EEO officer assigned to the agency and they will assist you in obtaining this information.

Pursuing Discrimination Complaints Externally

Agency policies and procedures are intended to address all complaints of discrimination within the agency. They 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 agency's internal complaint procedure before filing a complaint with any agency or with a court, based on federal or state or local law (though as mentioned previously, an agency may not be held responsible for harassment by coworkers if it was not made aware of the harassment).

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

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available to employees, and employees may wish to seek an attorney's advice prior to determining appropriate steps to take.

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

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

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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.



**Governor's Office
of Employee Relations**

Sexual Harassment in the Workplace

e-Learning Course

12/2020

For Training Purposes Only

Volforte

Exhibit

5

It is the policy of the State of New York to provide for and promote equal opportunity in employment and equal access to all programs and services without discrimination on the basis of age, race, color, creed, national origin, military status, sex, sexual harassment, sexual orientation, gender identity or expression, disability (including pregnancy-related disability or condition), predisposing genetic characteristics, marital/familial status, status as a victim of domestic violence, and prior arrest/criminal conviction record.

Reasonable accommodations are available, upon request, in all aspects of State training, consistent with the Americans with Disabilities Act and the New York State Human Rights Law, to ensure that every individual is able to gain maximum benefit from the training experience.

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New York State has long been committed to ensuring that all individuals have an equal opportunity to enjoy a fair, safe, and productive work environment. Laws and policies help ensure that diversity is respected and that everyone can enjoy the privileges of working for New York State. Preventing discrimination based on sex, including sexual harassment and other prohibited forms of harassment, is crucial to the State's commitment in this regard.

This training will help you better understand sexual harassment so that all employees know that sexual harassment will not be tolerated. All reports of sexual harassment will be taken seriously and promptly investigated, with effective remedial action taken where appropriate.

An Environment Free from Discrimination

All State employees and interns have the right to work in an environment free from discrimination, including all forms of harassment. Your employer is required by law and State policy to create a workplace free from harassment based on protected characteristics including age, race, color, creed, national origin, military status, sex, sexual harassment, sexual orientation, gender identity or expression, disability (including pregnancy-related disability or condition), predisposing genetic characteristics, marital/familial status, status as a victim of domestic violence, and prior arrest/criminal conviction record. You have the responsibility to assure that your actions do not contribute in any way to a discriminatory environment in the workplace.

This training is intended to provide you with information on your rights and responsibilities under applicable laws and policies. These laws and policies include the New York State Human Rights Law, federal antidiscrimination laws, and the Governor's Executive Order applicable specifically to State employees.

New York State Human Rights Law provides broad protections against discrimination and all forms of harassment. It applies to all State employees.

State policy prohibiting sexual harassment is also found in the *Equal Employment Opportunity in New York State: Rights and Responsibilities: A Handbook for Employees of New York State Agencies* (Handbook). The Handbook is available on the Governor's Office of Employee Relations (GOER) website, your agency's Intranet site, and from your agency's Human Resources Department. All discrimination complaints of protected class employment-related discrimination are investigated by Affirmative Action Officers (AAO) who work for GOER. Any State employee can file a complaint of discrimination directly with GOER using the New York State Employee Discrimination Complaint Form.

What is Employment Discrimination?

Discrimination occurs when employment decisions are based on characteristics that are protected by law or when persons are denied equal terms, conditions, or privileges of employment because of a protected characteristic.

The Human Rights Law applies to employees, interns, and nonemployees such as contractors, consultants, and other persons working in the State workplace. Therefore, all such individuals are considered employees for this training.

Protected characteristics include age, race, color, creed, national origin, military status, sex, sexual harassment, sexual orientation, gender identity or expression, disability (including pregnancy-related disability or condition), predisposing genetic characteristics, marital/familial status, status as a victim of domestic violence, and prior arrest/criminal conviction record.

You should have already taken the mandatory online Equal Employment Opportunity training, which explains these protected characteristics. For more information on protected characteristics and other aspects of employment discrimination and equal opportunity, see *Equal Employment Opportunity in New York State: Rights and Responsibilities: A Handbook for Employees of New York State Agencies*.

Workplace Harassment Based Upon Protected Characteristics is Discrimination

When an individual is harassed because of a protected characteristic, it changes the terms and conditions of their employment. Harassment may interfere with their job performance and other affected employees.

A harassment-free workplace allows employees to have an equal opportunity to advance in State employment and to perform their duties to the best of their ability for the people of New York State.

What is Discriminatory Harassment?

Harassment is a form of discrimination that consists of words, signs, jokes, pranks, intimidation, physical actions, or violence directed at an employee due to any protected characteristic.

It includes offensive behavior based on stereotypes about a protected class and behavior intended to cause discomfort or humiliation because of a protected characteristic.

Harassment includes any expression of contempt or hatred for the group to which the victim belongs based on a protected characteristic.

Harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment does not need to be severe or pervasive to be unlawful. It can be any conduct directed at an individual because of a protected characteristic that consists of behavior that is more than petty slights or trivial inconveniences.

Doesn't Harassing Conduct need to be "Severe or Pervasive" to be against the law?

No. In 2019, Governor Cuomo signed a law that removed the requirement that harassing conduct needed to be severe or frequent enough to alter the terms and conditions of an individual's employment to be against the law.

The standard is now whether the harassment "subjects an individual to inferior terms, conditions or privileges of employment" that are more than "petty slights or trivial inconveniences." Even petty slights and trivial inconveniences, when based upon an individual's protected class status, could violate the State's policy concerning discrimination in the workplace if they are based upon an employee's sex or are sexual in nature and the conduct is unwelcome.

Zero Tolerance

Any harassing behavior by a State employee is unacceptable and will be investigated even if it is not unlawful. If the allegation is substantiated, the perpetrator(s) will face administrative action up to and including termination. An individual experiencing harassment based upon a protected characteristic is not required to tell the perpetrator that the conduct is unwelcome.

Repeated behavior, especially after an employee has been told to stop, is particularly serious and will be dealt with accordingly.

Sexual Harassment

Sexual harassment is a particular type of harassment and a type of sex discrimination.

Sex discrimination, in general, includes:

- Any bias based on sex.
- Sexual harassment.
- Sex stereotyping.
- Discrimination based on gender identity or expression.
- Discrimination based on pregnancy.

What is Sexual Harassment?

Sexual harassment is defined as any unwanted verbal or physical advance, sexually explicit or derogatory statement, or sexually discriminatory remark that is offensive or objectionable to the recipient or interferes with their job performance.

Hostile work environment and *quid pro quo* sexual harassment are two frameworks used to evaluate whether actions should be regarded as sex discrimination.

Hostile Environment

A hostile environment based on sex may be created by words, signs, jokes, pranks, intimidation, physical actions, or violence, either of a sexual nature or not of a sexual nature, directed at an individual because of that individual's sex.

Quid Pro Quo Sexual Harassment

Quid pro quo sexual harassment occurs when a person in authority tries to trade job benefits for sexual favors. *Quid pro quo* is a legal term meaning "this for that" or, in other words, a trade. *Quid pro quo* harassment occurs only between an employee and someone with supervisory authority because only a supervisor can grant or withhold job benefits.

Quid pro quo sexual harassment includes:

- Offering or granting better working conditions or opportunities in exchange for a sexual relationship.
- Threatening adverse working conditions or denying opportunities if a sexual relationship is refused.
- Using physical or psychological coercion to force a sexual relationship.
- Retaliating for refusing to engage in a sexual relationship.

Who Can Be Sexually Harassed?

Anyone in the workplace can be sexually harassed. This includes:

- Any agency employee.
- Any nonemployee who interacts with agency personnel, such as an intern, vendor, consultant, building security staff, client, customer, or visitor. The agency is responsible for seeing that such nonemployees are not harassed on agency premises.
- Anyone affected by the conduct, not just the individual at whom the offensive conduct is directed.

Although females are more likely to experience sexual harassment, both males and females may be the recipient. Sexual harassment can occur between people of the same sex as well as people of the different sex.

Who Can Be the Perpetrator of Sexual Harassment?

The perpetrator of sexual harassment can be anyone in the workplace. The employer is responsible for dealing with harassing behavior by coworkers, supervisors, managers, or nonemployees in the workplace.

Coworker

The harasser can be a coworker of the recipient. When the harasser is a coworker, the recipient should report the harassment directly to GOER, where it will be assigned to an Affirmative Action Officer (AAO) for appropriate investigation. It may also be reported to a supervisor, manager, Human Resources Department staff, or Affirmative Action Officer (AAO) in your workplace. These individuals are required to report such conduct to GOER so that an investigation can be conducted.

Supervisor or Manager

The harasser can be a supervisor or manager. The harassing behavior of a supervisor or manager is always severe misconduct. Any harassment based upon sex should be reported to GOER. The recipient can also report the harassment to a different supervisor, manager, or any Affirmative Action Officer (AAO) assigned to their agency. Any supervisor or manager who receives a complaint or otherwise is aware of sexual harassment must report it to the agency.

Third Party

The harasser can be a nonemployee or third party, such as an intern, vendor, building security, client, customer, or visitor. When the harasser is a third party, the recipient should report the harassment to GOER, a supervisor, manager, or any Affirmative Action Officer (AAO) assigned to their agency.

Where Can Sexual Harassment Occur?

Harassment can occur whenever and wherever employees fulfill their work responsibilities, including in the field, agency-sponsored events, training, conferences open to the public, and office parties.

Employee interactions during off-hours, such as at a hotel while in travel status or even at "happy hour" after work, can impact the workplace. Locations off-site and off-hour activities can be considered extensions of the work environment. Harassing behavior that in any way affects the work environment is rightly the concern of management.

Sexual Harassment Case Studies

Next, let's look at a few scenarios that help explain the kinds of behavior that can constitute sexual harassment. These examples are not intended to explain what sort of harassment will create liability if a legal action is filed. Instead, they describe inappropriate behavior in the workplace that will be dealt with by corrective action, including disciplinary action. These examples are intended to encourage all employees to report inappropriate behavior in the workplace.

Not Taking "No" for an Answer

Li Yan's coworker Ralph has just been through a divorce. He comments on a few occasions that he is lonely and needs to find a new girlfriend. Li Yan and Ralph have a friendly working relationship and have had lunch together on many occasions. Ralph asks Li Yan to go on a date with him. Li Yan likes Ralph and agrees to go out with him. She enjoys her date with Ralph but decides that a relationship is not a good idea. She thanks Ralph for a nice time but explains that she does not want to have a relationship

with him. Ralph waits two weeks and then starts pressuring Li Yan for more dates. She refuses, but Ralph does not stop. He keeps asking her to go out with him.

True or False: When Ralph first asked Li Yan for a date, this was sexual harassment.

The statement is false. Ralph's initial comments about looking for a girlfriend and asking Li Yan, a coworker, for a date are not sexual harassment. Even if Li Yan had turned Ralph down for the first date, Ralph had done nothing wrong by asking if she wanted to go on a date and making occasional comments that are not sexually explicit about his personal life.

True or False: Li Yan cannot complain of sexual harassment because she went on a date with Ralph.

The statement is false. Being friendly, going on a date, or even having a prior relationship with a coworker does not mean that they have a right to pressure a coworker to continue dating them. Li Yan has to continue working with Ralph. He must respect her wishes and not engage in behavior that has now become inappropriate for the workplace.

Li Yan complains to her supervisor, and the supervisor (as required) reports her complaint to GOER. Ralph is questioned about his behavior, and he apologizes. He is instructed to stop asking Li Yan out on dates and to keep their relationship professional. Ralph stops for a while but then starts leaving little gifts for Li Yan on her desk with accompanying love notes. The love notes are not overtly offensive, but Ralph's behavior starts to make Li Yan nervous as she is afraid he may begin to stalk her.

True or False: Ralph's subsequent behavior with gifts and love notes is not sexual harassment because he has stopped asking Li Yan for dates as instructed. He is just being nice to Li Yan because he likes her.

The statement is false. Li Yan should report Ralph's behavior. She is entitled to have effective assistance in getting Ralph to stop his inappropriate workplace behavior. Because Ralph continues to seek a personal and romantic relationship with Li Yan after being told to stop, he could be subject to serious disciplinary action for his behavior.

The Boss with a Bad Attitude

Sharon transfers to a new location with her agency. Her new supervisor, Paul, is friendly and helps her get familiar with her new job duties. After a few days, when no one else is around, Paul comes over to Sharon's work area to chat. Paul talks about how he went to a strip club the previous night. Sharon is shocked that Paul would bring up such a topic in the workplace and says nothing in response. Paul continues talking and says that all the women in the office are so unattractive that he needs to get out and "see some hot chicks" once in a while. He tells Sharon he is glad she joined the staff because, unlike the others, she is "easy on the eyes." Sharon is very offended and demeaned that she and the other women in her workplace are evaluated on their looks by their supervisor.

True or False: Because Paul did not tell Sharon that she is unattractive, he has not harassed her.

The statement is false. Paul has made sexually explicit statements to Sharon, which are derogatory and demeaning to Sharon and her female coworkers. It does not matter that Paul supposedly paid Sharon a "compliment." The discussion is still highly offensive to Sharon, as it would be to most reasonable individuals in her situation.

True or False: By bringing up his visit to the strip club, Paul is engaging in inappropriate workplace behavior.

The statement is true. Simply bringing up the strip club visit is inappropriate in the workplace, especially by a supervisor. It would be appropriate for Sharon to report this conduct. A one-time comment about going to a strip club is behavior that Paul would be told to stop. If repeated, his behavior may lead to disciplinary action based on the severity of his conduct. Graphic descriptions of acts occurring at the strip club are unacceptable workplace behavior that will lead to disciplinary action, up to and including termination.

True or False: Paul should be instructed to stop making these types of comments, but this is not a serious matter.

The statement is false. Paul's comments about female employees are serious and show his contempt for women in the workplace. Paul is required to model appropriate behavior and must not exhibit contempt for employees based on sex or any protected characteristic. Sharon should not have to continue to work for someone she knows harbors such contempt for women, nor should the other employees have to work for such a supervisor. Management should be aware of this, even if the other employees are not. Paul should be disciplined and, most likely, removed from his current position.

No Job for a Woman?

Carla is a licensed heavy equipment operator, and some of her male coworkers think it is fun to tease her. Carla often hears comments like, "Watch out, here she comes—that crazy woman driver!" made in a joking manner. Also, someone keeps putting a handmade sign on the only porta-potty at the worksite that says "men only."

True or False: Women in traditionally male jobs should expect teasing and should not take the joking comments too seriously.

The statement is false. Whether Carla is being harassed based on her sex depends in part on Carla's opinion of the situation, that is, whether she finds the behavior offensive. However, if Carla does feel harassed, she is entitled to complain and have it stopped, regardless of whether and for how long she has endured the behavior without complaint. Carla can always say when enough is enough.

True or False: Carla cannot complain because her supervisor sometimes joins in with the joking behavior, so she has nowhere to go.

The statement is false. Carla can still complain to her supervisor, who is then on notice that the behavior bothers her and must be stopped. The supervisor's failure to take Carla's complaint seriously would constitute serious misconduct. Carla can also complain directly to GOER, either instead of going to her supervisor or after doing so.

Some of Carla's coworkers are strongly opposed to her presence in the traditionally all-male profession. These coworkers sometimes say things to her like, "You're taking a job away from a man who deserves it," "You should be home with your kids," and "What kind of a mother are you?" Also, someone scratched the word "bitch" on Carla's toolbox.

True or False: These behaviors, while rude, are not sexual harassment because they are not sexual in nature.

The statement is false. The behaviors are directed at Carla because of her sex. They are intended to intimidate her and cause her to quit her job. While not sexual, this harassment is due to Carla's sex.

Carla complains about the jokes and other behaviors, and an investigation is conducted. It cannot be determined who defaced Carla's toolbox. Her coworkers are told to stop their behavior or face disciplinary

charges. Her supervisor speaks with Carla and tells her to come to him if she has any further problems immediately. Carla then finds that someone has urinated in her toolbox.

True or False: There is nothing Carla can do because she can't prove who vandalized her toolbox.

The statement is false. Carla should speak to her supervisor immediately or file a complaint directly with GOER. It is the agency's responsibility to ensure that appropriate investigation and prompt remedial action is taken.

Too Close for Comfort

Keisha has noticed that her new boss, Harold, leans extremely close to her when they are going over the reports that she prepares. He touches her hand or shoulder frequently as they discuss work. Keisha tries to move away from him in these situations. Still, he doesn't seem to get the message that his behaviors are unwanted.

True or False: Keisha should ignore Harold's behavior, as it is just "how her boss is."

The statement is false. If Keisha is uncomfortable with Harold's behavior, she has options. If comfortable doing so, Keisha should tell Harold to stop because his closeness and touching makes her uncomfortable. Even if Keisha chooses to tell Harold to stop touching and standing so close, she can still file a complaint with GOER. Keisha does not need to tolerate it because there is no valid reason for Harold to engage in this behavior.

Before Keisha can complain, Harold brushes up against her back in a conference room before a meeting. His behavior is starting to make her feel uncomfortable. Later, Harold traps her in his office after they finish discussing work by standing between her and the door. Keisha doesn't know what to do, so she moves past him to get out. As she does so, Harold runs his hand over her breast.

True or False: Harold brushing up against Keisha in the conference room could be accidental and does not give Keisha any additional grounds to complain about Harold.

The statement is false. Harold is now engaging in a pattern of escalating behavior. Given the pattern of his too close and touching behavior, it is unlikely that this was inadvertent. Even before being trapped in his office, Keisha should have reported the behaviors she experienced that made her uncomfortable.

True or False: Harold touching Keisha's breast is inappropriate but is not unlawful harassment.

The statement is false. Any type of unwelcome sexual touching in the workplace subjects the recipient to inferior terms, conditions, or privileges of employment. The touching described in this example is more than a petty slight or trivial inconvenience. As an employer, the State regards any sexual touching to be very serious misconduct. Keisha should immediately report it before it is repeated. Harold may be subject to criminal charges and should expect to be disciplined for this behavior, up to and including termination.

A Distasteful Trade

Tatiana is hoping for a promotion to a position that she knows will become vacant soon. She knows that her boss, David, will be involved in deciding who will be promoted. She tells David that she will be applying and is interested in receiving the promotion. David says, "We'll see. There will be a lot of others interested in the position."

A week later, Tatiana and David travel together on State business, including an overnight hotel stay. Over dinner, David tells Tatiana that he hopes to promote her because he has always enjoyed working with her. He tells her that some other candidates "look better on paper" but that she is the one he wants. He

tells her that he can "pull some strings" to get her into the job, and Tatiana thanks him. Later, David suggests that they go to his hotel room for "drinks and some relaxation." Tatiana declines his "offer."

True or False: David's behavior could be harassment of Tatiana.

The statement is true. David's behavior is inappropriate, and Tatiana should report the behavior if it made her uncomfortable. Required work-related travel is an extension of the workplace. The prohibitions against sexual harassment apply even if the conduct is outside of the office or an employee's traditional workplace. Particularly in this instance, where their relationship is that of supervisor and supervisee, all their interactions can affect the workplace.

At this point, David's behavior may or may not constitute *quid pro quo* harassment; David has made no threat that, if Tatiana refuses his advance, he will handle her promotion any differently. However, his offer to "pull some strings" followed by a request that they go to his hotel room for drinks and relaxation might be considered potentially coercive. Certainly, if David persists in his advances—even if he never makes or carries out any threat or promise about job benefits—then this could create a hostile environment for Tatiana. David has also put the agency at legal risk due to his conduct because he is a manager.

After they return from the trip, Tatiana asks David if he knows when the job will be posted so that she can apply. He says that he is not sure but that there is still time for her to "make it worth his while" to use his position as her boss to get her the position. He then asks, "How about going out to dinner this Friday and then coming over to my place?"

True or False: David has now engaged in *quid pro quo* harassment of Tatiana.

The statement is true. It is now evident that David has offered to help Tatiana with her promotion in exchange for sexual favors.

Tatiana, who wants the position, decides to go out with David. Almost every Friday, they go out at David's insistence and engage in sexual activity. Tatiana does not want to be in a relationship with David. She is only going out with him because she believes that he will otherwise block her promotion.

True or False: Tatiana cannot complain of sexual harassment because she voluntarily engaged in sexual activity with David.

The statement is false. Tatiana's promotion has been tied to her engaging in sexual activity with David. She has been sexually harassed because the conduct is not welcome. She would have experienced sexual harassment if she had refused David's advances. The offer to Tatiana to trade job benefits for sexual favors by someone with authority over her in the workplace is *quid pro quo* sexual harassment, and the agency is exposed to liability because of its supervisor's actions.

Tatiana receives the promotion.

True or False: Tatiana cannot complain of harassment because she got the job, so there is no discrimination against her.

The statement is false. Tatiana can be sexually harassed whether or not she receives the promotion.

Tatiana breaks off the sexual activities with David. He then gives her an unsatisfactory evaluation. She is removed from her new position at the end of the probationary period and returned to her old job.

True or False: It is too late for Tatiana to complain. Losing a place of favor due to the breakup of the voluntary relationship does not create a claim for sexual harassment.

The statement is false. The breakup of a consensual relationship would not create a claim for sexual harassment. However, whether the relationship was truly consensual will arise in any relationship between a boss (or someone in management) and a subordinate. In this example, Tatiana never welcomed the relationship. David's behavior has at all times been inappropriate and a serious violation of State policy. As the person who abused the power and authority of a management position, David has engaged in sexual harassment.

Sex Stereotyping

Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of either sex should act or look.

