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	Section: OM-225			
	Directive: Domestic and Gender-Based Violence and the Workplace			
	Policy Owner:			

## **Domestic and Gender-Based Violence and the Workplace Policy**

### **I. POLICY STATEMENT**

Domestic violence and other forms of gender-based violence permeate the lives and harm thousands of New Yorkers each day, with tragic, destructive, and often fatal results. The impacts of such violence are felt in the workplace, regardless of where the incidents are taking place, and have the potential to compromise the safety of victims, co-workers, and clients, while resulting in lost productivity, increased health care costs, absenteeism, and employee turnover. Employers have both a moral and legal obligation to their employees who may be experiencing victimization.

New York State law recognizes that domestic and gender-based violence occurs within a wide spectrum of relationships, therefore the New York State Office of Mental Health (OMH) will take every appropriate measure to prevent and/or address domestic and gender-based violence as it impacts the workplace, while also recognizing the rights of victims to have self-determination and the need to respond in a survivor-centered, trauma-informed, and culturally responsive manner. All valid orders of protection shall be enforced by the OMH, and all protections of this policy shall apply. This policy shall apply to all victims of gender-based violence, regardless of where the incidents took place.

The OMH, to the fullest extent possible, without violating any existing rules, regulations, statutory requirements, contractual obligations, or collective bargaining agreements, designates and directs appropriate management, supervisory, and/or human resources staff to implement the following Gender-Based Violence and the Workplace Policy covering the following areas:

- 1) Agency Responsibilities;
- 2) Definitions;
- 3) Persons Covered by the Policy;
- 4) Non-discrimination and Responsive Personnel Policies for Employees Who are Victims of dDmestic and Gender-based Violence;
- 5) Non-Retaliation Policy;
- 6) Workplace Safety Plans;
- 7) Accountability for Employees Who Perpetrate Domestic or Gender-based Violence;
- 8) Training;
- 9) Data Collection and Reporting; and,
- 10) Violations of Policy.

### **II. RELEVANT STATUTES, STANDARDS, AND REFERENCES**

New York State Social Service Law § 459-a

Executive Law § 296(22), 292 (34)

Penal Law § 215.14

Labor Law § 196-b(4).

New York State Human Rights Law § 296.1, Human Rights Law § 296-c (for interns), and Human Rights Law § 296-d (for non-employees working in the workplace), and Title VII, the Federal Civil Rights Act of 1964.

NYS Labor Law § 593(1)(b)(i)

NYS Insurance Law § 2612

### III. DEFINITIONS

For the purposes of this policy, the following terms will be defined as follows:

- 1) **Domestic Violence:** A pattern of coercive behavior, including acts or threatened acts, that is used by a perpetrator to gain power and control over a victim, as defined in New York State Social Service Law § 459-a, including, but not limited to physical, sexual, psychological, economic, and/or emotional abuse; or the threat of any/all of the aforementioned acts.
- 2) **Domestic Violence Agency Liaison (DVAL):** A designated employee(s) of the agency who has been trained by the Office for the Prevention of Domestic Violence (OPDV) to assist victimized employees; who ensures Agency compliance with the Gender-Based Violence and the Workplace Policy; and who serves as the primary contact for OPDV.
- 3) **Gender-Based Violence:** Violence or threats that happen because of someone's sex, gender, sexual orientation, gender identity or expression, or other related characteristics. Gender-based violence is an umbrella term that includes domestic violence, sex-based discrimination, sexual harassment, sexual assault, and sexual violence, and can also include stalking or human trafficking.
- 4) **Order of Protection (OP) (Commonly referred to as "Restraining Order" or "Stay-Away Order"):** An order issued by any court to limit the behavior of someone who harms or threatens to harm another person. Orders of protection may direct the offending party not to injure, threaten, or harass the victim, their family, or any other person(s) listed in the order and may include, but are not limited to ordering him/her/them to stay away from the home, school, business, or place of employment of the victim; vacate a shared residence; abide by any active orders of custody and visitation; and surrender any firearms.
- 5) **Perpetrator or abusive partner or person who causes harm:** A person who commits or threatens to commit coercive or violence acts, which may include, but is not limited to, physical, psychological, sexual, economic, and/or emotional abuse against a victim.
- 6) **Sexual Harassment:** Consistent with the New York State Human Rights Law, unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:
  - a. 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;

