



## *Policies and Procedures*

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# Domestic Violence and the Workplace Policy

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### Policy Statement:

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

Domestic violence is defined as a pattern of coercive tactics which can include physical, psychological, sexual, economic and emotional abuse perpetrated by one person against an adult intimate partner, with the goal of establishing and maintaining power and control over the victim. In addition to exacting a tremendous toll from the individuals it directly affects, domestic violence often spills over into the workplace, compromising the safety of both victims and co-workers and resulting in lost productivity, increased health care costs, increased absenteeism, and increased employee turnover.

SUNY-ESF, to the fullest extent possible without violating any existing rules, regulations, statutory requirements, contractual obligations or collective bargaining agreements, will take all appropriate actions to promote safety in the workplace and respond effectively to the needs of victims of domestic violence.

### Definitions:

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

- **Domestic Violence:** A pattern of coercive tactics, which can include physical, psychological, sexual, economic and emotional abuse, perpetrated by one person against an adult intimate partner, with the goal of establishing and maintaining power and control over the victim.
- **Intimate Partner:** Includes persons legally married to one another; persons formerly married to one another; persons who have a child in common, regardless of whether such persons are married or have lived together at any time; couples who are in an intimate relationship, including but not limited to, couples who live together or have lived together, or persons who are dating or who have dated in the past, including same sex couples.



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- **Abuser:** A person who perpetrates a pattern of coercive tactics which can include physical, psychological, sexual, economic, and emotional abuse against an adult intimate partner, with the goal of establishing and maintaining power and control over the victim.
- **Victim:** The person against whom an abuser directs coercive and/or violent acts.

### Guidelines:

#### **I. Employee Awareness**

SUNY-ESF shall take all reasonable actions to educate employees regarding the effects of domestic violence, ways to prevent and curtail violence, and methods to report such violence to authorities.

It is the policy of SUNY-ESF that information on domestic violence and available resources shall be posted and, if necessary, replaced or reposted annually in areas where other employment policies and information are traditionally posted. This information shall include the topics addressed in the appendix.

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

SUNY-ESF shall ensure that personnel policies and procedures do not discriminate against victims of domestic violence and are responsive to the needs of victims of domestic violence.

- a) New York State law makes it a crime for employers to penalize an employee who, as a victim or witness of a criminal offense, is appearing as a witness, consulting with a district attorney, or exercising his/her rights as provided in the Criminal Procedure Law, the Family Court Act, and the Executive Law. This law requires employers, with prior day notification, to allow time off for victims or subpoenaed witnesses to exercise his/her rights as provided in the Criminal Procedure Law, the Family Court Act, and the Executive Law [Penal Law §215.14]. If there are any questions or concerns regarding the leave that must be granted to victims or subpoenaed witnesses, contact the Director of Human Resources or the Attendance and Leave Unit at the Department of Civil Service.
- b) SUNY-ESF, upon request, will assist the employee in determining the best use of his/her attendance and leave benefits when an employee needs to be absent as a result of being a victim of domestic violence. If an employee requests time off to care for and/or assist a family member who has been a victim of domestic violence, SUNY-ESF will evaluate the employee's request for leave for eligibility under existing law and collective bargaining agreements applicable to the employee and the attendance rules.



