

# EXHIBIT A



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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


**TO:** Kaitlin [REDACTED]  
c/o Zoe Salzman  
Emery Celli Brinckerhoff Abady Ward & Maazel LLP  
600 Fifth Avenue at Rockefeller Center, 10th Floor  
New York, New York 10020

**YOU ARE HEREBY COMMANDED**, under Executive Law § 63(8), N.Y. Civil Practice Law and Rules § 2302(a) and/or other statutes, to deliver and turn over to the Special Deputies to the First Deputy Attorney General, on **the 17th day of May, 2021, at 9:30 a.m.**, or any agreed upon adjourned date or time, at One Liberty Plaza, 38th Floor, New York, New York 10006, all documents and information requested in the attached Schedule in accordance with the instructions and definitions contained therein.

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

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

**WITNESS, The Honorable Letitia James**, Attorney General of the State of New York, this 6th day of May, 2021.

By:   
\_\_\_\_\_  
Joon H. Kim  
Jennifer Kennedy Park  
Abena Mainoo  
Special Deputies to the  
First Deputy Attorney General  
[REDACTED] @ag.ny.gov  
[REDACTED]  
[REDACTED] @ag.ny.gov  
[REDACTED]  
[REDACTED] @ag.ny.gov  
[REDACTED]

By: /s/ Anne L. Clark  
\_\_\_\_\_  
Anne L. Clark  
Yannick Grant  
Special Deputies to the  
First Deputy Attorney General  
[REDACTED] @ag.ny.gov  
[REDACTED]  
[REDACTED] @ag.ny.gov  
[REDACTED]

## SCHEDULE

### A. General Definitions and Rules of Construction

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

highlighting, marking, commit messages, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof.

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

## **B. Particular Definitions**

1. “Complainant” means You, Jessica Bakeman, Charlotte Bennett, Lindsey Boylan, Karen Hinton, Ana Liss, Alyssa McGrath, Anna Ruch, Sherry Vill, and any other individual who has made any Complaints known to You, any member of the

Executive Chamber, or the public, whether anonymously or otherwise. For the avoidance of doubt, to the extent additional allegations come to light following the issuance of this Subpoena, individuals who make such allegations should be included in this definition.

2. “Complaint” means any and all complaints, allegations, comments, accusations, or other statements of workplace misconduct, sexual harassment, sex- or gender-based misconduct, or other behavior or comments of a sexual, abusive or otherwise inappropriate or uncomfortable nature, whether made formally or informally.
3. “Executive Chamber” means the Executive Chamber of the State of New York, including but not limited to Governor Andrew M. Cuomo, and all other officers, directors, supervisors, personnel, employees, secretaries, interns, fellows, agents, contractors, consultants, representatives, and attorneys of the Executive Chamber, or any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing at any point during the relevant time.
4. “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.
8. [REDACTED] means the [REDACTED] (and all its offices, including all regional offices), including but not limited to all officers, directors, supervisors, personnel, employees, secretaries, interns, fellows, agents, contractors, consultants, representatives, and attorneys of the [REDACTED], 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.
9. “Respondent,” “You,” or “Your” means Kaitlin [REDACTED] and any agent, attorney, or other representative associated with or acting on behalf of You at any point during the relevant time.
10. “State” or “New York” means the State of New York.

### C. Instructions

1. Preservation of Relevant Documents and Information; Spoliation. You are reminded of Your obligations under law to preserve Documents and information relevant or potentially relevant to this Subpoena from destruction or loss, and of the consequences of, and penalties available for, spoliation of evidence. No agreement, written or otherwise, purporting to modify, limit or otherwise vary the terms of this Subpoena, shall be construed in any way to narrow, qualify, eliminate or otherwise diminish Your aforementioned preservation obligations. Nor shall You act, in reliance upon any such agreement or otherwise, in any manner inconsistent with Your preservation obligations under law. No agreement purporting to modify, limit or otherwise vary Your preservation obligations under law shall be construed as in any way narrowing, qualifying, eliminating or otherwise diminishing such aforementioned preservation obligations, nor shall You act in reliance upon any such agreement, unless a Special Deputy to the First Deputy Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.
2. Possession, Custody, and Control. The Subpoena calls for all responsive Documents or information in Your possession, custody or control. This includes, without limitation, Documents or information possessed or held by You or any of Your employees, staff, agents, representatives, consultants, attorneys, or Persons from whom You could request Documents or information. If Documents or information responsive to a request in this Subpoena are in Your control, but not in Your possession or custody, You shall promptly Identify the Person with possession or custody and notify that Person of the Person's obligation to preserve such Documents and provide them to You for production.
3. Documents No Longer in Your Possession. If any Document requested herein was formerly in Your possession, custody or control but is no longer available, or no longer exists, You shall submit a statement in writing under oath that: (a) describes in detail the nature of such Document and its contents; (b) Identifies the Person(s) who prepared such Document and its contents; (c) Identifies all Persons who have seen or had possession of such Document; (d) specifies the date(s) on which such Document was prepared, transmitted or received; (e) specifies the date(s) on which such Document became unavailable; (f) specifies the reason why such Document is unavailable, including without limitation whether it was misplaced, lost, destroyed or transferred; and if such Document has been destroyed or transferred, the conditions of and reasons for such destruction or transfer and the Identity of the Person(s) requesting and performing such destruction or transfer; and (g) Identifies all Persons with knowledge of any portion of the contents of the Document.
4. No Documents Responsive to Subpoena Requests. If there are no Documents responsive to any particular Subpoena request, You shall so state in writing under oath in the Affidavit of Compliance attached hereto, identifying the paragraph number(s) of the Subpoena request concerned.

