NEW YORK STATE
OLYMPIC REGIONAL
DEVELOPMENT AUTHORITY

GOVERNANCE COMMITTEE MEETING

Olympic Jumping Complex, Lake Placid, NY
May 27, 2025
2:00 p.m.

****

AGENDA

I. INTRODUCTION
- **a. Welcome**
- **b. Roll Call**
- **c. Approval of Minutes from June 11, 2024 Governance Committee Meeting**

II. DISCUSSION
- **a. Designated Policy Makers for 2025/2026 and Proposed Resolution #556**
- **b. Reviewing Certain Policies and Procedures and Proposed Resolution #557**
- **c. Reviewing Mission Statement and Performance Measurements and Proposed Resolution #558**

III. MOTION TO CONDUCT AN EXECUTIVE SESSION TO DISCUSS A MATTER MADE CONFIDENTIAL BY STATE LAW

IV. ADJOURN

NEW YORK STATE
OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Governance Committee Meeting Minutes
June 11, 2024

Present: Chris Pushkarsh, Chair
Diane Munro
Steve Hunt
Art Lussi
Joe Martens

Also Present: Ashley Walden, President & CEO
Michelle Crew, General Counsel

Introduction: Chair Chris Pushkarsh called the meeting to order at 11:02 a.m. and welcomed everyone in attendance.

Chris Pushkarsh explained that the meeting was being videotaped and a link to the recording and transcript would be made available at www.orda.org.

Chris Pushkarsh then asked for a roll call, and confirmed a quorum was present.

Minutes: On a motion by Diane Munro, seconded by Joe Martens, the minutes of the Governance Committee meeting held on April 12, 2024 were approved without changes.

Public Session: Chris Pushkarsh explained that the next item on the agenda was the designation of Olympic Authority policymakers for 2024/2025 and proposed resolution #536.

Michelle Crew explained that this is an update to the annual list of policymakers. The Authority has determined that a regular part of their duties involves formulating or implementing the goals and policies of the agency. This list is updated every year and is required to be filed with the ethics committee in February.

Chris Pushkarsh asked for a motion to recommend that the Board of Directors adopt proposed resolution #536 as presented.

On a motion by Joe Martens, seconded by Diane Munro.

5 in favor, 0 opposed, 0 abstained, the motion carries unanimously.

DRAFT

Chris Pushkarsh noted that the next item on the agenda was review of certain policies and procedures and proposed resolution #537.

Michelle Crew explained that this is an annual review of Board approved policies. There was a clarification on the Background Check Policy to reflect that everybody that is hired into a position will be subject to the sex offender registry background check.

The other change is to a section of the Management Confidential Employee Handbook. The policy will be updated to reflect that if an employee works a holiday, they will accrue comp time instead of receiving holiday pay. The holidays were also updated to make them more consistent with the rest of the state.

Chris Pushkarsh asked for a motion to recommend that the Board of Directors adopt proposed resolution #537 as presented.

On a motion by Diane Munro, seconded by Joe Martens.

5 in favor, 0 opposed, 0 abstained, the motion carries unanimously.

Executive Session: On a motion by Art Lussi, seconded by Steve Hunt, the Governance Committee entered into Executive Session to discuss a matter made confidential by state law.

On a motion by, seconded by, the Executive Committee exited Executive Session and resumed public session. No action was taken during Executive Session.

Chris Pushkarsh explained that during the executive session, committee members reviewed and discussed the 2024 confidential board evaluations and summary.

Chair: Chris Pushkarsh announced that the meeting's business had concluded.

Adjournment: On a motion by Art Lussi, seconded by Joe Martens, the meeting of the Governance Committee was adjourned at 11:49 a.m.

DRAFT

NEW YORK STATE
OLYMPIC REGIONAL
DEVELOPMENT AUTHORITY

Resolution #556

RESOLUTION APPROVING POLICY MAKERS FOR 2025/2026

At a meeting of the Board of Directors of the Olympic Regional Development Authority ("Olympic Authority") held on June 27, 2025, the Chair offered the following resolution:

WHEREAS, pursuant to the provisions of Public Officers Law § 73-a, the Olympic Authority is required to submit an annual statement of Board Members and Olympic Authority employees who have been determined to be policy makers, to the New York State Commission on Ethics and Lobbying in Government ("Ethics Commission"); and

WHEREAS, the Ethics Commission regulations at 19 NYCRR Part 932 define the term "policy maker" as "an officer, employee, director, commissioner or member of a State Agency (other than a multi-state authority) who has been determined to hold a policy-making position pursuant to Public Officers Law § 73-a (1) (c);" and

WHEREAS, the Olympic Authority is a State agency for the purposes of compliance with sections 73 and 74 of the Public Officers Law; and

WHEREAS, in accordance with the requirements of the Public Officers Law and implementing regulations, the Olympic Authority has determined that the staff listed in this resolution hold policy-making positions, which such list is required to be filed with the Ethics Commission each year during the month of February; and

WHEREAS, the Olympic Authority is required to keep this list up to date after the annual filing, by amending it within thirty (30) days of the undertaking of policy-making responsibilities by any employee not currently included in the list of staff who hold policy-making positions; and

WHEREAS, at a duly called meeting of the Governance Committee held on May 28, 2025, the Governance Committee approved the list of names and titles of Olympic Authority staff who hold policy-making positions as set forth herein, and recommended that the list be presented to the Board of Directors for approval for submission to the Commission on Ethics and Lobbying in Government when due, and further recommend that Olympic Authority staff be granted the authority to amend and submit an updated list in the event that becomes necessary during the course of the year;

NOW, THEREFORE, BE IT RESOLVED THAT, after careful consideration and due deliberation, the Olympic Authority Board of Directors hereby approves the following list of Olympic Authority policy makers and authorize Olympic Authority management to amend the list if and when necessary to comply with the Public Officers Law, and to submit such amended list to the Commission on Ethics and Lobbying in Government:

Policy Makers:	Ashley Walden	President/CEO
	Michelle Crew	General Counsel
	Tait Wardlaw	Vice President of Marketing, Communications, and Sponsorship
	Rebecca Dayton	Vice President, Events & Sport Programs Management
	Chadd Cassidy	Vice President, Legacy Venues Operations
	Aaron Kellett	Whiteface Mountain General Mgr.
	James Bayse	Gore Mountain General Mgr.
	Brenda Smith	Director of People and Organization Development
	Kirk Bassarab	Director of the Office of Environmental, Planning & Construction
	Ron Graham	Director of Finance
	Darcy Norfolk	Director of Communications
	Mike Costantino	Interim Director of Technology and Infrastructure
	Adam Powers	Assistant Counsel
	Edward Kowalewski, Jr.	Assistant Counsel

SO RESOLVED,

MOVED BY: _____

SECONDED BY: _____

and

ADOPTED BY the following vote:

In Favor:	Excused/Abstained:	Against:

Renee Fitzgerald, Secretary to the Board, being duly sworn, deposes and says:

The above Resolution #556 was duly passed by the Board of Directors on June 27, 2025.

Signature_____
Title: Secretary to the Board of Directors

Sworn to before me this _____ day of June, 2025.

_____
Notary Public, State of New York

NEW YORK STATE
OLYMPIC REGIONAL
DEVELOPMENT AUTHORITY

Resolution #557

RESOLUTION ADOPTING CERTAIN POLICIES AND PROCEDURES

At a meeting of the Board of Directors of the Olympic Regional Development Authority ("Olympic Authority") held on June 27, 2025, the Chair offered the following resolution:

WHEREAS, pursuant to Public Authorities Law § 2824 (1), the Olympic Authority Board of Directors is charged with establishing written policies and procedures, including those protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member, codes of ethics, investments, travel, the acquisition of real property, the disposition of real and personal property, the procurement of goods and services, and other policies that will enable the Olympic Authority to accomplish its mission and statutory responsibilities; and

WHEREAS, consistent with applicable law, the Olympic Authority has implemented and adopted comprehensive policies, procedures, and guidelines that are to be reviewed and approved annually by the Board; and

WHEREAS, annexed hereto and made a part hereof, are the following policies of the Olympic Authority that were approved and adopted by the Board at its June 2024 annual meeting:

- Background Check Policy;
- Code of Ethics Policy;
- Defense and Indemnification Policy;
- NYS Equal Employment Opportunity Rights & Responsibilities Handbook;
- Open Data Policy;
- Paid Family Leave Policy;
- Procedural Rules for Participation in Board Meetings from Private Locations Under Extraordinary Circumstances;
- Property Disposition Policy;
- Service Animal Policy;
- Whistleblower Policy;
- Investment of Corporate Funds Policy;
- Gender-Based Violence and the Workplace Policy; and

WHEREAS, certain of these policies have been revised and updated as follows:

- The Olympic Authority's Background Check Policy, which has been amended to expand the requirements for pre-hiring or pre-promotion background checks to include all Olympic Authority personnel;

- The Olympic Authority's Property Disposition Policy, which has been amended to

- Minor changes to the other policies to update their effective dates and to revise certain grammatical aspects of those policies.

WHEREAS, at a duly called meeting of the Governance Committee held on May 27, 2025, the Governance Committee recommended approval of the revised and updated policies based on the Committee's thorough review and consideration of such policies; and

WHEREAS, pursuant to Public Authorities Law § 2925 (6) and the Olympic Authority's Investment of Corporate Funds Policy, the Olympic Authority is required to annually prepare and approve an Annual Investment Report and to submit it to the Division of Budget, the Senate Finance Committee, the Assembly Ways and Means Committee, and the Office of the State Comptroller, by no later than ninety (90) days after the end of the fiscal year; and

WHEREAS, at a duly called meeting of the Executive Committee held on June 11, 2025, the Executive Committee recommended the Board's re-approval of the Investment Policy reflecting an updated effective date, and the approval of the 2024-2025 Annual Investment Report, based on the Committee's thorough review and consideration of such policy and report; and

NOW, THEREFORE, BE IT RESOLVED THAT, after careful consideration and due deliberation, the Olympic Authority Board of Directors hereby approves and adopts the policies of the Olympic Authority annexed hereto, effective immediately, and directs that each of the approved policies be posted on the Olympic Authority website for access by the public; and

BE IT FURTHER RESOLVED THAT, in accordance with this approval, the Olympic Authority Board of Directors hereby authorizes the submission of the 2024-2025 Annual Investment Report to the Division of Budget, the Senate Finance Committee, the Assembly Ways and Means Committee, and the Office of the State Comptroller, by no later than ninety (90) days after the end of the fiscal year.

SO RESOLVED,

MOVED BY: _____

SECONDED BY: _____

and

ADOPTED BY the following vote:

In Favor:	Excused/Abstained:	Against:

Renee Fitzgerald, Secretary to the Board, being duly sworn, deposes and says:

The above Resolution #557 was duly passed by the Board of Directors on June 27, 2025.

Signature_____
Title: Secretary to the Board of Directors

Sworn to before me this _____ day of June, 2025.

_____
Notary Public, State of New York

NEW YORK STATE
OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Background Check Policy
Effective _____

I. PURPOSE AND SCOPE

In making employment decisions, the Olympic Regional Development Authority ("Olympic Authority") is committed to the highest standards for its employees, and to complying with all applicable Federal and State statutes and regulations as well as other applicable requirements. Accordingly, applicants for employment in specified positions with the Olympic Authority will be subject to a background check in accordance with the terms of this Policy. The information collected through a background check is necessary to determine the overall fitness of an applicant for employment, to ensure the promotion of a safe work environment for other Olympic Authority employees, to ensure the protection of Olympic Authority assets and information, and to ensure the safety of the visiting public and the many athletes who utilize Olympic Authority venues for training and competition.

In addition, due in part to certain insurance requirements applicable to the Olympic Authority, and due in part to the requirements of the Safe Sport Authorization Act (Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017, 36 U.S.C. § 22051) and the Olympic Authority's relationship with the United States Olympic and Paralympic Committee ("USOPC"), for those Olympic Authority staff who are employed in specific titles defined herein, there will be a requirement for ongoing background checks during the terms of their employment. Information derived from these ongoing background check requirements will be used by the Olympic Authority to determine the continued fitness of those employees for the duties of the titles they hold.

The Olympic Authority will conduct all employment background checks in accordance with the terms of this Policy. The Olympic Authority's use of the information gained through a background check will at all times comply with New York State's Fair Credit Reporting Act (General Business Law § 380), the Federal Fair Credit Reporting Act (15 U.S.C. § 1681), and all other applicable laws, statutes, rules and regulations including, but not limited to, New York State Correction Law Article 23-a. Should any provision of this Policy conflict with any applicable law or regulation, that provision will be considered void and all other provisions of this Policy shall remain in full force and effect.

II. ACRONYMS AND DEFINITIONS

a. **Article 23-a** – shall mean the New York State Correction Law Article 23-a, which prohibits an employer from unfairly discriminating against a person previously convicted of one or more criminal offenses.

b. **Athlete(s)** – shall mean those Team USA athletes, as that term is defined in the current Olympic Authority-USOPC contract, using an Olympic Authority facility in connection with training or competition. The term "Athlete(s)" does not extend to members of the general public using an Olympic

Authority facility, or to clubs or organizations that may enter into third-party agreements with the Olympic Authority for the use of an Olympic Authority facility.

c. **Candidate** – shall mean any person who has applied for or is being considered for a full-time, part-time, or temporary/seasonal position, including those positions identified in Categories 1, 2, or 3 herein. This definition also includes any current Olympic Authority employee holding positions and/or titles identified in Category 2 or Category 3, who are subject to ongoing background checks.

d. **Covered Position** – shall mean any position and/or title identified in Categories 1, 2 and 3.

e. **FCRA** – shall mean the Fair Credit Reporting Act (15 U.S.C. § 1681), a U.S. Federal Government statute enacted to promote the accuracy, fairness, and privacy of consumer information contained in the files of the consumer reporting agencies.

f. **Negative Information** – shall mean a conviction for criminal conduct, a negative credit history, and/or a SafeSport disciplinary record, the nature of which has a direct bearing on a Candidate's fitness or ability to perform one or more of the duties or responsibilities necessarily related to a Covered Position, or information about a Candidate that would involve an unreasonable risk to property or to the safety or welfare of Olympic Authority employees or volunteers, or to the general public.

g. **Olympic Authority** – shall mean the Olympic Regional Development Authority or authorized representative of the Olympic Regional Development Authority.

h. **Report** – shall mean the results of a background check provided to the Olympic Authority by a TPA.

i. **SafeSport** – shall mean the Safe Sport Authorization Act. The U.S. Congress has designated the U.S. Center for SafeSport (the "Center") with the authority to respond to reports of sexual misconduct within the U.S. Olympic and Paralympic Movement by passing the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017. This legislation designates the Center as the independent national safe sport organization, with the additional responsibility for the Center to develop national policies and procedures to prevent the emotional, physical, and sexual abuse of amateur athletes. Through this legislation, the Center has the exclusive authority to respond to allegations of sexual abuse and sexual misconduct within the U.S. Olympic and Paralympic Movement. It also allows the Center to have discretionary jurisdiction on a case-by-case basis over any other forms of misconduct, including bullying, harassment, and physical and emotional abuse. The Olympic Authority is not under the jurisdiction of the Center. However, as a USOPC Training Center, the Olympic Authority is committed to the purpose and intent of SafeSport and consistent with its Agreement with the USOPC, the Olympic Authority will implement the requirements of SafeSport to the extent that such requirements do not conflict with New York State law.

j. **TPA** – shall mean Third-Party Administrator.

k. **USOPC** – shall mean the United States Olympic and Paralympic Committee.

III. APPLICABILITY

Every Candidate will be subject to background checks in accordance with the requirements Policy as set forth in Section 5.3 (a) herein. The reason for this requirement is to ensure the safety and security of all venue guests and Olympic Authority staff. Each Candidate will be evaluated in accordance with Section 5.5 herein.

In addition, the Olympic Authority has identified the following Covered Positions as being subject to background checks in accordance with the requirements of this Policy:

a. Category 1 – Category 1 Covered Positions are those positions held or to be held by a Candidate for an Executive level position with fiduciary responsibilities. For the purposes of this Policy, the following MC titles shall be included in Category 1:

President & CEO	Vice President
General Counsel	Attorney
Venue Manager	Assistant Venue Manager
Director	Assistant Director
Lake Placid Museum Director	Senior Managers

Category 1 Covered Positions will also include any Candidate for a position in which the job responsibilities involve or will involve a Candidate working in the information technology department at any Olympic Authority venue. This includes any position coded to "TEC" and any Candidate whose job responsibilities include, but are not limited to, the following: implementing and maintaining hardware and software infrastructure; providing technical support and offering troubleshooting solutions for both hardware and software issues; managing cybersecurity protocols to safeguard sensitive data; conducting regular system audits to ensure compliance with established policies; overseeing network performance for optimal operational efficacy; and collaborating with various departments to assess and fulfill technology-related needs.

Category 1 Covered Positions will also include any Candidate whose job responsibilities include or will encompass handling financial transactions in any form, managing financial data, accessing financial systems, software, or databases containing sensitive information, overseeing monetary resources (including the management of petty cash, cash registers, or other forms of physical currency), approving financial transactions, signing checks, authorizing payments, or gaining access to Personal, Private, Sensitive Information as part of their job responsibilities.

Personal, Private, Sensitive Information (PPSI) refers to any information that could potentially identify an individual and expose them to identity theft or other forms of risk if disclosed. This may include, but is not limited to, Social Security numbers, financial account details, medical records, and other confidential personal data. Proper handling of PPSI is crucial for maintaining the integrity and security of the Olympic Authority and is considered a key responsibility for applicable Category 1 Covered Positions.

Any Candidate for a Category 1 Covered Position will be subject to a full background check as defined herein under Section 5.3 (a), as well as a Credit History Check, as defined herein under Section 5.3 (c), prior to either initial appointment or promotion into a Covered Position. Category 1 Candidates will be subject to ongoing background checks if their job responsibilities also include the responsibilities identified in Categories 2 or 3 herein.

b. Category 2 – Category 2 Covered Positions are identified as follows:

1. Those positions in which the job responsibilities involve or will involve a Candidate working in snow sports/ski school at any Olympic Authority venue. This includes any position coded to "SSC" (also known as ski school). The following titles are explicitly included in Category 2: Laborer, Ski Instructor, Labor Supervisor, Department Supervisor, Department Manager, Program Manager.

2. Those positions in which the job responsibilities involve or will involve a Candidate working as a certified lifeguard at any Olympic Authority venue. The title "Lifeguard" is explicitly included in Category 2.

3. Those positions in which the job responsibilities involve or will involve a Candidate working at a retail store at any Olympic Authority venue or at a rental store at any Olympic Authority venue. This explicitly includes any position coded to "RET" (also known as retail) and "RNT" (also known as rental).

4. Those positions in which the job responsibilities involve or will involve a Candidate operating a shuttle bus with the capability of transporting 15 or more passengers to and/or from any Olympic Authority venue. This includes any position that requires a New York State Commercial Driver's License with a Passenger Endorsement.

5. Those positions in which the job responsibilities involve or will involve a Candidate operating the Mountain Coaster or Zip Line at an Olympic Authority venue. This explicitly includes any position coded to "MCR" or "ZIP".

6. Those positions in which the job responsibilities involve or will involve a Candidate having close contact with venue guests, including but not necessarily limited to: Olympic Authority venue attractions and/or venue experiences such as the Climbing Wall, Mountain Biking, Discover Luge, Discover Biathlon, and youth group venue tours.

Any Candidate for a Category 2 Covered Position, including any Candidate under the age of 18, will be subject to a full background check as defined herein under Section 5.3 (a), prior to initial appointment, and on a reoccurring basis every three (3) years thereafter.

c. Category 3 – Category 3 Covered Positions are those through which a Candidate: (1) may act in a position of authority over an Athlete, as the term "position of authority" is defined in the current Olympic Authority-USOPC Agreement; (2) has regular contact with an Athlete as the term "regular contact" is defined in the current Olympic Authority-USOPC Agreement; (3) has direct contact with an Athlete in nonpublic spaces as that term is defined in the current Olympic Authority-USOPC Agreement; or (4) has access to Athletes in non-public spaces, as that term is defined in the current Olympic Authority-USOPC Agreement.

This explicitly includes, but is not necessarily limited to, the following titles: all staff coded to "EVT," also known as Events, Ice Resurfacing Machine Operators, and all other staff and/or volunteers who serve in a position of authority over Athletes or who have regular contact with Athletes as those terms are defined in the Olympic Authority-USOPC Agreement.

In addition, any Candidate whose job responsibilities otherwise fall under one or more of the criteria in items (1) through (4) above, and who is assigned to work at any event conducted at an Olympic Authority-managed venue that involves Athletes, shall be deemed a Category 3 Covered Position for the specific event in which they are working. Such individuals will be subject to SafeSport training requirements and associated background screening on a one-time, event-specific basis, in accordance with this Policy and the Olympic Authority's obligations under the Olympic Authority–USOPC Agreement.

Any Candidate for a Category 3 Covered Position shall undergo a comprehensive background check as set forth in Section 5.3 (a) herein, both prior to initial appointment and bi-annually thereafter. Additionally, any Candidate for a Category 3 Covered Position will be subject to a supplemental, partial background check as set forth in Section 5.3 (b) herein, during the intervening years.[1]

IV. RESPONSIBILITY

The responsibility for implementation and oversight of this Policy resides with the Olympic Authority Office of Human Resources, unless otherwise noted herein.