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- c) SUNY-ESF understands that victims of domestic violence may lack the required documentation or have difficulty obtaining the required documentation to justify absences without compromising their safety. Therefore, the Director of Human Resources will consult with the employee to identify what documentation she/he might have, or be able to obtain, that will not compromise his/her safety-related needs and will satisfactorily meet the documentation requirement of the employer. Because there are confidentiality issues associated with the submission of documentation in these instances, SUNY-ESF may choose to consult with the Attendance and Leave Unit at the Department of Civil Service when questions arise.
- d) Employees who are victims of domestic violence and who separate from a spouse (or terminate a relationship with a domestic partner, if covered), shall be allowed to make reasonable changes in benefits at any time during the calendar year where possible, in accordance with statute, regulation, contract and policy.
- e) NYS has established that victims of domestic violence are now a protected class in the employment provisions of the NYS human rights law. This law prevents an employer from firing or refusing to hire any individual based on their status as a victim of domestic violence and prevents discrimination in compensation or in the terms, conditions or privileges of employment. SUNY-ESF will not make inquiries about a job applicant's current or past domestic violence victimization, and employment decisions will not be based on any assumptions about or knowledge of such exposure.
- f) In cases in which it is identified that an employee's work performance difficulties are a result of being a victim of domestic violence, said employee shall be afforded all of the proactive measures outlined in this policy, and shall be provided clear information about performance expectations, priorities, and performance evaluation. If a disciplinary process is initiated, special care will be taken to consider all aspects of the victimized employee's situation. SUNY-ESF shall utilize all reasonable available options to resolve work-related performance problems, and may make a referral to the Employee Assistance Program, consistent with existing collective bargaining unit agreements, statute, regulations and agency policy.
- g) If reasonable measures have been taken to resolve domestic violence-related work performance problems of victimized employees, but the performance problems persist and the employee is terminated or voluntarily separates from employment due to these domestic violence related issues, and the employee conveys to SUNY-ESF that the separation is due to these domestic violence issues, SUNY-ESF shall inform the employee of his or her potential eligibility for unemployment insurance and respond quickly to any requests for information that may be needed in the claims process. New York State law provides that a victim of domestic violence who voluntarily separates from employment may, under certain circumstances, be eligible for unemployment insurance benefits. [§593 of NYS Labor Law.]



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Additional information may be found here:

<http://www.labor.ny.gov/ui/claimantinfo/domesticviolenceanduibenefits.shtm>

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

By means of a domestic violence workplace safety response plan, SUNY-ESF shall make employees aware of their options and available resources and help employees safeguard each other and report domestic violence to designated officials.

- a) The designated liaison between SUNY-ESF and SUNY System Administration is Marcia Barber, Director of Human Resources. This liaison will ensure campus wide implementation of this policy, and serve as the primary liaison with System Administration regarding this policy. The System Administration designated liaison will communicate with the Office for the Prevention of Domestic Violence (OPDV) on behalf of campuses as it relates to reporting.
- b) Additionally, the following individuals are designated as available to support those in need of assistance concerning domestic violence: Tim Blehar, Assistant Director of Human Resources and Bev Gracz, Senior Personnel Associate, 315-470-6611.
- c) SUNY-ESF complies and assists with enforcement of all known court orders of protection, particularly orders in which abusers have been ordered to stay away from the work site. If requested by the victim of domestic violence or law enforcement, the agency shall provide information in its possession concerning an alleged violation of an order of protection. Employees are encouraged to bring their orders of protection (OP) to the attention of Marcia Barber, Director of Human Resources, Tim Blehar, Assistant Director of Human Resources, or Bev Gracz, Senior Personnel Associate. Once the OP has been brought forward, a copy will be provided to Scott Becksted, Chief of Police, and the document will be kept in a locked file in the Director of Human Resources Office.

In the case of a workplace emergency requiring the presentation of the OP to law enforcement, if Marcia Barber, Director of Human Resources is unavailable to obtain the document, Tim Blehar, Assistant Director of Human Resources and/or Bev Gracz, Senior Personnel Associate will have access to the cabinet where the document is locked.

The Director of Human Resources (or the Assistant Director of Human Resources or Senior Personnel Associate, as per above paragraph) will discuss with the employee a plan on how to best proceed to ensure the safest possible work environment for the employee and the rest of the staff. With the permission of the employee, this may include: detail options that may be available in the workplace, for example, providing a copy of the OP and/or photo of perpetrator to University Police or front desk



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- personnel; discussion of who should be told if there is not front desk staff , such as identifying supervisor/colleagues who would be able to assist with the identification of the perpetrator; blocking the subject, perpetrator; and creating a personal workplace safety plan as outlined in “f” below. The employee is responsible to notify the Director of Human Resources if there are any changes to the OP.
- d) SUNY-ESF maintains an emergency security response plan, available online at <http://www.esf.edu/ehs/epm.htm>, which includes procedures for contacting University Police and possibly other appropriate law enforcement agencies, and which provides employees with clear instructions about what to do and who to contact if they observe anyone engaging in threatening behavior.
  - e) SUNY-ESF will discuss with a known victim of domestic violence the limitations on confidentiality under New York State Law (See Section VII h; NYS Agencies Responsibility d–g).
  - f) As part of an emergency security response plan, SUNY-ESF shall take actions to assist in mitigating reoccurrence of domestic violence in an effort to protect all employees including the victim. These actions may include, but are not limited to, advising co-workers and, upon request, the employee's bargaining representative, of the situation; setting up procedures for alerting University Police; temporary relocation of the victim to a secure area; options for voluntary transfer or permanent relocation to a new work site; change of work schedule, reassignment of parking space; escort for entry to and exit from the building; responding to telephone, fax, e-mail or mail harassment; and keeping a photograph of the abuser and/or a copy of any existing court orders of protection in a confidential on-site location and providing copies to University Police. SUNY-ESF will address any additional concerns raised by a situation in which both the victim and offender are employed by SUNY-ESF.
  - g) This policy shall be reviewed annually. Any substantive policy revisions and updates shall be forwarded to the SUNY System-wide Affirmative Action Officer.

