EXHIBIT 1

EXHIBIT
1

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

SUBPOENA DUCES TECUM

THE PEOPLE OF THE STATE OF NEW YORK

GREETINGS

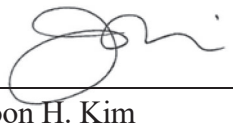
TO: Jill DesRosiers
Chief of Staff
Executive Chamber
Capitol Building
Albany, NY 12224

YOU ARE HEREBY COMMANDED, under Executive Law § 63(8) and N.Y. Civil Practice Law and Rules § 2302(a), and/or other statutes, to deliver and turn over to the Special Deputies to the First Deputy Attorney General, on ***the 29th day of March, 2021, at 9:30 a.m.,*** or any agreed upon adjourned date or time, at One Liberty Plaza, 38th Floor, New York, New York 10006, all documents and information requested in the attached Schedule in accordance with the instructions and definitions contained therein.

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

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

WITNESS, The Honorable Letitia James, Attorney General of the State of New York, this 13th day of March, 2021.

By: 

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SCHEDULE

A. General Definitions and Rules of Construction

1. "All" means each and every.

2. "Any" means any and all.

3. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Subpoena all information or Documents that might otherwise be construed to be outside of its scope.

4. "Communication" means any conversation, discussion, letter, email, text message, instant message, memorandum, meeting, note or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means, and shall include any Document that abstracts, digests, transcribes, records or reflects any of the foregoing.

5. "Concerning" means, directly or indirectly, in whole or in part, relating to, referring to, describing, evidencing or constituting.

6. "Custodian" means any Person or Entity that, as of the date of this Subpoena, maintained, possessed, or otherwise kept or controlled such Document.

7. "Document" is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced or stored (manually, mechanically, electronically or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail ("email"), instant messages, text messages, Blackberry or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, code (*e.g.*, C/C++/C#, SQL, JavaScript), algorithms, code repositories (*e.g.*, GitHub), commit messages, audit logs, data or databases (*e.g.*, Oracle, postgres or other SQL or non-SQL systems), plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, commit messages, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy

thereof.

8. "Entity" means without limitation any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or other firm or similar body, or any unit, division, agency, department, or similar subdivision thereof.

9. "Identify" or "Identity," as applied to any Document means the provision in writing of information sufficiently particular to enable the Attorney General to request the Document's production through subpoena or otherwise, including but not limited to: (a) Document type (letter, memo, etc.); (b) Document subject matter; (c) Document date; and (d) Document author(s), addressee(s) and recipient(s). In lieu of identifying a Document, the Attorney General will accept production of the Document, together with designation of the Document's Custodian, and identification of each Person You believe to have received a copy of the Document.

10. "Identify" or "Identity," as applied to any Entity, means the provision in writing of such Entity's legal name, any d/b/a, former, or other names, any parent, subsidiary, officers, employees, or agents thereof, and any address(es) and any telephone number(s) thereof.

11. "Identify" or "Identity," as applied to any natural person, means and includes the provision in writing of the natural person's name, title(s), position(s), any aliases, place(s) of employment, telephone number(s), email address(es), mailing addresses and physical address(es).

12. "Person" means any natural person, or any Entity.

13. "Sent" or "received" as used herein means, in addition to their usual meanings, the transmittal or reception of a Document by physical, electronic or other delivery, whether by direct or indirect means.

14. "Subpoena" means this subpoena and any schedules or attachments thereto.

15. The use of the singular form of any word used herein shall include the plural and vice versa. The use of any tense of any verb includes all other tenses of the verb.

B. Particular Definitions

1. "Complainant" means Charlotte Bennett, Lindsey Boylan, Brittany Commisso, Karen Hinton, Ana Liss, Anna Ruch, and any other individual who has made any Complaints known to You, any other member of the Executive Chamber, or the public. For the avoidance of doubt, to the extent additional allegations come to light following the issuance of this Subpoena, individuals who make such allegations should be included in the definition of "Complainant."

2. "Complaint" means any and all complaints, allegations, comments, accusations, or other statements of workplace misconduct, sexual harassment, sex- or gender-based misconduct, or other behavior or comments of a sexual, abusive or otherwise inappropriate or uncomfortable nature, whether made formally or informally.

3. "Executive Chamber" means the Executive Chamber of the State of New York, including but not limited to Governor Andrew M. Cuomo, and all other officers, directors, supervisors, personnel, employees, secretaries, interns, fellows, agents, contractors, consultants, representatives, and attorneys of the Executive Chamber, or any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing at any point during the relevant time.

4. "Executive Office" means any office within the New York State government in which employees and officers work directly with, work under the control of, answer to or maintain direct contact with the Governor. This includes offices in Albany, Manhattan, and anywhere else in New York State.

5. "Governor" means the New York State Governor Andrew M. Cuomo.

6. "Governor's Mansion" means the official residence of the Governor, also known as the New York State Executive Mansion.

7. "New York Attorney General" or "Attorney General" means the New York State Office of the Attorney General, including Letitia James.

8. "Respondent," "You," or "Your" means Jill DesRosiers, Chief of Staff to the Governor, either in an official or individual capacity.

9. "State" or "New York" means the State of New York.

C. Instructions

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

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

2. Possession, Custody, and Control. The Subpoena calls for all responsive Documents or information in Your possession, custody or control. This includes, without limitation, Documents or information possessed or held by You on any devices, whether personally owned or supplied to you by your employer or held by Your employees, agents, representatives, or consultants or Persons from whom You could request Documents or information. If Documents or information responsive to a request in this Subpoena are in Your control, but not in Your possession or custody, You shall promptly Identify the Person with possession or custody of the Person's obligation to preserve such Documents and provide them to You for production.

3. Documents No Longer in Your Possession. If any Document requested herein was formerly in Your possession, custody or control but is no longer available, or no longer exists, You shall submit a statement in writing under oath that: (a) describes in detail the nature of such Document and its contents; (b) Identifies the Person(s) who prepared such Document and its contents; (c) Identifies all Persons who have seen or had possession of such Document; (d) specifies the date(s) on which such Document was prepared, transmitted or received; (e) specifies the date(s) on which such Document became unavailable; (f) specifies the reason why such Document is unavailable, including without limitation whether it was misplaced, lost, destroyed or transferred; and if such Document has been destroyed or transferred, the conditions of and reasons for such destruction or transfer and the Identity of the Person(s) requesting and performing such destruction or transfer; and (g) Identifies all Persons with knowledge of any portion of the contents of the Document.

4. No Documents Responsive to Subpoena Requests. If there are no Documents responsive to any particular Subpoena request, You shall so state in writing under oath in the Affidavit of Compliance attached hereto, identifying the paragraph number(s) of the Subpoena request concerned.

5. Format of Production. You shall produce Documents and information responsive to this Subpoena in the format requested by the Office of the New York State Attorney General, as set out in Attachments 1 and 2 or as otherwise agreed upon.

6. Databases. To the extent that any data responsive to the requests herein is maintained in an electronic repository of records, such as a detailed transcription report, such information should be produced by querying the database for responsive information and generating a report or a reasonably usable and exportable electronic file (for example, *.csv and/or *.xls formats) for review. If it is not possible to export data in this format, You must make the database available to the undersigned for meaningful inspection and review of the information.

7. Existing Organization of Documents to be Preserved. Regardless of whether a production is in electronic or paper format, each Document shall be produced in the same form, sequence, organization or other order or layout in which it was maintained before production, including but not limited to production of any Document or other material indicating filing or other organization. Such production shall include without limitation any file folder, file jacket, cover or similar organizational material, as well as any folder bearing any title or legend that contains no Document. Likewise, all Documents that are physically attached to each other in Your files shall remain so attached in any production; or if such production is electronic, shall be accompanied by notation or information sufficient to indicate clearly such physical attachment.

8. Manner of Compliance – Custodians/Search Terms/Technology-Assisted Review. Prior consultation with the Special Deputies to the First Deputy Attorney General is required concerning selection of custodians for document searches (whether electronic or otherwise) or for use of search term filters, predictive coding or other forms of technology-assisted review. The Office of the Attorney General reserves the right to approve, disapprove, modify or supplement any proposed list of custodians, search terms, and/or review methodology. The selection or use of custodians, search term filters, and/or technology-assisted review in no way relieves You of Your obligation to fully respond to these requests for Documents or information.

9. Document Numbering. All Documents responsive to this Subpoena, regardless of whether produced or withheld on ground of privilege or other legal doctrine, and regardless of whether production is in electronic or paper format, shall be numbered in the lower right corner of each page of such Document, without disrupting or altering the form, sequence, organization or other order or layout in which such Documents were maintained before production. Such number shall comprise a prefix containing the producing Person's name or an abbreviation thereof, followed by a unique, sequential, identifying document control number.

10. Privilege Placeholders. For each Document withheld from production on ground of privilege or other legal doctrine, regardless of whether a production is electronic or in hard copy, You shall insert one or more placeholder page(s) in the production bearing the same document control number(s) borne by the Document withheld, in the sequential place(s) originally occupied by the Document before it was removed from the production.

11. Privilege. If You withhold or redact any Document responsive to this Subpoena on ground of any privilege or other legal doctrine, You shall submit with the Documents produced a statement in writing under oath, stating: (a) the document control number(s) of the Document withheld or redacted; (b) the type of Document; (c) the date of the Document; (d) the author(s) and recipient(s) of the Document; (e) the general subject matter of the Document; and (f) the legal ground for withholding or redacting the Document. If the legal ground for withholding or redacting the Document is attorney-client privilege, You shall

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

12. Your Production Instructions to Be Produced. You shall produce a copy of all written or otherwise recorded instructions prepared by You concerning the steps taken to respond to this Subpoena. For any unrecorded instructions given, You shall provide a written statement under oath from the Person(s) who gave such instructions that details the specific content of the instructions and any Person(s) to whom the instructions were given.

13. Cover Letter, Index, and Identifying Information. Accompanying any production(s) made pursuant to this Subpoena, You shall include a cover letter that shall at a minimum provide an index containing the following: (a) a description of the type and content of each Document produced therewith; (b) the paragraph number(s) of the Subpoena request(s) to which each such Document is responsive; (c) the Identity of the Custodian(s) of each such Document; and (d) the document control number(s) of each such Document. As further set forth in Attachment 2, information must also be included in the metadata and load files of each production concerning the identity of each Document's custodian, as well as information identifying the particular Document requests and/or information to which each document is responsive.

14. Affidavit of Compliance. A copy of the Affidavit of Compliance provided herewith shall be completed and executed by all natural persons supervising or participating in compliance with this Subpoena, and You shall submit such executed Affidavit(s) of Compliance with Your response to this Subpoena.

15. Identification of Persons Preparing Production. In a schedule attached to the Affidavit of Compliance provided herewith, You shall Identify the natural person(s) who prepared or assembled any productions or responses to this Subpoena. You shall further Identify the natural person(s) under whose personal supervision the preparation and assembly of productions and responses to this Subpoena occurred. You shall further Identify all other natural person(s) able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be.

16. Continuing Obligation to Produce. This Subpoena imposes a continuing obligation to produce the Documents and information requested. Documents located or created, and information learned, acquired or created, at any time after Your response is due shall be promptly produced at the place specified in this Subpoena.

17. No Oral Modifications. No agreement purporting to modify, limit or otherwise vary this Subpoena shall be valid or binding, and You shall not act in reliance upon any such agreement, unless a Special Deputy to the First Deputy Attorney

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

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

D. Documents to be Produced

1. Any and all Documents concerning any Complaints concerning the Governor, including investigations thereof.

2. Any and all Communications with or about a Complainant.

3. Any and all Documents reflecting Communications between the Governor and any of the Complainants.

4. Any and all Documents concerning a Complainant's attendance at an event, appointment, or meeting at which the Governor was or would be present, including any at the Executive Offices or the Governor's Mansion.

5. Any and all Documents concerning any change in the position, title, employment, or office of any Complainant.

6. Any and all Documents concerning communications with the media and public statements about the Complainants or Complaints concerning the Governor.

7. Any and all Documents relating to how to respond to Complaints concerning the Governor, including the nature of any investigations to be conducted about such Complaints.

8. Documents sufficient to identify Your employment history at the Executive Chamber, including but not limited to the time period of your employment, Your title(s), Your position(s), Your responsibilities, and Your direct supervisor(s).

9. A list of all Your electronic devices used for any Communication related to the Executive Chamber or the Governor, whether personally owned or supplied to you by the Executive Chamber or the State.

10. A list of all Your email addresses or phone numbers used for any

Communication related to the Executive Chamber or the Governor.

ATTACHMENT 1

Electronic Document Production Specifications

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

11. Concordance Production Components. A Concordance production consists of the following component files, which must be produced in accordance with the specifications set forth below in Section 7.

    a. ***Metadata Load File.*** A delimited text file that lists in columnar format the required metadata for each produced document.

    b. ***Extracted or OCR Text Files.*** Document-level extracted text for each produced document or document-level optical character recognition ("OCR") text where extracted text is not available.

    c. ***Single-Page Image Files.*** Individual petrified page images of the produced documents in tagged image format ("TIF"), with page-level Bates number endorsements.

    d. ***Opticon Load File.*** A delimited text file that lists the single-page TIF files for each produced document and defines (i) the relative location of the TIF files on the production media and (ii) each document break.

    e. ***Native Files.*** Native format versions of non-printable or non–print friendly produced documents.

12. Production Folder Structure. The production must be organized according to the following standard folder structure:
    - data\ (contains production load files)
    - images\ (contains single-page TIF files, with subfolder organization)
      \0001, \0002, \0003…
    - native_files\ (contains native files, with subfolder organization)
      \0001, \0002, \0003…
    - text\ (contains text files, with subfolder organization)
      \0001, \0002, \0003…

13. De-Duplication. You must perform global de-duplication of stand-alone documents and email families against any prior productions pursuant to this or previously related subpoenas.

14. Paper or Scanned Documents. Documents that exist only in paper format must be scanned to single-page TIF files and OCR'd. The resulting electronic files should be pursued in Concordance format pursuant to these instructions. You must contact the Special Deputy to the First Deputy Attorney General whose telephone number appears on the subpoena to discuss (i) any documents that cannot be scanned, and (ii) how information for scanned documents should be represented in the metadata load file.

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

a. Relational Databases

1. Database tables should be provided in CSV or other delimited machine-readable, non-proprietary format, with each table in a separate data file. The preferred delimiter is a vertical bar "|". If after speaking with the Special Deputy to the First Deputy Attorney General and it is determined that the data cannot be exported from a proprietary database, then the data can be produced in the proprietary format so long as the Office of the Attorney General is given sufficient access to that data.

