

# Gender-Based Violence and the Workplace

## Policy for NYS Bidders

### Purpose

Gender-based violence occurs within a broad spectrum of relationships; therefore, Herkimer County will take appropriate measures to prevent and/or address gender-based violence as it impacts the workplace. Herkimer County recognizes the rights of victims to have self-determination and the need to respond in a survivor-centered, trauma-informed, and culturally responsive manner. This policy shall apply to all victims of gender-based violence, regardless of where the incidents took place.

The importance of a responsive gender-based violence workplace policy cannot be overstated. Studies show stable employment increases survivor safety. It can offer survivors a “level of independence that lessens an abuser’s ability to control them as well as increase their ability to escape violence.”<sup>1</sup> The Centers for Disease Control and Prevention estimates intimate partner violence, a form of gender-based violence, has a lifetime cost of \$1.3 trillion in lost productivity for both offenders and victims.<sup>2</sup>

Herkimer County, to the fullest extent possible, without violating any existing rules, regulations, statutory requirements<sup>3</sup>, contractual obligations, or collective bargaining agreements, designates and directs appropriate management, supervisory, and/or human resources staff to implement the following Gender-Based Violence and the Workplace Policy covering the following areas:

- I. Definitions;
- II. Persons Covered by the Policy;
- III. Statement of Confidentiality;
- IV. Survivor Rights;
- V. Employer Responsibilities;
- VI. Non-Discrimination and Responsive Personnel Policies;
- VII. Non-Retaliation Policy;
- VIII. Workplace Safety Plans;
- IX. Accountability for Employees who Perpetrate Acts of Gender-Based Violence;
- X. Training;
- XI. Firearms (for applicable organizations);
- XII. Violations of Policy.

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<sup>1</sup> Sanders, C. K. (2015). Economic Abuse in the Lives of Women Abused by an Intimate Partner: A Qualitative Study. *Violence Against Women*, 21(1), 3-29. <https://doi.org/10.1177/1077801214564167> (Original work published 2015)

<sup>2</sup> Peterson, Cora, et al (2018). Lifetime Economic Burden of Intimate Partner Violence Among U.S. Adults. *American Journal of Preventive Medicine*, 55(4), 433-444. doi:10.1016/j.amepre.2018.04.049.

<sup>3</sup> When gender-based violence constitutes sexual harassment, New York State Labor Law § 201-g and New York State Human Rights Law § 296 supersedes this policy. For more information on sexual harassment and New York State requirements, please visit the [New York State Combatting Sexual Harassment in the Workplace website](#)

## I. Definitions

Unless otherwise noted, the Office for the Prevention of Domestic Violence (OPDV) defines the terms below for the purposes of this policy:

- a. **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.
- b. **Domestic Violence:** A pattern of coercive behavior, including acts or threatened acts, 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 of the acts as mentioned earlier. Domestic violence includes but is not limited to family violence, intimate partner violence, dating violence, or dating abuse.
- c. **Sexual Violence:** Sexual acts or activities that happen or are attempted without consent, including rape, molestation, groping, harassment, and sexual abuse. These acts may or may not be crimes.
- d. **Stalking:** An unwanted pattern of repeated harassing or threatening behavior, causing fear, substantial emotional distress, or safety concerns for the victim.
- e. **Coercive Control:** An act or pattern of acts, threats, humiliation, and intimidation that is used to harm, punish, or frighten.
- f. **Sexual Harassment:** Sexual Harassment is a type of gender-based violence. New York State law provides special protections against sexual harassment in the workplace. Under New York State Human Rights Law § 296 and Labor Law § 201-g, sexual harassment is defined as unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex, and:
  - i. unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment; or
  - ii. made, explicitly or implicitly, a term or condition of employment; or
  - iii. when submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

Herkimer County has a separate sexual harassment policy. Anyone who experiences sexual harassment in the workplace is directed to consult the sexual harassment policy for detailed information about reporting and the filing of a formal complaint.

- g. **Survivor-Centered:** An approach to supporting and assisting survivors focused on meeting their needs as they prioritize and define them. Key elements of a survivor-centered approach include confidentiality, safety, respect, and non-discrimination.
- h. **Trauma-Informed:** An approach to supporting and assisting survivors that realizes trauma is common, recognizes the signs, activators, and symptoms of trauma, and uses this knowledge to inform practices, policies, and procedures.
- i. **Culturally Responsive:** A holistic approach to supporting and assisting survivors that recognizes a person's complex identities and cultural values, by responding to differences in identities to actively meet the needs of all survivors and communities.
- j. **Victim of Domestic Violence – pursuant to NYS Social Services Law § 459-a (1):** Any person over the age of sixteen, any married person, or any parent accompanied by his or her<sup>4</sup> 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
  - 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.
- k. **"Family or household members" means the following individuals pursuant to NYS Social Services Law § 459-a (2):**
  - i. persons related by consanguinity or affinity (blood or a person's relation to blood relatives of their spouse);
  - ii. persons legally married to one another;
  - iii. persons formerly married to one another, regardless of whether they still reside in the same household;
  - iv. persons who have a child in common, regardless of whether such persons are married or have married or have lived together at any time;

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<sup>4</sup> New York State recognizes and affirms the diversity of New Yorkers. LGBTQIA+ people are covered under this definition provided they meet the criteria set forth.