- b. Such conduct is made either explicitly or implicitly a term or condition of employment; or
- c. Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

7) **Victim of domestic violence (New York State Social Services Law § 459-a):**

- a. 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, or 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.
- b. "Family or household members" mean the following individuals:
  - i. persons related by consanguinity or affinity (blood or a person's relation to blood relatives of their spouse);
  - ii. persons legally married to one another;
  - iii. persons formerly married to one another regardless of whether they still reside in the same household;
  - iv. persons who have a child in common regardless of whether such persons are married or have married or have lived together at any time;
  - v. unrelated persons who are continually or at regular intervals living in the same household or who in the past continually or at regular intervals lived in the same household;
  - vi. persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an "intimate relationship" include, but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship"; or
  - vii. any other category of individuals deemed to be a victim of domestic violence as defined by the Office of Children and Family Services in regulation.
- c. "Parent" means a natural or adoptive parent or any individual lawfully charged with a minor child's care or custody.

- 8) **Workplace:** For the purposes of this policy, any permanent or temporary location away from an employee's domicile where an employee performs any work-related duty in the course of employment.

#### **IV. PERSONS COVERED BY THIS POLICY**

This policy shall extend to all full, part-time, and temporary employees, volunteers, and interns engaged by the OMH in any official workplace capacity. Whenever possible, this policy shall be extended to consultants, contractors, and other on-site providers.

#### **V. STATEMENT OF CONFIDENTIALITY**

The OMH recognizes and respects the employee's right to privacy and confidentiality. All information, including employee disclosures about victimization, shall be kept confidential to the extent permitted by law and agency policy without the employee's written informed consent, unless doing so creates a substantial risk of imminent danger to the victimized employee, other employees, or worksite. Should that circumstance occur, the victimized employee will be given notice of what actions will be taken by the OMH and information will be given to only those employees deemed necessary for securing the safety of the victim, other employees, or worksite. The information given to those employees will be as limited in scope as possible and employees may be required to sign an acknowledgement of confidentiality stating that any information they have been given regarding the victimized employee must be used only for the intended purpose.

#### **VI. AGENCY RESPONSIBILITIES**

##### **a. Agency:**

1. The OMH shall designate at least one employee as their Domestic Violence and Gender-Based Violence Agency Liaison (DVAL) in the Central Office. Where possible, the liaison shall be an employee with advocacy, social work, or counseling experience. Employees who work as Employee Assistance Program (EAP) Coordinators shall not be designated as the DVAL. Each psychiatric center will also designate a DVAL for each site.
2. The current contact information for all DVALs and their supervisors must be communicated to OPDV by emailing [workplace@opdv.ny.gov](mailto:workplace@opdv.ny.gov). Any updates to this information shall be provided within two weeks.
3. Employee Awareness:
  - A. The OMH will increase awareness around domestic and gender-based violence and create an informed workforce regarding available sources of assistance for those experiencing domestic or gender-based violence.
  - B. The OMH will increase awareness around possible administrative action that may occur in the event of retaliation or used with employees who perpetrate acts of domestic or gender-based violence.
  - C. The OMH shall include this policy as part of the written materials that are provided to all new employees and shall provide the policy to all employees on an annual basis.
  - D. A detailed explanation of employee's rights under this policy shall be given during new employee orientation, including information for contacting the DVAL.
  - E. If the OMH suspects that an employee is a victim of domestic and gender-based violence but the employee has not disclosed victimization, the OMH shall refer the employee to:
    - i. the DVAL;
    - ii. EAP;