2. Each database must have an accompanying Data Dictionary.

3. Dates and numbers must be clearly and consistently formatted and, where relevant, units of measure should be explained in the Data Dictionary.

4. Records must contain clear, unique identifiers, and the Data Dictionary must include explanations of how the files and records relate to one another.

5. Each data file must also have an accompanying summary file that provides total row counts for the entire dataset and total row counts.

b. Compression

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

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

17. Production File Requirements.

a. ***Metadata Load File***

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

- Accepted time formats:
    - hh:mm:ss (if not in 24-hour format, you must indicate am/pm)
    - hh:mm:ss:mmm

b. ***Extracted or OCR Text Files***

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

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

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

d. ***Opticon Load File***

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

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

e. ***Native Files***

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

ATTACHMENT 2
Required Fields for Metadata Load File

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

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

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

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

DATECREATED	Date that a document was created.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMECREATED	Time that a document was created.	hh:mm:ss AM/PM or hh:mm:ss
DATEMOD	Date that a document was last modified.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMEMOD	Time that a document was last modified.	hh:mm:ss AM/PM or hh:mm:ss
FILESIZE	Original file size in bytes.	128, 512, 1024…
PGCOUNT	Number of pages per document.	1, 2, 10, 100…
IMPORTANCE	Email priority level if set.	Low, Normal, High
TIFFSTATUS	Generated by the Law Pre-discovery production tool (leave blank if inapplicable).	Y, C, E, W, N, P
DUPSTATUS	Generated by the Law Pre-discovery production tool (leave blank if inapplicable).	P
MD5HASH	MD5 hash value computed from native file (a/k/a file fingerprint).	BC1C5CA6C1945179FEE144F25F51087B
SHA1HASH	SHA1 hash value	B68F4F57223CA7DA3584BAD7ECF111B8044F8631
MSGINDEX	Email message ID	

AFFIDAVIT OF COMPLIANCE WITH SUBPOENA

State of _____ }
County of _____ }

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

1. I am employed by Respondent in the position of _____ _____;

2. Respondent's productions and responses to the Subpoena of the Attorney General of the State of New York, dated _____, 20_____ (the "Subpoena") were prepared and assembled under my personal supervision;

3. I made or caused to be made a diligent, complete and comprehensive search for all Documents and information requested by the Subpoena, in full accordance with the instructions and definitions set forth in the Subpoena;

4. Respondent's productions and responses to the Subpoena are complete and correct to the best of my knowledge and belief;

5. No Documents or information responsive to the Subpoena have been withheld from Respondent's production and response, other than responsive Documents or information withheld on the basis of a legal privilege or doctrine;

6. All responsive Documents or information withheld on the basis of a legal privilege or doctrine have been identified on a privilege log composed and produced in accordance with the instructions in the Subpoena;

7. The Documents contained in Respondent's productions and responses to the Subpoena are authentic, genuine and what they purport to be;

8. Attached is a true and accurate record of all persons who prepared and assembled any productions and responses to the Subpoena, all persons under whose personal supervision the preparation and assembly of productions and responses to the Subpoena occurred, and all persons able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be; and

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

_____ _____

Signature of Affiant Date

_____

Printed Name of Affiant

* * *

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

_____, Notary Public

My commission expires: _____

EXHIBIT 2

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

SUBPOENA AD TESTIFICANDUM

THE PEOPLE OF THE STATE OF NEW YORK

GREETINGS

TO: Jill DesRosiers
Chief of Staff
Executive Chamber
Capitol Building
Albany, NY 12224

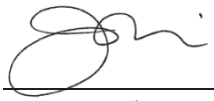
YOU ARE HEREBY COMMANDED, pursuant to Executive Law § 63(8) and § 2302(a) of the New York Civil Practice Law and Rules, to appear and attend before the Special Deputies to the First Deputy Attorney General, on March 29, 2021 at 9:30 AM, or any agreed upon adjourned date or time, at One Liberty Plaza, 38th Floor, New York, New York 10006 to testify in connection with an investigation into allegations of sexual harassment by Governor Cuomo, or any matter which the Attorney General deems pertinent thereto.

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

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

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

WITNESS, The Honorable Letitia James, Attorney General of the State of New York, this 15th day of March 2021.

By: 

Joon H. Kim
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First Deputy Attorney General
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By: /s/ Anne L. Clark

Anne L. Clark
Yannick Grant
Special Deputies to the
First Deputy Attorney General
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EXHIBIT 3

EXHIBIT
3

STATE OF NEW YORK
EXECUTIVE DEPARTMENT

EQUAL EMPLOYMENT OPPORTUNITY
In New York State

RIGHTS AND RESPONSIBILITIES

A Handbook for Employees of New York State Agencies

Andrew M. Cuomo
Governor

December 2011

TABLE OF CONTENTS

INTRODUCTION

New York State has long been committed to the proposition that every individual in the State have an equal opportunity to enjoy a full and productive life. This commitment to equal opportunity extends to the workplace. Under New York State's Human Rights Law, the first of its kind in the nation, employees are protected from acts of bias, harassment, prejudice or discrimination. Such acts have no place in the workplace, State or otherwise.

All State employees have the right to be free from unlawful discrimination and the responsibility to assure that their actions do not contribute to an atmosphere in which the State's policy of promoting a bias-free work environment is frustrated. To that end, 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 since it is generally broader in scope than protections granted under federal law. In addition, this Handbook will cover related state laws and Executive Orders.

This Handbook does not cover agency-specific policies and procedures related to discrimination. That information is provided to employees by their respective agencies.

PROTECTED AREAS

The Human Rights Law ("Law") applies to all State agencies and employees, and provides very broad anti-discrimination coverage. The Law provides, in section 296.1(a), that it is an unlawful discriminatory practice "[f]or an employer or licensing agency, because of the age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status or domestic violence victim status of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment. The Law further provides, in sections 296.15 and 296.16, protections from employment discrimination for persons with prior conviction records, or prior arrests, youthful offender adjudications or sealed records.

Each of these areas will be discussed in order below, as well as other protections provided by Governor's Executive Orders and other state laws and policies.

AGE

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

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

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

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

Statutory protection.

Age discrimination is made unlawful by Human Rights Law § 296.1 and § 296.3-a, and by the federal Age Discrimination in Employment Act ("ADEA").[1] Under New York law, age discrimination in employment is prohibited against all persons eighteen years of age or older. Under the ADEA, age discrimination is prohibited only against persons forty years of age or older.

Executive Order concerning State workers.

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

Retirement.

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

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

Exceptions.

The Civil Service Law[5] mandates minimum and maximum hiring ages for police officers. Correction Officers must be age 21 in order to be appointed.[6] These are lawful exceptions to the provisions of the Human Rights Law.

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]

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[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).

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

RACE and COLOR

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

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

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

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

Statutory protection.

Race and color discrimination is unlawful pursuant to the Human Rights Law § 296.1, and the federal Civil Rights Act of 1964, Title VII.[11]

CREED

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

"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

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[7] Human Rights Law § 296.3-a(g).
[8] N.Y. Retirement and Social Security Law § 381-b(e).
[9] N.Y. Park, Recreation and Historic Preservation Law § 13.17(4).
[10] Human Rights Law § 296.3-a(g).
[11] 42 U.S.C. § 2000e et seq.

religion or creed. An individual's self-identification with a particular creed or religious tradition is determinative.

Statutory protection.

Discrimination based on creed is unlawful pursuant to the Human Rights Law § 296.1, and the federal Civil Rights Act of 1964, Title VII.[12]

Sabbath or holy day observance.

An employee is entitled to time off for religious observance of a sabbath or holy day or days, in accordance with the requirements of his or her religion, provided it does not impose an undue hardship to his or her employer, as explained below.[13] Time off shall also be granted to provide a reasonable amount of time for travel before and after the observance.

The Human Rights Law provides that any such absence from work shall, wherever practicable in the reasonable judgment of the employer, be made up by an equivalent amount of time and work at a mutually convenient time, or shall be charged against any available personal, vacation or other paid leave, or shall be taken as leave without pay.[14] Agencies are not required to permit such absence to be made up at another time, but may agree that the employee may do so.

Leave that would ordinarily be granted for other non-medical personal reasons shall not be denied because the leave will be used for religious observance.[15] Under no circumstances may time off for religious observance be charged as sick leave.[16]

The employee is not entitled to premium wages or benefits for work performed during hours to which such premium wages or benefits would ordinarily be applicable, if the employee is working during such hours only to make up time taken for religious observance.[17]

Civil Service Law § 50(9) provides that candidates who are unable to attend a civil service examination because of religious observance can request an

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[12] 42 U.S.C. § 2000e et seq.
[13] Human Rights Law § 296.10(a).
[14] Human Rights Law § 296.10(b).
[15] Human Rights Law § 296.10(c).
[16] Human Rights Law § 296.10(b).
[17] Human Rights Law § 296.10(a). "Premium wages" include "overtime pay and compensatory time off, and additional remuneration for night, weekend or holiday work, or for standby or irregular duty." § 296.10(d)(2). "Premium benefit" means "an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, or an educational or pension benefit that is greater than the employment benefit due to the employee for an equivalent period of work performed during the regular work schedule of the employee." § 296.10(d)(3).

alternate test date from the Department of Civil Service without additional fee or penalty.

Religious observance or practices.

An employee who, in accordance with his or her religious beliefs, observes a particular manner of dress, hairstyle, beard, or other religious practice, should not be unreasonably required to compromise his or her practice in the workplace. The employer is required by law to make a bona fide effort to accommodate an employee's or prospective employee's religious observance or practice.[18]

Request for accommodation.

The employee needing time off or other accommodation of religious observance or practice should clearly state the religious nature of the request, and should be willing to work with the employer to reach a reasonable accommodation of the need. Supervisors should consult with their human resources and/or legal departments, as necessary, with respect to requests for accommodation of religious observance or practices.

Conflicts with seniority rights.

In making the effort to accommodate sabbath observance or religious practices, the employer is not obliged to initiate adversarial proceedings against a union when the seniority provisions of a collective bargaining agreement limit its ability to accommodate any employee's religious observance or practice, but may satisfy its duty under this section by seeking volunteers willing to waive their seniority rights in order to accommodate their colleague's religious observance or practice. This waiver must be sought from the union that represents the employees covered by such agreement.

Undue hardship.

Before the employer can deny a religious accommodation, the employer must be able to show that accommodating the employee's religious observance or practice would result in undue hardship to the employer. The undue hardship standard applies generally to all accommodation requests, not only those for time off for religious observance. "Undue hardship" means an accommodation requiring significant expense or difficulty, including one that would cause significant interference with the safe or efficient operation of the workplace. Factors that are specifically to be considered are the identifiable costs (such as loss of productivity, or the cost to transfer or hire additional personnel), and the number of individuals who will need time off for a particular sabbath or holy day in relation to available personnel.[19]

[18] Human Rights Law § 296.10(a).
[19] Human Rights Law § 296.10(d)(1).

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.[20]

Exceptions.

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

NATIONAL ORIGIN

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

National origin is defined as including ancestry, so an individual born in the United States is nonetheless protected against discrimination based on his or her ancestors' nationality.[21] An individual's self-identification with a particular national or ethnic group is determinative.

Statutory protection.

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

Language issues.

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

Requiring employees to speak only English, at all times in the workplace, may be national origin discrimination. Any specific workplace rule about language use

[20] Human Rights Law § 296.10(d)(1).
[21] Human Rights Law § 292.8.
[22] 42 U.S.C. § 2000e et seq.

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.[23]

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

Proof of identity and employment eligibility.

All New York State employees hired after November 6, 1986 must be able to complete a verified federal Form I-9, which establishes the employee's identity and eligibility for employment in the United States. Rescinding an offer of employment or terminating employment based upon lack of current employment authorization is required by federal law and is not unlawful discrimination.[24]

Citizenship requirements.

Employees serving in positions designated as "public offices," as well as peace and police officer positions defined in the New York State Criminal Procedure Law, must be United States citizens.[25]

SEXUAL ORIENTATION

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

The term "sexual orientation" means heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived.[26]

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[23] *See* the federal Equal Employment Opportunity Commission's regulation at 29 CFR § 1606.7.
[24] US Immigration and Nationality Act § 274A, as modified by the Immigration Reform and Control Act of 1986, Immigration Act of 1990 and Illegal Immigration Reform and Immigrant Responsibility Act of 1996.
[25] Public Officers Law § 3(1); Criminal Procedure Law § 1.20(34) (police officers); Criminal Procedure Law § 2.10 (peace officers).
[26] Human Rights Law § 292.27.

Statutory protection.

Discrimination on the basis of sexual orientation is unlawful pursuant to the Human Rights Law § 296.1. Sexual orientation is not a protected category under federal law.

Same-sex spouses or partners.

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

Domestic partners.

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

MILITARY STATUS

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

"Military status" is defined in the Human Rights Law as a person's participation in the military service of the United States or the military service of the State, including but not limited to, the armed forces of the United States, the Army National Guard, the Air National Guard, the New York Naval Militia, or the New York Guard.[27]

[27] Human Rights Law § 292.28.

Statutory protection.

Discrimination on the basis of military status is unlawful pursuant to the Human Rights Law § 296.1. The federal Uniformed Services Employment and Reemployment Rights Act (USERRA)[28] provides additional protections.

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

Military leave and job retention rights.

N.Y. Military Law entitles State employees to a leave of absence for "ordered military duty"[29] or "military duty."[30] Both provisions entitle State employees to return to their jobs with the same pay, benefits, and status they would have attained had they remained in their position continuously during the period of military duty. State employees on leave for military duty continue to accrue years of service, increment, and any other rights or privileges. Under both Military Law and the Human Rights Law, those called to military duty, or who may be so called, may not be prejudiced in any way with reference to promotion, transfer, or other term, condition or privilege of employment. Military Law § 243(5) provides: "State employees on leave for military duty shall suffer no loss of time, service, increment, or any other right or privilege, or be prejudiced in any way with reference to promotion, transfer, reinstatement or continuance in office. Employees are entitled to contribute to the retirement system in order to have leave time count toward determining length of service."

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

[28] 38 U.S.C. §§ 4301-35.
[29] N.Y. Military Law § 242; pertains to members of the militia, the reserve forces, or reserve components of any branch of the military.
[30] N.Y. Military Law § 243; pertains to active duty in the armed forces or reservists called to active duty.

SEX

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

Statutory protection.

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

Executive Order concerning State workers.

On January 1, 2011, Governor Andrew M. Cuomo issued Executive Order No. 2 reissuing Executive Order No. 19,[32] which established State policy on sexual harassment in the workplace.