- v. 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;
  - vi. 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
  - vii. 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.
- l. **“Parent” pursuant to NYS Social Services Law § 459-a (2):** means a natural or adoptive parent or any individual lawfully charged with a minor child’s care or custody.
  - m. **Victim or Survivor:** A person who has experienced or is experiencing any form of gender-based violence. People of all genders, sexual orientations, and gender identities may experience gender-based violence, but women and girls are impacted the most. Some people will have a strong preference for which term to use.
  - n. **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.
  - o. **Order of Protection (OP) (“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) identified and may include, but are not limited to ordering the person causing harm 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 surrender any firearms.
  - p. **Workplace:** For the purposes of this policy, any permanent or temporary location away from an employee’s domicile where an employee performs any work-related duty in the course of employment.
  - q. **Human Resources:** The department of a business or organization responsible for workforce management. If no such department exists, the responsibilities of Human Resources fall on the employer.

- r. **Gender-Based Violence Liaison (GBVL):** Where possible, a designated employee(s) of the business or organization who assists victimized employees with referrals to local service providers. The GBVL may or may not be a Human Resources employee.
- s. **Local Service Providers:** An organization in a given geographical area whose mission is to provide services to victims of gender-based violence. In New York State, each county has a designated service provider(s) for domestic violence and sexual violence. Services can include emergency shelter, advocacy, accompaniment to hospitals and court, safety planning, counseling, etc. Visit [opd.ny.gov](http://opd.ny.gov) for a list of New York State-based domestic and sexual violence service providers.

## **II. Persons covered by this policy**

This policy shall extend to all full, part-time, temporary employees, volunteers, and interns working for Herkimer County in any official work capacity.

## **III. Statement of Confidentiality**

Herkimer County recognizes and respects the employee's right to privacy and confidentiality. All information, including details an employee shares about being a victim, shall be kept confidential to the extent permitted by law without the employee's written permission, unless doing so creates a substantial risk of imminent danger to the victimized employee, other employees, or the worksite. If such a situation arises, Herkimer County will:

- a. Inform the victimized employee of the actions Herkimer County will take.
- b. Share information only with the specific employees who need to know.
- c. Limit the information shared to only what is necessary.
- d. Consider requiring employees who receive this sensitive information to sign a confidentiality agreement, committing to use it only for its intended safety purpose.

## **IV. Survivor Rights**

Victims of domestic violence are a protected class under New York State Human Rights Law §296, which applies to settings like employment, housing, education, and public accommodations. Every employer in the State of New York is required to follow the New York State Human Rights Law. This means it is unlawful to discriminate against an employee based on their status as a victim of domestic violence.

- a. Employees have the right to:
  - i. Disclose or not disclose experiences or details of gender-based violence.
  - ii. Ask for reasonable accommodations to address concerns related to gender-based violence.
  - iii. Be free of discrimination and retaliation in seeking such accommodation.
  - iv. Access gender-based violence services.
- b. Employers may require an employee to provide documentation, such as an attestation, to substantiate their need for an accommodation or to use sick, personal or vacation leave.

**V. Employer Responsibilities**

- a. Herkimer County shall implement the Gender-Based Violence and the Workplace policy and where possible, designate the Human Resources department or appropriate staff personnel to perform duties associated with implementing the policy. Where possible, Herkimer County will designate at least one employee as its Gender-Based Violence Liaison (GBVL).
  - i. The GBVL is a designated employee who assists victimized employees with referrals to local service providers. The GBVL may or may not be a Human Resources employee.
  - ii. Herkimer County designates Steven Billings, Personnel Officer, as GBVL.
- b. Increase awareness around gender-based violence and create an informed workforce by posting information in such places where employees can utilize the information. The information should include:
  - i. Employee Assistance Program (EAP) information, if applicable,
  - ii. Human resources staff,
  - iii. NYS Domestic and Sexual Violence Hotline Number (1-800- 942-6906), Chat and Text Line (1-844-997-2121), and
  - iv. Contact information for local gender-based violence programs.
- c. Ensure victimized employees know and understand this policy and their rights, including all possible options available to them, and are aware of accommodations outlined in section VI of this policy.
- d. Offer support to those victimized through the following minimum steps:
  - i. Provide information on available sources of services and assistance for victims and survivors, such as the New York State Domestic and Sexual Violence Hotline or local victim services provider.
  - ii. Educate employees on disciplinary practices that may be implemented in the event of retaliation for reporting or used with employees who commit acts of gender-based violence. Assist supervisors to ensure that all employees who knowingly violate this policy are held accountable.
  - iii. Include this policy as part of the written materials provided to all new employees and provide the policy to all employees on an annual basis.
  - iv. Refer anyone who discloses they are a victim to the EAP, if applicable, the NYS Domestic and Sexual Violence Hotline (or the statewide hotline for workplace sexual harassment, if appropriate), and any local programs serving victims of domestic and sexual violence. Additional referrals may be made to the appropriate resources to meet the employee's needs best.

