

New York Gov. Andrew Cuomo COVID-19 Press Conference Transcript May 13



New York Gov. Andrew Cuomo held a press conference on May 13, 2021 to provide updates on COVID-19. Read the transcript of his briefing with coronavirus and vaccine updates for New York here.



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Andrew Cuomo: (00:00)

Morning.

Andrew Cuomo: (00:03)

Let me introduce the people who are here with me today, on the dais first to my right, a man who needs no introduction, the borough president is, in my opinion, a truly extraordinary public official. My father used to say, God, rest his soul, there are people who go into public service because they like to talk and it's about their ego, and then there are people in public service who actually have the ability and the desire to make change for people. Your borough president makes change for people and he has transformed the Bronx and transformed lives. It's my honor to be with him, Ruben Diaz.

Andrew Cuomo: (00:55)

We have Assemblyman Benedetto and we have Senator Jamaal Bailey, they're my colleagues. They're my colleagues in Albany. They just passed a budget that I believe, in my opinion, is going to do more good for this state than any budget in decades. It was hard, what they did. Politics today is much more intense and heated than it's been. When you are in Albany, you have that state legislature, represents the entire state. We have the full political spectrum in New York State, right? There's politics nationwide, but we have everything in New York. We have the full spectrum. We have the most rabid conservatives you find anywhere, and we have the most rabid socialists you're going to find everywhere, anywhere.

Andrew Cuomo: (01:56)

To get something done, 213 people, you have to get agreement and conservatives will say, "Well, you're not conservative enough." I say, "Yeah, that's because I'm a Democrat. That's what the people elected." The socialists will say, "Well, you're not bringing socialism to New York." Yeah, I'm a progressive Democrat, that's what the people elected. They are loud. They are loud, they didn't learn the lesson my grandma mother used to teach me. Just because you yell doesn't mean you're right. It takes extraordinary leadership to stand up and to stand up for what you believe and to fight for what you believe and to speak up when people are yelling at you and trying to bully you. Senator Bailey, Assemblyman Benedetto, they stand up for what they believe, fight for what they believe. They deliver for the Bronx.

Andrew Cuomo: (03:07)

To my immediate left is Janno Lieber, he is the person who actually has to do the work that we're all going to talk about today. He makes things happen in government like no one I've ever worked with before. These are all complicated projects and it's very hard to get big projects done. Janno Lieber himself is a transformative doer affective administrator. He's a nice community oriented Robert Moses is what I think of him. Let's give him a big round of applause, Janno Lieber. I'd also like to acknowledge Kathy Renaldi, who is here with us, who was the president of Metro North, let's give her a round of applause. We have council member, Kevin Riley, thank you, and thank you for all your help on this. I want to thank our host, Bernie Cylich from the River Bay board of directors. Thank you very much for being with us today.

Andrew Cuomo: (04:13)

Okay. Let's talk about today, and almost more importantly, let's talk about tomorrow. We're coming through this COVID situation and we're at a point in history, a moment in time where we're going to decide our future. Understanding where we are is very important. Coming out of COVID, we have today a 1% positivity rate to report. What does that mean? That's the lowest level since October 10th, before November, before Thanksgiving, before the holidays. You want to know how low 1% is? You know what the national average is today? 4%. 4% positivity. New York is 1% because New Yorkers stepped up and they did the right thing. Let's applaud all New Yorkers.

Andrew Cuomo: (05:09)

Hospitalizations are down. The people in ICU units are down. Intubations are down. All the arrows are in the right direction. We're working very, very hard to keep it that way. People want to say, "Well, COVID is over. COVID is done." 22 people died yesterday because of COVID. 22 people died. 22 families are grieving today. It's not over. We're making progress, but it's not done. We have more to do. Vaccinations are going to be the key to actually winning this war and getting people vaccinated is everything. We've done over 17 million vaccinations in the state. 60% of the people have over one dose, 60%. 50% of the people are fully vaccinated. We're getting as creative as we can to get people to get vaccines. We just started a new pilot program with the MTA where we said rather than asking people to come to us to get a vaccine, we'll come to you.

Andrew Cuomo: (06:15)

We'll find you where you are. You're going to get on the subway, you're going to take a bus, we set up vaccine sites in the MTA, in the train station, so if you're

going to get on a train, you're walking right past the vaccine site. Step into the vaccine site, get a vaccine and you get a Metro card for a week if you get a vaccine. That's working very well. Just yesterday, over 1000 people got a vaccine. We're excited about that. We have a lot more work to do. We know that. We feel it. We know we're making progress, but we know that tomorrow is a question mark. We haven't been here before. One question everybody asks me, "Well, what is New York going to be like post-COVID? What's going to happen? How are we going to do after COVID is over?"

Andrew Cuomo: (07:16)

Truth is there is no predestined future. There is no path. Nobody's been here before. We're trying to find the place for New York and every other state is doing the same thing. Every other city is doing the same thing, all across the globe. How do you react to COVID? How do you react to Zoom, to remote learning, to people who are now afraid from a public health point of view? How do you recover after wearing this for a year and not socializing with people and not hugging people? How do you recover from the isolation of it? That's going to be the challenge, but the good news is it's in our control. Who's going to determine the future of New York? New Yorkers. You know who I believe in? I believe in New Yorkers.

Andrew Cuomo: (08:09)

Well, COVID hit us hard, yes, COVID hit us hard. COVID hit New York harder than any other state in the nation. We had the highest infection rate in the United States of America. We had the highest infection rate on the globe at one point. Why? Because COVID was coming here for months and nobody knew it because it was landing on planes at LaGuardia and JFK and Newark. It was coming here for months. The federal government had no idea that it was already here. We had people dying of COVID before we knew what it was. Yes, it hit us hard. Yes, we paid a price. Yes, we rose to the occasion. Why? Because in life, the question in life is not, "How do you avoid hardship?" Hardships going to happen in life. Something's going to happen where life is going to come up and knock you on your rear end.

Andrew Cuomo: (09:16)

Maybe you did something wrong. Maybe you didn't do anything wrong. But, it's going to happen. Health issue, you lose your job, divorce, something is going to happen. Then, the question becomes, "When you get knocked on your rear end, what do you do?" That's what defines your character and your personality. You get knocked on your rear end, do you just sit there? Do you lay down on the canvas and stare at the sky? Or, do you get up? If you're a real New Yorker, you

get up. You get up smarter, you get up stronger, you get up more resilient. That's what we've always done. Superstorm Sandy, oh my God the devastation. Yes, but we got up and we got up ever stronger. 9/11, remember the people after 9/11? "Oh, New York will never be the same." We're a terrorist target. No one's going to want to live in New York. I was there. All the naysayers. Forget it. We built back. We built back better than ever before and stronger than ever before. We learned from it. That's who we are.

Andrew Cuomo: (10:35)

Now you have people saying, oh, the city's in trouble. City has a real crime problem, which it does. Real issues in New York city. Yes, but we've been through worse my friends. People don't even remember, I'm trying to explain to my daughters who are in their mid-twenties, so they know all the answers, they just don't know the questions, but they know all the answers in life. What the city was like in the '70s, what it was like in the '80s, what the Bronx was like, when they said the Bronx is burning. Look at us now. Yes, you get knocked on your rear end, but you get up better than before and you think big when you get up.