Sexual harassment.

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

In accordance with the Executive Order, every State executive branch agency must have in place a policy on sexual harassment prevention, which includes a procedure for the receipt and investigation of complaints of sexual harassment. This policy and procedure should be distributed to new employees, and made available to all staff as needed. Also, each agency must provide appropriate sexual harassment training to its staff.

Hostile environment sexual harassment consists of 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 has also been defined as any unwanted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks made by someone in the workplace which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient's job performance.

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[31] 42 U.S.C. § 2000e et seq.
[32] Issued by Gov. Mario M. Cuomo on May 31, 1983.

Sexual harassment is known as “quid pro quo” harassment when a person in authority tries to trade job benefits for sexual favors. Only supervisors are deemed to engage in this kind of harassment, because co-workers do not have the authority to grant or withhold benefits.

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

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

As with all discrimination and harassment, if an employee is a victim of sexual harassment, or observes it in the workplace, the employee should complain promptly to a supervisor, managerial employee, personnel administrator, or equal employment officer. The complaint can be verbal or in writing. If the complaint is verbal, a written complaint may be required in order to assist in the investigation. Any complaint, whether verbal or written, must be investigated by the agency. Furthermore, any supervisory or managerial employee who observes or otherwise becomes aware of conduct of a sexually harassing nature, must report such conduct so that it can be investigated.

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

See, generally, section on Harassment, below.

Sex stereotyping.

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

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

Non-harassment related sex discrimination can also arise in the context of gender transition issues such as an employer's refusal to recognize an employee's sex after transition. For more information on transgender issues, see sections below on Gender Identity and on Disability.

Pregnancy discrimination and maternity leave.

Discrimination on the basis of pregnancy constitutes sex discrimination. 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.[33] Disability discrimination may also be implicated where discrimination is based on limitations or perceived limitations due to pregnancy. Any condition related to pregnancy 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. (See below in the section on Disability.)

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.

The federal Family Medical Leave Act[34] is also applicable. 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 Act. The Act entitles eligible employees to take up to a total of 12 weeks of unpaid leave during a 12-month period.

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.

[33] Human Rights Law § 296.1(g).
[34] 29 U.S.C. § 2601 et seq.

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. 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.[35] The Federal Rehabilitation Act of 1973 § 503 and § 504[36] also apply to many State workers. Federal law also requires reasonable accommodation.

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

What is a "disability" under the Human Rights Law?

A "disability" is:

- a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a 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.[37]

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

[35] 42 U.S.C. § 12111 et seq.
[36] 29 U.S.C. § 793 and § 794.
[37] Human Rights Law § 292.21.

Reasonable performance.

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

Essential functions.

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

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

Reasonable Accommodation.[38]

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;
- 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

[38] With respect to policy and procedures relative to reasonable accommodation generally, employees should also consult their own agencies' policies, as each State agency is required to have a written plan, policy and procedure for considering reasonable accommodation requests.

the position, or from receiving equal terms, conditions or privileges of the position.

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

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

While the employee can request a particular accommodation, the obligation to provide a reasonable accommodation is satisfied where the needs of the person with the disability are met. The agency has the right to decide which reasonable accommodation will be granted, so long as it is effective in enabling the employee to perform the job duties in a reasonable manner.

An agency may require a doctor's note to substantiate the request, or a medical examination where appropriate, but must maintain the confidentiality of an employee's medical information. Such information cannot be used by the agency for another purpose such as a basis for referring an employee for a medical examination to determine fitness for duty pursuant to Civil Service Law section 72(1) or placing the employee on an involuntary leave of absence pursuant to Civil Service Law section 72(5) or other personnel actions.

Many common questions about reasonable accommodation are explained in the reasonable accommodation regulations[39] 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.

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

As noted above relative to pregnancy discrimination, 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, section on Military Status.)

[39] 9 N.Y.C.R.R. § 466.11.

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

Drug and Alcohol Free Workplace Policy.

New York State employees are subject to criminal, civil, and disciplinary penalties if they distribute, sell, attempt to sell, possess, or purchase controlled substances while at the workplace or while acting in a work-related capacity. Such illegal acts, even if engaged in while off duty, may result in disciplinary action. In those locations where it is permitted, an employee may possess and use a controlled substance that is properly prescribed for the employee by a physician. Employees are also prohibited from on-the-job use of, or impairment from alcohol. If a supervisor has a reasonable suspicion that an employee is unable to perform job duties due to a disability which may be caused by the use of controlled substances or alcohol, that employee may be required to undergo medical testing.[42] If the cause of the disability is found to be drug- or alcohol-related, the employee may be referred to voluntary and confidential participation in the statewide Employee Assistance Program. Other available options include pursuing disability leave procedures or disciplinary measures. On-line supervisory training regarding a drug and alcohol free workplace is available through the GOER's Online Learning Center at http://www.goer.ny.gov/Training_Development/Online_Learning/index.cfm.

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.

[40] Civil Service Law § 71.
[41] Civil Service Law § 73.
[42] For agencies that do not have their own drug/alcohol testing procedures, this test must be done pursuant to Civil Service Law § 72.

Drug Addiction and Alcoholism under the Human Rights Law and Regulations.[43]

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

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

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

See also, Drug and Alcohol Free Workplace Policy, above.

Guide dogs, hearing dogs, and service dogs.

Users of guide dogs, hearing dogs, or service dogs are given protection by the Human Rights Law.[44] Any dog that meets the definition will be allowed to accompany its owner into the workplace, with only extremely narrow exceptions for health and safety.

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 is not part of the federal ADA, under which the matter may be analyzed to determine whether a reasonable accommodation is appropriate.

The right to be accompanied by such dogs 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 blind or hearing impaired person, is actually used to provide such aid, and was trained by a recognized guide or hearing dog training center or professional guide or hearing dog trainer.[45]

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[43] *See generally* 9 N.Y.C.R.R. § 466.11(h).
[44] Human Rights Law § 296.14.
[45] Human Rights Law §§ 292.31-32.

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 recognized service dog training center or professional service dog trainer.[46]

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.[47] 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 recognized 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.[48]

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.[49]

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.[50]

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[46] Human Rights Law § 292.33.
[47] 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.
[48] Civil Service Law § 6(1).
[49] 9 N.Y.C.R.R. § 466.11(g)(1).
[50] 9 N.Y.C.R.R. § 466.11(g)(2).

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 and § 296.19. It is also covered by the federal Genetic Information Nondiscrimination Act (GINA).[51]

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."[52]

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.[53] 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.[54]

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

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[51] 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.

[52] Human Rights Law § 292.21-a.

[53] Human Rights Law § 296.19(a)(1).

[54] Human Rights Law § 296.19(a)(2).

environment. The employer may not take any adverse action against an employee on the basis of such voluntary test.[55]

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.[56] However, the employer may not take adverse action against the employee as a result of such testing.

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. Marital status is not covered by federal law.

Marital status does not include the identity of the spouse.

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

Nepotism.

Nepotism means hiring, granting employment benefits, or other favoritism based on the identity of a person's spouse or other relative. The Public Officers Law provides that a State employee may not control or influence decisions to hire,

[55] Human Rights Law § 296.19(c) and (d).
[56] Human Rights Law § 296.19(b).

fire, supervise or discipline a spouse or other relative.[57] 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.

DOMESTIC VIOLENCE VICTIM STATUS

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

Statutory protection.

Discrimination based on domestic violence victim status is unlawful pursuant to Human Rights Law § 296.1. 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,[58] 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

[57] Anti-nepotism rules for all State government workplaces are found in N.Y. Public Officers Law § 73.14.
[58] Issued by Gov. Eliot L. Spitzer on October 22, 2007.

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 his or her status, which can include the following:

- Employee's need for time off to go to court, to move, etc., should be granted at least to the extent granted for other personal reasons.
- If an abuser of an employee comes to the workplace and is threatening, the incident should be treated in same manner as any other threat situation. It is not to be treated as just the victim's problem which the victim must handle on her or his own. The victim of domestic violence must not be treated as the "cause" of the problem and supervisory employees must take care that no negative action is taken against the victim because, for example, the abuser comes to the workplace, the victim asks the employer to notify security about the potential for an abuser to come to the workplace, or the victim provides an employer with information about an order of protection against the abuser.
- If a victim needs time off for disability caused by the domestic violence, it should be treated the same as any temporary disability. This includes time off for counseling for psychological conditions caused by the domestic violence. See section on Disability, above: 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.

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.[59]

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.[60]

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.

[59] N.Y. Penal Law § 215.14.
[60] N.Y. Labor Law § 593.

PRIOR ARREST RECORDS, YOUTHFUL OFFENDER ADJUDICATIONS AND SEALED RECORDS

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

Statutory protection.

This protection is provided by Human Rights Law § 296.16.

What is unlawful?

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

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

Pending arrest or accusation.

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

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

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

What specific circumstances are protected?

The arrest or criminal accusation must have been:

- dismissed, pursuant to Criminal Procedure Law § 160.50;
- disposed of as a youthful offender adjudication, pursuant to Criminal Procedure Law § 720.35;
- resulted in a conviction for a violation, which was sealed pursuant to Criminal Procedure Law § 160.55; or
- resulted in a conviction, which was sealed pursuant to Criminal Procedure Law § 160.58.

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 the section below on 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."[61]

These provisions do not apply to an application for employment as a police officer or peace officer.[62]

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

[61] Human Rights Law § 296.16; see e.g. Civil Service Law § 50(4).
[62] Police and peace officer as defined in Criminal Procedure Law §§ 1.20 and 2.10, respectively.

PREVIOUS CONVICTION RECORDS

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

Statutory protection.

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

Factors from the Correction Law.

The Correction Law provides that an employer may not refuse to hire, or terminate an employee, or take an adverse employment action against an individual, because that individual has been previously convicted of one or more criminal offenses, or because of a belief that a conviction record indicates a lack of "good moral character," ***unless*** either there is a direct relationship between one or more of the previous criminal offenses and the specific employment sought or held, or employment of the individual would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.[63]

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.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

[63] N.Y. Correction Law § 752.

(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.[64]

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.[65]

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.[66]

Interaction with the arrest provisions.

The arrest provisions[67] of the Human Rights Law interact with the conviction provisions. Although it is ***lawful to ask*** about previous convictions, it is ***unlawful***

[64] N.Y. Correction Law § 753.1.
[65] N.Y. Correction Law § 753.2.
[66] N.Y. Correction Law § 751; see also Civil Service Law section 50(4).

to ask about previous arrests resolved in an individual's favor, or about youthful offender adjudications, or about convictions that have been sealed pursuant to Criminal Procedure Law § 160.55 or § 160.58. If any individual with a youthful offender record or a sealed conviction states that he or she has no previous convictions, this is not a misrepresentation. The employer is not entitled to any information about youthful offender records or sealed convictions. (See section on Prior Arrest, above.)

Enforcement only by court action.

A State employee or an applicant for State employment cannot file a complaint with the Division of Human Rights regarding previous conviction. An individual can pursue enforcement under the Human Rights Law only by filing an Article 78 proceeding in State Supreme Court.[68] (However, State employees may file complaints with respect to the Prior Arrest provisions of the Human Rights Law (see section on Prior Arrest, above) with the Division of Human Rights.)

Exceptions.

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

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

These protections do not apply to "membership in any law enforcement agency."[69]

GENDER IDENTITY

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

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

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[67] Human Rights Law § 296.16.
[68] N.Y. Correction Law § 755.1.
[69] N.Y. Correction Law § 750.5.

Statutory protection.

There is no specific protection for gender identity in federal or New York State law, but gender identity may form the basis of a sex discrimination claim, under certain circumstances, or a disability discrimination claim if the employee alleges that he or she has "gender identity disorder" or "gender dysphoria," which are considered disabilities under the Human Rights Law. (See sections on Sex and on Disability, above.)

Executive Order concerning State workers.

On January 1, 2011, Governor Andrew M. Cuomo issued Executive Order No. 2, reissuing Executive Order No. 33,[70] which prohibits discrimination in employment by executive branch agencies on the basis of gender identity.

What protection against discrimination is provided?

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

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

The prohibition on gender identity discrimination extends to actions based upon an individual's actual or perceived gender identity. While gender identity discrimination can take many forms, it includes, but is not limited to, unwelcome verbal or physical conduct, such as derogatory comments, jokes, graffiti, drawings or photographs, touching, gestures, or creating or failing to remedy a hostile work environment.

[70] Issued by Gov. David A Paterson on December 16, 2009.

GENERAL PROHIBITIONS

Harassment

Harassment that creates a hostile work environment, based on the protected categories discussed in this Handbook, is unlawful pursuant to the Human Rights Law. (See also subsection on Sexual Harassment, above.) State employees are entitled to a work environment which promotes respect for all, and actions that demonstrate bias, harassment, or prejudice will not be tolerated.

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

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

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 must be reported.

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

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

Harassment must be investigated and appropriate corrective action taken.

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

Unlawful Inquiries

It is an unlawful discriminatory practice for an employer to print, circulate, or use any form of application, or to make any inquiry which expresses directly or indirectly, any limitation, specification or discrimination as to any protected category, unless based upon a bona fide occupational qualification.[71]

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 category membership which is collected for statistical purposes should be retained separately from a candidate's other information.

Retaliation

Retaliation by an employer is unlawful pursuant to the Human Rights Law and the Civil Service Law.[72] The federal statutes mentioned in this handbook also prohibit retaliation.

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

[71] Human Rights Law § 296.1(d).
[72] Human Rights Law § 296.7; see also Civil Service Law § 75.(b), which gives protection to "whistleblowers."

Division or court proceedings.

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

Opposing discriminatory practices.

Opposing discriminatory practices includes filing an internal complaint of discrimination with the employing agency, or reporting discriminatory actions to a supervisor or other appropriate person, either verbally or in writing. It also includes complaining that another person's rights under the Law were violated or encouraging a fellow employee to report unlawful discriminatory practices.

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

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

Adverse employment action.

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

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.

A negative employment 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.

Political Activities

The Civil Service Law provides that no appointment or selection or removal from employment shall relate to the political opinions or affiliations of any person. No

person in the civil service of the State is under any obligation to contribute to any political fund or render any political service and no person shall be removed or otherwise prejudiced for refusing to do so. No person in the civil service shall discharge or promote or reduce or in any manner change the rank or compensation of another for failing to contribute money or any other valuable thing for any political purpose. No person in the civil service shall use his or her official authority or influence to coerce the political action of any person or body or to interfere with any election.[73] This provision has been enforced by the New York State Commission on Public Integrity, which will be replaced on or before December 12, 2011, by the Joint Commission on Public Ethics. Complaints regarding this provision should not be filed with the Division of Human Rights.