5. Format of Production. You shall produce Documents and information responsive to this Subpoena in the format requested by the Office of the New York State Attorney General, as set out in Attachments 1 and 2 or as otherwise agreed upon.
6. Databases. To the extent that any data responsive to the requests herein is maintained in an electronic repository of records, such as a detailed transcription report, such information should be produced by querying the database for responsive information and generating a report or a reasonably usable and exportable electronic file (for example, \*.csv and/or \*.xls formats) for review. If it is not possible to export data in this format, You must make the database available to the undersigned for meaningful inspection and review of the information.
7. Existing Organization of Documents to be Preserved. Regardless of whether a production is in electronic or paper format, each Document shall be produced in the same form, sequence, organization or other order or layout in which it was maintained before production, including but not limited to production of any Document or other material indicating filing or other organization. Such production shall include without limitation any file folder, file jacket, cover or similar organizational material, as well as any folder bearing any title or legend that contains no Document. Likewise, all Documents that are physically attached to each other in Your files shall remain so attached in any production; or if such production is electronic, shall be accompanied by notation or information sufficient to indicate clearly such physical attachment.
8. Manner of Compliance – Custodians/Search Terms/Technology-Assisted Review. Prior consultation with the Special Deputies to the First Deputy Attorney General is required concerning selection of custodians for document searches (whether electronic or otherwise) or for use of search term filters, predictive coding or other forms of technology-assisted review. The Office of the Attorney General reserves the right to approve, disapprove, modify or supplement any proposed list of custodians, search terms, and/or review methodology. The selection or use of custodians, search term filters, and/or technology-assisted review in no way relieves You of Your obligation to fully respond to these requests for Documents or information.
9. Document Numbering. All Documents responsive to this Subpoena, regardless of whether produced or withheld on ground of privilege or other legal doctrine, and regardless of whether production is in electronic or paper format, shall be numbered in the lower right corner of each page of such Document, without disrupting or altering the form, sequence, organization or other order or layout in which such Documents were maintained before production. Such number shall comprise a prefix containing the producing Person's name or an abbreviation thereof, followed by a unique, sequential, identifying document control number.
10. Privilege Placeholders. For each Document withheld from production on ground of privilege or other legal doctrine, regardless of whether a production is



electronic or in hard copy, You shall insert one or more placeholder page(s) in the production bearing the same document control number(s) borne by the Document withheld, in the sequential place(s) originally occupied by the Document before it was removed from the production.

11. Privilege. If You withhold or redact any Document responsive to this Subpoena on ground of any privilege or other legal doctrine, You shall submit with the Documents produced a statement in writing under oath, stating: (a) the document control number(s) of the Document withheld or redacted; (b) the type of Document; (c) the date of the Document; (d) the author(s) and recipient(s) of the Document; (e) the general subject matter of the Document; and (f) the legal ground for withholding or redacting the Document. If the legal ground for withholding or redacting the Document is attorney-client privilege, You shall indicate the name of the attorney(s) whose legal advice is sought or provided in the Document.
12. Your Production Instructions to Be Produced. You shall produce a copy of all written or otherwise recorded instructions prepared by You concerning the steps taken to respond to this Subpoena. For any unrecorded instructions given, You shall provide a written statement under oath from the Person(s) who gave such instructions that details the specific content of the instructions and any Person(s) to whom the instructions were given.
13. Cover Letter, Index, and Identifying Information. Accompanying any production(s) made pursuant to this Subpoena, You shall include a cover letter that shall at a minimum provide an index containing the following: (a) a description of the type and content of each Document produced therewith; (b) the paragraph number(s) of the Subpoena request(s) to which each such Document is responsive; (c) the Identity of the Custodian(s) of each such Document; and (d) the document control number(s) of each such Document. As further set forth in Attachment 2, information must also be included in the metadata and load files of each production concerning the identity of each Document's custodian, as well as information identifying the particular Document requests and/or information to which each document is responsive.
14. Affidavit of Compliance. A copy of the Affidavit of Compliance provided herewith shall be completed and executed by all natural persons supervising or participating in compliance with this Subpoena, and You shall submit such executed Affidavit(s) of Compliance with Your response to this Subpoena.
15. Identification of Persons Preparing Production. In a schedule attached to the Affidavit of Compliance provided herewith, You shall Identify the natural person(s) who prepared or assembled any productions or responses to this Subpoena. You shall further Identify the natural person(s) under whose personal supervision the preparation and assembly of productions and responses to this Subpoena occurred. You shall further Identify all other natural person(s) able to competently testify: (a) that such productions and responses are complete and

correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be.