Andrew Cuomo: (11:23)

We have an opportunity here because everyone is going through this. This is not unique to New York. This year, I'm head of the governor's association. I talk to all the governors in the country every week speak, every state is saying, "What do we do? How do we rebuild post-COVID? How do we get out of this?" Think big, which is what we always did, New Yorkers. Oh, you're tough people. Yes. You're ambitious people, yes. You're daring people, yes. You're gutsy people, yes. Otherwise, we wouldn't be here. You can't make it here. You wouldn't have come here unless you were gutsy and daring and you believed in yourself. That is who we are in our essence. Just think how we made this place.

Andrew Cuomo: (12:18)

Just think of the conversation, late 1800s, there's no fresh water in New York City. Well, you have the Hudson, you have the East River, you have a lot of water, yeah, yeah, but there's no water to drink in New York City. Oh, no problem. Up in the Catskills they have water. In the Catskills? Where are the Catskills? Up North. How do we get the water from the Catskills down to New York City? Do I get in the car, drive up the Hutch. Do I take the throughway? What do I take? No, no, no. There's no Hutch. There is no throughway. We're going to build a tunnel from the Catskills to New York City, 90 miles long in 1907. Think about the guts. Think about the ambition. We're going to build a massive train system. Massive train system? You're such a small place. Manhattan, the Bronx, Queens, where are

you going to put all of these massive trains? We're going to put them under the ground. You're going to put them under the ground? How are you going to put them under the ground?

Andrew Cuomo: (13:29)

We're going to dig tunnels. We're going to dig 200 miles of tunnels under the ground. 1900. With what? Big tunnel boring machine. We don't have any. All right, we're going to do it with shovels and picks and we're going to build tunnels. That's who we are. That's what we did. Great Depression ravages the nation. What do we do? We're going to build the tallest building in the world in the middle of The Great Depression. What are you crazy? No. We're New York and we want to show that, yes, this is The Great Depression, but we're going to come back ever stronger.

Andrew Cuomo: (14:07)

We need affordable housing. We need residential housing. What do we do? We built 40,000 resident housing called Co-op City visionary in the nation, 1966. That's who we are. What do we do post COVID? We build. We build big. We don't take no for an answer. We are building with the largest building program in modern history in this state. New LaGuardia airport, first new airport in this nation in 25 years in New York. New JFK airport. New long Island railroad tracks. We're going to have the first state that has broadband that is accessible and affordable for every family in this state because no child is going to be left behind when they go to remote learning because they don't have a computer and they don't have broadband in their home. First state in the nation.

Andrew Cuomo: (15:18)

The largest green energy program in the nation is going to happen right here in New York. Hundreds of solar projects, the largest wind turbine projects in the nation, and then a new green transmission grid to bring all that power to downstate New York, which is where we use it. We're going to build a new West Side of Manhattan with a new Empire State Station, which rebuilds the whole train station. Last week, we opened up a new expanded Javits center, 50% bigger than ever before. New Highline tourist attractions. We're going to build a new Port Authority bus terminal, finally.

Andrew Cuomo: (16:02)

New Port Authority bus terminal, finally, which has been such a disgrace for so many years, we deserve better, and now is the time to do it. Well, what about the Bronx, you ask. Don't be so pushy, I was going to get there. I knew I was sitting

next to Rubin. And how many decades have we been talking about the problem at Hunts Point and the trucks and the pollution and the high asthma rates in the surrounding areas to Hunts Point? We've been talking about it for 20, 30 years, did nothing. We're spending billions of dollars to reconfigure the entire highway system to get those trucks right into Hunts Point and get them out of the community bringing the traffic and the congestion.

Andrew Cuomo: (16:57)

We have a Bronx Unemployment Strike Task Force that has connected people with jobs, especially young people with jobs. It brought down the unemployment rate to record lows right before COVID. It is common sense, people need to work and they need help finding those jobs and that's what we're doing. The budget that the senator and the assemblymen just signed, the largest affordable housing program in the history of the state of New York. The largest tenant relief program in the state of New York's history, the largest small business relief program in the history of the state of New York.

Andrew Cuomo: (17:43)

What is the key to an area's development? The key is access and access to mass transit. If you look at the parts of the city that have redeveloped quickly, you notice they all have one thing in common. They are all very accessible by train. Brooklyn Heights area in Brooklyn, you get on a train, one train you're in New York, in Manhattan in 10 minutes. The part of Queens that redeveloped fastest, you get on a train, you're in Manhattan, 15 minutes. New Jersey, you look at all that development on the Jersey waterfront. You know why, you get on the path train, you get into Manhattan in just a few minutes. Those are the areas that developed because they were accessible. Parts of the Bronx that have developed were the ones that were accessible.

Andrew Cuomo: (18:38)

How do you expand that? Now, Ruben shows me a map. Look at this. Metro North runs from New Haven down through Westchester, runs right through the Bronx, goes to Penn Station. You know what Metro North doesn't do? Stop. Oh, it runs through the Bronx, but it doesn't stop. Why? Why don't we have Metro North stop as it goes through the Bronx. Interesting idea. But this is a big idea. This is a problematic idea. There's a lot of problems with this idea. This is a complicated idea. It's not just the Metro North. Metro North is part of MTA. The train tracks are owned by Amtrak and the federal government. This is complicated and this is expensive. This is a lot. This is over a billion dollars. This is a lot of money. And the MTA, they can be a pain in the tuchus we would say in Italian.

Andrew Cuomo: (19:50)

Not John, but it's a complicated beast to deal with. They're never going to agree to this. And then we'd have to get the federal government to agree and forget it, we're all going to be dead by the time we get the federal government to agree. You can't do this. And then you have to build stations. We don't build stations anymore. When was the last time we built a new train station? We just, we don't do that anymore. And then you go into Penn and Penn Station is too small already. It's crowded. And by the way, there's a big project, somebody's going to sue. They're going to sue, and then you're going to be in court. Now, they're going to sue you anyway so you may as well do something big, is my point of view, but think big. So today we're announcing the state has agreed, the MTA has agreed, we have \$1.58 billion put aside to build it. Today, the federal government was the last obstacle and they have off. We are going to re-issue the RFP for construction, and we're going to do it now.

Andrew Cuomo: (21:05)

The train is on the move and look what it's going to do. Co-op city station. Right now, the commute to Penn, 75 minutes. When you have Metro North, that goes from 75 to 25 minutes, that commute. Hunts Point goes from 45 minute commute to a 16- minute commute. Changes, changes everything. And then you go into Penn and Penn Station is going to be new. We've already opened the new Moynihan Train Hall, which is beautiful and is a welcome place to go. We are then also going to expand Penn Station and redo the entire station. So it's going to be a world-class transportation facility and a place you actually want to enter. What does it mean? Better economy, less traffic, improved air quality, better community connections, 160 trains per day, five times more than Amtrak runs now moving 30,000 people. And this is not a proposal, this is not a dream. This is not a, we're going to try, we're going to hope. I have an idea. It's a press release, but I don't know that anything's ever going to happen. This is happening, it's happening and it's happening now.

Andrew Cuomo: (22:37)

We did the design build list. The RFP goes out today. We do an environmental assessment. We're going to award the project next year. It's going to be completed in four years, 2025. It's going to happen. It's going to happen in our lifetime and it's going to be [inaudible 00:22:53]. Remember this day, because it is going to be transformative for these communities. They are going to be transformed, the entire Bronx, the entire region. AJ Parkinson. We can do anything we believe we can do in life, but you have to believe you can do it. I believe in you. I believe in

New Yorkers. I saw what they did after COVID. I saw how they rose to the occasion when times were at their darkest and they were the most frightened. After what we did over this past year, don't tell me there's anything we can't do.