Diversity

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

Reporting Discrimination Complaints Internally

As noted throughout this Handbook, any employee who has been subjected to any discrimination, bias, prejudice, harassment or retaliation, based on any of the areas covered by the handbook, should promptly report the matter to his or her supervisor or manager, to the agency's human resources department, or to the agency's Equal Opportunity Officer.

Each agency has policies and procedures in place to respond to such complaints, and can advise employees as to appropriate steps to take pursuant to the agency's procedures. All agency procedures are designed to ensure that the State's anti-discrimination policies are followed, including the State's policies forbidding retaliation, as set out above. All agency procedures provide for a prompt and complete investigation as to the complaint of discrimination, and for prompt and effective remedial action where appropriate.

[73] Civil Service Law § 107.

Pursuing Discrimination Complaints Externally

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

Employees are not required to pursue their agency's internal complaint procedure before filing a complaint with any agency or with a court, based on federal or state or local law (though as mentioned previously, an agency may not be held responsible for harassment by coworkers if it was not made aware of the harassment).

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

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

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

NOTE

This Handbook has been prepared for the general information of State employees as a summary of the various laws, executive orders, and policies that provide protection from discrimination for State employees. The Handbook is not exhaustive and does not summarize all legal protections that may apply to State employees. Employees should also refer to the employee manual and anti-discrimination policies of their employing agency.

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 anytime, in its sole discretion, without prior notice to employees. Moreover, this Handbook is not intended to, and does not create any right, contractual or otherwise, for any employee, not otherwise contained in the particular law or executive order the Handbook summarizes.

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

EXHIBIT 4

EXHIBIT
4

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.

GIVEN 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

EXHIBIT 5

EXHIBIT
5

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

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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

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 Law[5] 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.

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[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).

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]

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[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.

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

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[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).

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

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[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."

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.

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[21] Human Rights Law § 296.10(d)(1).
[22] Human Rights Law § 296.10(d)(1).
[23] Human Rights Law § 292.8.

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]

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[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

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[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.

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.

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[32] 42 U.S.C. § 2000e et seq.

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:

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[33] 42 U.S.C. § 2000e et seq.

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

- 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.

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[35] Human Rights Law § 296.1(h).

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.

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[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

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[37] 9 N.Y.C.R.R. § 466.13

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

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.

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 § 504[40] 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.

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.

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[41] Human Rights Law § 292.21.

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

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[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.

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 regulations[44] 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

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[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.

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.

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[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).

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]

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[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.

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]

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[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.

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.

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[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).

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.

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[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.

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[63] Human Rights Law §296.3

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]

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[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.

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.

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.

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

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[67] N.Y. Penal Law § 215.14.
[68] N.Y. Labor Law § 593.
[69] Human Rights Law § 296.3(a).

(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

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[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.

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 Law[74] provides for paid leave to bond with a newly born, adopted or fostered child; care for a close relative with a serious health condition; or assist loved ones when a family member is deployed abroad on active military service. The amount of paid leave available increases to a total of 12 weeks by 2021. State employees not represented by a union in bargaining units 06, 18, 46 and 66 are covered by the law. State employees represented by a union may be covered if Paid Family Leave is collectively bargained for.

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

[73] 29 U.S.C. § 2601 et seq.
[74] Workers Compensation Law, art. 9, §§ 200, et seq.

PRIOR ARREST RECORDS, YOUTHFUL OFFENDER ADJUDICATIONS AND SEALED CONVICTION RECORDS

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

Statutory protection.

This protection is provided by Human Rights Law § 296.16.

What is unlawful?

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

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

Pending arrest or charges.

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

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

employee 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.

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.

(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]

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[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 provisions[81] 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

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[81] Human Rights Law § 296.16.
[82] N.Y. Correction Law § 755.1.
[83] N.Y. Correction Law § 750.5.

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.

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[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;

- 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."

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

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.

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).

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.

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[88] Civil Service Law § 107.

NOTE

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

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

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

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

EXHIBIT 7

EXHIBIT
6

Governor's Office of Employee Relations

Sexual Harassment in the Workplace

e-Learning Course

12/2020

For Training Purposes Only

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

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

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

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

An Environment Free from Discrimination

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

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

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

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

What is Employment Discrimination?

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

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

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

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

Workplace Harassment Based Upon Protected Characteristics is Discrimination

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

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

What is Discriminatory Harassment?

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

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

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

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

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

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

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

Zero Tolerance

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

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

Sexual Harassment

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

Sex discrimination, in general, includes:

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

What is Sexual Harassment?

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

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

Hostile Environment

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

Quid Pro Quo Sexual Harassment

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

Quid pro quo sexual harassment includes:

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

Who Can Be Sexually Harassed?

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

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

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

Who Can Be the Perpetrator of Sexual Harassment?

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

Coworker

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

Supervisor or Manager

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

Third Party

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

Where Can Sexual Harassment Occur?

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

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

Sexual Harassment Case Studies

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

Not Taking "No" for an Answer

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

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

> **True or False:** When Ralph first asked Li Yan for a date, this was sexual harassment.
>
> The statement is false. Ralph's initial comments about looking for a girlfriend and asking Li Yan, a coworker, for a date are not sexual harassment. Even if Li Yan had turned Ralph down for the first date, Ralph had done nothing wrong by asking if she wanted to go on a date and making occasional comments that are not sexually explicit about his personal life.
>
> **True or False:** Li Yan cannot complain of sexual harassment because she went on a date with Ralph.
>
> The statement is false. Being friendly, going on a date, or even having a prior relationship with a coworker does not mean that they have a right to pressure a coworker to continue dating them. Li Yan has to continue working with Ralph. He must respect her wishes and not engage in behavior that has now become inappropriate for the workplace.

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

> **True or False:** Ralph's subsequent behavior with gifts and love notes is not sexual harassment because he has stopped asking Li Yan for dates as instructed. He is just being nice to Li Yan because he likes her.
>
> The statement is false. Li Yan should report Ralph's behavior. She is entitled to have effective assistance in getting Ralph to stop his inappropriate workplace behavior. Because Ralph continues to seek a personal and romantic relationship with Li Yan after being told to stop, he could be subject to serious disciplinary action for his behavior.

The Boss with a Bad Attitude

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

> **True or False:** Because Paul did not tell Sharon that she is unattractive, he has not harassed her.
>
> The statement is false. Paul has made sexually explicit statements to Sharon, which are derogatory and demeaning to Sharon and her female coworkers. It does not matter that Paul supposedly paid Sharon a "compliment." The discussion is still highly offensive to Sharon, as it would be to most reasonable individuals in her situation.
>
> **True or False:** By bringing up his visit to the strip club, Paul is engaging in inappropriate workplace behavior.

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

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

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

No Job for a Woman?

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

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

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

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

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

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

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

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

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

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

> **True or False:** There is nothing Carla can do because she can't prove who vandalized her toolbox.
>
> The statement is false. Carla should speak to her supervisor immediately or file a complaint directly with GOER. It is the agency's responsibility to ensure that appropriate investigation and prompt remedial action is taken.

Too Close for Comfort

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

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

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

> **True or False:** Harold brushing up against Keisha in the conference room could be accidental and does not give Keisha any additional grounds to complain about Harold.
>
> The statement is false. Harold is now engaging in a pattern of escalating behavior. Given the pattern of his too close and touching behavior, it is unlikely that this was inadvertent. Even before being trapped in his office, Keisha should have reported the behaviors she experienced that made her uncomfortable.
>
> **True or False:** Harold touching Keisha's breast is inappropriate but is not unlawful harassment.
>
> The statement is false. Any type of unwelcome sexual touching in the workplace subjects the recipient to inferior terms, conditions, or privileges of employment. The touching described in this example is more than a petty slight or trivial inconvenience. As an employer, the State regards any sexual touching to be very serious misconduct. Keisha should immediately report it before it is repeated. Harold may be subject to criminal charges and should expect to be disciplined for this behavior, up to and including termination.

A Distasteful Trade

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

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

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

> **True or False:** David's behavior could be harassment of Tatiana.
>
> The statement is true. David's behavior is inappropriate, and Tatiana should report the behavior if it made her uncomfortable. Required work-related travel is an extension of the workplace. The prohibitions against sexual harassment apply even if the conduct is outside of the office or an employee's traditional workplace. Particularly in this instance, where their relationship is that of supervisor and supervisee, all their interactions can affect the workplace.
>
> At this point, David's behavior may or may not constitute *quid pro quo* harassment; David has made no threat that, if Tatiana refuses his advance, he will handle her promotion any differently. However, his offer to "pull some strings" followed by a request that they go to his hotel room for drinks and relaxation might be considered potentially coercive. Certainly, if David persists in his advances—even if he never makes or carries out any threat or promise about job benefits— then this could create a hostile environment for Tatiana. David has also put the agency at legal risk due to his conduct because he is a manager.

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

> **True or False:** David has now engaged in *quid pro quo* harassment of Tatiana.
>
> The statement is true. It is now evident that David has offered to help Tatiana with her promotion in exchange for sexual favors.

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

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

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

Tatiana receives the promotion.

> **True or False:** Tatiana cannot complain of harassment because she got the job, so there is no discrimination against her.
>
> The statement is false. Tatiana can be sexually harassed whether or not she receives the promotion.

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

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

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

Sex Stereotyping

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

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

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

An Issue about Appearances

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

> **True or False:** Leonard's boss is correct to tell him wearing jewelry is inappropriate for customer service positions.
>
> The statement is false. Leonard's jewelry is only an issue because Margaret considers it unusual for a man to wear such jewelry. Therefore, her comments to Leonard constitute sex stereotyping.

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

> **True or False:** Leonard is the recipient of harassment based on sex and sexual orientation.
>
> The statement is true. Leonard is harassed based on sex because he is being harassed for failure to adhere to Margaret's sex stereotypes.
>
> Leonard is also harassed based on perceived sexual orientation. It does not matter whether Leonard is gay for him to claim sexual orientation harassment.

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

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

> **True or False:** Leonard has been the target of discrimination based on sex, gender identity or expression, sexual orientation, and/or retaliation.
>
> The statement is true. We don't know Margaret's reason for not recommending Leonard for the promotion, but it is not looking good for Margaret. Either she is biased against Leonard, or she retaliated because he complained, or both.
>
> Leonard should reach out to the Affirmative Action Officer (AAO), who will investigate the circumstances of the promotion. Margaret should be subject to disciplinary action if she abused her supervisory authority by failing to consider Leonard for the promotion fairly. This scenario shows that sometimes more severe action is needed in response to such complaints to prevent discrimination in the future.

Retaliation

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

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

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

What is Retaliation?

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

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

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

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

A complaint must be promptly made to a higher authority if a coworker or a supervisor harasses an employee. An agency cannot stop sexual harassment unless it knows about the harassment. Once informed, the conduct must be reported to GOER or the employing agency, which is required to initiate an investigation and recommend prompt and effective remedial action where appropriate.

The Supervisor's Responsibility

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

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

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

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

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

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

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

Cooperate with Management

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

Take it to the Next Level

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

Investigation and Corrective Action

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

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

Other Types of Workplace Harassment

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

Summary

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

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

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

EXHIBIT 8

EXHIBIT
7

Governor's Office of
Employee Relations

Equal Employment Opportunity: Rights and Responsibilities

e-Learning Course

12/2017
For Training Purposes Only

Welcome to this training on Equal Employment Opportunity in New York State Government. I'm Shauna and I want to speak with you about your rights and responsibilities as an employee of the state.

New York State has long been committed to ensuring that all individuals have an equal opportunity to enjoy a fair, safe, and productive work environment. Laws and policies help ensure that diversity is respected and that everyone can enjoy the privileges of working for New York State. This course will help you better understand your role in helping the state meet this objective.

Equal Employment Opportunity

All state employees and interns have the right to work in an environment free from discrimination. We also have the responsibility to assure that our actions do not contribute in any way to a discriminatory workplace environment.

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

This course is intended to provide you with information on your rights and responsibilities under applicable laws and policies. These laws and policies include the New York State Human Rights Law, federal anti-discrimination laws, other state laws covering specific areas of concern, and the Governor's Executive Orders applicable specifically to state employees.

Course Overview

New York State's Human Rights Law provides broad protection against discrimination. It applies to all employees in New York State, including state employees.

In this course, you will take a look at each of the areas in which you are protected from discrimination.

For additional information on the topics covered in this course, including which laws and policies apply to each protected area, download the publication *Equal Employment Opportunity in New York State: Rights and Responsibilities: A Handbook for Employees of New York State Agencies* ("*Handbook*").

What is Protected?

Let's see if you know what characteristics are protected. Review the following list and determine all the possible characteristics of New York State employees for which there is protection against discrimination.

- Age

- Race and color
- Creed
- National Origin
- Sexual Orientation
- Military Status
- Sex
- Disability
- Pregnancy-related Condition
- Predisposing Genetic Characteristics
- Familial Status
- Marital Status
- Domestic Violence Victim Status
- Prior Arrest Record
- Previous Conviction Record
- Gender Identity

New York State employees are protected from discrimination based on all of the listed characteristics.

Persons who share a particular protected characteristic are sometimes referred to as a protected class, a term that is used in this training and in the *Handbook*.

What is Discrimination?

Discrimination occurs when:

- Employment decisions are based on protected characteristics.
- Individuals are at a disadvantage because of biased attitudes about their protected characteristics.
- Individuals are harassed because of their protected characteristics.

Nondiscrimination means that:

- All individuals have an equal opportunity to obtain and advance in state employment.
- Employment decisions are based on an individual's merit, skills, and qualifications, and not on protected characteristics.
- Employees can work in an environment free from bias.

Discrimination occurs when negative employment actions are based on a protected characteristic, including the following:

- A decision affecting hiring, promotion, discipline, or firing
- Putting an employee at a disadvantage with regard to a term, condition, or privilege of employment
- Harassment

It is also discrimination if negative employment actions are taken on the basis of perceived characteristics, such as someone being perceived to be gay, disabled, or of a particular national origin, whether true or not.

As your employer, the state has certain affirmative duties in some areas, including reasonable accommodation of the following:

- Disability
- Certain religious requirements or practices
- Military obligations
- Certain needs of victims of domestic violence

These will be discussed in more detail later in this training.

What is Harassment?

