



**OLYMPIC REGIONAL
NEW YORK
DEVELOPMENT AUTHORITY**

BOARD OF DIRECTORS MEETING

Olympic Center, Lake Placid, NY

November 20, 2020

1:00 pm

AGENDA

I. INTRODUCTION

- A. Roll Call**
- B. Agenda Review**
- C. Approval of Minutes from September 25, 2020 Board Meeting**
- D. President's Report**

II. OLD BUSINESS

III. NEW BUSINESS

A. Resolutions

- **Resolution # 397 – Resolution Committing Capital and Granting Approval for the President & CEO to Enter Into Agreements for the Olympic Center Revitalization – 1932 Rink/Jack Shea Arena & the 1980 Rink/Herb Brooks Arena Construction and Construction Administration and Phase One Construction Management**
- **Resolution # 398 – Resolution Committing Capital and Granting Approval for the President & CEO to Enter Into an Agreement for the Olympic Center Revitalization – Refrigeration Plant Project**
- **Resolution # 399 – Resolution Committing Capital and Granting Approval for the President & CEO to Enter Into an Agreement for the Olympic Center Revitalization – Temporary Refrigeration**
- **Resolution # 400 – Resolution Committing Capital and Granting Approval for ORDA to Renew Its Employee Health Insurance Policy**
- **Resolution # 401 – Resolution Approving and Adopting a Property Disposition Policy and Approving and Adopting the State of New York Equal Employment Opportunity Rights and Responsibilities Handbook as the ORDA Discrimination and Sexual Harassment Policy**

IV. ADJOURN



NYS Olympic Regional Development Authority
Board Meeting Minutes
September 25, 2020

Present:

Kelly Cummings, Chair
William Beaney
Steven Hunt, ESD
Thomas Keegan
Senator Betty Little
Arthur Lussi
Andrew Lack
Diane Munro
Christopher Pushkarsh, OPRHP
Jeffrey Stefanko, DEC
Elinor Tatum

Also Present:

Michael Pratt, President/CEO
Michelle Crew, General Counsel

Introduction:

Chairperson Kelly Cummings called the meeting to order at 1:03 p.m. and welcomed everyone in attendance. Ms. Cummings announced that she and some of the board members had toured the improvements at Mt. Van Hoevenberg and ridden the new mountain coaster. She also recognized the 80th birthday of Senator Little.

Ms. Cummings then asked for a roll call, and confirmed a quorum was present. Ms. Cummings explained that the meeting was being videotaped and the recording would be made available on www.orda.org.

Minutes:

On a motion by Mr. Lussi, seconded by Mr. Beaney, the minutes of the Board of Directors meeting held on August 7, 2020 were approved without changes.

All in favor, motion carried unanimously.

President's Report:

Mr. Pratt emphasized the excitement around the progress at Mt. Van Hoevenberg, as the venue continues improving to be a year-round asset for recreational visitors and athletes. Updates there continue in several areas including the lodge, bridges, stadium, and mountain coaster.

Other venue improvements include the pump house project at Belleayre, new lifts and reservoir work at Gore Mountain, pump house upgrades, lift installations, the Midstation Lodge construction at Whiteface, and the Roundhouse roofing work at the Veteran's Memorial Highway.



Mr. Pratt also provided an overview of the Olympic Training Center. He said the facility is operated by the United States Olympic & Paralympic Committee (USOPC), who provide a range of services there across several sports year-round. The Training Center is one of just two in the country, and specialty areas of sports medicine, sports psychology, training and recovery services, and nutritional planning are among industries involved in the Center's deliverables. The economic impact of these efforts benefits the entire region. Lake Placid Sports Medicine is the Official Orthopedic Medicine Provider for the Training Center. Prior to the pandemic, the facility also offered visitor tours to add to the public experience. The land allocated to the Training Center provides opportunities for possible future expansion.

Ms. Little commented that the Training Center is economically important to the region and attracts athletes to the area and the ORDA venues. Ms. Munro commented that keeping the awareness and conversation about the Training Center was positive. Mr. Pratt reinforced this by noting that over 51% of the United States athletes at the 2018 PyeongChang Olympics had trained in Lake Placid.

Mr. Beaney asked for an update about the Olympic Center. Mr. Pratt explained that the design development was progressing very well, and the 1932 and 1980 rink modernizations were out to bid. Mike expects to have more information at the October meeting, and a preliminary schedule targets refrigeration work in November, March for the oval, and April for the Link Building.

Mr. Lack inquired about the upcoming experience at the mountains under current COVID-19 protocols. Mr. Pratt explained that NYS would be issuing guidances for the ski areas, and after that occurs ORDA would publish more information. He explained that the venues have been successfully operating through the summer/fall seasons, and that significant planning for winter has taken place. Mr. Lussi, Ms. Cummings, and Ms. Munro all emphasized the importance of public awareness that the venues have been open, which has offered ORDA experience operating under the current situation. Mr. Pratt explained density controls such as increasing outdoor seating, reconfiguring dropoff zones, creating one-way traffic patterns indoors, and loading lifts were all examples of planning in progress. Best management practices were being shared in an upcoming "Snow Summit" meeting that the venues join virtually, as the emphasis will be on safety for all guests and staff. Mr. Lussi noted how fortunate ORDA is given the recent improvements which have increased capacity to lifts and lodges. Ms. Tatum asked about any restrictions that might be applied during early season or for reservations, and Mr. Pratt explained that the guidances would provide direction for this. He also noted that technology such as RFID gates and direct-to-lift ticketing already in place would help facilitate this if necessary.

Ms. Cummings then stated that the meeting would pause for a brief break while the board moves into Executive Session for the purpose of discussing proposals for the Mount Van Hoevenberg food and beverage concession license.



Executive Session: The board moved into Executive Session for the purposes of discussing the proposals submitted for the Mt. Van Hoevenberg concessions license. There was no action taken in Executive Session.

Public Discussion: On the record after regular session resumed, Ms. Cummings announced that no action had taken place during the executive session and that the board had heard from the President & CEO and the Vice-President of Operations about two proposals being considered following the bid process for the Mt. Van Hoevenberg concession contract.

New Business:

Resolutions:

#393 Resolution Granting Approval for the President & CEO to Enter Into an Agreement for Food and Beverage Concessionaire Services at Mt. Van Hoevenberg

On a motion by Ms. Tatum, seconded by Ms. Munro.

All in favor, motion carries unanimously, adopted Resolution #393.

#394 Resolution Committing Capital and Granting Approval for the President & CEO to Enter Into Agreements for ORDA 2020-2021 Insurance for Comprehensive General Liability, Umbrella, Property, Equipment Breakdown, Crime, and Auto

On a motion by Mr. Lack, seconded by Ms. Munro.

Ms. Cummings explained that the Executive Committee held a meeting to review ORDA's insurance broker's process which included obtaining the best available quotes and competitively pricing the policies in the market for ORDA's unique needs. The resolution includes all of the above annual policies, which together total \$1,511,070. Mr. Pratt explained some of the challenges within the property insurance market, which has been struggling with recent natural disasters. He also noted the fire at Whiteface's Midstation Lodge. The value of ORDA's coverages has increased by \$211 million over last year due to revaluations and several recent improvements throughout the organization.

