



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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

TO: **Staffer #6**
Chief Communications Officer
Metropolitan Transportation Authority
2 Broadway, 4th Floor
New York, NY 10004

YOU ARE HEREBY COMMANDED, under Executive Law § 63(8) and N.Y. Civil Practice Law and Rules § 2302(a), and/or other statutes, to deliver and turn over to the Special Deputies to the First Deputy Attorney General, on **the 15th day of April, 2021, at 9:30 a.m.**, or any agreed upon adjourned date or time, at One Liberty Plaza, 38th Floor, New York, New York 10006, all documents and information requested in the attached Schedule in accordance with the instructions and definitions contained therein.


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

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

EXHIBIT

1

WITNESS, The Honorable Letitia James, Attorney General of the State of New York, this 5th day of April, 2021.

By: 

Joon H. Kim
Jennifer Kennedy Park
Abena Mainoo
Special Deputies to the
First Deputy Attorney General
[REDACTED]@ag.ny.gov
[REDACTED]@ag.ny.gov
[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]@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, note or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means, and shall include any Document that abstracts, digests, transcribes, records or reflects any of the foregoing.
5. “Concerning” means, directly or indirectly, in whole or in part, relating to, referring to, describing, evidencing or constituting.
6. “Custodian” means any Person or Entity that, as of the date of this Subpoena, maintained, possessed, or otherwise kept or controlled such Document.
7. “Document” is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced or stored (manually, mechanically, electronically or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail (“email”), instant messages, text messages, Blackberry or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, code (*e.g.*, C/C++/C#, SQL, JavaScript), algorithms, code repositories (*e.g.*, GitHub), commit messages, audit logs, data or databases (*e.g.*, Oracle, postgres or other SQL or non-SQL systems), plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, commit messages, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy

thereof.

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

B. Particular Definitions

1. “Complainant” means 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 other member of the Executive Chamber, or the public. For the avoidance of doubt, to the extent additional allegations come to light following the issuance of this Subpoena, individuals who make such allegations should be included in this definition.

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

C. Instructions

1. Preservation of Relevant Documents and Information; Spoliation. You are reminded of Your obligations under law to preserve Documents and information relevant or potentially relevant to this Subpoena from destruction or loss, and of the consequences of, and penalties available for, spoliation of evidence. No agreement, written or otherwise, purporting to modify, limit or otherwise vary the terms of this Subpoena, shall be construed in any way to narrow, qualify, eliminate or otherwise diminish Your aforementioned preservation obligations. Nor shall You act, in reliance upon any such agreement or otherwise, in any manner inconsistent with Your preservation obligations under law. No agreement purporting to modify, limit or otherwise vary Your preservation obligations under law shall be construed as in any way narrowing, qualifying, eliminating or otherwise diminishing such aforementioned preservation obligations, nor shall You act in reliance upon any such agreement, unless a Special Deputy to the First Deputy Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.
2. Possession, Custody, and Control. The Subpoena calls for all responsive Documents or information in Your possession, custody or control. This includes, without limitation, Documents or information possessed or held by You or any of Your officers, directors, employees, agents, representatives, consultants, divisions, affiliates, subsidiaries or Persons from whom You could request

Documents or information. If Documents or information responsive to a request in this Subpoena are in Your control, but not in Your possession or custody, You shall promptly Identify the Person with possession or custody and notify that Person of the Person's obligation to preserve such Documents and provide them to You for production.

3. Documents No Longer in Your Possession. If any Document requested herein was formerly in Your possession, custody or control but is no longer available, or no longer exists, You shall submit a statement in writing under oath that: (a) describes in detail the nature of such Document and its contents; (b) Identifies the Person(s) who prepared such Document and its contents; (c) Identifies all Persons who have seen or had possession of such Document; (d) specifies the date(s) on which such Document was prepared, transmitted or received; (e) specifies the date(s) on which such Document became unavailable; (f) specifies the reason why such Document is unavailable, including without limitation whether it was misplaced, lost, destroyed or transferred; and if such Document has been destroyed or transferred, the conditions of and reasons for such destruction or transfer and the Identity of the Person(s) requesting and performing such destruction or transfer; and (g) Identifies all Persons with knowledge of any portion of the contents of the Document.
4. No Documents Responsive to Subpoena Requests. If there are no Documents responsive to any particular Subpoena request, You shall so state in writing under oath in the Affidavit of Compliance attached hereto, identifying the paragraph number(s) of the Subpoena request concerned.
5. Format of Production. You shall produce Documents and information responsive to this Subpoena in the format requested by the Office of the New York State Attorney General, as set out in Attachments 1 and 2 or as otherwise agreed upon.
6. Databases. To the extent that any data responsive to the requests herein is maintained in an electronic repository of records, such as a detailed transcription report, such information should be produced by querying the database for responsive information and generating a report or a reasonably usable and exportable electronic file (for example, *.csv and/or *.xls formats) for review. If it is not possible to export data in this format, You must make the database available to the undersigned for meaningful inspection and review of the information.
7. Existing Organization of Documents to be Preserved. Regardless of whether a production is in electronic or paper format, each Document shall be produced in the same form, sequence, organization or other order or layout in which it was maintained before production, including but not limited to production of any Document or other material indicating filing or other organization. Such production shall include without limitation any file folder, file jacket, cover or similar organizational material, as well as any folder bearing any title or legend that contains no Document. Likewise, all Documents that are physically attached

- to each other in Your files shall remain so attached in any production; or if such production is electronic, shall be accompanied by notation or information sufficient to indicate clearly such physical attachment.
8. Manner of Compliance – Custodians/Search Terms/Technology-Assisted Review. Prior consultation with the Special Deputies to the First Deputy Attorney General is required concerning selection of custodians for document searches (whether electronic or otherwise) or for use of search term filters, predictive coding or other forms of technology-assisted review. The Office of the Attorney General reserves the right to approve, disapprove, modify or supplement any proposed list of custodians, search terms, and/or review methodology. The selection or use of custodians, search term filters, and/or technology-assisted review in no way relieves You of Your obligation to fully respond to these requests for Documents or information.
 9. Document Numbering. All Documents responsive to this Subpoena, regardless of whether produced or withheld on ground of privilege or other legal doctrine, and regardless of whether production is in electronic or paper format, shall be numbered in the lower right corner of each page of such Document, without disrupting or altering the form, sequence, organization or other order or layout in which such Documents were maintained before production. Such number shall comprise a prefix containing the producing Person's name or an abbreviation thereof, followed by a unique, sequential, identifying document control number.
 10. Privilege Placeholders. For each Document withheld from production on ground of privilege or other legal doctrine, regardless of whether a production is electronic or in hard copy, You shall insert one or more placeholder page(s) in the production bearing the same document control number(s) borne by the Document withheld, in the sequential place(s) originally occupied by the Document before it was removed from the production.
 11. Privilege. If You withhold or redact any Document responsive to this Subpoena on ground of any privilege or other legal doctrine, You shall submit with the Documents produced a statement in writing under oath, stating: (a) the document control number(s) of the Document withheld or redacted; (b) the type of Document; (c) the date of the Document; (d) the author(s) and recipient(s) of the Document; (e) the general subject matter of the Document; and (f) the legal ground for withholding or redacting the Document. If the legal ground for withholding or redacting the Document is attorney-client privilege, You shall indicate the name of the attorney(s) whose legal advice is sought or provided in the Document.
 12. Your Production Instructions to Be Produced. You shall produce a copy of all written or otherwise recorded instructions prepared by You concerning the steps taken to respond to this Subpoena. For any unrecorded instructions given, You shall provide a written statement under oath from the Person(s) who gave such

instructions that details the specific content of the instructions and any Person(s) to whom the instructions were given.

13. Cover Letter, Index, and Identifying Information. Accompanying any production(s) made pursuant to this Subpoena, You shall include a cover letter that shall at a minimum provide an index containing the following: (a) a description of the type and content of each Document produced therewith; (b) the paragraph number(s) of the Subpoena request(s) to which each such Document is responsive; (c) the Identity of the Custodian(s) of each such Document; and (d) the document control number(s) of each such Document. As further set forth in Attachment 2, information must also be included in the metadata and load files of each production concerning the identity of each Document's custodian, as well as information identifying the particular Document requests and/or information to which each document is responsive.
14. Affidavit of Compliance. A copy of the Affidavit of Compliance provided herewith shall be completed and executed by all natural persons supervising or participating in compliance with this Subpoena, and You shall submit such executed Affidavit(s) of Compliance with Your response to this Subpoena.
15. Identification of Persons Preparing Production. In a schedule attached to the Affidavit of Compliance provided herewith, You shall Identify the natural person(s) who prepared or assembled any productions or responses to this Subpoena. You shall further Identify the natural person(s) under whose personal supervision the preparation and assembly of productions and responses to this Subpoena occurred. You shall further Identify all other natural person(s) able to competently testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be.
16. Continuing Obligation to Produce. This Subpoena imposes a continuing obligation to produce the Documents and information requested. Documents located or created, and information learned, acquired or created, at any time after Your response is due shall be promptly produced at the place specified in this Subpoena.
17. No Oral Modifications. No agreement purporting to modify, limit or otherwise vary this Subpoena shall be valid or binding, and You shall not act in reliance upon any such agreement, unless a Special Deputy to the First Deputy Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.
18. Time Period. Unless otherwise specified, the time period covered by this Subpoena shall be from January 1, 2013 forward.

D. Documents to Be Produced

1. Any and all Documents related to any Complaint concerning the Governor, including any investigation thereof.
2. Any and all Documents concerning Communications with or about a Complainant.
3. Any and all Documents reflecting Communications between the Governor and any Complainant.
4. Any and all Documents concerning a Complainant's attendance at an event, appointment, or meeting at which the Governor was or would be present, including any at the Executive Offices or the Governor's Mansion.
5. Any and all Documents concerning any change in the position, title, employment, or office of any Complainant.
6. Any and all Documents concerning Communications with the media or public and other public statements about the Complainants or Complaints concerning the Governor.
7. Any and all Documents relating to how to respond to Complaints concerning the Governor, including the nature of any investigation to be conducted about such Complaints.
8. Any and all Documents concerning retention or deletion of records within the Executive Chamber, including but not limited to Communications between members or policies regarding the deletion of emails, use of Blackberry instant messaging, and other means of communication.
9. Documents sufficient to identify Your employment history, beginning with Your employment by the Executive Chamber and up to the present day, including but not limited to the time period of Your employment, Your title(s), Your position(s), Your responsibilities, and Your direct supervisor(s) for each position.
10. 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.

11. A list of all Your email addresses or phone numbers used for any Communication related to the Executive Chamber or the Governor.

ATTACHMENT 1
Electronic Document Production Specifications

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

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

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

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

A. Relational Databases

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

B. Compression

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

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

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

- hh:mm:ss:mmm

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

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

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

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

D. ***Opticon Load File***

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

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

E. ***Native Files***

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

ATTACHMENT 2
Required Fields for Metadata Load File

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

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

NATIVEFILE	Relative file path of the native file on the production media.	.\Native_File\Folder\...\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
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MSGINDEX	Email message ID	

AFFIDAVIT OF COMPLIANCE WITH SUBPOENA

State of _____ }
County of _____ }

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

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

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

Signature of Affiant

Date

Printed Name of Affiant

* * *

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

_____, Notary Public

My commission expires: _____



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

TO: **Staffer #6**
Chief Communications Officer
Metropolitan Transportation Authority
2 Broadway, 4th Floor
New York, NY 10004


YOU ARE HEREBY COMMANDED, pursuant to Executive Law § 63(8) and § 2302(a) of the New York Civil Practice Law and Rules, to appear and attend before the Special Deputies to the First Deputy Attorney General, on April 15, 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 which the Attorney General deems pertinent thereto.

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

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

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

WITNESS, The Honorable Letitia James, Attorney General of the State of New York,
this 5th day of April, 2021.

By: 

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

By: /s/ Anne L. Clark

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

Staffer #6

_____.@gmail.com

Experience

**New York Metropolitan Transportation Authority
Chief Communications Officer**

**New York, NY
10/2019-Present**

- Manage five-department external affairs team for largest transit system in North America, overseeing all strategic, internal and customer communications, as well as marketing and intergovernmental relations
- Lead national public affairs response to the COVID-19 pandemic – resulting in the agency securing \$14 billion in federal aid from Congress and successfully implementing one of the first mask mandates in the country
- Serve as senior advisor to the MTA Chairman and CEO, MTA Board, and presidents of New York City Transit, the Long Island Rail Road and Metro-North on all communications, policy and labor relations matters
- Lead agency-wide transformation and consolidation of 300-person communications group into one, unified department and lead change management communications strategy

**Kivvit
Director**

**New York, NY
12/2018-10/2019**

- Developed winning public affairs campaigns and advised Fortune 500 companies, start-ups, and governments on media relations as well as led media training for senior executives
- Provided strategic communications counsel to a leading healthcare technology start-up, amplifying their national media presence to help them expand into key insurance marketplaces
- Built book of business from ground up to more than \$535,000 annualized

**Cuomo 2018
Press Secretary**

**New York, NY
4/2018-11/2018**

- Developed long-term communications plan for Governor Cuomo's contested primary and general elections, resulting in a 31-point primary victory and the most primary votes in New York history
- Served as primary spokesperson for the Governor's re-election bid, liaising with New York and national media to promote the Governor's record and place opposition research in the *New York Times*, *New York Post*, *The Atlantic*, *Associated Press*, and *Politico*
- Traveled with and advised the Governor on media strategy as well as led rapid response during high-profile debate appearances

**Governor Andrew M. Cuomo
First Deputy Press Secretary**

**New York, NY
12/2015-4/2018**

- Served as spokesperson for the Governor and over 50 state agencies, managing stories closely from concept through publication to ensure accurate reporting by the media
- Traveled with and briefed the Governor on press events, policy and crisis situations, from extreme weather events to the 2017 Manhattan terror attack
- Booked, staffed and briefed the governor for cable and network news appearances to raise his national profile
- Launched successful issue-area campaigns around key legislative priorities, including fighting President Trump's tax proposal, free college tuition for the middle class, a \$15 minimum wage and 12-week paid family leave

**Senate Independent Democratic Conference Leader Jeff Klein
Press Secretary**

**Bronx, NY
11/2014-11/2015**

- Served as primary spokesperson for Senator Klein with all local and statewide media
- Executed policy-oriented press conferences, including drafting talking points, statements, releases, and briefings

**Mercury, LLC
Director**

**New York, NY
11/2013-11/2014**

- Executed communications strategies for corporate clients, non-profits and public organizations
- Served as official spokesperson for clients, managing media relationships with national press and trade media to advance client specific goals and raise their profile

Education

**University at Albany – SUNY
Bachelor of Arts, 2012**

**Albany, NY
Major: Globalization and Development / Minor: French**

**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

EXHIBIT

4

EMPLOYEE RIGHTS AND RESPONSIBILITIES

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INTRODUCTION

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

All State employees have the right to be free from unlawful discrimination and the responsibility to assure that their actions do not contribute to an atmosphere in which the State's policy of promoting a bias-free work environment is frustrated. To that end, this Handbook is intended to provide employees of the State of New York with information on their rights and responsibilities under state and federal law with respect to equal employment opportunity. Emphasis will be placed on New York State's Human Rights Law since it is generally broader in scope than protections granted under federal law. In addition, this Handbook will cover related state laws and Executive Orders.

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

EMPLOYEE RIGHTS AND RESPONSIBILITIES

PROTECTED AREAS

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

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

AGE

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

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

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

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

EMPLOYEE RIGHTS AND RESPONSIBILITIES

Statutory protection.

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

Executive Order concerning State workers.

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

Retirement.

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

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

Exceptions.

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

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

¹ 29 U.S.C. § 621 et seq.

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

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

⁴ Human Rights Law § 296.3-a(g).

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

⁶ N.Y. Correction Law § 7(4).

EMPLOYEE RIGHTS AND RESPONSIBILITIES

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

RACE and COLOR

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

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

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

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

Statutory protection.

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

CREED

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

“Creed” encompasses belief in a supreme being or membership in an organized religion or congregation. Atheism and agnosticism are considered creeds as well. A person is also protected from discrimination because of having no

⁷ Human Rights Law § 296.3-a(g).

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

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

¹⁰ Human Rights Law § 296.3-a(g).

¹¹ 42 U.S.C. § 2000e et seq.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

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

Statutory protection.

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

Sabbath or holy day observance.

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

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

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

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

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

¹² 42 U.S.C. § 2000e et seq.

¹³ Human Rights Law § 296.10(a).

¹⁴ Human Rights Law § 296.10(b).

¹⁵ Human Rights Law § 296.10(c).

¹⁶ Human Rights Law § 296.10(b).

¹⁷ Human Rights Law § 296.10(a). "Premium wages" include "overtime pay and compensatory time off, and additional remuneration for night, weekend or holiday work, or for standby or irregular duty." § 296.10(d)(2). "Premium benefit" means "an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, or an educational or pension benefit that is greater than the employment benefit due to the employee for an equivalent period of work performed during the regular work schedule of the employee." § 296.10(d)(3).

EMPLOYEE RIGHTS AND RESPONSIBILITIES

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

Religious observance or practices.

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

Request for accommodation.

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

Conflicts with seniority rights.

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

Undue hardship.

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

¹⁸ Human Rights Law § 296.10(a).

¹⁹ Human Rights Law § 296.10(d)(1).

EMPLOYEE RIGHTS AND RESPONSIBILITIES

Furthermore, in positions that require coverage around the clock or during particular hours, being available even on sabbath or holy days **may** be an essential function of the job. Also, certain uniform appearance standards **may** be essential to some jobs. A requested accommodation will be considered an undue hardship, and therefore not reasonable, if it will result in the inability of an employee to perform an essential function of the job.²⁰

Exceptions.