Harassment is a form of discrimination that consists of words, signs, jokes, pranks, intimidation, or physical violence that is directed at an employee due to any protected characteristics that are discussed in this course. It includes offensive behavior based on stereotypes about a protected class and behavior that is intended to cause discomfort or humiliation because of protected characteristics. Harassment is unlawful when it becomes severe or frequent enough to alter the terms or conditions of an individual's employment.

State employees are entitled to a work environment that promotes respect for all and where actions that demonstrate bias, harassment, or prejudice will not be tolerated. State employees should avoid such behaviors and should report such behaviors when they witness them to a supervisor, manager, or their agency's Affirmative Action Officer. We will discuss supervisory reporting obligations later in this course. Sexual harassment is a particular type of harassment and will be discussed more in the section of this training on sex discrimination.

Normal workplace supervision is not harassment, even if it is negative or upsetting to the employee. If a supervisor treats an employee differently because of a protected characteristic, with regard to job duties, evaluations, or discipline, then this may be discriminatory.

Reporting Harassment

Your employer cannot stop harassment in the workplace unless management knows about the harassment. Harassment should be reported to a supervisor, manager, or Affirmative Action Officer.

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

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

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

If a supervisor or manager receives a report of harassment, or is otherwise aware of harassment, he or she must promptly report it to the agency, without exception. It must be reported even if the supervisor or manager does not believe that the conduct constitutes harassment or the harassed individual asked that it not be reported.

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

Human Rights Law and Equal Employment Opportunity

Federal law and the New York State Human Rights Law prohibit employers from discriminating based on certain protected characteristics.

These categories are protected from discrimination under New York State and federal law:

- Race and Color
- National Origin

- Creed
- Sex
- Age
- Disability
- Predisposing Genetic Characteristics

These categories are also protected from discrimination under New York State law:

- Sexual Orientation
- Pregnancy-related Condition
- Familial Status
- Marital Status
- Favorably Resolved Arrest Record, Youthful Offender Status, Sealed Record
- Prior Conviction Record
- Military Status
- Domestic Violence Victim Status
- Gender Identity

Because the New York State Human Rights Law is broader than federal law, we will focus largely on state law as we take a closer look at each of these protections.

Age

The Human Rights Law protects persons 18 and older from age discrimination, unlike federal law which protects only those 40 and older.

Decisions about hiring, job assignments, or training cannot be made based on assumptions about how an employee's age affects his or her ability or willingness to learn or undertake new tasks and responsibilities.

Most age discrimination involves making employment decisions based on the belief that the individual is “too old” for the job. However, an employment decision based on a perception that a person is “too young” may be discriminatory. Basing a decision on lack of experience or qualifications is not discriminatory.

Ageist remarks must be avoided in the workplace.

Mandatory retirement of employees at any specific age is generally prohibited. However, retirement plans may contain an age component for eligibility. For example, retirement plans may require that individuals reach a certain age, or have some combination of age and years of service, before being eligible for retirement benefits.

Incentive programs aimed at reducing the size of the workforce by granting employees greater than normal retirement benefits are generally considered lawful. Being eligible for early retirement is not coercion based on age. Making employees ineligible for a retirement benefit or incentive because they are too young is not discriminatory.

Employees eligible for retirement, via an incentive program or otherwise, must not be urged to retire.

There are certain exceptions permitting age-based eligibility and mandatory retirement rules, mainly applying to police officers, peace officers, and corrections officers. Please see the *Handbook* for more details.

The Promotion

Wesley, age 55, has two years of management experience while Taylor, who is 36, has eight. They interview for the same position in their agency. When Wesley learns that Taylor was offered the job, he immediately assumes that he was overlooked because he is nearing retirement age. He asks about the decision and is told that Taylor was selected because he had more management experience.

Was the employer's decision to hire Taylor over Wesley discrimination?

a) Yes, this is probably discrimination.

b) No, this is probably not discrimination.

This is probably not age discrimination. The agency had a legitimate reason to promote Taylor instead of Wesley, namely Taylor's greater management experience. If Wesley believes that his age was a factor, he can contact his agency's Affirmative Action Officer. However, unless Wesley or the investigation provides evidence that Taylor's superior qualifications were not the real reason Taylor was promoted, then there will be no basis for a claim of age discrimination.

Race and Color

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

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

Discriminating against an individual because of his or her ancestry or ethnic characteristics also can be considered racial discrimination in some cases.

A Stalled Career

Howard, who is black, works in an agency location where all of the other employees are white. During his ten years at the agency, Howard has noticed that others, who have experience similar to his own, have been promoted on more than one occasion, while he has received no promotion and has never been asked about his interest in promotion. The positions have not been posted, and Howard only learns about the positions after they have been filled. He has an excellent time and attendance record and has always received satisfactory evaluations.

Could discrimination be the reason that Howard has not been promoted?

a) No, there is no evidence of discrimination.

b) Yes, this could be discrimination.

This could be discrimination. Although Howard has no obligation to file a formal complaint, he should consider contacting his agency's Affirmative Action Officer because the circumstances are sufficiently suggestive of racial discrimination. Race discrimination can be subtle and can occur without overt evidence of discrimination. Available positions should be posted, and every employee who meets the basic qualifications should have an opportunity to compete for open positions. Even if an investigation finds that no discrimination has actually occurred in this case, the method of filling positions should be changed to conform to proper practices to assure all employees have an equal opportunity to apply for open positions.

Creed

Creed encompasses belief in a supreme being or membership in an organized religion or congregation. A person is also protected from discrimination for having no creed, or for being an atheist or agnostic. The state defers to an employee's self-identification with a particular creed or religious tradition.

In addition to the requirement that employees cannot be discriminated against in hiring, termination, or the terms, conditions, and privileges of employment because of their creed, workplace rules should not unnecessarily impede the employee's adherence to his or her religion. For this reason, accommodation of Sabbath or holy day observance and the wearing of religious garb is provided for by law.

An employee is entitled to time off for religious observance of a Sabbath or holy day in accordance with the requirements of his or her religion. Time off may be denied if it imposes an undue hardship on the employer. Time off should also be granted to allow for a reasonable amount of travel time before and after the observance, if requested by the employee.

The Human Rights Law provides that any such absence, in the reasonable judgment of the employer, can be made up by an equivalent amount of time and work at a time agreed to by the employer and employee. The time can also be charged against any appropriate leave accruals. Any absence not made up or charged may be treated by the employer as leave without pay. Time off for religious observance may not be charged to sick leave.

Supervisors should consult with management, their Affirmative Action Officer, and/or Agency Counsel whenever questions arise regarding time off for religious observance and should not deny a request without such consultation.

An employee who, in accordance with his or her religious beliefs, observes a particular practice or manner of dress, hairstyle, or beard should not be unreasonably required to compromise his or her practice in the workplace. Where the observance conflicts with a safety or grooming standard or other workplace rule, the employer should seek a way to accommodate the observance by making a reasonable exception to the rule.

Employees needing accommodation of religious observance or practice should clearly state the religious nature of their request and collaborate with their employer to reach a reasonable accommodation. Supervisors should consult with Human Resources, Agency Counsel, or the agency's Affirmative Action Officer with respect to requests for reasonable accommodation of religious observance or practices.

Religious Observance in the Balance

Akhil, a Sikh man, requests time off for Vaisakhi, a religious holiday. He makes his request two days before the start of the holiday. His supervisor checks the schedule for available personnel and also asks for volunteers, but she is unable to find someone to cover the shift. Without a suitable replacement, the unit cannot provide critical care to patients residing in the unit. The supervisor tells Akhil, "I'm sorry, I can't find anyone who is able to cover your shift. You need to come in to work that day."

Was the supervisor discriminating when she refused Akhil's leave request?

a) Yes, this was probably discriminatory

b) No, this was probably not discriminatory

This was probably not discrimination. Employers must make a good faith effort to allow employees to take requested time off for religious holidays. If granting the request would mean that the unit would not be able to function properly with regard to critical functions, such as patient care, then the request can be denied after a reasonable effort has been made to provide coverage with other available employees, including seeking volunteers. However, in ordinary circumstances where there is simply a lot of work backed up or the office is shorthanded, it would not be appropriate to deny leave for a holy day observance.

National Origin

National origin includes ancestry, so an individual born in the United States is protected against discrimination based on his or her ancestors' nationality. The state defers to an employee's self-identification as a member of a particular national or ethnic group.

Fluency in English may be a job requirement. However, requiring that a person speak English as his or her native language may be considered national origin discrimination. The only lawful requirement is for a level of English fluency necessary for the job.

Requiring employees to speak English at all times in the workplace may be national origin discrimination. Any specific rule about language use must be reasonable, necessary for the efficient conduct of the worksite, and be clearly communicated to employees before being enforced.

Requiring fluency in a language other than English for employment in bilingual positions is not discriminatory. Determinations of fluency must be based on an individual's ability and not his or her national origin.

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. Withdrawing an offer of employment or terminating employment based on lack of current employment authorization is required by federal law and is not discriminatory.

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

Challenging Stereotypes

Arturo, a unit supervisor, is meeting with his team. He says he needs someone to lead a team assigned to a demanding project. Yinan, who is Chinese, eagerly raises her hand, saying she would be happy to take the lead. Arturo replies, "You people are too quiet. I need someone I know will be assertive." He then picks someone else to lead the project.

True or False: Yinan should realize that her supervisor knows best and wait for a project that suits her better.

The statement is false. Employers may not discriminate based on stereotypes about national origin. Arturo expressed bias against Yinan because he used stereotypes about Chinese individuals, and, possibly, also her gender, when deciding to deny her the opportunity to lead the project instead of making the decision based on her ability to do the job. Yinan should report the incident to her agency's Affirmative Action Officer.

Sexual Orientation

Sexual orientation refers to being heterosexual, gay or lesbian, bisexual, or asexual, whether actual or perceived.

The New York State Marriage Equality Act, signed by Governor Andrew M. Cuomo on June 24, 2011, authorizes the marriage of same-sex couples in the State of New York. New York also recognizes marriages between same-sex couples performed anywhere such marriages are valid.

State employees will receive the same spousal benefits regardless of the gender of their spouse.

Discriminating against an employee married to a spouse of the same-sex, or failing to offer him or her equal benefits, is prohibited.

An employee with a domestic partner, whether same-sex or opposite-sex, may also qualify for benefits. The employee and his or her partner can fill out the Application for Domestic Partner Benefits and Affidavit of Domestic Partnership and Financial Interdependence to see if they qualify.

An Atmosphere of Disrespect

Darnell is a stylish, handsome man who doesn't share many details of his personal life with his coworkers. Kristi, who has a well-known crush on Darnell, flirts with him but is frustrated by his lack of interest in her. She starts a rumor that he is gay, and a couple of his coworkers start making crude comments about his presumed sexuality. Darnell finds this unpleasant and wants it to stop.

What are Darnell's options? Review each option and its feedback.

- Ignore the situation and hope it will stop. Darnell is free to ignore the situation if he chooses, but the behavior is inappropriate and he is not required to put up with it.
- Ask his coworkers politely to stop. Darnell is free to ask his coworkers to stop, but stopping the inappropriate behavior is not Darnell's job, and he is not required to inform his coworkers that he does not like the behavior.
- Tell his coworkers he is not gay and show them pictures of his girlfriend. It does not matter whether or not Darnell is gay. He is free to discuss the situation with his coworkers, but he is not required to inform anyone about his sexual orientation.
- Report the problem to a supervisor, manager, or Affirmative Action Officer. Unless he is a supervisor, Darnell is not required to report the behavior but he should consider doing so. This inappropriate behavior is no doubt distracting to others and detracts from a

good working environment. Management needs to be informed of the behavior so that it can be stopped.

Military Status

Military status is defined in Human Rights Law as a person's participation in the military service of the United States or the military service of New York 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.

Military personnel have various protections under the Human Rights Law, N.Y. Military Law (military leave provisions), the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), and the federal Family and Medical Leave Act (FMLA). See the *Handbook* for more details.

New York Military Law entitles employees to a leave of absence for ordered military duty. It also entitles 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 their period of military duty.

Reporting for Duty

Jesse is a member of the US Army Reserves. He takes leave time to report for duty at his military base, which includes a two-week training each summer. Russ, his coworker, complains to their supervisor that it isn't fair that Jesse gets an "extra paid vacation" each summer "just because he is in the military." Russ feels discriminated against because other workers are not allowed the same amount of time off with pay.

Does Russ have a valid complaint of discrimination?

a) Yes

b) No

Russ does not have a valid complaint of discrimination. State employees are given a certain number of days each year, with pay, for this type of military service. Furthermore, having a military status means being in the armed forces. Not being in the military is not a protected characteristic. However, if Russ feels the rules are not being followed in Jesse's case, or wants more information on the rules for military leave, he should contact his agency's Affirmative Action Officer.

Sex

Discrimination on the basis of sex includes:

- Any type of bias on the basis of sex.

- Sexual harassment.
- Sex stereotyping.
- Discrimination on the basis of pregnancy.

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

A hostile environment on the basis of sex may also be created by words, signs, jokes, pranks, or intimidation of a sexual nature that may be directed at an individual because of his or her sex.

Quid pro quo sexual harassment occurs when a person in authority tries to trade job benefits for sexual favors.

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

Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of either sex should act or look. Making employment decisions based on sex-stereotyped evaluations of conduct, looks, or dress is sex discrimination.

Harassment because a person does not conform to gender stereotypes is sexual harassment.

Discrimination on the basis of pregnancy constitutes sex discrimination (as well as familial status discrimination). In addition, any pregnancy-related medical condition that prevents the performance of job duties entitles the individual to reasonable accommodation, including time off consistent with the medical leave policies applicable to any disability.

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 individual who gives birth, however, is entitled to any medical leave associated with pregnancy, childbirth, and recovery.

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 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 a case for a BFOQ.

Gender-Specific Skills?

Roberto is a counselor at a residential youth facility. He is interested in child development and has taken several courses on the subject. He frequently volunteers to lead sessions on parenting skills. Doug, his supervisor, thanks him but always assigns Nora, his coworker, to do the workshops. When Roberto asks why, Doug tells him that she is the best choice because women understand "this baby care stuff" better.

What should Roberto do?

a) Contact his agency's Affirmative Action Officer.

b) Realize that his talents are better suited to other tasks.

Roberto should contact his agency's Affirmative Action Officer. Parenting skills are not gender specific. Doug's statement to Roberto is certainly a sufficient reason for Roberto to contact his agency's Affirmative Action Officer. Employers may not discriminate based on sex stereotypes. Instead of assuming that women understand childcare better, Doug should assign the workshops based on an individual's ability to teach it. Assigning all of the workshops to Nora is an action that should be investigated and stopped if it is found to be discriminatory.