16. Continuing Obligation to Produce. This Subpoena imposes a continuing obligation to produce the Documents and information requested. Documents located or created, and information learned, acquired or created, at any time after Your response is due shall be promptly produced at the place specified in this Subpoena.
17. No Oral Modifications. No agreement purporting to modify, limit or otherwise vary this Subpoena shall be valid or binding, and You shall not act in reliance upon any such agreement, unless a Special Deputy to the First Deputy Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.
18. Time Period. Unless otherwise specified, the time period covered by this Subpoena shall be from December 1, 2016 forward.

#### **D. Documents to Be Produced**

1. Any and all Documents related to the Governor or any Complaint concerning the Governor, including any social media posts or Communications that You sent, received, or otherwise prepared on any social media platform.
2. Any and all Documents concerning Communications with or about a Complainant (other than You).
3. Any and all Communications between You and any current or former member of the Executive Chamber (other than current employees, officers, or other members of ██████████) since December 1, 2020.
4. Any and all Documents concerning Your or any other 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. Documents sufficient to identify Your employment history in the Executive Chamber, including but not limited to the time period of Your employment, Your title(s), Your position(s), and Your compensation.
6. Any and all Communications concerning Your departure from the Executive Chamber and your engagement by ██████████ for employment.

7. Documents sufficient to identify Your employment history at [REDACTED], including any including but not limited to the time period of Your employment, Your title(s), Your position(s), and Your compensation.

8. 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, the State, or otherwise.

9. A list of all Your email addresses or phone numbers used for any Communication related to the Governor, the Executive Chamber, or a Complaint concerning 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.

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

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

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

A. Relational Databases

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

B. Compression

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

6. Media and Encryption. All documents must be produced on CD, DVD, or hard-drive media. After consultation with the Special Deputy to the First Deputy Attorney General, Documents may also be produced over a secure file transfer protocol (FTP) or a pre-approved cloud-based platform (e.g., Amazon Web Services S3 bucket). All production media must be protected with a strong, randomly generated password containing at least 16 alphanumeric characters and encrypted using Advanced Encryption Standard with 256-bit key length (AES-256). Passwords for electronic documents, files, compressed archives and encrypted media must be provided separately from the media.
7. Production File Requirements.
  - A. ***Metadata Load File***
    - Required file format:
      - ASCII or UTF-8
      - Windows formatted CR + LF end of line characters, including full CR + LF on last record in file.
      - .dat file extension
      - Field delimiter: (ASCII decimal character 20)
      - Text Qualifier: þ (ASCII decimal character 254). Date and pure numeric value fields do not require qualifiers.
      - Multiple value field delimiter: ; (ASCII decimal character 59)
    - The first line of the metadata load file must list all included fields. All required fields are listed in Attachment 2.
    - Fields with no values must be represented by empty columns maintaining delimiters and qualifiers.
    - ***Note:*** All documents must have page-level Bates numbering (except documents produced only in native format, which must be assigned a document-level Bates number). The metadata load file must list the beginning and ending Bates numbers (BEGDOC and ENDDOC) for each document. For document families, including but not limited to emails and attachments, compound documents, and uncompressed file containers, the metadata load file must also list the Bates range of the entire document family (ATTACHRANGE), beginning with the first Bates number (BEGDOC) of the “parent” document and ending with the last Bates number (ENDDOC) assigned to the last “child” in the document family.
    - Date and Time metadata must be provided in separate columns.
    - Accepted date formats:
      - mm/dd/yyyy
      - yyyy/mm/dd
      - yyymmdd
    - 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**

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

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<sup>1</sup> 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\...\BE GDOC.ext
SOURCE	For scanned paper records this should be a description of the physical location of the original paper record. For loose electronic files this should be the name of the file server or workstation where the files were gathered.	Company Name, Department Name, Location, Box Number...
CUSTODIAN	Owner of the document or file.	Firstname Lastname, Lastname, Firstname, User Name; Company Name, Department Name...
FROM	Sender of the email.	Firstname Lastname < FLastname @domain >
TO	All to: members or recipients, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ...
CC	All cc: members, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ...
BCC	All bcc: members, delimited by ";" when field has multiple values	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ...
SUBJECT	Subject line of the email.	
DATERCVD	Date that an email was received.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMERCVD	Time that an email was received.	hh:mm:ss AM/PM or hh:mm:ss
DATESENT	Date that an email was sent.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd

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

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

AFFIDAVIT OF COMPLIANCE WITH SUBPOENA

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ }

I, \_\_\_\_\_, being duly sworn, state as follows:

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

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

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Affiant

\* \* \*

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, Notary Public

My commission expires: \_\_\_\_\_

# EXHIBIT C



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

TO: Kaitlin [REDACTED]  
c/o Zoe Salzman  
Emery Celli Brinckerhoff Abady Ward & Maazel LLP  
600 Fifth Avenue at Rockefeller Center, 10th Floor  
New York, New York 10020

**YOU ARE HEREBY COMMANDED**, pursuant to Executive Law § 63(8) and New York Civil Practice Law and Rules § 2302(a), to appear and attend before the Special Deputies to the First Deputy Attorney General, on May 17, 2021 at 9:30 AM, or any agreed upon adjourned date or time, at One Liberty Plaza, 38th Floor, New York, New York 10006 to testify in connection with an investigation into allegations of and circumstances surrounding sexual harassment claims made against Governor Cuomo, or any matter that the Attorney General deems pertinent thereto.