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

NATIONAL ORIGIN

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

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

Statutory protection.

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

Language issues.

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

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

²⁰ Human Rights Law § 296.10(d)(1).

²¹ Human Rights Law § 292.8.

²² 42 U.S.C. § 2000e et seq.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

must be reasonable and necessary to the efficient conduct of State business. Any such reasonable rule that prohibits or limits the use of a language other than English in the workplace must be clearly communicated to employees before it can be enforced.²³

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

Proof of identity and employment eligibility.

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

Citizenship requirements.

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

SEXUAL ORIENTATION

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

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

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

²⁴ US Immigration and Nationality Act § 274A, as modified by the Immigration Reform and Control Act of 1986, Immigration Act of 1990 and Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

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

²⁶ Human Rights Law § 292.27.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

Statutory protection.

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

Same-sex spouses or partners.

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

Domestic partners.

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

MILITARY STATUS

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

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

²⁷ Human Rights Law § 292.28.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

Statutory protection.

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

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

Military leave and job retention rights.

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

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

²⁸ 38 U.S.C. §§ 4301-35.

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

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

EMPLOYEE RIGHTS AND RESPONSIBILITIES

SEX

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

Statutory protection.

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

Executive Order concerning State workers.

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

Sexual harassment.

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

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

Hostile environment sexual harassment consists of words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment has also been defined as any unwanted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks made by someone in the workplace which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient's job performance.

³¹ 42 U.S.C. § 2000e et seq.

³² Issued by Gov. Mario M. Cuomo on May 31, 1983.

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

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

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

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

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

See, generally, section on [Harassment](#), below.

Sex stereotyping.

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

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

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

Pregnancy discrimination and maternity leave.

Discrimination on the basis of pregnancy constitutes sex discrimination. A pregnant individual may not be compelled to take a leave of absence unless pregnancy prevents that individual from performing the duties of the job in a reasonable manner.³³ Disability discrimination may also be implicated where discrimination is based on limitations or perceived limitations due to pregnancy. Any condition related to pregnancy that does prevent the performance of job duties entitles the individual to reasonable accommodation, including time off consistent with the medical leave policies applicable to any disability. (See below in the section on [Disability](#).)

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

The federal Family Medical Leave Act³⁴ is also applicable. In general, the State as an employer cannot take adverse action against employees who take qualifying medical leave for the birth or adoption of a child, for their own serious health condition, or to care for a family member with a serious health condition which qualifies under the Act. The Act entitles eligible employees to take up to a total of 12 weeks of unpaid leave during a 12-month period.

Exceptions.

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

³³ Human Rights Law § 296.1(g).

³⁴ 29 U.S.C. § 2601 et seq.

DISABILITY

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

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

Statutory protection.

Disability discrimination is unlawful pursuant to Human Rights Law § 296.1. Reasonable accommodation is required of employers pursuant to Human Rights Law § 296.3(a). New York State law has a very broad definition of disability, and generally protects persons with any disabling condition, including temporary disabilities. Disability discrimination is also unlawful under federal law. However, the scope of disability under the provisions of the Americans with Disability Act (ADA) is not as broad.³⁵ The Federal Rehabilitation Act of 1973 § 503 and § 504³⁶ also apply to many State workers. Federal law also requires reasonable accommodation.

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

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

A “disability” is:

- a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or
- a record of such an impairment or
- a condition regarded by others as such an impairment.³⁷

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

³⁵ 42 U.S.C. § 12111 et seq.

³⁶ 29 U.S.C. § 793 and § 794.

³⁷ Human Rights Law § 292.21.

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Reasonable performance.

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

Essential functions.

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

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

Reasonable Accommodation.³⁸

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

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

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

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

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

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

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

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

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

Many common questions about reasonable accommodation are explained in the reasonable accommodation regulations³⁹ of the New York State Division of Human Rights, which are available on the Division's website. These regulations may be used by applicants, employees, and agency personnel in order to better understand the reasonable accommodation process.

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

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

³⁹ 9 N.Y.C.R.R. § 466.11.

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Civil Service Law §§ 71 and 73.

The Civil Service Law allows an agency to terminate an employee after one cumulative year of absence for a disability resulting from an occupational injury or disease as defined in the Workers' Compensation Law.⁴⁰ This is extended to two years for an individual injured in an assault that causes such injury or disease. The Civil Service Law also allows an agency to terminate an employee who has been continuously absent for one year for a personal injury or illness.⁴¹

Drug and Alcohol Free Workplace Policy.

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

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

⁴⁰ Civil Service Law § 71.

⁴¹ Civil Service Law § 73.

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

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

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

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

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

See also, [Drug and Alcohol Free Workplace Policy](#), above.

Guide dogs, hearing dogs, and service dogs.

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

The use of such a dog is not considered a reasonable accommodation, but a right protected separately under the Human Rights Law, and the dog owner need not specifically request permission to bring the dog into the workplace. This specific provision is not part of the federal ADA, under which the matter may be analyzed to determine whether a reasonable accommodation is appropriate.

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

A “guide dog” or “hearing dog” is a dog that is trained to aid a blind or hearing impaired person, is actually used to provide such aid, and was trained by a recognized guide or hearing dog training center or professional guide or hearing dog trainer.⁴⁵

⁴³ See generally 9 N.Y.C.R.R. § 466.11(h).

⁴⁴ Human Rights Law § 296.14.

⁴⁵ Human Rights Law §§ 292.31-32.

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A “service dog” may perform a variety of assistive services for its owner. However, to meet the definition, the dog must be trained by a recognized service dog training center or professional service dog trainer.⁴⁶

Dogs that are considered therapy, companion or other types of assistance dogs, but who have not been professionally trained as stated in the definitions above, are not covered by this provision.⁴⁷ The provision also does not apply to animals other than dogs, regardless of training.

Dogs not meeting one of the definitions, or animals other than dogs, may provide assistance or companionship to a person with a disability. However, they are generally **not** permitted into the workplace as a reasonable accommodation, because the workplace and other employees can be adversely impacted by animals that are not professionally trained by recognized guide, hearing or service dog trainers, as provided above.

The New York State Civil Service Law provides qualified employees with special leave benefits for the purposes of obtaining service animals or guide dogs and acquiring necessary training.⁴⁸

Exceptions.

The Human Rights Law does not require accommodation of behaviors that do not meet the employer’s workplace behavior standards that are consistently applied to all similarly situated employees, even if these behaviors are caused by a disability.⁴⁹

Reasonable accommodation is not required where the disability or the accommodation itself poses a direct threat, which means a significant risk of substantial harm to the health or safety of the employee or others that cannot be eliminated or reduced by reasonable accommodation.⁵⁰

⁴⁶ Human Rights Law § 292.33.

⁴⁷ A dog may be licensed as a “service” dog, and nevertheless not meet the definition of service dog for purposes of the Human Rights Law. N.Y. Agriculture & Markets Law § 110, which requires the licensing of dogs, permits municipalities to exempt from licensing fees various categories of dogs, including “service” and “therapy” dogs, but the section provides no definitions of those categories.

⁴⁸ Civil Service Law § 6(1).

⁴⁹ 9 N.Y.C.R.R. § 466.11(g)(1).

⁵⁰ 9 N.Y.C.R.R. § 466.11(g)(2).

PREDISPOSING GENETIC CHARACTERISTICS

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

Testing for such genetic characteristics is prohibited in most circumstances.

Statutory protection.

Discrimination on the basis of a genetic characteristic is unlawful pursuant to Human Rights Law § 296.1 and § 296.19. It is also covered by the federal Genetic Information Nondiscrimination Act (GINA).⁵¹

What is a predisposing genetic characteristic?

A predisposing genetic characteristic is defined as “any inherited gene or chromosome, or alteration thereof, . . . determined by a genetic test or inferred from information derived from an individual or family member that is scientifically or medically believed to predispose an individual or the offspring of that individual to a disease or disability, or to be associated with a statistically significant increased risk of development of a physical or mental disease or disability.”⁵²

How is the employee or applicant protected?

It is an unlawful discriminatory practice for any employer to directly or indirectly solicit, require, or administer a genetic test to a person, or solicit or require information from which a predisposing genetic characteristic can be inferred as a condition of employment or pre-employment application.⁵³ It is also unlawful for an employer to buy or otherwise acquire the results or interpretation of an individual's genetic test results or information from which a predisposing genetic characteristic can be inferred or to make an agreement with an individual to take a genetic test or provide genetic test results or such information.⁵⁴

An employee may give written consent to have a genetic test performed, for purposes of a worker's compensation claim, pursuant to civil litigation, or to determine the employee's susceptibility to potentially carcinogenic, toxic, or otherwise hazardous chemicals or substances found in the workplace

⁵¹ As with Title VII, the ADA and the ADEA, the Genetic Information Nondiscrimination Act is enforced by the federal Equal Employment Opportunity Commission. When codified, GINA was distributed throughout various sections of Titles 29 and 42 of the United States Code. For more details on GINA, see <http://www.eeoc.gov/laws/types/genetic.cfm>.

⁵² Human Rights Law § 292.21-a.

⁵³ Human Rights Law § 296.19(a)(1).

⁵⁴ Human Rights Law § 296.19(a)(2).

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

Exceptions.

An employer may require a specified genetic test as a condition of employment where such a test is shown to be directly related to the occupational environment, such that the employee or applicant with a particular genetic anomaly might be at an increased risk of disease as a result of working in that environment.⁵⁶ However, the employer may not take adverse action against the employee as a result of such testing.

MARITAL STATUS

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

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

Statutory protection.

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

Marital status does not include the identity of the spouse.

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

Nepotism.

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

⁵⁵ Human Rights Law § 296.19(c) and (d).

⁵⁶ Human Rights Law § 296.19(b).

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fire, supervise or discipline a spouse or other relative.⁵⁷ Moreover, other acts of nepotism not specifically governed by this provision may violate more general conflict of interest provisions in the New York ethics statutes. Such anti-nepotism rules do not implicate marital status discrimination.

What is marital status discrimination?

Some examples of marital status discrimination are:

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

DOMESTIC VIOLENCE VICTIM STATUS

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

Statutory protection.

Discrimination based on domestic violence victim status is unlawful pursuant to Human Rights Law § 296.1. There is no similar federal protection.

Executive Order concerning State workers.

On January 1, 2011, Governor Andrew M. Cuomo issued Executive Order No. 2, reissuing Executive Order No. 19,⁵⁸ which requires adoption of domestic violence and the workplace policies by all executive branch State agencies.

Purpose of domestic violence and the workplace policies.

Domestic violence permeates the lives and compromises the safety of New York State residents with tragic, destructive, and sometimes fatal results. Domestic violence occurs within a wide spectrum of relationships, including married and formerly married couples, couples with children in common, couples who live

⁵⁷ Anti-nepotism rules for all State government workplaces are found in N.Y. Public Officers Law § 73.14.

⁵⁸ Issued by Gov. Eliot L. Spitzer on October 22, 2007.

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together or have lived together, gay, lesbian, bisexual and transgender couples, and couples who are dating or who have dated in the past.

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

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

Meeting the needs of domestic violence victims.

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

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

The State's domestic violence and the workplace policy requires this and more. Employees should consult their agency's policy to understand the support it affords to victims of domestic violence, which may include the following:

- Assistance to the employee in determining the best use of his/her attendance and leave benefits when an employee needs to be absent as a result of domestic violence.

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- Assistance with enforcement of all known court orders of protection, particularly orders in which the abuser has been ordered to stay away from the work site.
- Refraining from any unnecessary inquiries about domestic violence.
- Maintenance of confidentiality of information about the domestic violence victim to the extent possible.
- Establishment of a violence prevention procedure, such as a policy to call “911” if an abuser comes to the workplace.
- Working with the domestic violence victim to develop a workplace safety plan.

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

Time off for legal proceedings.

In addition to the requirement of the domestic violence and the workplace policy that victims be granted reasonable time off to deal with domestic violence, time off for legal proceedings is addressed by the Penal Law. It is illegal for an employer to take any adverse action against an employee who is a victim of a crime for taking time off to appear in court as a witness, to consult with a district attorney,⁵⁹ or to obtain an order of protection.

Unemployment insurance benefits.

If a victim must leave a job because of domestic violence, he or she is not necessarily barred from receiving unemployment insurance benefits. Circumstances related to domestic violence may be “good cause” for voluntarily quitting a job. Also, job performance problems related to domestic violence (such as absenteeism or tardiness) will not necessarily bar benefits.⁶⁰

Further information and support.

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

⁵⁹ N.Y. Penal Law § 215.14.

⁶⁰ N.Y. Labor Law § 593.

PRIOR ARREST RECORDS, YOUTHFUL OFFENDER ADJUDICATIONS AND SEALED RECORDS

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

Statutory protection.

This protection is provided by Human Rights Law § 296.16.

What is unlawful?

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

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

Pending arrest or accusation.

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

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

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

What specific circumstances are protected?

The arrest or criminal accusation must have been:

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

Sealed records.

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

Exceptions.

The Human Rights Law explicitly states that arrest inquiries, requests for information, or adverse actions may be lawful where such actions are “specifically required or permitted by statute.”⁶¹

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

The provisions do not fully apply to an application for employment or membership in any law enforcement agency. For those positions, arrests or criminal accusations that are dismissed pursuant to Criminal Procedure Law § 160.50 may not be subject to inquiry, demands for information, or be the basis of adverse action. However, the other types of terminations (youthful offender adjudication or sealed convictions) may be inquired into and taken into consideration for jobs with law enforcement agencies.

⁶¹ Human Rights Law § 296.16; see e.g. Civil Service Law § 50(4).

⁶² Police and peace officer as defined in Criminal Procedure Law §§ 1.20 and 2.10, respectively.

PREVIOUS CONVICTION RECORDS

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

Statutory protection.

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

Factors from the Correction Law.

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

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

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

⁶³ N.Y. Correction Law § 752.

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- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.⁶⁴

Also, in making the determination, the employer must give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the individual, which creates a presumption of rehabilitation in regard to any offense specified in the certificate.⁶⁵

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

Conviction must be “previous.”

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

Inquiries and misrepresentation.

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

If the employer learns at any time that that an applicant or employee has made a misrepresentation with regard to any previous conviction, it may be grounds for denial or termination of employment.⁶⁶

Interaction with the arrest provisions.

The arrest provisions⁶⁷ of the Human Rights Law interact with the conviction provisions. Although it is **lawful to ask** about previous convictions, it is **unlawful**

⁶⁴ N.Y. Correction Law § 753.1.

⁶⁵ N.Y. Correction Law § 753.2.

⁶⁶ N.Y. Correction Law § 751; see also Civil Service Law section 50(4).

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

Enforcement only by court action.

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

Exceptions.

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

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

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

GENDER IDENTITY

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

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

⁶⁷ Human Rights Law § 296.16.

⁶⁸ N.Y. Correction Law § 755.1.

⁶⁹ N.Y. Correction Law § 750.5.

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Statutory protection.

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

Executive Order concerning State workers.

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

What protection against discrimination is provided?

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

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

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

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

GENERAL PROHIBITIONS

Harassment

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

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

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

Appropriate supervision is not harassment.

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

Harassment must be reported.

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

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

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Harassment must be investigated and appropriate corrective action taken.

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

Unlawful Inquiries

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

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

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

Retaliation

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

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

⁷¹ Human Rights Law § 296.1(d).

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

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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

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

Diversity

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

Reporting Discrimination Complaints Internally

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

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

⁷³ Civil Service Law § 107.

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Pursuing Discrimination Complaints Externally

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

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

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

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

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

EMPLOYEE RIGHTS AND RESPONSIBILITIES

NOTE

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

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

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

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



State of New York

Executive Chamber

No. 187

EXECUTIVE ORDER

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

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

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

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

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

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

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

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

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

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

II. Comprehensive State Diversity and Inclusion Planning

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

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

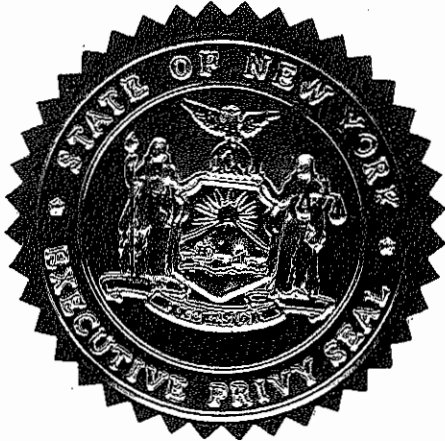
III. Combating Harassment and Discrimination in State Agencies

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

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

IV. Revocation of Previous Executive Order

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



G I V E N under my hand and the Privy Seal of the
State in the City of Albany this twenty
third day of August in the year two
thousand eighteen.

BY THE GOVERNOR


Secretary to the Governor



**STATE OF NEW YORK
EXECUTIVE DEPARTMENT**



**EQUAL EMPLOYMENT OPPORTUNITY
In New York State**

RIGHTS AND RESPONSIBILITIES

A Handbook for Employees of New York State Agencies

**Andrew M. Cuomo
Governor**

May 2020

EMPLOYEE RIGHTS AND RESPONSIBILITIES

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EMPLOYEE RIGHTS AND RESPONSIBILITIES

INTRODUCTION

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

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

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

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

PROTECTED AREAS

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

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

AGE

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

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

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

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

Statutory protection.

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

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

Executive Order concerning State workers.

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

Retirement.

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

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

Exceptions.

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

¹ 29 U.S.C. § 621 et seq.