Harassing a person because that person does not conform to gender stereotypes as to "appropriate" looks, speech, personality, or lifestyle is sexual harassment.

Harassment because someone is performing a job that is usually performed, or was performed in the past, mostly by persons of the opposite sex, is sex discrimination. The scenario about Carla, the heavy equipment operator, demonstrated some aspects of sex stereotyping. She was viewed negatively because she was in a job that is nontraditional for her gender. The following scenario also explains aspects of sex stereotyping.

An Issue about Appearances

Leonard works as a clerk typist for a large State agency. He likes to wear jewelry, and his attire frequently includes earrings and necklaces. His boss, Margaret, thinks it's weird that, as a man, Leonard wears jewelry and wants to be a clerical worker. She frequently makes sarcastic comments about his appearance and jokingly refers to him as her office boy. Leonard, who hopes to develop his career in customer relations, applies for an open promotional position that would involve working in a front desk area where he would interact with the public. Margaret tells Leonard that he had better look "more normal" if he wants that job or else wait for a mailroom supervisor promotion.

True or False: Leonard's boss is correct to tell him wearing jewelry is inappropriate for customer service positions.

The statement is false. Leonard's jewelry is only an issue because Margaret considers it unusual for a man to wear such jewelry. Therefore, her comments to Leonard constitute sex stereotyping.

Margaret also is suspicious that Leonard is gay, which she says she doesn't mind, but she thinks Leonard is secretive. She starts asking him questions about his private life, such as "Are you married?" "Do you have a partner?" "Do you have kids?" Leonard tries to respond politely "no" to her questions but is becoming annoyed. Margaret starts gossiping with Leonard's coworkers about his supposed sexual orientation.

True or False: Leonard is the recipient of harassment based on sex and sexual orientation.

The statement is true. Leonard is harassed based on sex because he is being harassed for failure to adhere to Margaret's sex stereotypes.

Leonard is also harassed based on perceived sexual orientation. It does not matter whether Leonard is gay for him to claim sexual orientation harassment.

Leonard might also be considered a target of harassment based on gender identity or expression, which is a form of sex and/or disability discrimination prohibited by the Human Rights Law. Leonard should report Margaret's conduct to GOER.

Leonard decides that he will not get a fair chance at the promotion under these circumstances and files a complaint with GOER. A GOER Affirmative Action Officer (AAO) investigates and informs the agency and Margaret that Leonard's jewelry is not in violation of any workplace rule, that she is to consider him for the position, and that she must stop making harassing comments, asking Leonard intrusive questions, and gossiping about his personal life. Margaret stops her comments, questions, and gossiping, but she then recommends a woman be promoted to the open position. The woman promoted has less experience than Leonard and lacks his two-year degree in customer relations from a community college.

True or False: Leonard has been the target of discrimination based on sex, gender identity or expression, sexual orientation, and/or retaliation.

The statement is true. We don't know Margaret's reason for not recommending Leonard for the promotion, but it is not looking good for Margaret. Either she is biased against Leonard, or she retaliated because he complained, or both.

Leonard should reach out to the Affirmative Action Officer (AAO), who will investigate the circumstances of the promotion. Margaret should be subject to disciplinary action if she abused her supervisory authority by failing to consider Leonard for the promotion fairly. This scenario shows that sometimes more severe action is needed in response to such complaints to prevent discrimination in the future.

Retaliation

Employees who have engaged in a "protected activity" may not be retaliated against in any manner. In addition to any complaint or statement about any kind of discrimination, protected activity concerning harassment includes:

- Making a complaint of discrimination, whether to a supervisor, manager, or GOER;
- Reporting discrimination on someone else's behalf;
- Opposing discrimination;
- Assisting another employee who is complaining of discrimination; and
- Being a witness or providing information in a discrimination related investigation, or testifying in connection with a complaint of discrimination, whether filed internally or externally, with a government agency or in court.

An individual who engages in any of the above activities should expect to be free from any negative actions by supervisors, managers, or the agency motivated by their participation in these protected activities.

What is Retaliation?

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, which is more than trivial, that would have the effect of dissuading a reasonable person from making or supporting an allegation of discrimination. An individual employee may take such action.

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

What is Not Retaliation?

An adverse employment action is not retaliatory merely because it occurs after the employee engages in protected activity. Employees continue to be subject to all job requirements and disciplinary rules after having engaged in such activity. An individual must show that the adverse action was motivated because they engaged in protected activity to establish a claim of retaliation.

Reporting Sexual Harassment

As with all forms of discrimination and harassment, if an employee, intern, or contractor experiences sexual harassment or observes it in the workplace, they should complain promptly to GOER using the New York State Employee Discrimination Complaint form. They may also report the conduct to a supervisor, managerial employee, or personnel administrator verbally or in writing. If the complaint is verbal, a written complaint will be requested from the employee to assist in the investigation. The supervisor or other individual who receives an oral complaint should file it in writing using the NYS Employee Discrimination Complaint Form if the complaining individual refuses to do so. Whether verbal or written, any complaint must be investigated by GOER or according to the employing agency's policy. Any supervisory or managerial employee who observes or becomes aware of sexually harassing conduct must report it so that it can be investigated.

A complaint must be promptly made to a higher authority if a coworker or a supervisor harasses an employee. An agency cannot stop sexual harassment unless it knows about 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.

The Supervisor's Responsibility

Supervisors and managers are held to a higher standard of behavior. This is because:

- They are placed in a position of authority by the agency and must not abuse that authority.
- Their actions can create liability for the agency without the agency having any opportunity to correct the harassment.
- They are required to report any harassment based on sex or any other protected characteristic reported to them or that they observe.
- They are responsible for any discrimination that they should have known of with reasonable care and attention to the workplace for which they are responsible.
- They are expected to model appropriate workplace behavior. Supervisors must report any discriminatory harassment that they observe or know of, even if no one objects.

Mandatory Reporting

If supervisors have questions about whether behavior that they have observed or learned about constitutes harassment, they should file a complaint with GOER. If a supervisor or manager receives a report of harassment or is otherwise aware of harassment, it must be promptly reported to GOER:

- Even if the supervisor or manager thinks the conduct is trivial.
- Even if the recipient of the behavior asks that it not be reported.

What Should I Do If I Am Harassed Based on Sex?

Your employer cannot stop discriminatory harassment in the workplace unless management knows of it. Harassment should be reported to GOER's Anti Discrimination Investigations Division, a supervisor, manager, or Affirmative Action Officer (AAO).

You should feel free to report any behavior that you experience or know about that is inappropriate without worrying whether it is unlawful harassment. Behavior does not need to violate the law to violate State policy as explained in the *Handbook*.

Cooperate with Management

Individuals who report or experience harassment should cooperate with management so that a full and fair investigation can be conducted and any necessary corrective action can be taken.

Take it to the Next Level

If you report harassment to a manager or supervisor and receive an inappropriate response, such as being told to "just ignore it," do not hesitate to take your complaint to the next level of management or file a complaint directly with GOER.

Investigation and Corrective Action

All reports of discrimination based on protected characteristics will be investigated. If it is determined that harassing behavior is occurring, the agency must take prompt and effective corrective action to stop the harassment and to take appropriate steps to ensure that harassment will not occur in the future.

All employees are required to cooperate in workplace investigations of possible harassment or other discrimination.

Other Types of Workplace Harassment

Remember that workplace harassment is not just about sex, gender, or inappropriate sexual behavior in the workplace. Any harassment based on a protected characteristic is prohibited and may lead to disciplinary action against the perpetrator. Much of the information presented in this training applies to all types of workplace harassment.

Summary

All State employees should understand what was discussed in this training, including:

- How to recognize harassment as inappropriate workplace behavior.
- The nature of sexual harassment.
- That harassment based on any protected characteristic is prohibited.
- The reasons why workplace harassment is employment discrimination.
- How to report complaints of harassment based upon sex or other protected characteristics.
- That supervisors and managers must report harassment.

With this knowledge, State employees can achieve appropriate workplace behavior, avoid disciplinary action, know their rights, and feel secure that they are entitled to and can work in an atmosphere of respect for all persons.



Sexual Harassment in the Workplace

e-Learning Course

1/2017
For Training Purposes Only

Volforte

Exhibit

6

Welcome to this training on Sexual Harassment issues. I'm Jonah and I want to speak with you about your rights and responsibilities as an employee of the state.

New York State has long been committed to ensuring that all individuals have an equal opportunity to enjoy a fair, safe, and productive work environment. Laws and policies help ensure that diversity is respected and that everyone can enjoy the privileges of working for New York State. Preventing sexual harassment and other prohibited forms of harassment is crucial to the state's commitment in this regard. This training will help you better understand sexual harassment so that all employees know that sexual harassment will not be tolerated and that all reports of sexual harassment will be taken seriously and promptly investigated, with effective remedial action taken where appropriate.

An Environment Free from Discrimination

All state employees and interns have the right to work in an environment free from discrimination, including all forms of harassment. Your employer is required by law and state policy to create a workplace free from harassment based on protected characteristics including age, race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity, and criminal history. You have the responsibility to assure that your actions do not contribute in any way to a discriminatory environment in the workplace.

This training is intended to provide employees with information on their rights and responsibilities under applicable laws and policies. These laws and policies include the New York State Human Rights Law, federal antidiscrimination laws, and the Governor's Executive Order applicable specifically to state employees.

New York State Human Rights Law provides broad protections against discrimination and all forms of harassment. It applies to all state employees.

A statewide policy prohibiting sexual harassment in state workplaces is established by Governor's Executive Order. Each state agency must have a written policy and procedure addressing sexual harassment, and you may request this policy and procedure from your agency's Human Resources Department or Affirmative Action Officer.

What is Employment Discrimination?

Discrimination occurs when employment decisions are based on characteristics that are protected by law or when persons are denied equal terms, conditions, or privileges of employment because of a protected characteristic.

The Human Rights Law was amended effective July 22, 2014 to protect interns from harassment and other discrimination, and accordingly, interns should be considered employees for purposes of this training.

These protected characteristics include age, race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity, and criminal history.

You should have already taken the mandatory online Equal Employment Opportunity training for state employees, which explains these protected characteristics. For more information on protected characteristics and other aspects of employment discrimination and equal opportunity, click here to download the publication *Equal Employment Opportunity in New York State: Rights and Responsibilities: A Handbook for Employees of New York State Agencies*.

Workplace Harassment is Discrimination

When an individual is harassed because of one of these protected characteristics, it changes the terms and conditions of employment for that individual.

Harassment may interfere with the job performance of the victim, as well as other affected employees.

A harassment-free workplace allows employees to achieve their best possible work performance and to have an equal opportunity to advance in state employment.

A harassment-free workplace allows individuals to be free from unnecessary stress and distraction so that they may perform their duties to the best of their ability for the people of the State of New York.

What is Harassment?

Harassment is a form of discrimination that consists of words, signs, jokes, pranks, intimidation, physical actions or violence that is directed at an employee due to any protected characteristic.

It includes offensive behavior based on stereotypes about a protected class and behavior that is intended to cause discomfort or humiliation because of a protected characteristic.

Harassment includes any expression of contempt or hatred for the group to which the victim belongs based on a protected characteristic.

Harassment is unlawful when it becomes severe or pervasive enough to alter the terms or conditions of an individual's employment.

Harassment becomes unlawful when it is severe or frequent enough to alter the terms and conditions of an individual's employment.

Petty annoyances or sporadic offensive conduct will not be considered severe or pervasive.

The more severe the conduct, the less frequent it needs to be to constitute harassment.

A single action can be unlawful harassment if sufficiently severe.

Any harassing behavior by a state employee, even if it is not sufficiently severe or pervasive to be unlawful, will be investigated and the perpetrator or perpetrators will be told to stop.

If the behavior is more than trivial, disciplinary action will be taken. If the behavior is sufficiently serious, disciplinary action may include termination.

Repeated behavior, especially after an employee has been told to stop, is particularly serious and will be dealt with accordingly.

Sexual harassment is a particular type of harassment and a particular type of sex discrimination.

Sex discrimination in general includes:

- Any type of bias on the basis of sex.
- Sexual harassment.
- Sex stereotyping.
- Discrimination on the basis of gender identity, or the status of being transgender.
- Discrimination on the basis of pregnancy.

What is Sexual Harassment?

Sexual harassment is defined as any unwanted verbal or physical advance, sexually explicit or derogatory statement, or sexually discriminatory remark that is offensive or objectionable to the recipient, or which interferes with his or her job performance. Hostile work environment and *quid pro quo* sexual harassment are two frameworks that are used to evaluate whether actions should be regarded as sex discrimination.

A hostile environment on the basis of sex may be created by words, signs, jokes, pranks, intimidation, physical actions or violence, either of a sexual nature or not of a sexual in nature, which is directed at an individual because of that individual's sex.

Quid pro quo sexual harassment occurs when a person in authority tries to trade job benefits for sexual favors. *Quid pro quo* is a legal term meaning "this for that," or, in other words, a trade. *Quid pro quo* harassment occurs only between an employee and someone with supervisory authority, because only a supervisor has the ability to grant or withhold job benefits.

Quid pro quo sexual harassment includes:

- Offering or granting better working conditions or opportunities in exchange for a sexual relationship.

- Threatening adverse working conditions or denial of opportunities if a sexual relationship is refused.
- Using physical or psychological coercion to force a sexual relationship.
- Retaliating for refusing to engage in a sexual relationship.

Who Can be the Recipient of Sexual Harassment?

The recipient or victim of sexual harassment, or any other type of harassment, can be any of the following:

- Any agency employee.
- Any nonemployee who interacts with agency personnel, such as an intern, vendor, building security, client, customer, or visitor. The agency is responsible to see that such nonemployees are not harassed on agency premises.
- Anyone affected by the conduct, not just the individual at whom the offensive conduct is directed.
- Although females are more likely to experience sexual harassment, both males and females may be the recipient.
- Sexual harassment can occur between people of the same sex as well as people of the opposite sex.

Who Can be the Perpetrator of Sexual Harassment?

The perpetrator of sexual harassment can be anyone in the workplace. The employer is responsible for dealing with any harassing behavior by coworkers, supervisors, managers, or nonemployees who are in the workplace.

The harasser can be a coworker of the recipient. When the harasser is a coworker, the recipient should report the harassment to a supervisor, manager, or the agency's Affirmative Action Officer ("AAO") so that the agency knows about the behavior, can investigate, and can take action to prevent the harassment.

The harasser can be a supervisor or manager. The harassing behavior of a supervisor or manager is always extremely serious misconduct. The recipient should report the harassment to a different supervisor, manager, or directly to the agency's AAO. Any supervisor or manager to whom a complaint is made, or who is otherwise aware of sexual harassment, has a duty to report.

The harasser can be a nonemployee or “third party,” such as an intern, vendor, building security, client, customer, or visitor. When the harasser is a third party, the recipient should report the harassment to a supervisor, manager, or the agency’s AAO.

Where Can Sexual Harassment Occur?

Harassment can occur whenever and wherever employees are fulfilling their work responsibilities, including in the field, at any agency sponsored event, trainings, conferences open to the public, and office parties.

Employee interactions during off hours, such as at a hotel while in travel status or even at “happy hour” after work, can have an impact in the workplace. Locations off site and off-hour activities can be considered extensions of the work environment. Harassing behavior that in any way affects the work environment is rightly the concern of management.

Sexual Harassment Case Studies

Now, let’s take a look at a few scenarios that help explain the kind of behaviors that can constitute sexual harassment. These examples are not intended to explain what sort of harassment will create liability if a legal action is filed. Rather, they describe inappropriate behavior in the workplace that will be dealt with by corrective action, including disciplinary action. These examples are intended to encourage all employees to report inappropriate behavior in the workplace.

Not Taking “No” for an Answer

Li Yan’s coworker Ralph has just been through a divorce. He drops comments on a few occasions that he is lonely and needs to find a new girlfriend. Li Yan and Ralph have been friendly in the past and have had lunch together in local restaurants on many occasions. Ralph asks Li Yan to go on a date with him-- dinner and a movie. Li Yan likes Ralph and agrees to go out with him. She enjoys her date with Ralph but decides that a relationship is not a good idea. She thanks Ralph for a nice time, but explains that she does not want to have a relationship with him. Ralph waits two weeks and then starts pressuring Li Yan for more dates. She refuses, but Ralph does not stop. He keeps asking her to go out with him.

True or False: When Ralph first asked Li Yan for a date, this was sexual harassment.

False. Ralph’s initial comments about looking for a girlfriend and asking Li Yan, a coworker, for a date are not sexual harassment. Even if Li Yan had turned Ralph down for the first date, Ralph had done nothing wrong by asking for a date and by making occasional comments that are not sexually explicit about his personal life.

True or False: Li Yan cannot complain of sexual harassment because she went on a date with Ralph.

False. Being friendly, going on a date, or even having a prior relationship with a coworker does not mean that a coworker has a right to behave as Ralph did toward Li Yan. She has to continue working with Ralph, and he must respect her wishes and not engage in behavior that has now become inappropriate for the workplace.

Li Yan complains to her supervisor, and the supervisor (as required) reports her complaint to the agency's AAO. Ralph is questioned about his behavior and he apologizes. He is instructed by the AAO to stop. Ralph stops for a while but then starts leaving little gifts for Li Yan on her desk with accompanying love notes. The love notes are not overtly offensive, but Ralph's behavior is starting to make Li Yan nervous, as she is afraid he may start stalking her.

True or False: Ralph's subsequent behavior with gifts and love notes is not sexual harassment because he has stopped asking Li Yan for dates as instructed. He is just being nice to Li Yan because he likes her.

False. Li Yan should report Ralph's behavior. She was entitled to have effective assistance in getting Ralph to stop his inappropriate workplace behavior. Because Ralph has returned to pestering Li Yan after being told to stop, he could be subject to serious disciplinary action for his behavior.

The Boss with a Bad Attitude

Sharon transfers to a new location with her agency. Her new supervisor, Paul, is friendly and helps her get familiar with her new job duties. After a few days, when no one else is around, Paul comes over to Sharon's work area to chat. Paul talks about what he did last night, which was to go to a strip club. Sharon is shocked that Paul would bring up such a topic in the workplace and says nothing in response. Paul continues talking and says that all the women in the office are so unattractive that he needs to get out and "see some hot chicks" once in a while. He tells Sharon he is glad she joined the staff because, unlike the others, she is "easy on the eyes." Sharon feels very offended and demeaned that she and the other women in her workplace are being evaluated on their looks by their supervisor.

True or False: Because Paul did not tell Sharon that she is unattractive, he has not harassed her.

False. Paul has made sexually explicit statements to Sharon, which are derogatory and demeaning to Sharon and her female coworkers. It does not matter that Paul supposedly paid Sharon a "compliment." The discussion is still highly offensive to Sharon, as it would be to most reasonable persons in her situation.

True or False: By bringing up his visit to the strip club, Paul is engaging in inappropriate workplace behavior.

True. Simply bringing up the visit to the strip club is inappropriate in the workplace, especially by a supervisor, and it would be appropriate for Sharon to report this conduct. A one-time comment

about going to a strip club is behavior that Paul would be told to stop, even though it probably would not rise to the level of unlawful harassment, unless it was repeated on multiple occasions.

True or False: Paul should be instructed to stop making these types of comments, but this is not a serious matter.

False. Paul's comments about the female employees are a serious matter and show his contempt for women in the workplace. Paul is required to model appropriate behavior, and must not exhibit contempt for employees on the basis of sex or any protected characteristic. Sharon should not have to continue to work for someone she knows harbors such contempt for women, nor should the other employees have to work for such a supervisor. Management should be aware of this, even if the other employees are not, and Paul should be disciplined and, most likely, removed from his current position.

No Job for a Woman?

Carla is a licensed heavy equipment operator for the state. Some of her male coworkers think it is fun to tease her. Carla often hears comments like "Watch out, here she comes—that crazy woman driver!" in a joking manner. Also, someone keeps putting a handmade sign on the only port-a-potty at the worksite that says "Men only."

True or False: Women in traditionally male jobs should expect teasing and should not take the joking comments too seriously.

False. Whether Carla is being harassed depends in part on Carla's opinion of the situation, that is, whether she finds the behavior offensive. However, if at any point Carla does feel harassed, she is entitled to complain of the behavior and have it stopped, regardless of whether and for how long she has endured the behavior without complaint. Carla can always say when enough is enough.

True or False: Carla cannot complain, because the site supervisor sometimes joins in with the joking behavior, so she has nowhere to go.

False. Carla can still complain to the supervisor who is then on notice that the behavior bothers Carla and must be stopped. The supervisor's failure to take Carla's complaint seriously, constitutes serious misconduct on his or her part. Carla can also complain directly to the agency's AAO, either instead of going to the supervisor, or after doing so. The agency is responsible for assuring that all employees are aware of its antiharassment policies and procedures.

Some of Carla's other coworkers are strongly opposed to her presence in the traditionally all-male profession. These coworkers have sometimes said things to her like, "You're taking a job away from a man who deserves it," "You should be home with your kids," and "What kind of a mother are you?" Also, someone scratched the word "bitch" on Carla's toolbox.

True or False: These behaviors, while rude, are not sexual harassment because they are not sexual in nature.

False. The behaviors are directed at her because she is a woman and appear to be intended to intimidate her and cause her to quit her job. While not sexual in nature, this harassment is because of her sex and will create a hostile work environment if it is sufficiently severe or frequent .

Carla complains about the jokes and other behaviors, and an investigation is conducted. It cannot be determined who defaced Carla's toolbox. Her coworkers are told to stop their behavior or face disciplinary charges. The supervisor speaks with Carla and tells her to come to him immediately if she has any further problems. Carla then finds that someone has urinated in her toolbox.