- iii. The NYS Domestic and Sexual Violence Hotline (1-800-942-6906), Chat and Text Line (1-844-997-2121); and
  - iv. any local programs serving victims of domestic and sexual violence.
- F. The OMH shall post information on domestic and gender-based violence as outlined below, this Policy, and any additional available resources at the OMH workplace. This information shall be posted in such places where employees are able to utilize the information without having to request it or be seen removing it. It will include such places: OMH Hub intranet, OMH employee newsletters or announcements, and bulletin boards. Information must include sources of assistance, contact information for the DVAL(s), Employee Assistance Program information, Human resources staff, the NYS Domestic and Sexual Violence Hotline Number (1-800-942-6906), Chat and Text Line (1-844-997-2121), and contact information for local domestic violence programs.
- G. Referrals must be offered to anyone who discloses they are a victim of domestic or gender-based violence, as follows to:
  - i. the DVAL;
  - ii. EAP;
  - iii. The NYS Domestic and Sexual Violence Hotline (1-800-942-6906), Chat and Text Line (1-844-997-2121); and
  - iv. any local programs serving victims of domestic and sexual violence.
- H. Additional referrals shall be made to the appropriate resources to best meet the employee's needs.
- I. The OMH shall consider conducting programs and activities throughout the year to increase awareness about domestic and gender-based violence such as:
  - i. Supply drives for local domestic and gender-based violence programs;
  - ii. Brown bag lunch discussions; and/or
  - iii. Presentations by local domestic and gender-based violence programs, the DVALs, or OPDV.

**b. Domestic Violence Agency Liaisons (DVALs):**

The liaisons' responsibilities include:

1. Ensure agency-wide implementation of, and compliance with, this Gender-Based Violence and the Workplace policy
2. Ensure victimized employees are aware of and understand this policy and their rights.
3. Upon notification that an employee is a victim of domestic or gender-based violence, the DVAL must provide the employee with confidential support services, including referrals to:
  - i. EAP;
  - ii. The NYS Domestic and Sexual Violence Hotline (1-800-942-6906), Chat and Text Line (1-844-997-2121); and
  - iii. any local programs serving victims of domestic and sexual violence.
4. Ensure that the victimized employee is informed of all possible options available to them, such as the use of alternative scheduling or a change in work location

and assisting the employee in identifying the best use of attendance and leave benefits.

5. Ensure that the victimized employee is aware of and receiving any necessary accommodations as outlined in section VII of this policy.
6. Ensure that all employees receive a copy of this policy annually, and regularly receive information about how to contact the DVALs and what supportive services are offered by the agency.
7. Conduct basic workplace safety strategizing with victimized employees.
8. Serve as the primary contact for OPDV, including reporting bi-annual data.

**c. Human Resources:**

1. Human Resources staff shall ensure that the OMH establishes a workplace culture that is safe and supportive for anyone who has experienced domestic or gender-based violence by communicating that information and resources are available to victims and that abusive behavior by any employee will not be tolerated.
2. Human Resources staff shall ensure that all employees who are required to attend training from OPDV pursuant to the policy complete the required training.
3. Human Resources staff shall ensure that employees shall receive a copy of this policy upon hire as well announcing it annually. This shall also include information about how to contact the DVALs and what supportive services are offered by the agency.
4. Human Resources staff shall ensure that any employee who discloses being a victim of domestic or gender-based violence is aware of and receiving any necessary accommodations and shall consult with the OMH leadership and Counsel, and OPDV Counsel as appropriate, to address complex cases.
5. Human Resources staff shall assist supervisors and the OMH to ensure that all employees who violate this policy are held accountable.

**d. Supervisors:**

1. Supervisors shall ensure that any employee who discloses being a victim of domestic or gender-based violence is aware of this policy and understands this policy and their rights, including the right to request accommodations or time off as discussed below.
2. If any employee discloses being a victim of domestic or gender-based violence, or if the supervisor suspects that the employee may be a victim of domestic or gender-based violence, the Supervisor must refer the employee to:
  - i. The agency DVAL,
  - ii. EAP,
  - iii. The NYS Domestic and Sexual Violence Hotline (or the statewide hotline for workplace sexual harassment, as may be appropriate), and
  - iv. any local programs serving victims of domestic and sexual violence.
3. There is no mandatory reporting of domestic or gender-based violence, unless it may constitute sexual harassment as defined on page 3.

**VII. NON-DISCRIMINATION AND REponsive PERSONNEL POLICIES**



Under the New York State Human Rights Law, all persons covered by this policy are protected from discrimination in the workplace on the basis of status as a victim of domestic violence, and on the basis of sex, sexual orientation, gender identity, and gender expression.

