

## **NY Thoroughbred Breeding and Development Fund Domestic Violence and the Workplace Policy**

### **Policy**

Domestic violence permeates 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, 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 defined as a pattern of coercive tactics which can include physical, psychological, sexual, economic and emotional abuse perpetrated by one person against an adult intimate partner, with the goal of establishing and maintaining power and control over the victim. 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.

The purpose of this Model Policy is to identify and prescribe agency practices that will promote safety in the workplace and respond effectively to the needs of victims of domestic violence. Agencies will use this Model Policy to develop their own agency-specific policies to achieve these objectives.

Therefore, **The New York Thoroughbred Breeding and Development Fund** 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 model policy.

## Definitions

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

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

**Intimate Partner:** Includes persons legally married to one another; 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.<sup>1</sup>

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

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

## Guidelines

### I. Employee Awareness

Agencies shall increase awareness of domestic violence and inform employees of available sources of assistance.<sup>2</sup>

- a. Agency shall post 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 agency intranet, rest rooms and lounge areas. Such information shall include available sources of assistance such as local domestic violence service providers, the NYS Domestic Violence and Sexual Assault hotline, and/or human resources personnel who are trained and available to serve as confidential sources of information, support, and referral. An Agency Contact Information Poster is available at <http://www.opdv.ny.gov/professionals/workplace/workplcres.html#tools> This template can be easily personalized and displayed identifying contact information for trained domestic violence support personnel within your agency.
- b. Referrals shall be made to licensed/approved domestic violence programs located on the New York State Coalition Against Domestic Violence (NYSCADV) website at <http://www.nyscadv.org/local-domestic-violence-programs/>. Additional referrals may

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<sup>1</sup> This definition may extend to other circumstances such as the abuse of a parent by an adult child, but the primary focus of this policy is adult, intimate partner violence.

<sup>2</sup> Whenever possible, the domestic violence and the workplace policy should also be extended to consultants, contractors, and other non-state, on-site providers.

be made to best meet the needs of the employee. Information shall be made available on employee bulletin boards and included in employee newsletters, as appropriate.

- c. Agency shall include information on domestic violence awareness and services in written materials provided to new employees and as part of new employee orientation.
- d. Agency shall inform employees that 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 pre-existing 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. [§2612 of the Insurance Law.]
- e. Agency shall integrate information on domestic violence and the agency's domestic violence and the workplace policy into existing materials and literature, policies, protocols, and procedures, including Public Employer Workplace Violence Prevention Programs<sup>3</sup> as appropriate.
- f. Agency shall consider conducting domestic violence awareness activities such as "brown bag" lunch programs and other health and wellness programs.

## **II. Non-Discriminatory and Responsive Personnel Policies for Victimized Employees**

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.

- a. 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/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 subpoenaed witnesses to exercise his/her rights as provided in the Criminal Procedure Law, the Family Court Act, and the Executive Law [Penal Law §215.14]. If there are any questions or concerns regarding the leave that must be granted to victims or subpoenaed witnesses, contact the agency's Personnel Office or the Attendance and Leave Unit at the Department of Civil Service.
- b. The agency, upon request, will assist 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 being a victim of domestic violence. If an employee requests time off to care for and/or assist a family member who has been a victim of domestic violence, the agency will evaluate the employee's request for leave for eligibility under existing law and collective bargaining agreements applicable to the employee and the attendance rules.
- c. The agency should be aware that victims of domestic violence may lack the required documentation or have difficulty obtaining the required documentation to justify absences without compromising their safety. Therefore, consult with the employee to identify what documentation she/he might have, or be able to obtain, that will not compromise his/her safety-related needs and will satisfactorily meet the documentation

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<sup>3</sup> 12 NYCRR pt. 800.16 Public Employer Workplace Violence Prevention Programs

requirement of the employer. Because there are confidentiality issues associated with the submission of documentation in these instances, agencies should consult with the Attendance and Leave Unit at the Department of Civil Service.

- d. Employees who are victims of domestic violence and who separate from a spouse (or terminate a relationship with a domestic partner, if covered), shall be allowed to make reasonable changes in benefits at any time during the calendar year where possible, in accordance with statute, regulation, contract and policy.
- e. NYS has established that victims of domestic violence are now a protected class in the employment provisions of 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. The agency should prohibit inquiries about a job applicant's current or past domestic violence victimization, and prohibit employment decisions to be based on any assumptions about or knowledge of such exposure.
- f. In cases in which it is identified that an employee's work performance difficulties are a result of being a victim of domestic violence, said employee shall be afforded all of the proactive measures outlined in this policy, and shall be provided clear information about performance expectations, priorities, and performance evaluation. If a disciplinary process 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.
- g. If reasonable measures have been taken to resolve domestic violence-related performance problems of victimized employees, but the performance problems persist and the employee is terminated or voluntarily separates from employment, inform the employee of his or her potential eligibility for unemployment insurance and 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. [§593 of NYS Labor Law.]