True or False: There is nothing Carla can do because she can't prove who vandalized her toolbox.

False. Carla should speak to her supervisor immediately, or contact her AAO directly. Although the situation has become very difficult, it is the agency's responsibility to support Carla and seek a solution. A significant investigation must be promptly undertaken and appropriate remedial action must follow.

Too Close for Comfort

Keisha has noticed that her new boss, Harold, leans extremely close to her when they are going over the reports that she prepares. He touches her hand or shoulder frequently as they discuss work. Keisha tries to move away from him in these situations, but he doesn't seem to get the message.

True or False: Keisha should just ignore Harold's behavior, as it is not sufficiently severe or pervasive.

False. If Keisha is uncomfortable with Harold's behavior, she has options. If she feels comfortable doing so, she should tell Harold to please back off because his closeness and touching make her uncomfortable. Another option is to complain directly to her agency's AAO, who will speak with Harold. Although this may not be sufficiently severe or pervasive to create an unlawful harassment situation (unless it was repeated by Harold after he was told to stop), there is no reason for Keisha to be uncomfortable in the workplace. There is no valid reason for Harold to engage in this behavior.

Before Keisha gets around to complaining, Harold brushes up against her back in the conference room before a meeting. She is now getting really annoyed but still puts off doing anything about it. Later Harold "traps" her in his office after they finish discussing work by standing between her and the door of his small office. Keisha doesn't know what to do, so she moves past him to get out. As she does so, Harold runs his hand over her breast.

True or False: Harold's brushing up against Keisha in the conference room could just be inadvertent and does not give Keisha any additional grounds to complain about Harold.

False. Harold is now engaging in a pattern of escalating behavior. Given the pattern of his "too close" and "touching" behavior, it is unlikely that this was inadvertent. Even before being "trapped" in Harold's office, Keisha should have reported all of the behaviors she had experienced that had made her uncomfortable.

True or False: Harold touching Keisha's breast is inappropriate but is probably not unlawful harassment because it is not "pervasive" enough.

False. Any type of sexual touching is considered "severe," and the more severe the behavior, the fewer times it needs to be repeated in order to be unlawful harassment. The state regards any sexual touching to be very serious misconduct, and Keisha should immediately report it without waiting for it to be repeated. Harold can expect to receive formal discipline for this behavior.

A Distasteful Trade

The following scenario will explain many aspects of quid pro quo sexual harassment.

Tatiana is hoping for a promotion to a position that she knows will become vacant soon. She knows that her boss, David, will be involved in deciding who will be promoted. She tells David that she will be applying for the position, and that she is very interested in receiving the promotion. David says, "We'll see. There will be a lot of others interested in the position."

A week later, Tatiana and David travel together on state business, including an overnight hotel stay. Over dinner, David tells Tatiana that he hopes he will be able to promote her, because he has always really enjoyed working with her. He tells her that some other candidates "look better on paper" but that she is the one he wants. He tells her that he can "pull some strings" to get her into the job and Tatiana thanks David. Later David suggests that they go to his hotel room for "drinks and some relaxation." Tatiana declines his "offer."

True or False: David's behavior could be harassment of Tatiana.

True. David's behavior as Tatiana's boss is inappropriate, and Tatiana should feel free to report the behavior if it made her uncomfortable. It is irrelevant that this behavior occurs away from the workplace. Their relationship is that of supervisor and supervisee, and all their interactions will tend to impact the workplace.

David's behavior, at this point, may or may not constitute quid pro quo harassment; David has made no threat that if Tatiana refuses his advance he will handle her promotion any differently. However, his offer to "pull some strings" followed by a request that they go to his hotel room for drinks and relaxation might be considered potentially coercive. Certainly, if David persists in his advances—even if he never makes or carries out any threat or promise about job benefits—then

this could create a hostile environment for Tatiana, for which the agency could be strictly liable because David is a management employee.

After they return from the trip, Tatiana asks David if he knows when the job will be posted so that she can apply. He says that he is not sure, but there is still time for her to “make it worth his while” to pull strings for her. He then asks, “How about going out to dinner this Friday and then coming over to my place?”

True or False: David has now engaged in quid pro quo harassment of Tatiana.

True. It is now evident that David has offered to help Tatiana with her promotion in exchange for sexual favors.

Tatiana, who really wants the position, decides to go out with David. Almost every Friday they go out at David’s insistence and engage in sexual activity. Tatiana does not want to be in a relationship with David and is only going out with him because she believes that he will otherwise block her promotion.

True or False: Tatiana cannot complain of harassment because she voluntarily engaged in sexual activity with David.

False. Because the sexual activity is unwelcome to Tatiana, she is a victim of sexual harassment. Equally, if she had refused David’s advances, she would still be a victim of sexual harassment. The offer to Tatiana to trade job benefits for sexual favors by someone with authority over her in the workplace is quid pro quo sexual harassment, and the agency is exposed to liability because of its supervisor’s actions.

Tatiana receives the promotion.

True or False: Tatiana cannot complain of harassment because she got the job, so there is no discrimination against her.

False. Tatiana can be the recipient of sexual harassment whether or not she receives the benefit that was used as an inducement.

Tatiana breaks off the sexual activities with David. He then gives her a bad evaluation, and she is removed from her new position at the end of the probationary period and returns to her old job.

True or False: It is now “too late” for Tatiana to complain. Losing a place of favor due to the break up of the voluntary relationship does not create a claim for sexual harassment.

False. It is true that the breakup of a relationship, if truly consensual and welcomed at the time, usually does not create a claim for sexual harassment. However, the “relationship” in this case was never welcomed by Tatiana. David’s behavior has at all times been inappropriate and a

serious violation of state policy. As the person who abused the power and authority of a management position, David has engaged in sexual harassment.

Sex Stereotyping

Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of either sex should act or look.

Harassing a person because that person does not conform to gender stereotypes as to "appropriate" looks, speech, personality, or lifestyle is sexual harassment.

Harassment because someone is performing a job that is usually performed, or was performed in the past, mostly by persons of the opposite sex, is sex discrimination. The previous scenario about Carla, the heavy equipment operator, shows some aspects of sex stereotyping. She was viewed negatively because she was in a job that is nontraditional for her gender. The scenario that follows about Leonard also explains aspects of sex stereotyping.

An Issue about Appearances

Leonard works as a clerk typist for a large state agency. He likes to wear jewelry, and his attire frequently includes earrings and necklaces. His boss, Margaret, thinks it's "weird" that, as a man, Leonard wears jewelry and wants to be a clerical worker. She frequently makes sarcastic comments to him about his appearance and refers to him "jokingly" as her office boy. Leonard, who hopes to develop his career in the area of customer relations, applies for an open promotional position that would involve working in a "front desk" area, where he would interact with the public. Margaret tells Leonard that, if he wants that job, he had better look "more normal" or else wait for a promotion to mailroom supervisor.

True or False: Leonard's boss is correct to tell him wearing jewelry is inappropriate for customer service positions.

False. Leonard's jewelry is only an issue because Margaret considers it unusual for a man to wear such jewelry. Therefore, her comments to Leonard constitute sex stereotyping.

Margaret also is "suspicious" that Leonard is gay, which she says she "doesn't mind," but she thinks Leonard is "secretive." She starts asking him questions about his private life, such as "Are you married?" "Do you have a partner?" "Do you have kids?" Leonard tries to respond politely "No" to her questions but is becoming annoyed. Margaret starts gossiping with Leonard's coworkers about his supposed sexual orientation.

True or False: Leonard is the recipient of harassment on the basis of sex and sexual orientation.

True. Leonard is harassed on the basis of sex because he is being harassed for failure to adhere to Margaret's sex stereotypes.

Leonard is also harassed on the basis of his perceived sexual orientation. It does not matter whether or not Leonard is a gay man in order for him to have a claim for sexual orientation harassment.

Leonard might also be considered a victim of harassment on the basis of gender identity, which is a form of sex and/or disability discrimination prohibited by the Human Rights Law. Leonard should report Margaret's conduct, which is clearly a violation of state policy, to the AAO.

Leonard decides that he is not going to get a fair chance at the promotion under these circumstances, and he complains to the agency's AAO about Margaret's behavior. The AAO does an investigation and tells Margaret that Leonard's jewelry is not in violation of any workplace rule, that she is to consider him for the position without regard for his gender, and that she must stop making harassing comments, asking Leonard intrusive questions, and gossiping about his personal life. Margaret stops her comments, questions, and gossiping, but she then recommends a woman be promoted to the open position. The woman promoted has much less experience than Leonard and lacks his two year degree in customer relations from a community college.

True or False: Leonard has likely been the victim of discrimination on the basis of sex, sexual orientation, and/or retaliation.

True. We don't know Margaret's reason for not recommending Leonard for the promotion, but it is not looking good for Margaret. It appears that she is either biased against Leonard for the same reasons she harassed him, or she is retaliating because he complained, or both.

Leonard should speak further with the AAO, and the circumstances of the promotion should be investigated. If it is found that Margaret had abused her supervisory authority by failing to fairly consider Leonard for the promotion, she should be subject to disciplinary action. This scenario shows that sometimes more severe action is needed in response to harassment complaints, in order to prevent discrimination in the future.

Retaliation

The Human Rights Law protects an employee who has engaged in "protected activity" from being retaliated against in any manner.

In addition to any complaint or statement about any kind of discrimination, protected activity with regard to harassment includes:

- Making a complaint to a supervisor, manager, or AAO about harassment.
- Making a report of suspected harassment, even if you are not the recipient.
- Filing a formal complaint about harassment.
- Opposing discrimination.

- Assisting another employee who is complaining of harassment.
- Providing information or testifying in connection with a complaint of harassment filed with a government agency or in court.

An individual who engages in any of the above activities should expect to be free from any negative actions by supervisors, managers, or the agency motivated by these protected activities.

Retaliation can be any negative action taken against the employee by the employer, which is more than trivial, that could have the effect of discouraging a reasonable worker from making a complaint about harassment or discrimination.

The negative action need not be job-related or occur in the workplace.

A negative employment action is not retaliatory merely because it occurs after the employee engages in protected activity. Employees continue to be subject to all job requirements and disciplinary rules after having engaged in such activity. In order to establish a claim of retaliation, an individual must be able to show that the adverse action was motivated by the protected activity.

The Supervisor's Responsibility

As shown in some of the scenarios above, supervisors and managers are held to a higher standard of behavior. This is because:

- They are placed in a position of authority by the agency and must not abuse that authority.
- Their actions can create liability for the agency without the agency having any opportunity to correct the harassment.
- They are required to report any harassment that is reported to them or which they observe.
- They are responsible for any harassment or discrimination that they should have known of with reasonable care and attention to the workplace for which they are responsible.
- They are expected to model appropriate workplace behavior.

Supervisors must report any harassment that they observe or know of, even if no one is objecting to the harassment.

If supervisors have questions about whether behavior that they have observed or learned about constitutes harassment, they should consult with their agency's Affirmative Action Officer.

If a supervisor or manager receives a report of harassment, or is otherwise aware of harassment, it must be promptly reported to the agency, without exception,

- Even if the supervisor or manager thinks the conduct is trivial.
- Even if the harassed individual asks that it not be reported.

What Should I Do If I Am Harassed?

Your employer cannot stop harassment in the workplace unless management knows about the harassment. Harassment should be reported to a supervisor, manager, or AAO. Agencies are required to have sexual harassment policies and procedures in place and to inform all employees about them regularly.

You should feel free to report any behavior that you experience or know about that is inappropriate, as described in this training, without worrying about whether or not it is unlawful harassment. Behavior does not need to be a violation of law in order to be in violation of state policy.

Individuals who report or experience harassment should cooperate with management so that a full and fair investigation can be conducted and any necessary corrective action can be taken.

If you report harassment to a manager or supervisor and receive an inappropriate response, such as being told to “just ignore it,” do not hesitate to take your complaint to the next level of management or to go directly to your agency’s AAO.

Investigation and Corrective Action

Your employing agency has the duty to investigate all reports of harassment. If it is determined that harassing behavior is occurring, the agency has a duty to take prompt and effective corrective action to stop the harassment. The agency also has a duty to take appropriate steps to ensure that harassment will not occur in the future.

All employees are required to cooperate with management and the AAO during investigations of possible harassment or other discrimination.

Other Types of Workplace Harassment

Remember that workplace harassment is not just about gender or inappropriate sexual behavior in the workplace. Any harassment based on a protected characteristic is prohibited in the workplace and may lead to disciplinary action against the perpetrator. Much of the information presented in this training applies to all types of workplace harassment.

Summary

All state employees should understand what we have discussed in this training, including:

- How to recognize harassment as inappropriate workplace behavior.
- The nature of sexual harassment.
- That harassment because of any protected characteristic is prohibited.
- The reasons why workplace harassment is employment discrimination.
- That all harassment should be reported.
- That supervisors and managers have a special responsibility to report harassment.

With this knowledge, state employees can achieve appropriate workplace behavior, avoid disciplinary action, know their rights, and feel secure that they are entitled to and can work in an atmosphere of respect for all persons.



No. 187

EXECUTIVE ORDER

ENSURING DIVERSITY AND INCLUSION AND COMBATING HARASSMENT AND DISCRIMINATION IN THE WORKPLACE

WHEREAS, it is a cornerstone of democratic governance of the State of New York that every New York State employee is treated equally before the law and has the right to full enjoyment of the protections, rights and obligations provided by law;

WHEREAS, New York State is committed to a culture of respect that values and promotes diversity, inclusion and equal opportunity, free of unlawful discrimination on the basis of protected class status, including, age, race, creed, color, sex, sexual orientation, gender identity, national origin, military or veteran status, disability, predisposing genetic characteristics, marital or family status, domestic violence victim status, arrest record or criminal conviction history, or any other impermissible basis, in all functions performed, and services offered, by New York State employees;

WHEREAS, it is the policy of New York State to protect and promote diversity, inclusion and equal opportunity in the State's workforce in accordance with the requirements of the New York State Human Rights Law, Title VII of the Federal Civil Rights Act, the Americans with Disabilities Act, and all applicable requirements of New York state and federal law;

WHEREAS, it is imperative that New York State continue its efforts to facilitate effective, coordinated strategies for diversity and inclusion, and for preventing and remedying discrimination and harassment at all levels of state government, that employ best practices and make effective use of resources across New York State agencies;

WHEREAS, New York State is committed to effectuating the comprehensive recommendations of the Governor's Advisory Council on Diversity and Inclusion to increase diversity and inclusion in state government;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

I. Governor's Executive Committee for Diversity, Inclusion, and Equal Opportunity

- a. The Governor's Executive Committee for Diversity, Inclusion, and Equal Opportunity is hereby established and its membership shall consist of the following: the Chief Diversity Officer, who shall serve as the chairperson, the Commissioner of Civil Service who shall serve as vice-chairperson, the Director of Budget, the Commissioner of the Division of Human Rights, the Commissioner of Labor, the Secretary of State, the Director of Employee Relations, the Director of Veterans' Affairs, and the Commissioner of the Office for People With Developmental Disabilities. Membership of the committee may be amended by the chairperson and vice-chairperson, with the agreement of the current members of the committee. The vice-chairperson shall perform the duties of the chairperson in the chairperson's absence and at such times as the chairperson may direct.

- b. The Committee shall advise the Governor, the Chief Diversity Officer and the Commissioner of Civil Service in the formulation and coordination of plans, policies, and programs relating to diversity and inclusion in all Affected State Entities, as defined in Article II of this Order, and in assuring effective implementation of such policies, plans, and programs by such entities.

II. Comprehensive State Diversity and Inclusion Planning

- a. Definitions: As used herein, the following terms shall have the following meanings:
 - i. "Affected State Entities" shall mean (i) all agencies and departments over which the Governor has Executive Authority; and (ii) all public benefit corporations, public authorities and commissions, for which the Governor appoints the Chair, Chief Executive, or the majority of Board Members, except for the Port Authority of New York and New Jersey.
 - ii. "State officer or employee" shall have the meaning set forth in Section 73 of the New York Public Officers Law.
- b. Responsibilities of the Commissioner of Civil Service and Chief Diversity Officer
 - i. No later than December 31, 2018, the Chief Diversity Officer and the Commissioner of Civil Service shall prepare comprehensive statewide objectives for the employment of minorities, women, lesbian, gay, bisexual, and transgender (LGBT) individuals, disabled persons, and veterans, and guidelines for agencies to prepare agency diversity and inclusion plans, including policies, objectives and implementation strategies. Such objectives and guidelines shall be developed with the advice of the Executive Committee for Diversity, Inclusion, and Equal Opportunity established pursuant to Article I of this Order and shall be updated as necessary.
 - ii. The Chief Diversity Officer and the Commissioner of Civil Service shall be responsible for monitoring the implementation of the written diversity and inclusion plans of State agencies on a continuing basis, including the need for revising or amending such plans and shall provide regular reports on progress to the Governor, incorporating recommendations for improving and strengthening such efforts.
 - iii. Upon a finding by the Chief Diversity Officer and Commissioner of Civil Service of substantial noncompliance by a State agency or department with the requirements or terms of this Order, the Chief Diversity Officer shall notify the agency or department of such finding and propose a remedial plan of action. The agency or department shall have 30 days from the receipt of such notice to accept the remedial plan or submit an alternative remedial plan acceptable to the Chief Diversity Officer and Commissioner. The Chief Diversity Officer and Commissioner may work directly with the agency or department to develop and implement the remedial plan until they are satisfied that the agency or department will implement the plan in compliance with the provisions of this Order.
 - iv. The Commissioner of Civil Service shall prepare annually a report of the composition of the work force of each State agency and department by sex and ethnic identity for all job categories, salary grades, and civil service classifications. The Chief Diversity Officer working in collaboration with the Commissioner of Civil Service shall also conduct studies to identify and resolve problems in eliminating under-representation and under-utilization of minorities, women, LGBT individuals, disabled persons, and veterans, and shall make recommendations to the Governor concerning the adoption or amendment of other laws, rules and regulations for the same purpose.
 - v. There is hereby established the Office of Diversity Management within the Department of Civil Service. The Office of Diversity Management shall be responsible for assisting the Commissioner of Civil Service and the Chief Diversity Officer in the effective development and implementation of statewide diversity and inclusion plans, policies, and programs. State agencies, officers and employees shall cooperate with the Office of Diversity Management and necessary staff may be transferred to the Office of Diversity Management pursuant to Civil Service Law 70.2.

- c. Development and Implementation of Diversity and Inclusion Programs by State Agencies
 - i. Each Affected State Entity shall develop a written diversity and inclusion plan consistent with the guidelines developed by the Chief Diversity Officer and Commissioner of Civil Service under Article II (b)(i) of this Order.
 - ii. The head of each Affected State Entity shall designate an employee as the agency's diversity and inclusion officer and report such designation to the Chief Diversity Officer and the Commissioner of Civil Service. The diversity and inclusion officer shall report to the agency head and shall have such support staff as may be appropriate to accomplish his or her duties.
 - iii. By December 31 of each year, beginning in 2019, each Affected State Entity shall submit a report on diversity and inclusion to the Chief Diversity Officer and the Commissioner of Civil Service. Such reports shall be submitted periodically, but not less frequently than annually, in a format and pursuant to standards issued by the Chief Diversity Officer and the Commissioner of Civil Service, and shall include a report on the agency's employment actions with respect to minorities, women, disabled persons, LGBT individuals, and veterans, and shall identify the agency's achievements, deficiencies, proposed solutions to problems, the need for external assistance, and such other matters as may be appropriate or requested.
 - iv. Each Affected State Entity shall cooperate with the Chief Diversity Officer and the Commissioner of Civil Service to provide any other information, data, and reports as may be deemed necessary.
- d. The State Workforce Diversity and Inclusion Council
 - i. There is hereby established the State Workforce Diversity and Inclusion Council (the "Workforce Council"). It shall consist of the diversity and inclusion officers of each agency designated pursuant to Article II(c)(ii) of this Order. The business of the Advisory Council shall be conducted pursuant to by-laws adopted by the members and subject to the approval of the Chief Diversity Officer and the Commissioner of Civil Service.
 - ii. The Advisory Council shall advise the Chief Diversity Officer, the Commissioner of Civil Service, and the Executive Committee for Diversity, Inclusion, and Equal Opportunity established pursuant to Article I of this Order, on all existing and proposed policies, procedures, practices and programs relating to or affecting affirmative action, and consistent with any request by the Chief Diversity Officer and the Commissioner of Civil Service shall submit reports of its activities.

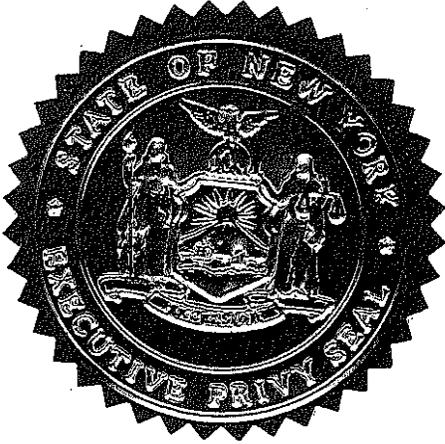
III. Combating Harassment and Discrimination in State Agencies

- a. Definitions
 - i. "Affected State Agency" shall mean all agencies and departments over which the Governor has executive authority.
 - ii. "Protected class discrimination" shall mean employment-related discrimination that is unlawful pursuant to federal laws, rules or regulations and/or state laws, rules or regulations, including but not limited to, Title VII of the Federal Civil Rights Act, the Americans with Disabilities Act, and the New York State Human Rights Law.
- b. In order to promote the effective, complete and timely investigation of complaints of employment-related protected class discrimination, as of December 1, 2018, the Governor's Office of Employee Relations (GOER) shall be responsible for conducting all investigations into employment-related discrimination complaints filed by employees, contractors, interns or other persons engaged in employment at Affected State Agencies as defined in Article III(a)(i) of this Order.