Abuse of Authority

Several people under Philip's supervision are uncomfortable with his behavior at the office. He often shares stories about his sex life and brags about how he can sexually please any woman. Recently, he has started directing his attention towards Pamela. He loudly compliments her legs when she wears skirts and rubs her shoulders when he stands behind her. When she applies for a promotion to another unit, he tells her that he would put in a good word for her if she "takes care" of him.

Is Philip's behavior sex discrimination?

a) Yes, this is discrimination.

b) No, this is not discrimination.

This is discrimination. By talking about his sex life at work, Philip is engaging in inappropriate workplace behavior. If women in the office feel uncomfortable or demeaned by his comments, this may constitute hostile environment sexual harassment. Additionally, if his behavior towards Pamela, including complimenting her legs and touching her shoulders, is unwelcome, it creates a hostile environment for Pamela, regardless of whether or not she tolerates it. Offering to help Pamela gain a promotion if she "takes care" of him constitutes *quid pro quo* sexual harassment, which is strictly prohibited in the workplace, regardless of whether or not Pamela takes him up on the offer.

If anyone complains of Philip's behavior, or if any supervisor or manager knows of his behavior, the agency must investigate and stop his behavior.

Disability

Under the Human Rights Law, unlike under federal law, what qualifies as a disability is very broad. There is no reason why health conditions, however minor or major, should be the basis for employment decisions, so long as the individual can adequately perform the job.

A disability is defined as:

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

Pregnancy-related Conditions

Pregnancy-related medical conditions have always been included as disabilities under the Human Rights Law, and pregnant employees are entitled to reasonable accommodation where such medical conditions make it necessary. Such protection was made explicit in the Human Rights Law by amendment effective in January 2016. The Law now provides that pregnancy-related medical conditions shall be treated the same as any temporary disability. Pregnancy-related condition is defined in the Law as "a medical condition related to pregnancy or childbirth that inhibits the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques". The protection extends to those conditions that allow the individual to perform her job in a reasonable manner, with provision of reasonable accommodation, as needed.

Reasonable Accommodation

An employee with a disability is entitled to reasonable accommodation if it will allow him or her to achieve reasonable job performance of essential job tasks or otherwise enable the employee to enjoy equal benefits and privileges of employment. A job task is essential if not performing it would fundamentally change the nature of the job. If a function is not essential, then it can be reassigned to another employee if doing so will allow the individual with a disability to perform his or her job.

A reasonable accommodation is an adjustment or modification made to a job or work environment that enables an individual with a disability to perform the essential functions of his or her job in a reasonable manner, or otherwise enable the employee to enjoy equal benefits and privileges of employment. Some examples include:

- A modified work schedule.
- Reassignment of nonessential job functions.

- Acquisition or modification of equipment.
- Provision of an accessible worksite.
- Provision of accessible break rooms, lunch rooms, and training rooms, if provided to other employees.

The person with a disability, including a pregnancy-related condition, must inform the agency of the need for a reasonable accommodation. Since January 2016, the Human Rights Law explicitly requires an employee to provide reasonable medical documentation as requested by the agency. Medical documentation may be requested when it is needed to verify the existence of the disability or pregnancy-related condition, or to provide information that is necessary for consideration of the accommodation. The employee has a right to have such medical information kept confidential.

When the need for an accommodation has been established, the employee and the agency should enter into an interactive process to seek an effective solution to the accommodation request.

While the employee can request a particular accommodation, the obligation to provide accommodation is satisfied when the needs of the person with a disability are met.

The agency decides which reasonable accommodation will be granted, as long as the accommodation effectively enables the employee to perform his or her job duties in a reasonable manner.

New York State employees are subject to criminal, civil, and disciplinary penalties if they distribute, sell, attempt to sell, possess, purchase, or use controlled substances while at the workplace or while acting in a work-related capacity. Such illegal acts, even if engaged in outside of work, 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 to him or her by a physician. Employees are also prohibited from on-the-job use of, or impairment from, alcohol.

Drug Addiction and Alcoholism as Disabilities

The Human Rights Law protects individuals who are recovered or recovering from drug addiction or alcoholism. Individuals with alcoholism may also be protected if the alcoholism does not interfere with job performance. Intoxication or the use of alcohol or illegal drugs on the job is not protected, regardless of disability. Any current use of illegal drugs is not protected. Please see the *Handbook* for more information on drugs and alcohol and the workplace.

Accommodation of behaviors that do not meet the employer's workplace behavior standards is not required, even if the behaviors are caused by a disability, so long as the standards are consistently applied to all similarly situated employees.

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.

Access Denied

Sonja, a supervisor, is planning a workshop on conflict resolution for her unit that will be held on the second floor of a historic building in town. Denise, who had polio and uses crutches, cannot use stairs. After Denise discovers that the location does not have an elevator, she meets with Sonja to talk about the problem. Sonja apologizes for the location not being accessible and assures Denise that she will make sure that future locations are accessible. She then tells her that she should not worry about missing the workshop.

What should Denise do?

a) Not worry about it and wait for next time.

b) Contact her agency's Affirmative Action Officer.

Denise should contact her agency's Affirmative Action Officer. Denise does not have to accept this situation and should contact her agency's Affirmative Action Officer. Although Sonja may have inadvertently located the workshop in an inaccessible location, since she has an employee who will be denied access, she should relocate or reschedule the workshop if there is no other way to fix the problem. Attending the workshop is a term of employment that Denise is entitled to equally with her coworkers.

Accommodating a Pregnancy-Related Condition

Jessica works as a clerk assisting members of the public, and stands most of the day at a counter. Jessica is six months pregnant. Jessica has recently started to experience swelling in her feet due to her pregnancy. When she visits her doctor the doctor suggests that Jessica ask for a chair to sit in while she is working at the counter. He further suggests that she refrain from lifting heavy boxes of the literature she hands out as part of her job.

When Jessica returns to work from her doctor visit, she sits down with her manager Jill to discuss the reasonable accommodations. Jill agrees that she can provide Jessica with a chair for sitting behind the counter while assisting the public. She also agrees to have the boxes delivered to her station by another available employee.

Jill asks Jessica to provide her with documentation so that she can keep a record of the accommodations they agreed upon.

True or False

Jessica is not required to provide her employer with documentation that outlines her pregnancy-related condition and the resulting restrictions on activities because everyone knows pregnant women need to sit and not lift heavy objects.

False

As with the accommodation of other types of disabilities, the employer is entitled to medical documentation of the need for the accommodation, and the nature of the restrictions (such as limits on lifting, standing, etc.) that are caused by the pregnancy-related condition. The Human Rights Law provides that the "employee must cooperate in providing medical or other information that is necessary to verify the existence of the disability or pregnancy-related condition, or that is necessary for consideration of the accommodation. The employee has a right to have such medical information kept confidential."

Predisposing Genetic Characteristics

A predisposing genetic characteristic is defined as any inherited gene or chromosome believed to predispose or significantly increase the risk of an individual or his or her offspring to develop a disease or disability. This information may be determined by a genetic test or inferred from knowledge of an employee or the employee's family member.
Testing for such genetic characteristics is prohibited in most circumstances.

As with all protected characteristics, employment decisions may not be made on the basis of known genetic information or on the basis of a perceived genetic inheritance.

No employer may directly or indirectly solicit, require, or administer a genetic test, or solicit or require information from which a predisposing genetic characteristic can be inferred as a condition of employment or preemployment. It is also unlawful for an employer to buy or otherwise acquire the results or interpretation of an individual's genetic test results.

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

Family Matters

Carole is a social worker and spends most of her workday completing home visits. Her brother, who also works at her agency, is on medical leave to seek treatment for schizophrenia. Sheila, her supervisor, decides to remove her from home visits and have her work in the office. She tells another supervisor that she is worried that mental illness might affect Carole, and she doesn't want her working directly with families.

What should Carole do?

a) Contact her agency's Affirmative Action Officer.

b) Realize this reassignment is for her own and others' safety.

Carole should contact her Affirmative Action Officer. Treating Carole differently–based on a perception of a genetic inheritance, on a perception of disability, or on a belief that there may be a problem in the future because of a disability–are all discriminatory based on genetic predisposition and/or perceived disability. Even if Sheila has observed behavior by Carole that causes concerns about safety, Sheila has not handled the matter properly. She should contact her agency's Human Resources Department to report the matter, which can be handled with an appropriate medical or mental health evaluation, consistent with policies regarding such matters.

Familial Status

Protection in employment on the basis of familial status was added to the Human Rights Law by amendment, effective January 2016. Employees or applicants for employment are protected from discrimination on the basis of being pregnant, or on the basis that they are the parent or guardian of one or more children, or are in the process of becoming a parent or guardian.

Familial status discrimination would include, but not be limited to, making a negative employment decision about an applicant or employee:

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

The Human Rights Law does not create right to reasonable accommodation on the basis of familial status. Accommodation of the needs of the child or children is not required, such as granting time off for the parent to attend school meetings, concerts, sporting events, etc. However, time off or other changes to the terms or conditions of employment, must be granted to the same extent that time off, or other workplace changes, are granted to employees for personal or other reasons. For example, an employer who routinely grants workplace adjustments for employees attending school shall not deny the same to employees based on familial status.

Familial status protection under the Human Rights Law does not expand or decrease any rights that a parent or guardian has under the federal Family Medical Leave Act to time off to care for family members, including a child's illness.

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. In other words (as is also true with marital status discrimination) anti-nepotism rules are not impacted, because anti-nepotism rules involve the identity of the employees as relatives, not their status as parent, child, or spouse. Likewise, actions taken against an employee because of who their child is, or what that child has done, do not implicate familial status discrimination.

Marital Status

Marital status is the condition of being single, married, separated, divorced, or widowed. Employment decisions may not be made based on such status. Examples of marital status discrimination would include an employer's decision to hire only single people for jobs that require long hours or travel, or an employer's decision to limit certain jobs to married people because of a stereotyped view that married people are more responsible.

Marital status does not concern decisions made because of the identity of the person to whom an employee is married. Marital status concerns whether an employee is married and not the individual circumstances of the relationship.

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, as well as state policy, prohibits a state employee from controlling or influencing decisions to hire, fire, supervise, or discipline a spouse or other relative.

A state employee may also violate the law by using his or her position to seek any advantage or favor from the state for a spouse or relative.

Such anti-nepotism rules are not marital status discrimination.

Office Romance

Rafaela and Walt work in the same unit. They had been dating for some time when Rafaela was promoted, making her Walt's supervisor. Then Rafaela and Walt were married. Walt was transferred to a different unit so that Rafaela would no longer be his supervisor. Walt wanted to remain in his old unit and felt the transfer was discriminatory since the only thing that changed about his circumstances was his marital status.

Was Walt's transfer discrimination on the basis of marital status?

a) Yes

b) No

Walt's transfer was not discrimination on the basis of marital status. Although Walt was transferred because of his marriage, he was transferred because he was married to his supervisor, not because of his status of being married. Had he married anyone other than his supervisor, he would not have been transferred. The state's anti-nepotism rules do not permit an employee to be supervised by a spouse or other relative. And, even without application of this specific anti-nepotism rule, taking any action because of the person to whom an employee is married is not marital status discrimination.

Domestic Violence Victim Status

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 people who are dating or who have dated in the past.

Protection for victims of domestic violence is now included in the employment provisions of the Human Rights Law. Also, a Governor's Executive Order requires adoption of domestic violence policies by all executive branch state agencies.

Domestic violence can compromise the safety of New York State residents with tragic, destructive, and sometimes fatal results.

The workplace can sometimes be the one place where the victim finds support. Policies on domestic violence and the workplace aim to support the victim in retaining employment and finding the resources necessary to resolve the problem.

An employee affected by domestic violence can ask the employer for accommodations related to his or her status. Accommodations can include, but are not limited to, the following:

- Granting time off to go to court, to move, etc., should be granted at least to the extent granted for other personal reasons. Granting time off to allow victims or subpoenaed witnesses to exercise their rights is required to be provided pursuant to the Criminal Procedure Law, the Family Court Act, and the Executive Law Penal Law §215.14.

- Treating incidents where an abuser of an employee comes to the workplace and is threatening in the 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.

- Treating an employee's need for time off for a disability caused by domestic violence in the same manner as any temporary disability. This includes time off for counseling for psychological conditions caused by domestic violence.

Pursuant to the Executive Order, a state employee is also entitled to have a workplace safety plan in place to prevent any incidents caused by the abuser coming near the workplace. This might include accommodations like staggering the employee's hours, changing an e-mail address, blocking a telephone number, changing a parking area, and escorting the employee to and from his or her vehicle.

"Go Home and Take Care of Your Problem"

Kelli recently left a violent marriage and has obtained an order of protection. Because she is afraid that her ex-husband will come to the workplace to cause trouble for her, she takes her order of protection to her supervisor, Jon, and explains her situation. She asks that building security be given the order of protection and her ex-husband's photograph and that her office phone number be changed because her ex-husband is calling frequently to harass her. Jon tells Kelli that she should take time off to sort out her personal life because the agency cannot risk her ex-husband causing problems.

What should Kelli do?

a) Contact her agency's Affirmative Action Officer.

b) Realize that she is causing a problem and take time off from work.

Kelli should contact the agency's Affirmative Action Officer. Based on Jon's response to her requests, Kelli should contact her agency's Human Resources Department and/or Affirmative Action Officer for further assistance. Kelli is entitled to have a workplace safety plan, which in this case could include giving the order of protection and a photograph to building security and changing her office phone number. She is entitled to continue working at her job and should not be required to leave the workplace because of the actions, or threatened actions, of her abuser.

Prior Arrest

Under the Human Rights Law, 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, resolved by a youthful offender adjudication, or resulted in a sealed conviction.

It is unlawful to require any individual to divulge information pertaining to any such arrest or criminal accusation or to take any adverse action based on such an arrest or criminal accusation.

An employee may lawfully be required to provide documentation showing how a prior arrest was resolved if, for example, such arrest shows up as still pending in a background check.

As long as an arrest or criminal accusation remains pending, the individual is not protected under the Human Rights Law. The agency may refuse to hire or may terminate or discipline the employee without violating the Human Rights Law. Supervisors and other decision makers should consult with their agency's Human Resources Department or Agency Counsel with respect to rights employees may have under other applicable laws or collective bargaining agreement provisions.

The agency may also question the employee about a pending arrest or accusation, the underlying circumstances, and the progress of the matter through the criminal justice system.

These provisions do not apply to an application for employment as a police officer or peace officer. They apply only in part to all other jobs with law enforcement agencies.

Arrest inquiries, requests for information, or adverse actions may be lawful where such actions are specifically required or permitted by another law.

