

 <p>NEW YORK STATE Corrections and Community Supervision</p> <p>DIRECTIVE</p>	TITLE		NO. 2003
	Domestic Violence and the Workplace Policy		DATE 07/29/2019
SUPERSEDES DIR #2003 Dtd. 03/09/18	DISTRIBUTION A	PAGES PAGE 1 OF 8	DATE LAST REVISED
REFERENCES (Include but are not limited to) Governor's Exec. Order #19; Insurance Law §2612; Penal Law §215.14; Criminal Procedure Law; Family Court Act; Executive Law; NYS Labor Law §593; NYS Human Rights Law; Directive #2020, #2112	APPROVING AUTHORITY 		

I. BACKGROUND: Domestic violence affects the lives and compromises the safety of thousands of New York State employees each day, with tragic, destructive, and often fatal results. Domestic violence occurs within a wide spectrum of relationships, including married and formerly married couples, couples with children in common, and 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 is not a private matter. In addition to exacting a tremendous toll from the individuals it directly affects, 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.

II. POLICY: In consultation with the Office for the Prevention of Domestic Violence (OPDV), the Department of Corrections and Community Supervision (DOCCS), 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 procedures set forth in this directive. The procedures as outlined in this policy are intended to promote safety in the workplace and respond effectively to the needs of victims of domestic violence. Each location shall consult with the collective bargaining representatives of the employee unions to gain input on the location implementation plans for this policy. In accordance with the Governor's Executive Order #19, any modification of this policy must be forwarded by the Bureau of Internal Controls to the OPDV for their review and approval.

III. DEFINITIONS

Domestic Violence: A pattern of coercive tactics, which can include physical, psychological, sexual, economic, and emotional abuse, perpetrated by one person against an intimate partner, with the goal of establishing or maintaining power and control over the victim.

Intimate Partner: Includes persons related by blood; persons legally married to one another, including same-sex marriages; persons formerly married to one another; persons who have a child in common, regardless of whether such persons are married or have lived together at any time, couples who are in an "intimate relationship," including but not limited to, couples who live together or have lived together, or persons who are dating or who have dated in the past, including same sex couples.

Abuser: A person who perpetrates a pattern of coercive tactics which can include physical, psychological, sexual, economic, and emotional abuse against an intimate partner, with the goal of establishing or maintaining power and control over the victim.

Victim: The person against whom an abuser directs coercive and violent acts.

Domestic Violence Service Provider: Agency or staff member of an agency that primarily or exclusively provides comprehensive services to victims of domestic violence, including residential programs licensed by the NYS Office of Children and Family Services.

IV. EXISTING LAW/REGULATIONS

§2612 of the Insurance Law: New York State law prohibits insurance companies and health maintenance organizations from discriminating against domestic violence victims. The law prohibits designation of domestic violence as a preexisting condition. An insurance company cannot deny or cancel an insurance policy or require a higher premium or payment because the insured is or has been a domestic violence victim.

§215.14 of the Penal Law: New York State law makes it a crime for employers to penalize an employee who, as a victim or witness of a criminal offense, is appearing as a witness, consulting with a district attorney, or exercising his or her rights as provided in the Criminal Procedure Law, the Family Court Act, and the Executive Law. This law requires employers, with prior day notification, to allow time off for victims or witnesses to pursue legal action related to domestic violence.

§593 of NYS Labor Law: 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.

NYS has established that victims of domestic violence are now a protected class in the employment provisions of the NYS Human Rights Law. This law prevents an employer from firing or refusing to hire any individual based on their status as a victim of domestic violence and prevents discrimination in compensation or in the terms, conditions or privileges of employment.

V. PROCEDURES

A. Employee Awareness: The Department shall:

1. Post available information on domestic violence and available resources in the work site in places where employees can obtain it without having to request it or be seen removing it, such as employee rest rooms or lounge areas. Such information shall include available sources of assistance such as Employee Assistance Programs (EAP), the New York State Domestic and Sexual Violence Hotline listed on the Help Available section of the website <http://www.opdv.ny.gov>, local domestic violence service providers, and/or human resources personnel who are trained and available to serve as confidential sources of information, support, and referral;
2. Refer employees to domestic violence programs located on the New York State Coalition Against Domestic Violence website www.nyscadv.org. For a list of Domestic Violence Programs by County, "mouse over" the Find Help tab and click on the Program Directory title. It is important to realize employees may not live in the same county as their work location. Information shall be made available on employee bulletin boards and included in employee newsletters, as appropriate;
3. Include information on domestic violence awareness and services in new employees' benefits packages and as part of new employee orientation;