- a. Subdivision 34 of section 292 of the Executive Law of New York State establishes persons who qualify as a "victim of domestic violence."
- b. Victims of domestic violence are a protected class under New York State Human Rights Law (Executive Law § 296(22)).
  1. Employers may not refuse to hire or license and may not terminate someone solely based on their status as a victim of domestic violence.
  2. Employers may not discriminate against victims of domestic violence in compensation, terms, conditions, or privileges of employment.
  3. Employers must prohibit inquiries about an applicant's status as a current or past victim of domestic violence and may not make any employment decisions based on assumptions or actual knowledge about someone's status as a current or past victim of domestic violence. Employers may inquire about status as a victim of domestic violence in order to provide reasonable accommodations.
- c. OMH must allow any employee who has disclosed their status as a victim of domestic or gender-based violence (or disclosed that a family member is a victim of domestic or gender-based violence) and must be out of work for a reasonable time to use accrued sick leave<sup>1</sup> for the following purposes:
  1. to obtain services from a domestic violence shelter, rape crisis center, or other services program;
  2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members;
  3. to meet with an attorney or other social services provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding;
  4. to file a complaint or domestic incident report with law enforcement;
  5. to meet with a district attorney's office;
  6. to enroll children in a new school;
  7. to address issues relating to technology or financial abuse; or
  8. to take any other actions necessary to ensure the health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.
- d. Employees can choose to use appropriate leave accruals to cover any absences, if available. If the employee does not have adequate leave accruals to cover the absence or chooses not to charge leave accruals, the absence shall be treated as leave without pay.
- e. Any employee who must be absent from work to utilize accommodations in this section is entitled to the continuation of any health insurance coverage provided by the employer to which the employee is otherwise entitled during any such absence, in accordance with any existing collective bargaining agreements, regulations, and agency policy.
- f. Employees who must be absent to utilize accommodations as listed in this section shall provide their employer with reasonable advanced notice of the absence whenever possible.
- g. OMH is also required to grant time off, with prior day notification, and may not penalize any employee who, as a victim or witness of a criminal offense, is appearing as a witness; consulting with a district attorney; or exercising their rights as provided by law.<sup>2</sup>

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<sup>1</sup> Labor Law § 196-b(4).

<sup>2</sup> Penal Law § 215.14.

Employees can choose to use appropriate leave accruals to cover any absences, if available. If the employee does not have adequate leave accruals to cover the absence or chooses not to charge leave accruals, the absence shall be treated as leave without pay. Any questions regarding leave that must be granted to victims or subpoenaed witnesses should be directed to the OMH Human Resource office.

- h. OMH is aware that there may be occurrences when an employee is absent due to incidents of domestic or gender-based violence where they are unable to follow agency protocol to report the absence. In that situation, the employee may lack documentation, may be unable to obtain documentation or may not want to share documentation containing confidential information. In such instances, employees who have disclosed their status as a victim of domestic or gender-based violence are encouraged to reach out to OMH Human Resources Office for compliance with time and attendance rules and contractual requirements. OMH may not require the disclosure of confidential information relating to an absence from work due to domestic violence, a sexual offense, stalking, or human trafficking, as a condition of providing sick leave.
- i. Employees who are victims of domestic violence or gender-based violence who separate from a covered family member due to an incident or incidents of domestic or gender-based violence shall be allowed to make reasonable changes in benefits at any time during the calendar year, where possible and in accordance with statute, regulation, contract, and policy related to specific benefits.
- j. The OMH recognizes that victims of domestic and gender-based violence may experience temporary work performance difficulties or be unable to complete certain job aspects because of safety reasons. (Examples include overnight travel, "off" hour shifts, etc.) If it is found that the employee's work performance is being affected as a result of being a victim of domestic or gender-based violence, the OMH will work with the employee to try to create a satisfactory resolution, including, but not limited to, specific work plans, the ability to take leave, provision of reasonable accommodations, referrals to the DVAL, EAP, and/or the local domestic violence service provider. OPDV is available for case specific technical assistance as needed. Employees will be given clear information of performance expectations, priorities, and performance evaluations. Employees should be made aware that not all employees requests for resolutions can be accommodated. If administrative action is initiated, special care should be taken to consider all aspects of the victimized employee's situation, and all available options in trying to resolve the performance problems should be exhausted, including making a referral to the DVAL, EAP, domestic violence program or other relevant services, consistent with existing collective bargaining unit agreements, statute, regulations, and agency policy.
- k. If all reasonable measures have been exhausted to resolve related performance problems of employees who are victims of domestic or gender-based violence, but the performance problems persist and the employee is terminated or voluntarily separates from employment, the employee shall be informed of their potential eligibility for unemployment insurance and the OMH shall respond quickly to any requests for information that may be needed in the claims process. New York State law provides that a victim of domestic violence who voluntarily separates from employment may, under certain circumstances, be eligible for unemployment insurance benefits.<sup>3</sup>
- l. New York State law prohibits insurance companies and health maintenance organizations from discriminating against domestic violence victims by prohibiting status as a domestic violence victim to be considered a "pre-existing condition." Insurance