All in favor, motion carries unanimously, adopted Resolution #394.

#395. Resolution Approving and Adopting a Delegation of Authority Policy for the President & CEO Pursuant to Public Authorities Law § 2611

Ms. Cummings noted that this resolution would be tabled and possibly considered at a future meeting.



#396. Resolution Approving and Adopting a Charter for the ORDA Executive Committee

On a motion by Ms. Little, seconded by Mr. Lussi.

Ms. Cummings noted that the Executive Committee has not had a charter to date. This is needed as it explains the makeup, powers, and responsibility of the committee. Ms. Crew noted that the charter was developed based on the bylaws, and that other charters were used as a model.

All in favor, motion carries unanimously, adopted Resolution #394.

Chair:

Ms. Cummings announced that the next meeting is scheduled for Friday, October 30, 2020 at 1:00pm.

Adjournment:

On a motion by Mr. Lack, seconded by Mr. Lussi, the meeting of the Olympic Development Authority Board of Directors was adjourned at 2:14 p.m.

DRAFT



NEW YORK STATE OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Resolution # 397

RESOLUTION COMMITTING CAPITAL AND GRANTING APPROVAL FOR THE PRESIDENT & CEO TO ENTER INTO AGREEMENTS FOR THE OLYMPIC CENTER REVITALIZATION – 1932 RINK/JACK SHEA ARENA & 1980 RINK/HERB BROOKS ARENA CONSTRUCTION AND CONSTRUCTION ADMINISTRATION AND PHASE ONE CONSTRUCTION MANAGEMENT

At a meeting of the Board of Directors of the Olympic Regional Development Authority (ORDA) held on November 20, 2020, the Chairperson offered the following resolution:

WHEREAS, ORDA desires to enter into proposed Agreements entitled “1932 Rink/Jack Shea Arena & 1980 Rink/Herb Brooks Arena Contract” (ARN.19.006.104), “1932 Rink/Jack Shea Arena & 1980 Rink/Herb Brooks Arena Construction Administration” (ARN.19.006.027), and “Olympic Center Revitalization: Phase I – Construction Management” (ARN.19.006.029) for necessary repairs and improvements at the Olympic Center (collectively the “Projects”); and

WHEREAS, the work shall include, but not be limited to, the following:

- Construction includes all labor, tools, equipment, materials, temporary facilities and profit & overhead for a project that includes the coordination and management, demolition, modification, renovations of architectural and structural systems, mechanical systems, plumbing system and electrical and information technology systems for the revitalization of the 1932 Rink/Jack Shea Arena & 1980/Herb Brooks Arena Contract. Work includes hazardous materials abatement and final cleaning.
- Construction Administration Services includes all prime and all sub-consultants management, supervision and patriation for Shop Drawings/Submittal review, addressing Request for Information, issuance of Information Bulletins and subsequent Work Change Directives, management of Quality Control/Quality Assurance Program, interpretation of Contract Documents and expenses.
- Construction Management Services are to extend to the end of 2021 and are to include the Construction Phase Services for the 1932 Rink/Jack Shea Arena & 1980 Rink/Herb Brooks Arena Contract, and the Preconstruction/Construction Phase for the James Sheffield Speed Skating Oval & Support Building Contract, and the Refrigeration Plant Replacement Contract. Construction Phase Services are to include management and coordination of the Work, Third-Party Specialty Inspections, Hazardous Material Monitoring during abatement and Commissioning Services. Preconstruction phase services are to include but not limited to Interdisciplinary Document Review and estimates services. Includes all expenses.

WHEREAS, the Projects are part of a continuing effort to provide upgrades and improvements to ORDA facilities that are necessary to ensure the continued success of ORDA operations; and

WHEREAS, for contract ARN.19.006.104, following Design-Bid-Build Requests for Proposals in the New York State Contract Reporter, The Pike Company, Inc. submitted a proposal for ORDA's consideration and, in accordance with Project Labor Agreement (PLA) Framework, said bid was determined to be the lowest responsible bidder; and

WHEREAS, for contract ARN.19.006.029, following Professional Services Requests for Proposals in the New York State Contract Reporter, Cannon Design Architectural and Engineering P.C., a certified MWBE contractor, submitted a proposal for ORDA's consideration and, in accordance with New York State Executive Law Article 15-A and New York State Public Buildings Law Section 8, said bid was determined to be the lowest responsible bidder; and

WHEREAS, for contract ARN.19.006.027, following Professional Services Requests for Proposals in the New York State Contract Reporter, Gilbane Building Company submitted a proposal for ORDA's consideration and was determined to be the best value; and

WHEREAS, pursuant to the terms of the proposed Agreements, the lump sum cost of the Projects will be:

Construction Costs (ARN.19.006.104) \$22,842,000.00
Construction Administration Costs (ARN.19.006.029) \$620,625.00
Construction Management Costs (ARN.19.006.027) \$2,858,000.00
Total Costs \$26,320,625.00; and

WHEREAS, the anticipated final completion date for the Projects is January 27, 2022; and

WHEREAS, the President & CEO has requested that the Board commit the requisite capital for the Projects; and

WHEREAS, pursuant to ORDA's By-Laws, Art. VI § 2, which requires that the President & CEO obtain Board approval prior to entering into agreements the value of which will be in excess of \$250,000.00 or more over the life of the contract, the President & CEO has requested authority to enter into the foregoing proposed Agreement.

THEREFORE, BE IT RESOLVED that the Board of Directors hereby authorizes the expenditure of funds and commits the capital for the Projects as is described more fully herein; and

THEREFORE, BE IT FURTHER RESOLVED that, the Board of Directors hereby authorize the President & CEO to enter into the proposed Agreements under the circumstances and incorporating the terms described above.

MOVED BY: _____

SECONDED BY: _____

and

ADOPTED BY the following vote:

Excused/Abstained:

Against:

Emily Stanton, Secretary to the Board, being duly sworn, deposes and says:

The above Resolution # 397 was duly passed by the Board of Directors on November 20, 2020

Signature _____

Title: Secretary to the ORDA Board of Directors

Sworn before me this ____ day of November 2020
 Notary Public, State of New York



NEW YORK STATE OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Resolution # 398

RESOLUTION COMMITTING CAPITAL AND GRANTING APPROVAL FOR THE PRESIDENT & CEO TO ENTER INTO AN AGREEMENT FOR THE OLYMPIC CENTER REVITALIZATION – REFRIGERATION PLANT PROJECT

At a meeting of the Board of Directors of the Olympic Regional Development Authority (ORDA) held on November 20, 2020, the Chairperson offered the following resolution:

WHEREAS, ORDA desires to enter into proposed Agreements entitled “Refrigeration Plant Contract” with Mullenberg-Betz (ARN.19.006.105) and Cannon Design Architecture & Engineering, P.C. (ARN.19.006.030) for necessary repairs and improvements at the Olympic Center (the “Project”); and

WHEREAS, a general overview of the Project scope includes, but is not limited to, all labor, tools, equipment, materials, temporary facilities and profit & overhead for a project that includes the removal of existing R-22/R-407F refrigeration system including all refrigeration equipment, related equipment and materials, controls, electrical, HVAC, plumbing and related systems inside the existing refrigeration room, and the removal of the exterior cooling tower. Construction of a new R-513 indirect 1375-ton refrigeration system inside the existing refrigeration room and new exterior cooling tower. Work includes demolition, excavation, concrete, refrigeration equipment, pumps, piping, insulation, refrigerant, HVAC, plumbing, electrical, controls, motor control centers, building modifications, and related items. Project includes all maintenance and protection of traffic and final clean-up. The Project will also include construction administration services.