Previous Conviction Record

It may be unlawful to deny a license, refuse to hire, terminate, or take an adverse employment action against an individual because he or she has been previously convicted of one or more criminal offenses.

The New York Correction Law, article 23-A, provides the standards to be applied and factors to be considered before an employment decision may be based on a previous conviction. It is the public policy of New York State to encourage the licensure and employment of individuals with previous criminal convictions.

Correction Law prohibits discrimination unless there is a direct relationship between one or more previous criminal convictions and the specific employment sought or held. It is unlawful to deny someone a job unless there is a direct relationship or unreasonable risk to property, safety, or the welfare of specific individuals.

For more information on the factors an employer must apply to determine if there is a direct relationship or unreasonable risk between an individual and the employment sought, refer to the *Handbook*.

There are eight factors to be weighed in determining whether such a direct relationship exists that would permit denial of employment or a license. These factors include: the job duties related to the license or employment sought, the bearing the conviction would have on the fitness or ability to perform the job duties, the time elapsed since the criminal offense, the age at the time of the offense, the seriousness of the offense, and any information as to rehabilitation. All eight factors must be considered on a case-by-case basis.

An employer may ask an individual to disclose prior convictions as part of the employment application process or at any time during employment. Employment may be denied, or the

employee may be terminated, if the employer learns that the employee misrepresented any information regarding a previous conviction.

A Drug Problem?

Peter works as a nurse in a medical facility. He was arrested for possession of a controlled substance and is currently out on bail. Between his arrest and court date, he continues to come to work. The supervisors in his unit meet to talk about the arrest and decide to write him up for termination and, given the nature of the charge, to seek immediate suspension since he has access to drugs in the workplace.

Are Peter's supervisors discriminating against him?

a) Yes

b) No

No, this is not discrimination. While Peter's arrest or criminal accusation remains pending, he is not protected by the Human Rights Law. His employer can choose to suspend and/or terminate him under these circumstances if done in accordance with the provisions of other applicable laws and collective bargaining agreements. The agency may also immediately conduct an investigation into the circumstances underlying his arrest.

If the agency took no action to terminate or investigate the situation during the pendency of the arrest, then, if Peter is acquitted or is convicted but the record is sealed, the agency can take no action against him.

A Drug Problem? Part 2

While Peter is suspended pending his termination hearing, he takes a plea that results in a conviction which is not sealed. Peter completes drug rehabilitation and asks to be allowed to return to work and to have his termination reduced to a lesser penalty. He says that he is no longer using drugs and qualifies as a recovering drug addict and seeks accommodation of his disability. The agency does not allow Peter to return to work and proceeds with the process of terminating him.

- Is this discrimination based on prior arrest? Peter's arrest was not resolved in his favor or with a sealed conviction. Therefore, his arrest record is not protected under the Human Rights Law.

- Is this discrimination based on prior conviction? Peter's conviction is not considered a prior conviction because it occurred while he was employed. He is not protected from his employer's actions taken in response to his current conviction.

- Is this disability discrimination? Peter was using illegal drugs while he was employed, and this behavior is not protected even if it was caused by the disability of addiction. If

Peter's job was different, and he would not have access to drugs if he returned to work, then the employer could choose to permit him to return to work, with a "last chance" agreement that he remain drug-free or face immediate termination.

Gender Identity

Gender identity refers to an individual's self-image, appearance, behavior, or expression, even if it is different from that traditionally associated with the sex assigned to an individual at birth. A transgender person is an individual who has a gender identity different from the sex assigned to that individual at birth.

Employees are protected with regard to their gender identity by the Human Rights Law, because discrimination on the basis of gender identity may give rise to a claim of sex or disability discrimination.

Discrimination on the basis of gender identity or the status of being transgender is sex discrimination. This applies to all areas of jurisdiction where sex is a protected category.

An employee diagnosed with gender dysphoria or related conditions is protected on the basis of disability, and is entitled to reasonable accommodation, where the need for and scope of the accommodation is established by medical documentation.

See further the regulation of the Division of Human Rights, 9 NYCRR §466.13, entitled "Discrimination on the Basis of Gender Identity," which is available on the Division's website. See also Governor's Executive Order, protecting state employees with regard to gender identity.

An Unwelcoming Promotion

Gwen recently accepted a promotion at a new office. After finding out that she is transgender, her new coworkers started asking her what her "real name" is and using the pronoun "he." When Gwen complained to her supervisor about the harassment, he said, "You were born a man, so naturally they are curious about you and just need time to adjust."

What should Gwen do?

a) Give her coworkers some more time to adjust.

b) Contact her agency's Affirmative Action Officer.

The behavior of her coworkers may be harassment on the basis of gender identity, a violation of the Executive Order policy on gender identity. Regardless of whether the harassment is currently severe and pervasive enough to create a hostile work environment, her supervisor needs to take her complaint seriously by reporting it to management and taking steps to end her coworkers' inappropriate behavior. Gwen is free to give her coworkers more time if she chooses, but she is entitled to complain to the agency's Affirmative Action Officer for two

reasons: because her complaint to her supervisor was rebuffed when it should have been acted upon and because of the harassment she is experiencing.

The harassment may be also unlawful harassment on the basis of sex and/or disability under the Human Rights Law. Please see the *Handbook* for more information.

Retaliation

The Human Rights Law protects an employee who has engaged in protected activity from retaliation. Protected activity includes:

- Making a complaint to a supervisor, manager, or Affirmative Action Officer about discrimination.
- Filing a formal complaint of discrimination.
- Testifying or assisting in any investigation or proceeding under any antidiscrimination law.
- Opposing any of the discriminatory practices discussed in this training.

An individual who engages in any of the above activities, when in fact, there is no violation of the law, is protected if he or she had a good faith belief that discrimination had occurred.

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

The negative action need not be job-related or occur in the workplace, and it can even occur after the employee no longer works for the agency.

A negative employment 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 establish a claim of retaliation, an individual must be able to show that the adverse action was motivated by the protected activity.

Committing to a Discrimination-Free Workplace

New York State is committed to creating discrimination- and harassment-free workplaces for all of its employees and interns. This course provided you with an overview of the protections afforded to all state employees and interns.

State employees and interns have an obligation to avoid any behavior in the workplace that frustrates the state's goal of providing a bias-free workplace. State employees and interns are

encouraged to report any discrimination or harassment that they are aware of to their supervisor, manager, or Affirmative Action Officer.

All supervisors and managers are required to report any discrimination or harassment of which they become aware so that the agency may enforce its antidiscrimination policies by conducting a prompt and thorough investigation and, if necessary, taking appropriate remedial action.

The publication *Equal Employment Opportunity in New York State: Rights and Responsibilities: A Handbook for Employees of New York State Agencies* provides additional information on each of the protected characteristics covered in this course.

If you want to file a complaint, you should request information on your agency's policies and procedures for complaints from your Affirmative Action Officer or your Human Resources Department. The *Handbook* also contains information about filing a complaint outside your agency.

Summary

Let's review what you learned in this course.

New York State prohibits discrimination and expects its agencies to create discrimination-free work environments.

All employees must refrain from discriminatory conduct.

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

EXHIBIT 10

EXHIBIT
8

Revised 2020

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

RECORDS RETENTION AND DISPOSITION SCHEDULE

This Records Retention and Disposition Schedule ("Schedule") governs the retention of the records of the Office of the Governor. Many of these records are available on websites, including the Governor's website (http://www.governor.ny.gov/) and the New York State Legislative Retrieval System. Records covered by this Schedule must be retained for the minimum retention period as specified in this Schedule, regardless of format. For more information about the Freedom of Information Law and the public's right to gain access to government records, please see the website for the Committee on Open Government (http://www.dos.ny.gov/coog/index.html).

1. AGENCY MATTERS

This section covers records relating to the agencies, commissions, and rulemaking.

Record Series Title and Description	Retention Period	Final Disposition
General Agency General files maintained for records and information on State agency activities, projects, and issues. Files may include briefings, research, analyses, resource material, opinions, recommendations, reports, and correspondence.	Retain in office until file inactive	Do not retain
General Agency – Concurrences Original copy of concurrence form requesting the Governor's signature with a copy of the original document.	Retain in office until end of the administration	Do not retain
Cabinet Presentations Copies of electronic presentations made at open Cabinet meetings.	Retain in office until end of the administration	Retain
Commission Reports Copies of reports and other information issued by commissions, task forces, councils, and other entities established by Executive Order.	Retain in office until end of administration	Retain
Notices of Proposed Rulemaking Notices of proposed rulemaking submitted by an agency or authority to the Regulatory Review Unit ("RRU") and recommended to the Executive Chamber by RRU for publication in the State Register. Files include background materials and meeting notes.	Retain in office until rule adopted	Do not retain
State Land Classification Governor's approval of State land classification, pursuant to Executive Law § 816, proposed by the Adirondack Park Agency. File includes Board resolution and attachments, background	Retain in office until end of the administration	Retain

materials, notes, and draft and final copies of Governor's approval letter.		

Civil Service Resolutions Governor's approval of resolutions adopted by the State Civil Service Commission, pursuant to the State Administrative Procedure Act, making changes to the Appendices of the Rules for the Classified Service. File includes background and requests and comments from State agencies and public employee unions, if any.	Retain in office until end of the administration	Retain
NYPA Power Allocation Contracts Contracts recommended for Governor's approval by the New York Power Authority allocating hydropower to recipients, and Governor's approval letter.	Retain in office until end of the administration	Retain
State Operations Directives Memoranda and guidance to Chamber staff and heads of agencies and authorities from the Director of State Operations.	Retain in office until end of the administration	Retain
New York City Watershed Notices required to be filed with the Governor pursuant to the 1997 New York City Watershed Memorandum of Agreement.	Retain in office until file inactive	Retain
Findings of Suitability for Early Transfer of Property Under CERCLA § 120(h)(3)(c) Governor's concurrence on findings statement by Federal officials that Federal land is suitable for early transfer even though all remedial action is not complete under the Comprehensive Environmental Response, Compensation and Liability Act . File includes background materials from the Federal government and recommendations from NYS Department of Environmental Conservation.	Retain in office until end of the administration	Retain

Ethics Files containing opinions provided by Chamber Ethics Officer and requests for opinions from the Joint Commission on Public Ethics and opinions provided therefrom.	Retain in office until end of the administration	Retain

2. APPOINTMENTS

This section covers records relating to the appointment by the Governor of people to agencies, boards, and commissions.

Record Series Title and Description	Retention Period	Final Disposition
Confidential Files Files contain appointments questionnaire and highly sensitive personal information, including criminal history check and financial and tax information relating to individuals appointed to positions and applicants for positions.	Retain securely in office until end of the administration	Do not retain
Board/Commission Files Files contain information relating to status of membership on boards or commissions appointed by the Governor directly or with Senate confirmation. Includes appointment processing forms, members' resumes, appointment and take-off letters, resignations, and recommendations from legislators. Also includes Orange Card containing chronological listing of members.	Retain in office until board or commission eliminated or until relevant board member resigns	Retain in office. Do not retain selected contents with personal information
Nomination Certificates Final text of nomination certificates, date stamped, and filed with the Senate for confirmation of an appointment made by the Governor.	Retain in office until end of the administration	Retain
Confirmation Certificates Certificate recording Senate confirmation of individual nominated for appointment by the Governor.	Retain in office until end of the administration	Retain
Appointment Letters Copies of letters sent to State Comptroller and individual notifying them of Senate confirmation of individual's nomination by Governor for appointment.	Retain in office until end of the administration	Retain

Budget Director Approvals (BDA) File contains BDA form, agency justification, duties description, agency head certification, minimum qualifications, resume, appointments processing form, copy of Appointments Office approval, and DOB approval.	Retain in office until end of the administration	Do not retain
Judicial Screening Candidates Files contain judicial appointment questionnaire submitted by candidates seeking judicial appointment and other materials.	Retain in office until end of the administration. Files of applicants who withdraw or become ineligible for selection are not retained.	Do not retain

Judicial Screening Committees Files contain contact and other information relating to each Judicial Screening Committee.	Retain in office until committee members' departure from committee	Do not retain
Judicial Screening Committee Reports Files contain the Judicial Screening Committees' confidential reports on candidates finding them highly qualified.	Retain in office until end of the administration	Do not retain
Designation Certificates Files contain copies of Governor's certificate designating a NYS Supreme Court Justice to the Appellate Division and to Presiding Justice of a Department of the Appellate Division.	Retain in office until end of the administration	Retain
Daybook and Nomination Certificates Files contain letters informing public officials of Governor's nominations and designations of individuals to judicial office and copies of Governor's certificate filed with NYS Senate nominating an individual for confirmation to a judicial appointment.	Retain in office until end of the administration	Retain

3. CORRESPONDENCE AND INFORMATION

This section covers records relating to the activities and communications between the Governor's Office and constituents and local officials.

Record Series Title and Description	Retention Period	Final Disposition
Governor's Correspondence Database of and original letters to and from the Governor managed by the Governor's Correspondence Office.	Retain in office until end of the administration	Retain
Lieutenant Governor's Correspondence Database of and original letters to and from the Lieutenant Governor managed by the Office of the Lieutenant Governor.	Retain in office until end of the administration	Retain
Press Releases Electronic file of press releases issued by the Governor.	Retain in office until end of the administration	Retain

4. EXECUTIVE ACTIONS

This section covers records relating to the Governor's executive actions.

Record Series Title and Description	Retention Period	Final Disposition
Proclamations, Citations, Certificates and Messages Copies of proclamations, citations, certificates, and messages issued by the Governor, including the State of the State and annual budget presentation.	Retain in office until end of the administration	Retain
Investigations Files contain Governor's requests for investigation pursuant to Executive Law § 63.	Retain in office until end of the administration	Retain
Executive Orders Copies of original Executive Orders filed with Department of State.	Retain in office until end of the administration	Retain
Extraordinary Session Proclamations File contains copies of original Proclamations filed with Department of State.	Retain in office until end of the administration	Retain
Special Election Proclamations File contains each Proclamation issued by the Governor, and transmittal letters to the Secretary of State and Board of Elections.	Retain in office until end of the administration	Retain

Messages of Necessity File contains requests from Legislature for a Message of Necessity pursuant to NY Constitution Art III, § 14 and Constitution Art VII, § 5 and copy of the Message filed with the Legislature.	Retain in office until end of administration	Retain
Reprieves, Commutations and Pardons File contains each Proclamation issued by the Governor for reprieves, commutations, and pardons.	Retain in office until end of the administration	Retain

5. GOVERNOR'S ACTIVITIES

This section covers records relating to the Governor's public affairs and communications, including events and activities.