V. POLICY IMPLEMENTATION

5.1 Process for Pre-Employment Background Checks

a. A pre-employment background check will be conducted on every Candidate who has accepted a formal offer of employment or promotion into a Covered Position. A Candidate must accurately and truthfully complete all sections of the employment application including the provision of education, current employment, and prior employment history within the last seven (7) years, and criminal history if applicable.

b. All job postings for a Covered Position shall include the following statement:

> *All offers of employment for this position will be contingent upon the results of a successfully completed background check. Background checks will be conducted by a Third Party Administrator of the Olympic Authority's choosing in compliance with the requirements of the New York State Fair Credit Reporting Act (General Business Law § 380) and the Federal Fair Credit Reporting Act (15 U.S.C. § 1681).*

c. All offers of employment and/or promotions into a Covered Position shall include the following statement:

> *This offer of employment is contingent upon the satisfactory completion of a background check. Should your background check reveal information that could result in a decision by the Olympic Authority to withdraw an offer of employment, you will be provided with a Pre-Adverse Action Notice that*

[1] Candidates eligible for Category 3 Covered Positions, who are subject to background checks under this Section, do not include individuals under the age of 18.

includes the contact information of the Third-Party Administrator, a copy of the background report and a "Summary of Your Rights Under the Fair Credit Reporting Act". You will have ten (10) business days from the date of your receipt of the Pre-Adverse Action Notice to dispute the information contained in the background report by contacting the Third-Party Administrator and providing correct information regarding your criminal history, credit history, and/or SafeSport disciplinary record. Extensions may be provided to you at the sole discretion of the Olympic Authority. Should you fail to provide a response within ten (10) business days from the date of receipt of the Pre-Adverse Action Notice, or to contact the Olympic Authority within that time frame with a request for an extension of time to respond, the Olympic Authority will inform you that your name has been withdrawn from consideration for employment. Any such action is within the Olympic Authority's sole discretion and you shall have no right to appeal or challenge such action by the Olympic Authority.

d. All background checks will be conducted by a qualified TPA in compliance with the terms of this Policy and all applicable Federal and State laws.

e. Prior to conducting a background check, a Candidate will be provided with an Authorization & Disclosure Form informing the Candidate that the Olympic Authority will be requesting a Report from the TPA, the name and contacting information of the TPA, the types of information that will be provided in the Report, and the Candidate's rights to request additional information regarding the nature and scope of the Report. The authorization consists of a statement, signed by the Candidate, permitting the TPA to provide the Report to the Olympic Authority. The Authorization & Disclosure Form must be a standalone document that cannot be part of an employment application or any other pre-employment document.

f. After a Candidate has consented to and signed the Authorization & Disclosure Form, the Office of Human Resources will securely submit the full name and email address of the Candidate to the TPA. The Candidate will automatically receive a secure link from the TPA with instructions for entering the information required for the TPA to initiate and conduct a background check. A Candidate must fully and accurately provide all information necessary for the TPA to complete the background check. A Candidate for a new Covered Position or promotion into a Covered Position shall not begin work in that position prior to the satisfactory completion of the required background check, and the receipt of final approval from the Office of Human Resources. If a Candidate refuses to authorize a background check, or the TPA is unable to obtain written authorization within seven (7) business days of the date of a written request for authorization, the Candidate shall be deemed to have withdrawn their name from consideration.

g. Any Adverse Action will be evaluated in accordance with Section 5.5 herein.

5.2 Process for Ongoing Background Checks

a. For any Candidates who holds a Covered Position that is subject to ongoing and/or supplemental background checks at the time when such background check is due, the Office of Human Resources will provide written notification to the Candidate and to the Olympic Authority

Department head and/or Venue management, as applicable. It will be the responsibility of both the Candidate and the Department Head or Venue Management, as applicable, to assure that the Candidate completes and submits the Authorization & Consent Form in a timely manner. If a Candidate refuses to authorize a background check, or the TPA is unable to obtain written authorization within seven (7) business days of the date of a written request for authorization, the Candidate shall be deemed to have withdrawn their name from consideration and the Olympic Authority will take action, in its sole discretion, to remove the Candidate from the Covered Position, whether by termination or by changing their job responsibilities.

b. Any Adverse Action will be evaluated in accordance with Section 5.5 herein.

5.3 Background Check Components:

a. **Full Background Checks.**
A full background check will be conducted for every Candidate. A full background check will include at least the following search components:

1. Social Security Trace and Address History – confirms address history and social security number ("SSN") provided by a Candidate and is used to identify the jurisdictions in which the searches set forth in this Policy will be conducted.

2. Criminal:
   i. **Federal** – Felony and misdemeanor searches for criminal convictions and pending prosecutions, through the respective federal courts in those jurisdictions reported in the SSN trace, for the previous seven (7) to ten (10) years.

   ii. **County** – Felony and misdemeanor searches for criminal convictions and pending prosecutions through the respective county courts where a Candidate has lived, worked, or was educated, in the past seven (7) years.

   iii. **Nationwide** – Search of multi-jurisdictional database compiled from state and county criminal record databases. Sources include court records, incarceration records, prison/inmate records, probation/parole/release information, arrest data, sex offender registries, and wants and warrants.

3. SafeSport Disciplinary Records (**Category 3 Covered Positions Only**) – any Negative Information obtained from a search of SafeSport disciplinary records, conducted via the centralized disciplinary database found at https://uscenterforsafesport.org/response-and-resolution/centralized-disciplinary-database/, will be treated in a manner consistent with New York Law, including Article 23-A, in accordance with the terms and conditions of this Policy.

b. **Supplemental Background Checks.** A supplemental off-year background check will be conducted every other year for any Candidate who works in a title that is identified in this Policy as a Category 3 Covered Position. Supplemental background checks will be conducted using at least the following search components:

1. Nation Wide – Search of multi-jurisdictional database compiled from state and county criminal record databases. Sources include court records, incarceration records, prison/inmate records, probation/parole/release information, arrest data, sex offender registries, and wants and warrants.

2. SafeSport Disciplinary Records – any Negative Information obtained from a search of SafeSport disciplinary records, conducted via the centralized disciplinary database found at https://uscenterforsafesport.org/response-and-resolution/centralized-disciplinary-database/, will be treated in a manner consistent with New York Law, including Article 23-A, as well as in accordance with the terms and conditions of this Policy.

c. **Credit History Checks**. Credit history checks provide a snapshot of financial history, including information regarding delinquent accounts, accounts sent to collection, maximum credit limits available, court judgments, bankruptcies, and liens. This check will be conducted on Candidates for Covered Positions that have the fiduciary responsibilities set forth in this Policy.

5.4 Authorized Third Party Administrator

The Olympic Authority, in its sole discretion, will select a USOPC authorized TPA that will act as a full-service screening organization working in accordance with the recommended guidelines established by the USOPC, the terms and conditions of this Policy, and all applicable State and Federal laws.

5.5 Adverse Action

In accordance with Section 603 of the FCRA, the term "Adverse Action" includes all employment actions affecting a Candidate that can be considered to have a "negative impact" as that term is defined under Section 603 (k) of the FCRA. For the purposes of this Policy, a negative impact will mean the withdrawal of an offer of employment, the denial of a promotion, or a determination to terminate employment or to change an Olympic Authority employee's job position or responsibilities, as the result of a background check that yields Negative Information.

For any Adverse Action that is taken based at least in part based on Negative Information contained in a Report, in accordance with Section 615 (a) of the FCRA, the Candidate will be notified by the Office of Human Resources in writing. Any such notification will be provided utilizing the process set forth below:

a. **Evaluation of Background Check Results**

1. In accordance with Article 23-a, the Olympic Authority will not deny or terminate employment on the basis of prior criminal convictions, except under the following circumstances:

i. A direct relationship between some or all of any previous criminal offense(s) and the specific job or position the Candidate is seeking or holds;

ii. When hiring or continuing to employ the individual would present an unreasonable risk to the Olympic Authority's property, specific individuals, or the general public.

2. Where an Adverse Action is contemplated due to the disclosure of a criminal conviction, negative credit report, and/or SafeSport disciplinary record, the Olympic Authority will consider:

i. That the public policy of this State, as expressed in Article 23-a, is to encourage the licensure and employment of persons previously convicted of one or more criminal offenses;

ii. The specific duties and responsibilities necessarily related to the license or employment sought or held by the person; the bearing, if any, that any criminal offense(s) for which the person was previously convicted will have on their fitness or ability to perform one or more such duties or responsibilities; the time that has elapsed since the occurrence of any criminal offense(s); the age of the person at the time of occurrence of any criminal offense(s); the seriousness of any criminal offense(s); any information produced by the person, or produced on their behalf, in regard to their rehabilitation and good conduct; the Olympic Authority's legitimate interest in protecting property, and the safety and welfare of specific individuals, the Olympic Authority's employees and volunteers, or the general public.

3. Should the Office of Human Resources determine that any Negative Information contained in a Report reflects that hiring or promoting a Candidate could negatively impact the Olympic Authority's interests, the Office of Human Resources will promptly notify the Department head or Venue management for to whom the Candidate has applied for a Covered Position or for whom the Candidate is currently working in a Covered Position, and the Olympic Authority's Office of General Counsel, whereby a determination will be made as to whether an Adverse Action is warranted.

4. Should the background check yield a Report that contains no Negative Information, the Candidate will be so notified in writing by the Office of Human Resources (see Exhibit A attached hereto).

b. **Pre-Adverse Action Notice**

1. If an Adverse Action is contemplated, the Office of Human Resources will issue by certified mail, return receipt requested, a written Pre-Adverse Action Notice (attached as Exhibit A) to the Candidate along with: (1) a copy of the Report; (2) contact information for the TPA including name, address, and telephone number; and (3) the "Summary of Rights under the Fair Credit Reporting Act" (attached as Exhibit B hereto).

2. The Candidate will be given ten (10) business days from the date of receipt of the Pre-Adverse Action Notice to dispute any information contained in the Report that led to the negative determination, by contacting the TPA and providing correct information regarding their criminal history, credit history, and/or SafeSport disciplinary record, including evidence that they did not commit the offense (e.g., in the case of

misidentification), evidence of rehabilitation or character, the length of time since the last criminal conviction, other factors relevant to the negative determination, and other extenuating circumstances including but not limited to disparate legal and enforcement practices. Extensions may be provided to the Candidate at the sole discretion of the Olympic Authority. Should a Candidate fail to either provide a response within ten (10) business days of the date of receipt of the Pre-Adverse Action Notice, or to request an extension of time to respond, the Olympic Authority shall inform the Candidate that their name has been withdrawn from consideration and/or take action to remove the Candidate from the Covered Position, whether by termination or by changing their job responsibilities. Any such action is within the Olympic Authority's sole discretion and the Candidate shall have no right to appeal or challenge such action by the Olympic Authority.

3. Upon receipt of any corrected Report, the Office of Human Resources, the Olympic Authority's Office of General Counsel, and either the Department head or Venue management, as applicable, will discuss the information contained in the Report and make a determination in accordance with Article 23-a and other applicable laws, including FCRA and SafeSport. Said determination will be made within five (5) business days from the date the Office of Human Resources receives the corrected Report from the TPA. Any such action is within the Olympic Authority's sole discretion and the Candidate shall have no right to appeal or challenge such action by the Olympic Authority.

4. The result of the Olympic Authority's review of any corrected Report will be communicated in writing to the Candidate by the Office of Human Resources.

c. **Adverse Action Notice**

If the Olympic Authority determines to take Adverse Action based in whole or in part on information contained in the Report, the Office of Human Resources will issue by certified mail, return receipt requested, a written Adverse Action Notice to the Candidate that includes: (1) a description of the Adverse Action being taken (e.g., rejection of the application) and that the action has been taken based in whole or in part on information contained in the Report; (2) a statement that the TPA did not make the decision to take Adverse Action and is unable to provide the reason for such decision; and (3) the rights of the Candidate to obtain a free copy of the Report from the TPA and to dispute information contained in the Report with the TPA. Any such action is within the Olympic Authority's sole discretion and the Candidate shall have no right to appeal or challenge such action by the Olympic Authority.

5.6 Protection of Personal Information

In accordance with the requirements of Public Officers Law § 87 (2), Public Officers Law §§ 91-99, and the FCRA, all information collected through the background check process will be used solely for employment considerations and will be kept strictly confidential and protected against unauthorized access, use, and disclosure.

5.7 Record-Keeping

a. The Report will be maintained by the Office of Human Resources and kept for a period of four (4) years from the date the Report was completed.

b. At the expiration of the four (4) years, the Report will be deleted from the Office of Human Resources database/information system and all paper copies, if any, will be destroyed.

VI. VIOLATIONS

Violations of this Policy by a Candidate, including the provision of false or fraudulent information, will result in disciplinary action up to and including termination. Any violation may also be subject to prosecution under applicable federal, state or local law.

VII. POLICY REVIEW

This Policy will be reviewed on an annual basis and updated as necessary.

Exhibit A

Date

Applicant Name
Address
City, State Zip Code

Dear [Name]:

A decision is currently pending concerning your application for employment with the Olympic Authority. Enclosed is a copy of the consumer report(s) that you authorized [TPA Name] to obtain in regard to your application for employment, together with "A Summary of Your Rights Under the Fair Credit Reporting Act."

The contents of the report are currently under review in consideration of your employment. If the report contains any information that is inaccurate or incomplete, you must contact our office within ten (10) business days of the date of this letter so that the corrected information can be reviewed prior to an employment decision being made.

In accordance with the Fair Credit Reporting Act, you have the right to dispute the accuracy or completeness of the information contained in your report by contacting the consumer reporting agency from which we obtained the report, the name, address, and contact information of which is:

[TPA Name, Address and Contact Info]

Thank you for your interest in employment with the Olympic Authority.

Sincerely,

Office of Human Resources

Exhibit B

Para información en español, visite www.consumerfinance.gov/learnmore o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under FCRA. **For more information, including information about additional rights, go to www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.**

- You must be told if information in your file has been used against you. Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.

- You have the right to know what is in your file. You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:

  o a person has taken adverse action against you because of information in your credit report;
  o you are the victim of identity theft and place a fraud alert in your file;
  o your file contains inaccurate information as a result of fraud;
  o you are on public assistance;
  o you are unemployed but expect to apply for employment within 60 days.

In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.consumerfinance.gov/learnmore for additional information.

- You have the right to ask for a credit score. Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.

- You have the right to dispute incomplete or inaccurate information. If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.consumerfinance.gov/learnmore for an explanation of dispute procedures.

- Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information. Inaccurate, incomplete, or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

- Consumer reporting agencies may not report outdated negative information. In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

- Access to your file is limited. A consumer reporting agency may provide information about you only to people with a valid need – usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.

- You must give your consent for reports to be provided to employers. A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.consumerfinance.gov/learnmore .

- You may limit "prescreened" offers of credit and insurance you get based on information in your credit report. Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address form the lists these offers are based on. You may opt out with the nationwide credit bureaus at 1-888-5-OPTOUT (1888-567-8688).

- The following FCRA right applies with respect to nationwide consumer reporting agencies:

CONSUMERS HAVE THE RIGHT TO OBTAIN A SECURITY FREEZE

- You have a right to place a "security freeze" on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, or any other account involving the extension of credit.

- As an alternative to a security freeze, you have the right to place an initial or extended fraud alert on your credit file at no cost. An initial fraud alert is a 1-year alert that is placed on a consumer's credit file. Upon seeing a fraud alert display on a consumer's credit file, a business is required to take steps to verify the consumer's identity before extending new credit. If you are a victim of identity theft, you are entitled to an extended fraud alert, which is a fraud alert lasting 7 years.

- A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

- You may seek damages from violators. If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.

- Identity theft victims and active duty military personnel have additional rights. For more information, visit www.consumerfinance.gov/learnmore .

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For information about your federal rights, contact:

Type of Business:	Contact:
1.a. Banks, savings associations, and credit unions with total assets of over $10 billion and their affiliates	a. Consumer Financial Protection Bureau 1700 G Street, N.W. Washington, DC 20552
b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the CFPB:	b. Federal Trade Commission: Consumer Response Center – FCRA 600 Pennsylvania Avenue, NW Washington, DC 20580 (877) 382-4357
2. To the extent not included in item 1 above: a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks	a. Office of the Comptroller of the Currency Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010-9050
b. State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and Insured State Branches of Foreign Banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act	b. Federal Reserve Consumer Help Center P.O. Box. 1200 Minneapolis, MN 55480
c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations	c. FDIC Consumer Response Center 1100 Walnut Street, Box #11 Kansas City, MO 64106
d. Federal Credit Unions	d. National Credit Union Administration Office of Consumer Protection (OCP) Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street Alexandria, VA 22314
3. Air carriers	Asst. General Counsel for Aviation Enforcement & Proceedings, Aviation Consumer Protection Division, Department of Transportation 1200 New Jersey Avenue, S.E. Washington, DC 20590
4. Creditors Subject to the Surface Transportation Board	Office of Proceedings, Surface Transportation Board, Department of Transportation 395 E Street, S.W. Washington, DC 20423
5. Creditors Subject to the Packers and Stockyards Act, 1921	Nearest Packers and Stockyards Administration area supervisor
6. Small Business Investment Companies	Associate Deputy Administrator for Capital Access, United States Small Business Administration 409 Third Street, S.W., 8th Floor Washington, DC 20416
7. Brokers and Dealers	Securities and Exchange Commission 100 F Street, N.E. Washington, DC 20549
8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations	Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090
9. Retailers, Finance Companies, and All Other Creditors Not Listed Above	FTC Regional Office for region in which the creditor operates or Federal Trade Commission: Consumer Response Center – FCRA 600 Pennsylvania Avenue, NW Washington, DC 20580 (877) 382-4357

NOTICE SPECIFIC TO NEW YORK: You have the right, upon request, to be informed of whether or not a consumer report was requested. If a consumer report was requested, you will be provided with the name and address of the consumer reporting agency furnishing the report. You may inspect and receive a copy of the report by contacting that agency. For a summary of your rights under New York State law, see N.Y. Correct. Law §§ 750–55.

NEW YORK STATE
OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Code of Ethics Policy
Effective _____

I. Introduction

It is the policy of the Olympic Regional Development Authority (the "Olympic Authority") to conduct all of its activities pursuant to the highest standards of public integrity and ethical conduct. So as to emphasize the standards of ethical conduct expected of all members and employees of the Olympic Authority, the Board of Directors has adopted in its By-Laws at Article III (Conflicts of Interest), and by Resolution Nos. 11, 79, 179, 428, and 537, a Code of Ethics Policy (the "Code").

This Code establishes the parameters of permissible activity by Olympic Authority members and employees, specifically proscribes certain activities, and establishes the administrative structure through which such matters shall be identified and resolved.

Any questions regarding the application of this Code, or any doubts regarding the propriety of any action planned or taken by the Olympic Authority, its members or employees, shall be brought to the attention of the Olympic Authority's General Counsel. The General Counsel will refer breaches of the Code, or other matters, as appropriate, to the Commission on Ethics and Lobbying in Government ("COELIG") and/or such other authority as may be appropriate under the circumstances. The COELIG website can be accessed at: https://ethics.ny.gov/.

II. Public Officers Law

The Ethics in Government Act was enacted in 1987 to eliminate abuse and corruption in State government and to restore the public's trust and confidence in public institutions. Under the Act, restrictions were imposed on the business and professional activities of State officers and employees, both during and after their State employment.The Act also requires certain public employees to file an annual statement of financial disclosure to COELIG.

Public Authorities Law § 2608 (5) provides that the Olympic Authority is a "state agency" for the purposes of sections 73 and 74 of the Public Officers Law. Under this Olympic Authority Code of Ethics, all members and employees of the Olympic Authority are subject to the ethics requirements set forth in Public Officers Law §§ 73 and 74. Designated policymakers, which includes Board Members, and those employees earning over the annual salary threshold set by COELIG, are also subject to the Financial Disclosure Filing requirements of Public Officers Law § 73-a. The rules of ethical conduct as set forth in this Code are to be considered as supplemental to those contained in §§ 73, 73-a, and 74 of the Public Officers Law, and such law is paramount and controlling to the extent, if any, that it is more restrictive or limiting than this Code.

III. Conflicts of Interest

Members and employees of the Authority shall avoid actual, apparent,or potential conflicts

DRAFT

of interest in the exercise of their official duties and responsibilities, as well as their private and individual interests. Such conflicts of interest may include:

A. Soliciting, accepting, or receiving any gift, whether in the form of money, service, a loan, travel, entertainment, hospitality, promise, or in any other form, under circumstances in which it could be reasonably inferred that the gift was intended to influence the member or employee of the Olympic Authority, or could reasonably be expected to influence such member or employee in the performance of their official duties, or as a reward for any official action;

B. Accepting outside employment which would impair the independence or judgment of the Olympic Authority member or employee in the exercise of their official duties, or which would require or result in the disclosure of confidential information gained by reason of State position, employment, or authority;

C. Soliciting or obtaining significant interest or investment in business enterprises that act as Olympic Authority sponsors or suppliers, other than those interests or investments held prior to service as a member or employee of the Olympic Authority;

D. Taking part, as a member or employee of Olympic Authority, in the identification, negotiation, selection, acquisition, or determination of any procurement, contract, transaction, or other matter with any business entity in which such member, employee, or representative has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his/her official duties.