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

SUNY-ESF will hold employees accountable for engaging in the following behavior: (1) using state resources to commit an act of domestic violence; (2) committing an act of domestic violence from or at the workplace or from any other location while on official state business; or (3) using their job-related authority and/or state resources in order to negatively affect victims and/or assist perpetrators in locating a victim and/or in perpetrating an act of domestic violence.



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- a) In cases in which SUNY-ESF has found that an employee has threatened, harassed, or abused an intimate partner at the workplace using state resources such as work time, workplace telephones, fax machines, mail, e-mail or other means, said employee may be subject to corrective or disciplinary action in accordance with existing collective bargaining unit agreements, statutes and regulations.
- b) In cases in which SUNY-ESF has verification that an employee is responsible for a domestic violence-related offense, or is the subject of any order of protection, including temporary, final or out-of-state order, as a result of domestic violence, and said employee has job functions that include the authority to take actions that directly impact victims of domestic violence and/or actions that may protect abusers from appropriate consequences for their behavior, SUNY-ESF shall determine if corrective action is warranted, in accordance with existing collective bargaining unit agreements, statutes and regulations.
- c) In cases in which any employee intentionally uses his/her job-related authority and/or intentionally uses state resources in order to negatively impact a victim of domestic violence, assist an abuser in locating a victim, assist an abuser in perpetrating acts of domestic violence, or protect an abuser from appropriate consequences for his/her behavior, said employee may be subject to corrective or disciplinary action, in accordance with existing collective bargaining unit agreements, statutes and regulations.

### **V. Firearms**

Pursuant to New York State and federal law, a person convicted of a domestic violence-related crime or subject to an order of protection, under certain circumstances, forfeits the right to legally possess a firearm or long gun. Additionally, federal law contains prohibitions relating to shipping, transportation, or receiving firearms or ammunition.

- a) In addition to complying with the law, employees who are authorized to carry a firearm as part of their job responsibilities are required to notify the campus if they are arrested on a domestic violence-related offense and/or served with an order of protection. Under certain circumstances, such employees are responsible for surrendering their firearms to the firearm-issuing agency or to the appropriate police agency.
- b) Should an employee fail to comply with the requirements set forth in Section V.a., said employee may be subject to corrective or disciplinary action, in accordance with existing collective bargaining unit agreements, statute or regulations. In addition, the appropriate law enforcement agency shall be notified for possible criminal action.



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### **VI. Training**

The Director of Human Resources and all personnel designated to provide support for those in need of assistance shall complete OPDV's one-day training on Domestic Violence and the Workplace. All appropriate managers, supervisors, employee assistance professionals, human resources personnel, union and labor representatives and security staff will be encouraged to attend OPDV's training on Domestic Violence and the Workplace. Additionally, SUNY-ESF shall make available for staff training on domestic violence and its impact on the workplace using materials provided by OPDV through the campus, OPDV and/or a local domestic violence service provider when scheduling permits.

### **VII. SUNY-ESF Responsibility**

- a) SUNY-ESF believes that domestic violence is behavior that cannot be tolerated and, to that end, will actively provide information and support to employees who are victims of such abuse.
- b) SUNY-ESF will disseminate copies of this *Domestic Violence and the Workplace Policy* to all employees upon implementation and to all new employees upon hiring or appointment.
- c) SUNY-ESF encourages all employees to review and follow this policy and the procedures set forth herein.
- d) SUNY-ESF will, consistent with applicable law and campus policy, document all incidents of domestic violence that happen in the workplace. Such documents should be provided to the designated liaison to System Administration as soon as practicable. Such documents shall be kept confidential to the extent permitted by law and campus policy and the provisions of section g detailed below.
- e) All SUNY-ESF employees providing domestic violence information and support services shall document, consistent with applicable law and agency policy, the number of employees who report domestic violence, the number of employees that request information/services, and the number of referrals made to domestic violence service providers. All information about employees who seek assistance shall be kept confidential to the extent permitted by law and campus policy and the provisions of section g detailed below, and documentation should not include any personal information. The number of employees seeking assistance as outlined above shall be reported to the designated liaison to System Administration.