Record Series Title and Description	Retention Period	Final Disposition
Photographs Photographs of Governor's public events.	Retain in office until end of the administration	Retain
Videos Videos of Governor's public events.	Retain in office until end of the administration	Retain
Speeches Audio recordings of Governor's public speeches.	Retain in office until end of the administration	Retain
Governor's Schedule Governor's schedule as posted.	Retain in office until end of the administration	Retain
Governor's Invitations Original invitations to Governor to attend events and database containing invitations to Governor to attend events.	Retain in office until end of the administration	Do not retain
Lieutenant Governor's Schedule Lieutenant Governor's schedule.	Retain in office until end of the administration	Retain

<u>Lieutenant Governor's Invitations</u> Original invitations to Lieutenant Governor to attend events and database containing invitations to Lieutenant Governor to attend events.	Retain in office until end of the administration	Do not retain

6. LEGISLATION

This section covers records relating to proposed and enacted legislation.

Record Series Title and Description	Retention Period	Final Disposition
Legislation General files maintained for tracking legislation and negotiating amendments, including to the Budget, with the Legislature, and including agency and Chamber staff recommendations.	Retain in office until file inactive	Do not retain
Ten Day Memoranda Memoranda providing legal and policy advice on legislation that has been delivered to the Governor for approval or veto.	Retain in office until end of the administration	Do not retain
Session Law Bill Jackets Files containing bill, sponsors' memoranda, vote tally, comments, Counsel letters to sponsors and sponsors responses, and Approval and Veto Messages.	Retain in office until transferred to State Archives	Retain
Ledger Books Hard cover Ledger Book documenting: (a) chapter numbers assigned to each bill that becomes law, (b) veto numbers assigned to each bill that is disapproved by the Governor, and (c) the delivery of vetoes to Legislature.	Retain in office	Retain
Program Bills File contains internal signoff sheet and copy of Program Bill and Memorandum submitted to the Legislature for introduction.	Retain in office or State Records Center until end of the administration	Retain Do not retain sign-off sheet
Budget Bills File contains internal signoff sheet and copy of Budget Bill and Memorandum submitted to the Legislature for introduction.	Retain in office or State Records Center until end of the administration	Do not retain

Departmental Bills File contains internal signoff sheet and copy of bill and memorandum submitted to the Legislature for introduction, as well as the Fact Sheet submitted by agency to Executive Chamber for consideration.	Retain in office or State Records Center until end of the administration	Do not retain
Veto Messages File contains copy of Veto Messages sent to Legislature with bill that is vetoed by Governor.	Retain in office until end of the administration	Retain

Approval Messages File contains copy of Approval Message typically but not always included in Bill Jacket transferred to State Archives.	Retain in office until the end of the administration	Retain
Pen Signature Authorizations File contains memoranda from Governor's Counsel authorizing use of pen signature machine for signature of Governor and Secretary to the Governor.	Retain in office until end of the administration	Do not retain

7. LITIGATION AND FOIL REQUESTS

This section covers records relating to litigation and FOIL requests.

Record Series Title and Description	Retention Period	Final Disposition
Litigation File contains a copy of papers received commencing litigation involving the Governor or other Executive Chamber staff and final papers submitted to court. File includes copy of referral letter to the Attorney General.	Retain in office until appeal time concludes, and then forward them to the New York State Archives, for retention for 10 years	Do not retain
Litigation Log Electronic log of papers received commencing litigation against the Governor or other Executive Chamber staff.	Retain in office until end of the administration	Retain
FOIL Requests Requests for records under Freedom of Information Law and Executive Chamber responses.	If requestor does not file an administrative appeal, retain for 1 month after expiration of time to appeal; if requestor files an administrative appeal, retain for 5 months after conclusion of appeal; and if requestor files an Article 78 proceeding, retain until 1 month after expiration of time to appeal	Do not retain

	or resolution of appeal by court of last resort	

8. TRIBAL AFFAIRS

This section covers records relating to tribal relations and issues.

Record Series Title and Description	Retention Period	Final Disposition
Native-American Affairs General files maintained related to Native-American affairs.	Retain in office until file inactive	Retain

Notes

1. Active files are maintained in Executive Chamber unless specified otherwise.
2. This Schedule supersedes and replaces any other records retention and disposition schedules of the Executive Chamber.
3. Form acknowledgement letters from and mass mailings to the Governor will not be retained.
4. Where retention period is until end of the administration, but file is needed for transition, retain in office for transition.
5. Where retention period is until end of the administration, and file is not needed for transition, disposition may commence prior to end of administration.
6. Governor may elect to designate any record of historical significance for Governor's Papers collection.
7. Executive Chamber administration files are maintained pursuant to the Records Management Procedures of the Division of the Budget.
8. The websites are to be archived at the end of administration.
9. According to the NYS Archives, "[m]any e-mail communications are not records and are therefore suitable for immediate destruction. Those messages and attachments which are records should be maintained in appropriate electronic or paper files and disposed consistent with applicable authorizations for those records." For this reason, the NYS Archives' standard instruction is that e-mails should be deleted "after messages and attachments are opened and records have been saved in appropriate electronic or paper file." See the General Retention and Disposition Schedule for New York State Government Records at http://www.archives.nysed.gov/a/records/mr_pub_genschedule_accessible.html. The Executive Chamber adopts the NYS Archives' policy with respect to e-mails but goes further to state that all electronic communications, whether by e-mail, text, or Blackberry pin, will fall under this policy and will be retained consistent with this records retention and disposition schedule if they constitute records. It is the content and not the form or method of the communication that governs retention.

EXHIBIT 18

EXHIBIT
9

EXHIBIT 48

EXHIBIT
10

From: [redacted] Melissa Derosa

To: [redacted] Jill DesRosiers (owner);[redacted] Rich Azzopardi;[redacted] Annabel Walsh;[redacted] Stephanie Benton;[redacted] Jim Malatras;[redacted] Dani Lever;[redacted] Robert Mujica;[redacted] Beth Garvey;[redacted] Peter Ajemian[redacted]@gmail.com Jill DesRosiers (owner)

TimeStamp: 04/20/19 06:17:34 PM

Attachments: ~/Library/SMS/Attachments/d8/08/D2BA4FE9-367D-437B-9BF4-A76AE792D8CA/IMG_1214.jpeg

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---------- Forwarded message ---------
From: **Lindsey** Redacted in Original Production
Date: Thu, Feb 28, 2019 at 11:31 AM
Subject: Re: [redacted]
To: Redacted in Original Production

I'm sorry you feel this way Redacted in Orig and I'm sorry that you feel it's necessry and appropriate to try and diminish and scare me in this way. It is not.

It's not why I'm running but a serious consideration for why I feel it's important now - to prevent a few people like you from swaying power over everything and everyone regardless of the democratic process.

It is good to know you will use your resourcses against me - it's unfortunate that some people who I have great respect for will try to diminish what I am about, who I am, and why I am doing this to begin with.

It's about [redacted] future.

On Thu, Feb 28, 2019 at 11:27 AM Redacted in Original Production [redacted] wrote:

> I was disappointed to read that you floated your name as a primary opponent to Jerry Nadler. It is a shame that you did not listen to me. Of course, I am totally behind Nadler. If you run, I seriously doubt you will reach the 11% level his last opponent did. And unfortunately you may have seriously impaired any realistic chance to run for the other offices you were considering.

EXHIBIT 22

EXHIBIT
11

CLOUD GOOGLE HANGOUTS MESSAGES

CHAT PARTICIPANTS	
Number of participants	4
Display names	[redacted] [redacted] Jill DesRosiers Stephanie Benton [redacted]
Local user	Jill DesRosiers
CONVERSATION DETAILS	
Number of messages	12
First message sent date/time	10/14/2014 10:59:31 PM
Last message sent date/time	12/13/2016 8:41:02 PM
Case time zone	(UTC) Coordinated Universal Time

Jill DesRosiers ↗ Sent
10/14/2014 10:59:31 PM
let me know what else I can do to help with [redacted] or [redacted] stuff.

Stephanie Benton [redacted] ↙ Received
10/14/2014 11:05:28 PM
I appreciate it. She's impossible and nasty. Nothing we can do.

Jill DesRosiers ↗ Sent
10/14/2014 11:05:38 PM
yep.

Jill DesRosiers ↗ Sent
10/14/2014 11:05:50 PM
I didn't even think it when I wrote her [redacted] anniversary

Jill DesRosiers

↗ Sent

10/14/2014 11:05:56 PM

that part was kind of funny'

Jill DesRosiers

↗ Sent

10/28/2015 6:06:50 PM

i think we should cancel..

Stephanie Benton [redacted]

↙ Received

10/28/2015 6:20:22 PM

me too.

Jill DesRosiers

↗ Sent

11/29/2016 4:33:31 PM

hey stephie

Jill DesRosiers

↗ Sent

11/29/2016 4:33:43 PM

are you able to join call wiht [redacted] etc on tuesday

Stephanie Benton [redacted]

↙ Received

11/29/2016 6:05:25 PM

ya

Jill DesRosiers

↗ Sent

12/13/2016 8:41:00 PM

can we ask if this is who he meant

Jill DesRosiers

↗ Sent

12/13/2016 8:41:02 PM

[redacted] kaitlin [redacted]

EXHIBIT 23

EXHIBIT
12

From: [redacted]

To: [redacted]@gmail.com Jill DesRosiers (owner)

TimeStamp: 08/04/20 09:45:22 PM

Does Kaitlin [redacted] still work at [redacted]? This is very brazen.

https://twitter.com/[redacted]

From: [redacted]@gmail.com Jill DesRosiers (owner)
To: [redacted]
TimeStamp: 08/04/20 09:46:32 PM

Jesus I don't know let me check are we sure that's still the same person?

From: [redacted]
To: [redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 08/04/20 09:46:43 PM

Definitely

From: [redacted]
To: [redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 08/04/20 09:46:57 PM

The same.person who shit the bed in chamber

From: [redacted]@gmail.com Jill DesRosiers (owner)
To: [redacted]
TimeStamp: 08/04/20 09:47:08 PM

Oh I remember

From: [redacted]
To: [redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 08/04/20 09:47:14 PM

And that's just one example of her tweets over the last few months

From: [redacted]@gmail.com Jill DesRosiers (owner)
To: [redacted]
TimeStamp: 08/04/20 09:47:49 PM

Oy will look. Maybe [redacted] let her go and she's pissed? I haven't heard from her since she moved over

From: [redacted]@gmail.com Jill DesRosiers (owner)
To: [redacted]
TimeStamp: 08/04/20 09:47:59 PM

Thanks for flagging

From: [redacted]
To: [redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 08/04/20 09:48:14 PM

If shes still there, she really has some nerve

From: [redacted]
To: [redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 08/04/20 09:48:16 PM

Yup

From: [redacted]@gmail.com Jill DesRosiers (owner)
To: [redacted]
TimeStamp: 08/04/20 09:50:36 PM

Yeah agreed

EXHIBIT 25

EXHIBIT
13

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner) [redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 01/19/20 08:06:01 PM

And Melissa is so pissed understandably

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner) [redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 01/19/20 08:06:11 PM

And I can't tell if she's still with him or not

From: [redacted] Jill DesRosiers (owner)
To: [redacted] Annabel Walsh [redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 01/19/20 08:06:33 PM

Who Charlotte

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner); [redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 01/19/20 08:07:09 PM

No Melissa

From: [redacted] Jill DesRosiers (owner)
To: [redacted] Annabel Walsh [redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 01/19/20 08:07:39 PM

She claimed she was in her hotel all day because she was sick when she called me before

From: [redacted] Jill DesRosiers (owner)
To: [redacted] Annabel Walsh [redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 01/19/20 08:07:57 PM

I should have saw it too it's not just you

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner) [redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 01/19/20 08:08:00 PM

She went this afternoon like 4p

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner) [redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 01/19/20 08:08:25 PM

No it's not your job Jill you're the chief of fucking staff it's so far below you it's insane

EXHIBIT 15

EXHIBIT
14

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 03:03:27 PM

They're giggling and flirting and having the time of their lives

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 03:03:38 PM

I walked in as they were taking about next week

From: [redacted] Jill DesRosiers (owner)
To: [redacted] Annabel Walsh[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 03:03:46 PM

Who Charlotte

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 03:03:50 PM

Yup

From: [redacted] Jill DesRosiers (owner)
To: [redacted] Annabel Walsh[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 03:03:57 PM

I quit

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner)[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 03:04:42 PM

SO GLAD I CAME IN BECAUSE SHES OVER WORKED

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 03:04:59 PM

When he saw me the fury in his eyes was almost worth it

From: [redacted] Jill DesRosiers (owner)
To: [redacted] Annabel Walsh[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 03:05:04 PM

I haven't slept in 5 years but she stayed up late

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 03:05:15 PM

Yep. For nothing having to do with this to be clear

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 03:05:54 PM

He was like where are the LGA remarks? I was like we have a draft let me just confirm that [redacted] has reviewed them and he was like yeah I don't care give them to me because

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 03:06:02 PM

No because idk how I typed that

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 03:06:28 PM

And then I was like I'll get them but I am going to finish the week with you first.

From: [redacted] Jill DesRosiers (owner)
To: [redacted] Annabel Walsh[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 03:06:43 PM

Did he do the electeds list

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 03:07:35 PM

Idk I'll ask once they're done

From: [redacted] Jill DesRosiers (owner)
To: [redacted] Annabel Walsh[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 03:07:57 PM

Is she still in there going through the week

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 04:04:12 PM

I'm seriously going to murder him he's such an asshole

From: [redacted] Jill DesRosiers (owner)
To: [redacted] Annabel Walsh: [redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 04:09:54 PM

God what now

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/26/19 05:40:19 PM

I'm going to lose my mind I hate him so much

From: [redacted] Jill DesRosiers (owner)
To: [redacted] Annabel Walsh[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/27/19 08:02:01 AM

Also I'm going to find someone else to hire and move Charlotte downstairs I'm not doing this he probably doesn't like her but doesn't want to say

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner)[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/27/19 08:02:12 AM

Of course

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/27/19 08:02:29 AM

She'll fucking be devastated

From: [redacted] Annabel Walsh
To: [redacted] Jill DesRosiers (owner)[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/27/19 08:02:36 AM

Which is why I hated her for that job anyways

From: [redacted] Jill DesRosiers (owner)
To: [redacted] Annabel Walsh[redacted]@gmail.com Jill DesRosiers (owner)
TimeStamp: 10/27/19 08:03:59 AM

Sounds like he's ok with [redacted]? He'll hate him too