This Code mandates complete disclosure, in writing, of any such conflict or potential conflict of interest, or appearance of a conflict of interest. This requirement includes a detailed recitation of the nature and extent of any direct or indirect financial or other interest such member or employee of the Olympic Authority may have in any entity currently doing or attempting to do business with the Olympic Authority, and must be submitted to the General Counsel. Every effort must be made to identify and mitigate the appearance or existence of, or the potential for, a conflict of interest, at the earliest stage of any Olympic Authority business transaction.

NOTE: *A conflict of interest with respect to any entity doing business or attempting to do business with the Olympic Authority shall preclude any member of the Olympic Authority Board of Directors from voting upon such business before the Board, and shall require all affected members and/or employees of the Olympic Authority to refrain from any involvement in the transaction of such business at any level. Inquiries regarding the application of this requirement should be immediately referred to the General Counsel.*

IV. Nepotism

Public Officers Law § 73 (14) prohibits a State employee from participating in any decision to hire, promote, discipline, or discharge a relative who is, or is under consideration to become, a State employee. The term "relative" is defined under the law as any person living in the same household as the member or employee, or any person who is a direct descendant of the member's or employee's grandparents, as well as the spouse of such descendant.

This law does not prohibit relatives from being employed by the Olympic Authority in the

same venue or even the same department. It does, however, prohibit the direct oversight of one relative by another. The Olympic Authority will make every effort to avoid the placement of relatives in the same chain of command. However, in those cases where that is not possible, in accordance with guidance provided by COELIG in 2023, the Olympic Authority will use its discretion to establish a management and reporting structure that avoids the direct or indirect management of one relative by another. Such management structure must be documented by the appropriate Olympic Authority venue or department management staff, shall be approved by the General Counsel in writing, and such written approval shall be provided to relevant managerial staff and maintained by the Office of Human Resources in the personnel files of both relatives. The Olympic Authority shall retain the right to revise any such management and reporting structure if necessary.

Any relative of an Olympic Authority employee who wishes to seek employment with the Olympic Authority must do so without any involvement by their Olympic Authority-employed relative. Any Olympic Authority employee who has a relative seeking employment with the Olympic Authority is prohibited from participating in the hiring process.

V. Gifts

A "gift" under the law is anything of value that is over the nominal amount of $15.00. The prohibition of accepting gifts includes but is not limited to meals, refreshments, entertainment, money, services, loans, travel, lodging, a promise with monetary value, forgiving a debt or agreeing to change the terms of a debt. The purpose of the prohibition is to avoid conflicts of interest or the appearance of conflicts of interest in connection with the performance of a member or employee's job duties, or anything that could be interpreted as a reward for official action on the part of a member or employee.

Under the law, gifts from "interested sources" are presumed to be prohibited even if the gift falls under the $15.00 nominal threshold. An "interested source" is any person or entity who does business with the Olympic Authority, who wants to do business with the Olympic Authority, who is involved in litigation with the Olympic Authority, any person or entity who has received or applied for funds from the Olympic Authority within the preceding year, and any person or entity who is attempting to influence the member or employee or the Olympic Authority in carrying out an official action.

It is important to remember that the $15.00 nominal threshold can be exceeded if the same source provides multiple otherwise "permissible" gifts that add up to over $15.00. It is also important to remember that no member or employee may direct a gift from an impermissible source to a third party, including a charitable organization or a family member.

Travel costs (which include lodging and hospitality) that are associated with an employee's job duties and are offered by a third party, must be reviewed and approved in advance by the General Counsel and may be reportable on an employee's annual Financial Disclosure form. Honoraria must also be approved in advance by the General Counsel and may also be reportable on an annual Financial Disclosure form filing. Complimentary attendance at certain widely attended events may be permissible, but must be approved in writing and in advance by the General Counsel.

NOTE*: *Impermissible gifts are those that are offered in connection with an employee's job with the Olympic Authority.

The General Counsel and COELIG are always available for advice regarding the offer of a gift in connection with employment. All employees are encouraged to and should feel free to ask questions about this or any other aspect of the ethics laws to avoid potential problems.

VI. Outside Employment or Activities

No Olympic Authority member or employee shall engage in any outside business activity, transaction, or employment that would conflict with their responsibility to carry out their job duties in the public interest. In addition, no Olympic Authority member or employee shall engage in any outside business activity that would reflect adversely on the integrity of such member or employee, or the Olympic Authority itself.

All employees are encouraged to seek the approval of their supervisor and the Olympic Authority General Counsel prior to engaging in any outside employment or business activities. Those employees who are classified as policymakers are required to have the prior written approval of both their supervisor and the General Counsel, and for any policymaker earning over $5000 per year from such activity, COELIG must also issue prior approval. Policymakers are required to obtain review and approval of all outside activities on an annual basis, even where such activity has previously been approved.

Actions associated with any outside business activity, transaction, or employment are not permitted during an employee's normal work hours, and no Olympic Authority premises, equipment, supplies, or resources of any kind may be used to accomplish such activity.

VII. Political Activities

Olympic Authority members and employees are encouraged to take an interest in local, State, and national political affairs, and with the exception noted here, have the right to participate in such affairs, on their own time, using their own resources. However, the Public Officers Law prohibits an individual who is serving in a policy making position from serving as an officer of any political party or political organization (note - a "political organization" is defined to mean an organization that is affiliated with or subsidiary to a political party, but does not include campaign or fundraising committees), from serving as a member of any political party committee including serving as a political party district leader or member of a national committee of a political party, and from giving or raising contributions to the Governor's political campaign.

Any participation by an Olympic Authority employee in permitted political activities must comply with the following guidelines:

A. The employee must be clearly acting as an individual, not as a representative of the Olympic Authority;

B. The activities must not interfere with the employee's job duties;

C. The activities cannot be carried out on Olympic Authority time;

D. The activities must not involve the use of Olympic Authority premises, resources, facilities, equipment, or supplies.

There should be no political signage on any Olympic Authority property, and no Olympic Authority employee should wear political hats or clothing at work. No Olympic Authority employee should wear their Olympic Authority uniform outside of work including to any political function. The use of social media on an employee's own time using their personal technology is permissible, as long as there is no association made between an employee's political views and their employment with the Olympic Authority.

In general, Olympic Authority members and employees are charged to pursue a course of conduct that will maintain the public's trust and confidence in civil servants and public institutions, and that complies with all applicable local, State, and federal laws.

Any member or employee with an interest in outside political activities or questions about these requirements should contact the Olympic Authority General Counsel or COELIG.

VIII. Policy Makers

The Olympic Authority Board of Directors will, on an annual basis, pass a resolution identifying those employees who are designated as policy makers by the Olympic Authority. The specific rules that apply to policy makers in a manner that is different than other Olympic Authority employees are discussed in Sections VI and VII above, and in the following section.

IX. Financial Disclosure

In accordance with Public Officers Law § 73-a, COELIG requires that any member or employee designated by the Olympic Authority as a policymaker, or any employee whose salary exceeds the annual threshold, file an Annual Financial Disclosure Statement (FDS). As designated policy makers, all Board Members are subject to the requirement for filing an annual FDS. Pursuant to the Public Officers Law, the failure to file this Statement in a timely manner may subject a required filer to a civil penalty of up to ten thousand dollars ($10,000.00), and/or disciplinary action initiated by the Olympic Authority.

The Olympic Authority will track the compliance of members and employees with this requirement, and those members and employees who are subject to this requirement will be notified by COELIG and the Olympic Authority Director of Human Resources of the requirement to file a FDS and the annual deadline for doing so.

Information about the annual filing requirements, including changes in salary thresholds can be found at https://ethics.ny.gov/fds-filing-information-and-forms.

Any questions on these requirements should be directed to Olympic Authority General Counsel, or to COELIG at 800-873-8442 or by email at Guidance@ethics.ny.gov.

NEW YORK STATE
OLYMPIC REGIONAL
DEVELOPMENT AUTHORITY

Defense and Indemnification Policy
Effective _____

I. Purpose and Definition.

The purpose of this Policy is to provide for the defense and indemnification of Members, officers, and employees of the New York State Olympic Regional Development Authority (Olympic Authority).

II. General Scope of Indemnification.

The Olympic Authority shall, to the fullest extent permitted by law, indemnify any person who becomes a party to an action or proceeding by reason of the fact that they were or are a Board Member (Member), officer, or employee of the Olympic Authority, and arising out of such Member's, officer's, or employee's action(s) within the scope of their employment in the exercise or carrying out of any of the Olympic Authority's purposes and powers (Applicable Standard of Conduct), against judgments, penalties, amounts paid in settlement and reasonable expenses, including attorney's fees, actually and necessarily incurred, unless the conduct of such Member, officer, or employee, in the matters at issue in such action or proceeding, is found not to have met the Applicable Standard of Conduct.

III. Insurance.

The Olympic Authority shall, to the fullest extent permitted by law, provide defense and/or indemnification under the terms of this Policy through the purchase and maintenance of insurance procured annually as part of the Olympic Authority program of insurance. Outside of such insurance the Olympic Authority assumes no independent obligation to indemnify any Olympic Authority Member, officer, or employee, under the terms of this Policy. If a claim for coverage is denied by the carrier(s) of such policy or policies of insurance, the Olympic Authority shall have no independent liability for the costs associated with either the defense or indemnification of any Member, officer, or employee, in any action or proceeding against them. This policy does not create any contractual obligation on the part of the Olympic Authority in this regard.

IV. Applicability of this Article.

A. The provisions of this Policy shall inure only to Members, officers, and employees of the Olympic Authority, as defined herein, shall not enlarge or diminish the rights of any other party to an action or proceeding, and shall not impair, limit, or modify the rights and obligations of any insurer under any policy of insurance.

B. The provisions of this Policy shall be in addition to and shall not supplant any indemnification by the State heretofore or hereafter conferred upon any Member, officer, or employee, by Section 17 of the Public Officers Law, or otherwise.

DRAFT

C. This Policy shall be applicable, to the fullest extent permitted by law, to any claim for indemnification made after its adoption as a Policy Resolution of the Olympic Authority, whether the action or proceeding to which such claim relates commenced, or the matters at issue therein occurred, before or after the adoption of this Policy. It is contemplated that no subsequent amendment, supplement, or repeal of this Policy which deprives a Member, officer, or employee of any substantial right or benefit conferred herein will be made applicable with respect to any claim for indemnification arising out of the conduct of such Member, officer, or employee occurring or alleged to have occurred after the adoption of this Policy and prior to such amendment, supplement or repeal.

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

Kathy Hochul
Governor

September 2024

TABLE OF CONTENTS

INTRODUCTION 1
PROTECTED AREAS 2
AGE 2
Statutory protection. 2
Executive Order concerning State workers. 3
Retirement 3
Exceptions 3
RACE and COLOR 4
Statutory protection. 4
CREED 4
Statutory protection. 5
Sabbath or holy day observance. 5
Religious observance or practices. 6
Request for accommodation. 6
Conflicts with seniority rights. 6
Undue hardship. 6
Exceptions 7
NATIONAL ORIGIN 7
Statutory protection. 7
Language issues. 7
Proof of identity and employment eligibility. 8
Citizenship requirements. 8
CITIZENSHIP OR IMMIGRATION STATUS 8
Statutory protection. 9
MILITARY STATUS 9
Statutory protection. 9
Military leave and job retention rights. 9
SEX 10
Statutory protection. 10
Sex stereotyping. 10

Sexual harassment. 11
Pregnancy and childbirth discrimination. 11
Exceptions. 11

SEXUAL HARASSMENT 11

Statutory protection. 11
Executive Order concerning State workers. 11
Sexual harassment defined. 12
Reporting sexual harassment. 13
Sexual harassment by a non-employee. 13
Sexual harassment of non-employees. 13

SEXUAL ORIENTATION 14

Statutory protection. 14
Same-sex spouses or partners. 14
Domestic partners. 14

GENDER IDENTITY OR EXPRESSION 14

Statutory protection. 15
Executive Order concerning State workers. 15
What protection against discrimination is provided by the Human Rights Law? 15
Rights with regard to name, title and pronoun. 16
Access to gender-segregated facilities and programs. 16
Dress codes, uniforms, grooming, and appearance standards. 16
Equal access to employee benefits, leave, and reasonable accommodations. 17

DISABILITY 17

Statutory protection. 17
What is a “disability” under the Human Rights Law? 17
Reasonable performance. 18
Essential functions. 18
Reasonable Accommodation. 18
Exceptions. 20
Family Medical Leave Act (29 USC sections 2601 to 2654). 20
Civil Service Law §§ 71 and 73. 20
Drug and Alcohol-Free Workplace Policy. 20
Drug addiction and alcoholism under the Human Rights Law and Regulations. 21
Guide dogs, hearing dogs, and service dogs. 21

PREDISPOSING GENETIC CHARACTERISTICS 22

Statutory protection. 23
What is a predisposing genetic characteristic? 23
How is the employee or applicant protected? 23
Exceptions 24

FAMILIAL STATUS 24

Statutory protection. 24
Familial status does not include the identity of the children. 24
Nepotism. 24
What is familial status discrimination? 25
No requirement of reasonable accommodation. 25
Pregnancy and childbirth discrimination. 25

MARITAL STATUS 25

Statutory protection. 26
Marital status does not include the identity of the spouse. 26
Nepotism. 26
What is marital status discrimination? 26

STATUS AS A VICTIM OF DOMESTIC VIOLENCE 27

Statutory protection. 27
Executive Order concerning State workers. 27
Purpose of domestic violence and the workplace policies. 27
Meeting the needs of domestic violence victims. 28
Human Rights Law reasonable accommodation requirements for leave time. 29
Time off for legal proceedings. 29
Unemployment insurance benefits. 29
Further information and support. 29

PREGNANCY, CHILDBIRTH AND FAMILY LEAVE 30

Statutory protection. 30
Pregnancy discrimination. 30
Reasonable accommodation of pregnancy-related conditions. 30
Right to express breast milk in the workplace. 31
Parental leave. 32
Paid Family Leave. 32

PRIOR ARREST RECORDS, YOUTHFUL OFFENDER ADJUDICATIONS AND SEALED CONVICTION RECORDS 33

Statutory protection. 33

What is unlawful? 33
Pending arrest or charges. 33
What specific circumstances are protected? 34
Sealed records. 34
Exceptions 34
PREVIOUS CONVICTION RECORDS 35
Statutory protection. 35
Factors from the Correction Law. 35
Conviction must be “previous.” 36
Inquiries and misrepresentation. 36
Interaction with the arrest provisions. 36
Enforcement only by court action. 37
Exceptions 37
HARASSMENT PROHIBITED 37
Appropriate supervision is not harassment. 38
Harassment by a non-employee. 38
Harassment of non-employees. 38
RETALIATION 38
Administrative or court proceedings. 39
Opposing discriminatory practices. 39
REPORTING DISCRIMINATION IN THE WORKPLACE 40
Confidentiality and cooperation. 41
Discrimination must be investigated and appropriate corrective action taken. 41
PURSUING DISCRIMINATION COMPLAINTS EXTERNALLY 42
GENERAL PROHIBITIONS AND PROVISIONS 43
Unlawful inquiries. 43
Interns 43
Non-employees working in the workplace. 43
Political activities. 44
Diversity. 44
NOTE 44

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.

Executive Order 187, which became effective on December 1, 2018, transferred the responsibility for conducting investigations of all employment-related discrimination complaints to the Office of Employee Relations ("OER")[1]. Executive Order 187 promotes 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. 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 OER. A copy of the New York State Employee Discrimination Complaint Form is located on the OER website (https://oer.ny.gov/) at https://antidiscrimination.oer.ny.gov/.

[1] OER, which was established as an office of the executive department by Article 24 of the New York Executive Law, was previously called the Governor's Office of Employee Relations until April 10, 2022. Executive Order 187 ("EO 187") confers the duty to investigate employment discrimination to the "Governor's Office of Employee Relations." References to the Governor's Office of Employee Relations in EO 187 are to the statutory entity, OER.

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

federal Age Discrimination in Employment Act ("ADEA").[2] 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.

Executive Order No. 2 dated January 1, 2011, reissued Executive Order No. 96,[3] and 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.[4] 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.[5]

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 Law[6] mandates minimum and maximum hiring ages for police officers. Correction Officers must be at least 21 years of age in order to be appointed.[7] These are lawful exceptions to the provisions of the Human Rights Law.

There are certain limited exceptions to the prohibition on mandatory retirement.[8] For example, officers of the New York State Police are required to retire at age 60,[9] and State park police officers are required to retire at age 62.[10]

---

[2] 29 U.S.C. § 621 et seq.
[3] Issued by Gov. Mario M. Cuomo on April 27, 1987.
[4] Human Rights Law § 296.3-a(d) but *see* exceptions below.
[5] Human Rights Law § 296.3-a(g).
[6] N.Y. Civil Service Law § 58; *see also* N.Y. Executive Law § 215.3.
[7] N.Y. Correction Law § 7(4).
[8] Human Rights Law § 296.3-a(g).
[9] N.Y. Retirement and Social Security Law § 381-b(e).
[10] N.Y. Park, Recreation and Historic Preservation Law § 13.17(4).

In the area of employee benefits, the Human Rights Law does not "preclude the varying of insurance coverage according to an employee's age."[11]

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.[12] 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.[13]

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.

[11] Human Rights Law § 296.3-a(g).
[12] Human Rights Law § 292.37 and § 292.38.
[13] 42 U.S.C. § 2000e et seq.

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.[14]

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.[15] 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.[16] 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.[17] Under no circumstances may time off for religious observance be charged as sick leave.[18]

The employee is not entitled to premium wages or benefits for work performed during hours to which such premium wages or benefits would ordinarily be applicable, if the employee is working during such hours only to make up time taken for religious observance.[19]

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.

---

[14] 42 U.S.C. § 2000e et seq.
[15] Human Rights Law § 296.10(a).
[16] Human Rights Law § 296.10(b).
[17] Human Rights Law § 296.10(c).
[18] Human Rights Law § 296.10(b).
[19] 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).

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.[20]

Request for accommodation.

All New York State agencies have adopted a procedure for requesting a religious accommodation.[21] 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 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

[20] Human Rights Law § 296.10(a).

[21] 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."

personnel), and the number of individuals who will need time off for a particular sabbath or holy day in relation to available personnel.[22]

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.[23]

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.[24] An individual's self-identification with a particular national or ethnic group is determinative.

Statutory protection.

National origin discrimination is unlawful pursuant to the Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace), and the federal Civil Rights Act of 1964, Title VII.[25]

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.

[22] Human Rights Law § 296.10(d)(1).
[23] Human Rights Law § 296.10(d)(1).
[24] Human Rights Law § 292.8.
[25] 42 U.S.C. § 2000e et seq.

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.[26]

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.[27]

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.[28]

CITIZENSHIP OR IMMIGRATION STATUS

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

"Citizenship or immigration status" means the citizenship or immigration status of any person who is not a citizen of the United States.

An employer's verification of citizenship or immigration status, when required by law, does not constitute discrimination on the basis of citizenship or immigration status. The

[26] *See* the federal Equal Employment Opportunity Commission's regulation at 29 CFR § 1606.7.
[27] 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.
[28] Public Officers Law § 3(1); Criminal Procedure Law § 1.20(34) (police officers); Criminal Procedure Law § 2.10 (peace officers).

law does not prevent an employer from taking an adverse action based on that verification where such action is required by law.

Statutory protection.

Discrimination on the basis of citizenship or immigration 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).

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.[29]

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)[30] 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"[31] or "military duty."[32] 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

[29] Human Rights Law § 292.28.
[30] 38 U.S.C. §§ 4301-35.
[31] N.Y. Military Law § 242; pertains to members of the militia, the reserve forces, or reserve components of any branch of the military.
[32] N.Y. Military Law § 243; pertains to active duty in the armed forces or reservists called to active duty.

their position continuously during the period of military duty. State employees on leave for military duty continue to accrue years of service, increment, and any other rights or privileges. Under both Military Law and the Human Rights Law, those called to military duty, or who may be so called, may not be prejudiced in any way with reference to promotion, transfer, or other term, condition or privilege of employment. Military Law § 243(5) provides: "State employees on leave for military duty shall suffer no loss of time, service, increment, or any other right or privilege, or be prejudiced in any way with reference to promotion, transfer, reinstatement or continuance in office. Employees are entitled to contribute to the retirement system in order to have leave time count toward determining length of service."

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

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.[33]

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-

[33] 42 U.S.C. § 2000e et seq.

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.

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.[34]

Executive Order concerning State workers.

Executive Order No. 2 dated January 1, 2011, reissued Executive Order No. 19,[35] which established State policy on sexual harassment in the workplace.

[34] 42 U.S.C. § 2000e et seq.
[35] Issued by Gov. Mario M. Cuomo on May 31, 1983.

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:

- 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. [36]

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

[36] Human Rights Law § 296.1(h).

and made available to all staff as needed. Also, each agency must provide appropriate sexual harassment training to its staff.

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 OER via the New York State Employee Discrimination Complaint form located at www.oer.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 OER, 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 OER 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.[37]

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 became effective on July 24, 2011, and 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.

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.

[37] Human Rights Law § 292.27.

"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.[38] 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.

Executive Order No. 2, dated January 1, 2011, reissued Executive Order No. 33,[39] 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 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

[38] 9 N.Y.C.R.R. § 466.13
[39] Issued by Gov. David A Paterson on December 16, 2009.