Andrew Cuomo: (23:47)

If we can dream it, we can do it. And this is not going to be about rebuilding New York. We went through too much to replace what we had. This is going to be about building a New York better than ever before, a New York that we can be proud of, that is cleaner and safer and fairer than any New York before. We can do it. And we are going to do it and we're going to make it happen together. Thank you very much.

Andrew Cuomo: (24:24)

Now I turn it over to my brother, my friend, your great borough President Ruben Diaz.

Ruben Diaz: (24:31)

Thank you. Hi, guys. Senor [foreign language 00:24:38]. Let's give the governor a strong round of applause not only for we thank you for being with us here today, but believing also in the Bronx. We've heard a lot of things going on for so many years throughout the city and the state in previous administrations and we've always been overlooked, but under your administration time and time again, Gov, you have always, always put a focus on our borough. You put financing and we appreciate it. We've been hit pretty hard during this pandemic, really hard in the Bronx. I know that. We speak of New York City and New York state, but we had a lot of pain, a lot of loss, a lot of sickness. And through it all, you made sure that over the last 14 months that we were able to get all of the testing sites that we needed, all of the medical attention that we needed and that we deserved. And of course, now, all of the vaccination sites.

Ruben Diaz: (25:39)

The last time you were in the Bronx, we were announcing more and more vaccination sites in the communities in our borough. I also want to thank our colleagues, my colleagues in government, we have Assembly member, Michael Benedetti. We have state Senator Jamal Bailey. When you speak of the financing here, I was up in the New York state legislature as a member for seven terms, and I know that it would not happen if it were not for the elected officials and the legislators voting on the capital budgets there. Let's give them a strong round of applause.

Ruben Diaz: (26:12)

This guy right here, he is young and he's new in the city council, but he is what we deserve as representation, not only here in Co-op City, but all over the Bronx in New York City. Council member, Kevin Riley, thank you for being with us here. I know I'm the borough president, but I'm not the only president here. We have powerful women. The president of the South Bronx Overall Economic Development Corporation, better known as SoBro. And of course, the president of the Bronx Chamber of Commerce, Lisa Sovereign is with us here.

Ruben Diaz: (26:46)

We are in the middle of Bronx Week. We have not been able to do Bronx Week in the way that we normally do it. We couldn't do it last year because of the pandemic. We had a lot of consternation, but we decided to do it albeit a modified way to celebrate our borough. And so I'm going to take executive privileges here, and I'm going to make this visit by the governor and this announcement by Janno and Catherine from MTA and Metro North as part of Bronx Week. Right guys, let's give them a strong round of applause.

Ruben Diaz: (27:19)

Look, the reality is that this was not a new idea. When the governor says that it was pie in the sky, this idea was something that was being kicked around for over 30, 35 years. And when I first got to Borough Hall back in 2009, we found this proposal and we dusted off and we started to push it. And some people thought that I was crazy. And it wasn't until we found the friend in the second floor up in Albany that said, you know what, this needs to be done. And things were moving in the right direction, but it was the pandemic that slowed us down. And yes, we had to get through COVID. I am fully vaccinated and I'm hoping that everybody gets vaccinated. It's the only way that we're going to get back to normalcy. But aside from dealing with COVID and the governor and his team has been doing that, we really have to start and restart again so that we can move the economy here, so that we can give people the most important thing, which I believe is something that's not physically tangible, but it's bigger than brick and mortar and that is hope.

Ruben Diaz: (28:28)

This announcement on restarting the procurement process on these Metro North stations is something that gives us hope. It's something that will allow, and by the way, if it were not for the community, when we first dusted this off, if you live in Co-op City, please raise your hand. Please raise your hand. Let's give them all a strong round of applause as well. I remember Catherine went, at the time I had to

make the case to Metro North, and we had to have a meeting with the community, I had to convince them that the community wanted this as well. I was expecting just community leaders to come here, Co-op City. It blew my mind and blew Metro North's mind when over 700 people in Co-op City fill the big ballroom here, all unanimously saying that we need to have this as part of moving forward and transforming not only Co-op City, but the entire borough of the Bronx.

Ruben Diaz: (29:24)

This will create thousands of jobs, ladies and gentlemen. It will create opportunity for more housing. It will give us a shot in the arm to economic development. But when we speak about hope and when we speak about moving forward, I'll tell you one thing. When the governor highlights the way that we can shave off the transportation time, and we have a lot of essential workers here, they deserve to be able to get to and from work with transportation alternatives in a quicker way. Yes, that would be a quality of life for them, but even more so, could you imagine now the amount of time that they can spend with their family members, where they are not in some tunnel in the subway system. Do you know how we can continue to protect mother earth? When we speak of congestion, everybody always focuses on New York City and the congestion into Manhattan.

Ruben Diaz: (30:16)

Well, there are a lot of Bronx-ites and New Yorkers who work in Stanford, Connecticut. And if you go and you see the I-95 going north, it is also congested. This will now put you in Stanford, Connecticut in about half an hour, 35 minutes. And people from Stanford and from Connecticut can now come and visit us regularly here in the boogie down Bronx. It checks off so many different boxes. It is a good day, and boy that we need this. We are filled with anxiety. We were hit hard. And when you plan with a purpose, when you have folks who really care about every single New Yorker, not just a few, when you have big dreams, when you have big aspirations, when you work as a team, anything and everything is possible.

Ruben Diaz: (31:07)

And so as we celebrate Bronx Week, ladies and gentlemen, we celebrate the past, we celebrate our culture. We celebrate the fact that this is the cradle of [foreign language 00:31:16], the birthplace of hip hop and doo-wop. We celebrate who we are today, but we also celebrate our recommitment to get out of this pandemic and ensure that the future of the Bronx and future generations will take it to even the next level. And we could not do that without our governor. So thank you, [foreign language 00:31:38].

Andrew Cuomo: (31:44)

Thank you very much. You had the borough president's idea and he's right. This was an idea that was there for a lot of years. Many ideas are, but they're just too big and too bold to take on. He was willing to take it on.

Andrew Cuomo: (32:02)

... to take on. He was willing to take it on. So now you had a plan. We have the capacity with Janno Lieber at the MTA to get it done. You had to get all the approvals, but you needed one essential element. You needed \$1.5 billion, and I'll give you 1.5 billion reasons why it's hard to get \$1.5 billion, especially in that state budget, especially in this process. So you needed a really powerful, energized, cohesive approach. And that's what you had in Senator Bailey and Assemblyman Benedetto. It does not happen, but for them, because it does not happen, but for the \$1.5 billion. And they made that a reality. Senator Bailey?

Jamaal Bailey: (32:59)

Thank you, governor. Good afternoon and go Knicks. I just want to shout out the amazing residents of Co-Op City. Our borough president reached out to them and he mentioned them, but I wanted to make sure I mentioned some of them by name. Leslie Peterson, the president of the NAACP branch in Co-Op City, Leslie. Leah Richardson, a board member of Riverbay, and Leah Richardson. Mr. Robert Hedgepath, my distant cousin from North Carolina, president of Co-Op City. Ms. Linda Warner, another... borough president. Excuse me, maybe one day Linda. A building president in Co-Op city, Linda Warner. And the indomitable Michelle [inaudible 00:33:45]. [inaudible 00:33:45], our director of community relations. We all know that nothing gets done in Co-Op without you Michelle.