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<sup>3</sup> NYS Labor Law § 593(1)(b)(i)



- companies may not deny or cancel an insurance policy or require a higher premium or payment because the insured party is a current or former victim of domestic violence.<sup>4</sup>
- m. Sex, sexual orientation, gender identity, and gender expression are all protected classes under the New York State Human Rights Law. Sexual harassment is a form of sex discrimination and is unlawful under the New York State Human Rights Law § 296.1, Human Rights Law § 296-c (for interns), and Human Rights Law § 296-d (for non-employees working in the workplace), and Title VII, the Federal Civil Rights Act of 1964. Sexual harassment includes harassment based on sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender (see page 2-3 for definition of sexual harassment). Gender-based violence may constitute sexual harassment when it subjects an individual to inferior terms, conditions, or privileges of employment.

OMH has adopted the New York State's anti-discrimination policy and prevention as set forth in in the [Equal Employment Opportunity in NYS Rights and Responsibilities A Handbook for Employees in NYS Agencies](#). Employees who have any questions on what constitutes protected class discrimination can obtain information related to unlawful discriminatory practices in this handbook. All complaints of protected class employment discrimination, including sexual harassment, will be investigated by the Office of Employee Relations (OER) Anti-Discrimination Investigations Division (ADID). For more information to file a complaint, please see the OMH Hub for the complaint form and process.

<https://nysemail.sharepoint.com/sites/OMHIntranet/omhhub/humanres/Pages/discrimination-sexualharassment.aspx>

- n. For all forms of discrimination and harassment, if an employee, including an intern or contractor working in a State workplace, experiences sexual harassment or discrimination on the basis of their status as a victim of domestic or other gender-based violence, or observes discrimination in the workplace, the employee may file a complaint to OER via the New York State Employee Discrimination Complaint form located on the OMH HUB or at [www.oer.ny.gov](http://www.oer.ny.gov),
1. Any complaint of potential discrimination, whether verbal or written, must be investigated. 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. OMH shall maintain the confidentiality of the complainant to the extent practical.

## **VIII. NON-RETALIATION POLICY**

The OMH shall not engage in any retaliatory practices against any employee that discloses they are a victim of domestic or gender-based violence, or any employee seeking accommodations or to exercise their rights under this policy.

The OMH will not retaliate, tolerate retaliation by any superiors, terminate, or discipline any employees for reporting information about alleged incidents of domestic violence that may have been committed by an employee, including those in management positions.

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<sup>4</sup> NYS Insurance Law § 2612



Retaliatory practices may include, but are not limited to, fewer promotions, inappropriate jokes, snide comments, excluding employee from conversations, etc., and may be carried out by everyone, not just the original perpetrator. Retaliation includes commencing discipline against victimized employees for actions taken to promote their safety.

Any employee or agency engaging in retaliatory practices may be subject to disciplinary actions. If you believe you have been subject to retaliatory practices, please see Section XIV: Violations of Policy.

## **IX. WORKPLACE SAFETY PLANS**

The OMH shall have workplace safety response plans in place, including procedures for reporting to supervisors or contacting law enforcement, if necessary, should an event take place in the workplace. (See the OMH Workplace Violence Prevention Policy and Guidelines)