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

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

⁴ Human Rights Law § 296.3-a(g).

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

⁶ N.Y. Correction Law § 7(4).

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

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

RACE AND COLOR

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

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

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

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

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

Statutory protection.

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

⁷ Human Rights Law § 296.3-a(g).

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

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

¹⁰ Human Rights Law § 296.3-a(g).

¹¹ Human Rights Law § 292.37 and § 292.38.

¹² 42 U.S.C. § 2000e et seq.

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CREED

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

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

Statutory protection.

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

Sabbath or holy day observance.

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

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

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

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

¹³ 42 U.S.C. § 2000e et seq.

¹⁴ Human Rights Law § 296.10(a).

¹⁵ Human Rights Law § 296.10(b).

¹⁶ Human Rights Law § 296.10(c).

¹⁷ Human Rights Law § 296.10(b).

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

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

Religious observance or practices.

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

Request for accommodation.

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

Conflicts with seniority rights.

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

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

¹⁹ Human Rights Law § 296.10(a).

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

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

Undue hardship.

Before the employer can deny a religious accommodation, the employer must be able to show that accommodating the employee's religious observance or practice would result in undue hardship to the employer. The undue hardship standard applies generally to all accommodation requests, not only those for time off for religious observance.

"Undue hardship" means an accommodation requiring significant expense or difficulty, including one that would cause significant interference with the safe or efficient operation of the workplace. Factors that are specifically to be considered are the identifiable costs (such as loss of productivity, or the cost to transfer or hire additional personnel), and the number of individuals who will need time off for a particular sabbath or holy day in relation to available personnel.²¹

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

Exceptions.

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

NATIONAL ORIGIN

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

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

²¹ Human Rights Law § 296.10(d)(1).

²² Human Rights Law § 296.10(d)(1).

²³ Human Rights Law § 292.8.

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Statutory protection.

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

Language issues.

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

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

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

Proof of identity and employment eligibility.

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

Citizenship requirements.

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

²⁴ 42 U.S.C. § 2000e et seq.

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

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

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

MILITARY STATUS

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

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

Statutory protection.

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

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

Military leave and job retention rights.

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

²⁸ Human Rights Law § 292.28.

²⁹ 38 U.S.C. §§ 4301-35.

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

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

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

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

SEX

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

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

Statutory protection.

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

Sex stereotyping.

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

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

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

³² 42 U.S.C. § 2000e et seq.

Sexual harassment.

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

Pregnancy and childbirth discrimination.

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

Exceptions.

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

SEXUAL HARASSMENT

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

Statutory protection.

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

Executive Order concerning State workers.

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

Sexual harassment defined.

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

³³ 42 U.S.C. § 2000e et seq.

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

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

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

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

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

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

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

³⁵ Human Rights Law § 296.1(h).

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Reporting sexual harassment.

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

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

See below: Harassment.

Sexual harassment by a non-employee.

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

Sexual harassment of non-employees.

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

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

SEXUAL ORIENTATION

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

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

Statutory protection.

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

Same-sex spouses or partners.

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

Domestic partners.

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

³⁶ Human Rights Law § 292.27.

GENDER IDENTITY OR EXPRESSION

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

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

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

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

Statutory protection.

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

Executive Order concerning State workers.

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

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

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

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

³⁷ 9 N.Y.C.R.R. § 466.13

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

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

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

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

Rights with regard to name, title and pronoun.

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

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

Access to gender-segregated facilities and programs.

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

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

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Dress codes, uniforms, grooming, and appearance standards.

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

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

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

DISABILITY

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

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

Statutory protection.

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

³⁹ 42 U.S.C. § 12111 et seq.

⁴⁰ 29 U.S.C. § 793 and § 794.

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

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

A “disability” is:

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

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

Reasonable performance.

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

Essential functions.

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

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

⁴¹ Human Rights Law § 292.21.

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Reasonable accommodation.⁴²

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

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

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

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

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

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

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

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

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

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

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

Exceptions.

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

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

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

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

Civil Service Law §§ 71 and 73.

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

⁴³ Human Rights Law § 296.3.

⁴⁴ 9 N.Y.C.R.R. § 466.11.

⁴⁵ 9 N.Y.C.R.R. § 466.11(g)(1).

⁴⁶ 9 N.Y.C.R.R. § 466.11(g)(2).

⁴⁷ Civil Service Law § 71.

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

Drug and Alcohol-Free Workplace Policy.

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

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

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

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

⁴⁸ Civil Service Law § 73.

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

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

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

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

See above: Drug and Alcohol-Free Workplace Policy.

Guide dogs, hearing dogs, and service dogs.

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

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

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

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

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

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

⁵¹ Human Rights Law § 296.14.

⁵² Human Rights Law § 296.14.

⁵³ Human Rights Law § 296.14.

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

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

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

PREDISPOSING GENETIC CHARACTERISTICS

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

Testing for such genetic characteristics is prohibited in most circumstances.

Statutory protection.

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

What is a predisposing genetic characteristic?

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

⁵⁵ Civil Service Law § 6(1).

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

⁵⁷ Human Rights Law § 292.21-a.

How is the employee or applicant protected?

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

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

Exceptions.

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

FAMILIAL STATUS

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

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

⁵⁸ Human Rights Law § 296.19(a)(1).

⁵⁹ Human Rights Law § 296.19(a)(2).

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

⁶¹ Human Rights Law § 296.19(b).

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Statutory protection.

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

Familial status does not include the identity of the children.

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

Nepotism.

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

What is familial status discrimination?

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

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

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

No requirement of reasonable accommodation.

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

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

Pregnancy and childbirth discrimination.

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

MARITAL STATUS

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

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

Statutory protection.

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

Marital status does not include the identity of the spouse.

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

⁶³ Human Rights Law §296.3

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Nepotism.

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

What is marital status discrimination?

Some examples of marital status discrimination are:

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

STATUS AS A VICTIM OF DOMESTIC VIOLENCE

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

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

⁶⁵ N.Y. Social Service Law §459-a.

Statutory protection.

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

Executive Order concerning State workers.

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

Purpose of domestic violence and the workplace policies.

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

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

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

Meeting the needs of domestic violence victims.

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

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

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

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

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

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

Human Rights Law reasonable accommodation requirements for leave time.

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

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

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Time off for legal proceedings.

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

Unemployment insurance benefits.

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

Further information and support.

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

PREGNANCY, CHILDBIRTH AND FAMILY LEAVE

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

Statutory protection.

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

⁶⁷ N.Y. Penal Law § 215.14.

⁶⁸ N.Y. Labor Law § 593.

⁶⁹ Human Rights Law § 296.3(a).

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

Pregnancy discrimination.

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

Reasonable accommodation of pregnancy-related conditions.

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

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

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

Right to express breast milk in the workplace.

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

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

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

⁷¹ Human Rights Law § 292.21-f.

⁷² Human Rights Law § 296.3.

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

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

Parental leave.

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

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

Paid Family Leave.

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

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

⁷³ 29 U.S.C. § 2601 et seq.

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

PRIOR ARREST RECORDS, YOUTHFUL OFFENDER ADJUDICATIONS AND SEALED CONVICTION RECORDS

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

Statutory protection.

This protection is provided by Human Rights Law § 296.16.

What is unlawful?

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

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

Pending arrest or charges.

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

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

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

What specific circumstances are protected?

The arrest or criminal accusation must have been:

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

Sealed records.

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

Exceptions.

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

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

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

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

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

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

PREVIOUS CONVICTION RECORDS

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

Statutory protection.

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

Factors from the Correction Law.

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

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

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

⁷⁷ N.Y. Correction Law § 752.

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

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

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

Conviction must be “previous.”

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

Inquiries and misrepresentation.

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

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

⁷⁸ N.Y. Correction Law § 753.1.

⁷⁹ N.Y. Correction Law § 753.2.

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

Interaction with the arrest provisions.

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

Enforcement only by court action.

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

Exceptions.

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

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

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

HARASSMENT PROHIBITED

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

⁸¹ Human Rights Law § 296.16.

⁸² N.Y. Correction Law § 755.1.

⁸³ N.Y. Correction Law § 750.5.

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

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

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

Appropriate supervision is not harassment.

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

Harassment by a non-employee.

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

Harassment of non-employees.

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

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

⁸⁴ Human Rights Law § 296.1(h).

⁸⁵ Human Rights Law § 296.1(h).

RETALIATION

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

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

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

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

Administrative or court proceedings.

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

Opposing discriminatory practices.

Opposing discriminatory practices includes:

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

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

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

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

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

REPORTING DISCRIMINATION IN THE WORKPLACE

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

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

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

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Antidiscrimination@goer.ny.gov

or

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

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

Confidentiality and cooperation.

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

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

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

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

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

Discrimination must be investigated and appropriate corrective action taken.

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

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

PURSUING DISCRIMINATION COMPLAINTS EXTERNALLY

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

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

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

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

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

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

GENERAL PROHIBITIONS AND PROVISIONS

Unlawful inquiries.

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

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

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

Interns.

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

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

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

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

Non-employees working in the workplace.

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

Political activities.

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

Diversity.

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

⁸⁸ Civil Service Law § 107.

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NOTE

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

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

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

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



**Governor's Office of
Employee Relations**

Equal Employment Opportunity: Rights and Responsibilities

e-Learning Course

12/2017
For Training Purposes Only

EXHIBIT

7

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 O



← 161212 CUOMO [REDACTED]

CLIENT AREA LIGHTBOX CART

← 182 of 193 →

+ MORE INFO

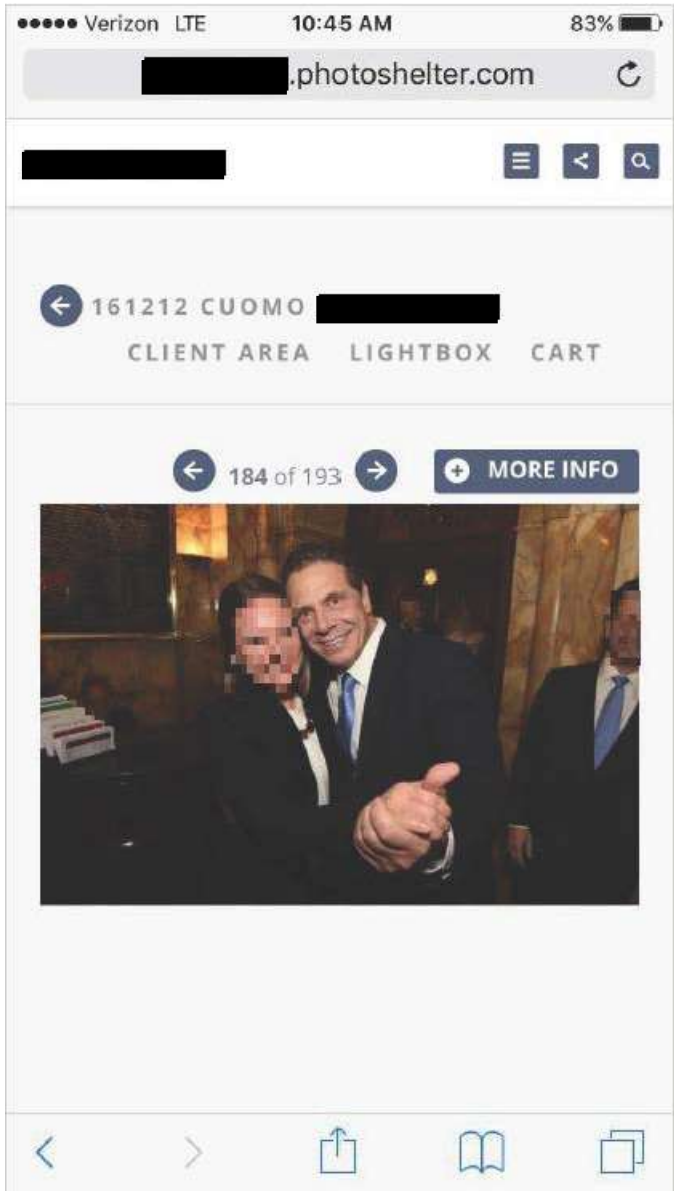


← 161212 CUOMO [REDACTED]

CLIENT AREA LIGHTBOX CART

← 183 of 193 → + MORE INFO





← 161212 CUOMO [REDACTED]
CLIENT AREA LIGHTBOX CART

← 185 of 193 → + MORE INFO



← 161212 CUOMO [REDACTED]

CLIENT AREA LIGHTBOX CART

← 177 of 193 → + MORE INFO





VIDEO RECORDING

[REDACTED]

[REDACTED]

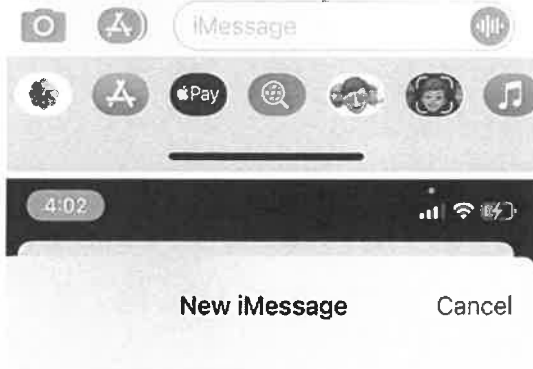
To: Melissa, Lis



The future is coming after
assholes.

Wed, May 6, 6:15 PM

I hope that journalists will be
looking into NDAs etc as



To: Lindsey Boylan

I hope that journalists will be
looking into NDAs etc as
@ericsschmidt suggests people
"reminagine" him too. It's so
bankrupt that what we do in
times of need is turn to people
who have been shut out of their
own companies & we just give
them the keys for our precious
New York. [https://t.co/
y3vWU2KFoF](https://t.co/y3vWU2KFoF)

 **Lindsey Boylan**
twitter.com



iMessage



EXHIBIT

12

To: Melissa, Lis



new iMessage

Cancel

To: Lindsey Boylan

I hope that journalists will be looking into NDAs etc as @ericsschmidt suggests people "reimagine" him too. It's so bankrupt that what we do in times of need is turn to people who have been shut out of their own companies & we just give them the keys for our precious New York. <https://t.co/y3vWU2KFoF>

 Lindsey Boylan
twitter.com

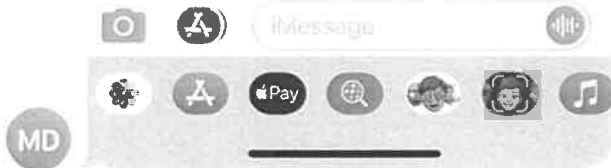
Happy holidays. Lol.

Wed, May 6, 7:26 PM

Lindsey please stop contacting me. I wish you well.

Delivered

Yes got it. Thanks.



Lindsey Boylan

To: Melissa, Lis



Mon, Dec 14, 7:21 PM

Melissa DeRosa



To: Lindsey Boylan

Ulster.

Hope all well xo

May 21, 2019, 2:58 PM

Hey do you have a second?

It's pretty important

Sat, Mar 14, 4:53 PM

NEWS: The safety of NYers is our top priority.

I'm signing an Executive Order to reduce the # of Petition Signatures to 30% of the statutory threshold; Petition period will end at 5PM, Tues 3/17.

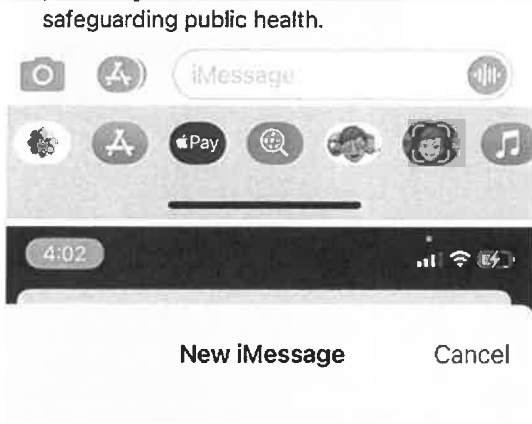
This will ensure our electoral process goes on while safeguarding public health.



iMessage



To: Melissa, Lis



To: Lindsey Boylan

Absolutely not helpful specific response to a tragedy but please relay that while we are ok, I see what the point is here and I will find ways to respond to the message.



The future is coming after assholes.



iMessage



To: Melissa, Rich, Peter



Mon, Dec 14, 7:33 PM

12:51



Lindsey >

This article literally grossed me out. It's unfortunate that [REDACTED] as a part of it

Sat, Jun 8, 2:03 PM

Also, @bradhoylman your blind ambition is embarrassing. I gave you the opportunity to change course but you're just you and that will never help our community.

 Lindsey Boylan
twitter.com

Please tell your guy this is a warning

If I hear about a single case of him making calls showing up again after this week then I will say exactly what I think about how this community has benefited a bunch of old white men

And I'm super pissed

And make no mistake it's my kid and your future kid that makes me the most pissed

I mean if there is a single case, there's a handle, posting, if there is anything, I will do whatever I can to



iMessage



EXHIBIT

13

To: Melissa, Rich, Peter



I mean if there is a single case, there's a handle, posting, if there is anything, I will do whatever I can to



12:51



LB

Lindsey :

most pissed

I mean if there is a single case, there's a handle, posting, if there is anything, I will do whatever I can to make it clear who perpetuates white older dude hegemony in this city in this country

Tell him I like him but fuck that if he even steps into this one more second

All. Bets. Are. Off.