- c. Such Affected State Agencies shall transfer the investigation function pursuant to Civil Service Law 70.2 to GOER and continue to permit such employees as are assigned by GOER to investigate complaints of protected class discrimination within their entity and shall cooperate fully with any and all investigations.

IV. Revocation of Previous Executive Order

This Executive Order revokes and supersedes Executive Order Number 6, dated February 18, 1983.



G I V E N under my hand and the Privy Seal of the

State in the City of Albany this twenty
third day of August in the year two
thousand eighteen.

BY THE GOVERNOR


Secretary to the Governor





Governor's Office of Employee Relations

ANDREW M. CUOMO
Governor

MICHAEL N. VOLFORTE
Director

MEMORANDUM

December 3, 2018

TO: State Agency and Authority General Counsels

FROM: Michael Volforte
Director

SUBJECT: Discrimination Complaint Investigations

Effective December 1, 2018, the Governor's Office of Employee Relations ("GOER") will be conducting investigations of employment discrimination complaints and fully supervising all Equal Employment Opportunity/Affirmative Action Officers who will perform those investigations.

Further, the EEO Rights and Responsibilities Handbook and the 10-Step Process for both internal and external complaints have been revised and will also be in effect as of December 1, 2018. The 10-Step Process also includes new forms, which will be used for all complaints of discrimination filed after December 1, 2018 and include a universal complaint form, a notice of complaint form, an investigation checklist and document request form, draft investigation report template and a draft legal recommendation template.

Please feel free to contact us at (518) 474-1920 if you have any questions.



Governor's Office of Employee Relations

ANDREW M. CUOMO
Governor

MICHAEL N. VOLFORTE
Director

MEMORANDUM

November 29, 2018

TO: Directors of Human Resource Management

FROM: Michael Volforte

SUBJECT: Executive Order No. 187
Investigation of Complaints of Protected-Class
Employment Discrimination

Pursuant to Executive Order No. 187, responsibility for the investigation of all complaints of protected class employment discrimination will transfer to the Governor's Office of Employee Relations (GOER) effective December 1. What this means for staff in your agency is that all complaints of discrimination (including those filed with the Equal Employment Opportunity Commission (EEOC) and the New York State Division of Human Rights) will be investigated by an investigator employed by GOER in its Anti-Discrimination Investigations Division. However, it is still the responsibility of all agencies to ensure that its employees know where/how to complain of discrimination. Therefore, please take the following steps to ensure that this transition works as smoothly as possible.

First, each agency must post on its intranet site or, if it doesn't have one, on its internet site, a link to the Equal Employment Opportunity Rights and Responsibilities Handbook for New York State Employees (*Handbook*) at <https://goer.ny.gov/equal-employment-opportunity-rights-and-responsibilities-handbook-employees-new-york-state-agencies>. The Handbook is the New York State Policy for anti-discrimination policies in New York State and replaces all other anti-discrimination policies except for those policies which may be in addition to, and are not in conflict with, those contained in the Handbook.

Second, each agency must post on its intranet site or, if it doesn't have one, on its internet site, a link to, the New York State Discrimination Complaint form at <https://goer.ny.gov/new-york-state-discrimination-complaint-form>. This form is an online, fillable form but may also be printed out.

Third, make sure that the contact information for any GOER investigator located within your agency is also posted on your intranet site, or internet site, if there is no intranet site. Many agencies will still have a GOER investigator located "on site" within your agency.

Fourth, for those agencies that have employees who do not normally access computers as part of their regular job duties, the agency must make alternate arrangements to ensure that the Handbook and the complaint form are known and available to agency staff. Agencies should provide at least one hardcopy of the Handbook to each work location, multiple copies of the complaint form and instructions to staff on how to obtain additional copies of each document.

Lastly, your agency needs to communicate this information to your employees immediately and on an ongoing monthly basis. To aid you in that communication, attached is a Word document that you can edit to include your agency-specific information and send to employees via email, use as a handout to be sent via intra-agency mail to employees without regular email access and post on management bulletin boards within the workplace. Any changes to the information contained in that document must be immediately communicated to employees in your agency and then incorporated into the regular monthly communication.

Please ensure that this information is distributed immediately to all employees.

/mv
Attachment



Governor's Office of Employee Relations

ANDREW M. CUOMO
Governor

MICHAEL N. VOLFORTE
Director

MEMORANDUM

May 21, 2020

TO: Directors of Human Resource Management

FROM: Michael Volforte 

SUBJECT: GOER Memo 2020-04
Executive Order No. 187
Investigation of Complaints of Protected-Class
Employment Discrimination

Pursuant to Executive Order No. 187, responsibility for the investigation of all complaints of protected class employment discrimination was transferred to the Governor's Office of Employee Relations (GOER) effective December 1, 2018. All complaints of discrimination (including those filed with the Equal Employment Opportunity Commission (EEOC) and the New York State Division of Human Rights) will be investigated by an investigator employed by GOER in its Anti-Discrimination Investigations Division (ADID). However, it is still the responsibility of all agencies to ensure that its employees know where/how to complain of discrimination. Therefore, please take the following steps to ensure that this transition works as smoothly as possible.

First, each agency must post on its intranet site or, if it doesn't have one, on its internet site, the link to the Equal Employment Opportunity Rights and Responsibilities Handbook for New York State Employees (*Handbook*) at <https://goer.ny.gov/equal-employment-opportunity-rights-and-responsibilities-handbook-employees-new-york-state-agencies>. The Handbook is the New York State Policy for anti-discrimination policies in New York State and replaces all other anti-discrimination policies except for those policies which may be in addition to, and are not in conflict with, those contained in the Handbook.

Second, each agency must post on its intranet site or, if it doesn't have one, on its internet site, a link to, the New York State Discrimination Complaint webform at <https://antidiscrimination.goer.ny.gov/>. This form is an online form that is directly submitted to ADID. If you or your employees are having issues with the webform, a

PDF and Word Doc version are still available at <https://goer.ny.gov/anti-discrimination-investigations>. The PDF is a fillable form, or you may also be print it out and submit the form to antidiscrimination@goer.ny.gov.

Third, make sure that the contact information for any GOER investigator located within your agency is also posted on your intranet site, or internet site, if there is no intranet site. Many agencies have a GOER investigator located “on site” within your agency.

Fourth, for those agencies that have employees who do not normally access computers as part of their regular job duties, the agency must make alternate arrangements to ensure that the Handbook and the complaint form are known and available to agency staff. Agencies should provide at least one hardcopy of the Handbook to each work location, multiple copies of the complaint form and instructions to staff on how to obtain additional copies of each document.

Lastly, your agency needs to continue communicating this information to your employees on an ongoing monthly basis. To aid you in that communication, attached is a Word document that you can edit to include your agency-specific information and send to employees via email, use as a handout to be sent via intra-agency mail to employees without regular email access and post on management bulletin boards within the workplace. Any changes to the information contained in that document must be immediately communicated to employees in your agency and then incorporated into the regular monthly communication.

Please ensure that this information is distributed immediately to all employees, and cc antidiscrimination@goer.ny.gov on all communications attaching the memo.

/mv
Attachment



Governor's Office
of Employee Relations

ANDREW M. CUOMO
Governor

MICHAEL N. VOLFORTE
Director



MEMORANDUM

November 29, 2018

TO: All Agency Employees

FROM: Michael Volforte

SUBJECT: Investigation of Complaints of Protected Class
Employment Discrimination

Effective December 1, 2018, all complaints of protected class employment discrimination will be investigated by the Governor's Office of Employee Relations (GOER) Anti-Discrimination Investigations Division.

If you have any questions about what constitutes protected class employment discrimination, please refer to the Equal Employment Opportunity Rights and Responsibilities Handbook for New York State Employees (*Handbook*) located at <https://goer.ny.gov/equal-employment-opportunity-rights-and-responsibilities-handbook-employees-new-york-state-agencies> and at **{INSERT AGENCY INTRANET OR INTERNET SITE LOCATION}**. The Handbook is the State's anti-discrimination policy.

There are additional anti-discrimination protections that you have so please check our **{AGENCY TO INSERT AGENCY SPECIFIC NAME OF THEIR EMPLOYEE HANDBOOK, AGENCY POLICY MANUAL, ETC IF AGENCY HAS ADDITIONAL PROTECTIONS. IF NOT, SENTENCE SHOULD BE DELETED.}** located at {insert agency location} for procedures applicable to those additional protections. Below please find information on how to file complaints of protected class employment discrimination.

Filing an Internal Complaint

A complaint form that you may use is located at {insert agency intranet or internet site location}. A copy of this complaint form is located on the GOER website at <https://goer.ny.gov/new-york-state-discrimination-complaint-form>. You may submit this

form electronically to GOER or print it out and mail directly to GOER at the address on the form.

[THIS PARAGRAPH ONLY FOR THOSE AGENCIES THAT HAVE AN AAA ASSIGNED TO IT; OTHERWISE DELETE IT]. Also, our agency has a GOER Affirmative Action Administrator who can assist you in filing a complaint. They can be contacted at **AGENCY TO INSERT ALL CONTACT INFORMATION FOR THIS INDIVIDUAL OR INDIVIDUALS}**

You may also file a complaint with your supervisor, manager, agency Executive Staff, Counsel's Office or Human Resources department. Each of these individuals is required to send your complaint to GOER so that it will be investigated. If you file a complaint with any of these individuals and you do not hear from a GOER investigator within **one week**, please contact GOER at (518) 474-1920 to ensure that GOER received your complaint.

Filing an External Complaint

Employees are not required to pursue the internal complaint procedure before filing a complaint with the Equal Employment Opportunity Commission, the New York State Division of Human Rights or with a court, based on federal or state or local law.

The following agencies can provide information to employees and receive and investigate complaints of protected class employment discrimination.

- New York State Division of Human Rights
Website: www.dhr.ny.gov
Telephone: (888) 392-3644
TTY number: (718) 741-8300

- United States Equal Employment Opportunity Commission
Website: www.eeoc.gov
Telephone: (800) 669-4000
TTY number: (800) 669-6820
ASL Video Phone: (844) 234-5122



Governor's Office
of Employee Relations

ANDREW M. CUOMO
Governor

MICHAEL N. VOLFORTE
Director

MEMORANDUM

November 29, 2018

TO: All Agency Employees

FROM: Michael Volforte

SUBJECT: Investigation of Complaints of Protected Class
Employment Discrimination

Effective December 1, 2018, all complaints of protected class employment discrimination will be investigated by the Governor's Office of Employee Relations (GOER) Anti-Discrimination Investigations Division.

If you have any questions about what constitutes protected class employment discrimination, please refer to the Equal Employment Opportunity Rights and Responsibilities Handbook for New York State Employees (*Handbook*) located at <https://goer.ny.gov/equal-employment-opportunity-rights-and-responsibilities-handbook-employees-new-york-state-agencies> and at **{INSERT AGENCY INTRANET OR INTERNET SITE LOCATION}**. The Handbook is the State's anti-discrimination policy.

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Employees are not required to pursue the internal complaint procedure before filing a complaint with the Equal Employment Opportunity Commission, the New York State Division of Human Rights or with a court, based on federal or state or local law.

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Website: www.dhr.ny.gov
Telephone: (888) 392-3644
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- United States Equal Employment Opportunity Commission
Website: www.eeoc.gov
Telephone: (800) 669-4000
TTY number: (800) 669-6820
ASL Video Phone: (844) 234-5122

10 Step Internal Discrimination Complaint Investigation Process

INVESTIGATION PROTOCOL

All discrimination complaints filed in relation to employment at a state agency or department over which the Governor has executive authority (State Agency) shall be investigated by an Equal Opportunity Officer, also known as an Affirmative Action Administrator (“AAO”) as assigned by the Governor’s Office of Employee Relations (GOER). State Agencies shall cooperate with all such investigations and provide access to such employees, resources, files and other materials necessary for the thorough investigation of each complaint.

All employment discrimination complaints filed in relation to employment at designated Authorities shall be investigated in accordance with this 10 Step Internal Discrimination Complaint Process, by the designated AAO at each Authority.

TIMING

All investigations of internal complaints should be completed, pursuant to the steps outlined herein, within **30 days** of receipt of complaint. If additional time is needed to complete an investigation due to its complexity, extensions will be granted for good cause shown, including, but not limited to, the unavailability of key witnesses. Every extension request must include the reason for the extension request and the date by which the Draft Investigation Report (DIR) will be submitted and be approved by the GOER.

STEP 1- RECEIVE AND REVIEW COMPLAINT

- A. After conducting a conflict check, GOER will immediately assign the complaint to an AAO for investigation.
- B. Upon receipt of a Complaint Form, the AAO shall conduct an immediate review of the allegations to determine whether the Complaint alleges violation of a policy concerning discrimination in the workplace based upon a protected class. If the Complaint Form does not include sufficient information to permit the AAO to make that determination, the AAO may contact the Complainant to determine if the conduct about which s/he is complaining has a nexus to the complainant’s protected class status (e.g. comments, actions, visual representations, or by comparison of similarly situated individuals).

- C. All Complaint forms must be dated and the date of receipt recorded. The Complainant shall receive a record acknowledging receipt of the Complaint Form and notice that retaliation for filing a complaint will not be tolerated.
- D. If complaint is made orally, the AAO shall encourage Complainant to complete the Step Complaint Form in Complainant's own words.
- E. If Complainant refuses to reduce the complaint to writing, the AAO shall prepare a Complaint Form based on the oral reporting. In this instance, if Complainant does not have good cause for not filling out the complaint form in his or her own words (e.g. he or she refuses unreasonably to cooperate with the AAO or in investigation), the AAO shall be deemed the Complainant.
- F. If Complainant or any individual alleged to have engaged in discriminatory conduct ("Respondent") is not an employee of the State Agency or Authority, the State Agency or Authority shall assist the AAO to determine what entity employs that individual.

STEP 2– DETERMINE WHETHER INTERIM ACTION WARRANTED

- A. Identify key personnel at the State Agency or Authority, including Counsel with whom interaction will be necessary in order to identify and implement any immediate interim action that might be warranted and who will have access to the information necessary to commence an investigation into the complaint.
- B. If a Complainant or Respondent is not employed by the State Agency or Authority, determine what steps need to be taken during the pendency of the investigation with the State Agency or Authority
 - a. If the conduct alleged to have occurred could be criminal in nature, immediately discuss with GOER and State Agency or Authority Counsel whether the action should be referred to appropriate law enforcement for investigation prior to or in conjunction with the administrative investigation;
 - b. In matters that are not deemed to be criminal in nature, discuss/recommend with State Agency or Authority key personnel, any interim actions that must be taken immediately, if necessary.
 - c. Interim actions include but are not limited to :
 - i. Sending a letter to Respondent or other parties prohibiting retaliation, reassigning Respondent to a different location or

supervisor, separating Complainant and Respondent, or any other means deemed appropriate to provide a productive workplace while the investigation is ongoing. There shall be no step taken to move or reassign Complainant unless he or she requests such move or reassignment.

STEP 3– FILE NOTICE OF COMPLAINT AND COMPLAINT FORM

- A. A Notice of Complaint (NOC) form shall accompany each Complaint Form filed and each NOC shall contain:
 - a. Identity of the Complainant(s) and Respondent(s) and what entity employs each individual;
 - b. The basis (categories) of discrimination that the Complainant is alleging, based on the narrative in the Complaint Form and taking into account, but not necessarily copying the categories indicated by Complainant.
 - c. Any relevant complaint history (e.g. prior complaints filed by the same individual that relate to the one currently filed);
- B. The AAO shall send the NOC and Complaint Form and related materials provided by Complainant via email to State Agency Counsel; who shall acknowledge receipt promptly. State Authority AAOs will also be required to send the NOC and Complaint form to GOER and State Authority Counsel.
- C. If after reviewing the Complaint form, any additional material provided by Complainant, and follow-up questioning of the Complainant as warranted, the AAO determines that the complaint does not allege acts that violate State Agency or Authority Policies concerning discrimination in the workplace, the AAO may draft an NOC—Non 10 Step explaining why the complaint does not allege a discrimination policy violation and send to Agency Counsel. If Agency Counsel concurs, he/she shall send the NOC-Non 10 Step form to the Director for review and determination. If the Director concurs, he/she shall have a letter sent to Complainant indicating the reason the complaint does not fall within the 10 Step Investigation Process and provide the Complainant with information to assist in filing a complaint of discrimination, with the opportunity to re-file the complaint, and information about other possible avenues of complaint (e.g. workplace violence process, labor grievance)

STEP 4– DRAFT AN INVESTIGATION PLAN AND DOCUMENT REQUEST

- A. The AAO should prepare an investigation plan, which may include a request to State Agency to :
 - a. Implement an email hold and request review of emails for appropriate parties;
 - b. Review of relevant discrimination training records for Complainant, Respondent and any applicable witnesses;
 - c. Review of the personal history folder and employment history of the Complainant, Respondent and, as needed, any applicable witnesses or employees;
 - d. Request for and review of any information needed, including, but not limited to, video footage, time cards, sign in sheets, duty rosters, assignment sheets or logs, organizational charts, data concerning the breakdown of units by protected class categories, where such data is available, seating charts; policies, procedures, job descriptions, hiring materials and procedures and reasonable accommodation request files,
- B. State Agency Counsel shall assist the AAO in obtaining the requested documents and may suggest to the AAO any additional avenues or methods of investigation;
- C. Documents and materials shall be made available to the AAO as soon as possible and in no event later than one week after the AAO makes a request.
- D. All documents/materials provided by the State Agency shall be kept in the confidential investigation file.

STEP 5 – INTERVIEW COMPLAINANT (AS NEEDED)

- A. If after a careful review of the Complainant Form and related materials, the AAO understands the allegations fully, an intake interview with complainant may not be necessary. Upon approval, the AAO may elect not to conduct such an interview.
- B. If an intake interview with Complainant is needed, the AAO will ask questions that will encourage the complete story and ask non-leading questions to assist in getting the allegations and facts in the Complainant's

own words .

- C. The AAO shall explain that the investigation will be confidential to the extent possible and advise the Complainant that he/she and all other witnesses and staff will be advised to keep the investigation confidential by not discussing it, or by divulging they are witnesses. The prohibition against retaliation shall be reiterated in every interview during the course of the investigation.
- D. If Complainant has retained an attorney with regard to the complaint and is cooperating in the investigation, Complainant may request the presence of his or her attorney at the complaint intake interview. In this instance, both Complainant's attorney and State Agency Counsel will be permitted to be present, but not participate in the interview.

STEP 6– DOCUMENT REVIEW AND WITNESS INTERVIEWS

- A. All documents received to date are reviewed to the extent needed to formulate questions for witness interviews.
- B. All witness interviews should commence with a reminder that the investigation is confidential, to the extent permissible by law, and that the witness should not discuss the investigation or his/her participation in the investigation to anyone in the workplace. The AAO shall explain that retaliation is not permitted against anyone who participates in an investigation of a discrimination complaint.
- C. Witnesses should be asked non-leading questions and be encouraged to relay relevant information in their own words. If it becomes clear that the witness has information or allegations of discrimination that have not yet been made, such allegations may be investigated during the course of the investigation.
- D. The AAO shall document the name of each witness, their job title and work location, if different from the Complainant's and their relationship to the Complainant and/or Respondent. The AAO must document the location, date and time of each interview

STEP 7– RESPONDENT INTERROGATED BY LABOR RELATIONS UNIT (IF NECESSARY) OR INTERVIEWED

- A. If the AAO's investigation up until Step 7 indicates that a Respondent is not the potential subject of discipline, the AAO may, upon approval, elect to interview the Respondent.

- B. If an interrogation of a Respondent is required, notify the State Agency or Authority Labor Relations Unit (or other unit responsible for employee investigations) that there has been a discrimination complaint filed against Respondent and that Respondent is the potential subject of discipline. The AAO should brief the Labor Relations Unit and any other appropriate personnel, including Counsel if appropriate on the investigation findings to date.
- C. Interrogations will be conducted jointly by the State Agency or Authority Labor Relations (or other appropriate State Agency or Authority Unit) and the AAO. The applicable Agency or Authority Labor Relations Unit shall provide any contractually required notices to Respondent(s) and union representatives prior to and during the interrogation.
- D. All interrogations shall be recorded.
- E. If, during the investigation, a Respondent does not appear to be a potential subject of discipline, then the AAO may determine, upon approval, to interview the Respondent. If, during the course of the interview, the AAO learns of information that indicates that the Respondent may be the potential subject of discipline, then the AAO shall stop the interrogation, and schedule an interrogation.
- F. Any Respondent who does not have a right to notice and representation prior to questioning shall be interviewed by the AAO.

STEP 8 DRAFT INVESTIGATION REPORT

- A. The AAO is the finder of fact and shall write a Draft Investigation Report (DIR) which includes a factual analysis of whether the conduct alleged occurred, if any other conduct that may violate such policies may have occurred, and whether such conduct amounts to a violation of a State Agency or Authority policy prohibiting discrimination in the workplace.
- B. The DIR shall be in the form set forth by the GOER and include:
 - a. A list or appendix of all documents reviewed, along with a detailed summary of relevant documents;
 - b. A list of witnesses interviewed, along with a summary of the relevant portions of their interviews, as considered in the DIR;
 - c. An analysis of the credibility of the Complainant and witness accounts,

which may include a comparison to contemporaneous documents, other witness accounts, or other documentation reviewed in the course of the investigation.