WHEREAS, the Project is part of a continuing effort to provide upgrades and improvements to ORDA facilities that are necessary to ensure the continued success of ORDA operations; and

WHEREAS, following Design-Bid-Build Request for Proposals in the New York State Contract Reporter, Mullenber-Betz submitted a proposal for ORDA’s consideration and, in accordance with Project Labor Agreement Framework, said bid was awarded as the lowest responsible bidder; and

WHEREAS, following a Professional Services Request for Proposals in the New York State Contract Reporter, Cannon Design Architecture & Engineering, P.C. submitted a proposal for ORDA’s consideration and said bid was awarded pursuant to New York State Finance Law § 136-a. Contracts for Architectural, Engineering and Surveying Services; and

WHEREAS, the lump sum cost for ARN.19.006.105 is \$11,550,000.00 and the lump sum cost for ARN.19.006.030 is \$163,000.00 for a total Project cost of \$11,713,000.00; and

WHEREAS, the anticipated final completion date for the Project is March 4, 2022; and

WHEREAS, the President & CEO has requested that the Board commit the requisite capital for the Project; and

WHEREAS, pursuant to ORDA's By-Laws, Art. VI § 2, which requires that the President & CEO obtain Board approval prior to entering into agreements the value of which will be in excess of \$250,000.00 or more over the life of the contract, the President & CEO has requested authority to enter into the foregoing proposed Agreement.

THEREFORE, BE IT RESOLVED that the Board of Directors hereby authorizes the expenditure of funds and commits the capital for the Project as is described more fully herein; and

THEREFORE, BE IT FURTHER RESOLVED that, the Board of Directors hereby authorize the President & CEO to enter into the proposed Agreements under the circumstances and incorporating the terms described above.

MOVED BY: _____

SECONDED BY: _____

and

ADOPTED BY the following vote:

Excused/Abstained:

Against:

Emily Stanton, Secretary to the Board, being duly sworn, deposes and says:

The above Resolution # 398 was duly passed by the Board of Directors on November 20, 2020

Signature_____

Title: Secretary to the ORDA Board of Directors

Sworn before me this _____ day of November 2020
Notary Public, State of New York



NEW YORK STATE OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Resolution # 399

RESOLUTION COMMITTING CAPITAL AND GRANTING APPROVAL FOR THE PRESIDENT & CEO TO ENTER INTO AN AGREEMENT FOR THE OLYMPIC CENTER REVITALIZATION – TEMPORARY REFRIGERATION

At a meeting of the Board of Directors of the Olympic Regional Development Authority (ORDA) held on November 20, 2020, the Chairperson offered the following resolution:

WHEREAS, ORDA desires to enter into proposed Agreements for work on a project entitled “OC Speed Skating Oval Temporary Refrigeration System 2020-21 & 2021-22 Winter Season” (ARN.19.006.105A-E), for necessary repairs and improvements at the Olympic Center (the “Project”); and

WHEREAS, a general overview of the Project scope includes, but is not limited to:

- the rental of package refrigeration systems, with pumps and temporary process piping;
- the mobilization, installation, commissioning and demobilization of the refrigeration systems;
- the development of temporary electrical service to power the package refrigeration systems;
- the retrofitting of existing Speed Skating Oval supply and return process piping to accept the package refrigeration systems, supply of glycol refrigeration into the temporary supply and return process piping;
- final electrical connects from the utility temporary service to the package refrigeration systems, and all related site work.

WHEREAS, the Project is part of a continuing effort to provide upgrades and improvements to ORDA facilities that are necessary to ensure the continued success of ORDA operations; and

WHEREAS, the contracting required for the Project will include equipment supply, term contractors, and electric utility supply, each of which will proceed in accordance with the applicable requirements of all the State Finance Law and regulations; and

WHEREAS, the President & CEO must be ready and have the authority to act by entering into the Agreements as soon as they are ready, to enable ORDA to be prepared for an anticipated start-up date of December 7, 2020;

WHEREAS, the President & CEO therefore requests the authority to negotiate and execute the Agreements at the point at which ORDA has been able to advertise as necessary and make awards based on the all appropriate criteria for doing so, without having to wait until the next regularly scheduled Board meeting for approval to do so; and

Emily Stanton, Secretary to the Board, being duly sworn, deposes and says:

The above Resolution # 399 was duly passed by the Board of Directors on November 20, 2020

Signature_____

Title: Secretary to the ORDA Board of Directors

Sworn before me this _____ day of November 2020
Notary Public, State of New York

NEW YORK STATE OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Resolution # 400

**RESOLUTION COMMITTING OPERATING FUNDS AND GRANTING
APPROVAL FOR THE PRESIDENT & CEO TO ENTER INTO AN AGREEMENT
FOR 2020-2021 ANNUAL POLICY OF HEALTH INSURANCE**

At a meeting of the Board of Directors of the Olympic Regional Development Authority (ORDA) held on November 20, 2020, the Chairperson offered the following resolution:

WHEREAS, pursuant to Public Authorities Law § 2611 (5), the New York State Olympic Regional Development Authority (ORDA) is authorized “[t]o enter into contracts for employment of such officers and employees as it may required for the performance of its duties...”; and

WHEREAS, pursuant to Public Authorities Law § 2611 (7), ORDA is authorized to enter into contracts “and execute all instruments necessary of convenient for the conduct of authority business”; and

WHEREAS, pursuant to Public Authorities Law § 2611 (15) ORDA is authorized “[t]o procure insurance against any loss or liability in connection with the ... operation of the participating olympic facilities and/or Belleayre Mountain ski center, in such amounts and from such insurers, subject to public bidding as it deems desirable”; and

WHEREAS, ORDA employs approximately 400 full time staff whose employment benefits include the provision of health insurance both during employment and in retirement; and

WHEREAS, ORDA enters into an annual health insurance contract to satisfy its obligations in this regard, which contract will expire on December 31, 2020; and

WHEREAS, as a result ORDA desires to enter into a proposed contract for the purchase of the 2020-2021 annual health insurance coverage; and

WHEREAS, the proposed cost of the premium for the proposed health insurance policy will exceed \$250,000.00; and

WHEREAS, the term of the proposed contract shall be one year, commencing on January 1, 2021 and expiring on December 31, 2021; and

WHEREAS, the proposed policy is recommended following a process conducted by ORDA’s health insurance broker through that was designed to obtain the best insurance product for ORDA’s interests at the most competitive price available; and

WHEREAS, the President & CEO has requested that the Board commit the requisite operating funds to enter into the proposed contract for the purchase of the 2020-2021 health insurance coverage; and

WHEREAS, pursuant to ORDA's By-Laws, Art. VI § 2, which requires that the President & CEO obtain Board approval prior to entering into contracts the value of which will be in excess of \$250,000.00 or more over the life of the contract, the President & CEO has requested authority to enter into the proposed contract; and

THEREFORE, BE IT RESOLVED that the Board of Directors hereby commits the operating funds necessary and authorizes their expenditure for the proposed contract for the purchase of annual health insurance coverage for ORDA employees and retirees, as is described more fully herein; and

THEREFORE, BE IT FURTHER RESOLVED that, the Board of Directors hereby authorizes the President & CEO to enter into the proposed contract under the circumstances described above.