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.

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.[40] The Federal Rehabilitation Act of 1973 § 503 and § 504[41] also apply to many State workers. Federal law also requires reasonable accommodation.

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

What is a "disability" under the Human Rights Law?

A "disability" is:

- a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a

[40] 42 U.S.C. § 12111 et seq.
[41] 29 U.S.C. § 793 and § 794.

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.[42]

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.

Reasonable accommodation.[43]

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;

[42] Human Rights Law § 292.21.

[43] 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.

- 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 providing medical or other information needed to verify the disability, or any additional information that is otherwise necessary for consideration of the accommodation.[44]

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 regulations[45] of the New York State Division of Human Rights, which are available on the Division's website. These regulations may be used

[44] Human Rights Law § 296.3.
[45] 9 N.Y.C.R.R. § 466.11.

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.[46]

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.[47]

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.[48] This is extended to two years for an individual injured in an assault that causes such injury or disease. The Civil Service Law also allows an agency to terminate an employee who has been continuously absent for one year for a personal injury or illness.[49]

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

[46] 9 N.Y.C.R.R. § 466.11(g)(1).
[47] 9 N.Y.C.R.R. § 466.11(g)(2).
[48] Civil Service Law § 71.
[49] Civil Service Law § 73.

substances or alcohol, that employee may be required to undergo medical testing.[50] 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 OER'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.[51]

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

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

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

See 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.[52]

---

[50] For agencies that do not have their own drug/alcohol testing procedures, this test must be done pursuant to Civil Service Law § 72.
[51] *See generally* 9 N.Y.C.R.R. § 466.11(h).
[52] Human Rights Law § 296.14.

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. [53]

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. [54]

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.[55]

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.[56]

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

[53] Human Rights Law § 296.14.
[54] Human Rights Law § 296.14.
[55] 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.
[56] Civil Service Law § 6(1).

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).[57]

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."[58]

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.[59] 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.[60]

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.[61]

---

[57] 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.

[58] Human Rights Law § 292.21-a.

[59] Human Rights Law § 296.19(a)(1).

[60] Human Rights Law § 296.19(a)(2).

[61] Human Rights Law § 296.19(c) and (d).

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.[62] 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.

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.[63] Moreover, other acts of nepotism not

[62] Human Rights Law § 296.19(b).
[63] Anti-nepotism rules for all State government workplaces are found in N.Y. Public Officers Law § 73.14.

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.

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.[64] 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

[64] Human Rights Law §296.3

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.

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.[65] 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.

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

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."[66]

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.

Executive Order No. 2, dated January 1, 2011, reissued Executive Order No. 19,[67] 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.

[66] N.Y. Social Service Law §459-a.
[67] Issued by Gov. Eliot L. Spitzer on October 22, 2007.

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 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.

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.[68]

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.[69]

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

[68] N.Y. Penal Law § 215.14.
[69] N.Y. Labor Law § 593.

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.[70] 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 (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.[71] 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"[72] must be accommodated, when necessary, to allow the employee to perform the essential functions of the job.

[70] Human Rights Law § 296.3(a).
[71] Human Rights Law § 296.1(g) and § 296-c(2)(e).
[72] Human Rights Law § 292.21-f.

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.[73] (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.

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

> An employer shall provide paid break time for thirty minutes, and permit an employee to use existing paid break time or meal time for time in excess of thirty minutes, to allow an employee to express breast milk for such employee's nursing child each time such employee has reasonable need to express breast milk for up to three years following child birth. 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)

Unless there is an undue hardship, upon request of an employee expressing breastmilk in the workplace, an employer shall designate a room or other location that is in close proximity to the work area (i.e., within walking distance so as not to significantly extend an employee's needed break time), is well lit, is shielded from view, and is free from intrusion from other people in the workplace or the public (i.e., a door that locks from inside the room or, if not possible and as a last resort, a sign indicating the room is in use and not accessible) for the employee to express breast milk. At a minimum, the location must have a chair, a working surface, nearby access to clean running water, and an electrical outlet (if the workplace has electricity). Windows shall be covered with a curtain, blind, or other covering. The room or location cannot be a restroom or toilet stall. If the room or location's sole function is not for the expression of breastmilk, the room or location shall be made available to employees expressing breast milk when needed and shall not be used for any other purpose while in use by an employee expressing breast milk. Employers must also notify all employees as soon as practicable that the room or location has been designated for employees to express breast milk. Furthermore, to the extent that the workplace has access to

[73] Human Rights Law § 296.3.

refrigeration, the employer shall provide access to said refrigeration to store expressed breastmilk.

The right to express breast milk in the workplace is NOT an accommodation. However, employees expressing breastmilk are required to notify the employer in advance and in writing, preferably before a return to work from parental leave, that the employee will be expressing breast milk. The written notification should include the employee's anticipated return date, how many breaks the employee anticipates needing, and the employee's preferred time for expressing breast milk, if any. This will assist in ensuring the availability of the room or other location to express breast milk as well as appropriate staffing coverage.

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.[74] 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 Law[75] 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.

[74] 29 U.S.C. § 2601 et seq.
[75] 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

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."[76]

These provisions do not apply to an application for employment as a police officer or peace officer.[77]

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

[76] Human Rights Law § 296.16; see e.g. Civil Service Law § 50(4).
[77] Police and peace officer as defined in Criminal Procedure Law §§ 1.20 and 2.10, respectively.

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.[78]

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

(a) The public policy of this State, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

[78] N.Y. Correction Law § 752.

(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.[79]

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.[80]

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.[81]

Interaction with the arrest provisions.

The arrest provisions[82] 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

[79] N.Y. Correction Law § 753.1.
[80] N.Y. Correction Law § 753.2.
[81] N.Y. Correction Law § 751; see also Civil Service Law section 50(4).
[82] Human Rights Law § 296.16.

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.[83] 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."[84]

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 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.

[83] N.Y. Correction Law § 755.1.
[84] N.Y. Correction Law § 750.5.

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.[85] 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. [86]

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.

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.

[85] Human Rights Law § 296.1(h).
[86] Human Rights Law § 296.1(h).

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 OER, 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;

- 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 OER, or may complain to a supervisor, manager, or human resources officer, who are then required

to report the complaint to OER, 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.[87] 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 OER, 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 OER. The New York State Employee Discrimination Complaint Form ("Complaint Form") is located at https://oer.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 OER. When OER receives a Complaint Form, the individual submitting the complaint will receive an acknowledgment. The Complaint Form may also be filled out and sent to OER via email or regular mail at:

Antidiscrimination@oer.ny.gov

or

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 OER and should request that the employee file the complaint directly with OER. 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

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

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 workplace discrimination has a duty to report it to OER, 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 OER 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.

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.[88]

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 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.

[88] Human Rights Law § 296.1(d) and § 296-c(2)(c).

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.[89] 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 OER.

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 OER. 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 OER website at www.oer.ny.gov.

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

[89] Civil Service Law § 107.

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.

NEW YORK STATE
OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Gender-Based Violence and the Workplace Policy
Effective _____

I. Introduction

The purpose of this Policy is to identify and prescribe practices that will respond effectively to the needs of Olympic Authority employees as victims of domestic or gender-based violence, and to promote safety in the workplace. This Policy was first issued in accordance with Governor's Executive Order No. 17 (EO 17), which required that by January 1, 2023, each state agency formulate and issue a Domestic Violence and the Workplace Policy, with implementation procedures, that would strengthen New York State's procedures for addressing domestic and other forms of gender-based violence. For the purposes of EO 17, the term "state agency" or "agency" includes public authorities such as ORDA.

II. Policy Statement

Domestic violence and other forms of gender-based violence permeate the lives of 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. The Olympic Authority recognizes that as an employer it has both a moral and legal obligation to its employees who may be experiencing such victimization.

New York State law recognizes that domestic and gender-based violence occurs within a wide spectrum of relationships. Therefore the Olympic Authority 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 (OP) will be enforced by the Olympic Authority, and all protections of this Policy will apply. This Policy shall apply to all Olympic Authority employees who are victims of gender-based violence, regardless of where the incidents took place.

Under the mandates of this Policy, the Olympic Authority hereby, to the fullest extent possible and 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 this Gender-Based Violence and the Workplace Policy covering the following topics:

A. Agency responsibilities;

B. Definitions;

C. Persons covered by the Policy;

DRAFT

D. Non-discrimination and Responsive Personnel Policies for Employees who are victims of domestic and gender-based violence*;*

E. Non-Retaliation Policy;

F. Workplace Safety Plans;

G. Accountability for Employees who perpetrate domestic or gender-based violence;

H. Training;

I. Data Collection and Reporting;

J. Violations of this Policy.

III. Definitions

For the purposes of this Policy, the following terms will have the definitions set forth below:

A. 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 these acts.

B. Domestic Violence Agency Liaison (DVAL): A designated employee of the Olympic Authority who has been trained by the Office for the Prevention of Domestic Violence (OPDV) to assist victimized employees, who shall ensure the Olympic Authority's compliance with this Gender-Based Violence and the Workplace Policy, and who serves as the primary contact for OPDV.

C. Employee: Solely for purposes of this Policy, the term "employee" shall include all full-time staff, part-time staff, seasonal and/or temporary staff, contract employees, per diem staff, and those who perform services for the Olympic Authority as official volunteers.

D. 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.

E. Olympic Authority: All venues and other workplaces operated, managed, and/or maintained by the State of New York Olympic Regional Development Authority.

F. 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 not be limited to ordering the person who is the subject of the order 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/or surrender any firearms.

G. Perpetrator or abusive partner or person who causes harm: A person who commits or threatens to commit coercive or violent acts, which may include but is not limited to physical, psychological, sexual, economic, and/or emotional abuse against a victim.

H. Sexual Harassment: Consistent with the New York State Human Rights Law and Olympic Authority policy, unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

1. 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;

2. Such conduct is made either explicitly or implicitly a term or condition of employment; or

3. Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

I. Victim of domestic violence (Executive Law § 292 [34] [Human Rights Law]; New York State Social Services Law § 459-a): Any person over the age of sixteen (16), any married person, or any parent[1] accompanied by their 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

1. 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

2. Such act or acts are or are alleged to have been committed by a family or household member with the term "family or household members" defined to mean:
   a. Persons related by consanguinity or affinity (blood or a person's relation to blood relatives of their spouse);

   b. Persons legally married to one another;

[1] The term "Parent" means a natural or adoptive parent, or any individual lawfully charged with a minor child's care or custody.

c. Persons formerly married to one another regardless of whether they still reside in the same household;

d. Persons who have a child in common regardless of whether such persons are married or have married or have lived together at any time;

e. 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;

f. 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

g. 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.

J. Workplace: For the purposes of this Policy, any permanent or temporary location away from an Olympic Authority employee's domicile where the employee performs any work-related duty in the course of their employment with the Olympic Authority.

IV. Persons covered by this Policy

This Policy shall extend to all Olympic Authority employees as that term is defined herein.

V. Statement of Confidentiality

The Olympic Authority recognizes and respects each of its employees' right to privacy and confidentiality. All information, including employee disclosures about victimization, shall be kept confidential to the extent permitted by law and organizational policy. In any other instance the Olympic Authority will first obtain written consent from the victimized employee. In all circumstances the Olympic Authority will provide notice to the victimized employee, and any confidential information will be given to only those deemed necessary for securing the safety of the victim, other employees, or the workplace. The information given will be as limited in scope as possible, and anyone receiving such information may be required to sign an acknowledgement of confidentiality stating that any information they have been given will be used only for the intended purpose. The Olympic Authority will not share information in circumstances where doing so would create a substantial risk of imminent danger to the victimized employee, other employees, or the workplace.

VI. Olympic Authority Responsibilities

A. The Olympic Authority shall designate at least one employee as its Domestic Violence Agency Liaison (DVAL). Where possible, the liaison shall be an employee with advocacy, social work, or counseling experience.

B. Employees who work as Employee Assistance Program (EAP) Coordinators shall not be designated as the DVAL.

C. The current contact information for all DVALs and their supervisors will be communicated to OPDV by emailing **workplace@opdv.ny.gov**. Any updates to this information shall be provided within two weeks of the change.

D. Employee Awareness

1. The Olympic Authority will work to increase awareness regarding domestic and gender-based violence and create an informed workforce by providing available sources of assistance for those employees who experience domestic or gender-based violence.

2. The Olympic Authority will increase awareness regarding possible disciplinary practices that may be implemented in the event of retaliation or used with employees who perpetrate acts of domestic or gender-based violence.

3. The Olympic Authority will include this Policy as part of the written materials that are provided to all new employees, and will also provide this Policy to all employees on an annual basis.

4. A detailed explanation of employee rights under this Policy will be given during new employee orientation, including information for contacting the DVAL.

5. If the Olympic Authority suspects that an employee is a victim of domestic and gender-based violence but the employee has not disclosed victimization, the Olympic Authority will refer the employee to:
   a. The DVAL

   b. The local or Statewide EAP
   1-800-822-0244

   c. The NYS Domestic and Sexual Violence Hotline
   1-800-942-6906 or chat/text 1-844-997-2121

   d. If applicable, the Statewide hotline for workplace sexual harassment
   1-800-427-2773

   e. Local programs serving victims of domestic and sexual violence:
      i. **For Clinton, Essex, and Franklin Counties:**
      Behavioral Health Services – STOP Domestic Violence
      1-888-563-6904

Provides both residential and non-residential domestic violence services. OCFS Licensed and Approved.

First Step to New Beginnings Domestic Violence Program-Community Connections of Franklin County
518-481-8748
Provides non-residential domestic violence services. OCFS Licensed and Approved.

Three Sisters Program of the Saint Regis Mohawk Tribe
855-374-7837
Provides both residential and non-residential domestic violence services.

ii. **For Warren, Washington, and Saratoga Counties:**

Catholic Charities of Warren, Washington and Saratoga Counties – The Domestic Violence Project
518-793-9496
Provides both residential and non-residential domestic violence services. OCFS Licensed and Approved.

Wellspring
518-584-8188
Provides both residential and non-residential domestic violence services. OCFS Licensed and Approved.

In Our Own Voices LGBT Domestic Violence Support Line
518-432-4341
Provides non-residential domestic violence services (Monday - Friday 9:00 AM -9:00 PM).

Mechanicville Area Community Service Center Domestic Violence Advocacy Program
518-664-4008
Provides non-residential domestic violence services. OCFS Licensed and Approved.

iii. **For Delaware and Ulster Counties:**

Family of Woodstock Inc.
845-679-2485
Provides both residential and non-residential domestic violence services. OCFS Licensed and Approved.

Delaware Opportunities, Inc. – Safe Against Violence
607-746-6278 or 866-457-7233
Provides both residential and non-residential domestic violence services. OCFS Licensed and Approved.

iv. **Other local resources in New York State can be found at:**

https://www.nyscadv.org/find-help/program-directory.html

6. The Olympic Authority will post information on domestic and gender-based violence, this Policy, and any additional available resources at each ORDA venue or other workplace in the following places where employees will be able to utilize the information without having to request it or be seen removing it:
   a. The bulletin boards in the administration building and in the employee time clock areas of each Olympic Authority Venue or other workplace;

   b. Restrooms;

   c. Kitchen and lounge areas, and other frequently trafficked areas;

   d. Employee Workbright accounts;

   e. The Human Resources offices in each Venue or other Olympic Authority workplace;

   f. Other locations where necessary and appropriate.

7. The information to be made available will include:
   a. Sources of assistance;

   b. Contact information for the DVAL;

   c. EAP information;

   d. Human Resources staff;

   e. The NYS Domestic and Sexual Violence Hotline Number; and

   f. Contact information for local domestic violence programs.

8. Referrals will be offered to anyone who discloses they are a victim of domestic or gender-based violence, as follows to:
   a. The DVAL;

   b. EAP;

   c. The NYS Domestic and Sexual Violence Hotline (or the Statewide hotline for workplace sexual harassment, as may be appropriate), and

   d. Any local programs serving victims of domestic and sexual violence.

9. Additional referrals will be made to the resources that will best meet the employee's needs.

10. To the extent possible, the Olympic Authority will conduct programs and activities throughout the year to increase awareness about domestic and gender-based violence such as:
    a. Brown bag lunch discussions;

    b. Presentations by local domestic and gender-based violence programs or OPDV.

VII. DVAL Responsibilities

A. Ensuring organization-wide implementation of, and compliance with, this Gender-Based Violence and the Workplace Policy.

B. Ensuring that victimized employees are aware of and understand this Policy and their rights.

C. Upon notification that an employee is a victim of domestic or gender-based violence, providing the employee with confidential support services including referrals to:
    1. EAP;

    2. The NYS Domestic and Sexual Violence Hotline (or the Statewide hotline for workplace sexual harassment, as may be appropriate), and

    3. Any local programs serving victims of domestic and sexual violence.

D. Ensuring 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.

E. Ensuring that the victimized employee is aware of and receiving any necessary accommodations as outlined in Sections X and XII of this Policy.

F. Ensuring that all employees receive a copy of this Policy annually, and regularly receive information about how to contact the DVAL and understand what supportive services are offered by the Olympic Authority.

G. Conducting basic workplace safety strategizing with victimized employees.

H. Serving as the primary contact for OPDV, including reporting bi-annual data.

VIII. Responsibilities of the Office of Human Resources

A. All Olympic Authority Human Resources staff shall ensure that the Olympic Authority establishes a workplace culture that is safe and supportive for anyone who has experienced domestic or gender-based violence by communicating all relevant information and assuring that the necessary resources are available to victims, and further ensuring that abusive behavior by any employee will not be tolerated.

B. Olympic Authority Human Resources staff shall ensure that all employees who are required under the terms of this Policy to attend training from OPDV, timely complete all such training.

C. Olympic Authority Human Resources staff shall ensure that all employees shall receive a copy of this policy upon hire as well annually, as well as information about how to contact the DVAL and what supportive services are offered by the Olympic Authority.

D. Olympic Authority 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. Through the DVAL, Human Resources staff shall consult with Olympic Authority leadership and Counsel, and OPDV Counsel as appropriate, to address complex cases.

E. Olympic Authority Human Resources staff shall work with the DVAL, Counsel, and Olympic Authority executive management, to assist managers and supervisors and take whatever steps are necessary to ensure accountability for any employee who violates this Policy.

IX. Responsibilities of Managers and Supervisors

A. All managers and 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.

B. If any employee discloses being a victim of domestic or gender-based violence, or if a supervisor suspects that their employee may be a victim of domestic or gender-based violence, the Supervisor shall refer the employee to:

1. The DVAL;

2. EAP;

3. The NYS Domestic and Sexual Violence Hotline (or the Statewide hotline for workplace sexual harassment, as may be appropriate); and

4. Any local programs serving victims of domestic and sexual violence.

There is no mandatory reporting of domestic or gender-based violence, unless it may constitute sexual harassment as defined under the terms of this Policy and the Equal Employment Opportunity in New York Rights and Responsibilities Handbook, which the Olympic Authority has adopted as its policy on Equal Employment Opportunity.

X. Non-discrimination and Responsive Personnel Policies

In accordance with applicable law and policy, the Olympic Authority's policies and procedures will endeavor to be trauma-informed, survivor-centered, and culturally responsive to victims' needs, and will not discriminate. Under the New York State Human Rights Law (Executive Law § 292 [22]) victims of domestic violence are a protected class, and 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. The Olympic Authority will not refuse to hire or license and may not terminate someone solely based on their status as a victim of domestic violence.

B. The Olympic Authority will not discriminate against victims of domestic violence in compensation, terms, conditions, or privileges of employment.

C. The Olympic Authority prohibits inquiries about an applicant's status as a current or past victim of domestic violence and will not make any employment decisions based on assumptions or actual knowledge about someone's status as a current or past victim of domestic violence. The Olympic Authority may inquire about status as a victim of domestic violence in order to provide reasonable accommodations.

D. The Olympic Authority will 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 who must be out of work for a reasonable time to use accrued sick leave[2] 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 including the attendance of court or administrative proceedings.

E. 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. In certain qualifying circumstances, employees who are victims of domestic violence may be eligible for leave under the Family and Medical Leave Act and/or a Reasonable Accommodation pursuant to the NYS Human Rights Law.

[2] Labor Law § 196-b (4).

Questions regarding leave for victims or subpoenaed witnesses should be directed to the Olympic Authority DVAL.

F. 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 Olympic Authority to which the employee is otherwise entitled during any such absence, in accordance with any existing collective bargaining agreements, regulations, and Olympic Authority policy.

G. Employees who must be absent to utilize accommodations as listed in this section shall provide the Olympic Authority with reasonable advanced notice of the absence whenever possible. Such notice should be provided to the employee's immediate supervisor and to the appropriate Human Resources staff.

H. The Olympic Authority will also grant time off, with one prior day of notification, and will 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.[3]

I. The Olympic Authority recognizes 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. The Olympic Authority will 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.

J. An employee who is a victim of domestic violence or gender-based violence who separates from a covered family member due to an incident or incidents of domestic or gender-based violence will 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 Olypic Authority policy.

K. The Olympic Authority 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 an employee's work performance is being affected as a result of being a victim of domestic or gender-based violence, the Olympic Authority 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 regarding performance expectations, priorities, and performance evaluations. Employees should be aware that not all employee requests for resolutions can be accommodated. If a disciplinary process is initiated, special care will be taken to consider all aspects of the victimized employee's situation, and all available options

[3] Penal Law § 215.14

will be explored in trying to resolve the performance problems 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 Olympic Authority policy.