4. Conduct domestic violence awareness activities such as health and wellness programs; and
 5. Integrate information on domestic violence into existing materials and literature, policies, protocols, and procedures, as appropriate.
- B. Non-Discriminatory and Responsive Personnel Policies for Victimized Employees: The Department shall:
1. Ensure that personnel policies and procedures do not discriminate against victims of domestic violence and are responsive to the needs of victims of domestic violence;
 2. Assist the employee in determining the best use of her or his attendance and leave benefits, taking into consideration the employee's particular situation when an employee needs to be absent from work as a result of being a victim of domestic violence;
 3. Consult with the employee to identify what documentation she or he might have, or be able to obtain, that will not compromise his or her safety-related needs and will satisfactorily meet the documentation requirement, when a victim of domestic violence initially lacks documentation or has difficulty obtaining documentation to justify absences;
 4. Allow employees who are victims of domestic violence and who separate from a spouse (or terminate a relationship with a domestic partner), if covered, to make reasonable changes in benefits at any time during the calendar year where possible;
 5. Prohibit inquiries about a job applicant's current or past exposure to domestic violence and prohibit staffing decisions to be based on any assumptions about or knowledge of such exposure;
 6. Afford those employees who can reasonably document that their work performance difficulties are the result of being a victim of domestic violence, all of the proactive measures outlined in this directive, and provide clear information about performance expectations, priorities, and performance evaluation. If a disciplinary process is initiated, the Department will take special care to consider all aspects of the victimized employee's situation, and exhaust all available options in trying to resolve the performance problems, including making a referral to EAP, consistent with existing collective bargaining unit agreements, statute, regulations, and Department policy; and
 7. Provide all employees with the contact information for the New York State Department of Labor regarding their potential eligibility for unemployment insurance, which is also available at: <http://www.labor.ny.gov/ui/claimantinfo/claimant-advocate.shtm>, if they can demonstrate that domestic violence-related problems have resulted in termination or voluntary separation from employment, and respond quickly to any requests for information that may be needed in the claims process.

C. Workplace Safety Plans

1. The Deputy Commissioner for Administrative Services has been designated as the Department's DOCCS/OPDV liaison. This liaison, or their designee, will ensure Department-wide implementation of the *Domestic Violence and the Workplace Policy*, and serve as the primary liaison with OPDV regarding *Domestic Violence and the Workplace Policy*;
2. The Deputy Superintendent for Administrative Services (DSA) will be the DOCCS/OPDV liaison at each facility. The Bureau Chief will be the DOCCS/OPDV liaison at each field office. Personnel, including EAP staff, will also be available to support those in need of assistance around the issue of domestic violence. Designated support personnel's contact information, including name, phone number, and location will be included in Department materials and clearly posted;
3. The Department shall facilitate enforcement of known Court Orders in which abusers have been ordered to stay away from the work site, or which require that the abuser stay away from the victim, and assist the victim only when the victim requests help, as appropriate, in gathering and providing evidence relating to whether a violation of an Order has occurred. If these circumstances apply to Departmental employees working at the same location, the Director of Personnel shall be consulted to assist in the facilitation of the enforcement of the Court Order;
4. The DSA shall maintain a confidential locked cabinet in their office where Orders of Protection will be kept. The DSA's alternate to access the locked cabinet containing the Orders of Protection will be the Deputy Superintendent for Security Services (DSS). Facility employees are encouraged to bring their Orders of Protection to the attention of the DSA or DSS as alternate.

The Bureau Chief shall maintain a confidential locked cabinet in their office where Orders of Protection will be kept. The Bureau Chief's alternate to access the locked cabinet will be the Regional Director. Field Office employees are encouraged to bring their Orders of Protection to the Bureau Chief or the Regional Director as alternate.

The employee is responsible to notify the DSA or Bureau Chief if there are any changes to the Order of Protection;

5. The Department shall contact the appropriate law enforcement agency in accordance with Section V-C-8 of this directive, if anyone is observed engaging in threatening behavior, or if an abuser gains unauthorized access to the work site, or if an abuser engages in any acts that threaten the safety of employees or clients;
6. The Department shall inform victims of any confidentiality limitations that may exist, as in the following examples:
 - a. Supervisors/managers may be informed about a domestic violence incident that happens in the workplace, or a report of domestic violence, if it is necessary to protect the safety of the employee or the employee's co-workers.
 - b. Health Services and security personnel may be informed about a domestic violence incident that happens in the workplace or a report of domestic violence, if it is necessary to protect the safety of the employee or the employee's co-workers.