MOVED BY: _____

SECONDED BY: _____

and

ADOPTED BY the following vote:

Excused/Abstained:

Against:

Emily Stanton, Secretary to the Board, being duly sworn, deposes and says:

The above Resolution # 400 was duly passed by the Board of Directors on November 20, 2020.

Signature _____

Title: Secretary to the Board of Directors

Sworn before me this _____ day of November 2020
Notary Public, State of New York



NEW YORK STATE OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Resolution #401

RESOLUTION APPROVING AND ADOPTING A PROPERTY DISPOSITION POLICY, AND APPROVING AND ADOPTING THE STATE OF NEW YORK EQUAL EMPLOYMENT OPPORTUNITY RIGHTS AND RESPONSIBILITIES HANDBOOK AS THE ORDA DISCRIMINATION AND SEXUAL HARASSMENT POLICY

At a meeting of the Board of Directors of the Olympic Regional Development Authority (ORDA) held on November 20, 2020, the Chairperson offered the following resolution:

WHEREAS, pursuant to Public Authorities Law § 2824, the Board of Directors is charged with establishing written policies and procedures governing the conduct of ORDA and ORDA personnel; and

I. PROPERTY DISPOSITION POLICY

WHEREAS, under Public Authorities Law § 2896 (1) (a), it is mandatory that every authority adopt by resolution a comprehensive set of guidelines “regarding the use, awarding, monitoring and reporting of contracts for the disposal of property”; and

WHEREAS, Public Authorities Law § 2896 (3) mandates that each authority adopt comprehensive guidelines for contracts for the disposal of its property, publish at least annually a report listing all of its real property and all real and personal property disposed of in the previous year and submit that report to the comptroller, the director of the budget, the commissioner of general services, the legislature, and the authorities budget office; and

WHEREAS, Public Authorities Law § 2896 (1) (b) directs that every authority, by resolution, designate a contracting officer responsible for compliance with, and enforcement of, its property disposal guidelines; and

WHEREAS, in compliance with the Public Authorities Law, ORDA has prepared a comprehensive policy for the disposition of real and personal property that complies with the criteria and processes set forth in Public Authorities Law §§2896 and 2897; and

WHEREAS, in compliance with the Public Authorities Law, ORDA recommends designating the Vice President of Operations as the ORDA Contracting Officer; and

WHEREAS, in conformance with Public Authorities Law §2896 (1), ORDA’s Property Disposition Policy must be annually reviewed and approved, and by no later than March 31 of each year filed with the Comptroller and posted on the ORDA website; and

WHEREAS, annexed hereto and made a part hereof as if fully restated herein, is ORDA’s proposed Property Disposition Policy; and

II. DISCRIMINATION AND SEXUAL HARASSMENT POLICY

WHEREAS, ORDA’s Discrimination and Sexual Harassment Policy is in need of being updated to better conform to the policy applicable to all New York State workplaces; and

WHEREAS, the New York State policy is reflected in the State of New York Equal Employment Opportunity Rights and Responsibilities Handbook (the “EEO Handbook”); and

WHEREAS, the Governor’s Office of Employee Relations has encouraged and approved the adoption of the EEO Handbook as the ORDA Discrimination and Sexual Harassment Policy, a copy of which is attached hereto;

NOW THEREFORE BE IT RESOLVED, that after careful consideration and due deliberation, the Board of Directors hereby approves and adopts the attached Property Disposition Policy and EEO Handbook as the ORDA Discrimination and Sexual Harassment Policy, effective immediately, all of which will be posted on the ORDA website and implemented across all ORDA venues.

SO RESOLVED,

At a meeting of the Board of Directors of the Olympic Regional Development Authority (ORDA) held on October 30, 2020, the Chairperson offered the following resolution approving and adopting the policies attached hereto and designating the ORDA Vice President of Operations as the ORDA Contracting Officer:

MOVED BY: _____

SECONDED BY: _____

and

ADOPTED BY the following vote:

Excused/Abstained:

Against:

Emily Stanton, Secretary to the Board, being duly sworn, deposes and says:

The above Resolution # 401 was duly passed by the Board of Directors on November 20, 2020

Signature_____

Title: Secretary to the Board of Directors

Sworn before me this _____ day of November 2020

Notary Public, State of New York



PROPERTY DISPOSITION POLICY

I. SUMMARY

This Policy describes the operative policy, procedures, and instructions regarding the identification of ORDA real and personal property for disposal, and the use, awarding, monitoring, and reporting of contracts for the disposal of real and personal property under the ownership or control of the New York State Olympic Regional Development Authority (“ORDA”).

This Policy further designates a Contracting Officer who is responsible for ORDA’s compliance with and enforcement of this Policy.

This Policy replaces and supersedes the policy dated May 2008.

II. PURPOSE

The purpose of this policy is to provide guidelines for the inventory and proper designation of real and personal property for disposal, and consistency in the manner in which such disposal process is carried out.

Attached as Exhibit A is a Property Disposition Summary and Checklist for staff to use in implementing this Policy.

III. BACKGROUND

Under ORDA’s enabling statute at Public Authorities Law § 2611 (3), ORDA is authorized to “acquire, lease, hold and dispose of real and personal property or any interest therein for its corporate purposes”.

Public Authorities Law § 2896 sets forth the duties of public authorities with respect to the disposal of property. This includes the adoption of comprehensive guidelines for contracts for the disposal of its property; the publication at least annually of a list of all of ORDA’s real property, as well as certain information regarding the real and personal property disposed of in the preceding period; and the designation of a Contracting Officer who is responsible for assuring ORDA’s compliance with its property disposal guidelines.

Pursuant to Public Authorities Law § 2897 (3), a public authority such as ORDA may dispose of real or personal property by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, or

on such other terms as the Contracting Officer deems proper. Subject to the exceptions and criteria set forth in the statute, an authority may not dispose of real or personal property in its possession for less than fair market value. Public authorities are also authorized, pursuant to Public Authorities Law § 2897 (4), to enter into an agreement with the Office of General Services to dispose of the authority's property when it would be advantageous to the State to do so.

ORDA also manages and controls certain real property that is not subject to its disposal. This includes: land that is within the Forest Preserve on which certain ORDA venues are located, that is occupied and managed by ORDA under a Memorandum of Understanding ("MOU") with the New York State Department of Environmental Conservation ("NYSDEC"); and land within the Town of North Elba Public Parks and Playgrounds District ("Park District"), which is managed in accordance with ORDA's agreement with the Town Board of the Town of North Elba as Trustee for the District ("Park District Agreement").