Jamaal Bailey: (33:53)

Governor, thank you for not just coming to the Bronx, but believing in the Bronx and for helping us dream bigger. Once upon a time, before my time, there was a place called Freedom Land. And I would imagine that if one looked at Freedom Land, they would have never been able to believe that Co-Op City could be built. So it takes ingenuity. It takes dedication, but as the governor said, it takes belief. And when you believe in yourself, like I tell my daughters, you can achieve anything, but that belief has to be true. And I truly believe that we've had an amazing team in this borough to push this project forward.

Jamaal Bailey: (34:33)

I'm going to miss being on [inaudible 00:34:35] with my borough president. When I was an intern in the legislature in 2004, for our great speaker, Rubin was

also an amazing mentor to me. He's been a great steward in this Bronx and a great leader. And without him also, this project would not be there. Mr. Borough president, thank you for all your work as well. My colleague in the assembly, who we share Co-Op City with, and we were out there fighting the good fight, our chair of the education committee, making sure that in our state budget, as our governor mentioned, that we finally fully funded the CFE, our education share. The Bronx is on to something in Michael Benedetto. My brother for about 25 years, we've gone to church together. We've worshiped together and now we get to lead in the same community together. Our great new city council member, Councilman Kevin Riley. And I also want to thank our Congressman in Ritchie Torres and our Westchester County Executive George Latimer, because they've been fighting the good fight on this for so long.

Jamaal Bailey: (35:41)

Again, I talked about Freedom Land and I talked about what it took for somebody to look at that plot of land, to think that 50,000 residents strong can be in one geographical area anywhere, much less in the Bronx. And I think about how that's been realized. And I think about the individuals who work, live, and play in Co-Op City and how they've been disenfranchised. You see, I went to middle school here. And if I wanted to get here, I had to take the 31 bus or the eight bus and come all the way around and take the 28 buses or the 26 bus. But that wasn't that bad. And especially when I lived only a five minute car ride away. Now, I want you to think about that. And I want you to think about the thousands of essential workers who during COVID, when many of us working remotely, they couldn't work remotely.

Jamaal Bailey: (36:29)

They had to continue to go into the hospitals. They had to continue to go into these locations that were essential and they had to use mass transit. So that means they had to go take a bus to Pelham Bay, to get on a train, to take a train, to transfer to the express train, just to get further downtown. For people that do so much, that's not fair. And quite frankly, it's not equity. This project will bring essential transportation equity to a region that quite frankly hasn't had it. You see sometimes in the North Bronx, we are victims of our own success. People think that because we have some grass here on the ground and we've got Co-Op City that we don't need help, but we do need help and we did need help. And we got the help. So in 2025, after the shovels are in the ground, we're going to be able to say, and my daughters, with my supervision at first, they're going to be too young.

Jamaal Bailey: (37:26)

They're going to be able to take that train. You're going to be able to get to Manhattan faster because of this project. And the next generations of individuals who are growing up in Co-Op City are going to be able to have that same access. Co-Op city is incredibly unique, largest cooperative development in the country. The country, not just a city, not just the state, the country. The largest NORC, naturally occurring retirement community. And again, not just the city, not just the state, the country. So Co-Op City needed this, it deserved this. And the amazing three other parts of the world are going to get that same access. They deserved it too.

Jamaal Bailey: (38:09)

I think about one of my favorite movies, Miracle, about the hockey Olympic team, where they say great moments are born from great opportunity. Shouldn't take a miracle to get to work if you live in Co-Op City. That opportunity is going to be given because of the hard work of general and the governor and the borough president, Assemblyman Benedetto, and the speaker and council member, and so many people.

Jamaal Bailey: (38:36)

I'm glad that we've got a commitment to build better. MWBEs are going to be a part of this program to make sure that our minority and women owned businesses are going to be able to have a seat at the table when we're building back better. And again, we have to make sure that we preserve affordability in Co-Op City as well, because as transportation access increases, people are going to want to flock to Co- Op City because we know how great Co-Op is and making sure that we can keep it affordable is going to be a critically important component of what we do here in the future going forward.

Jamaal Bailey: (39:12)

So again, they say as New York goes, so goes the nation. I would venture to say, as Co-Op City goes, so goes to Bronx, and making sure that we have access here so that people can work, live, and play throughout the region. And again, I represent Westchester County as well. So being able to go North in a search of commerce. My first job was in White Plains, New York, actually, as it were. I had to go North. The next generation will be able to go North freely. You'll be able to go faster and more efficiently, thanks to this project. Appreciative of our legislative leaders, [inaudible 00:39:48] cousin and Speaker Hasty. Appreciative of a governor. In general, thank you for all the hard work that you've done in

those meetings that we had at the borough president's office. We're going to get this done. Thank you governor, once again.

Andrew Cuomo: (40:00)

Thank you. Thank you, Senator. And as the Senator said, to get something done in Albany, you have to get the Senate to pass it and you have to get the assembly to pass it and you need a champion in the assembly. And this project had a real champion in Assemblyman Benedetto. Assemblyman, good to be with you.

Assemblyman Benedetto: (40:21)

Thank you, Mr. Governor, for having us here today. Thank you for those kind words. I want to acknowledge a few people that are here today. My good friend, Knoll Ellison, who's the general manager of Riverbay. Okay. His assistant Gary Smith, the assistant executive manager, who's here somewhere here. Also Warren Mitchell, deputy general manager of Riverbay corporation. My good friend, Junius Williams, who helped me get some of the cameras we just got installed. Okay. And of course, my district leader, Jimmy Payne. Okay. Thank you, Jimmy, for coming here today. And you know, thanking the people, we're hearing them. I just want to thank the guy to my left over here, I'm going to miss him. I really mean that. Ruben Diaz has been a great borough president. He was a great colleague of mine up in Albany for many years before he became the borough president. And I just don't believe that he is now... You should have been mayor of this city, but is stepping out of politics and all the best for you, Ruben. I big hand for Ruben, please.

Assemblyman Benedetto: (41:38)

Okay. I'm lucky. I just a fortunate person. I work with good people. And my state Senator Jamaal Bailey. My city councilman, Kevin Riley. They are tops to work with. Everything we do joins together and blends. I thank you guys for being representatives in my department. Okay.

Assemblyman Benedetto: (42:03)

Yeah, I guess I should say something about Ritchie Torres, congressmen, and George Latimer, who I also served with up in Albany, two terrific people without which this project is not going to happen. And I thank them. Listen, I agree with what these people are saying. How much more can I say? Sorry, this is so important to... Yeah. Co-Op City. Think bigger. By the way, that's what the governor is all about. He thinks big. Okay. You think big, yeah, it's going to be good for Co-Op City. It's going to be good for the Bronx and the whole city, it's going to be good. You can get from here up to Connecticut and points North, you

can go into the city, can do so many, many different things that you never did before. This is not a new project. When I was running for election 2004, this was something we talked about. And I advocated for. It took this governor to think big and say, we're going to get it done. And there was one of the few times, one of the times when I was really, really happy when the governor presented in his state of the state speech some six years ago or so, committed himself to this whole project to be developed. And boy was I happy. He was coming to me, and now we see it all together. Thank you, governor. Just great.