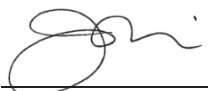
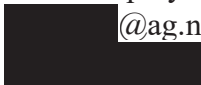


**TAKE NOTICE** that the Attorney General deems the testimony commanded by this Subpoena to be relevant and material to an investigation and inquiry undertaken in the public interest.



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

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



**WITNESS, The Honorable Letitia James**, Attorney General of the State of New York,  
this 6th day of May, 2021.

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

By: /s/ Anne L. Clark  
\_\_\_\_\_  
Anne L. Clark  
Yannick Grant  
Special Deputies to the  
First Deputy Attorney General  
@ag.ny.gov  
@ag.ny.gov

# EXHIBIT D



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# EXHIBIT E





# 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 F

**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**

## 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.

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

### **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.<sup>71</sup>

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.<sup>72</sup> 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.

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<sup>71</sup> Human Rights Law § 296.1(d).

<sup>72</sup> Human Rights Law § 296.7; see also Civil Service Law § 75.(b), which gives protection to "whistleblowers."

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

### **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



## EMPLOYEE RIGHTS AND RESPONSIBILITIES

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.<sup>73</sup> 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](http://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.

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<sup>73</sup> Civil Service Law § 107.

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

### **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](http://www.dhr.ny.gov)
  - Telephone: (888)392-3644
  - TTY number: (718)741-8300
- United State Equal Employment Opportunity Commission ("EEOC")
  - Website: [www.eeoc.gov](http://www.eeoc.gov)
  - Telephone: (800)669-4000
  - TTY number: (800)669-6820

# EXHIBIT G

**Kaitlin** [REDACTED]

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**From:** Jill DesRosiers  
**Sent:** Wednesday, December 27, 2017 9:27 AM  
**To:** Kaitlin [REDACTED]  
**Subject:** RE: Time line

Circling back and would like to follow up in person when we are next together. Based on our conversation and your areas of interest, we did some looking into what would be a good fit. Because you referenced [REDACTED] being an area of interest, we did some looking into [REDACTED] positions as they handle a lot of that for us and have a great new president and CEO – [REDACTED]. They would like to discuss more but would include work with the New York City Council, program meetings, overlap with the team that expands access to [REDACTED] and other key projects for us. Once we get through state of the state (Jan 3) I would like to schedule some conversations for you and after that we can move timing along. Do that work?

**From:** Kaitlin [REDACTED]  
**Sent:** Wednesday, December 20, 2017 12:21 PM  
**To:** Jill DesRosiers <[REDACTED]@exec.ny.gov>  
**Subject:** Time line

Hi Jill -

Do we have a time line for my next steps? I'm planning on taking off from Friday to Jan 2nd and would love to start shortly after returning.

Thanks  
Kaitlin

*→ save in travel folder on desktop.*

# EXHIBIT H



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
<u>General Agency</u> 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
<u>General Agency – Concurrences</u> 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
<u>Cabinet Presentations</u> Copies of electronic presentations made at open Cabinet meetings.	Retain in office until end of the administration	Retain
<u>Commission Reports</u> 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
<u>Notices of Proposed Rulemaking</u> 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
<u>State Land Classification</u> 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.		
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<p><u>Civil Service Resolutions</u></p> <p>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.</p>	<p>Retain in office until end of the administration</p>	<p>Retain</p>
<p><u>NYPA Power Allocation Contracts</u></p> <p>Contracts recommended for Governor's approval by the New York Power Authority allocating hydropower to recipients, and Governor's approval letter.</p>	<p>Retain in office until end of the administration</p>	<p>Retain</p>
<p><u>State Operations Directives</u></p> <p>Memoranda and guidance to Chamber staff and heads of agencies and authorities from the Director of State Operations.</p>	<p>Retain in office until end of the administration</p>	<p>Retain</p>
<p><u>New York City Watershed</u></p> <p>Notices required to be filed with the Governor pursuant to the 1997 New York City Watershed Memorandum of Agreement.</p>	<p>Retain in office until file inactive</p>	<p>Retain</p>
<p><u>Findings of Suitability for Early Transfer of Property Under CERCLA § 120(h)(3)(c)</u></p> <p>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.</p>	<p>Retain in office until end of the administration</p>	<p>Retain</p>

<u>Ethics</u> 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
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## 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
<p><u>Confidential Files</u></p> <p>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.</p>	<p>Retain securely in office until end of the administration</p>	<p>Do not retain</p>
<p><u>Board/Commission Files</u></p> <p>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.</p>	<p>Retain in office until board or commission eliminated or until relevant board member resigns</p>	<p>Retain in office. Do not retain selected contents with personal information</p>
<p><u>Nomination Certificates</u></p> <p>Final text of nomination certificates, date stamped, and filed with the Senate for confirmation of an appointment made by the Governor.</p>	<p>Retain in office until end of the administration</p>	<p>Retain</p>
<p><u>Confirmation Certificates</u></p> <p>Certificate recording Senate confirmation of individual nominated for appointment by the Governor.</p>	<p>Retain in office until end of the administration</p>	<p>Retain</p>
<p><u>Appointment Letters</u></p> <p>Copies of letters sent to State Comptroller and individual notifying them of Senate confirmation of individual's nomination by Governor for appointment.</p>	<p>Retain in office until end of the administration</p>	<p>Retain</p>