IV. POLICY

It is the policy of ORDA to require that the real and personal property in its possession be periodically inventoried to determine which property shall be disposed of, that it produce a written report of such property in accordance with section 2896 of the Public Authorities Law, that it maintain adequate inventory controls and accountability systems for all real and personal property within its possession and control, and that all activities concerning the inventory, identification, disposal and reporting on the real and personal property in ORDA's possession be managed and overseen by a Contracting Officer designated by the ORDA Board of Directors.

It is further the policy of ORDA that the disposition of the real and personal property in its possession comply with section 2897 of the Public Authorities Law, and all other applicable law for contracting for the disposal of property, as well as duly adopted Board policies and rules.

Consistent with the requirements of the Public Authorities Law, this policy will be filed with the New York State Office of the Comptroller and made available to the public on the ORDA website.

A. DEFINITIONS

For the purposes of this Policy, the following definitions will apply:

1. "Auction" includes but is not limited to the use of a reputable auction site conducted either on-line or at an on-site/in-person auction, as well as the offer of items for public auction on the ORDA website. In all cases of the use of auction for property disposition, the Venue Manager will first obtain the approval of the Contracting Officer after establishing and

documenting a minimal acceptable bid for purchase, based on market conditions and best value to the organization. The intent to offer ORDA personal property through auction shall be publicly noticed on the ORDA website and may also be noticed on ORDA official social media marketing sites.

2. “Contracting Officer” means the Vice President for Operations, who shall be appointed by resolution of the Board of Directors to be responsible for the disposition of ORDA property and the implementation of this Policy.

3. “Dispose” or “disposal” means the transfer of title or any other beneficial interest in personal or real property from ORDA to a third party. The terms “dispose” and “disposal” do not include either the rental or lease of ORDA venues for events by third parties, or the rental or lease of ORDA facilities to the US Olympic Committee or other national or international sports organizations.

4. The term “negotiation” includes the exchange of ORDA personal property through a trade-in on the purchase by ORDA of new or used personal property, subject to the process set forth herein for establishing the value of the property to be exchanged, and the approval of the Contracting Officer.

5. “Personal property” means any ORDA asset that is not real property and which has a value in excess of five thousand dollars in value. Surplus computer and other information technology equipment is excepted from the definition of “personal property” under this Policy.

6. “Real property” means real estate to which ORDA holds title in its corporate capacity under the terms of an official deed that has been duly recorded in the office of the clerk of the County in which such property is located.

7. “Transferee” means the person or entity taking possession of real or personal property that has been disposed of by ORDA in accordance with the terms of this Policy.

8. “Venue Managers” means the persons who are responsible for managing each of the ORDA venues, whether in an acting or official capacity, including but not limited to the Olympic

Center, the Mt. Van Hoevenberg Nordic Center, Whiteface Mountain Ski Center, Gore Mountain Ski Center, Belleayre Mountain Ski Center, and the Olympic Ski Jumps.

B. GUIDELINES

It is the responsibility of the Contracting Officer and all Venue Managers to ensure that all personal property under their control is properly inventoried, recorded, and reported in accordance with the procedures in this Policy, and that the disposal of any ORDA personal property complies with the procedures and requirements of this Policy.

It is the responsibility of the Contracting Officer to work with the ORDA President & CEO to ensure that all ORDA real property is properly inventoried, recorded and reported in accordance with the procedures in this Policy, and that the disposal of any ORDA real property complies with the procedures and requirements of this Policy, and with all applicable procedures and requirements of New York law.

V. PROCEDURE FOR DISPOSING OF PERSONAL PROPERTY

A. Identifying Personal Property For Disposal

By June 1 of every year, Venue Managers will prepare and submit to the Contracting Officer an inventory of the personal property under their control, and a list of any personal property recommended for disposal. Recommendations for disposal of surplus computer and related equipment is the sole the responsibility of the Information Technology Manager, and Venue Managers shall not dispose of any computer or related equipment.

Prior to including an item of personal property on the list for disposition, Venue Managers must first make a good faith effort to determine that there is no need for the property by other Venue Managers. Any personal property that is relocated from one venue to another must be identified and accounted for on each Venue Manager's annual inventory. In addition, in identifying personal property for disposal Venue Managers shall:

1. Identify and include on the personal property list all personal property which has not been used in the prior fiscal year, is not expected to be used in the coming fiscal year, and in the judgment of the Venue Manager is no longer in ORDA's best interest to continue to possess;

2. Document the date and the manner in which such property was acquired by ORDA, including the source of funding and in particular whether any federal funding was used by ORDA to purchase the personal property.

a. If the property that may be subject to disposal is property that was transferred to ORDA from the Town of North Elba, the Contracting Officer shall contact the Town of North Elba for written permission to dispose of such personal property, and to obtain direction as to how to direct any revenue that may be generated as a result.

b. If the property that may be subject to disposal is property that was transferred to ORDA from the New York State Department of Environmental Conservation, then in accordance with Interim MOU No. AM12059, after properly identifying the property and accounting for it on the inventory supplied by DEC, the property may be disposed of in accordance with the procedures and requirements of this policy.

c. In the event that federal funding was utilized to purchase any part of personal property that has been identified for disposal, the Contracting Officer shall be provided with a copy of the grant or other agreement under which such funds were provided, and no such property shall be disposed of unless the Contracting Officer has made a determination that such disposal will occur in conformance with the terms of such grant or other agreement.

3. Document any unique qualities attributable to any item of personal property including artistic or historical significance, rarity, or limitations on the available market that may affect either the options for disposition through a competitive bid process or the ability to estimate the property's fair market value;

4. Consider and to the extent practicable quantify or otherwise describe the usable life of the property, its potential use for parts and/or whether the sale of its parts should be considered or should be considered for recycling, the Venue Manager's ability to keep the facility neat and clean, and other relevant factors related to ORDA's interests with respect to that item of personal property and the basis for its inclusion on the personal property disposition list;

5. Document the lack of need for each item of personal property by other Venue Managers including the date and method of communication used to offer the property to them (email, telephone, other), and the responses of the other Venue Managers;
6. Document any other factors considered in recommending the item for disposal;
7. Document the fair market value or, if there is no valuation possible through reference to an active market for similar property, due to either the unique nature of the property or the unique circumstances of the proposed transaction, then in those circumstances the Venue Manager shall obtain an appraised value of the property by an independent appraiser.

Venue Managers shall obtain the approval of the Contracting Officer prior to having an item appraised, and shall follow the direction of the Contracting Officer in retaining the services of an independent appraiser, and documenting the results of the appraisal.

B. Method of Disposal

1. Competitive bids

a. Unless the criteria in section V.B.2. are met, the Contracting Officer will publicly advertise for bids for personal property that each Venue Manager has identified for disposal in accordance with the requirements of this Policy. The bid process shall provide sufficient time prior to disposal or contracting for disposal of the property, to allow full and free competition consistent with the value and nature of the property.

b. The advertisement will state the length of time that the bid process will remain open, and the time and place that the bids will be publicly disclosed. Wherever practical, the Contracting Officer should seek a minimum of three (3) written bids.

c. Upon the close of the bid period, the Contracting Officer will determine whether to make an award or whether to reject all bids as not being in the public interest. Any bids that do not equal or exceed the fair market or appraised value of the personal property will be rejected as not being in the public interest. If one or more bids equal or exceed the fair market or appraised value of the property, the Contracting Officer shall consider which

responsible bidder's bid, conforming to the invitations for bids, will be most advantageous considering price and other factors such as market conditions and best value to ORDA.

d. The Contracting Officer will promptly and in writing notify the responsible bidder of the award.