Assemblyman Benedetto: (43:37)

You know, we're going to recover from the last year and the last year has been tough on an all of us. We've all survived it in varying degrees and so on. But like the borough president said, and I wanted to really be so annoyed at him for saying that because I was going to use the same four letter word, hope. Okay, hope springs eternal. And this is so important. This is as given us new rejuvenation here that we're going to move ahead. You know, when the people came to Co-Op City, they realized there was no connection to the outside world. There was no connection to subways. So they were promised some of the best bus service possible to them.

Assemblyman Benedetto: (44:29)

And a tribute to the MTA, not without the battle, not without a lot of people in this very room and committees who talked to them and fought the good fight against them to convince them to keep that bussing coming into Co-Op City. And now we're doing busing plus, we're going to have this Metro North station coming to a Co-Op City. And it is great. It is great. Infrastructure means so much for the development of the Bronx, of a country in general. Let me lastly say that this would not have happened unless people think big and boy are we blessed to have a governor who thinks big, is making this happen. And Mr. Governor, I thank you very much.

Andrew Cuomo: (45:24)

Thank you, Benedetto. Thank you. Well, I think everything has been said. Mike said it well, it is about... And Ruben said it well. It is about hope, but this is not just an aspirational hope. This is a concrete hope because it's based on who we are and what we have done in the past. This is what we do. We're in New York, we rise to the occasion. New York tough. I love that expression. That's what they say about us behind our back. You know, I worked in the federal government for a lot of years. I worked in every state in the nation and somehow they would figure out I was from New York. I don't know how. It must've been my tie that let them up.

But the first thing they would say is, oh, you New Yorkers, you're tough. You're tough. And at first I used to say, no, no, no, we're not that tough.

Andrew Cuomo: (46:28)

But then I went the other way. Yes, we're tough. We are tough, but we're tough in a good way. We're tough in a good way. We're strong and we're strong enough to be tough, but we're strong enough to be loving. And we're strong enough to be confident. And we're strong enough as Jamaal said to believe in ourselves and to believe in each other. That's what New York tough means.

Andrew Cuomo: (46:58)

We went through a hard time. We'll get through it. How do you know? Because we're New York tough. That's what this is about. This is what New Yorkers do when they're faced with challenges. We rise to them and we overcome. This is great for Co-Op City. And Co-Op City is going to get a great station. Ruben in the back room was giving me his design ideas for the station. He started showing me colors. How you get red, yellow, green, blue, orange, and purple all on one wall, I'm not really sure, but he's going to make sure that it is a beautiful station for Co-Op City. But we also have a station at Parkchester [inaudible 00:47:51], which is going to transform that area. Hunts Point is going to have a station and Morris Park are going to have a station.

Andrew Cuomo: (48:04)

So, it is going to revitalize the entire area, North, South, and other points. Thank you to all. It just shows you what you can do when you work together and you forget the differences and you find the commonality and you join arms, and that's what you've seen demonstrated here today. They've been mentioned, but Congressman Torres, he is a fighter, he is an advocate, he has been great. County Executive George Latimer of Westchester. Why would Westchester care? Well, it's good for Westchester, but more because it was the right thing. It was the right thing. And George Latimer is one of the rare politicians, and I say it behind his back, who does the right thing only because it's the right thing. And that is a beautiful thing. Thank you the all. Thank you and congratulations. (silence)

Andrew Cuomo: (49:03)

Abby, do you have a question?

Abby: (51:07)

I don't. I'll leave it to the lovely reporter back there with [inaudible 00:51:07].

Speaker 2: (51:07)

Governor, I'd like ask about-

Andrew Cuomo: (51:07)

So much for your question.

Speaker 2: (51:13)

I have two questions. First, do you support state level target attacks on companies that are stocking fuel? And secondly, can you say where and when did you personally take the sexual harassment class you mandated others to take [inaudible 00:51:26] employees?

Andrew Cuomo: (51:27)

Yeah, I took it in my office in Albany.

Speaker 2: (51:29)

When?

Andrew Cuomo: (51:32)

The executives have a PowerPoint that they go through. You don't participate in a class. So, you're given a PowerPoint. You take it every year.

Speaker 2: (51:44)

But I mean this year, when did you take the class?

Andrew Cuomo: (51:46)

Oh, I don't know the date, but I took it this year.

Speaker 2: (51:50)

Is there-

Andrew Cuomo: (51:50)

A carbon tax, you can't do it that way. A carbon tax. I understand the concept. In concept it makes sense. How does it work? What's the economic impact? You'd have to have all those questions. Go ahead.

Clayton: (52:04)

So, you suggested the other day that you didn't have faith in the AG's investigation. Will you respect the findings and resign if the allegations are confirmed? And are you at all concerned about criminal charges based on the employees allegations?

Andrew Cuomo: (52:19)

Short answer is no, I did nothing wrong. I never said I didn't have faith in the attorney general's investigation. What I said was, people have heard one side of the story and New Yorkers are smart. They know when they're hearing one side of the story, that they wait to hear the other side of the story. And I am very eager to tell them the other side of the story because it is a much different story. And the truth will be told, and the truth is much different than what has been suggested. And I'll leave it at that for now.

Clayton: (53:08)

Governor, can you talk about the East River tunnels? You didn't mention that today, the MTAs is listed the repair of Amtrak East River tunnels as the main blockade between Penn Access being completed. That's beyond your control. Is it still the MTA and your position that those titles need to be repaired before this get launch?

Andrew Cuomo: (53:30)

Janno.

Clayton: (53:30)

And what is the timeline? What is that look like?

Andrew Cuomo: (53:30)

Janno.

Janno: (53:31)

Clayton, I think you know, we said is that the way Amtrak is planning at this time to repair the East River tunnels could inhibit the startup of this service. It could prevent us from getting the full advantage of the Metro-North to Penn service that the governor has announced today. So, we have Amtrak to do the renovation of the East River tunnels, work that has been waiting since Sandy to be done the way that we did the L train at the governor's instigation, which is to do the work while maintaining service. We work nights and weekends. And we've expressed to Amtrak a real concern that because they're planning year shutdowns that that could eventually, the second such year long shutdown could interfere with the achievement of the full advantage of this service. But we are also hopeful that Amtrak will reconsider their position. And as you know we got into that last week.

Clayton: (54:38)

You just promised a room full of people that this service would be able to run it by 2025. But what are you doing beyond this to make sure that that isn't keeping that from happening?

Janno: (54:49)

As I've said to you, we're working with Amtrak on this project. Amtrak is actually a collaborator on this project. And I am convinced that in the end of the day, the timing and the methodology of that East River tunnel work will be done in a way that allows the full achievement. We're planning three trains an hour in each direction and that's what we want to make sure is done. We also want to make sure that's done so that we can take full advantage of East Side Access in terms of opening up additional service in Penn Station, including the Metro-North to Penn.

Andrew Cuomo: (55:22)

And Clayton, you're a smart guy. Who owns Amtrak? Federal government. Who controlled the federal government last year?

Clayton: (55:31)

I don't know.

Andrew Cuomo: (55:32)

Oh yes you do. You may not want to, but you do. Who controls it this year? That's a big difference, right? Next question.