- d. A summary of the Respondent's interrogation or interview, including an analysis of the Respondent's credibility;
 - e. A timeline of events;
 - f. A summary of prior relevant incidents, which may inform the analysis; and
 - g. A finding of (1) whether the allegations are substantiated, and (2) if they violate policies concerning discrimination in the workplace.
- C. A DIR may make a finding that policies other than those prohibiting discrimination in the workplace have been violated, but the overall finding of the discrimination complaint will be "unsubstantiated," if it is determined that no policy prohibiting discrimination has been violated.
- D. State Authority AAO's shall provide a copy of the DIR to GOER for review and approval.

STEP 9 - CONSULT AND SUBMIT REPORT TO COUNSEL

- A. GOER will provide a copy of the DIR to the State Agency or Authority Counsel (Counsel) for review together with a Draft Legal Recommendation Form (DLR). In cases where the DIR substantiates the complaint as a violation of State Agency or Authority policy concerning discrimination in the workplace, the DLR will include recommendations on the appropriate administrative action for the State Agency or Authority to pursue.
- B. Counsel will have the opportunity to review the DIR and DLR and provide comments and/or specific recommendations for further investigation to GOER. If Counsel provides comments or recommendations, GOER will review them and will determine if any further investigation is needed or if additional actions must be taken to complete the investigation, and finalize the DIR and the DLR.
- C. If the State Agency or Authority has no comments or recommendations on a DIR and DLR, in a complaint that is not substantiated, and no further action is warranted on the complaint, Counsel may return the signed DLR to GOER, and the investigation will be closed. The DIR and DLR will then become final.

- D. If the State Agency or Authority concurs with the DIR and DLR substantiating the complaint, the DIR and DLR will become final. If a State Agency or Authority wishes to have additional discussion regarding the proposed administrative action, Counsel may return the DLR with the rationale for an alternative recommendation for administrative action only. GOER will review the proposal and will make a final determination as to the administrative action to be taken. The DLR then becomes final.

STEP 10– RESOLUTION

- A. The Complainant and Respondent will receive notice of the final determination.
- B. If corrective action is warranted, Counsel and/ or Labor Relations representative shall follow up with GOER and provide documentation that the recommended administrative action is complete.
- C. If the State Agency or Authority wishes to settle or resolve any disciplinary matter for a different or reduced penalty than that set forth in the final DLR, it must get GOER's approval prior to agreeing to any such variance in penalty.

10 Step External Discrimination Complaint Investigation Process

INVESTIGATION PROTOCOL

All employment discrimination complaints filed with the New York State Division of Human Rights (“DHR”), the United States Equal Employment Opportunity Commission (“EEOC”), or any other administrative agency having jurisdiction over complaints of discrimination from an employee at a state agency or department over which the Governor has executive authority (“State Agency”) shall be investigated by an Equal Opportunity Officer, also known as an Affirmative Action Administrator (“AAO”) as assigned by the Governor’s Office of Employee Relations (“GOER”). State Agencies shall cooperate with all such investigations and provide access to such employees, resources, files and other materials necessary for the thorough investigation of each complaint.

All employment discrimination complaints filed with the DHR or EEOC in relation to employment at designated State Authorities shall be investigated in accordance with this 10 Step External Discrimination Complaint Process, by the designated AAO at each Authority.

TIMING

All investigations of complaints filed with the DHR and the EEOC must be fully completed, pursuant to the steps outlined herein, within 10 days of receipt of complaint. Accordingly, the investigation of these complaints must be given priority and handled expeditiously. If additional time is needed to complete an investigation, a request for an extension may be submitted to the State Agency’s or Authority’s Counsel.

However, if the Complainant previously filed a discrimination complaint with respect to the allegations contained in the external complaint, and those allegations were fully investigated, an additional investigation need not be conducted. Instead, the investigation file from the internal complaint shall be forwarded to the State Agency or Authority Counsel.

STEP 1- RECEIPT OF COMPLAINT AND NOTIFICATION

- A. Upon receipt of a DHR or EEOC complaint, the State Agency Counsel or designee shall immediately send a copy of the complaint via email to the GOER Anti Discrimination Investigations Division (“ADID”) to be assigned for investigation by an AAO.
- B. Upon the AAO's receipt of the assigned complaint, he/she shall do the following:
 - a. Immediately acknowledge receipt of the complaint with State Agency or Authority Counsel via email.
 - b. Open or update complaint file. If the complaint requires no agency action at this time, open an internal complaint file and investigate accordingly.

STEP 2 – CONDUCT CONFLICT CHECK

- A. Conduct an immediate review of the allegations with GOER’s ADID counsel.
- B. Identify whether there is any apparent conflict of interest for the State Agency or Authority Counsel in responding to the complaint, and if so, notify GOER’s ADID counsel and State Agency Counsel to assign alternate counsel to respond to the complaint;
- C. If individual respondents are identified in the DHR or EEOC complaint caption, review complaint with GOER’s ADID counsel to identify any potential conflicts for the State Agency or Authority.

STEP 3 – DETERMINE WHETHER INTERIM ACTION WARRANTED

- A. Identify key personnel at the State Agency or Authority, including Counsel with whom interaction will be necessary in order to identify and implement any immediate interim action that might be warranted and who will have access to the information necessary to commence an investigation into the complaint.

STEP 4 – FILE A NOTICE OF COMPLAINT AND AN INVESTIGATION PLAN/DOCUMENT REQUEST

- A. A Notice of Complaint (NOC) form shall accompany each Complaint and each NOC shall contain:
 - a. Identity of the Complainant(s) and Respondent(s) and what entity employs each individual;
 - b. The basis (categories) of discrimination that the Complainant is alleging, based on the boxes checked and narrative in the Complaint.
 - c. An explanation of any conflicts identified;
 - d. Any relevant complaint history (e.g. prior complaints filed by the same individual that relate to the one currently filed);
- B. Identify alleged wrongdoer(s) and any relevant witnesses for interviews.
- C. The AAO should prepare an investigation plan/document request, to State Agency Counsel, which may include:
 - a) A request to implement an email/litigation hold and to make emails for appropriate parties/witnesses available for the AAO to review;
 - b) Review of relevant discrimination training records for Complainant, Respondent and any applicable witnesses;
 - c) Review of the personal history folder and employment history of the Complainant, Respondent and, as needed, any applicable witnesses or employees;
 - d) Request for and review of any information needed, including, but not limited to, video footage, time cards, sign in sheets, duty rosters, assignment sheets or logs, organizational charts, data concerning the breakdown of units by protected class categories, where such data is available, seating charts; policies, procedures, job descriptions, hiring materials and procedures and reasonable accommodation request files
- D. The AAO shall send the NOC, external complaint, and the investigation plan/document request via email to State Agency Counsel; who shall acknowledge receipt promptly. State Authority AAOs will also be required to send the NOC, external complaint and the investigation plan/document request to GOER and State Authority Counsel.

STEP 5 - INTERVIEW COMPLAINANT (AS NEEDED)

- A. Interview the Complainant only if the complaint is unclear or if it is otherwise necessary to gather additional information in order to respond to the allegations in the complaint.

STEP 6 – DOCUMENT REVIEW AND WITNESS INTERVIEWS

- A. All documents received to date are reviewed to the extent needed to formulate questions for witness interviews.
- B. All witness interviews should commence with a reminder that the investigation is confidential, to the extent permissible by law, and that the witness should not discuss the investigation or his/her participation in the investigation to anyone in the workplace. The AAO shall explain that retaliation is not permitted against anyone who participates in an investigation of a discrimination complaint.
- C. Witnesses should be asked non-leading questions and be encouraged to relay relevant information in their own words.
- D. The AAO shall document the name of each witness, their job title and work location, if different from the Complainant's and their relationship to the Complainant and/or Respondent. The AAO must document the location, date and time of each interview.

STEP 7 - RESPONDENT INTERROGATED OR INTERVIEWED BY LABOR RELATIONS UNIT (IF NECESSARY)

- A. If the DHR or EEOC complaint has been previously investigated or there is no individual Respondent identified in the DHR or EEOC complaint, Step 7 may be unnecessary.
- B. If the AAO's investigation up until Step 7 indicates that a Respondent is not the potential subject of discipline, the AAO may, upon approval, elect to interview a Respondent.
- C. If an interrogation of a Respondent is required, notify the State Agency or Authority Labor Relations Unit (or other unit responsible for employee investigations) that there has been an external discrimination complaint filed with regard to Respondent and that Respondent may be the potential subject of discipline. The AAO should brief the Labor Relations Unit and any other

appropriate personnel, including Counsel if appropriate on the investigation findings to date.

- D. Interrogations will be conducted jointly by the State Agency or Authority Labor Relations (or other appropriate State Agency or Authority Unit) and the AAO. The applicable Agency or Authority Labor Relations Unit shall provide any contractually required notices to Respondent(s) and union representatives prior to and during the interrogation.
- E. All interrogations shall be recorded.
- F. If, during the investigation, a Respondent does not appear to be a potential subject of discipline, then the AAO may determine, upon approval, to interview the Respondent. If, during the course of the interview, the AAO learns of information that indicates that the Respondent may be the potential subject of discipline, then the AAO shall stop the interrogation, and schedule an interrogation.
- G. Any Respondent who does not have a right to notice and representation prior to questioning shall be interviewed by the AAO.

STEP 8 – DRAFT INVESTIGATION REPORT

- A. The AAO shall write a Draft Investigation Report (DIR) which includes factual responses to all allegations set forth in the complaint and an analysis of whether the conduct alleged occurred.
 - a. If the allegations set forth in the complaint are untrue, the DIR should so state.
 - b. If alleged conduct occurred but there is a legitimate, non-discriminatory reason for the conduct/action taken, such information shall be included in the DIR.
- B. The DIR shall be in the form set forth by the GOER and include:
 - a. A list or appendix of all documents reviewed, along with a detailed summary of relevant documents;
 - b. A list of witnesses interviewed, along with a summary of the relevant portions of their interviews, as considered in the DIR;
 - c. An analysis of the credibility of the Complainant's allegations and witness accounts, which may include a comparison to contemporaneous documents, other witness accounts, or other documentation reviewed in

the course of the investigation.

- d. A summary of the Respondent's interrogation or interview, including an analysis of the Respondent's credibility;
- e. A timeline of events (if necessary); and
- f. A summary of prior relevant incidents, which may inform the analysis.

C. State Authority AAO's shall provide a copy of the DIR to GOER for review.

STEP 9 - SUBMIT REPORT TO STATE AGENCY AND GOER's ADID COUNSEL

- A. Provide DIR to State Agency and GOER's ADID Counsel for review.
- B. Brief State Agency Counsel on the content of the report, discuss whether additional investigation is needed (e.g., additional interviews or document review), and conduct such further steps, if necessary.
- C. Provide State Agency Counsel with the entire investigation file and provide support to State Agency Counsel as requested.

STEP 10 – DHR OR EEOC ADMINISTRATIVE PROCESS

- A. State agency or Authority Counsel shall draft a position statement (if required by DHR or EEOC). Any such position statement must be sent to GOER's ADID within 10 days of filing.
- B. State Agency or Authority Counsel shall provide all communications to and from the DHR or EEOC to GOER's ADID.
- C. State Agency or Authority Counsel shall provide the DHR or EEOC determination to GOER ADID. If the DHR Determination is one of "No Probable Cause," is dismissed for administrative convenience, or is otherwise terminated without further administrative proceedings at the DHR, the GOER's ADID file shall be closed. If the EEOC issues a Dismissal and Notice of Rights, the GOER's ADID file shall be closed.
- D. To the extent that there are further administrative proceedings at the DHR or EEOC, Agency or Authority Counsel shall keep GOER's ADID informed of each step of the proceeding through its conclusion.

Instructions for Complaints Filed in State or Federal Court

INSTRUCTIONS

- A. When an action, the basis of which is discrimination on the basis of protected class status, is commenced against a State Agency or Authority in State or Federal court, the State Agency or Authority's Counsel shall provide the Summons and Complaint to GOER ADID.

- B. If an investigation has been previously conducted with respect to the allegations at issue in the action, the AAO shall provide State Agency or Authority Counsel with the entire investigation file.

- C. Further, AAOs will perform investigatory functions only as directed by GOER ADID, in consultation with State Agency or Authority Counsel and the Office of the Attorney General. If appropriate, AAOs may be directed to perform some or all of the investigative process steps set forth in the document entitled "10 Step External Administrative Complaint Investigation Process."



DRAFT INVESTIGATION REPORT

PRIVILEGED AND CONFIDENTIAL/REQUEST FOR LEGAL ADVICE

To: [Anti Discrimination Investigations Division Supervisor/Counsel]

From: [AAO Name, Title]

Date: [Mandatory]

Re: Complainant Full Name v. Respondent Full Name, Claim of Discrimination Based upon [Protected Class or Retaliation]; State Agency or Agencies Involved

INTRODUCTION

On [date of receipt of complaint], [Complainant's Full Name], [Complainant's Full Title] ("Complainant"), filed a complaint of discrimination against [Respondent's Full Name], [Respondent's Full Title], ("Respondent"), alleging that [very brief summary of factual allegation and nexus to protected class]. *If the Complainant is alleging discrimination based upon race, color, religion, or national origin, please include here how the complainant identifies and how the respondent identifies.*

INTERIM ACTION TAKEN

Describe what action was taken, when it was taken, who made the decision, if the respondent was suspended without pay or assigned to work from home, what date it started, and how the interim action provided corrective action. If action involves having changed complainant's work station or any other work condition, please document that it was upon complainant's request.

PRIOR RELEVANT INCIDENTS

It is important that in any instance where a complaint is substantiated, you include information on conduct that was the same or similar. Please summarize any prior complaints involving either complainant or respondent, noting whether the allegations were substantiated or not and emphasizing those with similarities to the instant complaint/investigation.

DOCUMENTS REVIEWED

It is MANDATORY to check and include relevant training records for complainant, respondent and any relevant witnesses;

Always refer to the applicable section of the anti discrimination related policy applicable to the complaint investigation;

If a complaint is to be substantiated and administrative action is to be recommended, it is critical to include the respondent's entire history of employment, including years of service with employer, performance evaluations, counseling, NODs, awards, etc.

In addition to above, please list and briefly describe any documents reviewed that have information relevant to the allegations/investigation. If the agency has an organizational chart of the unit or division that would be helpful, get it, review it and use it as an exhibit to the DIR.

INTERVIEW SUMMARIES

Please summarize each interview/interrogation you conducted, as is relevant to the allegations under investigation. The first paragraph of each interview summary should include the date and location of the interview and basic information about the individual, including salary grade and bargaining unit, and the shift they work, if relevant. Do not include quotes unless the quote is exact and is critical to the analysis – this is important where, for example, a derogatory phrase is used.

For complainants and respondents, please include when they began employment with the Agency. Please also include the self-identified class to which individual belongs as is relevant. For example, if discrimination based on national origin is alleged, include individual's nation of origin.

If credibility issues arise during the course of a particular interview, the AAO should include it during the witness interview summary

ANALYSIS

*This section should not simply be a summary of the allegations and interviews, but a full, thoughtful synthesis of all information gathered in the investigation toward two questions: (1) What actually happened?, and (2) Did the conduct violate policy concerning **discrimination** in the workplace?*

Credibility analyses can be included here or, depending on the case, can be included in the individuals' interview summaries. Where it is determined that an individual is credible or not credible, please explain the basis for such a determination.

**Please determine whether conduct violated POLICY. Do not use legal standards or analyze whether the conduct violated law.*

FINDINGS

Please briefly and simply state what is determined to have occurred and whether respondent (or anyone else) was found to have violated the State's policies regarding discrimination in the workplace. This should not be the analysis or the explanation of why such a determination was made, but a simple reporting of the determination.

RECOMMENDATION

It is recommended that [administrative action/no further action] be taken.



Governor's Office of Employee Relations
 Anti Discrimination Investigations Division
Empire State Plaza
Agency Building 2
Albany, New York 12223
antidiscrimination@goer.ny.gov

New York State Employee Discrimination Complaint Form

Instructions: Use this form to file a claim of discrimination based on race, color, national origin, creed/religion, age, disability, military status, arrest/criminal conviction record, marital/familial status, predisposing genetic characteristics, pregnancy and related conditions, domestic violence victim status, gender/sex, sexual harassment, sexual orientation, gender identity, and/or retaliation.

Complete and return this form to the **Governor's Office of Employee Relations, Anti Discrimination Investigations Division**

Section 1: Complainant Information

Full Name

Preferred Email Address (for complaint related communications)

Agency/Employer **Title/Business Unit/Facility**

Work Location/Address **Work Schedule (days/hours)**

Home Address

Work Phone #

Personal Phone #

Section 2: Supervisory Information

Immediate Supervisor Name **Title**

Work Location/Address **Work Phone #**

2nd Level Supervisor Name **Title**

Work Location/Address **Work Phone #**



Section 3: Details of Claim

1. Your claim of discrimination is based upon (check all that apply):

- | | | | |
|--|--|---|---|
| <input type="checkbox"/> Race | <input type="checkbox"/> Age | <input type="checkbox"/> Marital/Familial Status | <input type="checkbox"/> Gender/Sex |
| <input type="checkbox"/> Color | <input type="checkbox"/> Disability | <input type="checkbox"/> Predisposing Genetic Characteristics | <input type="checkbox"/> Sexual Harassment |
| <input type="checkbox"/> National Origin | <input type="checkbox"/> Military Status | <input type="checkbox"/> Pregnancy and Related Conditions | <input type="checkbox"/> Sexual Orientation |
| <input type="checkbox"/> Creed/Religion | <input type="checkbox"/> Arrest/Criminal Conviction Record | <input type="checkbox"/> Domestic Violence Victim Status | <input type="checkbox"/> Gender Identity |
| | | | <input type="checkbox"/> Retaliation (for having engaged in a protected activity) |

2. Your claim of discrimination is made against:

Name 1 **Title**

Agency **Facility/Work Location** **Work Phone**

Relationship to you: Supervisor Co-worker Subordinate Other → Please Specify:

Name 2 **Title**

Agency **Facility/Work Location** **Work Phone**

Relationship to you: Supervisor Co-worker Subordinate Other → Please Specify:

3. Date(s) discrimination occurred:

Is the discrimination continuing?

Yes No

4. Please describe the alleged discriminatory conduct and the reasons the conduct is discriminatory. Please include the names of witnesses, if any, and attach supporting documentation, if available. Attach additional pages, if necessary.

5. Have you filed a claim regarding this complaint with a federal, state, or local government agency?

Yes No

6. Have you instituted a legal suit or court action regarding this complaint?

Yes No

7. Have you hired an attorney with respect to the allegations in the complaint?

Yes No

8. This complaint form was completed by:

- Complainant
- Supervisor/Manager
- Affirmative Action Administrator

Signature

Date

Return the completed form (by email or mail) to the Governor's Office of Employee Relations, Anti Discrimination Investigations Division:

**Empire State Plaza
Agency Building 2
Albany, New York 12223**
antidiscrimination@goer.ny.gov



Governor's Office of Employee Relations

Anti Discrimination Investigations Division ("ADID")

Draft Legal Recommendation ("DLR")

PRIVILEGED AND CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION/ATTORNEY WORK PRODUCT

Complete and return this form to:

Email:

ADID Date

ADID Complaint Number

Complainant(s)

Respondent(s)

Agency

Section 1: Findings

I have reviewed the attached Draft Investigation Report ("DIR"), and I:

- A) Concur with the factual findings and analysis set forth in the DIR, and I agree that Complaint:
 - Is unsubstantiated as a violation of the policies set forth in the NYS EEO Handbook and complaint should be closed.
 - Is substantiated as a violation of the policies set forth in the NYS EEO Handbook (Go to Section 2)

OR

- B) Have the following comments and recommend the following additional steps be taken to investigatedthe complaint.

Please include specific suggestions and recommendations concerning how the allegations may be more thoroughly investigated:

Section 2: Recommendation for Administrative Action

A) The Complaint is substantiated as a violation of the EEO Handbook policy concerning discrimination on the basis of:

Race
Retaliation
Sexual Harassment
Sexual Orientation

B) ADID recommends administrative action consisting of:

C) Agency or Authority Counsel:

- A) Concurs with the administrative action proposed by ADID and will forward the recommendation to the Agency Bureau of Labor Relations or appropriate management personnel for action.

OR

- B) Recommends alternative administrative action for the following reason(s):



Governor's Office of Employee Relations

Anti Discrimination Investigations Division ("ADID")

Draft Legal Recommendation

PRIVILEGED AND CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION/ATTORNEY WORK PRODUCT

Section 3: Implementation of Administrative Action

Agency or Authority Counsel Agrees:

- A) To ensure that appropriate agency or authority personnel will contact ADID on or before to confirm that administrative action is completed.
- B) No Notice of Discipline or other corrective action set forth in this DLR shall be resolved or settled for a different or reduced penalty without the approval of ADID.

Signature

Date



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Thread

Lindsey Boylan @LindseyBoylan

Most toxic team environment? Working for @NYGovCuomo.

Jerry Avenaim @avenaim · Dec 5, 2020
Name the worse job you've ever had.

1:00 PM · Dec 5, 2020 · Twitter for iPhone

1,252 Retweets 311 Quote Tweets 9,293 Likes



Lindsey Boylan @LindseyBoylan · Dec 5, 2020
Replying to @LindseyBoylan
I've had many jobs. Waitressing at @Friendlys as a teenager was an infinitely more respectful environment. Even when I had bad customers who tipped poorly.