2. Negotiation and public auction

a. In lieu of the bid process described in section V.B.1. herein, with the approval of the Contracting Officer, Venue Managers may dispose of personal property through negotiation or public auction if:

i. the fair market or appraised value of the item of personal property is less than or equal to \$15,000.00; or

ii. Bid prices after advertising are not reasonable, either as to all or some part of the property, or have not been arrived at in open competition; or

iii. The personal property involved has qualities separate from the utilitarian purpose of the property such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect that would tend to increase its value, and the nature, quality and value of such property has been documented by the Venue Manager to the satisfaction of the Contracting Officer.

b. In addition, with the approval of the Contracting Officer, Venue Managers may dispose of personal property through negotiation if:

i. The value of the property exceeds \$15,000.00 and the Venue Manager or Contracting Officer prepares an explanatory statement that is approved by the President and CEO which sets forth: (a) the estimated fair market value or appraised value of the property; (b) the reason(s) why disposition without competitive bidding will be in the best interest of the public and the factors considered in reaching that conclusion; (c) whether the Venue Manager or Contracting Officer propose disposing of the property through sale or exchange;

and (d) the criteria that was or will be used to select the entity with whom the negotiated sale or exchange will occur; or

ii. The property is to be sold in such quantity that, if it were disposed of through a competitive bid process as set forth in section V.B.1. herein, would adversely affect the State or local market for such property, the Venue Manager can document this fact to the satisfaction of the Contracting Officer as well as the fact that satisfactory terms of disposal can be obtained by negotiation, and the Venue Manager can document to the satisfaction of the Contracting Officer the criteria that was or will be used to select the entity with whom the negotiated sale will occur; or

iii. The disposal will be to the State or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained through a negotiation, the terms of which are satisfactory to the Contracting Officer, and the Venue Manager can document to the satisfaction of the Contracting Officer the method by which the State or local political subdivision was contacted and chosen for the purpose of engaging in the negotiation process.

c. With the approval of the Contracting Officer, Venue Managers may dispose of personal property for a negotiated value that is less than fair market value if the disposal of such property is clearly within ORDA's purpose, mission, and authority of its enabling statute and:

i. The entity receiving such property is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or other public entity; or

ii. The Contracting Officer has received approval from the ORDA President and CEO to pursue the process set forth in Public Authorities Law § 2897 (7) (a) (iii) for proposing the transfer of personal property for an amount below its fair market value to other than a governmental entity, to the Governor, the speaker of the assembly, and the temporary president of the senate. In the event such proposed

transfer is not denied, the Contracting Officer shall strictly adhere to the criteria and procedure set forth in Public Authorities Law § 2897 (b) for documenting the details of the proposed transfer and, in accordance with the requirements of Public Authorities Law § 2897 (c), obtaining a written determination by the ORDA Board of Directors that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.

d. For personal property that is disposed of by negotiation for less than fair market value and which has an appraised or fair market value of over \$15,000.00, the Contracting Officer shall prepare an explanatory statement of the circumstances of the disposal including but not limited to the reason(s) that disposal of the property for less than fair market value will be in the public interest, and the factors or criteria used to reach that conclusion.

VI. PROCEDURE FOR DISPOSING OF REAL PROPERTY

A. No Venue Manager shall dispose of or enter into agreements for the disposition of real property in ORDA's possession.

Any proposal for the sale of ORDA real property must be made to the Contracting Officer, who must obtain the approval of the ORDA President & CEO, and the ORDA Board of Directors.

Prior to requesting approval to consider the disposition of ORDA real property, the Contracting Officer shall obtain written verification that ORDA has marketable title to such property, and shall document: (1) the reason(s) that such property should be disposed of; and (2) the reason(s) why such disposal would be in the public interest and in the best interest of ORDA.

The Contracting Officer shall assure that no part of any real property that is identified for disposal by ORDA, is or consists of land that belongs to: the State of New York as Constitutionally-protected Forest Preserve; the Town of North Elba; the Town of North Creek; the Town of Highmount; or to any other Federal, State, or local government entity.

B. The Contracting Officer shall summarize the information required in VI.A. herein and present it to the President & CEO, with a recommendation for action. If the recommendation is to pursue the sale of the property, then upon the approval of the President & CEO, the Contracting Officer shall obtain an appraisal of the property by an independent appraiser.

C. The President & CEO shall present a resolution to the ORDA Board of Directors, proposing the sale of the ORDA real property, which reflects its marketable title, its appraised value, and the reasons for disposing of the real property, including any benefit to ORDA and/or the public that may result, and any benefit to or potential impact on local government. In the event of any anticipated impact to local government, the President & CEO shall contact local government stakeholders to obtain their input to the proposal. The Contracting Officer shall undertake any necessary review pursuant to the State Environmental Quality Review Act (SEQRA), the Adirondack Park Agency Act, and any other applicable laws and regulations that may be required.

D. Method of Disposal

1. Competitive bids

a. Unless the criteria in section VI.C. are met, the Contracting Officer will publicly advertise for bids for real property that the President & CEO has identified for disposal. The bid process shall provide sufficient time prior to disposal or contracting for disposal of the property, to allow full and free competition consistent with the value and nature of the property, and shall explicitly put bidders on notice that any final sale, its terms, and the timing of the closing process, must be approved by the ORDA Board of Directors through an officially scheduled board meeting.

b. The advertisement will state the length of time that the bid process will remain open, and the time and place that the bids will be publicly disclosed. Wherever practical, the Contracting Officer should seek a minimum of three (3) written bids.

c. Upon the close of the bid period, the Contracting Officer will determine whether to make an award or whether to reject all bids as not being in the public interest. Any bids that do not equal or exceed the fair market or appraised value of the personal property will be rejected as not being in the public interest. If one or more bids equal or exceed the fair market or appraised value of the property, the Contracting Officer must consider which responsible bidder's bid, conforming to the invitations for bids, will be most advantageous to ORDA considering price and other factors such as market conditions and best value to ORDA.

d. The Contracting Officer will promptly and in writing notify the responsible bidder of the award.

e. The proposed terms of sale shall be authorized through a resolution by the ORDA Board of Directors.