<p><u>Budget Director Approvals (BDA)</u></p> <p>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.</p>	<p>Retain in office until end of the administration</p>	<p>Do not retain</p>
<p><u>Judicial Screening Candidates</u></p> <p>Files contain judicial appointment questionnaire submitted by candidates seeking judicial appointment and other materials.</p>	<p>Retain in office until end of the administration. Files of applicants who withdraw or become ineligible for selection are not retained.</p>	<p>Do not retain</p>

<p><u>Judicial Screening Committees</u></p> <p>Files contain contact and other information relating to each Judicial Screening Committee.</p>	<p>Retain in office until committee members' departure from committee</p>	<p>Do not retain</p>
<p><u>Judicial Screening Committee Reports</u></p> <p>Files contain the Judicial Screening Committees' confidential reports on candidates finding them highly qualified.</p>	<p>Retain in office until end of the administration</p>	<p>Do not retain</p>
<p><u>Designation Certificates</u></p> <p>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.</p>	<p>Retain in office until end of the administration</p>	<p>Retain</p>
<p><u>Daybook and Nomination Certificates</u></p> <p>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.</p>	<p>Retain in office until end of the administration</p>	<p>Retain</p>



### 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
<u>Governor’s Correspondence</u> 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
<u>Lieutenant Governor’s Correspondence</u> 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
<u>Press Releases</u> 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
<p><u>Proclamations, Citations, Certificates and Messages</u></p> <p>Copies of proclamations, citations, certificates, and messages issued by the Governor, including the State of the State and annual budget presentation.</p>	Retain in office until end of the administration	Retain
<p><u>Investigations</u></p> <p>Files contain Governor’s requests for investigation pursuant to Executive Law § 63.</p>	Retain in office until end of the administration	Retain
<p><u>Executive Orders</u></p> <p>Copies of original Executive Orders filed with Department of State.</p>	Retain in office until end of the administration	Retain
<p><u>Extraordinary Session Proclamations</u></p> <p>File contains copies of original Proclamations filed with Department of State.</p>	Retain in office until end of the administration	Retain
<p><u>Special Election Proclamations</u></p> <p>File contains each Proclamation issued by the Governor, and transmittal letters to the Secretary of State and Board of Elections.</p>	Retain in office until end of the administration	Retain

<p><u>Messages of Necessity</u></p> <p>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.</p>	<p>Retain in office until end of administration</p>	<p>Retain</p>
<p><u>Reprieves, Commutations and Pardons</u></p> <p>File contains each Proclamation issued by the Governor for reprieves, commutations, and pardons.</p>	<p>Retain in office until end of the administration</p>	<p>Retain</p>

## 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
<u>Photographs</u> Photographs of Governor's public events.	Retain in office until end of the administration	Retain
<u>Videos</u> Videos of Governor's public events.	Retain in office until end of the administration	Retain
<u>Speeches</u> Audio recordings of Governor's public speeches.	Retain in office until end of the administration	Retain
<u>Governor's Schedule</u> Governor's schedule as posted.	Retain in office until end of the administration	Retain
<u>Governor's Invitations</u> 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
<u>Lieutenant Governor's Schedule</u> 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
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## 6. LEGISLATION

This section covers records relating to proposed and enacted legislation.

Record Series Title and Description	Retention Period	Final Disposition
<u>Legislation</u> 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
<u>Ten Day Memoranda</u> 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
<u>Session Law Bill Jackets</u> 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
<u>Ledger Books</u> 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
<u>Program Bills</u> 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
<u>Budget Bills</u> 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

<p><u>Departmental Bills</u></p> <p>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.</p>	<p>Retain in office or State Records Center until end of the administration</p>	<p>Do not retain</p>
<p><u>Veto Messages</u></p> <p>File contains copy of Veto Messages sent to Legislature with bill that is vetoed by Governor.</p>	<p>Retain in office until end of the administration</p>	<p>Retain</p>



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

## 7. LITIGATION AND FOIL REQUESTS

This section covers records relating to litigation and FOIL requests.

Record Series Title and Description	Retention Period	Final Disposition
<p><u>Litigation</u></p> <p>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.</p>	<p>Retain in office until appeal time concludes, and then forward them to the New York State Archives, for retention for 10 years</p>	<p>Do not retain</p>
<p><u>Litigation Log</u></p> <p>Electronic log of papers received commencing litigation against the Governor or other Executive Chamber staff.</p>	<p>Retain in office until end of the administration</p>	<p>Retain</p>
<p><u>FOIL Requests</u></p> <p>Requests for records under Freedom of Information Law and Executive Chamber responses.</p>	<p>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</p>	<p>Do not retain</p>

	or resolution of appeal by court of last resort	
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## 8. TRIBAL AFFAIRS

This section covers records relating to tribal relations and issues.