### **III. Workplace Safety Plans**

Agencies shall have domestic violence workplace safety response plans in place and provide reasonable means to assist victimized employees in developing and implementing individualized domestic violence workplace safety plans, consistent with existing collective bargaining agreements, statutes and regulations.

- a. **The NYTBDF's liaison to OPDV shall be the Executive Director Tracy Egan.** This liaison will ensure agency- wide implementation of the domestic violence and the workplace policy, and serve as the primary liaison with OPDV regarding the domestic violence workplace policy.

- b. Agency shall designate personnel available to support those in need of assistance around the issue of domestic violence. **Because of the small staff size at the NYTBDF, the Executive Director shall serve as the sole liaison and as such her contact information, including name, agency phone number and location will be included in agency materials and clearly posted.**
  - c. The Fund shall comply and assist with enforcement of all known court orders of protection, particularly orders in which abusers have been ordered to stay away from the work site. If requested by the victim of domestic violence or law enforcement, the agency shall provide information in its possession concerning an alleged violation of an order of protection. Employees are encouraged to bring their orders of protection (OP) to the attention of the Executive Director or the Registrar<sup>4</sup>. Once the OP has been brought forward, the document will be kept in a file marked Orders of Protection in filing cabinets inside the Executive Director's office. Because the Fund has no Human resources department, the sole repository for such orders shall be in the Executive Directors Office. The Fund's Executive Director will discuss with the employee 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: providing a copy of the OP and a photograph of the perpetrator to security and any front desk personnel that may be in place, providing similar information to other office staff and to the Director of the Office of Racing Promotion and Development such that if the subject of the Orders of Protection are spotted outside or within the Gaming Commission Building where both ORPAD and the Fund are located, such that more individuals can help spot the individual who is violating the Orders of Protection. (See workplace safety plan. The employee is responsible to notify the Executive Director if there are any changes to the OP.
  - d. Agency shall have an emergency security response plan in place, including procedures for contacting the appropriate law enforcement agency, and provide employees with clear instructions about what to do and who to contact if they observe anyone engaging in threatening behavior. Such a plan will allow appropriate actions to be taken 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. **In Dec. 2012 the Fund moved to an office space within the NYS Racing and Wagering Board in Schenectady. The Lottery Division provides security for the Building and the Fund office door can be securely locked from the inside.**
  - e. Agency shall discuss with the victim of domestic violence the agency confidentiality policy and the limitation thereto. (See Section VII. NYS Agencies Responsibility d – g).
  - f. Agency shall consult with victimized employees to develop and implement individualized workplace safety plans, which may include when appropriate, advising co-workers of the situation; setting up procedures for alerting security and/or the police; temporary relocation of the victim to a more secure area; change of work schedule, reassignment of parking space; escort for egress of the building; responding to telephone, fax, e-mail or mail harassment. Should the alleged abuser work in the same
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building as the victim, the Fund will approach Gaming Commission security personnel about establishing further safety provisions.

- g. Agency shall review domestic violence and the workplace policy annually. Policy revisions and updates shall be forwarded to OPDV.

#### **IV. Accountability for Employees Who Are Offenders**

Agencies shall hold accountable employees who engage in the following behavior: (1) using 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) using 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.

- d. Agency shall consult with victimized employees to develop and implement individualized workplace safety plans, which may include, when appropriate, advising co-workers and, upon request, 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; change of work schedule, reassignment of parking space; escort for entry to and exit from the building; responding to telephone, fax, e-mail or mail harassment; and keeping a photograph of the abuser and/or a copy of any existing court orders of protection in a confidential on-site location and providing copies to security personnel. Plans must address additional concerns if the victim and the offender are both employed by the same agency.
  - a. In cases in which an agency has found that an employee has threatened, harassed, or abused an intimate partner at the workplace using state resources such as work time, workplace telephones, FAX machines, mail, e-mail or other means, said employee shall be subject to corrective or disciplinary action in accordance with existing collective bargaining unit agreements, statutes and regulations.
  - b. In cases in which an agency has verification that an employee is responsible for a domestic violence-related offense, or is the subject of any order of protection, including temporary, final or out-of-state order, 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, the agency shall determine if corrective action is warranted, in accordance with existing collective bargaining unit agreements, statutes and regulations.
  - c. In cases in which any employee intentionally uses his/her job-related authority and/or intentionally uses 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 behavior, said employee shall be subject to corrective or disciplinary action, in

accordance with existing collective bargaining unit agreements, statutes and regulations.