L. If all reasonable measures have been exhausted to resolve related performance problems of an employee who is a victim of domestic or gender-based violence, but the performance problems persist and the employee is terminated or voluntarily separates from employment, the Olympic Authority will inform the employee of their potential eligibility for unemployment insurance and the Olympic Authority will 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.[4]
‘

M. 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 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.[5]

N. 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), Human Rights Law § 296-d (for non-employees working in the workplace), and Title VII, the Federal Civil Rights Act of 1964. Gender-based violence may constitute sexual harassment when it subjects an individual to inferior terms, conditions, or privileges of employment. The Olympic Authority’s sexual harassment and discrimination policy may be found in each employee’s personnel management account and at https://orda.org/wp-content/uploads/sites/7/2024/07/equal-employment-opportunity-rights-and-responsibilities-handbook_08_23_1.pdf.

O. For all forms of discrimination and harassment, if an employee, including an intern or contractor working in at an Olympic Authority venue or other 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 at https://oer.ny.gov/anti-discrimination-investigations either directly or by contacting the Olympic Authority’s Office of Human Resources, or by filling out the complaint form found at https://orda.org/about-us/policies/.

P. Any complaint of potential discrimination, whether verbal or written, will be investigated. Furthermore, the Olympic Authority requires that any supervisory or managerial employee who observes or otherwise becomes aware of conduct of a sexually harassing nature report such conduct so that it can be investigated. The

[4] NYS Labor Law § 593 (1) (b) (i)
[5] NYS Insurance Law § 2612

Olympic Authority will maintain the confidentiality of the complainant to the extent practical.

XI. Non-Retaliation Policy

A. The Olympic Authority will not engage in any retaliatory practices against any employee who discloses that they are a victim of domestic or gender-based violence, or any employee seeking accommodations or to exercise their rights under this Policy.

B. In accordance with Olympic Authority policies and procedures, the Olympic Authority will not retaliate against, tolerate retaliation by any supervisor or manager, terminate, or discipline any employee for reporting information about alleged incidents of domestic violence that may have been committed by an employee, including those in management positions.

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

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

XII. Workplace Safety Plans

The Olympic Authority will put workplace safety response plans in place, including procedures for reporting to supervisors, managers, or contacting law enforcement, if necessary, if either an event takes place in the workplace or there is a concern on the part of an employee that a perpetrator of domestic or gender-based violence may attempt to harm them in the workplace or otherwise cause disruption to their performance in the workplace. The Olympic Authority's workplace violence incident report is available through the Office of Human Resources.

A. The Olympic Authority will comply and assist with the enforcement of all known Orders of Protection (OP).

B. If requested by the victim or by law enforcement, the Olympic Authority will provide any relevant information regarding an alleged violation of an OP.

C. All Olympic Authority employees are encouraged to disclose the existence of, or any information concerning any active OP to the DVAL or designated Human Resources staff member at their Venue or other Olympic Authority workplace. Copies of OPs 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 DVAL or designated Human Resources staff member, or a member of Olympic Authority executive management shall retrieve and present the OP.

D. *Any modification or revocation of the OP should be provided to the DVAL immediately, and the DVAL shall assure that relevant Human Resources staff and/or executive management are aware of such modification or revocation.*

E. When requested by the victimized employee, the DVAL and/or designated Human Resources staff will work with the employee to develop a plan for best increasing safety for the victimized employee, other employees, and the Olympic Authority Venue or other workplace. Options may include, but are not limited to:

1. Providing front desk security or reception staff with a copy of the OP with a photo of the perpetrator;

2. Protocols for reporting to law enforcement;

3. Allowing the employee to work staggered hours, an "off shift", or move to a different work location, either temporarily or permanently;

4. Temporary reassignment of certain duties, such as overnight travel;

5. Reassignment of parking space;

6. Providing an escort for entry and exit from the workplace;

7. Escorting or allowing law enforcement to escort a perpetrator out of the building and off the workplace premises;

8. Working with the employee to address any identified concerns about the use of technology;

9. Assigning a new email account or phone number if the perpetrator has been able to access the existing accounts;

10. Creating a personalized safety plan in consultation with the local domestic or sexual violence program;

11. Allowing the employee to work from an alternate work station until further action is taken, if the employee works directly with the perpetrator; or

12. If an OP is in place and has been violated (i.e. by perpetrator showing up at workplace of victim), requiring the reporting of the violation to law enforcement.

F. If the circumstances indicate a need for the Olympic Authority to take steps to increase safety for the victim, other employees, and/or the Venue or other Olympic Authority workplace, Olympic Authority staff should follow the Olympic Authority Workplace Violence Policy.

XIII. Accountability for Employees who Perpetrate Acts of Domestic or Gender-Based Violence

A. The Olympic Authority will hold accountable any employee who is found to have engaged in behaviors including but not limited to:

1. Using Olympic Authority or State resources, including time, to commit an act of domestic or gender-based violence;

2. Committing an act of domestic or gender-based violence from or at an Olympic Authority Venue or other property, or from any location conducting State business, except for locations from which employees are telecommuting; or

3. Using their job-related authority and/or State resources to negatively affect victims of domestic or gender-based violence and/or to assist a perpetrator in locating a victim and/or in perpetrating an act of domestic or gender-based violence.

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

C. If the Olympic Authority has found that an employee has committed any act of gender-based violence, including making threats or harassment at or from the workplace, or using any Olympic Authority or State resources such as work time, Olympic Authority or State-owned telephones or cell phones, e-mail, or by any other means, the employee's supervisor, in conjunction with the Director of Human Resources, shall take any and all steps necessary to hold the employee accountable through administrative and/or disciplinary action in accordance with existing Olympic Authority policy, applicable collective bargaining agreements, applicable statutes and/or regulations. This should include referrals to Accountability Programs for Persons who Cause Harm. In these instances, the Olympic Authority will work with the Office of Prevention for Domestic to determine what program is best suited for the employee.

D. Disciplinary actions may include, but are not limited to:
1. Placing the employee on administrative leave;

2. Issuing a cease and desist memo;

3. Removing/modifying the employee's chain of supervision pending an official report;

4. Relocation of the employee alleged to have committed the abuse, to another work site;

5. Surrender of work cell phone, laptop, or other Olympic Authority-issued equipment;

6. Placing an employee on probation;

7. Mandated participation in an Accountability Program for Persons who Cause Harm;

8. Suspension without pay; or

9. Termination.

E. The Olympic Authority will determine if corrective action or disciplinary action is warranted, in accordance with existing policies and procedures, existing collective bargaining agreements, relevant statutes and/or regulation if the Olympic Authority has received verification that an employee is responsible for any gender-based violence-related offense or is the respondent on any OP 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:

1. The authority to take actions that directly impact victims of gender-based violence domestic violence; and/or

2. Actions which may protect perpetrators from appropriate consequences for their behavior.

F. Any employee who intentionally uses the authority of their employment and/or misuses any Olympic Authority or other State resources in order to engage in any of the following, shall be subject to corrective or disciplinary action, in accordance with existing policies and procedures, collective bargaining agreements; applicable statutes and/or regulations:

1. Negatively impact any victim of gender-based violence;

2. Assist a perpetrator in locating a victim;

3. Assist a perpetrator in perpetrating any act of gender-based violence;

4. Protect a perpetrator from receiving appropriate consequences; or

5. Otherwise retaliate against a victim of gender-based violence.

G. *Any Olympic Authority employee who would like to report information about an alleged act of gender-based violence committed by another Olympic Authority 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. Trained staff will discuss the specifics of your complaint.*

XIV. Training

A. The DVAL:

1. Shall complete a Gender-Based Violence and the Workplace training provided by OPDV.

2. Shall complete an initial one-day training provided by OPDV.

3. Shall attend quarterly meetings hosted by OPDV, which will provide ongoing training and technical assistance. Appropriate managers, supervisors, Employee Assistance Program staff, and human resources personnel, union and labor representatives, may also attend the OPDV DVAL one-day or quarterly trainings.

B. EAP Staff: All Olympic Authority 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. Additional employees: To the extent possible, the Olympic Authority will work through OPDV to implement annual training for all employees regarding gender-based violence and the workplace.

XV. Data Collection and Reporting to OPDV

A. Information regarding employees who are victims of domestic or gender-based violence, as well as those who are disciplined for violating this Policy, will be maintained by the DVAL and reported to OPDV on a bi-annual basis, and at any time upon request from OPDV. Reporting to OPDV will 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.

B. The following information will be collected, maintained, and reported to OPDV:
   1. To the best of the Olympic Authority's ability, all incidents of gender-based violence that take place at an Olympic Authority Venue or other workplace, or while an employee is on Olympic Authority time, shall be documented consistent with applicable law and Olympic Authority policy, categorized by domestic violence and sexual violence;

   2. The general nature of the incidents that occurred in an Olympic Authority Venue or other workplace;

   3. The number of employees who report being a victim of current or past domestic violence;

   4. The number of employees who make contact with the Olympic Authority DVAL with concerns that a co-worker is experiencing domestic violence or gender-based violence;

   5. The number of employees who are referred for discipline in accordance with section XIII of this Policy;

   6. The number of employees who contact the DVAL to request information on domestic violence services;

7. The number of referrals made to domestic violence service providers, EAPs, or other applicable services;

8. The number of orders of protection that are reported to ORDA.

XVI. Violations of this Policy

A. Any employee who would like to report any alleged violations of this Policy may do so by contacting OPDV, the Olympic Authority's Director of Human Resources, 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.

B. For complaints of workplace discrimination, employees may contact the Anti-Discrimination Investigations Division at the NYS Office for Employee Relations (https://antidiscrimination.oer.ny.gov/). This includes complaints related to denials of reasonable accommodations.

NEW YORK STATE
OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Open Data Policy
Effective_____

1. **Background**

On March 11, 2013, Governor Andrew Cuomo launched the Open NY initiative which included the launch of New York State's Open Data Website, data.ny.gov.

Concurrent with the launch of Open NY, Governor Cuomo issued Executive Order No. 95, "Using Technology to Promote Transparency, Improve Government Performance and Enhance Citizen Engagement." This Executive Order directed covered state entities to identify and catalogue their data, and make publishable State data available on the new transparency website.

2. **Purpose of Policy**

The New York State Olympic Regional Development Authority ("Olympic Authority") is committed to the principles of open, accessible, efficient, and transparent government, and the use of technology to help put those principles into practice.

This policy creates a process for making the Olympic Authority data available to the public on the Open Data Website. The Olympic Authority will make its "data", as that term is defined herein, publicly available online to promote civic engagement, improve service delivery, allow for more effective communication with the public, and increase opportunities for economic development. This policy is also intended to make the operation of the Olympic Authority more transparent, effective, and accountable to the public.

3. **Definitions**

A. Covered State Entity: (i) any State agency or department, or any office, division, bureau, or board of such State agency or department, except where the head of such agency or department is not appointed by the Governor, (ii) any State board, committee, or commission, at least one of whose members is appointed by the Governor, and (iii) all public-benefit corporations, public authorities and commissions, for which the Governor appoints the Chair, the Chief Executive, or the majority of Board Members, except for the Port Authority of New York and New Jersey.

B. Chief Data Officer (CDO): The New York State Chief Data Officer in the Office of Information Technology Services or a designee thereof.

C. Data: Final versions of statistical or factual information that:

i. are in alphanumeric form reflected in a list, table, graph, chart or other nonnarrative form, that can be digitally transmitted or processed;

DRAFT

ii. are regularly created or maintained by or on behalf of a covered State entity and are controlled by such entity; and
iii. record a measurement, transaction or determination related to the mission of the covered State entity.

The term "data" shall not include image files, such as designs, drawings, photos or scanned copies of original documents; provided, however, that the term "data" shall include statistical or factual information about image files and geographic information system data.

D. Dataset: A named collection of related records maintained on a storage device, with the collection containing data organized or formatted in a specific or prescribed way, often in tabular form.

E. ITS: The New York State Office of Information Technology Services.

F. Publishable State Data: Data that is collected by a covered State entity where the entity is permitted, required, or able to make the data available to the public, consistent with any and all applicable laws, rules, regulations, ordinances, resolutions, policies or other restrictions, requirements or rights associated with the State data, including but not limited to contractual or other legal orders, restrictions or requirements. Data shall not be Publishable State data if making such data available on the Open Data Website would violate statute or regulation (e.g., disclosure that would constitute an unwarranted invasion of personal privacy), endanger the public health, safety or welfare, hinder the operation of government, including criminal and civil investigations, or impose an undue financial, operational or administrative burden on the covered State entity or the State.

G. Protected Data: Any data set, or portion thereof, exempt from disclosure pursuant to the New York State Freedom of Information Law ("FOIL"), or any other law or regulation.

4. Data Coordinator

The Olympic Authority's President & CEO will designate a Data Coordinator. The Data Coordinator will:

- have authority equivalent to the head of a division or department within the Olympic Authority;
- have knowledge of data and resources in use by the Olympic Authority; and
- be responsible for the Olympic Authority's compliance with the Executive Order, this policy, and future directives which may be needed to support the open data program.

The Data Coordinator will serve as the liaison between the ITS Open Data Website team and the Olympic Authority. In that position, the Data Coordinator will convey to the Olympic Authority's Data Owners, as identified herein, in-house counsel, and President & CEO any specific needs of the ITS team who maintain the Open Data Website, to enable them to format or define such data in an optimal manner for publication (such as formatting the data or

defining a structure that is optimal for publication). These efforts provide an additional internal control to ensure the dataset is properly evaluated before being provided to the Open Data platform.

5. Publication of Data

Within thirty (30) days of the effective date of this policy, the Olympic Authority will create a catalogue of its Publishable State Data and propose a schedule to ITS and the CDO for making its Publishable State Data publicly available. Such schedules will be made publicly available and will further include a schedule for updating the data catalogue as appropriate. The Olympic Authority will prioritize data publication in accordance with guidelines as set forth herein.

6. Prioritization, Publication, Alteration, and Removal Process

The Olympic Authority shall engage in an internal review process established by the Data Coordinator in accordance with this policy, and shall obtain appropriate internal approvals for the datasets from the President & CEO, as recommended by the Data Owners responsible for the relevant datasets, which it wishes to commit to the Open Data Website. The internal review process will include a means by which to assure increasing data content quality and accuracy, and compliance with all security, privacy, confidentiality laws, rules, and regulations, as well as any Intellectual Property Rights requirements, and status under FOIL (including whether data may lawfully be withheld under the FOIL exemptions).

i. **Prioritization:** In creating a data catalogue, the Olympic Authority's Data Coordinator will identify those datasets that are high value, high quality, complete, and in accordance with the definition of "Publishable State Data".

"High value" data, as defined within Executive Order 95, is that which can be used to increase the Olympic Authority's accountability and responsiveness, improve public knowledge of the Olympic Authority and its operations, further the mission of the Olympic Authority, create economic opportunity, or respond to a need or demand identified after public consultation.

When creating a schedule for publication of datasets, a number of factors must be assessed. Prioritizing initial and ongoing publication will entail balancing high value with data quality, data availability, and data readiness.

The amount of time to prepare high quality data can vary significantly, as datasets vary in complexity. Therefore, in prioritizing data for release, the Olympic Authority's Data Coordinator must account for sufficient time to: identify data, assess the data (i.e., ensure consistency, timeliness, relevance, completeness, and accuracy of the data), ensure completeness of the metadata and data dictionary, review and obtain all necessary approvals to publish the data, and prepare data, metadata and requisite accompanying documentation for publication.

ii. **Publication:** To publish a dataset, at a minimum, the Data Coordinator will obtain explicit approval from the individuals listed below, which will be memorialized on an ITS Standardized Approval Form, a copy of which is attached as Exhibit B, to be completed and signed prior to dataset publication. The Data Coordinator may

determine whether additional internal approvals and signatures are required and shall include such additional persons in its review and approval for publication process.

The Data Coordinator is responsible for obtaining the following approvals:

- Data Owner: The Olympic Authority Department Heads and Directors will be the designated Data Owners. The Data Owners will have the greatest familiarity with and knowledge of the dataset and the data it contains, and the purpose for the collection of the data. The Data Owners will know the accuracy and currency of the data and be best able to describe and fill in the metadata elements describing the data. Approval by the Data Owners also validates that the Olympic Authority has secured permission for publication and knowledge from the department which is most responsible for the specific data. Each Data Owner may identify individuals within their respective departments and/or units to assist them in the collection of data.
- Legal Department: The Olympic Authority's in-house legal counsel will confirm that the Olympic Authority has sufficiently reviewed the dataset to ensure its publication complies with privacy and security requirements, intellectual property rights, FOIL responsibilities, this policy, and any other applicable laws, rules and regulations.
- President & CEO: Approval by the Olympic Authority's President & CEO demonstrates knowledge within the Olympic Authority's leadership that it is providing a dataset to data.ny.gov under full authority. It also serves as the ultimate internal control within the Olympic Authority to ensure personnel completed proper evaluations of the datasets.

iii. **Removal:** To remove a dataset, at a minimum, the Data Coordinator must receive explicit approval from the Data Owners identified hereinabove, the Olympic Authority's in-house counsel, and the Olympic Authority's President & CEO, which will be memorialized on an ITS Standardized Removal Form, a copy of which is attached as Exhibit C, to be completed and signed prior to dataset removal. The Data Coordinator may determine additional internal approvals and signatures are required and should include such additional persons in their review and approval process.

iv. **Alteration:** To alter a dataset, at a minimum, the Data Coordinator will obtain approval from the Data Owners identified hereinabove, which will be memorialized on an ITS Standardized Alteration Form, a copy of which is attached as Exhibit D, to be completed and signed prior to publication of the altered dataset. The Data Coordinator may determine that additional internal approvals and signatures are required and should include such additional persons in their review and approval process.

7. Standardization

The Data Coordinator will ensure that the following requirements are met when publishing datasets to the Open Data Website:

- **Metadata –** The Open Data Website adheres to core components of the Dublin Core standard for metadata and uses the current recommended set of elements, which are required to accompany each dataset (Refer to Exhibit A: Metadata Elements for additional details).
- **Descriptive Information –** The Open Data Website requires covered state entities to submit metadata and supplemental documentation with each dataset (e.g., data dictionaries, overview documents, etc.) in order to fully describe and maximize public understanding and interpretation of the data.
- **Domain Categories** – The Open Data Website supports common domain models and allows the Data Coordinator to transform and anchor datasets in a particular domain (Refer to Exhibit A for examples of categories).
- **Catalogue Sharing –** The Open Data Website combines with several data catalogs and explores common, open formats such as Data Catalog Vocabulary (DCAT) or Project Open Data (see https://resources.data.gov/schemas/dcat-us/v1.1/)
- **Datasets** – The Olympic Authority must provide standardized open data file formats to facilitate automatic processing of the data, making it easily accessible and available in machine-readable format.
- **Open Specifications** – When possible, published datasets must be compatible with open specifications (e.g. KML/KMZ and GeoJSON).
- **Content Formats –** Datasets must be machine-readable and have a clear separation of metadata from the original source data.
- **Tabular Data –** The Open Data Website currently supports the format CSV & TSV: Comma/Tab Separated Values.
- **Geographic Data** – The Open Data Website supports two data formats for geospatial information. The appropriate format is dependent on the specific characteristic of the underlying geographic data.
    i. Points: All Tabular File Formats or Shapefile
    ii. Lines: Shapefile
    iii. Polygons: Shapefile

  Point data can be stored in either tabular or Shapefile format. Tabular formatting of points requires either columns for latitude and longitude, or complete address information (house number, street, village/town/city, state, and zip code) that can be geocoded. In contrast, lines and polygons define complex geometric structures that are not easily defined as column attributes. Therefore, Shapefile format is a preferred format for these complex geographic structures.

  Each shapefile (at a minimum) should contain the following files:
    i. .shp: Defines the geometry (shapes)
    ii. .dbf: Defines the attribute table
    iii. .prj: Projection, ensures the feature locations are accurately rendered on the map
    iv. .shx: Shape indexing file, for efficient processing

  Note: Shapefiles that use projections other than WGS-1984/Web Mercator will not be transformed by the platform and may result in inaccurate representations of location.

Other supported geospatial formats may include Keyhole Markup Language (KML/KMZ).

- **Geocoding –** The Open Data Website supports geocoding services that converts address information into mappable coordinates (Latitude/Longitude)

8. Updates to Published Data Sets

The Olympic Authority will create an update schedule to maintain data freshness on the Open Data Website. Individual data sets will be evaluated for staticity and schedules and value of data to be updated to the public. All data update schedules will be maintained in the metadata uploaded to the Open Data Website with a minimum update schedule of annually and increased frequency, up to monthly, for more publicly valuable or volatile data sets.

- Replace: All existing records are removed, and new records are inserted.
- Append: New dataset records are inserted into existing records.

9. Protected Data

- **Security, Privacy, Regulatory, & Aggregate Data.**

The public release of some data might result in the violation of laws, rules, or regulations. Some data may not be appropriate to release because it can compromise internal Olympic Authority processes, such as procurement. Other data may contain personally identifiable information. Finally, even if detailed data appears innocuous, it may be possible to easily combine it with other public information to reveal sensitive details. Even if there are no legal impediments to publishing the data, releasing the data may have unintended or undesirable effects. The Data Coordinator will confer with the Olympic Authority's legal counsel prior to any publication of data on the Open Data Website and exclude any datasets whose publication would cause harm by disclosing the Olympic Authority's internal processes, as such data does not constitute "Publishable State Data".