Honestly, a year ago when I would be harassed, when I would be dismissed, when I would be maligned, this was why: people like @bradhoylman thought they "deserved" this seat & I called him out a year ago and I call him out again today. <https://t.co/OgTAf33WlP>
<https://t.co/leG71xCvrRS>



iMessage



To: Melissa, Rich, Peter



Honestly, a year ago when I would be harassed, when I would be dismissed, when I would be maligned, this was why: people like @bradhoylman thought they "deserved" this seat & I called him out a year ago and I call him out again today. <https://t.co/0gTAf33WIP>
<https://t.co/eG71xCyrRS>

 **Lindsey Boylan**
twitter.com

Please tell him I have a lot more to say if he fucks a bunch of hard working women over



[REDACTED] kinda freaking so tell me before you do anything w these

Rich Azzopardi

RA

Ok

Tue, Feb 2, 12:24 PM

Peter Ajemian

PA

Don't do [REDACTED]



iMessage





Explore

Settings

Thread

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

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

22 174 1.1K

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

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

Instead I'm getting back to my work.

4 20 265

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

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

5 40 335

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

I will fight.

20 55 442

Replies

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

1 2 27

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

3

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

1

View more replies

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Sign up

Relevant people

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

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

What's happening

Music · LIVE

It's Travis Scott's birthday

Trending with Travis Scott, Astro

Trending in United States

BOYFRIEND REVEAL

4,131 Tweets

Trending in United States

Josh Duggar

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

Trending with 19 Kids and Count

COVID-19 · LIVE

COVID-19: News and upda
New York

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

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Ads info More ... © 2021 Twit

Don't miss what's happening

People on Twitter are the first to know.



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Lindsey Boylan @LindseyBoylan · Dec 13, 2020
 My first experience of workplace sexual harassment was when my mom got her first real office job after graduating from college when I was in high school.

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

330 1.4K 7.6K

Lindsey Boylan @LindseyBoylan · Dec 13, 2020
 It was then how I learned how hard it is for women. How hard this world can be for us when we are trying to be taken seriously and help our community. How easily jerks can destroy the lives of women.

58 331 3.7K

Lindsey Boylan @LindseyBoylan · Dec 13, 2020
 And I promised myself I would never let those kind of guys win. I would work hard my whole life to put myself in positions of power to change things. To end the violence & corruption. Give voice to the voiceless.

Thread

Lindsey Boylan @LindseyBoylan
 Replying to @LindseyBoylan

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

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

9:16 AM · Dec 13, 2020 · Twitter for iPhone

9,846 Retweets 4,118 Quote Tweets 27.8K Likes

330 1.4K 7.6K

Lindsey Boylan @LindseyBoylan · Dec 13, 2020
 Replying to @LindseyBoylan
 Not knowing what to expect what's the most upsetting part aside from knowing that no one would do a damn thing even when they saw it.

No one.

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

203 1K 7.5K

Lindsey Boylan @LindseyBoylan · Dec 13, 2020
 I'm angry to be put in this situation at all. That because I am a woman, I can work hard my whole life to better myself and help others and yet still fall victim as countless women over generations have. Mostly silently.

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

New to Twitter?

Sign up now to get your own pers

Sign up

Relevant people

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

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

What's happening

Music · LIVE
It's Travis Scott's birthday
 Trending with [travis scott](#), [Astrow](#)

Trending in United States
BOYFRIEND REVEAL
 4,069 Tweets

Trending in United States
Josh Duggar
 Former reality television star
 arrested by federal agents in
 Thursday, TMZ reports

Don't miss what's happening

People on Twitter are the first to know.

Log in S



FEBRUARY 24, 2021 Albany, NY

Statement from Press Secretary Caitlin Girouard

"As we said before, Ms. Boylan's claims of inappropriate behavior are quite simply false."

In Ms. Boylan's latest blog post, she opens up with a story about a plane trip in October 2017 - the manifests of all flights from October 2017 can be found below - there was no flight where Lindsey was alone with the Governor, a single press aide, and a NYS Trooper. Below is a statement that can be attributed to **John Maggione, Howard Zemsky, Dani Lever and Abbey Fashouer Collins** who were on all of these flights with her:

"We were on each of these October flights and this conversation did not happen."

https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/October_2017.pdf

~~10/04/17 - Watertown Downtown Revitalization Initiative/Southern Tier Lithium Ion Battery Giga-Factory Announcement/Western New York Smart Growth Community Fund Announcement~~

Passengers:

Governor Andrew M. Cuomo

John Maggione, Director of Policy

Dani Lever, Press Secretary

Lindsey Boylan, Chief of Staff, Empire State Development

Howard Zemsky, President and CEO, Empire State Development

~~10/06/17 - Cortland Downtown Revitalization Initiative/Rochester Train Station Event~~

EXHIBIT
15

Passengers:

Governor Andrew M. Cuomo

John Maggiore, Director of Policy

Lindsey Boylan, Chief of Staff, Empire State Development

Abbey Fashouer, First Deputy Press Secretary

Protective Services incl. Sr. Inv. V. Straface

**10/12/17 - Cold Spring Harbor Laboratory Groundbreaking/Staten Island Fentanyl Crisis
Announcement**

Passengers:

Governor Andrew M. Cuomo

Dani Lever, Press Secretary

Lindsey Boylan, Chief of Staff, Empire State Development

Howard Zemsky, President and CEO, Empire State

**10/17/17 - John R. Oishei Children's Hospital Dedication Ceremony/Syracuse Airport Redesign
and Reconstruction Announcement/Norsk Titanium USA Announcement**

Passengers:

Governor Andrew M. Cuomo

John Maggiore, Director of Policy

Dani Lever, Press Secretary

Howard Zemsky, President and CEO, Empire State Development

Lindsey Boylan, Chief of Staff, Empire State Development

Protective Services incl. Sr. Inv. J. Boyle

Contact the Governor's Press Office



**Contact us
by phone:**

Albany: (518) 474 - 8418

New York City: (212) 681 - 4640



**Contact us
by email:**

Press.Office@exec.ny.gov

**Governor Andrew M. Cuomo
Sunday, October 01, 2017**

6:25 AM Interview with 1010 WINS's Kathleen Marple

6:35 AM Interview with WABC's Michelle Charlesworth and Ken Rosato

6:45 AM Interview with NY1's Kristen Shaughnessy

6:55 AM Interview with WCBS 880's Tanya Hansen

**7:15 AM Governor Cuomo Delivers Remarks at the Energetic Felling of the Old
Kosciusko Bridge**

Location: ExxonMobile Site
400 Kingsland Avenue
Brooklyn, NY

7:45 AM Kosciuszko Bridge Energetic Felling Boat Tour

Location: New York Paving
3718 Railroad Avenue
Long Island City, NY

12:00 PM Interview with NY1's Shannan Ferry

###

**Governor Andrew M. Cuomo
Monday, October 02, 2017**

10:00 AM Meeting

Location: Governor's Conference Room
633 3rd Avenue, 39th Floor
New York, NY

Staff: Melissa DeRosa, Secretary to the Governor
Alphonso David, Counsel to the Governor
Rob Mujica, Director of Budget
Peter Kiernan, Special Counselor for Interagency Initiatives
Jamie Rubin, Director of State Operations
John Maggiore, Director of Policy
Maria Comella, Chief of Staff
Kelly Cummings, Deputy Chief of Staff and Senior Advisor
Stephanie Benton, Director of Governor's Offices
Annabel Walsh, Director of Scheduling
Letizia Tagliafierro, Special Counsel for Public Safety
Mimi Reisner, Senior Advisor for Communications

James Allen, Director of Communications
Dani Lever, Press Secretary
Kendra Rubin, Assistant Counsel to the Governor
Kate Dineen, Chief of Staff, State Operations
Adam Schuman, Special Counsel for Public Integrity

11:15 AM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Adam Schuman, Special Counsel for Public Integrity

12:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Stephanie Benton, Director of Governor's Offices

1:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Rob Mujica, Director of Budget

2:45 PM Meeting

Location: Governor's Conference Room
633 3rd Avenue, 39th Floor
New York, NY
Staff: Maria Comella, Chief of Staff
Annabel Walsh, Director of Scheduling
James Allen, Director of Communications
Dani Lever, Press Secretary
Tom Topousis, Special Adviser to the Communications Director
and Director of Speechwriting
Jamie Malanowski, Senior Speechwriter
Maxwell Morgan, Deputy Press Secretary
Kate Dineen, Chief of Staff, State Operations

3:30 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Alphonso David, Counsel to the Governor
Rob Mujica, Director of Budget

Jamie Rubin, Director of State Operations
Kate Dineen, Chief of Staff, State Operations
Sarah Paden, Assistant Secretary for Intergovernmental Affairs
Lisa Santeramo, Regional Representative, Long Island

4:15 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Letizia Tagliafierro, Special Counsel for Public Safety

4:45 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Adam Schuman, Special Counsel for Public Integrity

5:15 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Rob Mujica, Director of Budget
Dani Lever, Press Secretary

5:45 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Jill DesRosiers, Executive Deputy Secretary to the Governor
Andrew Ball, Deputy Secretary to the Governor

6:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Jamie Rubin, Director of State Operations
Maria Comella, Chief of Staff
Kate Dineen, Chief of Staff, State Operations
Alexander Cochran, Director of Washington Office and Counsel
for Federal Affairs

###

Governor Andrew M. Cuomo

Tuesday, October 03, 2017

8:15 AM Critical Medical Supplies for Puerto Rico Announcement

Location: Westchester County Airport
Ross Aviation East
2nd Floor Conference Room
184 Airport Road, Hangar D3
White Plains, NY

9:30 AM Scheduled Conference Call

Staff: Kelly Cummings, Deputy Chief of Staff and Senior Advisor
Cathy Calhoun, Acting Commissioner, Department of
Transportation
Phil Eng, Chief Operating Officer, MTA

9:45 AM Scheduled Conference Call

Staff: Rob Mujica, Director of Budget
Dani Lever, Press Secretary
Axel Bernabe, Assistant Counsel to the Governor
Howard Zucker, Commissioner, Department of Health
Jason Helgerson, New York State Medicaid Director
Daniel Tarantino, Counsel, Department of Health

10:30 AM Meeting

Location: Governor's Conference Room
633 3rd Avenue, 39th Floor
New York, NY

Staff: Jill DesRosiers, Executive Deputy Secretary to the Governor
Maria Comella, Chief of Staff
Rob Mujica, Director of Budget
Stephanie Benton, Director of Governor's Offices
Annabel Walsh, Director of Scheduling
Andrew Ball, Deputy Secretary to the Governor
Dani Lever, Press Secretary
Tom Topousis, Special Adviser to the Communications Director
and Director of Speechwriting
Mac Barrett, Speechwriter
Casey Sinnwell, Director of Strategic Planning
Howard Zucker, Commissioner, Department of Health
Jason Helgerson, New York State Medicaid Director

12:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

Staff: Maxwell Morgan, Deputy Press Secretary

12:30 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor

1:00 PM Meeting

Location: Governor's Conference Room
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Howard Zucker, Commissioner, Department of Health
Jason Helgeson, New York State Medicaid Director
Maxwell Morgan, Deputy Press Secretary

2:00 PM Impact of Targeted Federal Attacks on New York State Announcement

Location: Governor's Press Room
633 3rd Avenue, 38th Floor
New York, NY

3:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Dani Lever, Press Secretary

3:45 PM Meeting

Location: Governor's Conference Room
633 3rd Avenue, 39th Floor
New York, NY
Staff: Jill DesRosiers, Executive Deputy Secretary to the Governor
Maria Comella, Chief of Staff
Rob Mujica, Director of Budget
Stephanie Benton, Director of Governor's Offices
Annabel Walsh, Director of Scheduling
Andrew Ball, Deputy Secretary to the Governor
Dani Lever, Press Secretary
Tom Topousis, Special Adviser to the Communications Director
and Director of Speechwriting
Mac Barrett, Speechwriter
Casey Sinnwell, Director of Strategic Planning
Howard Zucker, Commissioner, Department of Health
Jason Helgeson, New York State Medicaid Director

4:15 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Stephanie Benton, Director of Governor's Offices

4:45 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Dani Lever, Press Secretary
Abbey Fashouer, First Deputy Press Secretary

6:30 PM Columbus Citizens Foundation Cocktails

Location: Eataly
4 World Trade Center
101 Liberty Street, Floor 3
New York, NY

###

**Governor Andrew M. Cuomo
Wednesday, October 04, 2017**

8:30 AM Wheels up Westchester County Airport en route Watertown International Airport

Aircraft: NYSP King Air
Passengers: Governor Andrew M. Cuomo
John Maggiore, Director of Policy
Dani Lever, Press Secretary
Lindsey Boylan, Chief of Staff, Empire State Development
Howard Zemsky, President and CEO, Empire State Development
Protective Services incl. Sr. Inv. V. Straface
State Purposes: The Governor flew from Westchester to Watertown to make economic development announcements.
Mixed Use: No
Reimbursed: No

9:30 AM Wheels down Watertown International Airport

10:00 AM Watertown Downtown Revitalization Initiative

Location: Watertown Masonic Temple
242 Washington Street
Watertown, NY

11:05 AM Wheels up Watertown International Airport en route Greater Binghamton Airport

Aircraft: NYSP King Air
Passengers: Governor Andrew M. Cuomo
 John Maggiore, Director of Policy
 Dani Lever, Press Secretary
 Lindsey Boylan, Chief of Staff, Empire State Development
 Howard Zemsky, President and CEO, Empire State Development
 Protective Services incl. Sr. Inv. V. Straface
State Purposes: The Governor flew from Watertown to Binghamton to make economic
 development announcements.
Mixed Use: No
Reimbursed: No

11:40 AM Wheels down Greater Binghamton Airport

12:15 PM Southern Tier Lithium Ion Battery Giga-Factory Announcement

Location: Huron Campus
 1093 Clark Street
 Endicott, NY

1:30 PM Wheels up Greater Binghamton Airport en route Niagara Falls International Airport

Aircraft: NYSP King Air
Passengers: Governor Andrew M. Cuomo
 John Maggiore, Director of Policy
 Dani Lever, Press Secretary
 Lindsey Boylan, Chief of Staff, Empire State Development
 Howard Zemsky, President and CEO, Empire State Development
 Protective Services incl. Sr. Inv. V. Straface
State Purposes: The Governor flew from Binghamton to Niagara Falls to make economic
 development announcements.
Mixed Use: No
Reimbursed: No

2:15 PM Wheels down Niagara Falls International Airport

2:45 PM Western New York Smart Growth Community Fund Announcement

Location: Remington Tavern
 184 Sweeney Street
 North Tonawanda, NY

3:55 PM Wheels up Niagara Falls International Airport en route Westchester County Airport

Aircraft: NYSP King Air
Passengers: Governor Andrew M. Cuomo
 John Maggiore, Director of Policy
 Dani Lever, Press Secretary
 Lindsey Boylan, Chief of Staff, Empire State Development
 Howard Zemsky, President and CEO, Empire State Development
 Protective Services incl. Sr. Inv. V. Straface

State Purposes: The Governor flew from Niagara Falls to Westchester to end his day.
Mixed Use: No
Reimbursed: No

5:15 PM Wheels down Westchester County Airport

###

**Governor Andrew M. Cuomo
Thursday, October 05, 2017**

11:30 AM Scheduled Conference Call

Staff: Cathy Calhoun, Acting Commissioner, Department of
Transportation
Participant: Brian Reilly, Project Manager, Granite Construction

12:30 PM Scheduled Conference Call

Staff: Theresa Egan, Executive Deputy Commissioner, Department of
Motor Vehicles
Ali Chaudhry, Deputy Secretary for Transportation
Timothy Lennon, Deputy Commissioner and Counsel, Department
of Motor Vehicles
Rob Gibbon, Assistant Counsel to the Governor

12:45 PM Scheduled Conference Call

Staff: Rob Mujica, Director of Budget
Theresa Egan, Executive Deputy Commissioner, Department of
Motor Vehicles
Sandra Beattie, Deputy Director of Budget
Rose Harvey, Commissioner, Office of Parks, Recreation and
Historic Preservation
Basil Seggos, Commissioner, Department of Environmental
Conservation
Superintendent George Beach, New York State Police
RoAnn Destito, Commissioner, Office of General Services
Roger Parrino, Commissioner, Division of Homeland Security and
Emergency Services
Kevin Wisely, Deputy Commissioner, State Emergency
Management Office

4:30 PM Post Avenue LIRR Bridge Replacement Announcement

Location: 201 Railroad Avenue
Westbury, NY

OTHER EXECUTIVE USE OF STATE AIRCRAFT

7:20 AM Wheels up Greater Buffalo International Airport en route Albany International Airport

Aircraft: NYSP King Air
Passengers: Lieutenant Governor Kathy Hochul
 Melissa Bochenski, Deputy Chief of Staff to the Lieutenant Governor
 Protective Services incl. Inv. F. Andriaccio
State Purposes: The Lieutenant Governor flew from Buffalo to Albany to moderate a panel at
 the MWBE Annual Conference.
Mixed Use: No
Reimbursed: No

8:30 AM Wheels down Albany International Airport

11:35 AM Wheels up Albany International Airport en route Binghamton County Municipal

Aircraft: NYSP King Air
Passengers: Lieutenant Governor Kathy Hochul
 Melissa Bochenski, Deputy Chief of Staff to the Lieutenant Governor
 Protective Services incl. Inv. F. Andriaccio
State Purposes: The Lieutenant Governor flew from Albany to officially open the New York
 Welcome Center on Interstate 81 Northbound.
Mixed Use: No
Reimbursed: No

12:05 PM Wheels down Binghamton County Municipal

2:25 PM Wheels up Binghamton County en route Greater Buffalo International Airport

