



New York State Division of Military and Naval Affairs

State Human Resources Management

Domestic Violence and the Workplace Policy

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.

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.

PURPOSE:

The goal of this Domestic Violence in the Workplace Policy (DVW) is to identify and prescribe practices that will promote safety in the workplace and respond effectively to the needs of victims of domestic violence.

Therefore, the New York State Division of Military and Naval Affairs, (DMNA), to the fullest extent possible without violating any existing rules, regulations, statutory requirements, contractual obligations or collective bargaining agreements, designates and directs appropriate management, supervisory, and/or human resources staff to implement the following.

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.

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.

I. NON-DISCRIMINATORY AND RESPONSIVE PERSONNEL POLICIES FOR VICTIMIZED EMPLOYEES

DMNA 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 [Penal Law §215.14]. DMNA will, with prior day notification, allow time off for victims or subpoenaed witnesses to exercise those rights as provided by Law. Any questions or concerns regarding the leave that must be granted to victims or subpoenaed witnesses shall be addressed to State Human Resources Management (MNHS).
- b. Upon request, MNHS will assist an employee in determining the best use of 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, MNHS will evaluate the employee’s request for leave for eligibility under existing law and collective bargaining agreements applicable to the employee and the attendance rules.

- c. Victims of domestic violence may lack the required documentation or have difficulty obtaining the required documentation to justify absences without compromising their safety. Therefore, MNHS will consult with the employee to identify what documentation he/she might have, or be able to obtain, that will not compromise his/her safety-related needs and will satisfactorily meet documentation requirements.
- d. Employees who are the victim 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. Inquiries about a job applicant's current or past domestic violence victimization, and employment decisions based on any assumptions about or knowledge of such exposure are prohibited.
- 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, and all available options in trying to resolve the performance problems shall be exhausted, including making a referral to the EAP, consistent with existing collective bargaining unit agreements, statute, regulations and Division policy.
- g. If reasonable measures have been taken to resolve domestic violence-related performance problems of victimized employees, but the performance problems persist and the employee is terminated or voluntarily separates from employment, DMNA shall inform the employee of his/her potential eligibility for unemployment insurance and respond as soon as possible 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.]

II. ACCOUNTABILITY FOR EMPLOYEES WHO ARE OFFENDERS

Employees who engage in the following behavior(s) will be held accountable: (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.

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

III. 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 DMNA 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 DMNA or to the appropriate police agency.
- b. Should an employee fail to comply with the requirements set forth in V. a., said employee shall be subject to corrective or disciplinary action, in accordance with existing collective bargaining unit agreements, statute or regulations. In addition, the appropriate law enforcement agency shall be notified for possible criminal action.

IV. EMPLOYEE AWARENESS

DMNA shall increase awareness of domestic violence and inform employees of available sources of assistance.

- a. Information on domestic violence and available resources in the work site will be posted in places where employees can obtain it without having to request it or be seen removing it, such as Division intranet, rest rooms and lounge areas. Such information shall include available sources of assistance such as the EAP, 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.
- b. Referrals shall be made to domestic violence programs located on the NYS Office for the Prevention of Domestic Violence (OPDV) website at http://www.opdv.state.ny.us/about_dv/fss/resource.html. Additional referrals may be made to best meet the needs of the employee. Information will be available on employee bulletin boards and included in employee newsletters, as appropriate.
- c. Information on domestic violence awareness and services will be included in written materials provided to new employees and as part of new employee orientation.
- d. Employees will be informed that New York State law prohibits insurance companies and health maintenance organizations from discriminating against domestic violence victims. The law prohibits designation of domestic violence as a pre-existing condition. An insurance company cannot deny or cancel an insurance policy or require a higher premium or payment because the insured is or has been a domestic violence victim. [§2612 of the Insurance Law.]
- e. Information on domestic violence and this Policy will be integrated into existing materials and literature, policies, protocols, and procedures.

- f. Additional domestic violence awareness activities such as "brown bag" lunch programs and other health and wellness programs will be considered.

V. WORKPLACE SAFETY PLANS

The safety and welfare of all Division employees remains of the utmost priority and concern. Therefore, a domestic violence workplace safety response plan has been implemented to provide reasonable means to protect all employees and assist victimized employees in developing and implementing individualized domestic violence workplace safety plans, consistent with existing collective bargaining agreements, statutes and regulations.

- a. MNHS Labor Relations Representative is designated as the DMNA/OPDV Liaison. This liaison will ensure agency-wide implementation of the domestic violence and the workplace policy, and serve as the primary liaison with OPDV regarding this Policy.
- b. The Employee Assistance Program Office (EAP) is designated as support for those in need of assistance around the issue of domestic violence. EAP contact information, including name, phone number and location will be included in all DVW Policy materials and clearly posted.
- c. DMNA shall comply and assist with enforcement of all known court orders of protection, particularly orders in which abusers have been ordered to stay away from the work site. If requested by the victim of domestic violence or law enforcement, the agency shall provide information in its possession concerning an alleged violation of an order of protection.

Employees are encouraged to bring their orders of protection to the attention of the DMNA/OPDV Liaison, MNHS Director or DMNA Office of Legal Affairs (MNLA). Once the order of protection has been brought forward, it shall remain in a secured file cabinet in MNHS, accessible only by the DMNA/OPDV Liaison. In the case of a workplace emergency requiring the presentation of the order of protection to law enforcement, if the DMNA/OPDV Liaison is unavailable to obtain the document, the MNHS Director will have access to the cabinet where the document is locked.