- **Thresholds**

The Health Insurance Portability and Accountability Act ("HIPAA") and its privacy regulations have very exacting requirements for determining whether data have been sufficiently de-identified so as not to compromise individual privacy. The Data Coordinator will confer with the Olympic Authority's legal counsel prior to the publication of data on the Open Data Website and exclude any datasets whose publication would cause harm as described in HIPPA's privacy regulations, as such data does not constitute "Publishable State Data".

- **FOIL Applicability**

Under the NYS Public Officers Law, Article 6 (the NYS Freedom of Information Law, or "FOIL"), the presumption is that government records shall be open to the public, unless excludable under a narrow set of specific exemptions including such concerns as invasion of personal privacy, impairment of contractual or collective bargaining negotiations, exposure of protected trade secrets, interference with law enforcement or judicial proceedings, endangering life or safety, jeopardizing the security of state information technology assets, systems and infrastructures, and others. The Data Coordinator will confer with the Olympic Authority's FOIL officers and/or legal counsel prior to the publication of data on the Open Data Website

and exclude any datasets whose publication would cause the harms described in the FOIL law, as such data does not constitute "Publishable State Data."

10. Enforcement Standards and Compliance

The Olympic Authority's President & CEO, in accordance with the requirements set forth in Executive Order No. 95, shall have the authority to promulgate reasonable rules and regulations to implement the requirements of this policy.

NEW YORK STATE
OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Paid Family Leave Policy
Effective _____

I. POLICY

It is the policy of the State of New York Olympic Regional Development Authority (Olympic Authority) to opt-in to New York Paid Family Leave (PFL) to provide its eligible employees with the ability to request and take PFL to: bond with a newborn, adopt or foster a child; care for a close relative with a serious health condition; or assist with family situations when a family member is deployed abroad on active military service. It is further the policy of the Olympic Authority to ensure that no employee will be the subject of discrimination or retaliation for requesting or taking PFL, and that upon return from leave an employee will either be reinstated to the same position or a position that is comparable to the one held by the employee at the time of taking leave. Olympic Authority employees who request or take PFL will not be subject to any reduction in pay or benefits as a result.

This policy applies to only those staff who are designated as Management Confidential (M)/C by the Olympic Authority's Human Resources Department. Staff subject to a collective bargaining agreement and/or those who work less than 600 hours per year are not covered by this policy.

II. DEFINITIONS

A. The term "close relative" means an employee's spouse, domestic partner, child, stepchild, parent, stepparent, parent-in-law, grandparent, or grandchild.

B. The term "serious health condition" means, as defined in 12 NYCRR § 355.9 (a)(16) and as it may be amended from time to time, an illness, injury, impairment, or physical or mental condition that involves (a) inpatient care in a hospital, hospice, or residential health care facility, or (b) continuing treatment or continuing supervision by a health care provider.

C. The term "domestic partner" means a person who is not related by blood to the employee and is at least eighteen years of age who is dependent upon the employee for support as defined in Section 4 of the Workers Compensation Law; or has registered as the domestic partner of an employee with any registry identified in Section 4 of the Workers Compensation Law. For the purposes of this section, the term "domestic partner" shall include the term "surviving domestic partner".

D. The term "M/C" shall mean only those staff designated Management Confidential by the Olympic Regional Development Authority Office of Human Resources.

III. ELIGIBILITY

A. The Olympic Authority's current policy applies to full-time hourly and M/C employees who work a regular schedule of 20 or more hours per week. Eligibility for PFL will commence after 26 consecutive weeks of employment. For M/C employees who work a regular schedule of fewer than 20 hours per week, eligibility begins after working 175

DRAFT

days, which do not need to be consecutive. The Olympic Authority does not currently provide PFL for part-time hourly employees.

B. Paid time off will count as a qualifying work day/days toward eligibility for PFL. However, during a period of PFL, employees will not continue to accrue either vacation or sick time. Accrual of time will resume once an employee has returned to work from PFL.

C. Neither citizenship nor immigration status are factors that will be considered in determining the eligibility of an employee for PFL.

D. Only one employee at a time may use PFL to bond with the same child or care for the same family member.

IV. PFL BENEFITS

A. Time available under PFL

1. Eligible employees are entitled to up to 12 weeks of paid family leave on an annual basis.

2. Leave may be taken all at once or intermittently, but must be taken in full-day increments. An employee may take the maximum time-off benefit in any given 52-week period.

B. Benefit payments under PFL

Benefits are based on a percentage of an employee's average weekly wage, capped at the same percentage of the New York State Average Weekly Wage as calculated annually by New York State's Department of Labor. PFL benefit payments are calculated based on 67% of the employee's average weekly wage.

C. **PFL benefits are subject to State and Federal income tax** (*see* New York State Department of Tax and Finance Notice N-17-12). Olympic Authority employees who take PFL are responsible for assuring that the proper tax withholding is applied to PFL benefits:

1. To withhold federal taxes the employee must complete an IRS Form W-4S (Request for Federal Income Tax Withholding From Sick Pay) and submit it to the Arch Insurance Company[1] with the initial claim form.

2. To withhold New York State taxes the employee must provide a written notice to the Arch Insurance Company[2] specifying the dollar amount to be withheld from each weekly benefit check. Written notice can be provided by using the New York State Paid Family Leave State Tax Withholding Request Form for this notice.

Note: If you wish to withhold New York State taxes you must also withhold federal taxes. Questions concerning how much to withhold should be directed to a tax professional.

3. Relationship with other benefits and other types of leave

[1] Or other carrier as it may be changed from time to time. For the most recent carrier information, please contact the Olympic Authority's Benefits Administrator

1. PFL benefits are paid directly by the insurance carrier. As a result, any deductions other than as authorized above to pay taxes, will not be taken out of the PFL benefit check. Any employee who is out of work on PFL may keep his or her health insurance benefits while out on leave, by directly paying the required portion of the premiums that would otherwise be deducted from their paycheck. **Employees should contact the Olympic Authority's Benefit Administrator to arrange for payment of insurance premiums while out of work on PFL.**

2. Employees may access PFL benefits in accordance with the eligibility requirements established herein; however, PFL is a stand-alone benefit and employees may not use accrued time to supplement PFL.

3. Employees who are unable to work and who qualify for Workers Compensation Benefits may not use PFL benefits at the same time that they receive Workers Compensation Benefits. However, if an employee is receiving reduced earnings, he or she may be eligible for PFL and should contact the Office of Human Resources at 518-302-5307 or 518-302-5346.

V. COST, PREMIUM PAYMENTS AND PAYROLL DEDUCTIONS

The Olympic Authority will provide PFL benefits and pay the premium on behalf of M/C staff.

VI. PROCESS FOR REQUESTING AND APPROVING PFL

A. Requests for PFL must be made by the requesting employee directly to the insurance carrier before the start of leave, if foreseeable; otherwise notice should be made as soon as possible.

B. Applications for PFL may be found here: https://paidfamilyleave.ny.gov/forms. Employees may also obtain the required forms by contacting the Olympic Authority's Benefits Administrator. Be sure to choose the correct form when applying (form PFL-1, PFL-2, PFL-3, PFL-4, or PFL-5). Note that PFL-1 is required for all applications and additional forms may be required depending the basis for the leave request.

C. It is important that you submit your competed request package to the Olympic Authority's insurance carrier within 30 days after the start of your leave to avoid losing benefits. The Olympic Authority Benefits Administrator is available to help with this process and answer any questions you may have.

D. In addition, employees who wish to take PFL must notify the Olympic Authority's Office of Human Resources. The requesting employee should give as much notice as is practicable, in writing. Notice should include, to the extent possible, the amount of time the requesting employee plans to take for leave.

E. Requests submitted to the Olympic Authority are to be made using the Paid Family Leave Request Form and should include a request that the Olympic Authority complete Part B of the Request for Paid Family Leave Form (https://paidfamilyleave.ny.gov/forms). The Olympic Authority's Human Resources Office will return the form with Part B completed to the requesting employee. The information returned by the Olympic Authority to the requesting employee will include the employee's last 8 weeks of gross wages and a calculation of the employee's average weekly wage. **The Olympic Authority is required**

to complete and return the form to the requesting employee within three business days. If the employee does not receive the completed form from the Olympic Authority within three days, s/he should submit *Form PFL-1*, along with the rest of your request package, to the Olympic Authority's PFL insurance carrier.

E. Depending on the basis for the PFL, the following documentation should be submitted by the requesting employee, to the insurance carrier, along with the request:

1. <u>For bonding with a newborn:</u>
   a. If the requesting employee is the birth parent: submit a copy of the newborn's birth certificate if available, or an original copy of a health care provider certification of birth.

   b. If the requesting employee is not the birth parent: A copy of the child's birth certificate, if available, naming you as the second parent, a Voluntary Acknowledgement of Paternity (Form LDSS-4418), or a Court Order of Filiation.

   Or

   Provide the same documentation as would be required of the birth parent plus a second document verifying the relationship to the birth parent, such as a marriage certificate, civil union, or domestic partnership document.

2. <u>For bonding with an adopted child, provide one of the following</u>:
   a. A copy of the court documents finalizing the adoption

   b. Documentation in furtherance of adoption

   c. A court order finalizing the adoption

   If the employee requesting PFL is not the parent named in the documents, the insurance carrier may require proof verifying the employee's relationship to the parent named in the documents, such as a marriage certificate, civil union, or domestic partnership document.

3. <u>For bonding with a fostered child:</u>
   The requesting employee must submit a foster care placement letter issued by the county or city Department of Social Services or authorized voluntary foster care agency. If the requesting employee is not the parent named in the placement letter, the employee must provide proof verifying his or her relationship to the parent named in the placement letter, such as a marriage certificate, civil union, or domestic partnership document.

4. <u>For care of a close relative with a serious health condition:</u>
   Any forms and documentation as required by the insurance carrier.

5. <u>For assisting when a family member is deployed abroad on active military service:</u>
   The requesting employee must submit verification that the family member is in active military service through submission of one of the following:

a. Covered active duty orders.

b. A letter from the military unit documenting impending call or order to covered duty.

c. Documentation of military leave signed by the approval authority for the military member's Rest and Recuperation.

d. Any additional forms and documentation that may be required by the insurance carrier.

F. Determinations regarding benefit approval/denial are made by the insurance carrier. The carrier must pay or deny the employee's request within 18 calendar days of receipt of a completed request for PFL, or the employee's first day of leave, whichever is later.

1. **If the PFL request is granted**. Upon completion of PFL, the employee will be returned to the same or similar job that s/he was performing upon initiation of PFL. Employees need to keep Office of Human Resources apprised of their anticipated return date to ensure a seamless transition back to work.

2. **If the PFL request is denied**. If your PFL claim is denied, the insurance carrier or employer, if self-insured, will provide you with information about how to request arbitration. A neutral arbitrator will decide claim-related disputes. Employees may request arbitration at www.nyspfla.com .

VII. PROCESS FOR FILING COMPLAINTS OF PFL DISCRIMINATION

Any employee who believes that he or she was discriminated against for requesting and/or taking PFL by having been terminated, having his or her pay and/or benefits reduced, having been disciplined, or otherwise retaliated against, should submit a formal request for job reinstatement to the Office of Human Resources using the Formal Request For Reinstatement Regarding Paid Family Leave (Form PFL-DC-119),which can be found at: http://www.wcb.ny.gov/content/main/forms/PFL-DC-119.pdf.

The employee must also submit a copy of this form to:

Paid Family Leave
PO Box 9030
Endicott, NY 13761-9030

Should the Olympic Authority not comply with the request for reinstatement within thirty (30) days of the date of submission, the affected employee has the right to a hearing with the Workers' Compensation Board (Board) using the Paid Family Leave Discrimination/Retaliation Complaint (Form PFL-DC-120), which is also available on the Paid Family Leave website. See http://www.wcb.ny.gov/content/main/forms/PFL-DC-120.pdf.

The Workers Compensation Board will assemble the employee's case and schedule a hearing within forty-five (45) calendar days of receipt of the complaint.

Note: To be eligible to file a complaint and have the right to a hearing before the Workers Compensation Board the employee must have first requested reinstatement and filed a complaint with the Olympic Authority's Office of Human Resources.

The relief available to an employee by an administrative law judge who presides over the Workers Compensation Board Hearing includes reinstatement, payment for any lost wages, payment for attorney's fees. The law also provides for penalties against the Olympic Authority of up to $500.

In addition to protections under the Workers' Compensation Law, in certain situations an employee may have viable claims under the New York Human Rights Law which makes it illegal for employers to discriminate against employees based on certain protected grounds, including but not limited to, sexual orientation, sex, age, marital status, pregnancy-related conditions, or familial status. For more information, please visit the Division of Human Rights website at: https://dhr.ny.gov/complaint#howto.

For more information on Paid Family Leave, you may call the New York State PFL Hotline at 844-337-6303, visit www.ny.gov/PaidFamilyLeave , or contact your venue's Human Resources office.

NEW YORK STATE
OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Procedural Rules for Participation in Board Meetings from Private Locations Under Extraordinary Circumstances
Effective _____

In compliance with Public Officers Law (POL) § 103-a (2) (a), following a public meeting the Olympic Regional Development Authority (Olympic Authority), by resolution on June 23, 2023, authorized the use of videoconferencing as described in POL § 103-a.

The following procedures are hereby established to satisfy the requirement of POL § 103-a (2) (b) that any public body which in its discretion wishes to permit its members to participate in meetings by videoconferencing from private locations – under extraordinary circumstances – must establish written procedures governing member attendance.

1. Olympic Authority Board Members shall be physically present at any meeting of the Olympic Authority unless such member is unable to be physically present at a designated public meeting location due to an extraordinary circumstance.

2. For purposes of these procedures, the term "extraordinary circumstance" shall be defined to include a disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member's physical attendance at such meeting, or remote attendance from a properly noticed public location.

3. If a member is unable to be physically present at one of the designated public meeting locations and wishes to participate by videoconferencing from a private location due to extraordinary circumstances, the member must notify the Chair, or if the Chair is unavailable, the Vice-Chair, by no later than four (4) business days prior to the scheduled meeting, to enable the Olympic Authority to revise the public notice for the meeting to indicate that the meeting will be conducted by use of videoconferencing and include directions for public viewing of the meeting. If extraordinary circumstances present themselves on an emergent basis within four (4) days of the date of the meeting, the Olympic Authority shall update its notice as soon as practicable to include such information. If it is not practicable for the Olympic Authority to update its notice, the Olympic Authority may, but is not required to, reschedule its meeting, or may move forward with the scheduled meeting, and the member who is unable to be physically present shall not be allowed to participate or vote in the meeting.

4. If there is a quorum of members participating at a physical location(s) open to the public, the Olympic Authority may properly convene a meeting. A member who is participating from a remote location that is not open to in-person physical attendance by the public shall not count toward a quorum of the Olympic Authority but may participate and vote if there is a quorum of members at a physical location(s) open to the public.

5. Except in the case of executive sessions conducted pursuant to POL § 105, and in accordance with its By-Laws, the Olympic Authority shall ensure that its members can be

DRAFT

heard, seen, and identified while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon. This shall include the use of first and last name placards physically placed in front of the members or, for members participating by videoconferencing from private locations due to extraordinary circumstances, such members must ensure that their full first and last name appears on their videoconferencing screen.

6. The minutes of the meetings involving videoconferencing based on extraordinary circumstances pursuant to POL § 103-a shall include which, if any, members participated by videoconferencing from a private location due to such extraordinary circumstances.

7. The public notice for the meeting shall inform the public: (i) that extraordinary circumstances videoconferencing may be used, (ii) where the public can view such meeting, (iii) where required documents and records will be posted or available, and (iv) the physical location(s) for the meeting where the public can attend.

8. The Olympic Authority shall provide that each open portion of any meeting conducted using extraordinary circumstances videoconferencing shall be recorded and such recordings posted or linked on the Olympic Authority website within five (5) business days following the meeting and shall remain so available for a minimum of five (5) years thereafter. Such recordings shall be transcribed upon request.

9. If members of the Olympic Authority are authorized to participate by videoconferencing from a private location due to extraordinary circumstances, the Olympic Authority shall provide the opportunity for members of the public to view such meeting by video.

10. Open meetings of the Olympic Authority conducted using extraordinary circumstances videoconferencing pursuant to the provisions of POL § 103-a shall be broadcast pursuant to the requirements of POL § 103 (f) and shall utilize technology to permit access by members of the public with disabilities consistent with the 1990 Americans with Disabilities Act (ADA), as amended, and corresponding guidelines. For the purposes of this guideline, the term "disability" shall have the meaning defined in Executive Law § 292.

11. The in-person participation requirements of POL § 103-a (2) (c) shall not apply during a State disaster emergency declared by the Governor pursuant to Executive Law § 28 or a local state of emergency proclaimed by the chief executive of a county, city, village or town pursuant to Executive Law § 24, if the Olympic Authority Board determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the Olympic Authority Board to hold an in-person meeting.

12. These procedures shall be conspicuously posted on the Olympic Authority website.

NEW YORK STATE
OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Property Disposition Policy
Effective _____

I. SUMMARY

This Policy describes the operative policy, procedures, and instructions regarding the identification of 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 ("Olympic Authority").

This Policy further designates a Contracting Officer who is responsible for the Olympic Authority's compliance with and enforcement of this Policy.

This Policy replaces and supersedes the policy dated June 26, 2024.

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 the Olympic Authority's enabling statute at Public Authorities Law § 2611 (3), the Olympic Authority 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 the Olympic Authority'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 the Olympic Authority's compliance with its property disposal guidelines.

Pursuant to Public Authorities Law § 2897 (3), a public authority such as the Olympic Authority 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.

DRAFT

The Olympic Authority manages and controls certain Real Property that is subject to its disposal. This includes land that is within the Town of North Elba on which the Olympic Training Center is located, which is occupied and managed by the United States Olympic and Paralympic Committee ("USOPC") under a Master Agreement with USOPC; and on which the USA Luge Facility is located, which is occupied and managed by the United States Luge Association ("USA Luge") under a Use and Occupancy Agreement with USA Luge.

The Olympic Authority 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 Whiteface Mountain Ski Center, the Olympic Sports Complex at Mt Van Hoevenberg, Gore Mountain Ski Center, and Belleayre Mountain Ski Center are located, which are operated, managed, and maintained by the Olympic Authority under a Memorandum of Understanding with the New York State Department of Environmental Conservation ("DEC")("the Olympic Authority/DEC MOU");
- Land within the Town of North Elba Public Parks and Playgrounds District ("Park District") on which the Olympic Center and Olympic Ski Jumping Complex are located, which are operated, managed, and maintained by the Olympic Authority under an Operation and Management Agreement with the Town Board of the Town of North Elba as Trustee for the Park District;
- Land that is within the Town of Johnsburg on which the North Creek Ski Bowl is located, which is operated, managed, and maintained by the Olympic Authority under a Maintenance and Operation Agreement with the Town of Johnsburg; and
- Land that is within the Town of North Elba on which the Olympic Authority Administration Building is located, which is occupied and managed by the Olympic Authority under a Lease Agreement with the Town of North Elba.

IV. POLICY

It is the policy of the Olympic Authority 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 Public Authorities Law § 2896, 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 the Olympic Authority's possession be managed and overseen by a Contracting Officer designated by the Olympic Authority Board of Directors.

It is further the policy of the Olympic Authority that the disposition of the Real and Personal Property in its possession comply with Public Authorities Law § 2897, and all other applicable law for contracting for the disposal of property, as well as policies and rules duly adopted by the Olympic Authority Board of Directors.

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 Olympic Authority Website.

A. DEFINITIONS

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

1. "Contracting Officer" means a member of the Olympic Authority senior management, who shall be appointed by resolution of the Board of Directors to be responsible for the disposition of Olympic Authority Real and Personal Property and the implementation of this Policy.

2. "Dispose" or "disposal" means the transfer of title or any other beneficial interest in Real or Personal Property from the Olympic Authority to a third party. The terms "dispose" and "disposal" do not include either the rental or lease of Olympic Authority venues for events by third parties, or the rental or lease of Olympic Authority facilities to the USOPC or other national or international sports organizations.

3. "Excluded Property" means any Olympic Authority asset that is not Real Property, having a Fair Market Value or appraised value of less than $5,000. Excluded Property shall be subject to the applicable requirements of this Policy as set forth herein.

4. "Fair Market Value" means the estimated dollar amount that a willing buyer would pay to a willing seller for the property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair Market Value may be determined by consulting industry-recognized sources, contacting original suppliers, depreciation analysis, appraisals, fair market valuations by public auction or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the Contracting Officer or authorized designee.

5. "Negotiation" means the disposal of Real or Personal Property for not less than the appraised or Fair Market Value, as applicable, through sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and on such terms as the Contracting Officer deems necessary and proper, without requiring a competitive bid. This includes the exchange of the Olympic Authority's Personal Property as a trade-in toward the purchase of new or used Personal Property as part of a competitive procurement or single/sole source justification, provided that the value of the Personal Property to be exchanged is established in accordance with the process set forth herein and approved by the Contracting Officer.