Aircraft: NYSP King Air
Passengers: Lieutenant Governor Kathy Hochul
 Melissa Bochenski, Deputy Chief of Staff to the Lieutenant Governor
 Protective Services incl. Inv. F. Andriaccio
State Purposes: Upon conclusion of the event, the Lieutenant Governor Flew to Buffalo to end
 her day.
Mixed Use: No
Reimbursed: No

3:15 PM Wheels down Greater Buffalo International Airport

###

**Governor Andrew M. Cuomo
Friday, October 06, 2017**

8:30 AM Wheels up Westchester County Airport en route Ithaca Tompkins Regional Airport

Aircraft: NYSP King Air
Passengers: Governor Andrew M. Cuomo
John Maggiore, Director of Policy
Lindsey Boylan, Chief of Staff, Empire State Development
Abbey Fashouer, First Deputy Press Secretary
Protective Services incl. Sr. Inv. V. Straface
State Purposes: The Governor flew from Westchester to Cortland to make economic development announcements.
Mixed Use: No
Reimbursed: No

9:15 AM Wheels down Ithaca Tompkins Regional Airport

10:00 AM Cortland Downtown Revitalization Initiative

Location: Cortland Repertory Theatre
24 Port Watson Street
Cortland, NY

11:25 AM Wheels up Ithaca Tompkins Regional Airport en route Greater Rochester International Airport

Aircraft: NYSP King Air
Passengers: Governor Andrew M. Cuomo
John Maggiore, Director of Policy
Howard Zemsky, President and CEO, Empire State Development
Lindsey Boylan, Chief of Staff, Empire State Development
Abbey Fashouer, First Deputy Press Secretary
Protective Services incl. Sr. Inv. V. Straface
State Purposes: The Governor flew from Cortland to Rochester to make economic development announcements.
Mixed Use: No
Reimbursed: No

11:50 AM Wheels down Greater Rochester International Airport

12:15 PM Rochester Train Station Event

Location: Rochester Train Station
320 Central Avenue
Rochester, NY

1:45 PM Batavia Downtown Revitalization Initiative

Location: Batavia City Hall
1 City Center
Batavia, NY

2:50 PM Wheels up Genesee County Airport en route Westchester County Airport

Aircraft: NYSP King Air
Passengers: Governor Andrew M. Cuomo
John Maggiore, Director of Policy
Lindsey Boylan, Chief of Staff, Empire State Development
Abbey Fashouer, First Deputy Press Secretary
Protective Services incl. Sr. Inv. V. Straface

State Purposes: The Governor flew from Rochester to Westchester to end his day.
Mixed Use: No
Reimbursed: No

4:00 PM Wheels down Westchester County Airport

###

**Governor Andrew M. Cuomo
Saturday, October 07, 2017**

6:30 PM 73rd Annual Columbus Day Gala Cocktails

Location: New York Hilton Midtown
Grand Ballroom
1335 Avenue of the Americas
New York, NY

###

**Governor Andrew M. Cuomo
Sunday, October 08, 2017**

No Public Schedule

###

**Governor Andrew M. Cuomo
Monday, October 09, 2017**

11:30 AM Columbus Day Parade

Location: 44th Street and 5th Avenue
East Side
New York, NY

1:15 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Rob Mujica, Director of Budget

1:30 PM Meeting

Location: Governor's Office

633 3rd Avenue, 39th Floor
New York, NY
Staff: Dani Lever, Press Secretary
Abbey Fashouer, First Deputy Press Secretary

2:15 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Jill DesRosiers, Executive Deputy Secretary to the Governor
Rob Mujica, Director of Budget
Annabel Walsh, Director of Scheduling
Dani Lever, Press Secretary
Sarah Paden, Assistant Secretary for Intergovernmental Affairs
Casey Sinnwell, Director of Strategic Planning
Lindsey Boylan, Chief of Staff, Empire State Development

3:45 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Jill DesRosiers, Executive Deputy Secretary to the Governor
Annabel Walsh, Director of Scheduling
Sarah Paden, Assistant Secretary for Intergovernmental Affairs

5:15 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Jill DesRosiers, Executive Deputy Secretary to the Governor
Sarah Paden, Assistant Secretary for Intergovernmental Affairs

###

**Governor Andrew M. Cuomo
Tuesday, October 10, 2017**

9:00 AM Scheduled Conference Call

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Dawn Curry-Clarry, Special Assistant for Labor Relations,
Department
of Labor
Jeff Guynup, Director for Upstate Labor Affairs

10:00 AM Meeting

Location: Governor's Conference Room
633 3rd Avenue, 39th Floor
New York, NY

Participant: Jim Cahill, President, NYS Building and Construction Trades
Council

11:00 AM Meeting

Location: Governor's Conference Room
633 3rd Avenue, 39th Floor
New York, NY

Staff: Jon Weinstein, Deputy Communications Director for
Transportation
Joseph Lhota, Chairman, MTA
Pat Foye, President, MTA
Phil Eng, Chief Operating Officer, MTA
Larry Schwartz, MTA Board of Directors

Participant: Charles Hall, Construction Manager, Parsons Brinckerhoff

12:15 PM Meeting

Location: Governor's Conference Room
633 3rd Avenue, 39th Floor
New York, NY

Staff: Melissa DeRosa, Secretary to the Governor
Jill DesRosiers, Executive Deputy Secretary to the Governor
Alphonso David, Counsel to the Governor
Rob Mujica, Director of Budget
Peter Kiernan, Special Counselor for Interagency Initiatives
Jamie Rubin, Director of State Operations
John Maggiore, Director of Policy
Maria Comella, Chief of Staff
Kelly Cummings, Deputy Chief of Staff and Senior Advisor
Stephanie Benton, Director of Governor's Offices
Annabel Walsh, Director of Scheduling
Andrew Ball, Deputy Secretary to the Governor
Letizia Tagliafierro, Special Counsel for Public Safety
Mimi Reisner, Senior Advisor for Communications
James Allen, Director of Communications
Dani Lever, Press Secretary
Kate Dineen, Chief of Staff, State Operations
Kendra Rubin, Assistant Counsel to the Governor
Sarah Paden, Assistant Secretary for Intergovernmental Affairs
Casey Sinnwell, Director of Strategic Planning
Adam Schuman, Special Counsel for Public Integrity

12:45 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Jill DesRosiers, Executive Deputy Secretary to the Governor

1:40 PM Wheels up LaGuardia International Airport en route Syracuse Hancock International Airport

Aircraft: NYSP King Air
Passengers: Governor Andrew M. Cuomo
Dani Lever, Press Secretary
Protective Services incl. Sr. Inv. V. Straface
State Purposes: The Governor flew from New York City to Syracuse to make an economic development announcement.
Mixed Use: No
Reimbursed: No

2:35 PM Wheels down Syracuse Hancock International Airport

3:00 PM Syracuse Mets Announcement

Location: NBT Bank Stadium
1 Tex Simone Drive
Syracuse, NY

4:05 PM Wheels up Syracuse Hancock International Airport en route LaGuardia International Airport

Aircraft: NYSP King Air
Passengers: Governor Andrew M. Cuomo
Dani Lever, Press Secretary
Protective Services incl. Sr. Inv. V. Straface
State Purposes: The Governor flew from Syracuse to New York City to continue state business.
Mixed Use: No
Reimbursed: No

5:00 PM Wheels down LaGuardia International Airport

5:45 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Dani Lever, Press Secretary

###

**Governor Andrew M. Cuomo
Wednesday, October 11, 2017**

10:00 AM Draft & Revise Remarks

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

12:30 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

Staff: Melissa DeRosa, Secretary to the Governor.

Participants: Mario Cilento, President, NYS AFL-CIO
Henry Garrido, Executive Director, District Council 37, AFSCME,
AFL-CIO

1:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

Staff: Melissa DeRosa, Secretary to the Governor
Rob Mujica, Director of Budget

1:45 PM Meeting

Location: Governor's Conference Room
633 3rd Avenue, 39th Floor
New York, NY

Staff: Jill DesRosiers, Executive Deputy Secretary to the Governor
Maria Comella, Chief of Staff
Stephanie Benton, Director of Governor's Offices
Annabel Walsh, Director of Scheduling
Andrew Ball, Deputy Secretary to the Governor
Dani Lever, Press Secretary
Tom Topousis, Special Adviser to the Communications Director
and Director of Speechwriting
Mac Barrett, Speechwriter
Kate Dineen, Chief of Staff, State Operations
Sarah Paden, Assistant Secretary for Intergovernmental Affairs
Casey Sinnwell, Director of Strategic Planning
Lindsey Boylan, Chief of Staff, Empire State Development

2:30 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

Staff: Rob Mujica, Director of Budget

3:30 PM Draft & Revise Remarks

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

5:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor

6:15 PM Meeting

Location: Docks Oyster Bar & Seafood Grill
633 3rd Avenue
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Participants: Andrew Pallotta, Executive Vice President, NYSUT
Michael Mulgrew, President, United Federation of Teachers

7:30 PM Futures in Education Annual Scholarship Fund Dinner

Location: New York Marriott Marquis
1535 Broadway
New York, NY

OTHER EXECUTIVE USE OF STATE AIRCRAFT

11:05 AM Wheels up Greater Buffalo International Airport en route Griffiss Airport

Aircraft: NYSP King Air
Passengers: Lieutenant Governor Kathy Hochul
Melissa Bochenski, Deputy Chief of Staff to the Lieutenant Governor
Howard Zucker, Commissioner, Department of Health
Protective Services incl. Inv. F. Andriaccio
State Purposes: The Lieutenant Governor flew from Buffalo to Rome to deliver the Governor's
message on how cuts in federal health care will affect children in the Mohawk
Valley.
Mixed Use: No
Reimbursed: No

11:50 AM Wheels down Griffiss Airport

1:15 PM Wheels up Griffiss Airport en route Brookhaven Municipal

Aircraft: NYSP King Air
Passengers: Lieutenant Governor Kathy Hochul
Melissa Bochenski, Deputy Chief of Staff to the Lieutenant Governor
Howard Zucker, Commissioner, Department of Health
Protective Services incl. Inv. F. Andriaccio

State Purposes: The Lieutenant Governor flew from Rome to Brookhaven to deliver the Governor's message on how cuts in federal health care will affect children on Long Island.
Mixed Use: No
Reimbursed: No

2:05 PM Wheels down Brookhaven Municipal

3:55 PM Wheels up Brookhaven Municipal en route Greater Buffalo International Airport

Aircraft: NYSP King Air
Passengers: Lieutenant Governor Kathy Hochul
Melissa Bochenski, Deputy Chief of Staff to the Lieutenant Governor
Protective Services incl. Inv. F. Andriaccio
State Purposes: Upon conclusion of the event, the Lieutenant Governor Flew to Buffalo to end her day.
Mixed Use: No
Reimbursed: No

4:45 PM Wheels down Greater Buffalo International Airport

###

**Governor Andrew M. Cuomo
Thursday, October 12, 2017**

9:20 AM Wheels up Westchester County Airport en route Mill Dam Park

Aircraft: NYSP Helicopter
Passengers: Governor Andrew M. Cuomo
Dani Lever, Press Secretary
Lindsey Boylan, Chief of Staff, Empire State Development
Howard Zemsky, President and CEO, Empire State Development
Protective Services incl. Sr. Inv. V. Straface
State Purposes: The Governor flew from Westchester to Cold Spring Harbor to make an economic development announcement.
Mixed Use: No
Reimbursed: No

9:35 AM Wheels down Mill Dam Park

10:00 AM Cold Spring Harbor Laboratory Groundbreaking

Location: Cold Spring Harbor Laboratory
1 Bungtown Road
Cold Spring Harbor, NY

11:05 AM Wheels up Mill Dam Park en route Lemon Creek Park

Aircraft: NYSP Helicopter
Passengers: Governor Andrew M. Cuomo
Dani Lever, Press Secretary
Lindsey Boylan, Chief of Staff, Empire State Development

Howard Zemsky, President and CEO, Empire State Development
Protective Services incl. Sr. Inv. V. Straface
State Purposes: The Governor flew from Cold Spring Harbor to Staten Island to hold a press conference detailing the State's actions to combat the fentanyl crisis on Staten Island.
Mixed Use: No
Reimbursed: No

11:25 AM Wheels down Lemon Creek Park

11:45 AM Staten Island Fentanyl Crisis Announcement

Location: CYO-MIV Community Center
6541 Hylan Boulevard
Staten Island, NY

12:45 PM Wheels up Lemon Creek Park en route East 34th Street Helipad

Aircraft: NYSP Helicopter
Passengers: Governor Andrew M. Cuomo
 Dani Lever, Press Secretary
 Lindsey Boylan, Chief of Staff, Empire State Development
 Howard Zemsky, President and CEO, Empire State Development
 Protective Services incl. Sr. Inv. V. Straface
State Purposes: The Governor flew from Staten Island to New York City to continue state business in the New York City Office.
Mixed Use: No
Reimbursed: No

12:55 PM Wheels down East 34th Street Helipad

1:15 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor

1:45 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Maria Michalos, Director of External Communications

3:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor

5:30 PM Meeting

Location: Governor's Office

633 3rd Avenue, 39th Floor
New York, NY
Staff: Dani Lever, Press Secretary
Rob Mujica, Director of Budget

OTHER EXECUTIVE USE OF STATE AIRCRAFT

10:00 AM Wheels up Greater Buffalo International Airport en route Columbia County

Airport

Aircraft: NYSP King Air
Passengers: Lieutenant Governor Kathy Hochul
Melissa Bochenski, Deputy Chief of Staff to the Lieutenant Governor
State Purposes: The Lieutenant Governor flew from Buffalo to Kingston to deliver the Governor's message on how cuts in federal health care will affect children in the Hudson Valley.
Mixed Use: No
Reimbursed: No

11:00 AM Wheels down Columbia County Airport

###

**Governor Andrew M. Cuomo
Friday, October 13, 2017**

7:45 AM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Stephanie Benton, Director of Governor's Offices

8:15 AM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Rob Mujica, Director of Budget

8:45 AM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Rob Mujica, Director of Budget

10:00 AM Meeting

Location: Governor's Conference Room
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Rob Mujica, Director of Budget
Participants: Mario Cilento, President, NYS AFL-CIO
Henry Garrido, Executive Director, District Council 37, AFSCME,
AFL-CIO

11:00 AM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Rob Mujica, Director of Budget

12:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Dani Lever, Press Secretary

12:30 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Rob Mujica, Director of Budget
Dani Lever, Press Secretary

###

**Governor Andrew M. Cuomo
Saturday, October 14, 2017**

No Public Schedule

###

**Governor Andrew M. Cuomo
Sunday, October 15, 2017**

2:00 PM Wake of Michele "Mike" Tagliafierro

Location: Buono Funeral Home

100 Main Street
Saugerties, NY

###

Governor Andrew M. Cuomo
Monday, October 16, 2017

9:15 AM Meeting

Location: Governor's Office
State Capitol
Albany, NY
Staff: Melissa DeRosa, Secretary to the Governor

9:45 AM Scheduled Call

Staff: Dani Lever, Press Secretary

10:00 AM Meeting

Location: Governor's Conference Room
State Capitol
Albany, NY
Staff: Melissa DeRosa, Secretary to the Governor
Alphonso David, Counsel to the Governor
Rob Mujica, Director of Budget
Participant: Jim Malatras, President, Nelson A. Rockefeller Institute of
Government

12:00 PM Wheels up Albany en route East 34th Street Helipad

Aircraft: NYSP Helicopter
Passengers: Governor Andrew M. Cuomo
Melissa DeRosa, Secretary to the Governor
Alphonso David, Counsel to the Governor
Rob Mujica, Director of Budget
Protective Services incl. Sr. Inv. D. Dively
State Purposes: The Governor flew from Albany to New York City to continue state business in
the New York City office.
Mixed Use: No
Reimbursed: No

1:00 PM Wheels down East 34th Street Helipad

3:30 PM Meeting

Location: Governor's Conference Room
633 3rd Avenue, 39th Floor
New York, NY
Staff: Jon Weinstein, Deputy Communications Director for
Transportation

Veronique “Ronnie” Hakim, Managing Director, MTA
Pat Foye, President, MTA
Phil Eng, Chief Operating Officer, MTA
Participant: Charles Hall, Construction Manager, Parsons Brinckerhoff

4:30 PM Meeting

Location: Governor’s Conference Room
633 3rd Avenue, 39th Floor
New York, NY
Staff: Jill DesRosiers, Executive Deputy Secretary to the Governor
John Maggiore, Director of Policy
Maria Comella, Chief of Staff
Kelly Cummings, Deputy Chief of Staff and Senior Advisor
Stephanie Benton, Director of Governor’s Offices
Annabel Walsh, Director of Scheduling
Andrew Ball, Deputy Secretary to the Governor
Dani Lever, Press Secretary
Tom Topousis, Special Adviser to the Communications Director
and Director of Speechwriting
Mac Barrett, Speechwriter
Sarah Paden, Assistant Secretary for Intergovernmental Affairs
Casey Sinnwell, Director of Strategic Planning
Lindsey Boylan, Chief of Staff, Empire State Development

6:30 PM AMC 2018: Private Event

Location: New York, NY

###

**Governor Andrew M. Cuomo
Tuesday, October 17, 2017**

8:45 AM Wheels up Westchester County Airport en route Buffalo Niagara International Airport

Aircraft: NYSP King Air
Passengers: Governor Andrew M. Cuomo
John Maggiore, Director of Policy
Dani Lever, Press Secretary
Howard Zemsky, President and CEO, Empire State Development
Lindsey Boylan, Chief of Staff, Empire State Development
Protective Services incl. Sr. Inv. J. Boyle
State Purposes: The Governor flew from Westchester to Buffalo to attend the dedication ceremony at the new John R. Oishei Children’s Hospital.
Mixed Use: No
Reimbursed: No