The DMNA/OPDV Liaison 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 Agency staff. With permission of the employee, this may include: providing a copy of the order of protection and/or photo of the perpetrator to security and front desk personnel; identifying a supervisor and/or colleague to assist in the identification of the subject of the order of protection; and creating a workplace safety plan (see Model Policy Section V f.).

The employee is responsible to notify the DMNA/OPDV Liaison if there are any changes to the order of protection.

- d. While many DMNA facilities are gated and/or protected by Security Forces, if it is suspected that an abuser has gained unauthorized access to the work site, or if an abuser engages in any acts that threaten the safety of employees, employees are required to report these threatening behaviors or incidents immediately. In facilities where on-site security is present, employees must alert security by phone or in person without delay. In facilities where on-site security is not available, employees must call 911 immediately to report the incident to local law enforcement. Local Supervisors and MNHS staff must also be notified as soon as possible.
- e. Victims of domestic violence will be informed of the DMNA confidentiality policy and the limitation thereto. (See Section VII. NYS Agencies Responsibility d – g).
- f. Upon request, victimized employees will be consulted with to develop and implement individualized workplace safety plans, which may include, when appropriate, advising co-workers and, upon request, the employee's bargaining representative, of the situation; setting up procedures for alerting security and/or the police; temporary relocation of the victim to a secure area; options for voluntary transfer or permanent relocation to a new work site; change of work schedule; reassignment of parking space; escort for entry to and exit from the building; responding to telephone, fax, e-mail or mail harassment; and keeping a photograph of the abuser and/or a copy of any existing court orders of protection in a confidential on-site location and providing copies to security personnel. Plans must address additional concerns if both the victim and the offender are employees of DMNA.
- g. This policy will be reviewed annually, with all revisions and updates forwarded to OPDV.

VI. TRAINING

Training will be made available to all staff on domestic violence. Training will be required of certain staff, and strongly encouraged for others, as outlined below.

- a. The DMNA/OPDV liaison and all personnel designated to provide support for those in need of assistance shall complete OPDV's one-day training on Domestic Violence and the Workplace. Training will prepare support personnel to identify possible signs and indicators of victimization, make appropriate referrals to domestic violence service providers, work with professionals to assist identified victims with safety planning, and develop individualized responses in recognition of the physical, social and cultural realities that may affect an individual victim's situation.

- Training will also include information on the ways in which domestic violence impacts the workplace, including the potential impact on worker productivity and the safety risks to on-site personnel and visitors.
- b. All appropriate managers, supervisors, employee assistance professionals, human resources personnel, union and labor representatives and security staff shall be encouraged to attend OPDV's training on Domestic Violence and the Workplace.
 - c. Training on domestic violence and its impact on the workplace should be made available on a regular basis for all agency staff. Training shall include information on the physical, social and cultural realities that may affect victims of domestic violence, the ways in which domestic violence impacts the workplace, including the potential impact on worker productivity and safety risks. When possible, OPDV-approved training materials will be integrated into existing union and management training programs, agency training programs, EAP training, Public Employer Workplace Violence Prevention Programs training, etc. Training may also be provided by OPDV or a local domestic violence service provider when scheduling permits.

VI. NYS AGENCIES RESPONSIBILITY

- a. Domestic violence is behavior that will not be tolerated. As such, DMNA pledges to actively provide information and support to employees who are victims of such abuse.
- b. Copies of this policy will be disseminated to all current employees and to all new employees upon hiring or appointment.
- c. Employees will review and follow the policy and procedures set forth in this Domestic Violence and the Workplace Policy.
- d. All incidents of domestic violence in the workplace will be documented, consistent with applicable law and this policy. Such documents should be provided to the DMNA/OPDV Liaison as soon as practicable. Such documents shall be kept confidential to the extent permitted by law and agency policy and the provisions of section g detailed below.
- e. Employees providing domestic violence information and support services shall document, consistent with applicable law and DMNA 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 DMNA 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 DMNA/OPDV Liaison.

- f. The DMNA/OPDV Liaison will, consistent with applicable law and Division 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 DMNA policy, and shall not be divulged without the written consent of the victimized employee, unless it is determined that maintaining said confidentiality puts the victim or other employees at risk of physical harm, 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, is required by law, or is deemed necessary to enforce an order of protection, only those individuals as deemed necessary by DMNA to protect the safety of the victim and/or other employees or to enforce an order of protection shall be given such information. Only the minimum amount of information necessary to protect the safety of the victim and/or other employees or enforce an order of protection will be disclosed. Where possible, the victim of domestic violence shall be provided notice of the intent to inform other employees and/or safety personnel. Employees who are the victim of domestic violence will be informed of the Division's policy of confidentiality toward domestic violence information and the limitations of that policy. Nothing herein shall prevent DMNA from investigating an act or acts of domestic violence that happen with in the workplace. Examples of situations where confidentiality cannot be maintained are as follows:
 - 1. Supervisors/managers may be informed about a domestic violence incident that happens in the workplace, or a report of domestic violence, if it is necessary to protect the safety of the employee or the employee's co-workers.
 - 2. First aid and safety personnel may be informed about a domestic violence incident that happens in the workplace or a report of domestic violence, if it is necessary to protect the safety of the employee or the employee's co-workers.
 - 3. Government officials investigating a domestic violence incident that happens in the workplace, or a report of domestic violence, shall be provided relevant information on request.