6. "Personal Property" means any Olympic Authority asset that is not Real Property, having a Fair Market Value in excess of $5,000. Surplus computer and other information technology equipment is excepted from the definition of "Personal Property" under this Policy.

7. "Real Property" means real estate to which the Olympic Authority 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.

8. "Transferee" means the person or entity taking possession of Real or Personal property that has been disposed of by the Olympic Authority in accordance with the terms of this Policy.

9. "Venue Managers" means the persons who are responsible for managing each of the Olympic Authority venues, whether in an acting or official capacity, including, but not limited, to the Administration Building, the Olympic Center, the Olympic Oval, the Mt Van Hoevenberg Olympic Sports Complex, Whiteface Mountain Ski Center, Gore Mountain Ski Center, Belleayre Mountain Ski Center, and the Olympic Ski Jumping Complex.

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 Olympic Authority Personal Property complies with the procedures and requirements of this Policy.

It is the responsibility of the Contracting Officer to work with the Olympic Authority President & CEO to ensure that all Olympic Authority Real Property is properly inventoried, recorded and reported in accordance with the procedures in this Policy, and that the disposal of any Olympic Authority 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. <u>Identifying Personal Property for Disposal</u>

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 Olympic Authority's Interim Director of Technology and Infrastructure 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 the Olympic Authority's best interest to continue to possess;

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

a. If the property that may be subject to disposal is property that was transferred to the Olympic Authority 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 the Olympic Authority from the DEC, then in accordance with the Olympic Authority/DEC MOU, 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, whether the sale of its parts should be considered, whether the parts should be considered for recycling, the Venue Manager's ability to keep the facility neat and clean, and other relevant factors related to the Olympic Authority'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 the Personal Property that each Venue Manager has identified for disposal in accordance with the requirements of this Policy on the Olympic Authority's Property Disposition Website and, if applicable, on the New York State Contract Reporter. 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.

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 appraised or Fair Market Value of the Personal Property will be rejected as not being in the public interest. If one or more bids equal or exceed the appraised or Fair Market 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 the Olympic Authority.

c. The Contracting Officer will promptly and in writing notify the responsible bidder of the award and post such award on the Olympic Authority's Property Disposition Website and, if applicable, on the New York State Contract Reporter.

2. Negotiation

a. In lieu of the competitive bid process described in Section V.B.1. above, with the approval of the Contracting Officer, Venue Managers may dispose of Personal Property through Negotiation if:

i. the appraised or Fair Market Value of the 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 Personal Property exceeds $15,000.00 and the Venue Manager or Contracting Officer prepares an explanatory statement that is approved by the President & 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 Personal 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, it 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 through Negotiation for less than Fair Market Value if the disposal of such property is clearly within the Olympic Authority'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 property will remain with the government or other public entity; or

ii. The Contracting Officer has received approval from the Olympic Authority's President & 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 Olympic Authority 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.

3. Excluded Property

a. Any Excluded Property may be disposed of through Negotiation, competitive bidding, sale for scrap/salvage value, recycling, donation, or any other method deemed appropriate by the Contracting Officer based on the circumstances. When determining the appropriate method of disposal, the Contracting Officer may consider, among other things, the Fair Market Value of the property; the cost to the Olympic Authority of conducting a sale of the property relative to the likely resale value; the cost of storage and handling; and any operational, logistical, or environmental considerations relevant to the disposal process.

b. Venue Managers must document the Fair Market Value of the Excluded Property. If an active market valuation is not feasible due to the unique nature of the property or the circumstances of the proposed transaction, the Venue Managers must document whether the property should be considered for recycling, scrap or salvage, or donation. In making this determination, the Venue Manager shall also consider the ability to maintain the cleanliness and organization of their venue; the practicality and cost-effectiveness of continued storage; and any other factors relevant to the Olympic Authority's operational and financial interests.

c. Any Excluded Property that is disposed of through donation must be directed to an entity whose mission aligns with the Olympic Authority's objectives. Specifically, considerations for donations must include, but not be limited to, improving the physical fitness, athletic training, or recreational education for residents of New York State, the United States, or other countries; reducing the financial burden on State and local governments; serving the public interest, and/or satisfying any other criteria deemed appropriate and necessary by the Contracting Officer under the circumstances. All donations must be documented, and prior written approval from the Olympic Authority's President & CEO is required to ensure compliance with these criteria.

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 the Olympic Authority's possession.

Any proposal for the sale of Olympic Authority Real Property must be made to the Contracting Officer, who must obtain the approval of the Olympic Authority's President & CEO, and the Olympic Authority Board of Directors.

Prior to requesting approval to consider the disposition of Olympic Authority Real Property, the Contracting Officer shall obtain written verification that the Olympic Authority 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 the Olympic Authority.

The Contracting Officer shall assure that no part of any Real Property that is identified for disposal by the Olympic Authority, 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 Section VI.A. above 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 Olympic Authority Board of Directors, proposing the sale of the Olympic Authority Real Property, which reflects its marketable title, its appraised value, and the reasons for disposing of the Real Property, including any benefit to the Olympic Authority 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 the 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 Olympic Authority 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 appraised value of the Real Property will be rejected as not being in the public interest. If one or more bids equal or exceed the appraised value of the Real Property, the Contracting Officer must consider which responsible bidder's bid, conforming to the invitations for bids, will be most advantageous to the Olympic Authority considering price and other factors such as market conditions and best value to the Olympic Authority.

   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 Olympic Authority Board of Directors.

2. Negotiation

a. Subject to the approval of the President & CEO, and a resolution of the Olympic Authority Board of Directors, the Contracting Officer may dispose of Real Property by Negotiation if the disposal of such property is clearly within the Olympic Authority'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 Olympic Authority Board of Directors, the Contracting Officer may dispose of Real Property by Negotiation for below the appraised value, where the value of such property is in excess of $100,000.00, if the disposal of such property is clearly within the Olympic Authority'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 Olympic Authority 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 appraised 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 Olympic Authority 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 the appraised value, where the value of such property is in excess of $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 the appraised 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 competitive bid or Negotiation, 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 competitive bid or Negotiation process.

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

Any contract, bill of sale, or receipt shall clearly state that the property is being conveyed "as is", that the Olympic Authority 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 the Olympic Authority 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 the Olympic Authority (as authorized by the Olympic Authority Board of Directors for the sale or transfer of Real Property), purporting to transfer title or any other interest in Olympic Authority Real 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 the Olympic Authority 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 New York law and in using such formats and forms as directed by the Contracting Officer.

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 may be 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 the Olympic Authority's possession, as well as all Real Property that the Olympic Authority 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 the Olympic Authority for each item of Real or Personal Property disposed of, and the name of the purchaser of all such property sold by the Olympic Authority during such period.

2. Such report shall be published on the Olympic Authority 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, the Olympic Authority may enter into an agreement with the Commissioner of General Services where under such agreement the Commissioner may dispose of Olympic Authority property under terms and conditions acceptable to the Olympic Authority and the Commissioner of General Services. In disposing of any such property of the Olympic Authority'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
PERSONAL PROPERTY DISPOSITION SUMMARY

1. **First Steps**
   A. All Venue Managers must create and maintain a current and detailed inventory of all Personal Property at the venue they manage:
      - Document all additions to and deletions from the inventory.
      - Include the acquisition date, source of funding, and whether federal funds were used.
      - Deletions must identify the date and manner for disposal.
      - Any surplus computer or IT equipment, which must be handled solely by the Olympic Authority's IT Department, is excluded from the inventory.

   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, is not expected to be used in the coming fiscal year, and is not in the Olympic Authority'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 using accepted industry methods.
   B. If Fair Market Value can't be determined, get the Contracting Officer's approval for an independent appraisal.
   C. Identify and document the date the Olympic Authority 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 the Olympic Authority, 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 Olympic Authority-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/recycling and impacts on venue organization and cleanliness.
F. Provide the Contracting Officer with any other information relevant to decisions about disposal.

3. Personal Property Disposal Process:

A. **Competitive Bidding (Preferred Method)**

- Advertise publicly via the Olympic Authority's Property Disposition Website and NYS Contract Reporter (if applicable).
- 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 Value 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 conforms to the invitation for bids and will be most advantageous to the Olympic Authority, price and other factors considered.

B. **Negotiation (Alternate Method)**

- Only allowable when:
  - The Fair Market Value or appraised value is under $15,000.00; OR
  - Bids after advertising are not reasonable; OR
  - The property has unique qualities
- Venue Managers may enter into Negotiation 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 (Negotiation of Personal Property with a Fair Market Value > $15,000)**
- 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
  - Legislature.
- The statement must include the following information:
  - The estimated Fair Market Value 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;
  - Identification of the property, including its location and quantity;
  - Proposed sale price or exchange value of the property; and
  - Expected date of sale or exchange of the property.

D. **Negotiation of Personal Property Below 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 Olympic Authority'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, the Olympic Authority must give written notice to the Governor, the Assembly Speaker, and Senate, each of whom could deny the property transfer.
- Requires the following reporting, including to the Olympic Authority Board of Directors
  - A full description of the property
  - The property's Fair Market Value or appraised 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 Board must make a written determination that there is no reasonable alternative to the proposed below-market transfer, that would achieve the same purpose.
- 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 as described in Section C.

E. **Excluded Property (Personal Property with a Fair Market Value < $5,000)**

- May be disposed of through Negotiation, competitive bidding, sale for scrap/salvage value, recycling, donation, or any other method deemed appropriate by the Contracting Officer.
- Venue Managers must document the Fair Market Value of the Excluded Property. If an active market valuation is not feasible due to the unique nature of the property or the circumstances of the proposed transaction, the Venue Managers must document whether the property should be considered for recycling, scrap or salvage, or donation. In making this determination, the Venue Manager shall also consider the ability to maintain the cleanliness and organization of their venue; the practicality and cost-effectiveness of continued storage; and any other factors relevant to the Olympic Authority's operational and financial interests.
- Any Excluded Property that is disposed of through donation must be to an entity whose mission aligns with the Olympic Authority's objectives and receive prior written approval from the President & CEO

F. **Documentation and Reporting**

- All documentation and reporting must comply with the requirements of the Policy, including annual reporting on the Olympic Authority Website. Such reporting must include 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 Olympic Authority 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.**

NEW YORK STATE
OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Service Animal Policy
Effective _____

The New York State Olympic Regional Development Authority ("Olympic Authority") is a public benefit corporation and public authority of the State of New York. Its venues and facilities are places of public accommodation and public facilities as those terms are defined under Federal and State law. As such, the Olympic Authority is subject to the requirements of both Title II of the Federal Americans with Disabilities Act ("ADA"), and the New York State Human Rights Law and Civil Rights Law, with respect to the accommodation of individuals with disabilities. In accordance with the requirements of Federal and State law, therefore, this policy articulates the Olympic Authority's practices and procedures for assuring access by individuals with disabilities who are accompanied by service animals, to all of its venues, programs, activities, services, and events that are open to members of the general public.

I. POLICY STATEMENT

It is the policy of the Olympic Authority to prohibit discrimination against individuals with disabilities, including individuals with disabilities who are accompanied by service animals. Accordingly, subject to certain limitations as set forth in this policy, any guest with a disability who is assisted by a service animal, and any trainer of a service animal whether or not accompanied by an individual with a disability, shall have access to all public areas and activities of the Olympic Authority that are open to the general public.

II. DEFINITIONS

A. The term "handler" is defined as: the individual with a disability, as that term is defined under Federal and State law, who uses a service animal to perform work or a task directly related to that individual's disability; a personal care attendant who handles the animal for a person with a disability; or as the trainer of a Service Animal in Training.

B. The term "service animal" is defined under the ADA and New York State law as any dog that has been individually trained to do work or to perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability.

1. Miniature horses have been added to the definition of the term "service animal" in the ADA regulations. Miniature horses used as service animals must meet the height limit set by the American Miniature Horse Association. Specifically, they may not exceed thirty-four inches at the withers (measured at the last mane hairs). Miniature horses can range in weight from 150 pounds or less to as much as 300 pounds. Consistent with the criteria in this policy, the size and weight of a

DRAFT

miniature horse could affect whether it can be accommodated at an Olympic Authority venue.

2. Ponies and full-size horses do not qualify as service animals under the terms of this policy.

3. The term "service animal" does not include emotional support animals, or animals that solely provide comfort, well-being or companionship, nor does it encompass any crime deterrent effect that may result from the animal's presence.

C. Service Animals in Training ("SATs") are dogs that are being trained by a trainer identified as an agent or employee of an entity specialized in training dogs or to become service animals, whether or not accompanied by an individual with a disability.

III. PROCEDURE

Olympic Authority staff shall follow the procedures in this policy for the admission of service animals or SATs to all Olympic Authority venues, programs, services, activities, and events. Subject to the limitations, conditions, and criteria set forth in this policy, all venues, activities, programs, services, and events that are open to the general public are open to service animals that accompany an individual with a disability, and to SATs.

Olympic Authority employees shall not require any medical documentation, or any proof of training, licensing, or certification from an individual with a disability who is accompanied by a service animal to an Olympic Authority venue, program, service, activity, or event.

Olympic Authority employees shall not require the payment of a surcharge for a service animal or SAT, even if people accompanied by pets are required to pay fees.

A. General Criteria and Conditions for The Admission of Service Animals and SATs

1. The work or task of the service animal must be directly related to the individual's disability.

   For example: assisting individuals who are blind or have low vision with navigation and other tasks; alerting individuals who are deaf or hard of hearing to the presence of people or sounds; providing non-violent protection or rescue work; assisting an individual during a seizure; retrieving items such as medicine or the telephone; providing physical support and assistance with balance and stability to individuals with mobility disabilities; helping persons with psychiatric and neurological disabilities by preventing impulsive or destructive behaviors.

2. Olympic Authority employees may not ask about either the nature or the extent of a person's disability. Two inquiries are permissible by Olympic Authority staff in ascertaining whether an animal accompanying an individual with a disability qualifies as a service animal within the meaning of this policy:

    a. Olympic Authority employees may ask whether the animal is required because of a disability; and

    b. If the answer to that question is yes, Olympic Authority employees may ask what work or task the animal has been trained to perform (but may not ask that the animal demonstrate its ability to perform the work or task).

    Except that, these inquiries are not permissible where the nature of the disability is readily apparent, such as a service dog pulling a wheelchair or guiding a person with a visual impairment.

3. The service animal or SAT must be housebroken.

4. The service animal or SAT must be under the control of its handler at all times while in or on property that is owned or under the management of the Olympic Authority.

    a. Unless the handler is unable to do so, or the use of such device interferes with the safe, effective function of the animal's duties, all service animals or SATs shall have a harness, leash, bridle or other type of tether; or

    b. Where the use of such physical controls would interfere with the safe, effective performance of the service animal's or SAT's work or task, the animal must be under the handler's control through other means (for example, voice commands or hand signals).

5. Olympic Authority employees are not responsible for the care or supervision of a service animal or SAT.

6. Olympic Authority employees may ask that a service animal or SAT be removed by its handler from a venue, activity, program, service, or event, **if**:

    a. The animal is out of control and the handler does not take or is not able to take effective action to control it.

        Except that, if the handler asserts that the animal was provoked or injured, or if Olympic Authority staff otherwise have reason to suspect that provocation or injury has occurred, staff will seek to determine the facts and, if they determine that provocation or injury has occurred, staff will take steps to prevent further provocation or injury including asking the provocateur to leave the venue or facility if appropriate and necessary.

b. The animal is not housebroken.

In the event of an incident of a service animal or SAT failing to control its bodily function due to illness or accident, the handler will be asked by Olympic Authority staff to immediately and properly clean up and dispose of any bodily fluids or solid waste, whether inside or outside. At a minimum proper cleanup must include physical removal and proper disposal of any liquid and/or solid wastes, as well as any cleaning materials used.

c. The service animal or SAT causes damage to an Olympic Authority venue or poses a direct threat to the health or safety of others that cannot be reduced or eliminated by reasonable modifications.

The owner of a service animal or SAT is responsible for any costs that result from damages caused to an Olympic Authority venue by a service animal or SAT, including but not limited to the cost of cleanup in the event of illness or accident as described in subsection (b) above. In the case of any incident involving injury while on property owned or managed by the Olympic Authority, to a person or another animal by a service animal or SAT, the handler shall make an immediate report to the local police department so that the incident can be properly documented and investigated.

d. In the event that a service animal is excluded from an Olympic Authority venue, program, activity, service, or event under the guidelines set forth in this policy, it is the policy of the Olympic Authority to provide the individual with a disability whose service animal has been excluded, with the opportunity to access the venue and/or participate in the service, program, activity, or event through reasonable accommodations, without the service animal present.

i. The staff person who is responsible for admission to the Olympic Authority venue, service, program, activity or event will contact the First Aid/Ski Patrol staff person assigned to the venue.

ii. The First Aid/Ski Patrol may make a determination as to the accommodation that will be provided for an individual with a disability, in the absence of their service animal, or will contact the head of the Olympic Authority's Human Resources Department to make that determination.

B. Procedures and Policy for The Admission of Miniature Horses as Service Animals

1. It is the policy of the Olympic Authority to make reasonable modifications in its policies, practices, and procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or to perform tasks for the benefit of the individual with a disability.

2. In addition to the general criteria set forth in Section III. A. above, the following criteria will be considered in determining whether the Olympic Authority's venues, services, programs, activities and/or events may be reasonably modified to accommodate the admission of a miniature horse as a service animal:

    a. The type, size, and weight of the miniature horse, and whether the Olympic Authority can accommodate these features without fundamentally altering the program, activity, service, or event at a venue;

    b. Whether the handler has sufficient control of the miniature horse;

    c. Whether the miniature horse's presence in a specific facility will compromise legitimate safety requirements necessary for safe operation of the venue, program, activity, service, or event.

3. If the Olympic Authority determines that it cannot accommodate the presence of a miniature horse in a venue, program, service, activity, or event, staff will follow the procedure described in section III (A) (d) above to provide the individual with a disability with accommodations to access the venue, program, service, activity, or event without the miniature horse present.

IV. VENUE AND SEASON-SPECIFIC PROCEDURES

The safety requirements described in this section are based on actual risks and are not intended to be discriminatory. In any situation in which a service animal cannot be accommodated at an Olympic Authority venue, or in a specific activity, program, service, or event, in accordance with the procedure described in section III (A) (d) above, the Olympic Authority will provide the individual with a disability with the opportunity to access the venue and/or participate in the activity, program, service, or event, without the service animal present.

1. Winter Policy For Service Animals and SATs

The use of service dogs and SATs on the Belleayre Mountain Gondola, Gore Mountain Gondola, Whiteface Mountain Gondola, and the Olympic Jump Complex Gondola is permitted.

Due to safety considerations and the lack of specialized evacuation equipment in the event of an emergency, the use of miniature horses on Olympic Authority gondolas is prohibited.

The Olympic Authority prohibits the use of service animals and SATS on all other lifts. The use of service animals on open ski lifts and on-slope ski terrain directly conflicts with the Olympic Authority's safety requirements, and impedes the reasonably safe operation of the Olympic Authority's on-slope activities. These safety concerns include the potential for conflicts between service animals and skiers and riders, and are compounded by the large volume of slope and trail use.

2. Summer Policy For Service and SATs

Service animals and SATs are allowed on the trails at Olympic Authority venues that are designated for hiking, as well as on open roadways. Handlers must obey all permanent or temporary closures of terrain, trails, roads, and any other directives regarding closed or restricted areas within the boundaries of the Olympic Authority venue they are visiting.

The use of service dogs and SATs on the Belleayre Mountain Gondola, Gore Mountain Gondola, Whiteface Mountain Gondola, and the Olympic Jump Complex Gondola is permitted.

Due to safety considerations and the lack of specialized evacuation equipment in the event of an emergency, the use of miniature horses on Olympic Authority gondolas is prohibited.

Due to safety considerations, and to avoid conflicts between the reasonably safe operation of on-slope activities and service animals, the Olympic Authority prohibits the use of service animals and SATs on open ski lifts and on mountain biking trails.

V. GONDOLA EVACUATION POLICY AND PROCEDURE

1. In the event of a mechanical or other problem with the gondola at any Olympic Authority Venue, an aerial evacuation of a service dog or SAT and its handler may be required.

2. For the safety of the rescuers: rescuers will start the evacuation of a service dog or SAT from outside of the gondola cabin.

3. The handler or his or her companion, if the handler is accompanied by a companion, will be asked to place the service dog or SAT in a muzzle provided by the rescuer.

4. After confirming that the service animal or SAT is properly secured with a muzzle, the rescuer will enter the cabin. With assistance from the handler (or his or her companion if there is one), the handler will keep the service dog under control and calm while the rescuer places the dog in an evacuation harness and attaches the rescue line. The handler should provide the rescuer with a leash, tether, or other means of assuring control of the service dog or SAT once it is on the ground.

5. The service dog or SAT will be lowered first from the cabin, ahead of the handler.

6. After the service dog or SAT is safely on the ground, rescuers will then facilitate the evacuation of the handler and any companion(s).

7. Service Animal or SAT Equipment: one adjustable rescue harness, five muzzles ranging from extra-small to extra-large.

8. Equipment will be stored in the Base First Aid Facility.

NEW YORK STATE
OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Whistleblower Policy
Effective _____

I. Purpose.

It is the policy of the Olympic Regional Development Authority ("Olympic Authority") to afford certain protections to individuals who in good faith report violations of the Olympic Authority Code of Ethics or other instances of potential wrongdoing within the organization. This Whistleblower Policy is applicable to all Olympic Authority employees and to the members of its Board of Directors.