- a. <https://nysemail.sharepoint.com/sites/OMHIntranet/omhhub/humanres/health/Pages/wvp.aspx> The OMH shall comply and assist with enforcement of all known Orders of Protection (OP).
  1. If requested by the victim, or by law enforcement, the OMH will provide any relevant information regarding an alleged order of protection violation.
- b. Employees are encouraged to disclose any active orders of protection to the DVAL or designated human resources staff member at their work site. Copies of orders of protection will be maintained in a locked, confidential location, separately from the employee's personnel file. In the event of an emergency or that the OP needs to be presented to law enforcement, the liaison, other designated human resources staff member, director of human resources, or a member of executive staff shall retrieve and present the order. Employees should be made aware that they are responsible for notifying the liaison in the event of a relevant modification or revocation of the OP.
- c. When requested by the victim, the DVAL and/or Human Resources staff will work with the employee to develop a plan to how best increase safety for the victim, other employees, and the workplace. Options may include, but are not limited to:
  1. Providing the Chief of Safety and Security at the facility or front desk security with a copy of the Order of Protection with a photo of the perpetrator;
  2. Blocking the perpetrator from being entered into the OMH facility or Central Office Visitor Management System (VMS);
  3. Protocols for reporting to law enforcement (e.g. having OMH safety or security desk staff immediately contact local law enforcement if an Order of Protection is violated).;
  4. Allowing the employee to work staggered hours, an "off shift", or move to a different work location, either temporarily or permanently;
  5. Temporary reassignment of certain duties, such as overnight travel; or adjusting these duties in light of the specific circumstances;
  6. Reassignment of parking space;
  7. Providing employees an escort for entry and exit from the worksite, which may take many forms from entering and leaving with a colleague or colleagues to have to having a security escort, if protocols permit and the victim approves such a visible arrangement;
  8. Allowing security to escort perpetrator out of the building and off the worksite premises and/or contact local law enforcement to escort the person out depending on protocols and training level of security staff;

9. Working with the employee to address any identified concerns about the use of technology;
  10. Assigning a new email account or phone number if the perpetrator has been able to access the existing accounts;
  11. Creating a personalized safety plan in consultation with the local domestic or sexual violence program;
  12. Allowing the employee to work from an alternate work station until further action is taken, if the employee works directly with the perpetrator; or
  13. If an Order of Protection is in place and has been violated (i.e. by perpetrator showing up at workplace of victim), requiring security to report the violation to law enforcement.
- d. If the circumstances indicate a need for the OMH to take steps to increase safety for the victim, other employees, and the workplace, OMH should follow their Workplace Violence Policy.

#### **X. ACCOUNTABILITY FOR EMPLOYEES WHO PERPETRATE ACTS OF DOMESTIC OR GENDER-BASED VIOLENCE**

OMH will hold accountable any employee who is found to have engaged in behaviors including but not limited to:

- a. Used state resources, including time, to commit an act of domestic or gender-based violence;
- b. Committed an act of domestic or gender-based violence from or at the workplace, or from any location conducting state business, except for locations where employees are telecommuting; or
- c. Used their job-related authority and/or state resources in order to negatively affect victims of domestic or gender-based violence and/or assisted perpetrators in locating a victim and/or in perpetrating an act of domestic or gender-based violence.

Acts of domestic or gender-based violence that occur outside of the workplace can subject a person to administrative and/or disciplinary action.

If the OMH has found that an employee has committed any act of gender-based violence, including making threats or harassment at or from the workplace using any state resources such as work time, state owned telephones or cell phones, e-mail, or by any other means, the Supervisor, in conjunction with Human Resources and Labor Relations, shall take any and all steps necessary to hold the employee accountable through administrative and/or disciplinary action in accordance with existing collective bargaining agreements, applicable statutes and/or regulations. This should include referrals to Accountability Programs for Person who Cause Harm.

Administrative actions may include, but are not limited to:

- a. Administrative leave;
- b. Cease and desist memo;
- c. Removing/modifying chain of supervision pending an official report;
- d. Relocation of employee alleged to abuse to another work site;
- e. Surrender of work cell phone, laptop, etc.;
- f. Revocation of permanent employment status (reverting to contingent or probationary status);
- g. Mandated participation in an Accountability Programs for Person who Cause Harm;



- h. Notice of Discipline; or
- i. Termination.

The OMH shall determine if corrective action or disciplinary action is warranted, in accordance with existing collective bargaining agreements, relevant statutes, and regulation if the OMH has received verification that an employee is responsible for any gender-based violence related offense, or is the respondent on any order of protection, including temporary, final, and/or out of state orders because of a gender-based violence related offense, and said employee has any job functions that include:

- a. the authority to take actions that directly impact victims of gender-based violence domestic violence; and/or
- b. actions which may protect perpetrators from appropriate consequences for their behavior.