24 54 884

Lindsey Boylan @LindseyBoylan · Dec 5, 2020
If people weren't deathly afraid of him, they'd be saying the same thing and you'd already know the stories.

26 85 1K

Lindsey Boylan @LindseyBoylan · Dec 5, 2020
Seriously, the messages and texts I receive when I speak the truth about this...it's a whole book of people who have been harmed.

9 53 860

Lindsey Boylan @LindseyBoylan · Dec 5, 2020
Don't be surprised that it's the same small group of white people sitting alongside him at every presser. The same group that he has had by him the whole time, doing his dirty work. If you're not one of those handful, your life working for him is endlessly dispiriting.

13 70 914

Lindsey Boylan @LindseyBoylan · Dec 5, 2020
I tried to quit three times before it stuck. I've worked hard my whole life. Hustled - fake it till you make it style.

That environment is beyond toxic. I'm still unwrapping it years later in therapy!

20 39 776

Lindsey Boylan @LindseyBoylan · Dec 5, 2020
And I'm a privileged person. I could opt out and eventually did. I shudder to think what happens to others. It pisses me off so much.

7 26 672

Lindsey Boylan @LindseyBoylan · Dec 5, 2020
Yes I did not sign whatever they told me to sign when I left. Nope!

29 30 936

Marcella L. Simonetta @marcellalaluna · Dec 5, 2020

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Lindsey Boylan @LindseyBoylan
Mom. Progressive 4 a Livable City. Fm & Urban Planner. C. Manhattan Boroug

Andrew Cuomo @NYGovCuomo
Father, fisherman, n enthusiast, 56th Go

Jerry Avenaim @avenaim
Award winning pho Fashion, Celebrity, -Chicago Native -Lc Mental Health Advc

What's happening

Entertainment · LIVE
Happy birthday, Tom Holla
Trending with Tom Holland

Music · Trending
JUST ANNOUNCED
17K Tweets

Trending in United States
HELP THE BEAR
People react to a viral TikTok fearlessly pushing a bear aw before running inside to pro 4,843 Tweets

COVID-19 · LIVE
New York: COVID-19: New updates for New York

Holidays · 1 hour ago
Pride Month celebrations t across the world
Trending with #pride LGBTQ

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Lindsey Boylan @LindseyBoylan · Dec 8, 2020
Yesterday was an extremely weird day, responding to the news world finally waking up about the whispers they have heard about @NYGovCuomo over the years. It's worse than the gossip, by far.

My hope is he is on notice and won't harm more people, especially women.
22 174 1.1K

Lindsey Boylan @LindseyBoylan · Dec 8, 2020
I have very important work to do getting elected so I can help my city recover and my people be heard.

I will not be spending my days responding to the trauma men like @NYGovCuomo have caused every day in power.

Instead I'm getting back to my work.
4 20 265

Lindsey Boylan @LindseyBoylan · Dec 8, 2020
But, you better believe I'll be listening to what I hear out there, @NYGovCuomo. And if other women decide to come forward I will back them up and elaborate.

For now, I am getting back to my important work that made me willing to live in hell so long working for you.
5 40 335

Lindsey Boylan @LindseyBoylan · Dec 8, 2020
When we let our abusers, or onlookers, dictate the conversation we lose. I will not be stopped. I will not be deterred. I will not be minimized and truncated in history as someone that was victimized by a famous and powerful man the world kept elevating.

I will fight.
20 55 442

Replies

D'Abbey-Bonacci @lordgrand7 · Dec 8, 2020
Replying to @LindseyBoylan and @NYGovCuomo
I hope things go well for you @LindseyBoylan. There are women across the globe that have suffered trauma from powerful men. Sadly, it's an enduring reality for too many women. I don't know your story, but I'm acutely aware what trauma inflicted by powerful men can do. Stay strong

1 2 27

Sandra Rios @sabulosaa · Dec 8, 2020
Replying to @LindseyBoylan and @NYGovCuomo
?????? unbelievable #StrongerTogether

3

Roger @Roger2dot0 · Dec 8, 2020
Replying to @LindseyBoylan @es_indivisible and @NYGovCuomo
What are you talkin about?

1

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Lindsey Boylan @LindseyBoylan
Mom. Progressive M
4 a Livable City. Fmi
& Urban Planner. C
Manhattan Borough

Andrew Cuomo @NYGovCuomo
Father, fisherman, n
enthusiast, 56th Go

What's happening

Music · LIVE

It's Travis Scott's birthday

Trending with Travis Scott, Astro

Trending in United States

BOYFRIEND REVEAL

4,131 Tweets

Trending in United States

Josh Duggar

Former reality television star
arrested by federal agents in
Thursday, TMZ reports

Trending with 19 Kids and Count

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COVID-19: News and updat
New York

The New York Times · Ye:
'Disaster Girl' is 21 now an
made \$500,000 off the me

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Lindsey Boylan @LindseyBoylan

My first experience of workplace sexual harassment was when my mom got her first real office job after graduating from college when I was in high school.

She was so excited to be taken "seriously." Her bossed isolated her and kissed her. She never had that type of job again.

8:49 AM · Dec 13, 2020 · Twitter for iPhone

1,085 Retweets 375 Quote Tweets 7,614 Likes



Lindsey Boylan @LindseyBoylan · Dec 13, 2020
Replying to @LindseyBoylan

It was then how I learned how hard it is for women. How hard this world can be for us when we are trying to be taken seriously and help our community. How easily jerks can destroy the lives of women.

58

327

3.7K



Lindsey Boylan @LindseyBoylan · Dec 13, 2020

And I promised myself I would never let those kind of guys win. I would work hard my whole life to put myself in positions of power to change things. To end the violence & corruption. Give voice to the voiceless.

I am not stopping. I refuse. I will never give up.

110

378

3.8K



Lindsey Boylan @LindseyBoylan · Dec 13, 2020

Yes, @NYGovCuomo sexually harassed me for years. Many saw it, and watched.

I could never anticipate what to expect: would I be grilled on my work (which was very good) or harassed about my looks. Or would it be both in the same conversation? This was the way for years.

2.5K

13.8K

27.6K



Lindsey Boylan @LindseyBoylan · Dec 13, 2020

Not knowing what to expect what's the most upsetting part aside from knowing that no one would do a damn thing even when they saw it.

No one.

And I *know* I am not the only woman.

203

1K

7.5K



Lindsey Boylan @LindseyBoylan · Dec 13, 2020

I'm angry to be put in this situation at all. That because I am a woman, I can work hard my whole life to better myself and help others and yet still fall victim as countless women over generations have. Mostly silently.

I hate that some men, like @NYGovCuomo abuse their power.

714

2K

11.1K



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Lindsey Boylan @LindseyBoylan
Mom. Progressive M
4 a Livable City. Fm
& Urban Planner. C
Manhattan Borough

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World news · Yesterday

**Chinese government says t
first human case of H10N3
flu is unlikely to spread**

Trending in United States

Concorde
1,700 Tweets

Music · Trending

Olamide
24.2K Tweets

COVID-19 · LIVE

**New York: COVID-19: New
updates for New York**

BuzzFeed News · Last nig
**Tulsa Raised Millions of Do
To Memorialize The 1921
Massacre. Not Much Went
The Black Community.**

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Lindsey Boylan

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About

My story of working with Governor Cuomo



Lindsey Boylan Feb 24 · 8 min read

“Let’s play strip poker.”

I should have been shocked by the Governor’s crude comment, but I wasn’t.

We were flying home from an October 2017 event in Western New York on his taxpayer-funded jet. He was seated facing me, so close our knees almost touched. His press aide was to my right and a state trooper behind us.

“That’s exactly what I was thinking,” I responded sarcastically and awkwardly. I tried to play it cool. But in that moment, I realized just how acquiescent I had become.

Governor Andrew Cuomo has created a culture within his administration where sexual harassment and bullying is so pervasive that it is not only condoned but expected. His inappropriate behavior toward women was an affirmation that he liked you, that you must be doing something right. He used intimidation to silence his critics. And if you dared to speak up, you would face consequences.

That’s why I panicked on the morning of December 13.

While enjoying a weekend with my husband and six-year-old daughter, I spontaneously decided to share a small part of the truth I had hidden for so long in shame and never planned to disclose. The night before, a former Cuomo staffer confided to me that she,



too, had been the subject of the Governor's workplace harassment. Her story mirrored my own. Seeing his name floated as a potential candidate for U.S. Attorney General — the highest law enforcement official in the land — set me off.

In a few tweets, I told the world what a few close friends, family members and my therapist had known for years: Andrew Cuomo abused his power as Governor to sexually harass me, just as he had done with so many other women.

As messages from journalists buzzed on my phone, I laid in bed unable to move. I finally had decided to speak up, but at what cost?

Parts of a supposed confidential personnel file (which I've never seen) were leaked to the media in an effort to smear me. The Governor's loyalists called around town, asking about me.

Last week, Assemblymember Ron Kim spoke out publicly about the intimidation and abuse he has faced from Governor Cuomo and his aides. As Mayor de Blasio remarked, "the bullying is nothing new." There are many more of us, but most are too afraid to speak up.

I'm compelled to tell my story because no woman should feel forced to hide their experiences of workplace intimidation, harassment and humiliation — not by the Governor or anyone else.

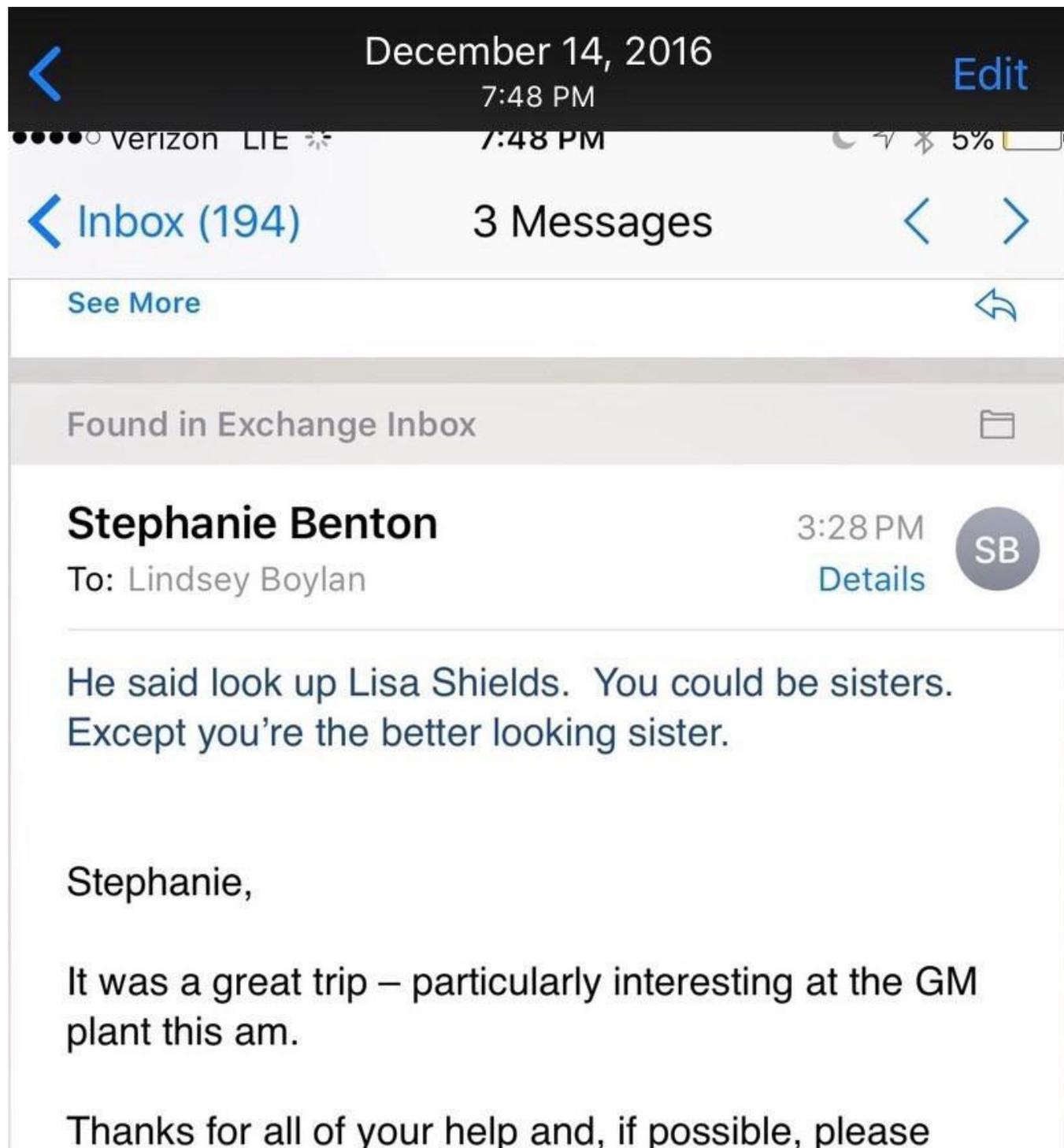
I expect the Governor and his top aides will attempt to further disparage me, just as they've done with Assemblymember Kim. They'd lose their jobs if they didn't protect him. That's how his administration works. I know because I was a part of it.

I joined state government in 2015 as a Vice President at Empire State Development. I was quickly promoted to Chief of Staff at the state economic development agency. The news of my appointment prompted a warning from a friend who served as an executive with an influential civic engagement organization: "Be careful around the Governor."

My first encounter with the Governor came at a January 6, 2016, event at Madison Square Garden to promote the new Pennsylvania Station-Farley Complex project. After his speech, he stopped to talk to me. I was new on the job and surprised by how much attention he paid me.

My boss soon informed me that the Governor had a “crush” on me. It was an uncomfortable but all-too-familiar feeling: the struggle to be taken seriously by a powerful man who tied my worth to my body and my appearance.

Stephanie Benton, Director of the Governor’s Offices, told me in an email on December 14, 2016 that the Governor suggested I look up images of Lisa Shields — his rumored former girlfriend — because “we could be sisters” and I was “the better looking sister.” The Governor began calling me “Lisa” in front of colleagues. It was degrading.



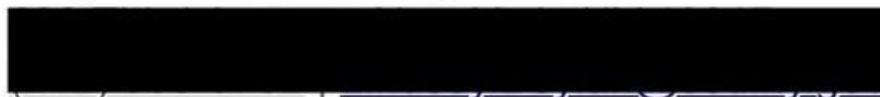
relay my thanks to the Governor for letting me join again.

Hope to see you one of these days after work

All my best,
Linds

Lindsey Boylan
Chief of Staff

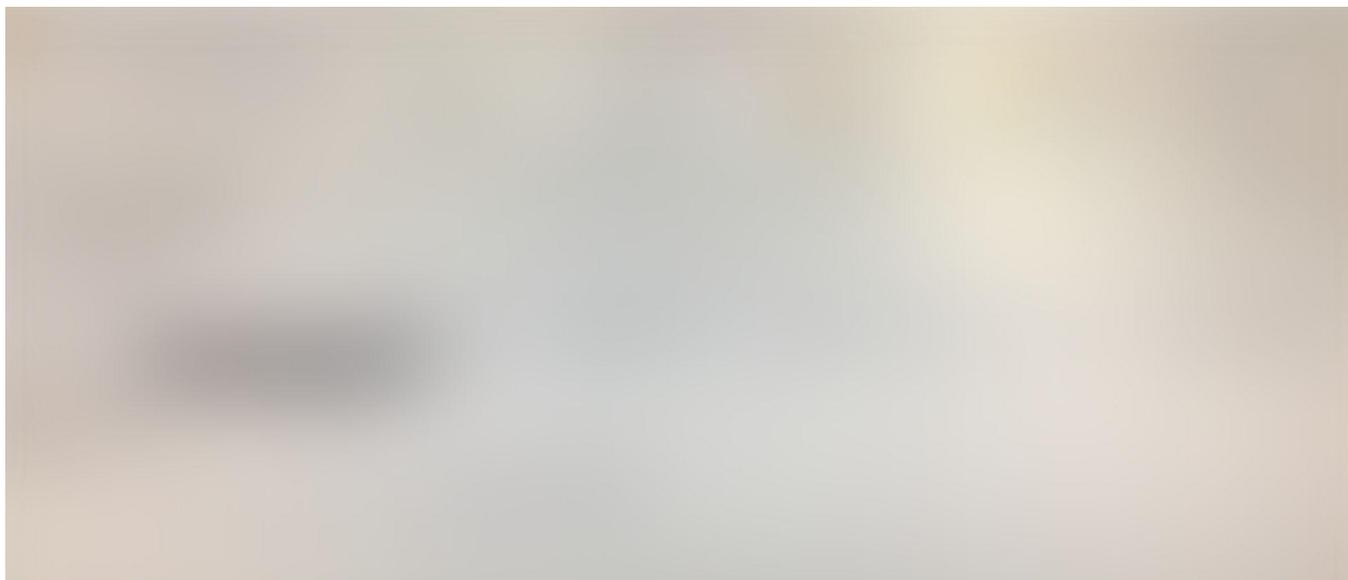
Empire State Development



www.esd.ny.gov

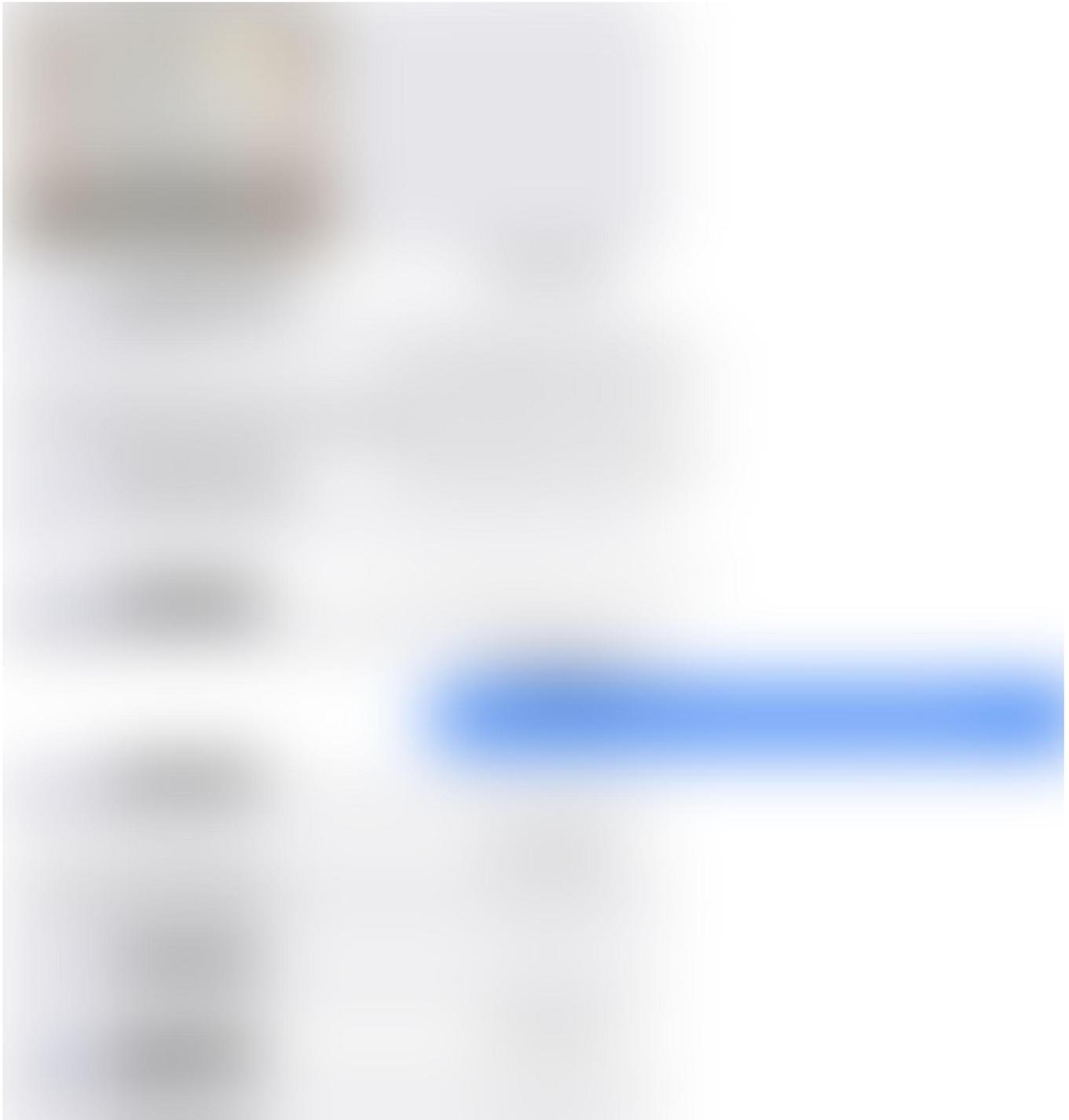
The Governor's staff was directed to tell me I looked like his rumored former girlfriend.

I had complained to friends that the Governor would go out of his way to touch me on my lower back, arms and legs. His senior staff began keeping tabs on my whereabouts. "He is a sexist pig and you should avoid being alone with him!" my mother texted me on November 4, 2016.





The Governor's senior staff member emailed my supervisor about my whereabouts.



I shared my concern with my mother at the time.

The Governor's behavior made me nervous, but I didn't truly fear him until December 2016. Senior State employees gathered at the Empire State Plaza Convention Center in Albany to celebrate the holidays and our year's work. After his remarks, the Governor spotted me in a room filled with hundreds of people waiting to shake his hand. As he began to approach me, I excused myself from coworkers and moved upstairs to a more distant area of the party.