Record Series Title and Description	Retention Period	Final Disposition
<u>Native-American Affairs</u> 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](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 H

**Kaitlin** [REDACTED]

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**From:** Jill DesRosiers  
**Sent:** Wednesday, January 24, 2018 1:23 PM  
**To:** Kaitlin [REDACTED]  
**Subject:** RE: Following up

My numbers in case you need them: office up here [REDACTED] and cell: [REDACTED]

**From:** Jill DesRosiers  
**Sent:** Wednesday, January 24, 2018 1:15 PM  
**To:** Kaitlin [REDACTED] [REDACTED]@exec.ny.gov>  
**Subject:** Following up

Hi Kaitlin – Just tried your cell but following up on our conversation. The title is Policy Associate reporting to the Senior Policy Associate at [REDACTED] and is consistent with the group there that you will be joining. Your salary will be [REDACTED] which is made up of [REDACTED] base plus [REDACTED] location. They are expecting you to start tomorrow. Please let me know of any questions or problems – I am still in Albany I've got a meeting from 130p-3p but am available after then.

Jill

# EXHIBIT I





Rebecca >

Fri, Feb 26, 10:59 AM

Sorry can I have 5 minutes?

of course

Okay sorry I'm ready

Fri, Feb 26, 1:22 PM

I took some people off:

- 1. [Redacted]
- 2. Senior Staffer #3 - highly doubt she would speak
- 3. [Redacted]
- 4. [Redacted]
- 5. [Redacted]
- 6. [Redacted]
- 7. Executive Assistant #3
- 8. [Redacted]
- 9. [Redacted] I think overlapped with Lindsey from 2016-2017
- 10. [Redacted]
- 11. [Redacted]
- 12. If you can get staff at the Governor's mansion to talk they might have seen things
- 13. [Redacted] - I'd bet had a similar experience
- 14. [Redacted]
- 15. [Redacted]



iMessage



# EXHIBIT K

NEWS [ /NEWS ]

# "It's The Cuomo Way": Former Staffers Describe Toxic Workplace Under Governor's Relentless Thumb

BY [GWYNNE HOGAN, WNYC](#) [ /STAFF/GWYNNE-HOGAN ]

MARCH 4, 2021 5:00 A.M. • [180 COMMENTS](#)



Ana Liss was in her twenties when she won a fellowship to work in Governor Andrew Cuomo's office in 2013. She was surprised, upon arriving, to be quickly invited by senior staffers to sit at a desk positioned right near the governor – in his "line of sight," as she described it.

At first, she didn't understand why. Another woman in the office offered Liss some insight, telling her Cuomo "likes blondes," particularly those in stiletto heels.

"You gotta wear heels when he's in Albany sweetie, that's the rule," Liss, who is blonde, said the woman told her. So, although Liss was more accustomed to flats or boots, she soon amassed a small collection of stilettos – not because it was a written rule, but because it seemed necessary to succeed.

Nearly a dozen current and former staffers of Cuomo's office who spoke to Gothamist/WNYC this week said Cuomo has cultivated an intense work culture that was brutal for some, traumatic for others. We are withholding all of their names because they fear professional or personal retaliation from the governor and his senior staff. Many still reside in New York where Cuomo's reach extends far and wide.

Their comments follow a tumultuous week for the governor, who is accused of sexual misconduct (<https://gothamist.com/news/third-woman-accuses-governor-cuomo-sexual-harassment-says-he-grabbed-and-kissed-her-cheek-wedding>) by three women, including two former staffers who said he harassed them at work, allegations he has denied and the Attorney General is investigating (<https://gothamist.com/news/cuomo-apology-letitia-james-referral-investigation>).

The former staffers said they weren't surprised by the allegations, in part because they described a workplace where outdated gender binaries were the norm, bullying was constant, and where people worked non-stop, blurring the lines between personal and professional lives.

They said they were expected to answer texts and phone calls and attend meetings at all hours of the day and night, any day of the week. They faced personal attacks on their professional worth and competence for seemingly small mistakes. And loyalty, rather than creative thinking, problem-solving, or passion for public service, was valued above all else.

"There's no right or wrong way. It's the Cuomo way," one former staffer said she was told when interviewing for the job. "He wants people who are literally going to fall on the sword for him, and they all will."

As Liss told us, "We all would have taken a bullet for the governor. He was the most important person."

While at first Cuomo said his alleged actions may have been misinterpreted as unwanted flirtation (<https://gothamist.com/news/cuomo-apology-letitia-james-referral-investigation>), on Wednesday he apologized, saying he kissed and hugged many people in his role as governor and did not intend to offend or harass anyone.

"You can find hundreds of pictures of me making the same gesture with hundreds of people, women, men, children," he said. "It is my usual customary way of greeting... by the way, it was my father's way of greeting people."