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- f) The designated liaison to System Administration shall, consistent with applicable law and SUNY-ESF policy, provide information about the number and general nature of domestic violence incidents that happen in the workplace, the number of employees who report domestic violence, the number of employees that request information/services, and the number of referrals made to domestic violence service providers, with no personally identifying information, to OPDV at the time and in a manner determined by OPDV.
  
- g) Information related to an employee being a victim of domestic violence shall be kept confidential, to the extent permitted by law and campus policy, and shall not be divulged without the written consent of the victimized employee, unless the campus determines that maintaining said confidentiality puts the victim or other employees at risk of physical harm, is required by law, or is deemed necessary to enforce an order of protection. In such circumstances where a determination has been made that maintaining confidentiality puts the victim or other employees at risk of physical harm, only those individuals deemed necessary by the campus to protect the safety of the victim and/or other employees or to enforce an order of protection shall be given such information. SUNY-ESF shall disclose only the minimum amount of information necessary to protect the safety of the victim and/or other employees or enforce an order of protection. Where possible, SUNY-ESF will provide to the victim of domestic violence notice of the intent to provide information to other employees and/or safety personnel. Nothing herein shall prevent SUNY-ESF from investigating an act or acts of domestic violence occurring in the workplace. Some examples of situations where confidentiality cannot be maintained include the following:
  - 1) Supervisors/managers may be informed about a domestic violence incident that happens in the workplace, or a report of domestic violence, if it is necessary to protect the safety of the employee or the employee's co-workers.
  - 2) First aid and safety personnel may be informed about a domestic violence incident that happens in the workplace or a report of domestic violence, if it is necessary to protect the safety of the employee or the employee's co-workers.
  - 3) Government officials investigating a domestic violence incident that occurs in the workplace, or a report of domestic violence, shall be provided relevant information upon request and in accordance with legal requirements.
  
- h) While reported information is kept private to the greatest extent possible by Federal law, State law, and campus policy, New York State law includes clear limitations on legal confidentiality. Information reported to anyone not in a position listed below may have to be disclosed pursuant to a subpoena, where otherwise required by law or in accordance with Section VII, paragraph g above. Such confidentiality exists in



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certain (but not all) instances for certain medical personnel and counselors, social workers, clergy, attorneys, and rape crisis counselors and may in fact be required to be turned over in these cases through a subpoena or court order. Please note that where medical information is received from an employee who is the victim of domestic violence, such medical information shall be kept confidential to the extent required by and permitted by New York State and Federal laws including, but not limited to, the Americans with Disabilities Act and the Family and Medical Leave Act, if they apply to the employee's situation.

### APPENDIX

#### Information to be Included in Campus Postings Regarding Domestic Violence and the Workplace

At a minimum, the following information shall be provided to current employees and new employees and included in posters posted in areas where employment information is ordinarily posted:

- Information regarding domestic violence and available resources in the work site. Such information shall include available sources of assistance such as Employee Assistance Program, local domestic violence service providers, the NYS Domestic Violence and Sexual Assault hotline, and/or human resources personnel who are trained and available to serve as confidential sources of information, support, and referral. Additionally, the posters may include information regarding domestic violence programs located on the OPDV website [http://www.opdv.state.ny.us/about\\_dv/fss/resource.html](http://www.opdv.state.ny.us/about_dv/fss/resource.html).
- A statement informing employees that New York State law prohibits insurance companies and health maintenance organizations from discriminating against domestic violence victims or designation of domestic violence as a pre-existing condition [§2612 of the Insurance Law].

Additionally, SUNY-ESF shall integrate information on domestic violence and this domestic violence and the workplace policy into existing materials and literature, policies, protocols, and procedures, including the Public Employer Workplace Violence Prevention Programs<sup>1</sup> as appropriate.

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<sup>1</sup>12 NYCRR pt. 800.16 Public Employer Workplace Violence Prevention Programs