- c. Government officials investigating a domestic violence incident that happens in the workplace, or a report of domestic violence, shall be provided relevant information upon request.

(Information related to an employee being a victim of domestic violence shall not be divulged without the express written consent of the victimized employee, unless it is determined that maintaining said confidentiality puts the victim or other employees at risk of physical harm. In these cases, where possible, the victimized employee shall be given prior notification of the intent to provide information to other parties);

7. The DSA, the DSS as alternate in correctional facilities, or the Bureau Chief, the Regional Director as alternate in the field offices, and/or EAP will be available to discuss with victimized employees a plan on how to best proceed to ensure the safest possible work environment for the employee and the rest of the staff. With the permission of the employee, this may include developing and implementing individualized workplace safety plans, which may include, when appropriate, advising co-workers and the employee's bargaining representative of the situation; setting up procedures for alerting security and/or the police; temporary relocation of the victim to a secure area; options for voluntary transfer or permanent relocation to a new work site in line with existing collective bargaining agreements and related procedures; reassignment of parking space; escort for entry to and exit from the building; dealing with telephone, fax, e-mail, or mail harassment; and keeping a photograph of the abuser and/or a copy of any existing Court Orders in a confidential on-site location and providing copies to security personnel;
 8. DOCCS has an emergency security response plan in place, including procedures for contacting the appropriate law enforcement agency. Employees shall contact their supervisor or the Watch Commander as soon as possible if they observe anyone engaging in threatening behavior. The DOCCS emergency security response plan allows appropriate actions to be taken should an abuser engage in any acts that threaten the safety of employees or inmates; and
 9. DOCCS shall review the *Domestic Violence and the Workplace Policy* annually. Policy revisions and updates shall be forwarded to OPDV.
- D. Accountability for Employees Who Are Offenders: The Department shall:
1. Hold accountable employees who engage in the following behavior: (1) Misusing State resources to commit an act of domestic violence; (2) Committing an act of domestic violence from or at the workplace or from any other location while on official State business; or (3) Misusing their job-related authority and/or State resources in order to negatively affect victims and/or assist perpetrators in locating a victim and/or in perpetrating an act of domestic violence;
 2. Take corrective or disciplinary action in accordance with existing collective bargaining unit agreements, statutes, and regulations against any employee who is found to have threatened, harassed, or abused a family or household member at the workplace, from the workplace, or on State business using any workplace resources such as work time, workplace phones, FAX machines, mail, e-mail, or other means;

3. Determine if corrective action is warranted, in accordance with existing collective bargaining unit agreements, statutes and regulations in cases in which the Department has verification that an employee is responsible for a domestic violence-related offense, or is enjoined by a final Order of Protection as a result of domestic violence, and said employee has job functions that include the authority to take actions that directly impact victims of domestic violence and/or actions that may protect abusers from appropriate consequences for their behavior;
4. Initiate corrective or disciplinary action, in accordance with existing collective bargaining unit agreements, statutes, and regulations in cases in which an employee intentionally misuses his or her job-related authority and/or intentionally misuses State resources in order to negatively impact a victim of domestic violence, assist an abuser in locating a victim, assist an abuser in perpetrating acts of domestic violence, or protect an abuser from appropriate consequences for his or her behavior; and
5. Require all employees to notify the Department (Superintendent, Division Head, Bureau Chief, or Regional Director) if they are arrested on a domestic violence – related offense and/or served with an Order of Protection. All reports will be processed in accordance with Directive #2112, “Report of Criminal Charges.”

E. Firearms

1. Pursuant to New York State and Federal law, a person convicted of a domestic violence-related crime or subject to an Order of Protection, under certain circumstances, forfeits the right to legally possess a firearm or long gun. Additionally, Federal law contains prohibitions relating to shipping, transportation, or receiving firearms or ammunition.
2. In addition to complying with the law, employees who are authorized to carry a firearm as part of their job responsibilities are required to immediately notify the Department (Superintendent, Division Head, Bureau Chief, or Regional Director) if they are arrested on a domestic violence-related offense and/or served with an Order of Protection. Under certain circumstances, such employees are responsible for surrendering their firearms to DOCCS or the appropriate police agency pursuant to Departmental Policy, Directive #2020, “Off-Duty Firearms Regulation.”
3. Should an employee fail to comply with the requirements set forth in Section E-2 above, said employee shall be subject to corrective or disciplinary action, in accordance with existing collective bargaining unit agreements, statute, or regulations. In addition, the appropriate law enforcement agency shall be notified for possible criminal action.