Minutes later, I received a call from an unlisted number. It was the Governor's body person. He told me to come to the Capitol because the Governor wanted to see me.

I made my way through the underground connection that linked the Plaza to the Capitol. As the black wrought-iron elevator took me to the second floor, I called my husband. I told him I was afraid of what might happen. That was unlike me. I was never afraid.

I exited the elevator to see the body person waiting for me. He walked me down the Hall of Governors. "Are there cameras here?" I asked him. I remembered my mother's text warning the month before. I worried that I would be left alone with the Governor. I didn't know why I was there. Or how it would end.

I was escorted into the Governor's office, past the desks of administrative assistants and into a room with a large table and historical artifacts. The door closed behind me. It was my first time in his Albany office. The Governor entered the room from another door. We were alone.

As he showed me around, I tried to maintain my distance. He paused at one point and smirked as he showed off a cigar box. He told me that President Clinton had given it to him while he served as the Secretary of Housing and Urban Development. The two-decade old reference to President Clinton's affair with Monica Lewinsky was not lost on me.

The Governor must have sensed my fear because he finally let me out of the office. I tried to rationalize this incident in my head. At least he didn't touch me. That made me

feel safer.

His inappropriate gestures became more frequent. He gave roses to female staffers on Valentine's Day and arranged to have one delivered to me, the only one on my floor. A signed photograph of the Governor appeared in my closed-door office while I was out. These were not-so-subtle reminders of the Governor exploiting the power dynamic with the women around him.

In 2018, I was promoted to Deputy Secretary for Economic Development and Special Advisor to the Governor. I initially turned the job down — not because I didn't want the responsibility or work but because I didn't want to be near him. I finally accepted the position at the Governor's insistence with one requirement — I would keep my old agency office and remain on a separate floor from him and his inner circle.

The Governor's pervasive harassment extended beyond just me. He made unflattering comments about the weight of female colleagues. He ridiculed them about their romantic relationships and significant others. He said the reasons that men get women were "money and power."

I tried to excuse his behavior. I told myself "it's only words." But that changed after a one-on-one briefing with the Governor to update him on economic and infrastructure projects. We were in his New York City office on Third Avenue. As I got up to leave and walk toward an open door, he stepped in front of me and kissed me on the lips. I was in shock, but I kept walking.

I left past the desk of Stephanie Benton. I was scared she had seen the kiss. The idea that someone might think I held my high-ranking position because of the Governor's "crush" on me was more demeaning than the kiss itself.

After that, my fears worsened. I came to work nauseous every day. My relationship with his senior team — mostly women — grew hostile after I started speaking up for myself. I was reprimanded and told to get in line by his top aides, but I could no longer ignore it.

On September 26, 2018, I sent a mass email informing staff members of my resignation.

There is a part of me that will never forgive myself for being a victim for so long, for trying to ignore behavior that I knew was wrong. The Governor exploited my

weaknesses, my desire to do good work and to be respected. I was made to believe this was the world I needed to survive in.

It was all so normalized — particularly by Melissa DeRosa and other top women around him — that only now do I realize how insidious his abuse was.

After my tweets about the Governor in December, two women reached out to me with their own experiences. One described how she lived in constant fear, scared of what would happen to her if she rejected the Governor's advances. The other said she was instructed by the Governor to warn staff members who upset him that their jobs could be at risk. Both told me they are too afraid to speak out.

I know some will brush off my experience as trivial. We are accustomed to powerful men behaving badly when no one is watching. But what does it say about us when everyone is watching and no one says a thing?

Telling my truth isn't about seeking revenge. I was proud to work in the Cuomo Administration. For so long I had looked up to the Governor. But his abusive behavior needs to stop.

I am speaking up because I have the privilege to do so when many others do not. No one should have to be defined or destroyed by this kind of sexual harassment. Nor should they be revictimized if they decide to speak their own truth.

I hope that sharing my story will clear the path for other women to do the same.



About Help Legal

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Volforte, Michael (GOER)

From: Lauren Grasso [REDACTED]@exec.ny.gov>
Sent: Monday, December 14, 2020 10:52 AM
To: [REDACTED] (CHAMBER)
Cc: Moore, Harold (CHAMBER); Volforte, Michael (GOER)
Subject: RE: Training history

+Mike – can you please have someone from GOER pull from SLMS? I'm tied up with electoral college today

From: [REDACTED]@exec.ny.gov>
Sent: Monday, December 14, 2020 10:40 AM
To: Lauren Grasso <[REDACTED]@exec.ny.gov>
Cc: Harold Moore <[REDACTED]@exec.ny.gov>
Subject: FW: Training history
Importance: High

Hi Lauren –

Are you able to provide this?

From: [REDACTED] (ESD) [REDACTED]@esd.ny.gov>
Sent: Monday, December 14, 2020 10:34 AM
To: [REDACTED]@exec.ny.gov>
Subject: Training history
Importance: High

Good morning [REDACTED],

I need a complete training history transcript for former employee Lindsay Boylan ([REDACTED]) **ASAP**. Her account was moved from ESD to the Chamber Learning Environment back in 2018, so I don't have access to it anymore.



Human Resources Coordinator

Empire State Development

633 Third Avenue, New York, NY 10017

O: [REDACTED] | F: [REDACTED] | [REDACTED]@esd.ny.gov

www.esd.ny.gov



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restriction or sanction. Please immediately notify the sender by electronic mail or notify the System Administrator by telephone [REDACTED] or e-mail ([REDACTED]@esd.ny.gov) and delete the message. Thank you.

Volforte, Michael (GOER)

From: Volforte, Michael (GOER)
Sent: Monday, December 14, 2020 10:54 AM
To: Grasso, Lauren (CHAMBER)
Subject: Re: Training history

This is something my staff will have to do. Are you ok with that?

They are discreet but I have to have them do it.

Michael Volforte
Director
New York State
Governor's Office of Employee Relations

On Dec 14, 2020, at 10:52 AM, Lauren Grasso <[REDACTED]@exec.ny.gov> wrote:

+Mike – can you please have someone from GOER pull from SLMS? I'm tied up with electoral college today

From: [REDACTED]@exec.ny.gov
Sent: Monday, December 14, 2020 10:40 AM
To: Lauren Grasso <[REDACTED]@exec.ny.gov>
Cc: Harold Moore <[REDACTED]@exec.ny.gov>
Subject: FW: Training history

Importance: High

Hi Lauren –

Are you able to provide this?

From: [REDACTED] (ESD) <[REDACTED]@esd.ny.gov>
Sent: Monday, December 14, 2020 10:34 AM
To: [REDACTED]@exec.ny.gov
Subject: Training history

Importance: High

Good morning [REDACTED],

I need a complete training history transcript for former employee Lindsay Boylan ([REDACTED] **ASAP**). Her account was moved from ESD to the Chamber Learning Environment back in 2018, so I don't have access to it anymore.

[REDACTED]
<image001.jpg.secure>

Human Resources Coordinator

Empire State Development

633 Third Avenue, New York, NY 10017

O: [REDACTED] | F: [REDACTED] | [REDACTED]@esd.ny.gov

www.esd.ny.gov

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Volforte, Michael (GOER)

From: Volforte, Michael (GOER)
Sent: Monday, December 14, 2020 11:02 AM
To: Grasso, Lauren (CHAMBER)
Subject: RE: Training history

My training director is pulling so we were taking care of this.

From: Volforte, Michael (GOER)
Sent: Monday, December 14, 2020 10:54 AM
To: Grasso, Lauren (CHAMBER) <[REDACTED]@exec.ny.gov>
Subject: Re: Training history

This is something my staff will have to do. Are you ok with that?

They are discreet but I have to have them do it.

Michael Volforte
Director
New York State
Governor's Office of Employee Relations

On Dec 14, 2020, at 10:52 AM, Lauren Grasso <[REDACTED]@exec.ny.gov> wrote:

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From: [REDACTED]@exec.ny.gov>
Sent: Monday, December 14, 2020 10:40 AM
To: Lauren Grasso <[REDACTED]@exec.ny.gov>
Cc: Harold Moore <[REDACTED]@exec.ny.gov>
Subject: FW: Training history
Importance: High

Hi Lauren –

Are you able to provide this?

From: [REDACTED] (ESD) [REDACTED]@esd.ny.gov>
Sent: Monday, December 14, 2020 10:34 AM
To: [REDACTED]@exec.ny.gov>
Subject: Training history
Importance: High

Good morning [REDACTED],

I need a complete training history transcript for former employee Lindsay Boylan ([REDACTED]) **ASAP**. Her account was moved from ESD to the Chamber Learning Environment back in 2018, so I don't have access to it anymore.



<image001.jpg.secure>

Human Resources Coordinator

Empire State Development

633 Third Avenue, New York, NY 10017

O: [REDACTED] | F: [REDACTED] | [REDACTED]@esd.ny.gov

www.esd.ny.gov

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Volforte, Michael (GOER)

From: [REDACTED] (GOER)
Sent: Monday, December 14, 2020 11:22 AM
To: Volforte, Michael (GOER)
Subject: Boylan Learner Transcript
Attachments: L Boylan Learning Transcript.xlsx

Mike,
See attached.

[REDACTED]
Director

Governor's Office of Employee Relations
Workforce and Organizational Development
2 Empire State Plaza, 7th Floor, Albany, New York 12223
[REDACTED] | [REDACTED]@goer.ny.gov
www.goer.ny.gov

Learner	Title	Print Certificate	Type
Lindsey Boylan	New York State COVID-19 Response: Return to Work Training		*Online
Lindsey Boylan	Prevention of Workplace Violence (2019)		*Online
Lindsey Boylan	Sexual Harassment In the Workplace (2019)		*Online
Lindsey Boylan	Internal Controls (2019)		*Online
Lindsey Boylan	Fire Safety and Emergency Evacuation (2019)		*Online
Lindsey Boylan	NYS Right to Know (2019)		*Online
Lindsey Boylan	Information and Cyber Security Awareness (2019)		*Online
Lindsey Boylan	Ethics for NYS Employees (2019)		*Online
Lindsey Boylan	Equal Employment Opportunity: Rights and Responsibilities (2019)		*Online
Lindsey Boylan	Prevention of Workplace Violence (2018)		*Online
Lindsey Boylan	JCOPE Online Ethics Orientation		*Online
Lindsey Boylan	Project Sunlight Substantive Training		*Online
Lindsey Boylan	Supervisor's Guide to Reasonable Accommodation of Religious Observance or Practices		*Online
Lindsey Boylan	Supervisor's Guide to Reasonable Accommodation of Employees with Disabilities and Pregnancy-Related		*Online
Lindsey Boylan	Reasonable Accommodation for the Public (2018)		*Online
Lindsey Boylan	Information and Cyber Security Awareness (2018)		*Online
Lindsey Boylan	Sexual Harassment In the Workplace (2018)		*Online
Lindsey Boylan	NYS Right to Know (2018)		*Online
Lindsey Boylan	Internal Controls (2018)		*Online
Lindsey Boylan	Fire Safety and Emergency Evacuation (2018)		*Online
Lindsey Boylan	Ethics for NYS Employees (2018)		*Online
Lindsey Boylan	Equal Employment Opportunity: Rights and Responsibilities (2018)		*Online
Lindsey Boylan	Prevention of Workplace Violence (2017)		*Online
Lindsey Boylan	DOL UI Confidentiality Module II - 2017		*Online
Lindsey Boylan	DOL UI Confidentiality Module I - 2017		*Online
Lindsey Boylan	Reasonable Accommodation Series for Supervisors (2017)		*Online
Lindsey Boylan	Workplace Safety-480 Seconds		*Online
Lindsey Boylan	Information and Cyber Security Awareness (2017)		*Online
Lindsey Boylan	Equal Employment Opportunity: Rights and Responsibilities (2017)		*Online
Lindsey Boylan	Fire Safety and Emergency Evacuation (2017)		*Online
Lindsey Boylan	Sexual Harassment in the Workplace (2017)		*Online

Lindsey Boylan	NYS Right to Know (2017)		*Online
Lindsey Boylan	Internal Controls (2017)		*Online
Lindsey Boylan	Reasonable Accommodation Series for Supervisors (2016)	Print Certificate	*Online
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Lindsey Boylan	JCOPE Online Ethics Orientation		*Online
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Lindsey Boylan	Sexual Harassment in the Workplace (2015)	Print Certificate	*Online
Lindsey Boylan	Equal Employment Opportunity: Rights and Responsibilities (2015)	Print Certificate	*Online
Lindsey Boylan	ESD EEO Supplemental Training	Print Certificate	*Instructor-Led Classroom
Lindsey Boylan	ESD Ethics Supplemental Training	Print Certificate	*Instructor-Led Classroom
Lindsey Boylan	Internal Controls (2015)	Print Certificate	*Online
Lindsey Boylan	Cyber Security Information and Security Awareness (2015)	Print Certificate	*Online
Lindsey Boylan	Right to Know (2015)	Print Certificate	*Online

	Enrolled	2/7/2017	Drop
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	Completed	10/31/2015	
	Dropped	9/3/2015	
	Completed	9/2/2015	
	Completed	9/2/2015	
	Completed	9/2/2015	
	Completed	6/15/2015	
	Completed	6/15/2015	
	Completed	5/31/2015	
	Completed	5/31/2015	
	Completed	5/31/2015	

Volforte, Michael (GOER)

From: Volforte, Michael (GOER)
Sent: Monday, December 14, 2020 11:24 AM
To: Lauren Grasso; [REDACTED] (CHAMBER)
Cc: Moore, Harold (CHAMBER)
Subject: RE: Training history
Attachments: L Boylan Learning Transcript.xlsx

see attached.

From: Lauren Grasso <[REDACTED]@exec.ny.gov>
Sent: Monday, December 14, 2020 10:52 AM
To: [REDACTED] (CHAMBER) <[REDACTED]@exec.ny.gov>
Cc: Moore, Harold (CHAMBER) <[REDACTED]@exec.ny.gov>; Volforte, Michael (GOER) <[REDACTED]@goer.ny.gov>
Subject: RE: Training history

+Mike – can you please have someone from GOER pull from SLMS? I'm tied up with electoral college today

From: [REDACTED] <[REDACTED]@exec.ny.gov>
Sent: Monday, December 14, 2020 10:40 AM
To: Lauren Grasso <[REDACTED]@exec.ny.gov>
Cc: Harold Moore <[REDACTED]@exec.ny.gov>
Subject: FW: Training history
Importance: High

Hi Lauren –

Are you able to provide this?

From: [REDACTED] (ESD) <[REDACTED]@esd.ny.gov>
Sent: Monday, December 14, 2020 10:34 AM
To: [REDACTED] <[REDACTED]@exec.ny.gov>
Subject: Training history
Importance: High

Good morning [REDACTED]

I need a complete training history transcript for former employee Lindsay Boylan (ESD01537) **ASAP**. Her account was moved from ESD to the Chamber Learning Environment back in 2018, so I don't have access to it anymore.



Human Resources Coordinator

Empire State Development
633 Third Avenue, New York, NY 10017

O: [REDACTED] | [REDACTED] | [REDACTED]@esd.ny.gov

www.esd.ny.gov

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	Completed	6/15/2015	
	Completed	6/15/2015	
	Completed	5/31/2015	
	Completed	5/31/2015	
	Completed	5/31/2015	

Volforte, Michael (GOER)

From: Volforte, Michael (GOER)
Sent: Monday, December 14, 2020 11:24 AM
To: [REDACTED] (GOER)
Subject: RE: Boylan Learner Transcript

Thanks.

From: [REDACTED] (GOER) <[REDACTED]@goer.ny.gov>
Sent: Monday, December 14, 2020 11:22 AM
To: Volforte, Michael (GOER) <[REDACTED]@goer.ny.gov>
Subject: Boylan Learner Transcript

Mike,
See attached.

[REDACTED]
Director

Governor's Office of Employee Relations
Workforce and Organizational Development
2 Empire State Plaza, 7th Floor, Albany, New York 12223
[REDACTED] | [REDACTED]@goer.ny.gov
www.goer.ny.gov

Volforte, Michael (GOER)

From: Volforte, Michael (GOER)
Sent: Monday, December 14, 2020 12:05 PM
To: Grasso, Lauren (CHAMBER)
Subject: Re: Training history

No worries. Just sent.

Michael Volforte
Director
New York State
Governor's Office of Employee Relations

On Dec 14, 2020, at 12:03 PM, Lauren Grasso <[REDACTED]@exec.ny.gov> wrote:

Yes I'm ok with that
Sorry today was wild

From: Volforte, Michael (GOER) <[REDACTED]@goer.ny.gov>
Sent: Monday, December 14, 2020 10:54 AM
To: Lauren Grasso <[REDACTED]@exec.ny.gov>
Subject: Re: Training history

This is something my staff will have to do. Are you ok with that?
They are discreet but I have to have them do it.

Michael Volforte
Director
New York State
Governor's Office of Employee Relations

On Dec 14, 2020, at 10:52 AM, Lauren Grasso <[REDACTED]@exec.ny.gov> wrote:

+Mike – can you please have someone from GOER pull from SLMS? I'm tied up with electoral college today

From: [REDACTED] <[REDACTED]@exec.ny.gov>
Sent: Monday, December 14, 2020 10:40 AM
To: Lauren Grasso <[REDACTED]@exec.ny.gov>
Cc: Harold Moore <[REDACTED]@exec.ny.gov>
Subject: FW: Training history
Importance: High

Hi Lauren –
Are you able to provide this?

From: [REDACTED] (ESD) <[REDACTED]@esd.ny.gov>

Sent: Monday, December 14, 2020 10:34 AM

To: [REDACTED]@exec.ny.gov>

Subject: Training history

Importance: High

Good morning [REDACTED]

I need a complete training history transcript for former employee Lindsay Boylan (ESD01537) **ASAP**. Her account was moved from ESD to the Chamber Learning Environment back in 2018, so I don't have access to it anymore.

[REDACTED]
<image001.jpg.secure>

Human Resources Coordinator

Empire State Development

633 Third Avenue, New York, NY 10017

O: [REDACTED] | F: [REDACTED] | [REDACTED]@esd.ny.gov

www.esd.ny.gov

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From: Peter Ajemian [REDACTED]@exec.ny.gov]
Sent: 3/9/2021 2:32:09 PM
To: DeRosa, Melissa (CHAMBER) [REDACTED]@exec.ny.gov]
CC: Garvey, Beth (CHAMBER) [REDACTED]@exec.ny.gov]; Lacewell, Linda A (DFS) [REDACTED]@dfs.ny.gov];
Azzopardi, Richard (CHAMBER) [REDACTED]@exec.ny.gov]; Cohen, Steven (ESD) [REDACTED]@esd.ny.gov];
Mogul, Judith (CHAMBER) [REDACTED]@exec.ny.gov]
Subject: Re: Attorney Client privileged

Yes

Sent from my iPad

On Mar 9, 2021, at 2:27 PM, Melissa DeRosa <[REDACTED]@exec.ny.gov> wrote:

Peter do u see this and r u doing?

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Melissa DeRosa
Sent: Tuesday, March 9, 2021 2:21 PM
To: Beth Garvey; Linda A Lacewell (dfs.ny.gov); Peter Ajemian
Cc: Richard Azzopardi; Steven Cohen (esd.ny.gov); Judith Mogul
Subject: Re: Attorney Client privileged

U have to explain what u mean on background - she claimed she tried to leave multiple times etc

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Beth Garvey
Sent: Tuesday, March 9, 2021 2:20 PM
To: Linda A Lacewell (dfs.ny.gov); Peter Ajemian
Cc: Melissa DeRosa; Richard Azzopardi; Steven Cohen (esd.ny.gov); Judith Mogul
Subject: Re: Attorney Client privileged

Not til friday

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Lacewell, Linda A (DFS)
Sent: Tuesday, March 9, 2021 2:20 PM
To: Peter Ajemian
Cc: Melissa DeRosa; Beth Garvey; Richard Azzopardi; Steven Cohen (esd.ny.gov); Judith Mogul
Subject: Re: Attorney Client privileged

Acting Counsel

Sent from my iPhone

On Mar 9, 2021, at 2:18 PM, Peter Ajemian <[REDACTED]@exec.ny.gov> wrote:



Shipping

Sent from my iPad

On Mar 9, 2021, at 2:16 PM, Melissa DeRosa <[REDACTED]@exec.ny.gov> wrote:

Ok

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Peter Ajemian
Sent: Tuesday, March 9, 2021 2:15 PM
To: Melissa DeRosa; Linda A Lacewell (dfs.ny.gov); Beth Garvey
Cc: Richard Azzopardi; Steven Cohen (esd.ny.gov); Judith Mogul
Subject: Re: Attorney Client privileged

Privileged/ Draft / Confidential

Spoke with Beth, Linda, Judy. Here's where we landed.

From Beth Garvey, Special Counsel & Senior Advisor: "With certain limited exceptions, as a general matter, it is within a government entity's discretion to share redacted employment records including in instances when members of the media ask for such public information and when it is for the purpose of correcting inaccurate statements made in the press. Given the ongoing review by the State Attorney General, we cannot comment further at this time."

On Mar 9, 2021, at 12:49 PM, Peter Ajemian <[REDACTED]@exec.ny.gov> wrote:

Talked thru with Linda. Here's a tweaked version. Beth, will Volforte agree this is accurate? Should these statements start coming from Mitra?

On Mar 9, 2021, at 12:13 PM, Peter Ajemian <[REDACTED]@exec.ny.gov> wrote:

PRIVILEGED / CONFIDENTIAL

Below is what the story looks like. Deadline is 1:30pm. Where did we land on the law?