2. Negotiation

a. Subject to the approval of the President & CEO, and a resolution of the ORDA Board of Directors, the Contracting Officer may dispose of real property by negotiation if the disposal of such property is clearly within ORDA's purpose, mission, and authority of its enabling statute and:

i. the appraised value of the property is less than or equal to \$100,000.00; or

ii. Bid prices after advertising are not reasonable, either as to all or some part of the property, or have not been arrived at in open competition; or

iii. Disposition will be made to the State or any political subdivision.

b. Subject to the approval of the President & CEO, and a resolution of the ORDA Board of Directors, the Contracting Officer may negotiate for the sale of real property for below fair market or appraised value, where the value of such property is in excess of \$100,000.00, if the disposal of such property is clearly within ORDA's purpose, mission, and authority of its enabling statute and:

i. The entity receiving such property is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or other public entity; or

ii. The Contracting Officer has received approval from the ORDA President & CEO to pursue the process set forth in Public Authorities Law § 2897 ((7) (a) (iii) for proposing the transfer of real property for an amount below its fair market value to other than a governmental entity, to the Governor, the speaker of the assembly, and the temporary president of the senate. In the event such proposed transfer is not

denied, the Contracting Officer shall strictly adhere to the criteria and procedure set forth in Public Authorities Law § 2897 (b) for documenting the details of the proposed transfer and, in accordance with the requirements of Public Authorities Law § 2897 (c), obtaining a written determination by the ORDA Board of Directors that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.

e. For real property that is disposed of by negotiation for less than fair market value and which has an appraised value of over \$100,000.00, the Contracting Officer shall prepare an explanatory statement of the circumstances of the disposal including but not limited to the reason(s) that disposal of the property for less than fair market value will be in the public interest, and the factors or criteria used to reach that conclusion.

VII. DOCUMENTATION AND REPORTING

A. Property Transfer Documentation and Disposition of Revenue

1. The Contracting Officer may accept cash or credit from the transferee for the sale of real or personal property by bid, negotiation, or auction, or may enter into a contract for sale or exchange of such property.

If the sale is for cash or credit, the Contracting Officer shall provide either a receipt or bill of sale to the transferee which clearly describes the property being conveyed and its sale price, which should accurately correspond to any bid documents, and the result of the bid, auction, or negotiation process.

The terms of any contract shall clearly describe the property being conveyed and shall clearly state the value received by ORDA for its sale or exchange, based on the result of any bid, audit, or negotiation process.

Any contract, bill of sale or receipt shall clearly state that the property is being conveyed “as is”, that ORDA provides no warranties of any kind in connection with the sale of the property and that the transferee accepts all risk that may accompany the purchase, exchange, use, or disposition of the property, with a disclaimer of all liability to ORDA in connection with any subsequent disposition of the property by the transferee.

2. A deed, bill of sale, lease, or other instrument executed by or on behalf of ORDA (as authorized by the ORDA Board of Directors for the sale or transfer of real property), purporting to transfer title or any other interest in ORDA property, shall be conclusive evidence of compliance with the relevant provisions of the Public Authorities Law insofar as concerns title or other interest of any bona fide transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to the closing or other completion of sale.

3. Revenue generated from the sale of personal property will generally be realized by the Venue that held the property, but all final decisions in this regard shall be made by the Contracting Officer. Revenue generated from the sale of real property will be realized by ORDA as directed by the President & CEO.

4. All revenue from the sale of personal property shall be directed to the Director of Finance who will work with the Contracting Officer or his or her designee to prepare a bill of sale, receipt, or contract of sale or exchange, and to post the revenue realized from the disposal to appropriate Venue's personal property inventory roster.

5. Documentation of the sale of real property shall be in such form as is generally acceptable under NY law and in using such formats and forms as directed by the Contracting Office.

6. Documentation of the exchange of property where no revenue is generated shall be submitted to the Director of Finance along with such other documentation as required by the Director of Finance.

B. Reporting

1. By not later than January 1 of each year, the Contracting Officer shall compile an updated inventory of all real property in ORDA's possession, as well as all real property that ORDA rents, leases, manages or otherwise controls. The report shall include a list and full description of all real and personal property disposed of during the preceding year, the price received by ORDA for each item of real or personal property disposed of, and the name of the purchaser of all such property sold by ORDA during such period.

2. Such report shall be published on the ORDA website and copies of the report shall also be delivered to the Comptroller, the Director of the Budget, the Commissioner of General Services, the legislature, and the Authorities Budget Office.

VIII. SALES BY THE COMMISSIONER OF GENERAL SERVICES

When it shall be deemed advantageous to the State, as recommended by the Contracting Officer and approved by the President & CEO, ORDA may enter into an agreement with the Commissioner of General Services where under such agreement the Commissioner may dispose of ORDA property under terms and conditions acceptable to ORDA and the Commissioner of General Services. In disposing of any such property of ORDA's, the Commissioner of General Services shall be bound by the terms of Public Authorities Law § 2897 and references to the contracting officer shall be deemed to refer to the Commissioner of General Services.

EXHIBIT A

Property Disposition Summary and Checklist

1. First Steps

- A. All Venue Managers must create and maintain an inventory of all personal property at the venue they manage:
- Annually document additions to and deletions from the inventory.
 - Deletions must identify the date and process for disposal.
- B. By June 1 of each year:
- Venue managers must send the Contracting Officer the updated inventory of all personal property at the venue.
 - Include a list of any personal property recommended for disposal:
 - Document the Following Criteria: the property has not been used in the prior fiscal year, isn't expected to be used in the coming fiscal year, and isn't in ORDA's interest to keep.
 - Can another venue use the property?
 - If so, document the transfer of the property to another venue.
 - If not, document the effort made to reach this decision (email, phone call, date, response, other relevant information).

2. Mandatory steps for property recommended for disposal:

- A. Identify and document the fair market value of the property.
- B. If fair market value can't be determined, get the Contracting Officer's approval for an appraisal.
- C. Identify and document the date ORDA acquired the property and how it was acquired, particularly the source of funding and whether any federal funding was used:
- If federal funding was used to purchase the property for ORDA, Venue Managers must work with the Contracting Officer to obtain the funding documentation to identify any limits or conditions on the disposal of the property that may have accompanied the federal monies.
 - Did the property come from the Town of North Elba?
 - If so, the Contracting Officer must contact the Town to identify the property, get written permission for disposal, and written agreement about who will retain any monies that may be generated.
 - Did the property come from DEC?
 - If so, work with Counsel's office to determine compliance with applicable ORDA-DEC MOU.

- D. Identify and document any unique, artistic, historic significance of the property, any market limitations affecting options for disposal through a competitive bid, or any limit on the ability to determine fair market value.
- E. Identify the usable life of the property and state whether any parts can be considered for sale or recycling.
- F. Provide the Contracting Officer with any other information relevant to decisions about disposal.

3. Disposal Process

A. Competitive bidding is the preferred method.

- Publish an ad for public bidding – use ORDA website.
- Based on a fair market value evaluation, set a base price for bids (may or may not be disclosed to bidders depending on the circumstances; get approval from the Contracting Officer).
- Give a “reasonable time” for responses; use terms and conditions to allow full and free competition.
- The ad must state the length of time the bid process will be open, and the time and place that bids will be publicly disclosed.
- Get at least three written bids unless not practical to do so.
- Work with the Contracting Officer and the Office of General Counsel to decide whether to make an award or reject all bids as not being in the public interest.
 - If bids don't meet or exceed fair market or appraised value, they must be rejected as not in the public interest.
- Give winning bidder written notice of award in a letter from the Contracting Officer;
 - award should be made from the Contracting Officer to the responsible bidder who bid, conforming to the invitation for bids, will be most advantageous to ORDA, price and other factors considered.