Any employee who intentionally uses the authority of their employment and/or misuses any state resources in order to:

- a. negatively impact any victim of gender-based violence;
- b. assist a perpetrator in locating a victim;
- c. assist a perpetrator in perpetrating any act of gender-based violence; or
- d. protect a perpetrator from receiving appropriate consequences

shall be subject to corrective or disciplinary action, in accordance with existing collective bargaining agreements; applicable statutes, and regulations.

Any employee who would like to report information about an alleged act of gender-based violence committed by an employee may do so by contacting the director of human resources, the Anti-Discrimination Investigations Division at the NYS Office for Employee Relations (<https://antidiscrimination.oer.ny.gov/>) or the NYS Inspector General's Office by calling the toll-free hotline at 1-800-367-4448 where trained staff will discuss the specifics of your complaint.

## **XI. TRAINING**

### **a. Domestic Violence Agency Liaisons (DVALs):**

- 1. DVALs shall complete a Domestic and Gender-Based Violence and the Workplace training provided by OPDV.
- 2. DVALs shall complete an initial one-day training provided by OPDV.
- 3. DVALs shall attend quarterly meetings hosted by OPDV, which will provide ongoing training and technical assistance to them.
- 4. Appropriate managers, supervisors, Employee Assistance Program staff, human resources personnel, union and labor representatives, and security staff may also attend the OPDV DVAL one-day or quarterly trainings.

**b. Employee Assistance Program (EAP) Staff:** All employees who function as EAP coordinators must participate in annual training provided by OPDV on Gender-Based Violence and the Workplace training.

**c. Human Resources:** All employees who are employed in human resources positions must participate in two annual trainings provided by OPDV:

- 1. Gender-Based Violence and the Workplace training; and
- 2. Gender-Based Violence Workplace Safety Planning training.

- d. **Supervisors:** All employees who are supervisors must participate in an annual Gender-Based Violence and the Workplace training provided by OPDV.
- e. **All employees:** The OMH shall consider requiring all employees to attend an annual Domestic and Gender-Based Violence and the Workplace training provided by OPDV. OPDV will provide ongoing training opportunities and technical assistance about domestic and gender-based violence and its impact on the workplace to all agencies. Training will be offered to all employees on a regular basis. To request specific training from OPDV, please send an email to [workplace@opdv.ny.gov](mailto:workplace@opdv.ny.gov).

## **XII. DATA COLLECTION AND REPORTING TO OPDV**

Information regarding employees who are a victim of domestic or gender-based violence, as well as those who are disciplined for violating this policy, shall be maintained by the DVALs and reported to OPDV by DVAL with data from the Director of Human Resources on a bi-annual basis, and at any time, upon request from OPDV. Reporting to OPDV shall be done in aggregate form without any personally identifying information. Data from January through June will be due no later than July 30, and data from July through December will be due no later than January 30.

The following information shall be collected:

- a. All incidents of gender-based violence that take place at a workplace, or while the employee is on agency time, shall be documented to the best of the agency's ability, consistent with applicable law and agency policy, categorized by domestic violence and sexual violence;
- b. The general nature of the incidents that occurred in the workplace;
- c. The number of employees who report being a victim of current or past domestic violence;
- d. The number of employees who make contact with the liaison with concerns that a co-worker is experiencing domestic violence or gender-based violence;
- e. The number of employees who are referred for discipline as a result of violating section IX of this policy;
- f. The number of employees who contact the DVALs to request information on domestic violence services;
- g. The number of referrals made to domestic violence service providers, employee assistance programs (EAP), or other applicable services; and,
- h. The number of orders of protection that are reported to the agency.

## **XIII. VIOLATIONS OF POLICY**

Any employee who would like to report any alleged violations of this policy may do so by contacting OPDV, OMH Director of Human Resources Management, or the NYS Inspector General's Office by calling the toll-free hotline at 1-800-367-4448 where trained staff will discuss the specifics of your complaint.

For complaints of workplace discrimination, an employee may contact the Anti-Discrimination Investigations Division at the NYS Office for Employee Relations (<https://antidiscrimination.oer.ny.gov/>).