F. Training

1. The Department shall integrate training on domestic violence and its impact on the workplace into existing Departmental training programs using curricula developed and provided by the Office for the Prevention of Domestic Violence.

2. The DOCCS/OPDV liaison, location DOCCS/OPDV liaisons and all personnel designated to provide support for those in need of assistance shall complete OPDV's one-day training on Domestic Violence and the Workplace. Training will prepare support personnel to identify possible signs and indicators of victimization, make appropriate referrals to domestic violence service providers, work with professionals to assist identified victims with safety planning, and develop individualized responses in recognition of the physical, social, and cultural realities that may affect an individual victim's situation. Training will also include information on the ways in which domestic violence impacts the workplace, including the potential impact on worker productivity and the safety risks to on-site personnel and visitors.
 3. All appropriate managers, supervisors, employee assistance professionals, human resources personnel, union and labor representatives, and security staff shall be encouraged to attend OPDV's training on Domestic Violence and the Workplace.
 4. Training shall prepare staff to identify possible cues and indicators of victimization, make appropriate referrals, work with professionals to assist identified victims in safety planning, and develop individualized responses in recognition of the physical, social, and cultural realities that may affect an individual victim's situation. Training shall also include information on the ways in which domestic violence impacts on the workplace, including the potential impact on worker productivity, and the safety risks to on-site personnel and visitors.
 5. Information regarding one-day trainings offered by OPDV is available on their website (<https://opdv.ny.gov/professionals/workplace/workplacetrain.html>). Specific inquiries may be made via email to: dvworkplace@opdv.ny.gov
- G. **Management/Supervisory Responsibility:** All managers/supervisors shall set a tone communicating that domestic violence is behavior that will not be tolerated and that the Department will actively provide information and support to employees who are victims of such abuse. Additional responsibilities include the following:
1. Disseminate copies of the Agency's *Domestic Violence and the Workplace Policy* to all employees upon implementation and to all new employees upon hiring or appointment;
 2. Ensure all DOCCS employees review and follow the Agency policy and procedures set forth in this *Domestic Violence and the Workplace Policy*;
 3. Consistent with applicable law and Agency policy, document all incidents of domestic violence that happen in the workplace. Such documents should be provided to the Agency/OPDV liaison as soon as practicable. Such documents shall be kept confidential to the extent permitted by law and Agency policy and the provisions of Section V-G-6 detailed below;
 4. Ensure all DOCCS employees providing domestic violence information and support services shall document, consistent with applicable law and DOCCS policy, the number of employees who report domestic violence, the number of employees that request information/services, and the number of referrals made to domestic violence service providers.

All information about employees who seek assistance shall be kept confidential to the extent permitted by law and DOCCS policy and the provisions of Section V-G-6 detailed below, and documentation should not include any personal information. The number of employees seeking assistance as outlined above shall be reported to the DOCCS/OPDV liaison;

5. Ensure all DOCCS/OPDV liaison and location DOCCS/OPDV liaisons, consistent with applicable law and DOCCS policy, provide information about the number and general nature of domestic violence incidents that happen in the workplace, the number of employees who report domestic violence, the number of employees that request information/services, and the number of referrals made to domestic violence service providers, with no personally identifying information, to OPDV at the time and in a manner determined by OPDV; and
6. Ensure information related to an employee being a victim of domestic violence be kept confidential, to the extent permitted by law and Agency policy, and not be divulged without the written consent of the victimized employee, unless DOCCS determines that maintaining said confidentiality puts the victim or other employees at risk of physical harm, is required by law, or is deemed necessary to enforce an Order of Protection. In such circumstances where a determination has been made that maintaining confidentiality puts the victim or other employees at risk of physical harm, only those individuals (Agency employees and/or safety and security personnel and/or rescue and first aid personnel) as deemed necessary by DOCCS to protect the safety of the victim and/or other employees or to enforce an Order of Protection shall be given such information. DOCCS shall disclose only the minimum amount of information necessary to protect the safety of the victim and/or other employees or enforce an Order of Protection. Where possible, DOCCS should provide to the victim of domestic violence notice of the intent to provide information to other employees and/or safety personnel. It is important for DOCCS to inform a victim of domestic violence of DOCCS policy of confidentiality toward domestic violence information and the limitations of that policy. Nothing herein shall prevent DOCCS from investigating an act or acts of domestic violence that happen within the workplace. (See Section V-C-6 for examples of situations where confidentiality cannot be maintained.)