None of the staffers who spoke to Gothamist/WNYC said they witnessed sexual harassment or sexual misconduct by the governor. Liss said she received kisses on the cheek, just as one of the women (<https://gothamist.com/news/third-woman-accuses-governor-cuomo-sexual-harassment-says-he-grabbed-and->

kissed-her-cheek-wedding) who spoke out against the governor described. At the time, Liss said it felt like a fatherly gesture. Cuomo also asked her personal questions, including if she had a boyfriend, which she did not consider out of line.

"I felt like I was special," Liss said, adding she preferred a kiss on the cheek to the screams she heard directed at staff members who'd angered Cuomo or his top aides. She watched other women who didn't fit the archetype get bullied and mocked.

"I knew by looking cute, and not being obstinate or opinionated, and doing what I was told and looking polished... That is the only way I would survive there," Liss said.

Some former staffers who spoke to Gothamist/WNYC had a more generous interpretation of what it's like to work for Cuomo. Some refuted the characterization that it was a toxic workplace or that there were dress codes, but they conceded the environment was not for everyone.

"I think everyone there wants to do the best work they can. Sometimes that work-life balance is sacrificed. I was definitely burned out by the end of my time there," one said, adding, "I didn't take it personally."

### **Micromanager "to the 100th Degree"**

Cuomo needed to personally approve every detail of every project, down to which photos were sent to the press, and what backdrop he would stand in front of, the former staffers said. They had Google alerts set for his name, and sent him messages anytime he was mentioned in the press. He would pit people against one another, assigning them the same project to see who could do it better or faster.

"A micromanager to the 100th degree," one former staffer recalled. "One of the worst I've ever seen."

Setting up events for the governor was an endlessly complicated assignment. They were canceled or changed at the last minute because Cuomo decided he didn't want to do them, or rescheduled with just a few hours notice. Sometimes workers in other agencies were told to cancel their regular work schedules to accommodate the last-minute plans.

"It's not just chaos for his close staff," another former employee said. "It's chaos for his whole administration."

Everything down to the room temperature (between 67-71 degrees) had to be just so. Year-round, staff would place two small fans behind his speaking podium to keep him cool. Sometimes Cuomo would call staff on site from a blocked number just to double-check the room was cold enough.

"So that way he didn't sweat," another former staffer said. More than once, staff scrambled to locate a full air-conditioning unit to place near the governor. "If you do any Andrew Cuomo event you know it has to be a particular temperature."

And you had to be ready to work at all times.

"They flew me back from vacation once because they needed something done," one former staffer said, adding she still jumps at the ping of a Blackberry. "You had go-bags. You literally had to be ready to go at a drop of a hat."

Bursts of anger from Cuomo and his top aides came quick, often, and without warning. The most vitriolic personal attacks, former staffers said, were often reserved for men in Cuomo's close orbit. If something happened that made the governor feel he looked stupid or foolish, he'd lash out at the person he thought was to blame.

One staffer described an incident in Buffalo in 2017, where an aide briefly left his side, and Cuomo walked out onto the stage before being formally introduced by the loudspeaker. Embarrassed, he'd retreated back into the wings, ripping into the

young staffer. Cuomo fired the man on the spot, another staffer described, though his bosses kept him on without the governor's knowledge.

"Cuomo fired a lot of people and we just didn't put them in front of him," the woman said. "This guy continued to [work] but we would hide him at events."

The micromanaging also expressed itself in how people were expected to dress when the governor was around, and not just women. Men in Cuomo's inner orbit wear white shirts. Their shoes must be spotless. One staffer said they witnessed the governor taking a knee and polishing someone's shoes himself.

"There was a general sense that when the governor was in the building that you were to walk on eggshells," another said. "And while you're walking, make sure those shoes are nice and shiny."



➡ Melissa DeRosa and Gov. Andrew Cuomo, May 2020. GOV. ANDREW CUOMO'S OFFICE  
[[HTTPS://WWW.FLICKR.COM/PHOTOS/GOVERNORANDREWCUOMO/49931457602](https://www.flickr.com/photos/governorandrewcuomo/49931457602)]

**"Stockholm Syndrome"**



You were either in the governor's good graces or you were out. Cuomo and his top staffers either liked you, or they didn't. If the Albany office had the feel of an old boys' club, the New York City office was ruled by top-level female staffers who acted as gatekeepers to the governor. They jokingly referred to themselves as "mean girls," and others in the office knew them as such, several former staffers confirmed.

At the center were Melissa DeRosa, the secretary to the governor, and Stephanie Benton, his executive secretary, as well as several other female aides. DeRosa defended the office as a place where women could thrive professionally when asked about the recent allegations against Cuomo on Wednesday afternoon.

"We've seen more women rise to the highest levels in terms of commissioners and senior staff members, and senior staff levels," she said. "We've promoted one another, we've supported one another, and I don't think that this diminishes any of that."

Asked specifically about whether "mean girls" was used in the office to describe top aides, spokesperson Rich Azzopardi dismissed it, saying "that characterization is sexist and offensive."

"These are some of the highest ranking women in state government and some of the smartest, hardest working public servants I have ever met," Azzopardi added.

Three former staffers used the words "Stockholm syndrome" to describe life in Cuomo's office, a psychological reaction when hostages or abuse victims bond with their captors. Another described it as a textbook abusive relationship.