This Policy prohibits discrimination, harassment and/or retaliation of any kind against anyone who in good faith, based upon a reasonable belief: (i) reports a complaint and/or provides information concerning an actual, potential or suspected act of fraud, misconduct, wrongdoing, or other inappropriate behavior by an employee or Olympic Authority business partner as further described in this Policy, or (ii) reports a complaint and/or provides information regarding any alleged conduct that violates or demonstrates non-compliance with Olympic Authority Policies and Procedures and/or any applicable laws and regulations affecting the organization.

This Whistleblower Policy, and the procedures set forth below, are intended to encourage and enable employees to raise concerns in good faith within the Olympic Authority and without fear of retaliation or adverse employment action.

II. Definitions.

For the purposes of this policy, the terms specified below shall be defines as follows:

A. "Good Faith" – shall mean information that is disclosed whereby the individual disclosing said information reasonably believes such information to be true and reasonably believes that it constitutes potential wrongdoing.

B. "Olympic Authority Employee" – shall mean all staff employed by the Olympic Authority including those working full-time, seasonal, part-time, temporary, or under contract. The term Olympic Authority Employee shall also include, for purposes of this policy, Olympic Authority Board Members and Executive Staff.

C. "Whistleblower" **-** shall mean any Olympic Authority Employee who in good faith discloses information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by another Olympic Authority Employee, or concerning the Olympic Authority's investments, travel, acquisition of real or personal property, the disposition of real or personal property, the procurement of goods and services, and/or the business of the Olympic Authority itself.

D. "Wrongdoing" - shall mean any alleged corruption, fraud, criminal or unethical activity, misconduct, waste, conflict of interest, intentional reporting of false or misleading

DRAFT

information, or abuse of authority engaged in by an Olympic Authority Employee that relates to the management and/or operation of the Olympic Authority.

E. "Personnel action" – shall mean any action affecting compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement or evaluation of performance.

III. Reporting Wrongdoing.

Any Olympic Authority Employee who discovers or has knowledge of potential wrongdoing concerning: Board Members, Executive Staff, or other employees of the Olympic Authority; or a person having business dealings with the Olympic Authority; a contractor of the Olympic Authority; or concerning the Olympic Authority itself, may report such activity in accordance with the following procedures:

A. The Olympic Authority Employee shall disclose any information concerning wrongdoing either orally or in a written report to their highest level supervisor (i.e., Vice-President, Venue Manager, or Department Director), or to ORDA's General Counsel/Ethics Officer or Human Resources representative.

B. Any Olympic Authority Employee who discovers or has knowledge of wrongdoing shall report such wrongdoing in a prompt and timely manner.

C. The identity of the whistleblower and the substance of their allegations will be kept confidential to the best extent possible.

D. The individual to whom the potential wrongdoing is reported shall forward the complaint to the Director of Human Resources and General Counsel, who will then cause an investigation to be conducted in a timely and reasonable manner, which may include referring such information to the Authorities Budget Office or an appropriate law enforcement agency where applicable.

E. Should an Olympic Authority Employee believe in good faith that disclosing information within the Olympic Authority pursuant to Section 1(a) above would likely subject them to adverse personnel action or be wholly ineffective, the Olympic Authority Employee may instead disclose the information to the Authorities Budget Office (1-800-560-1770) or an appropriate law enforcement agency, if applicable.

F. Any Employee who knowingly submits false allegations of misconduct, fraud, or other wrongdoing, or otherwise fabricates accusations, is not protected under this policy and is subject to disciplinary action up to and including termination.

IV. No Retaliation or Interference.

No Olympic Authority Employee shall retaliate against any whistleblower for the disclosure of potential wrongdoing, whether through threat, coercion, or abuse of authority; and, no Olympic Authority employee shall interfere with the right of any other employee by any improper means

aimed at deterring disclosure of potential wrongdoing. Further, no Olympic Authority employee shall retaliate against or otherwise interfere with an employee who is cooperating and/or providing information during the course of an investigation. Any attempts at retaliation or interference are strictly prohibited and:

A. No Olympic Authority Employee who in good faith discloses potential violations of the Olympic Authority Code of Ethics or other instances of potential wrongdoing, shall suffer harassment, retaliation, or adverse personnel action.

B. All allegations of retaliation against a Whistleblower or interference with an individual seeking to disclose potential wrongdoing will be thoroughly investigated by the Olympic Authority.

C. Any Olympic Authority Employee who retaliates against or attempts to interfere with any individual for having in good faith disclosed potential violations of the Olympic Authority Code of Ethics or other instances of potential wrongdoing is subject to discipline, which may include termination of employment.

D. Any allegation of retaliation or interference will be taken and treated seriously and irrespective of the outcome of the initial complaint, will be treated as a separate matter.

V. Other Legal Rights Not Impaired.

This Whistleblower Policy and the procedures set forth herein are not intended to limit, diminish, or impair any other rights or remedies that an individual may have under the law with respect to disclosing potential wrongdoing free from the threat of retaliation or adverse personnel action.

A. Specifically, the provisions of this Whistleblower Policy are not intended to limit any rights or remedies that an individual may have under the laws of the State of New York, including but not limited to Labor Law § 740, State Finance Law § 191 (commonly known as the "False Claims Act"), or Executive Law § 55 (1).

B. With respect to any rights or remedies that an individual may have pursuant to Labor Law § 740, any Olympic Authority Employee who wishes to preserve such rights must, prior to disclosing information to a government body, have "made a good faith effort to notify [their] employer by bringing the activity, policy or practice to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice. Such employer notification shall not be required where: (a) there is an imminent and serious danger to the public health or safety; (b) the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice; (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or (e) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice" (Labor Law § 740 [3]).

NEW YORK STATE
OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Resolution #558

RESOLUTION APPROVING AND ADOPTING THE OLYMPIC AUTHORITY'S MISSION STATEMENT AND PERFORMANCE MEASUREMENTS

At a meeting of the Board of Directors of the Olympic Regional Development Authority ("Olympic Authority") held on June 27, 2025, the Board Chair offered the following resolution:

WHEREAS, pursuant to Public Authorities Law §§ 2800 and 2824-a, the Olympic Authority Board of Directors is charged with developing and submitting to the Authorities Budget Office (ABO), on an annual basis, the Olympic Authority's Mission Statement, together with a list of Performance Measurements by which the achievement of the Olympic Authority's Mission may be evaluated; and

WHEREAS, by Resolution #439, in February 2022, the Olympic Authority Board of Directors approved and adopted the Olympic Authority's Mission Statement, which is attached to this resolution; and

WHEREAS, by Resolution #524, in April 2024, the Olympic Authority Board of Directors approved and adopted the Olympic Authority's Performance Measures, including the identification of the Olympic Authority's stakeholders and their reasonable expectations, which is also attached to this resolution; and

WHEREAS, the Olympic Authority has prepared the self-evaluation report that is also attached, reflecting the use of the approved performance measurements to determine how well it has achieved its mission; and

WHEREAS, the Board of Directors has reviewed the Mission Statement and the proposed Performance Measurements, and has considered both in the context of the ABO guidance to public authorities for best practices in this regard; and

WHEREAS, the Board of Directors does not wish to make any changes to the Mission Statement at this time, and hereby approves the Olympic Authority Mission Statement as written; and

WHEREAS, the Board of Directors has reviewed the self-evaluation report and concludes that its contents reflect that the Olympic Authority is achieving its stated Mission, and that the Olympic Authority's performance measurements provide a sound basis for enabling the Olympic Authority to determine whether and how well it is performing its Mission and meeting the interests of its stakeholders; and

WHEREAS, the Board of Directors therefore concludes that the self-evaluation report does not reflect that there are any changes that should be implemented to the existing performance measurements to enable the Olympic Authority to be more efficient and/or effective in carrying out its Mission and meeting the interests of its stakeholders;

NOW THEREFORE BE IT RESOLVED, that after careful consideration and due deliberation, the Olympic Authority Board of Directors hereby approves and adopts the attached Mission Statement and list of Performance Measures for posting on the Olympic Authority website; and

BE IT FURTHER RESOLVED, that the Olympic Authority Board of Directors approves the attached list of Olympic Authority stakeholders and their reasonable expectations, as well as the attached self-evaluation report, and further approves the submission of all four sets of information to the ABO and as part of the Olympic Authority's annual filing in accordance with the requirements of Public Authorities Law §§ 2800, 2824-a.

SO RESOLVED,

MOVED BY: _____

SECONDED BY: _____

and

ADOPTED BY the following vote:

In Favor:	Excused/Abstained:	Against:

Renee Fitzgerald, Secretary to the Board, being duly sworn, deposes and says:

The above Resolution #558 was duly passed by the Board of Directors on June 27, 2025.

Signature_____
Title: Secretary to the Board of Directors

Sworn to before me this _____ day of June, 2025
Notary Public, State of New York

Measurements of Mission Delivery for Annual Filing with Authorities Budget Office:

- Revenue
- Visitation
- Operational Schedules
- Economic Impact Studies, if applicable
- Communications/PR Reach
- Guest Survey Results
- Improvement Projects Completed
- Technology Initiatives
- Sustainability Actions
- Annual Independent Audit
- Olympic Initiatives
- Activities & Programs
- Events Hosted

Olympic Authority Stakeholders:

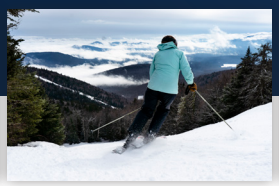
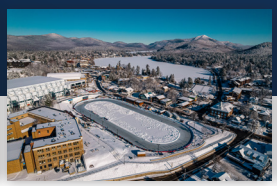
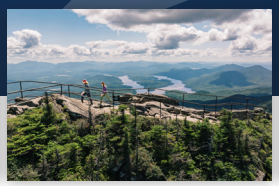
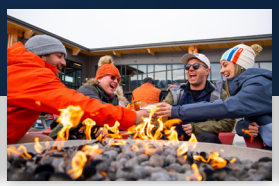
- NYS Residents & Government Officials
- Local government leaders, residents, and businesses
- County government leaders, residents, and businesses
- USOPC, National Governing Bodies, Team USA, developmental athlete organizations
- Winter Sport Industry Partners
- Individual recreational athletes and sport participants
- Team recreational athletes and sport participants
- Those who use Olympic Authority facilities for other pursuits including attending events, holding conferences/meetings, weddings, or other celebratory occasions, etc.

Reasonable Expectations of Olympic Authority Stakeholders:

- Produce positive economic impact in the NY regions that the Olympic Authority serves
- Provide quality facilities for recreation, training, events, and athlete development
- Year-round programming and activities for all ages and abilities
- Advancement of the Olympic Movement
- Operations with a focus on financial and environmental responsibility
- Providing an excellent customer experience with an emphasis on continued improvement of process and operations

NEW YORK STATE
OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

This report is to illustrate that the metrics used to determine how successfully the Olympic Authority is delivering upon its mission statement remain relevant to the organization's current operations, standards, and activities. Metrics are reviewed and approved annually by the Olympic Authority Board of Directors. For a comprehensive review of financials and operations, see the Olympic Authority's Independent Audit Report and Annual Report; both are published at the end of June each year and available on the Olympic Authority website.

OLYMPIC REGIONAL DEVELOPMENT AUTHORITY MISSION

To create economic and social benefit in the Adirondacks and Catskills by operating year-round venues that provide recreational and athletic development opportunities, achieved through a commitment to continuous improvement and emphasis on environmental stewardship, fiscal responsibility, and the delivery of world-class programs and experiences to persons of all ages and abilities.

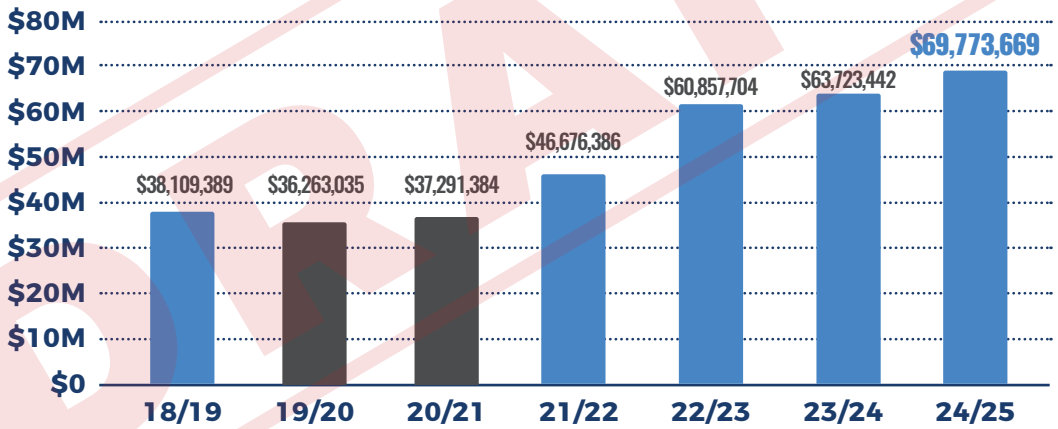
MEASUREMENTS OF MISSION DELIVERY (as approved June 2024)

- Revenue Generation
- Venue Visitation
- Operational Schedules
- Economic Impact Studies
- Communications/PR Reach
- Guest Survey Results
- Improvement Projects Completed
- Technology Initiatives
- Sustainability Actions
- Annual Independent Audit Results
- Olympic Initiatives
- Activities & Programs
- Events Hosted

DRAFT

REVENUE GENERATION

During the 24/25 fiscal year, the Olympic Authority's operational revenue increased to $69,773,669, the highest level in the organization's history. 19/20 and 20/21 in grey indicate years impacted by COVID-19:



VENUE VISITATION

During the 24/25 fiscal year, the Olympic Authority's visitation also broke all-time records, totaling over 1.16 million people. This is up approximately 9% over 23/24, and does not include conference center events, custom groups, and functions. During 24/25, the Conference Center welcomed over 7,500 attendees to 27 functions.

1,066,961
Total Visits | 2023-2024

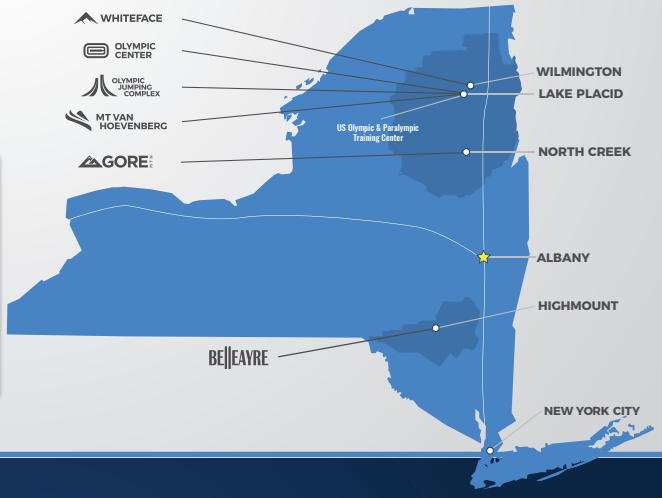
1,184,086
Total Visits | 2024-2025

OPERATIONAL SCHEDULES

In delivering upon its mission, the Olympic Authority strives to provide recreational and athlete development opportunities for all ages and abilities. This is achieved in part by operating venues year-round. The Olympic Authority is committed to outstanding snowmaking and grooming at the ski facilities that maximize the winter season, as well as introducing new summer and activities at all venues. Examples of recent extensions to operational schedules include spring climbing wall programs at Mt Van Hoevenberg, increased indoor figure skating programming, a summer concert series at Belleayre, and a broadened list of meetings and events at the Lake Placid Conference Center.

DRAFT

TOURISM ECONOMICS



$156 Million
2016-2017 Economic Impact for NYS

$273.6 Million
2019-2020 Economic Impact for NYS

$341.8 Million
2022-2023 Economic Impact for NYS

119% INCREASE OVER 6 YEARS

ECONOMIC IMPACT STUDIES

The Olympic Authority has conducted three economic impact studies over the last eight fiscal years, and the most recent results were compiled in Summer 2023, measuring the 22/23 fiscal year. The study, which is available at www.orda.org, measured the Olympic Authority's total economic impact at $341.8M during 22/23, a 119% increase over the 2016/2017 study. Impact evaluated visitor spending across categories including recreation, lodging, food and beverage, retail, and transportation.

The next study scheduled will measure the 25/26 season and publish in Summer 2026.

COMMUNICATIONS/PR REACH

The Communications Department maintains metrics on its reach, tracking article mentions, social media traffic, and net sentiment. During 24/25, the Olympic Authority received over 4,500 editorial mentions with a potential reach of 15.8 billion, increases of 7% and 29% over 23/24 respectively. The communications team issues dozens of press releases each year, produces the annual report, supports all media needs at events, and is a liaison between media and the organization.

GUEST SURVEY RESULTS

The Olympic Authority surveys its guests year-round, gathering venue-specific feedback in general areas including a likelihood to recommend to others, value, and overall experience, as well as specific items including staff helpfulness, lesson quality, foodservice, and trip planning. Both qualitative and quantitative results are compiled real-time with tracking in comparison to a competitive set of other resorts. Management utilizes the data to operate more efficiently, increase direct communications with guests, and improve the venue experience.

DRAFT

IMPROVEMENT PROJECTS

24/25 capital projects supported infrastructural improvements and maintenance at all venues. This included major snowmaking and electrical improvements at the three ski areas. Gore Mountain opened the high-speed Hudson Quad at the North Creek Ski Bowl and Belleayre installed a beginner conveyor lift. Other work included the installation of a radiant-heat deck at Whiteface's Bear Den Lodge, the installation of new gondola cabins at Gore Mountain, a new learning area at Belleayre's summit, the installation of wind nets at the Olympic Jumping Complex, and starting a modernization of the foodservice area at the Olympic & Paralympic Training Center.

TECHNOLOGY INITIATIVES

The Olympic Authority's Information Technology (IT) team is involved in all aspects of the organization's operations, including ticketing, infrastructure, communications, and events. The team also leads cybersecurity efforts as it pertains to software implementation and staff training. As the Olympic Authority has been hosting a variety of international events, IT has helped lead efforts for broadcasting, timing, and scoring. There has been a large focus on camera capabilities along the Mt Van Hoevenberg sliding track, which improved the experience for spectators, coaches, officials, and athletes at the 2025 Bobsled and Skeleton World Championships.

SUSTAINABILITY ACTIONS

The Olympic Authority has continued building upon its award-winning sustainability efforts, which includes the organization's purchase of 100% green power for its three alpine resorts. The Olympic Authority recently purchased the solar arrays dedicated to Gore Mountain, which offsets the resort's energy use while producing clean electricity to the region. The Olympic Authority is presently pursuing recertification of its LEED Gold for Communities status, which it obtains in cooperation with Clarkson University, and in partnership with the Town of North Elba, the Village of Lake Placid, and the Lake Placid School District.

ANNUAL INDEPENDENT AUDIT RESULTS

To be completed when 24/25 audit results are ready (mid-June 2025)

OLYMPIC INITIATIVES

The Olympic Authority continued developing its strategic sport partner relationships with numerous national governing bodies and international federations. A restructure of staff in this area designated more focused work within sport and events. Additionally, the Olympic Authority continued its communications with the 2026 Olympic Winter Games Organizing Committee, in the event that the track in Milano Cortina is not available for competition.

DRAFT

ACTIVITIES & PROGRAMS

During 24/25, attractions and activities revenue increased 12.65%, with key areas of growth noted at the Veterans' Memorial Highway, the zipline at the Olympic Jumping Complex, and the Cliffside Coaster at Mt Van Hoevenberg.

EVENTS HOSTED

A 24/25 events calendar is below, and included prestigious events such as the IBSF World Championships Mt Van Hoevenberg, an event second only to the Olympics in the sports of bobsled and skeleton. The Olympic Authority also hosted the FIS World Cup in Freestyle Aerials, the US Ski & Snowboard Holeshot Cross Tour at Gore, and the return of FIS World Cup Ski Jumping. In addition to the year-round events and training that occur on an international scale, venues also host an array of recreational events and competitions for developing athletes and the public.

MAJOR EVENTS SCHEDULE

SUMMER-FALL 2024

July 5-6 Star Spangled Ski Jump
August 10 Spartan Trail Race
September 27-29 UCI Mountain Bike World Cup
October 12-13 USA Nordic National Championships - Flaming Leaves Festival

WINTER 2024/2025

November 29-30 Adirondack Winter Invitational
January 13-19 FIL Continental Cup
January 18-19 FIS World Cup Freestyle Aerials
January 23-27 IBSF North American Cup
January 30-February 2 Empire State Winter Games
February 7-9 FIS World Cup Ski Jumping
February 11-16 FIS Nordic Junior World Ski Championships

MARCH 3-16, 2025 **IBSF Bobsled & Skeleton World Championships**

March 21-22, 2025 ECAC Men's Hockey Championship
March 27-30, 2025 USSS SuperTour Finals

WINTER 2025/2026

February 24 - March 8, 2026 IBU Biathlon Cups
March 20-21, 2026 ECAC Men's Hockey Championship
March 20-22, 2026 FIS Cross-Country World Cup

Dates indicate full range of event schedules, including practice and qualification rounds. Please see venue websites for complete details.