I tried rewriting the response because we should not be attacking people who make allegations.

My recommendation is to break it up and have the first part from Mike Volforte (if he would be willing) and the second part from the chamber:

"As a general matter, it is within a government entity's discretion to share redacted personnel records, with certain limited exceptions, including in instances when members of the media ask for such public information and when it is for the purpose of correcting inaccurate statements made in the press, as was the case in this situation as it related to the circumstances surrounding Ms. Boylan's departure. Given the ongoing review by the State Attorney General, we cannot consider sharing any such documents at this time and cannot comment further at this time."

Timeline of the events in december – Boylan tweets
At the time gov was being considered for AG

Boylan had worked in Cuomo admin for over three years, final title was

Tweets on 11th and 13th

Essay on medium detailing interactions with gov and staff, specifically Lisa Shields allegation

Timing of other women who came forward – charlotte, anna ruch, anna liss.

On march 1, the gov asked AG to do independent investigation

Eric raises questions about why it took so long from boylan's initial tweets to the increase in attention from media, law enforcement – partially because Boylan chose not to talk to press

But also documents that were out there

Within hours of her tweets on dec 13 several outlets reported on the documents – AP described them as personnel memos, Post described personnel, TU docs and personnel records

Several women had complained about her as being Harassing, belittling, and yelled and general unprofessional

Cites from Post account that there were three black employees who complained to state HR about Boylan, who is white, of being a bully and treating them like children.

From the AP report, cites claim that Boylan resigned after being counseled about the complaints by a top admin lawyer And then cites statement from Boylan attorney saying she had never seen those documents raised in the news accounts. Statement from attorney saying expects AG to look into the leak of the documents; goes on to accuse the gov and his staff seeking to smear victims of sexual harassment.

Quotes from gov presser last week – supports a women's right to come forward and sorry for whatever pain and asked for time to be allowed due process and facts from ag before forming an opinin

Gov has had a history in the past of scorched earth and retaliation tactics.

Statement from Boylan attorney saying she believed she would be retaliated against for going public.

Cites convo with a former senior official in Cuomo admin that in his opinion there was no question the governor would be involved in the decision to release personnel records.

Cites prior reporting about Gaffney accusations – NYP: Gaffney said Cuomo would call her on weekends to berate her, accused him of sex discrimination in 2000, and retaliated against her. Cuomo spox this is nothing more than a diversion from her downloading pornogphrahy in her office and our efforts to get to the bottom of it.

Cites Michael Fiat from 2013 – he gave quotes to Daily Enterprise and the admin moved to fire him. When the press looked into it, an admin official at the time – Howard Glaser – did a radio interview reading aloud items from his personnel file including misconduct allegations including that he had an improper relationship with a subordinate.

Karen Hinton, during Legionnaires outbreak, gov didn't like a statement she gave and gov called city hall and said if you don't fire her then BdB would be personally blamed for the nyc deaths.

After leaving the de Blasio administration she had a hard time finding work in political PR in her estimation because of Cuomo. NEED RESPONSE

Gov's attempt to intimate Ron Kim. Include Rich Azzopardi's denial of his allegations

Cites convos with workplace harassment lawyers who think that the release of the docs could have legal implications and could be seen as retaliatory against legally protected speech in violation of ny human rights law, and that it's a private use of government property for personal use of defending the gov.

Raises question that employees who raised concern against Boylan may have only wanted that done in private, and wouldn't have this sort of use in mind.

Spoke to good gov advocate who said the press needed to examine their role in the leak of the doc and that it's the admin's MO to bully and terrorize, and that the press may have been complicit in that. RESPONSE

Who leaked the docs?

Who approved it?

Was governor involved?

Cites ASC calling on gov to resign – speaker of assembly stops short of doing same

Quotes from conf call where gov says he won't resign

Yesterday the AG announced lawyers

An AG source says the leak of the documents may well be a subject that they investigate.

###

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

From: Melissa DeRosa <[REDACTED]@exec.ny.gov>

Sent: Tuesday, March 9, 2021 9:00 AM

To: Linda A Lacewell (dfs.ny.gov) [REDACTED]@dfs.ny.gov>; Beth Garvey <[REDACTED]@exec.ny.gov>

Cc: Peter Ajemian <[REDACTED]@exec.ny.gov>; Richard Azzopardi <[REDACTED]@exec.ny.gov>; Steven Cohen (esd.ny.gov) [REDACTED]@esd.ny.gov>; Judith Mogul <[REDACTED]@exec.ny.gov>

Subject: Re: Attorney Client privileged

"Ms. Boylan repeatedly mischaracterized the terms of her departure in the press -- she resigned when confronted by allegations of bullying and harassment of three female subordinates at ESD as well as formal complaints against her by her colleagues in the Executive Chamber. She then subsequently asked for her job back, but her request was not granted. As a general matter, it is within a government entity's discretion to share redacted personnel records, with certain limited exceptions -- in those instances, we would seek permission from GOER. However, given the ongoing review by the State Attorney General, we cannot consider sharing any such documents at this time."

From: Melissa DeRosa

Sent: Tuesday, March 09, 2021 8:54 AM

To: Linda A Lacewell (dfs.ny.gov); Beth Garvey

Cc: Peter Ajemian; Richard Azzopardi; Steven Cohen (esd.ny.gov); Judith Mogul

Subject: Re: Attorney Client privileged

"Ms. Boylan repeatedly mischaracterized the terms of her departure in the press -- she resigned when confronted by allegations of bullying and harassing three female subordinates at ESD as well as formal complaints against her by her colleagues in the Executive Chamber. She then subsequently asked for her job back, but her request was not granted. As a general matter, it is within a government entity's discretion to share redacted personnel records, with certain limited exceptions -- in those instances, we would seek permission from GOER. However, given the ongoing review by the State Attorney General, we cannot consider sharing any such documents at this time."

From: Melissa DeRosa

Sent: Tuesday, March 09, 2021 8:51 AM

To: Linda A Lacewell (dfs.ny.gov); Beth Garvey

Cc: Peter Ajemian; Richard Azzopardi; Steven Cohen (esd.ny.gov); Judith Mogul

Subject: Re: Attorney Client privileged

"Ms. Boylan repeatedly mischaracterized the terms of her departure in the press -- she resigned when confronted by allegations of bullying and harassing three female subordinates at ESD as well as formal complaints against her by her colleagues in the Executive Chamber. She then subsequently asked for her job back, but her request was not granted. As a general matter, it is within a government entity's discretion to share redacted personnel records, with certain limited exceptions -- however, given the ongoing review by the State Attorney General, we cannot consider sharing any such documents at this time."

From: Melissa DeRosa

Sent: Tuesday, March 09, 2021 8:25 AM

To: Linda A Lacewell (dfs.ny.gov); Beth Garvey

Cc: Peter Ajemian; Richard Azzopardi; Steven Cohen (esd.ny.gov); Judith Mogul

Subject: Re: Attorney Client privileged

Let's get on phone and discuss this am

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message

From: Lacewell, Linda A (DFS)

Sent: Tuesday, March 9, 2021 6:50 AM

To: Beth Garvey

Cc: Peter Ajemian; Melissa DeRosa; Richard Azzopardi; Steven Cohen (esd.ny.gov); Judith Mogul

Subject: Re: Attorney Client privileged

To: Volforte, Michael (GOER) [REDACTED]@goer.ny.gov]
Cc: Mogul, Judith (CHAMBER) [REDACTED]@exec.ny.gov]
From: Garvey, Beth (CHAMBER) [REDACTED]@exec.ny.gov]
Sent: Mon 3/15/2021 4:00:17 PM (UTC)
Subject: Complaint as we discussed
[nys-employee discrimination-complaint-form.pdf](#)

Please see attached, available to discuss at your convenience.

Beth Garvey
Acting Counsel to the Governor
Governor Andrew M. Cuomo
[REDACTED]





Governor's Office of Employee Relations
 Anti Discrimination Investigations Division
Empire State Plaza
Agency Building 2
Albany, New York 12223
antidiscrimination@goer.ny.gov

New York State Employee Discrimination Complaint Form

Instructions: Use this form to file a claim of discrimination based on race, color, national origin, creed/religion, age, disability, military status, arrest/criminal conviction record, marital/familial status, predisposing genetic characteristics, pregnancy and related conditions, domestic violence victim status, gender/sex, sexual harassment, sexual orientation, gender identity, and/or retaliation.

Complete and return this form to the **Governor's Office of Employee Relations, Anti Discrimination Investigations Division.**

Section 1: Complainant Information

Full Name		Preferred Email Address (for complaint related communications)	
Beth Garvey on behalf of Brittany Commisso		[Redacted]@exec.ny.gov	
Agency/Employer	Title/Business Unit/Facility	Work Schedule (days/hours)	
Executive Chamber/Lt. Governor	Special Counsel/Senior Advisor	Mon-Sun 9-5+	
Work Location/Address		Work Phone #	
Room [Redacted] The Capitol Albany, NY 12224		[Redacted]	
Home Address		Personal Phone #	
[Redacted]		[Redacted]	

Section 2: Supervisory Information

Immediate Supervisor Name	Title
Lauren Grasso (Ms. Commisso's)	Office Administrator
Work Location/Address	Work Phone #
Room [Redacted]	[Redacted]
2nd Level Supervisor Name	Title
[Redacted]	Chief of Staff
Work Location/Address	Work Phone #
Room [Redacted]	[Redacted]

Section 3: Details of Claim

1. Your claim of discrimination is based upon (check all that apply):

- | | | | |
|--|--|---|---|
| <input type="checkbox"/> Race | <input type="checkbox"/> Age | <input type="checkbox"/> Marital/Familial Status | <input type="checkbox"/> Gender/Sex |
| <input type="checkbox"/> Color | <input type="checkbox"/> Disability | <input type="checkbox"/> Predisposing Genetic Characteristics | <input checked="" type="checkbox"/> Sexual Harassment |
| <input type="checkbox"/> National Origin | <input type="checkbox"/> Military Status | <input type="checkbox"/> Pregnancy and Related Conditions | <input type="checkbox"/> Sexual Orientation |
| <input type="checkbox"/> Creed/Religion | <input type="checkbox"/> Arrest/Criminal Conviction Record | <input type="checkbox"/> Domestic Violence Victim Status | <input type="checkbox"/> Gender Identity |
| | | | <input type="checkbox"/> Retaliation (for having engaged in a protected activity) |

2. Your claim of discrimination is made against:

Name 1	Title	Work Phone
Andrew Cuomo	Governor	[Redacted]
Agency	Facility/Work Location	
Executive Chamber/Lt. Governor	The Capitol Albany NY 12224	

Relationship to you: Supervisor Co-worker Subordinate Other → Please Specify:

Name 2	Title	Work Phone
Agency	Facility/Work Location	
	The Capitol Albany NY 12224	

Relationship to you: Supervisor Co-worker Subordinate Other → Please Specify:

3. Date(s) discrimination occurred:

Unk

Is the discrimination continuing?

Yes No

4. Please describe the alleged discriminatory conduct and the reasons the conduct is discriminatory. Please include the names of witnesses, if any, and attach supporting documentation, if available. Attach additional pages, if necessary.

On Monday, March 8th, Executive Assistant #3 and Executive Assistant #2 contacted Judy Mogul, Special Counsel, and myself by phone to tell us that on the evening of March 6th, while socializing outside of the office, Brittany Commisso had spoken to them about alleged inappropriate conduct by the Governor towards her. There had been a conversation earlier in the week (they said Monday but based on our understanding of the conversation, which was after the Governor's press briefing Wednesday we think Wednesday, Brittany alluded to an interaction that made her upset, without specifics as to the nature of that interaction. They did not report to Judy or myself at that juncture.

The conduct alleged on Saturday March 8 was both verbal statements as well as physical actions, such as hugs "several times" that made complainant uncomfortable. That conduct occurred over approximately 18 months.

The complainant also alleged that there was an incident at the Executive Mansion, that the Governor closed the door to the office and kissed her once, and felt her breasts. EA #3 and EA #2 reported this conduct using the word "groping" - they were not clear on the timing of this incident.

EA #3 and EA #2 reported that Ms. Commisso had retained an attorney, Brian Premo.

I attempted to reach Mr. Premo after first consulting with the Attorney General's Office, [redacted] (initially) and [redacted] indicated that we should not delay our process internally and if the normal course of such a complaint would be to investigate we should do so. Since the allegation involved a physical interaction which, if true, could constitute a crime, we would have to report to law enforcement, [redacted] indicated we should follow our normal process.

Judy and I consulted with outside counsel, Mitra Hormozi. Ms. Hormozi also reached out to confirm this directive with Joon Kim, one of the subsequently named independent investigators. Mr. Premo did not return calls until March 9. We impressed upon him our obligation to report to law enforcement if this conduct occurred, he confirmed that this was his client's claim, and he would prefer to proceed civilly via an

5. Have you filed a claim regarding this complaint with a federal, state, or local government agency?

Yes No

6. Have you instituted a legal suit or court action regarding this complaint?

Yes No

7. Have you hired an attorney with respect to the allegations in the complaint?

Yes No

8. This complaint form was completed by:

- Complainant
- Supervisor/Manager
- Affirmative Action Administrator

Beth Garvey

Signature

Digitally signed by Beth Garvey
Date: 2021.03.11 17:48:07 -05'00'

03/11/21

Date

Return the completed form (by email or mail) to the Governor's Office of Employee Relations, Anti Discrimination Investigations Division:

**Empire State Plaza
Agency Building 2
Albany, New York 12223
antidiscrimination@goer.ny.gov**

From: Beth Garvey [REDACTED]@exec.ny.gov
Subject: eo 187
Date: March 10, 2021 at 5:44 PM
To: Steven Cohen (esd.ny.gov) [REDACTED]@esd.ny.gov



III. Combating Harassment and Discrimination in State Agencies

a. Definitions

i. “Affected State Agency” shall mean all agencies and departments over which the Governor has executive authority.

ii. “Protected class discrimination” shall mean employment-related discrimination that is unlawful pursuant to federal laws, rules or regulations and/or state laws, rules or regulations, including but not limited to, Title VII of the Federal Civil Rights Act, the Americans with Disabilities Act, and the New York State Human Rights Law.

b. In order to promote the effective, complete and timely investigation of complaints of employment-related protected class discrimination, as of December 1, 2018, the Governor’s Office of Employee Relations (GOER) shall be responsible for conducting all investigations into employment-related discrimination complaints filed by employees, contractors, interns or other persons engaged in employment at Affected State Agencies as defined in Article III(a)(i) of this Order.

c. Such Affected State Agencies shall transfer the investigation function pursuant to Civil Service Law 70.2 to GOER and continue to permit such employees as are assigned by GOER to investigate complaints of protected class discrimination within their entity and shall cooperate fully with any and all investigations.

This is a crime, so if reported this way to GOER they would say this
This is conduct which constitutes a crime, and needs to be reported to law enforcement, and we will take your report and hold it in abeyance until they pursue or conclude their investigation.



To: Lauren Grasso [REDACTED]@exec.ny.gov]
From: Volforte, Michael (GOER) [REDACTED]@goer.ny.gov]
Sent: Wed 3/10/2021 10:17:00 AM Eastern Standard Time
Subject: FW: Learning Transcript
Attachment: SLMS_Learning_Transcript_Commisso.xltx



Learner	Title	Print Certificate	Type	Status	Status	Date	Action
Brittany Commisso	Prevention of Workplace Violence (2019)	Print Certificate	*Online		Completed	1/16/2020	
Brittany Commisso	Language Access (2019)	Print Certificate	*Online		Completed	12/31/2019	
Brittany Commisso	NYS DOT-Introduction to the Incident Command System		*Online		Enrolled	7/11/2019	Drop
Brittany Commisso	NYS DOT-National Incident Management System, An Introduction	Print Certificate	*Online		Completed	5/21/2019	
Brittany Commisso	NYS Right to Know (2019)		*Online		Enrolled	1/25/2019	Drop
Brittany Commisso	Internal Controls (2019)		*Online		Enrolled	1/25/2019	Drop
Brittany Commisso	Equal Employment Opportunity: Rights and Responsibilities (2019)		*Online		Enrolled	1/25/2019	Drop
Brittany Commisso	Ethics for NYS Employees (2019)		*Online		Enrolled	1/25/2019	Drop
Brittany Commisso	Sexual Harassment In the Workplace (2019)		*Online		Enrolled	1/25/2019	Drop
Brittany Commisso	Fire Safety and Emergency Evacuation (2019)		*Online		Enrolled	1/25/2019	Drop
Brittany Commisso	Information and Cyber Security Awareness (2019)		*Online		Enrolled	1/25/2019	Drop
Brittany Commisso	Project Sunlight Technical Training		*Online		In-Progress	11/15/2018	Drop
Brittany Commisso	Prevention of Workplace Violence (2018)	Print Certificate	*Online		Completed	11/15/2018	
Brittany Commisso	Internal Controls (2018)		*Online		In-Progress	11/15/2018	Drop
Brittany Commisso	Project Sunlight Substantive Training		*Online		In-Progress	11/13/2018	Drop
Brittany Commisso	Workplace Safety-480 Seconds	Print Certificate	*Online		Completed	11/13/2018	
Brittany Commisso	Prevention of Workplace Violence (2018)	Print Certificate	*Online		Completed	10/19/2018	
Brittany Commisso	Reasonable Accommodation for the Public (2018)	Print Certificate	*Online		Completed	10/19/2018	
Brittany Commisso	Information and Cyber Security Awareness (2018)	Print Certificate	*Online		Completed	10/19/2018	
Brittany Commisso	Language Access (2018)	Print Certificate	*Online		Completed	10/19/2018	
Brittany Commisso	Ethics for NYS Employees (2018)		*Online		Enrolled	1/26/2018	Drop
Brittany Commisso	NYS Right to Know (2018)		*Online		Enrolled	1/26/2018	Drop
Brittany Commisso	Sexual Harassment In the Workplace (2018)		*Online		Enrolled	1/26/2018	Drop
Brittany Commisso	Equal Employment Opportunity: Rights and Responsibilities (2018)		*Online		Enrolled	1/26/2018	Drop
Brittany Commisso	Fire Safety and Emergency Evacuation (2018)		*Online		Enrolled	1/26/2018	Drop
Brittany Commisso	OGS-BSC-Travel 101 Rules and Regulations		*Webcast/webinar		Enrolled	1/25/2018	Drop
Brittany Commisso	Ethics for NYS Employees (2018)	Print Certificate	*Online		Completed	1/25/2018	
Brittany Commisso	JCOPE Online Ethics Orientation		*Online		Enrolled	1/25/2018	Drop
Brittany Commisso	OGS-BSC-Travel 101 Rules and Regulations		*Webcast/webinar		Dropped	1/25/2018	
Brittany Commisso	Supervisor's Guide to Reasonable Accommodation of Employees with Disabilities and Pregnancy-Related		*Online		Dropped		
Brittany Commisso	Language Access (2019)		*Online		Dropped		



Governor's Office of Employee Relations

ANDREW M. CUOMO
Governor

MICHAEL N. VOLFORTE
Director

Complainant Name **Beth Garvey**

Discrimination Number
Complaint Number
Form Number Form-000941

Filer Information

Who is Filing On Behalf of an Individual
Employment Type Employee
Agency Chamber
Facility
Employer
Title Acting Counsel to the Governor
Preferred Contact Type Email Address
When to Contact Any Time
Phone Number [REDACTED]
Email Address [REDACTED]@exec.ny.gov
Street [REDACTED] The Capitol
City Albany
State NY
Zip 12224

The Person I Am Filing On Behalf Of

On Behalf Of This Individual Alyssa McGrath
Employment Type Employee
Agency Chamber
Facility
Employer Executive Chamber
Title Executive Assistant
Work Location/Address [REDACTED] The Capitol

My Supervisor's Information

Supervisor Information Lauren Grasso
Work Location/Address [REDACTED] Capitol Albany, NY 12224
Title Director of Administrative Services
Phone Number [REDACTED]
Email Address [REDACTED]@exec.ny.gov





Governor's Office of Employee Relations

ANDREW M. CUOMO
Governor

MICHAEL N. VOLFORTE
Director

The Person I Am Filing Against

Respondent Details

Name: Andrew Cuomo | Email: [REDACTED]@exec.ny.gov | Phone: [REDACTED] | Relation to you:
Supervisor | Additional Info:

Agency Chamber
Facility

What Happened

County Albany

Age No

Arrest/Criminal Conviction Record No

Color No

Creed/Religion No

Disability No

Domestic Violence Victim Status No

Gender Identity No

Gender/Sex Yes

Marital/Familial Status No

Military Status No

National Origin No

Predisposing Genetic Characteristics No

Pregnancy & Related Conditions No

Race No

Retaliation No

Sexual Harassment Yes

Sexual Orientation No

Start Date 3/19/2021

Ongoing Yes

End Date

Narrative

The allegations were relayed to the New York Times and are available here.

<https://www.nytimes.com/2021/03/19/nyregion/alyssa-mcgrath-cuomo-harassment.html>

The individual seems to be alleging sexual harassment. She is represented By Mariann Wang of Cutie Hecker and Wang.

Filed with Fed State Local No

Legal Suit/Court Action No



Governor's Office of Employee Relations

ANDREW M. CUOMO
Governor

MICHAEL N. VOLFORTE
Director

Hired Attorney Yes

Volforte Exhibit 31

Withheld

Volforte Exhibit 32

Withheld

Volforte Exhibit 33

Withheld

Volforte Exhibit 34

Withheld

Volforte Exhibit 35

Withheld

Volforte Exhibit 37

Withheld