"They push you until you want to be there. You want them to like you," one former staffer said. Another, who said she's been talking with former employees since the allegations broke, put it this way: "We're all kind of waking up to the fact that we were in a cult."

People stayed because of what working in the Cuomo administration could mean for their careers; many former staffers hold top positions in government, public relations, technology, finance, and other companies. If things were not going well, administration officials could withhold a referral letter for their next job, or thwart their career in New York politics. If they couldn't handle the environment, some staffers were made to believe it was their own personal failing.

"That's what we were all led to believe, 'Well I can't hack it. That means I'm a failure. I'm a loser,'" a former staffer said.

### **Open Secret**

Stories of Cuomo's management style have extended as far back as 2000 ([https://www.washingtonpost.com/archive/politics/2000/10/18/discrimination-complaint-filed-in-dispute-at-hud/77fd0457-d43c-4601-b8fb-62f3ee7c6b75/?utm\\_term=.03bad1a01a3f](https://www.washingtonpost.com/archive/politics/2000/10/18/discrimination-complaint-filed-in-dispute-at-hud/77fd0457-d43c-4601-b8fb-62f3ee7c6b75/?utm_term=.03bad1a01a3f)) when he worked as the U.S. Secretary of Housing and Urban Development. They bubbled up again around election time.

(<https://www.politico.com/states/new-york/city-hall/story/2018/06/06/cuomo-leans-into-the-bully-moniker-under-the-image-of-strong-leadership-452511>)

They were more recently brought back into the public eye by Assemblymember Ron Kim, who in mid-February (<https://gothamist.com/news/cuomo-unleashes-tirade-on-queens-lawmaker-and-threatens-to-destroy-him-after-nursing-home-deaths-criticism>) described a threatening phone call from the governor after Kim had criticized him for his handling of COVID-19 in nursing homes.

Since then, New York City Mayor Bill de Blasio, reporters, elected officials and federal employees have stepped forward, describing similar threatening phone calls (<https://nypost.com/2021/02/22/inside-andrew-cuomos-history-of-bullying-foes-staffers/>). Albany's open secret, once again unearthed, is that Cuomo, despite glowing national coverage and an Emmy for his televised pandemic briefings, can be a bully.

In recent weeks, as news coverage of Cuomo has snowballed from nursing homes to bullying to sexual harassment, morale inside the office has worsened.

“Staff members are blaming each other for the way things are unfolding,” one said. “No one ever tells the governor he’s wrong about anything. People who are in a position to do that don’t... the rest of us have to deal with the fallout.”

Cuomo’s defenders, old-guard political allies as well as some new supporters he picked up during the pandemic, deny or downplay the allegations. Some tend toward conspiratorial thinking (<https://gothamist.com/news/cuomo-comforted-them-during-covid-now-they-see-conspiracy-destroy-him>), that some sort of plot orchestrated by Donald Trump has been set in motion to oust him. Others say this is how Albany is.

“I think they play hardball up in Albany, there’s no question about it. And you have to have a thick skin to work up there,” said Jay Jacobs, State Democratic Chair and Cuomo’s long-time ally and confidant on NY1 Tuesday night. (<https://www.ny1.com/nyc/all-boroughs/politics/2021/03/03/cuomo-sexual-harassment-allegations-governor-cuomo-scandal-jay-jacobs-reaction>) “There’s this misconception that producing good government results is going to be nice, or sweet, or easy – it’s not.”

Cuomo spokesperson Azzopardi said New Yorkers have trusted the governor to deliver results for 14 years.

“Yes, they have seen him get impatient with partisan politics and disingenuous attacks,” he said. “We have a top-tier team and the Governor is direct with people if their work is subpar because the people of New York deserve nothing short of excellence from us.”

By the time Liss left the governor’s office, she was deflated. Despite accomplishing some work she was proud of, the cost was too high: She told Gothamist she had lost weight, drank too much, cried all the time. With the

benefit of hindsight, she now feels differently about those years.

“I hate the fact that I viewed it as a professional, personal failure that I couldn’t survive because of how f—ed up and mean and nasty everyone was,” Liss, who is now 35, said. “Power was the number one goal. It wasn’t really about making things right or making things better for New Yorkers.”

*Editor's note: The original version of this story, published on March 4th, 2021, withheld Ana Liss's name and used a pseudonym to refer to her, at her request. On March 6th, Liss came forward publicly, describing her allegations [to the Wall Street Journal](https://www.wsj.com/articles/third-former-andrew-cuomo-aide-describes-inappropriate-workplace-treatment-11615081956) (<https://www.wsj.com/articles/third-former-andrew-cuomo-aide-describes-inappropriate-workplace-treatment-11615081956>). Liss has since granted Gothamist permission to identify her, and this article has been updated accordingly with her name.*

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The more news comes out about how Andrew Cuomo operates, the more I view his antagonistic relationship with Donald Trump, another old white guy from Queens, in the same light as the US vs. Russia or two brothers who constantly fight; they are more alike than they want to admit.

From an era where gender norms were clearly delineated? Check.

From Queens? Check.

Born into a powerful family and all the privilege and expectations he got used to? Check

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