10:00 AM Wheels down Buffalo Niagara International Airport

10:30 AM John R. Oishei Children’s Hospital Dedication Ceremony

Location: John R. Oishei Children’s Hospital
818 Ellicott Street
Buffalo, NY

11:40 AM Wheels up Buffalo Niagara International Airport en route Syracuse Hancock International Airport

Aircraft: NYSP King Air
Passengers: Governor Andrew M. Cuomo
John Maggiore, Director of Policy
Dani Lever, Press Secretary
Howard Zemsky, President and CEO, Empire State Development
Lindsey Boylan, Chief of Staff, Empire State Development
Protective Services incl. Sr. Inv. J. Boyle
State Purposes: The Governor flew from Buffalo to Syracuse to make a transportation and infrastructure announcement.
Mixed Use: No
Reimbursed: No

12:10 PM Wheels down Syracuse Hancock International Airport

12:30 PM Syracuse Airport Redesign and Reconstruction Announcement

Location: Syracuse Hancock International Airport
Main Terminal
1000 Colonel Eileen Collins Boulevard
Syracuse, NY

1:30 PM Wheels up Syracuse Hancock International Airport en route Plattsburgh International Airport

Aircraft: NYSP King Air
Passengers: Governor Andrew M. Cuomo
John Maggiore, Director of Policy
Dani Lever, Press Secretary
Howard Zemsky, President and CEO, Empire State Development
Lindsey Boylan, Chief of Staff, Empire State Development
Protective Services incl. Sr. Inv. J. Boyle
State Purposes: The Governor flew from Syracuse to Plattsburgh to make an economic announcement.
Mixed Use: No
Reimbursed: No

2:20 PM Wheels down Plattsburgh International Airport

2:45 PM Norsk Titanium USA Announcement

Location: Norsk Titanium USA
44 Martina Circle
Plattsburgh, NY

11:30 AM Scheduled Conference Call

Staff: Pat Foye, President, MTA
Joseph Lhota, Chairman, MTA
Veronique “Ronnie” Hakim, Managing Director, MTA

11:45 AM Meeting

Location: Governor’s Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor

2:00 PM Meeting

Location: Governor’s Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Jill DesRosiers, Executive Deputy Secretary to the Governor
Annabel Walsh, Director of Scheduling

3:00 PM Meeting

Location: Governor’s Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor

###

**Governor Andrew M. Cuomo
Thursday, October 19, 2017**

8:30 AM AMC 2018: Private Event

Location: New York, NY

10:00 AM Funeral Services for Michael Mulrow

Location: St. John the Evangelist Church
348 East 55th Street
New York, NY

12:00 PM Meeting

Location: Governor’s Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor

1:30 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Jill DesRosiers, Executive Deputy Secretary to the Governor
Annabel Walsh, Director of Scheduling

3:30 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor

4:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Rob Mujica, Director of Budget

6:30 PM The Alfred E. Smith Memorial Foundation Dinner

Location: New York Hilton Midtown
Grand Ballroom
1335 Avenue of the Americas
New York, NY

###

**Governor Andrew M. Cuomo
Friday, October 20, 2017**

9:30 AM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Alphonso David, Counsel to the Governor
Rob Mujica, Director of Budget

10:00 AM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Maria Comella, Chief of Staff
Tom Topousis, Special Adviser to the Communications Director
and Director of Speechwriting

Mac Barrett, Speechwriter
Harvey Cohen, Vice President of Marketing, ESD
Rick Cotton, Executive Director, Port Authority of New York &
New Jersey

10:30 AM Meeting

Location: Governor's Conference Room
633 3rd Avenue, 39th Floor
New York, NY

Staff: Peter Kiernan, Special Counselor for Interagency Initiatives
Rick Cotton, Executive Director, Port Authority of New York &
New Jersey
Howard Zemsky, President and CEO, Empire State Development
Michael Evans, President of MSDC, Empire State Development
Holly Leicht, Executive Vice President, Real Estate Development
& Planning, Empire State Development

Participants: Steve Roth, CEO, Vornado Realty Trust
David Greenbaum, President, New York Division, Vornado Realty
Trust
Barry Langer, Executive Vice President, Development, Vornado
Realty Trust

11:45 AM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

Staff: Melissa DeRosa, Secretary to the Governor
Jill DesRosiers, Executive Deputy Secretary to the Governor

12:30 PM Meeting

Location: Docks Oyster Bar & Seafood Grill
633 3rd Avenue
New York, NY

Staff: Melissa DeRosa, Secretary to the Governor

Participants: Jill Furillo, Executive Director, NYS Nurses Association
Anthony Ciampa, NYSNA Board Member

2:30 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

Staff: Melissa DeRosa, Secretary to the Governor

3:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor

New York, NY
Staff: Andrew Ball, Deputy Secretary to the Governor

3:30 PM **Scheduled Conference Call**

Staff: Sandi Toll, First Assistant Counsel
Amanda Hiller, Assistant Counsel to the Governor

4:45 PM **Meeting**

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Lindsey Boylan, Chief of Staff, Empire State Development

5:45 PM **Meeting**

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor

6:15 PM **Meeting**

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Jill DesRosiers, Executive Deputy Secretary to the Governor

###

Governor Andrew M. Cuomo
Saturday, October 21, 2017

7:10 PM **Wedding Ceremony**

Location: Refinery Rooftop
63 West 38th Street
New York, NY

###

Governor Andrew M. Cuomo
Sunday, October 22, 2017

No Public Schedule

###

Governor Andrew M. Cuomo
Monday, October 23, 2017

8:45 AM Wheels up Westchester County Airport en route Albany

Aircraft: NYSP Helicopter
Passengers: Governor Andrew M. Cuomo
Abbey Fashouer, First Deputy Press Secretary
Protective Services incl. Sr. Inv. F. Plaskocinski
State Purposes: The Governor flew from Westchester to Albany to participate in a press conference with Senator Schumer regarding state and local tax deductibility.
Mixed Use: No
Reimbursed: No

9:35 AM Wheels down Albany

10:00 AM Press Conference with Senator Schumer Regarding State and Local Tax Deduction

Location: DiSpirito Residence
85 University Street
Selkirk, NY

11:05 AM Wheels up Albany en route East 34th Street Helipad

Aircraft: NYSP Helicopter
Passengers: Governor Andrew M. Cuomo
Melissa DeRosa, Secretary to the Governor
Stephanie Benton, Director of Governor's Offices
Abbey Fashouer, First Deputy Press Secretary
Protective Services incl. Sr. Inv. F. Plaskocinski
State Purposes: The Governor flew from Albany to New York City to continue state business and conduct meetings in the New York City office.
Mixed Use: No
Reimbursed: No

12:05 PM Wheels down East 34th Street Helipad

12:30 PM Meeting

Location: Governor's Conference Room
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Jill DesRosiers, Executive Deputy Secretary to the Governor
Alphonso David, Counsel to the Governor
Rob Mujica, Director of Budget
Peter Kiernan, Special Counselor for Interagency Initiatives
Jamie Rubin, Director of State Operations
John Maggiore, Director of Policy
Maria Comella, Chief of Staff
Kelly Cummings, Deputy Chief of Staff and Senior Advisor

Stephanie Benton, Director of Governor's Offices
Annabel Walsh, Director of Scheduling
Andrew Ball, Deputy Secretary to the Governor
Letizia Tagliaferro, Special Counsel for Public Safety
Mimi Reischer, Senior Advisor for Communications
James Allen, Director of Communications
Dani Lever, Press Secretary
Kate Dineen, Chief of Staff, State Operations
Kendra Rubin, Assistant Counsel to the Governor
Sarah Paden, Assistant Secretary for Intergovernmental Affairs
Casey Sinnwell, Director of Strategic Planning
Adam Schuman, Special Counsel for Public Integrity
Lindsey Boylan, Chief of Staff, Empire State Development
Rich Newman, Executive Vice President of State Marketing
Strategy, Empire State Development

1:15 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Jill DesRosiers, Executive Deputy Secretary to the Governor
Dani Lever, Press Secretary
Annabel Walsh, Director of Scheduling
Sarah Paden, Assistant Secretary for Intergovernmental Affairs

1:30 PM Interview with NY1's Roma Torre

2:30 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor

3:15 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Dani Lever, Press Secretary

4:30 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Jill DesRosiers, Executive Deputy Secretary to the Governor
Alphonso David, Counsel to the Governor

Rob Mujica, Director of Budget

###

Governor Andrew M. Cuomo
Tuesday, October 24, 2017

1:45 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Jill DesRosiers, Executive Deputy Secretary to the Governor
Annabel Walsh, Director of Scheduling

2:30 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Sandi Toll, First Assistant Counsel
Sandra Beattie, Deputy Director of Budget

3:30 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Kelly Cummings, Deputy Chief of Staff and Senior Advisor
Annabel Walsh, Director of Scheduling
Sarah Paden, Assistant Secretary for Intergovernmental Affairs

4:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Dani Lever, Press Secretary

4:15 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Melissa DeRosa, Secretary to the Governor
Rob Mujica, Director of Budget

4:45 PM Scheduled Conference Call

Staff: Melissa DeRosa, Secretary to the Governor
Rob Mujica, Director of Budget
Cathy Calhoun, Acting Commissioner, Department of
Transportation
Sandra Beattie, Deputy Director of Budget
Basil Seggos, Commissioner, Department of Environmental
Conservation
Rose Harvey, Commissioner, Office of Parks, Recreation and
Historic Preservation
RoAnn Destito, Commissioner, Office of General Services
Matthew Driscoll, Acting Executive Director, Thruway Authority

5:30 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Alphonso David, Counsel to the Governor

6:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Jill DesRosiers, Executive Deputy Secretary to the Governor
Maria Comella, Chief of Staff
Annabel Walsh, Director of Scheduling
Dani Lever, Press Secretary

6:30 PM AMC 2018: Private Event

Location: New York, NY

###

**Governor Andrew M. Cuomo
Wednesday, October 25, 2017**

**9:00 AM Wheels up Westchester County Airport en route Floyd Bennett Memorial
Airport**

Aircraft: NYSP Helicopter
Passengers: Governor Andrew M. Cuomo
Dani Lever, Press Secretary
Howard Zucker, Commissioner, Department of Health
Protective Services incl. T/Lt. V. Straface
State Purposes: The Governor flew from Westchester to Glens Falls to announce a cancer
research initiative.
Mixed Use: No
Reimbursed: No

10:05 AM Wheels down Floyd Bennett Memorial Airport

10:30 AM Warren County Cancer Study Announcement

Location: Glens Falls Hospital
 Auditorium, 100 Park Street
 Glens Falls, NY

11:35 AM Wheels up Floyd Bennett Memorial Airport en route East 34th Street

Helipad

Aircraft: NYSP Helicopter
Passengers: Governor Andrew M. Cuomo
 Dani Lever, Press Secretary
 Howard Zucker, Commissioner, Department of Health
 Basil Seggos, Commissioner, Department of Environmental Conservation
 Protective Services incl. T/Lt. V. Straface
State Purposes: The Governor flew from Glens Falls to New York City to continue state
 business in the New York City office.
Mixed Use: No
Reimbursed: No

12:40 PM Wheels down East 34th Street Helipad

1:15 PM Meeting

Location: Governor's Office
 633 3rd Avenue, 39th Floor
 New York, NY
Staff: Maria Comella, Chief of Staff
 Dani Lever, Press Secretary

1:45 PM Meeting

Location: Governor's Office
 633 3rd Avenue, 39th Floor
 New York, NY
Staff: Dani Lever, Press Secretary
 Abbey Fashouer, First Deputy Press Secretary

2:15 PM Meeting

Location: Governor's Office
 633 3rd Avenue, 39th Floor
 New York, NY
Staff: Melissa DeRosa, Secretary to the Governor

3:00 PM Meeting

Location: Governor's Office
 633 3rd Avenue, 39th Floor
 New York, NY
Staff: Alphonso David, Counsel to the Governor

4:00 PM Richmond County Cancer Study Announcement

Location: Staten Island University Hospital
475 Seaview Avenue
Staten Island, NY

6:30 PM AMC 2018: Private Event

Location: Staten Island, NY

###

**Governor Andrew M. Cuomo
Thursday, October 26, 2017**

9:15 AM Puerto Rico Relief and Recovery Effort Announcement

Location: John F. Kennedy International Airport
Delta Hangar 12, Building 145
Sheltair Terminal
Jamaica, NY

**10:00 AM Wheels up John F. Kennedy International Airport en route San Juan Luis
Muñoz Marín Airport**

(Aircraft – Commercial Flight)

1:30 PM Wheels down San Juan Luis Muñoz Marín Airport

2:00 PM Distribution Center Tour

Location: Universidad del Sagrado Corazón
Avenida Sagrado Corazon De Jesus
San Juan, PR

3:10 PM Press Conference with Governor Rosselló

Location: Centro de Convenciones de Puerto Rico
100 Calle Guamaní
San Juan, PR

**4:20 PM Wheels up San Juan Luis Muñoz Marín Airport en route John F. Kennedy
International Airport**

(Aircraft – Commercial Flight)

8:00 PM Press Conference Regarding Puerto Rico Relief and Recovery Effort

Location: John F. Kennedy International Airport
Building 145, Sheltair Terminal

###

Governor Andrew M. Cuomo
Friday, October 27, 2017

11:00 AM Governor Cuomo and California Governor Jerry Brown Hold Conference
Call on State and Local Tax Deductibility

12:45 PM Meeting

Location: Governor's Conference Room
State Capitol
Albany, NY

Staff: Jill DesRosiers, Executive Deputy Secretary to the Governor
Alphonso David, Counsel to the Governor
Maria Comella, Chief of Staff
Annabel Walsh, Director of Scheduling
Andrew Ball, Deputy Secretary to the Governor

1:15 PM Meeting

Location: Governor's Conference Room
State Capitol
Albany, NY

Staff: Melissa DeRosa, Secretary to the Governor
Alphonso David, Counsel to the Governor
Rob Mujica, Director of Budget
John Maggiore, Director of Policy
Maria Comella, Chief of Staff
Tom Topousis, Special Adviser to the Communications Director
and Director of Speechwriting
Jamie Malanowski, Senior Speechwriter

Participant: Jim Malatras, President, Nelson A. Rockefeller Institute of
Government

2:30 PM Meeting

Location: Governor's Office
State Capitol
Albany, NY

Staff: Melissa DeRosa, Secretary to the Governor
Maria Comella, Chief of Staff
Kelly Cummings, Deputy Chief of Staff and Senior Advisor

3:30 PM Interview with MSNBC's Ali Velshi

3:45 PM Meeting

Location: Governor's Office
State Capitol
Albany, NY

Staff: Melissa DeRosa, Secretary to the Governor
Stephanie Benton, Director of Governor's Offices

4:15 PM Meeting

Location: Governor's Office
State Capitol
Albany, NY
Staff: Sandra Beattie, Deputy Director of Budget

OTHER EXECUTIVE USE OF STATE AIRCRAFT

11:05 AM Wheels up East 34th Street Helipad en route Albany

Aircraft: NYSP Helicopter
Passengers: Lieutenant Governor Kathy Hochul
Protective Services incl. Trooper J. Kaneg
State Purposes: The Lieutenant Governor flew from New York City to Albany to deliver the keynote address at the Planned Parenthood Empire State Acts lunch.
Mixed Use: No
Reimbursed: No

12:10 AM Wheels down Albany

###

**Governor Andrew M. Cuomo
Saturday, October 28, 2017**

8:00 AM Draft & Revise Remarks

Location: Governor's Office
State Capitol
Albany, NY

10:00 AM Meeting

Location: Governor's Office
State Capitol
Albany, NY
Staff: Melissa DeRosa, Secretary to the Governor
Stephanie Benton, Director of Governor's Offices

10:45 AM Meeting

Location: Governor's Office
State Capitol
Albany, NY
Staff: Kelly Cummings, Deputy Chief of Staff and Senior Advisor

11:00 AM Meeting

Location: Governor's Conference Room
State Capitol
Albany, NY

Staff: Melissa DeRosa, Secretary to the Governor
Alphonso David, Counsel to the Governor
Rob Mujica, Director of Budget
John Maggiore, Director of Policy
Maria Comella, Chief of Staff
Tom Topousis, Special Adviser to the Communications Director
and Director of Speechwriting
Jamie Malanowski, Senior Speechwriter

Participant: Jim Malatras, President, Nelson A. Rockefeller Institute of
Government

1:00 PM Meeting

Location: Governor's Office
State Capitol
Albany, NY

Staff: Melissa DeRosa, Secretary to the Governor
Stephanie Benton, Director of Governor's Offices

###

**Governor Andrew M. Cuomo
Sunday, October 29, 2017**

11:00 AM Upgrades to Bay Park Wastewater Treatment Plant Announcement

Location: Friedberg Jewish Community Center
15 Neil Court
Oceanside, NY

###

**Governor Andrew M. Cuomo
Monday, October 30, 2017**

11:00 AM Meeting

Location: Governor's Conference Room
633 3rd Avenue, 39th Floor
New York, NY

Staff: Melissa DeRosa, Secretary to the Governor
Jill DesRosiers, Executive Deputy Secretary to the Governor
Alphonso David, Counsel to the Governor