Speaker 3: (55:41)

Governor Cuomo, Ohio is offering a \$1 million lottery for folks to get the vaccine. Have you thought about a whole different approach to incentives to get people to get shot?

Andrew Cuomo: (55:56)

We've thought about lottery tickets, which is basically a \$1 million lottery, right? Depending on what the lottery is that that week. We are offering, as you know, baseball tickets, we're offering MTA rides, Buffalo. Yesterday, we're offering NFTA. They call it their transit authority rides. So, we're offering a variety of incentives. Lottery tickets are one of the ideas that we had, but we're thinking way outside the box.

Andrew Cuomo: (56:35)

Some states are offering cash. I'm not crazy about that idea because how about all

the people who received the vaccine already? We have 17 million vaccines done, with 60%. Now you're going to offer someone, some states I believe are offering \$ 100 to take a vaccine. Well, I just took my vaccine. Why didn't I get my \$100? Shouldn't you retroactively give everyone money? So, the incentives are tricky, but we're open to very creative incentives.

Speaker 3: (57:22)

If it gets the job done, is it worth it?

Andrew Cuomo: (57:23)

Yeah, if it gets the job done, it would be worth it. I don't know, look, as we discussed, there's a spectrum of people we're working through. We're at 60%. The numbers have dropped off nationally, not just in New York. The first people came in for the vaccine we're the people who were really eager for the vaccine, right? You had a lot of people who were anxious and afraid and believed, and they overwhelmed the system. We've worked our way through them. It's now walk in anyone. We've walked our way through that population.

Andrew Cuomo: (58:06)

You now have a population that is not resistant, but is sort of blasé about the vaccine. It's not a top priority for them. And what we're doing with them is we're trying to make it easy. And rather than asking them, come to us, you have to make a reservation and come to the Javits Center or you have to get in the car and drive the Yankee Stadium. We're saying we'll go to you. You stay there. I'll get you as you go to the train. I'll get you as you go to the ball game. You literally have to walk right by the place. And by the while giving you incentive to go and to take the vaccine. We did 1,000 people yesterday at the MTA site, 1,000 people without giving them \$100 by making it accessible. And they got basically a \$28 or so benefit, I guess on the card. But that's the population we're focused on now.

Andrew Cuomo: (59:13)

There will be a hardcore population that I believe is going to be very, very difficult because we went through this with measles and you have parents today who homeschool their child because they won't give them the measles vaccine to go to school. The anti-vaccine theory is a small group, but it is an intense group. I have talked to them numerous times, their very vocal, their very energized. A \$100 and a lottery ticket is not going to do it for that people. It's just not. Just think of what they're going through, homeschooling rather than sending their child to school. That's how strongly they feel. So, we're working our way through, if you will, the degrees of resistance and what we're doing is working

now. 1,000 people yesterday was good. We'll see where we get, and then we'll continue to add incentives and come up with new ideas as we're working through the population.

Speaker 4: (01:00:25)

Well, on that same line, the nursing home staffers who have not been vaccinated, obviously kind of resistant. Have you heard any interesting plans or ideas for encouraging them or maybe, not requiring, but somehow encouraging them to get vaccinated?

Andrew Cuomo: (01:00:41)

[inaudible 01:00:41], nothing different than the general population. I think they're reflective of the general population.

Speaker 2: (01:00:49)

Governor, I'd like to read to you the statement that you put out when Charlotte Bennett accused you of sexual harassment. You said, "I now understand that my interactions may have been insensitive or too personal. And that some of my comments given my position make others feel in ways I've never expected." You didn't deny that you said an appropriate thing to Charlotte Bennett. Do you acknowledge the fact that your intention, according to the law, don't matter in sexual harassment? And did you say the things that you said that she accused you of saying? Because you don't deny them. You apologized for making people feel uncomfortable.

Andrew Cuomo: (01:01:19)

No. I said I never meant to make anyone feel uncomfortable.

Speaker 2: (01:01:26)

I'm asking you do you acknowledge-

Andrew Cuomo: (01:01:27)

Can I finish my answer? It is after the fact, obviously. I never said anything I believe is inappropriate. You can leave this press conference today and say, "Oh, the governor harassed me." You can say that. I would say, "I never said anything that I believed was inappropriate. I never meant to make you feel that way. You may hear it that way. You may interpret it that way. And I respect that. And I apologize to you." If I said something you think is offensive.

Speaker 2: (01:02:09)

Well, according to the law, the harasser's intention doesn't matter.

Andrew Cuomo: (01:02:13)

Yes, but-

Speaker 2: (01:02:14)

You apologized for if you made someone feel uncomfortable. I'm just wondering if you acknowledge that the law that doesn't matter and would still be considered harassment.

Andrew Cuomo: (01:02:21)

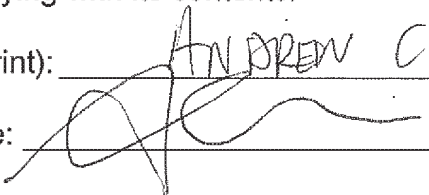
Harassment is not making someone feel uncomfortable. That is not harassment. If I just made you feel uncomfortable, that is not harassment. That's you feeling uncomfortable. Okay. Thank you all very much.

2019 Mandatory Training Attestation Form

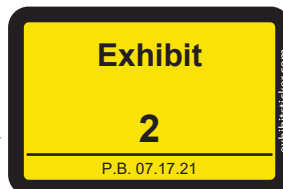
I hereby attest that I have completed the following mandatory training courses
(check all that apply):

All staff:	
<input checked="" type="checkbox"/>	Sexual Harassment in the Workplace
<input checked="" type="checkbox"/>	Equal Employment Opportunity
<input checked="" type="checkbox"/>	Prevention of Violence in the Workplace
<input type="checkbox"/>	Fire Safety
<input checked="" type="checkbox"/>	Information and Cyber Security Awareness
<input type="checkbox"/>	Internal Controls
<input checked="" type="checkbox"/>	NYS Right to Know
<input checked="" type="checkbox"/>	Ethics for New York State Employees
<input type="checkbox"/>	

I have read and understand the material and acknowledge that I am responsible
for complying with its contents.

Name (print): ANDREW CUOMO
Signature:  Date: 10/8/19

Return the completed and signed form to [REDACTED]@budget.ny.gov.





State of New York

Executive Chamber

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.

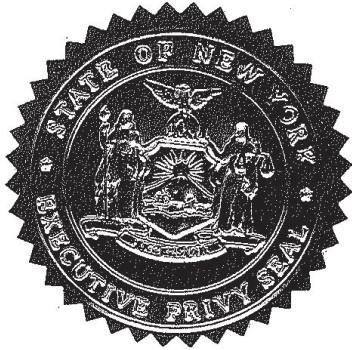
III. Combating Harassment and Discrimination in State Agencies

- 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



July 7, 2021 | 12:49 pm

COVID-19 Updates

The COVID-19 vaccine is here. It is safe, effective and free. Walk in to get vaccinated at sites across the state. Continue to mask up and stay distant where directed.