B. Alternatives to public bidding: negotiation or public auction

- Only allowable when:
 - The fair market or appraised value is under \$15,000.00; OR
 - Bids after advertising are not reasonable; OR
 - The property has unique qualities; OR
 - An estimated fair market value can be negotiated.
- Venue Managers may negotiate for the sale of property with a value over \$15,000.00 only if:
 - They first prepare an explanatory statement (see below) approved by the President & CEO; OR
 - The quantity of the property is such that there is a State or local market that would be adversely affected if the property were disposed of through a

competitive bid process. Get Contracting Officer's approval; document and follow policy process. OR

- The property is going to a State or local government.
Get Contracting Officer's approval; document and follow policy process.

C. Explanatory Statement Process

- Must be sent to all of the following at least 90 days before the date of disposal, with a copy to ORDA's Finance Office:
 - The State Comptroller;
 - The Director of the Budget;
 - The Commissioner of General Services; and
 - The legislature.
- The statement must include the following information:
 - The estimated fair market or appraised value of the property;
 - Justification for disposing of property by negotiation rather than by competitive bid;
 - Whether disposal will be through sale or exchange;
 - Description of parties involved in the transaction;
 - Criteria used to select the party with whom the negotiated sale or exchange will occur;
 - Details identification of property, including its location;
 - Proposed sale price or exchange value of the property; and
 - Expected date of sale or exchange of the property.

D. Disposal of property for less than fair market value

- May only be done with the Contracting Officer's approval and only if:
 - The Venue Manager explains in writing that the transfer is within ORDA's purpose, mission, and governing statute;
 - The transferee is a government or other public entity, and the terms and conditions of the documented transfer require that the public entity will retain ownership of the property;
 - If the Venue Manager cannot document the first two criteria above, ORDA must give written notice to the governor, the speaker of the assembly, and the temporary president of the Senate, each of whom could deny the property transfer.
- Requires the following reporting, including to the ORDA Board of Directors
 - A full description of the property
 - An appraisal of the property fair market value and any other information establishing that value, as may be requested by the Board;

- A description of the purpose of the transfer, and a reasonable statement of the kind and amount of benefit to the public that will result from the transfer including:
 - The kind of property
 - The number of items
 - Location
 - Wages or salaries created or preserved as a result
 - Any benefits to the community where the property is located
- Documentation of the value to be received compared to the fair market value.
- The names of any private parties involved in the transfer, and a statement of the value of the property to that party.
- The names of any other private parties who made any offers for the property, the value offered, and the purpose the party wanted the property for.
- Considering all of this information, the ORDA Board must make a written determination that there is no reasonable alternative to the proposed below-market transfer, that would achieve the same purpose.

E. Documentation and Reporting

- All documentation and reporting must comply with the requirements of the Property Disposition Policy including annual reporting to ORDA's website of the ORDA inventory and all personal property disposed of during the preceding year (including the prices received and the names of purchasers).
- This report must also be delivered to the Comptroller, the Director of the Budget, the Commissioner of General Services, the legislature, and the ORDA Finance Office.
- **All Venue Managers must timely provide the Contracting Officer with the inventory and property disposition information that will be required for this annual reporting.**

**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/>.

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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.

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How is the employee or applicant protected?

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

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

Exceptions.

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

FAMILIAL STATUS

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

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

⁵⁸ Human Rights Law § 296.19(a)(1).

⁵⁹ Human Rights Law § 296.19(a)(2).

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

⁶¹ Human Rights Law § 296.19(b).

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Statutory protection.

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

Familial status does not include the identity of the children.

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

Nepotism.

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

What is familial status discrimination?

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

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

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

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No requirement of reasonable accommodation.

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

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

Pregnancy and childbirth discrimination.

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

MARITAL STATUS

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

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

Statutory protection.

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

Marital status does not include the identity of the spouse.

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

⁶³ Human Rights Law §296.3

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Nepotism.

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

What is marital status discrimination?

Some examples of marital status discrimination are:

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

STATUS AS A VICTIM OF DOMESTIC VIOLENCE

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

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

⁶⁵ N.Y. Social Service Law §459-a.

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Statutory protection.

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

Executive Order concerning State workers.

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

Purpose of domestic violence and the workplace policies.

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

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

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

Meeting the needs of domestic violence victims.

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

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

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

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

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

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

Human Rights Law reasonable accommodation requirements for leave time.

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

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

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Time off for legal proceedings.

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

Unemployment insurance benefits.

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

Further information and support.

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

PREGNANCY, CHILDBIRTH AND FAMILY LEAVE

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

Statutory protection.

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

⁶⁷ N.Y. Penal Law § 215.14.

⁶⁸ N.Y. Labor Law § 593.

⁶⁹ Human Rights Law § 296.3(a).

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

Pregnancy discrimination.

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

Reasonable accommodation of pregnancy-related conditions.

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

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

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

Right to express breast milk in the workplace.

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

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

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

⁷¹ Human Rights Law § 292.21-f.

⁷² Human Rights Law § 296.3.

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

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

Parental leave.

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

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

Paid Family Leave.

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

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

⁷³ 29 U.S.C. § 2601 et seq.

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

PRIOR ARREST RECORDS, YOUTHFUL OFFENDER ADJUDICATIONS AND SEALED CONVICTION RECORDS

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

Statutory protection.

This protection is provided by Human Rights Law § 296.16.

What is unlawful?

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

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

Pending arrest or charges.

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

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

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

What specific circumstances are protected?

The arrest or criminal accusation must have been:

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

Sealed records.

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

Exceptions.

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

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

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

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

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

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

PREVIOUS CONVICTION RECORDS

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

Statutory protection.

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

Factors from the Correction Law.

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

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

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

⁷⁷ N.Y. Correction Law § 752.

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

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

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

Conviction must be “previous.”

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

Inquiries and misrepresentation.

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

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

⁷⁸ N.Y. Correction Law § 753.1.

⁷⁹ N.Y. Correction Law § 753.2.

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

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Interaction with the arrest provisions.

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

Enforcement only by court action.

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

Exceptions.

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

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

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

HARASSMENT PROHIBITED

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

⁸¹ Human Rights Law § 296.16.

⁸² N.Y. Correction Law § 755.1.

⁸³ N.Y. Correction Law § 750.5.

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

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

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

Appropriate supervision is not harassment.

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

Harassment by a non-employee.

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

Harassment of non-employees.

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

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

⁸⁴ Human Rights Law § 296.1(h).

⁸⁵ Human Rights Law § 296.1(h).

RETALIATION

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

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

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

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

Administrative or court proceedings.

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

Opposing discriminatory practices.

Opposing discriminatory practices includes:

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

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

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

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

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

REPORTING DISCRIMINATION IN THE WORKPLACE

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

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

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

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Antidiscrimination@goer.ny.gov

or

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

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

Confidentiality and cooperation.

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

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

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

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

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

Discrimination must be investigated and appropriate corrective action taken.

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

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

PURSUING DISCRIMINATION COMPLAINTS EXTERNALLY

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

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

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

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

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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.