Rob Mujica, Director of Budget
Peter Kiernan, Special Counselor for Interagency Initiatives
Jamie Rubin, Director of State Operations
John Maggiore, Director of Policy
Kelly Cummings, Deputy Chief of Staff and Senior Advisor
Stephanie Benton, Director of Governor's Offices
Annabel Walsh, Director of Scheduling
Andrew Ball, Deputy Secretary to the Governor
Letizia Tagliaferro, Special Counsel for Public Safety
Mimi Reisner, Senior Advisor for Communications
James Allen, Director of Communications
Dani Lever, Press Secretary
Kate Dineen, Chief of Staff, State Operations
Sarah Paden, Assistant Secretary for Intergovernmental Affairs
Casey Sinnwell, Director of Strategic Planning
Lindsey Boylan, Chief of Staff, Empire State Development
Adam Schuman, Special Counsel for Public Integrity
Gil Quiniones, President & CEO, NYPA
Basil Seggos, Commissioner, Department of Environmental
Conservation
Alexander Cochran, Director of Washington Office and Counsel
for Federal Affairs

12:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Lindsey Boylan, Chief of Staff, Empire State Development

1:45 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Dani Lever, Press Secretary
Abbey Fashouer, First Deputy Press Secretary

2:15 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY
Staff: Adam Schuman, Special Counsel for Public Integrity

3:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

Staff: Melissa DeRosa, Secretary to the Governor
Dani Lever, Press Secretary

4:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

Staff: Melissa DeRosa, Secretary to the Governor
Rob Mujica, Director of Budget

###

**Governor Andrew M. Cuomo
Tuesday, October 31, 2017**

9:30 AM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

Participants: Jeff Wilpon, COO, New York Mets
Herb Allen III, President and CEO, Allen & Company

11:00 AM Meeting

Location: Governor's Conference Room
633 3rd Avenue, 39th Floor
New York, NY

Staff: John Maggiore, Director of Policy
Maria Comella, Chief of Staff
Tom Topousis, Special Adviser to the Communications Director
and Director of Speechwriting
Jamie Malanowski, Senior Speechwriter
Mac Barrett, Speechwriter
Lindsey Boylan, Chief of Staff, Empire State Development

11:30 AM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

Staff: Rob Mujica, Director of Budget
Maria Comella, Chief of Staff
Dani Lever, Press Secretary
Tom Topousis, Special Adviser to the Communications Director
and Director of Speechwriting

12:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

Staff: Melissa DeRosa, Secretary to the Governor
Jill DesRosiers, Executive Deputy Secretary to the Governor
Alphonso David, Counsel to the Governor
Rob Mujica, Director of Budget
Amanda Hiller, Assistant Counsel to the Governor
Tim Taylor, Director of Revenue, Budget

1:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

Staff: Melissa DeRosa, Secretary to the Governor
Jill DesRosiers, Executive Deputy Secretary to the Governor
Alphonso David, Counsel to the Governor
Rob Mujica, Director of Budget
Alexander Cochran, Director of Washington Office and Counsel
for Federal Affairs
Gil Quiniones, President & CEO, NYPA

2:30 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

Staff: Rob Mujica, Director of Budget

3:00 PM Meeting

Location: Governor's Office
633 3rd Avenue, 39th Floor
New York, NY

Staff: Melissa DeRosa, Secretary to the Governor

Participant: Vincent Pitta, Managing Partner, Pitta & Baione

4:15 PM Governor Cuomo is Briefed on Scene in Lower Manhattan regarding Attacks

Location: West Street and Chambers Street
New York, NY

5:15 PM Governor Cuomo Holds Press Briefing with Mayor DeBlasio, State Police, NYPD

Location: 1 Police Plaza
New York, NY

6:15 PM Scheduled Conference Call

Staff: Veronique “Ronnie” Hakim, Managing Director, MTA
Phil Eng, Chief Operating Officer, MTA
Pat Foye, President, MTA
Participant: Charles Hall, Construction Manager, Parsons Brinckerhoff

7:10 PM Governor Cuomo Attends Halloween Parade

Location: Bleecker Street and 6th Avenue
New York, NY

OTHER EXECUTIVE USE OF STATE AIRCRAFT

12:00 PM Wheels up East 34th Street Helipad For Flyover

Aircraft: NYSP Helicopter
Passengers: Jamie Rubin, Director of State Operations
Andrew Ball, Deputy Secretary to the Governor
James Allen, Director of Communications
Kate Dineen, Chief of Staff, State Operations
Basil Seggos, Commissioner, Department of Environmental Conservation
Protective Services incl. T/Lt. V. Straface
State Purposes: Executive chamber staff used the state helicopter to map out a storm resiliency
helicopter tour the Governor will do on Thursday with the Governor of Puerto
Rico.
Mixed Use: No
Reimbursed: No

1:00 PM Wheels down East 34th Street Helipad

###

Note: This document contains all official events of the Governor and Andrew Cuomo 2018 fundraisers. It also contains all executive and legislative use of State aircraft. Other unofficial and personal events as well as information that might tend to compromise security have not been included.



Lindsey Boylan ✓

@LindseyBoylan



Lindsey Boylan ✓ @LindseyBoylan

Mom. Progressive New Yorker fighting 4 a
Livable City. Fmr State Govt Official & Urban
Planner. Candidate 4 Manhattan Borough Prez.
(She/Her)

6,843 Following **62.1K** Followers

 Joined November 2016

You could have been a good
person. Instead you're a liar.

You of all people



Good luck at looking yourself in
the mirror.

Feb 27, 2021, 8:15 PM

You can no longer send messages to this person. Learn
more

5:55

LTE



Tweet



Kaitlin [redacted]



Thinking of you Anna.

 **Jesse McKinley**  @jessemckinley · 3/1/21
NEW, w/ @mattfleg: An awkward moment and an offer of a buss with @NYGovCuomo in 2019 left another young woman unsettled, with a photo of the instant it happened.
...

5:36 PM · 3/1/21 · [Twitter for iPhone](#)

 [View Tweet activity](#)

4 Likes



Add another Tweet



5:55

LTE



Tweet



Kaitlin



No. Andrew Cuomo is a smart man. He knew better then and he knows better now. A bullshit apology does not excuse predatory behavior. He's sorry because his power and control are slowly slipping away from him.

Zack Fink @ZackFinkNews · 2/28/21

Quite the statement from @NYGovCuomo on how he interacts with women in his office.

people about their personal lives, their relationships, about getting married or not getting married. I mean no offense and only attempt to add some levity and banter to what is a very serious business.

"I now understand that my interactions may have been insensitive or too personal and that some of my comments, given my position, made others feel in ways I never intended. I acknowledge some of the things I have said have been misinterpreted as an unwanted flirtation. To the extent anyone felt that way, I am truly sorry about that.

5:45 PM · 2/28/21 · [Twitter for iPhone](#)

Add another Tweet



5:55

LTE



Tweet



Kaitlin



Get it done Senator. Janet DiFiore should not touch this investigation. This is one more attempt for Cuomo and his inner circle to control the message.

Senator Liz Krueger @LizKrue... · 2/28/21

The Governor must refer the allegations of sexual harassment to the Attorney General, who should have full authority, with subpoena power and with no caveats. If he does not, I call for the Legislature to immediately pass a law...

10:23 AM · 2/28/21 · [Twitter for iPhone](#)

View Tweet activity

3 Likes



Add another Tweet



5:55

LTE



Thread

Kaitlin [redacted] ...

Andrew Cuomo is a pig. Wake up New York.

4:53 PM · 2/27/21 · [Twitter for iPhone](#)

View Tweet activity


33 Likes



Kaitlin [redacted] · 2/27/21 ...
Replying to [redacted]
Stop normalizing this behavior.



[redacted] [Add another Tweet](#)

 **Nicole Benedict**  @Nicki_... · 2/27/21 ...
Replying to [redacted]
Thank you!



[Show more replies](#)



5:56

LTE



Tweet



Kaitlin [redacted]



Proud of you Charlotte.

Jesse McKinley @jessemckin... · 2/27/21

EXCLUSIVE/BREAKING: A 25-year-old former aide to @NYGovCuomo told the @nytimes the Governor sexually harassed her, asking if she had had sex with older men, among other claims....

4:49 PM · 2/27/21 · [Twitter for iPhone](#)

View Tweet activity

1 Like



Add another Tweet



5:56

LTE



Tweet



Kaitlin



I want to know who thought it was a good idea to allow Cuomo to still give the opening remarks after everything he has been accused of.

NGA @NatIGovsAssoc · 2/25/21

Live at 4:30 PM ET, public remarks from @POTUS Biden to the NGA Virtual Winter Meeting 2021. youtu.be/7rwR5mbAP2o

4:16 PM · 2/25/21 · [Twitter for iPhone](#)

[View Tweet activity](#)

2 Likes



Add another Tweet





Tweet



Kaitlin [redacted]



The emotional reaction I had to this is overwhelming. I admire your bravery @LindseyBoylan and I stand by you in solidarity.



Lindsey Boylan @LindseyBoyl... · 2/24/21

Today I am telling my story. I never planned to share the details of my experience working in the Cuomo administration, but I am doing so now in hopes that it may make it easier for others to speak their own truth. [medium.com/...](#)

10:21 AM · 2/24/21 · [Twitter for iPhone](#)

View Tweet activity

5 Likes



Add another Tweet





Thread



Kaitlin [redacted] · 2/22/21 ...

Proof that being a bully isn't a requirement for being a popular politician. This is what NY deserves in our Elected Officials. ↓

Alexandria Ocasio-C... · 2/21/21

One last update (I think!): We just hit \$5 million raised for Texans across the state.

Thank you ALL for your collective action when people need it most.

Charity can't replace policy, but solidarity is how we'll face climate change and build a better world. 💪



Thank you 🙏



Kaitlin [redacted] ...



... This is what NY gets... Uprising Grows Over Cuomo's Bullying and 'Brutalist Political Theater'



Uprising Grows Over Cuomo's Bullying and 'Brutalist Political Theater'
nytimes.com

5:57 AM · 2/22/21 · Twitter for iPhone

||| View Tweet activity



Kaitlin [redacted] · 2/22/21 ...

Replying to [redacted]

Coercive control is a form of abuse that describes a pattern of behaviors a perpetrator uses to gain control and power by eroding a person's autonomy and self-esteem. This can include acts of intimidation, threats, and humiliation.



Add another Tweet





Tweet



Kaitlin [redacted]



I've been on the receiving end of "I'll end your career". Enough is enough.

[redacted] Kaitlin [redacted] · 2/20/21

The Sound and the Fury of Andrew Cuomo
[newyorker.com/news/our-local...](https://www.newyorker.com/news/our-local...) via
@NewYorker

12:27 PM · 2/20/21 · [Twitter for iPhone](#)

||| [View Tweet activity](#)

10 Retweets **25** Likes



Add another Tweet





Tweet



Kaitlin



'Meet the governor we've known all along': how Cuomo fell from grace



'Meet the governor we've known all along': how Cuomo fell from grace
theguardian.com

12:41 PM · 2/20/21 · [Twitter for iPhone](#)

||| [View Tweet activity](#)

1 Like



Add another Tweet





Tweet

Kaitlin 

Hey @LindseyBoylan sorry I deleted my previous tweet supporting you. I got scared. I still believe you, I still think you should keep talking, and I still believe men like him shouldn't be in positions of power. Rooting for you every day.

11:00 AM · 2/19/21 · [Twitter for iPhone](#)

 View Tweet activity

1 Like



Add another Tweet





Tweet



Kaitlin



Hope I don't catch heat for this too. I believe the Assemblyman - Cuomo said 'he can destroy me': NY assemblyman alleges governor threatened him over nursing homes scandal - CNNPolitics



Cuomo said 'he can destroy me': NY assemblyman alleges governor threatened hi...
cnn.com

2:19 PM · 2/17/21 · [Twitter for iPhone](#)

View Tweet activity

Add another Tweet





Kaitlin [redacted]
[redacted] Tweets

Tweets

Tweets & replies

Media

Likes

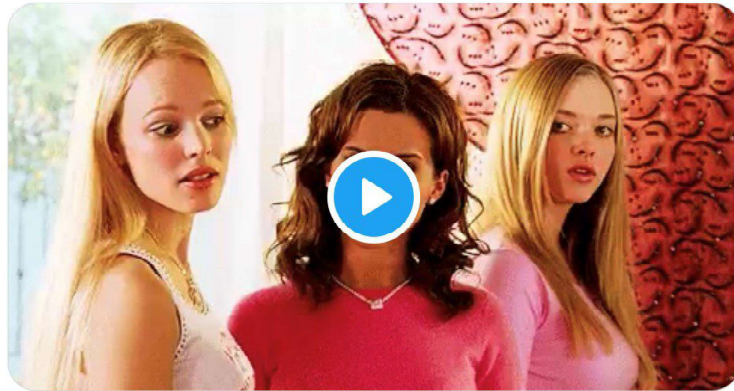
369

1,522

9,320



Kaitlin [redacted] · 2/12/21 ...
The 2nd floor



1



Kaitlin [redacted] · 2/12/21 ...



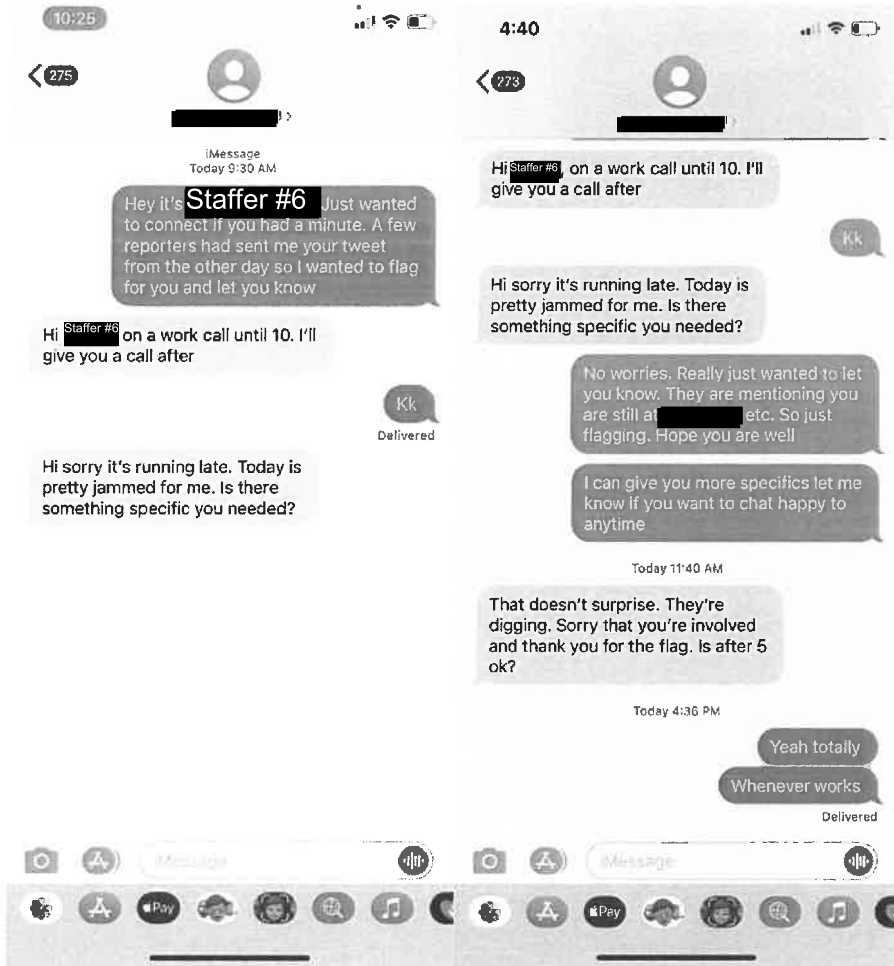
You Retweeted



New York Post @nypost · 2/11/21
Cuomo aide admits they hid nursing home



Kaitlin [REDACTED]





I can give you more specifics let me know if you want to chat happy to anytime

Today 11:40 AM

That doesn't surprise. They're digging. Sorry that you're involved and thank you for the flag. Is after 5 ok?

Today 4:36 PM

Yeah totally

Whenever works

Delivered

I can do any time between 5 - 6:30



Exhibit T

To: Melissa DeRosa



Sun, Dec 13, 6:59 PM



Former aide Lindsey Boylan alleges Cuomo 'sexually harassed' her about looks
nypost.com

It's better for sure

Huffpo will include it?

I would just get it everywhere

Mon, Dec 14, 2:15 PM

Thought he was really good



iMessage



To: Melissa DeRosa



Thu, Dec 17, 9:14 AM

12:44
Messages



Tweet



Kaitlin

Keep talking, Lindsey. Men like him should not be in positions of power.

6:42 PM · 12/13/20 · Twitter for iPhone

2 Likes



iMessage



To: Melissa DeRosa



Tweet your reply

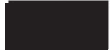


Kk

One of the people who liked that tweet was Biaggi

She since deleted her twitter account

Kaitlin



Ok

Ty

Didn't answer I texted her to see if she'll chat but we'll see



iMessage



To: Melissa DeRosa



Didn't answer I texted her to see if she'll chat but we'll see

10:25



< (275)



[Redacted name]

iMessage
Today 9:30 AM

Hey it's **Staffer #6**. Just wanted to connect if you had a minute. A few reporters had sent me your tweet from the other day so I wanted to flag for you and let you know

Hi **Staffer #6**, on a work call until 10. I'll give you a call after

Kk

Delivered

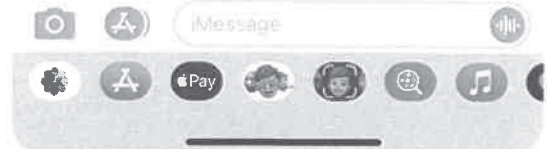
Hi sorry it's running late. Today is pretty jammed for me. Is there something specific you needed?



iMessage



To: Melissa DeRosa



Unlikely she is going to speak to me

I think she took some time to talk someone and be like nah

She said no

They were not close

Said she could be talking to Lindsay

Thu, Dec 17, 4:40 PM



Hi **Staffer #6**, on a work call until 10. I'll give you a call after

Kk

Hi sorry it's running late. Today is pretty jammed for me. Is there something specific you needed?



iMessage



To: Melissa DeRosa



No worries. Really just wanted to let you know. They are mentioning you are still at [redacted] etc. So just flagging. Hope you are well

I can give you more specifics let me know if you want to chat happy to anytime

Today 11:40 AM

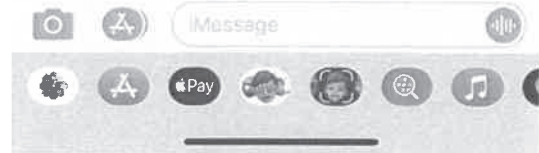
That doesn't surprise. They're digging. Sorry that you're involved and thank you for the flag. Is after 5 ok?