GET THE FACTS >

GOVERNOR
ANDREW M. CUOMO

AUGUST 12, 2019 | Albany, NY

Governor Cuomo Signs Legislation Enacting Sweeping New Workplace Harassment Protections

EQUAL OPPORTUNITY

(/KEYWORDS/EQUAL-
OPPORTUNITY)

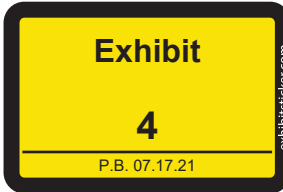
Eliminates Restriction that Harassment be "Severe or Pervasive" in Order for it to Be Legally Actionable

Mandates That All Employment Contract NDAs Include Language Allowing Employees to File a Complaint of Harassment or Discrimination

Extends Statute of Limitations for Employment Sexual Harassment Claims Filed from One Year to Three Years

Key Component of the Governor's 2019 Women's Justice Agenda

Watch Video of Governor Cuomo Discussing This Legislation [Here](#)



Governor Andrew M. Cuomo today signed legislation (S.6577/A.8421) to enact sweeping new workplace harassment protections, fulfilling a key component of Governor Cuomo's 2019 Women's Justice Agenda. This legislation

strengthens New York's anti-discrimination laws to ensure employees can seek justice and perpetrators will be held accountable by eliminating the restriction that harassment be "severe or pervasive" in order to be legally actionable; mandating that all non-disclosure agreements allow employees to file a complaint of harassment or discrimination; and extending the statute of limitations for employment sexual harassment claims filed from one year to three years.

"There has been an ongoing, persistent culture of sexual harassment, assault and discrimination in the workplace, and now it is time to act," **Governor Cuomo said.** "By ending the absurd legal standard that sexual harassment in the workplace needs to be 'severe or pervasive' and making it easier for workplace sexual harassment claims to be brought forward, we are sending a strong message that time is up on sexual harassment in the workplace and setting the standard of equality for women."

"We must continue to change our culture and ensure women are protected from sexual assault and harassment," **said Lieutenant Governor Kathy Hochul.** "These reforms build on New York's nation-leading efforts to combat sexual harassment and make sure survivors have the tools and support they need to seek justice and hold abusers accountable. This legislation is another step in advancing women's rights and achieving full equality once and for all."

To further protect workers and hold abusers accountable, this legislation:

- Lowers the high bar set for employees to hold employers accountable for sexual harassment by amending under the New York Human Rights Law to make clear that conduct need not be "severe or pervasive" to constitute actionable conduct;
- Protects employees' rights to pursue complaints by mandating that all non-disclosure agreements in employment contracts include language stating that employees may still file a complaint of harassment or discrimination with a state or local agency and testify or participate in a government investigation;
- Extends the statute of limitations for employment sexual harassment claims filed with the Division of Human Rights from one year to three years;
- Requires employers to provide their employees with notice about the employer's sexual harassment prevention policy in English as well as the employee's primary language;
- Expands the coverage of the Human Rights Law to all employers in the state;
- Extends protections against all forms of discrimination in the workplace to all contractors, subcontractors, vendors, consultants, or others providing services; and against all forms of discriminatory harassment to domestic workers;
- Requires courts to interpret the Human Rights Law liberally regardless of the federal rollback of rights;
- Prohibits mandatory arbitration to resolve cases of discrimination and harassment in the workplace;
- Updates the power of the Attorney General to enforce the Human Rights Law; and
- Requires a study on how best to build on recent sexual harassment prevention laws to combat all types of discrimination in the workplace and a review of sexual harassment policies every four years.

Senator Alessandra Biaggi said, "In 2018 a group of former legislative staffers came forward to demand justice for the years of sexual harassment they endured at the hands of powerful lawmakers and state agencies - today we are taking that power and putting it in the hands of survivors and working people of New York. With the signing of this legislation, employers across all sectors will be held accountable for addressing all forms of sexual harassment and discrimination in the workplace, and survivors will be given the necessary time to report complaints and seek the justice they deserve. It has been such an honor to carry this bill and I am incredibly appreciative of Senate Majority Leader Andrea Stewart-Cousins and Governor Andrew M. Cuomo for their commitment to addressing this issue with open hearts and minds. Today New York stands as a beacon of hope for survivors across the country as we usher a movement into law, and take one step forward towards building a harassment-free New York for all."

Assembly Member Aravella Simotas said, "Today marks the day that workers in NYS proudly claim their space without fear. Every single person has the right to a workplace free of sexual harassment and violence. It has been a long time coming, and I am proud that the foundation upon which sexual harassment has festered in our workplaces for generations has been demolished. By signing this package of guidelines to strengthen worker protections, we are strengthening New York's standard of ensuring equal opportunity for all. I thank Governor Cuomo, Senator Biaggi, and my partners in the Legislature for understanding the urgency of improving our workplaces and prioritizing these reforms."

The Governor first proposed these sweeping reforms as part of the 2019 Women's Justice Agenda; he proposed it again in the FY 2020 Executive Budget. The initiative was not adopted by the legislature, and with 11 days remaining in the legislative session, the Governor launched the Women's Justice Agenda: The Time Is Now campaign urging the legislature to end the requirement that harassment be severe or pervasive, as well as take other actions before the end of session.

New York is a national leader in the fight against sexual harassment and last year Governor Cuomo signed into law the nation's most comprehensive sexual harassment package as part of the FY 2019 budget. That package expanded workplace harassment protections in the State's Human Rights Law to include contractors, subcontractors, vendors, consultants, or others providing services in the workplace; required employers to adopt a sexual harassment prevention policy and training; and mandated that as of January 2019 all State contractors must submit an affirmation that they have a sexual harassment policy and that they provide annual training to all of their employees. This legislation builds upon that package and provides even greater protections against workplace harassment.

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Translations

<p>Bengali Translation বাংলা অনুবাদ</p>	<p>(https://www.governor.ny.gov/sites/default/files/atoms/files/08.12.19.reI_.HARASSMEN)</p>
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STATE OF NEW YORK
EXECUTIVE DEPARTMENT



EQUAL EMPLOYMENT OPPORTUNITY
In New York State

RIGHTS AND RESPONSIBILITIES

A Handbook for Employees of New York State Agencies

Andrew M. Cuomo
Governor

May 2020

EMPLOYEE RIGHTS AND RESPONSIBILITIES

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INTRODUCTION

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

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

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

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

PROTECTED AREAS

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

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

AGE

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

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

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

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

Statutory protection.

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

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

Executive Order concerning State workers.

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

Retirement.

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

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

Exceptions.

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

¹ 29 U.S.C. § 621 et seq.

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

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

⁴ Human Rights Law § 296.3-a(g).

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

⁶ N.Y. Correction Law § 7(4).

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

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

RACE AND COLOR

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

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

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

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

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

Statutory protection.

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

⁷ Human Rights Law § 296.3-a(g).

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

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

¹⁰ Human Rights Law § 296.3-a(g).

¹¹ Human Rights Law § 292.37 and § 292.38.

¹² 42 U.S.C. § 2000e et seq.

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CREED

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

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

Statutory protection.

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

Sabbath or holy day observance.

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

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

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

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

¹³ 42 U.S.C. § 2000e et seq.

¹⁴ Human Rights Law § 296.10(a).

¹⁵ Human Rights Law § 296.10(b).

¹⁶ Human Rights Law § 296.10(c).

¹⁷ Human Rights Law § 296.10(b).

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

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

Religious observance or practices.

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

Request for accommodation.

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

Conflicts with seniority rights.

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

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

¹⁹ Human Rights Law § 296.10(a).

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

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

Undue hardship.

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

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

Exceptions.