## **V. Firearms** *(Note: only for applicable agencies)*

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.

- a. In addition to complying with the law, employees who are authorized to carry a firearm as part of their job responsibilities are required to notify the agency 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 the issuing agency or to the appropriate police agency.
- b. Should an employee fail to comply with the requirements set forth in V. a., 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.

## **VI. Training**

Training, training development and training technical assistance on domestic violence and its impact on the workplace will be made available by OPDV on an on-going basis. Agencies should make training available to all staff on domestic violence. Training should be required of certain staff, and strongly encouraged for others, as outlined below.

- a. Agency/OPDV liaison and all personnel designated to provide support for those in need of assistance should 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.
- b. All appropriate managers shall be encouraged to attend OPDV's training on Domestic Violence and the Workplace.
- c. Training on domestic violence and its impact on the workplace should be made available on a regular basis for all agency staff. Training would include information on the physical, social and cultural realities that may affect victims of domestic violence, the ways in which domestic violence impacts the workplace, including the potential impact on worker productivity and safety risks. When possible, OPDV-approved training materials can be integrated into existing union and management training programs,

agency training programs. Public Employer Workplace Violence Prevention Programs<sup>5</sup> training, etc. Training may also be provided by OPDV or a local domestic violence service provider when scheduling permits.

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<sup>5</sup> 12 NYCRR pt. 800.16 Public Employer Workplace Violence Prevention Programs

## VII. NYS Agencies Responsibility <sup>6</sup>

- a. All NYS Agencies shall set a tone communicating that domestic violence is behavior that will not be tolerated and that the agency will actively provide information and support to employees who are victims of such abuse.
- b. All NYS Agencies shall 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.
- c. All NYS employees shall review and follow their agency policy and procedures set forth in this domestic violence and the workplace policy.
- d. All NYS Agencies shall, 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 g detailed below.
- e. All agency employees providing domestic violence information and support services shall document, consistent with applicable law and agency 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 agency policy and the provisions of section g detailed below, and documentation should not include any personal information. The number of employees seeking assistance as outlined above shall be reported to the Agency/OPDV Liaison.
- f. All Agency/OPDV Liaisons shall, consistent with applicable law and agency 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.
- g. Information related to an employee being a victim of domestic violence shall be kept confidential, to the extent permitted by law and agency policy, and shall not be divulged without the written consent of the victimized employee, unless the agency 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 the agency to protect the safety of the victim and/or

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<sup>6</sup> For the purpose of this order, "state agency" shall mean: (1) any state agency, department, office, board, commission or other instrumentality of the state; and (2) any public authority or public benefit corporation created by or existing under any State law, at least one of whose members is appointed by the Governor (including any subsidiaries of such public authority or public benefit corporation), other than an interstate or international authority or public benefit operation.

other employees or to enforce an order of protection shall be given such information. The agency 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, an agency 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 an agency to inform a victim of domestic violence of the agency policy of confidentiality toward domestic violence information and the limitations of that policy. Nothing herein shall prevent an agency from investigating an act or acts of domestic violence that happen within the workplace. The agency shall provide examples of situations where confidentiality cannot be maintained such as the following:

1. 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.
  2. First aid and safety 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.
  3. Government officials investigating a domestic violence incident that happens in the workplace, or a report of domestic violence, shall be provided relevant information on request.
- h. All agencies should establish a clear statement informing staff providing services and victims of applicable confidentiality limitations that exist.
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Below are some useful phone numbers should employees need assistance with a Domestic Violence situation.

**OPDV Liaison: Tracy Egan (518) 312-0534**

**NYS Domestic and Sexual Violence Hotline**

**1-800-942-6906**

**Saratoga**

**Wellspring (518) 583-0280**

**Mechanicville Domestic Violence Advocacy Program (518) 664-4008**

**Schenectady**

**YWCA of Schenectady (518) 374-3386**

**Nassau**

**Circulo de la Hispanidad Inc./ Salva Domestic Violence Program (516) 889-2849**

**Nassau County Coalition Against Domestic Violence (516) 542-0404**