Today 4:36 PM

Yeah totally

Whenever works

Delivered



I can give you more specifics let me know if you want to chat happy to anytime

Today 11:40 AM



iMessage



To: Melissa DeRosa



know if you want to chat happy to anytime

Today 11:40 AM

That doesn't surprise. They're digging. Sorry that you're involved and thank you for the flag. Is after 5 ok?

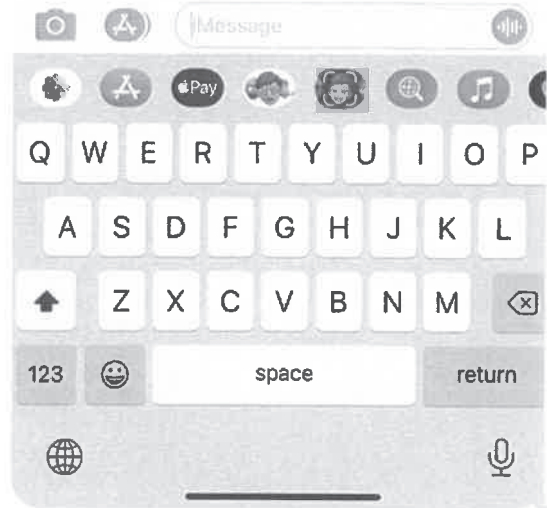
Today 4:36 PM

Yeah totally

Whenever works

Delivered

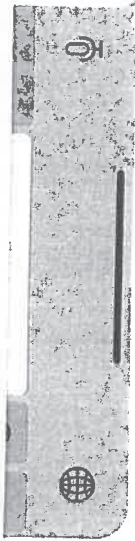
I can do any time between 5 - 6:30



iMessage



To: Melissa DeRosa



1 Broadway.m4a

Did u listen to it

Thu, Dec 17, 8:34 PM

Let's just take this to the grave because I think it just proves we're both crazy

Staffer #6 Call

Speaker 1: “Hey Staffer #6”

Staffer #6 “Hey, how are you?”

Speaker 1: “Good, how are you?”

Staffer #6 : “Good, so it’s sort of weird circumstances for sure. But, I just wanted to reach out because like your tweets are definitely making the rounds with reporters and I wasn’t sure if you know or – I definitely wanted to let you know. And I’m not sure if it’s like folks are reaching out because they know we shared an office or what. It’s just definitely weird circumstances. But, I have also just had sort of folks reach out in the wake of Lindsey’s tweets and I’ve just been kind of like it’s definitely a tough place to work. Expectations are really high. I know – I know you know that. But, I really, you know, have never seen anything like sexual harassment.”

Speaker 1: “So – the reporters reached out to you?”

Staffer #6 : “Yeah.”

Speaker 1: “Because you think that they know that we shared an office?”

Staffer #6 : “Yeah, I mean – the tweet “I worked for the Governor for many years.” And I was one of his flaks [not sure if this is what was said here]. And, you know, I have had people call me for stories dating back since I left the administration looking for like dirt and, you know, digging up stuff. I think like it’s fairly normal that – yeah I am not surprised. I am just letting you know that this is happening. Again, I haven’t seen anything like that. But, I wanted to make you aware.”

Speaker 1: “Who reached out to you? Are you able to say?”

Staffer #6 “Um, sure. Yeah, folks have definitely reached out, like the Times Union, other reporters as well. But– ”

Speaker 1: “I don’t know anybody in that world so I am just as surprised as you that– ”

Staffer #6 “Ok, so, got it. Are like talking to them? Or– ”

Speaker 1: “No, I don’t. I don’t know anybody who works at the Times Union. I don’t – No. I don’t know anybody there.”

Staffer #6 : “Ok.”

Speaker 1: “The only experience I ever had – excuse me – is sitting in that office with you. But, like, I never spoke to anybody so I don’t know how I would be on their radar.”

Staffer #6 “Well, the tweet.”

Speaker 1: “Right, but how would they find my account? Like I – nobody followed me. You know? It didn’t tag anybody. It didn’t say –”

Staffer #6: “I think the reporter like also flagged that Biaggi liked it.”

Speaker 1: “Oh. That’s interesting.”

Staffer #6: “So, I – listen, just letting you know. I mean, again, you know, if like, I think it would be fairly clear, you know, if like an elected official liked it. And, in the wake of the Lindsey stuff, obviously everybody knew that you worked there could easily surmise that. So–”

Speaker 1: “I mean, Alessandra worked there too. Right, during that time?”

Staffer #6: “Totally. Totally.”

Speaker 1: “Has she been contacted? Have you guys talked to her? Or, have you talked to her?”

Staffer #6: “I haven’t talked to Alessandra. No, I don’t know if she has been contacted. I just wanted to reach out to you. But, uh –”

Speaker 1: “Thank you.”

Staffer #6: “No idea.”

Speaker 1: “No, I have not talked to anybody at the Times Union. I don’t know anybody who is there.”

Staffer #6: “Ok. Well, um, glad to have let you know. You know, thanks for chatting. And, definitely hope you are well and all that stuff. It’s definitely a weird time.”

Speaker 1: “Yeah, you too Staffer #6.”

Staffer #6: “Ok, bye.”

Speaker 1: “Ok.”

10:20

5G

109



[Redacted]

iMessage
Saturday 9:27 PM

Hello **Staffer #6** Ronan here. Thank you again. [Redacted]@newyorker.com for anything further you want to share.

Circle back on one piece

"I'm not going to comment on inaccurate Twitter gossip."

Re tweets from me

To be clear, above is about her twitter claim that you were making calls about her?

And thank you. Let me know re her additional comment on plane issue when you can.

Will do

And yes

But I would also caution you

The tweets are just tweets

Anyone can tweet whatever they want

Do they rise to the editorial standards of the New Yorker?

**EXHIBIT
22**



iMessage



10:21

5G E

< 109



[REDACTED]

And thank you. Let me know re her additional comment on plane issue when you can.

Will do

And yes

But I would also caution you

The tweets are just tweets

Anyone can tweet whatever they want

Do they rise to the editorial standards of the New Yorker?

what are the allegations. That I talk to colleagues?

She claims the calls to colleagues were about her. Her implication appears to be that you were gathering information about her, sussing out who might support her, or marshaling support for the governor on this point.

Sunday 9:05 AM

She has no details in those tweets at all

You can use the [REDACTED]

[REDACTED]

[REDACTED]



iMessage



10:21

5G

< 109



[REDACTED]

And thank you. Let me know re her additional comment on plane issue when you can.

Will do

And yes

But I would also caution you

The tweets are just tweets

Anyone can tweet whatever they want

Do they rise to the editorial standards of the New Yorker?

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Sunday 9:05 AM

She has no details in those tweets at all

You can use the [REDACTED]



iMessage



She claims the calls to colleagues were about her. Her implication appears to be that you were gathering information about her, sussing out who might support her, or marshaling support for the governor on this point.

Sunday 9:05 AM

She has no details in those tweets at all

You can use the [REDACTED]

Yesterday 9:43 AM

When is this running?

Delivered

Yesterday 12:31 PM

Will keep you apprised on timing. I would still be grateful if you could clarify what we discussed: I left our conversation uncertain as to whether a) you are confident you were on all those flights and therefore know the exchange didn't happen; or b) as you said when we talked, that you were [REDACTED] on that particular western NY

support for the governor on this point.

Sunday 9:05 AM

She has no details in those tweets at all

You can use the [REDACTED]
[REDACTED]
[REDACTED]

Yesterday 9:43 AM

When is this running?

Delivered

Yesterday 12:31 PM

Will keep you apprised on timing. I would still be grateful if you could clarify what we discussed: I left our conversation uncertain as to whether a) you are confident you were on all those flights and therefore know the exchange didn't happen; or b) as you said when we talked, that you were never on that particular western NY route she described and therefore know she is not accurate in saying she remembers you sitting next to her. Welcome any additional clarity or context you can provide. Thanks

Staffer #6



iMessage



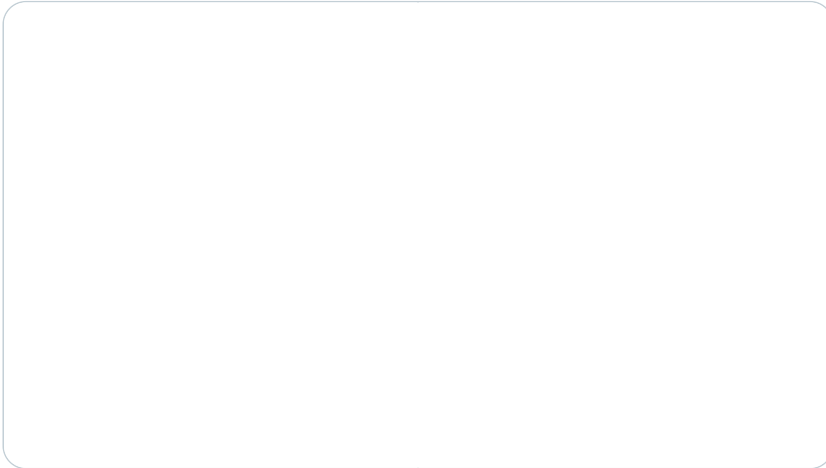


Thread



Valerie Bauman @valeriereports

My full statement.

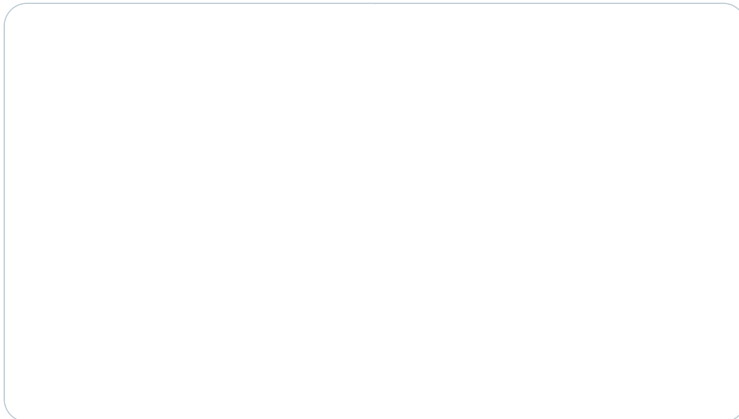


7:11 AM · Mar 18, 2021 · Twitter Web App

133 Retweets 50 Quote Tweets 615 Likes

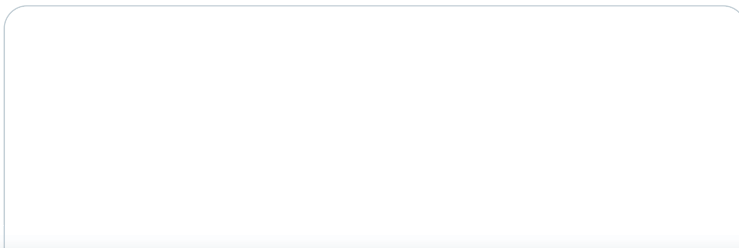


Valerie Bauman @valeriereports · Mar 18
Replying to @valeriereports



25 68 254

Valerie Bauman @valeriereports · Mar 18



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What's happening

Music · LIVE It's Travis Scott's birthday Trending with Travis Scott

Trending in United States Terry Crews 1,769 Tweets

Trending in United States BOYFRIEND REVEAL 5,977 Tweets

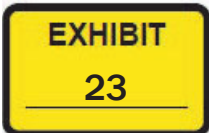
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I was 25 when I began covering New York state politics out of Albany for The Associated Press. It was a privilege, and one of the most rewarding experiences of my career. It was also a period marked by rampant sexism and sexual harassment.

It's important to note that throughout my time in Albany I was supported steadfastly by fantastic editors who were kind, honorable and willing to go to bat for me anytime they were aware that I was treated inappropriately.

Now, more than a decade later, New York Gov. Andrew Cuomo (who was attorney general during my time in Albany) is facing allegations of sexual harassment of staff. A reporter has approached me to ask about my own experience with Cuomo, which pales in comparison to those already reported in the public sphere.

I have decided to share my experience to shine a light on the broader culture of sexual harassment and devaluation of women and women's voices in Albany. Perhaps things have changed in the past decade, but I suspect not enough.

To be clear: Andrew Cuomo never touched me inappropriately or said anything that I felt I could report to my boss. He did make me uncomfortable, as did a lot of men in Albany.

My greatest hesitation about speaking on this matter was that my story would be interpreted as putting certain problematic behavior on par with much more severe offenses. But I believe there is room to talk about any situation where a professional is treated differently because of their gender, race, sexuality or gender identity.

Andrew Cuomo did appear to take an interest in me.

Here is what happened: The first time I met Andrew Cuomo I was sitting directly across from him during a press conference about a sunshine (government transparency) initiative that the attorney general's office was implementing. Throughout the press conference he made unwavering eye contact, actually staring to the point that I started blushing and looking around at the people surrounding me, whose own facial expressions indicated, "Yes, ma'am, he's looking at you."

After the event was over I stood up and quickly headed out the side door, with the goal of catching him before other reporters to ask some follow up questions. Andrew Cuomo came marching through the door and - in another reporter's words - "beelined" for me. He took my hand, entered my personal space and looked into my eyes as he announced, "Hello, I'm Andrew Cuomo."

I pulled out my digital recorder with my other hand, took a step back and said, "I'm Valerie Bauman, with The Associated Press. May I ask a few questions?"

He appeared surprised that I was a journalist but answered my questions. Meanwhile, the rest of the press corps surrounded us, photographers snapping pictures. Afterward, a fellow reporter loudly observed that Andrew Cuomo seemed very into me. I was embarrassed, but least it wasn't my imagination, I thought.

Shortly after that first meeting, one of his staff called me up at my desk and asked me if I had any interest in working for the attorney general's office. I said I was happy to stay in journalism.

Soon after that, I started to get an unusual level of access to the attorney general. Cuomo's office had a reputation in the press corps for ignoring requests and being very controlling about the public narrative around the attorney general. Yet, when I would call with simple questions that an aide could easily answer, Andrew Cuomo would sometimes pick up the phone himself.

He would greet me in a booming voice, repeating my name frequently. The access didn't do me any favors though. He danced around my tougher lines of inquiry, often asking me random personal questions. It felt like he was flirting with me, and I think that's because he was.

It was embarrassing and uncomfortable, but I did my best to do the job without giving him any indication that I was flirting back. The calls eventually dwindled and stopped altogether.

So that's it. That is my whole story of covering Andrew Cuomo.

I would hope this moment could be a chance for actual cultural change. Albany is a boys club where I learned to suck it up when men made comments about my body, hovered too close or even showed up in my office when I stopped responding to calls and texts because they had crossed a line.

It's a place where I, like many women, wore a fake engagement ring as a defense against frequent overtures from much older men - because "belonging" to another man was often the only thing that would stop unwanted attention.

Women shouldn't have to live and work like that. It's exhausting.

It's time for a real reckoning in Albany and beyond.



← Tweet



Lindsay Nielsen
@Lindsayon10



I have something to say today.



5:26 PM · Feb 28, 2021 · Twitter for iPhone

1,260 Retweets 107 Quote Tweets 4,403 Likes



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Lindsay Niel...
@Lindsayon10

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Investigative journalist, "I still believe that if your aim is to change the world, journalism is a more immediate short-term weapon." TS r/t not endorsements

What's happening

Music · LIVE

It's Travis Scott's birthday

Trending with [Travis Scott](#)

Trending in United States

Josh Duggar

Former reality television star Josh Duggar pleads not guilty after being 'charged by indictment with receiving and possessing child pornography' following his arrest in Arkansas on Thursday

Trending with [Jim Bob, 19 Kids and Counting](#)

Trending in United States

BOYFRIEND REVEAL

6,180 Tweets

COVID-19 · LIVE

COVID-19: News and updates for New York

Premier League · LIVE

Southampton vs

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Lindsay Nielsen



Posted by Lindsay Starr

16m · 🌐

"You have a vendetta against him don't you!" That was the last time I allowed someone connected to Governor Andrew Cuomo's administration to harass and manipulate me. It was during one of the many accusatory and threatening phone calls I received by his staff members that I realized this behavior was never going to stop. It was shortly thereafter that I decided to leave my job at News10. The late night phone calls from the administration, the constant threats to call my boss, the incessant bullying to try and get me to stop doing my job and reporting specific stories...it would never end. The tactics used were deliberate yet evasive. They skimmed the line of inappropriateness ever so delicately as to make you feel like they were acceptable. I am writing this today to make sure that those involved in this behavior back then now know that not only was it not acceptable but also that it was damaging. I applaud those who have come forward recently with reports of similar behavior by the same administration.