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

NATIONAL ORIGIN

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

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

²¹ Human Rights Law § 296.10(d)(1).

²² Human Rights Law § 296.10(d)(1).

²³ Human Rights Law § 292.8.

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Statutory protection.

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

Language issues.

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

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

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

Proof of identity and employment eligibility.

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

Citizenship requirements.

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

²⁴ 42 U.S.C. § 2000e et seq.

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

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

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

MILITARY STATUS

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

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

Statutory protection.

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

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

Military leave and job retention rights.

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

²⁸ Human Rights Law § 292.28.

²⁹ 38 U.S.C. §§ 4301-35.

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

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

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

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

SEX

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

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

Statutory protection.

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

Sex stereotyping.

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

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

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

³² 42 U.S.C. § 2000e et seq.

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Sexual harassment.

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

Pregnancy and childbirth discrimination.

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

Exceptions.

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

SEXUAL HARASSMENT

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

Statutory protection.

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

Executive Order concerning State workers.

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

Sexual harassment defined.

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

³³ 42 U.S.C. § 2000e et seq.

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

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

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

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

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

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

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

³⁵ Human Rights Law § 296.1(h).

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Reporting sexual harassment.

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

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

See below: Harassment.

Sexual harassment by a non-employee.

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

Sexual harassment of non-employees.

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

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

SEXUAL ORIENTATION

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

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

Statutory protection.

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

Same-sex spouses or partners.

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

Domestic partners.

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

³⁶ Human Rights Law § 292.27.

GENDER IDENTITY OR EXPRESSION

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

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

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

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

Statutory protection.

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

Executive Order concerning State workers.

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

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

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

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

³⁷ 9 N.Y.C.R.R. § 466.13

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

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

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

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

Rights with regard to name, title and pronoun.

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

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

Access to gender-segregated facilities and programs.

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

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

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Dress codes, uniforms, grooming, and appearance standards.

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

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

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

DISABILITY

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

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

Statutory protection.

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

³⁹ 42 U.S.C. § 12111 et seq.

⁴⁰ 29 U.S.C. § 793 and § 794.

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

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

A “disability” is:

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

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

Reasonable performance.

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

Essential functions.

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

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

⁴¹ Human Rights Law § 292.21.

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Reasonable accommodation.⁴²

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

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

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

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

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

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

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

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

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

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

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

Exceptions.

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

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

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

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

Civil Service Law §§ 71 and 73.

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

⁴³ Human Rights Law § 296.3.

⁴⁴ 9 N.Y.C.R.R. § 466.11.

⁴⁵ 9 N.Y.C.R.R. § 466.11(g)(1).

⁴⁶ 9 N.Y.C.R.R. § 466.11(g)(2).

⁴⁷ Civil Service Law § 71.

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

Drug and Alcohol-Free Workplace Policy.

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

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

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

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

⁴⁸ Civil Service Law § 73.

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

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

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

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

See above: Drug and Alcohol-Free Workplace Policy.

Guide dogs, hearing dogs, and service dogs.

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

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

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

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

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

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

⁵¹ Human Rights Law § 296.14.

⁵² Human Rights Law § 296.14.

⁵³ Human Rights Law § 296.14.

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

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

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

PREDISPOSING GENETIC CHARACTERISTICS

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

Testing for such genetic characteristics is prohibited in most circumstances.

Statutory protection.

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

What is a predisposing genetic characteristic?

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

⁵⁵ Civil Service Law § 6(1).

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

⁵⁷ Human Rights Law § 292.21-a.

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How is the employee or applicant protected?

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

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

Exceptions.

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

FAMILIAL STATUS

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

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

⁵⁸ Human Rights Law § 296.19(a)(1).

⁵⁹ Human Rights Law § 296.19(a)(2).

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

⁶¹ Human Rights Law § 296.19(b).

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Statutory protection.

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

Familial status does not include the identity of the children.

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

Nepotism.

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

What is familial status discrimination?

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

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

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

No requirement of reasonable accommodation.

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

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

Pregnancy and childbirth discrimination.

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

MARITAL STATUS

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

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

Statutory protection.

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

Marital status does not include the identity of the spouse.

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

⁶³ Human Rights Law §296.3

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Nepotism.

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

What is marital status discrimination?

Some examples of marital status discrimination are:

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

STATUS AS A VICTIM OF DOMESTIC VIOLENCE

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

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

⁶⁵ N.Y. Social Service Law §459-a.

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Statutory protection.

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

Executive Order concerning State workers.

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

Purpose of domestic violence and the workplace policies.

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

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

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

Meeting the needs of domestic violence victims.

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

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

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

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

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

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

Human Rights Law reasonable accommodation requirements for leave time.

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

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

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Time off for legal proceedings.

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

Unemployment insurance benefits.

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

Further information and support.

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

PREGNANCY, CHILDBIRTH AND FAMILY LEAVE

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

Statutory protection.

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

⁶⁷ N.Y. Penal Law § 215.14.

⁶⁸ N.Y. Labor Law § 593.

⁶⁹ Human Rights Law § 296.3(a).

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

Pregnancy discrimination.

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

Reasonable accommodation of pregnancy-related conditions.

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

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

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

Right to express breast milk in the workplace.

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

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

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

⁷¹ Human Rights Law § 292.21-f.

⁷² Human Rights Law § 296.3.

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

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

Parental leave.

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

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

Paid Family Leave.

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

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

⁷³ 29 U.S.C. § 2601 et seq.

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

PRIOR ARREST RECORDS, YOUTHFUL OFFENDER ADJUDICATIONS AND SEALED CONVICTION RECORDS

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

Statutory protection.

This protection is provided by Human Rights Law § 296.16.

What is unlawful?

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

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

Pending arrest or charges.

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

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

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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).

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.

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

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

GENERAL PROHIBITIONS AND PROVISIONS

Unlawful inquiries.

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

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

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

Interns.

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

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

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.

December 14, 2016

7:48 PM

Edit

Inbox (194)

3 Messages

See More

Found in Exchange Inbox

Stephanie Benton

3:28 PM



To: Lindsey Boylan

Details

He said look up Lisa Shields. You could be sisters. Except you're the better looking sister.

Stephanie,

It was a great trip – particularly interesting at the GM plant this am.

Thanks for all of your help and, if possible, please 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

633 Third Avenue, New York, NY 10017

[Redacted] | [Redacted] [@esd.ny.gov](mailto:[Redacted]@esd.ny.gov)

www.esd.ny.gov



Exhibit

6

P.B. 07.17.21



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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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Relevant people

Lindsey Boylan @LindseyBoylan
Mom. Progressive P
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

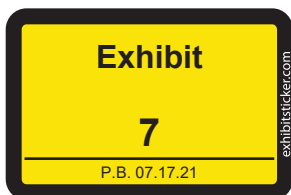
Trending in United States
HELP THE BEAR
People react to a viral TikTok
fearlessly pushing a bear awa
before running inside to pro
4,843 Tweets

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

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

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People on Twitter are the first to know.

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Thread

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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Relevant people

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

COVID-19 · LIVE
COVID-19: News and upda
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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Relevant people

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

What's happening

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

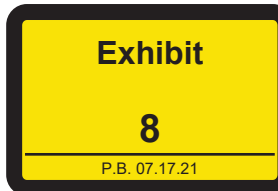
Music · Trending Olamide 24.2K Tweets

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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