- e. Human Resources (and/or GBVLs)  
Herkimer County Human Resources staff must create a safe and supportive workplace culture for anyone who has experienced gender-based violence. They can do this by communicating that information and resources are available to victims and that abusive behavior by any employee will not be tolerated.
- f. Supervisors  
Herkimer County Supervisors shall ensure that any employee who discloses being a victim of gender-based violence is aware of and understands this policy and their rights. Additionally, supervisors shall refer employees to the Human Resources department and/or GBVL to receive referrals and resources as outlined above.

## **VI. Non-Discrimination and Responsive Personnel Policies**

All Herkimer County policies and procedures must not discriminate and should be trauma-informed, survivor-centered, and culturally responsive to victims' needs. Under the New York State Human Rights Law, all persons are protected from discrimination in the workplace on the basis of their status as a victim of domestic violence, and on the basis of sex, sexual orientation, gender identity, and gender expression. If such discrimination occurs, the employee can report it to the New York State Division of Human Rights for potential investigation and remediation. Responsive personnel policies can increase the stability of gender-based violence survivors and help them navigate safety.

- a. Victims of domestic violence are a protected class under New York State Human Rights Law (Executive Law § 296(22)) and as such;
  - i. Employers may not refuse to hire and may not terminate someone solely based on their status as a victim of domestic violence.
  - ii. Employers may not discriminate against victims of domestic violence in compensation, terms, conditions, or privileges of employment.
  - iii. Employers may not inquire about an applicant or employee's status as a current or past victim of domestic violence in any way that directly or indirectly expresses discriminatory treatment based on that status.
  - iv. Employers may inquire about status as a victim of domestic violence to provide reasonable accommodations.
  - v. Employers may not refuse to provide certain reasonable accommodations to an employee who is known by the employer to be a victim of domestic violence and who needs such accommodation to seek medical care and/or obtain certain services connected to an incident or incidents of domestic violence.
  - vi. Employers are prohibited from retaliating against an employee for opposing unlawful discrimination and/or filing a formal complaint over alleged discriminatory conduct.
- b. **Use of Safe Leave:** Under New York State Labor Law, employers in New York must allow any employee who has disclosed their status as a victim of gender-based violence (or disclosed that a family member is a victim of gender-based violence) and must be out of work for a reasonable time to use accrued sick leave, known as safe leave, for the purposes as outlined in Labor Law § 196-b(4).

- c. **Leave Options:** 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.
- d. **Continuation of Benefits:** 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 employer to which the employee is otherwise entitled during any such absence, in accordance with any existing collective bargaining agreements, regulations, and organization policy.
- e. **Notice of Absence:** Employees who must be absent to utilize accommodations as listed in this section shall provide their employer with reasonable advanced notice of the absence when possible.
- f. **Time Off for Legal Proceedings:** Employers are also required to grant time off, with prior day notification, and may 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.<sup>5</sup>
- g. **Privacy and Documentation:** There may be occurrences when an employee is absent due to incidents of gender-based violence where they are unable to follow organizational 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. Under New York State Labor Law, an employer may 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 or safe leave.
- h. **Changes to Benefits:** Employees who are victims of gender-based violence who separate from a covered family member due to incidents of gender-based violence shall 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 policy.
- i. **Work Performance Impact:** Herkimer County 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.
  - i. If performance is affected as a result of being a victim of gender-based violence, Herkimer County will work with the employee on solutions which may include referrals to the GVBVL or HR, EAP, if applicable, and/or the local domestic violence service provider, and may consider leave options.

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<sup>5</sup> Penal Law § 215.14

1. Employees should be made aware that not all employees' requests for assistance can be accommodated.
  - ii. OPDV is available for case-specific technical assistance as needed.
  - iii. Employees will be given clear information on performance expectations, priorities, and performance evaluations.
  - iv. If disciplinary action is considered, special care should be taken to consider all aspects of the victimized employee's situation, and all available options in trying to resolve the performance problems should be exhausted, including making a referral to HR, EAP, if applicable, domestic violence program, or other relevant services, consistent with existing collective bargaining unit agreements, statute, regulations, and organization policy.
- j. **Termination and Unemployment Eligibility:** If reasonable measures have been exhausted and the work performance issue remains and the employee is terminated or voluntarily separates from employment, the employee shall be informed of their potential eligibility for unemployment insurance, and Herkimer County shall respond promptly 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.<sup>6</sup>
- k. **Protection Against Sexual Harassment:** Sex, sexual orientation, gender identity, gender expression, and status as a victim of domestic violence are all protected classes under the New York State Human Rights Law. Sexual harassment is a form of sex discrimination and is also prohibited under the New York State Human Rights Law § 296 and Title VII, the Federal Civil Rights Act of 1964. Sexual harassment includes harassment based on sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender. Gender-based violence may constitute sexual harassment when it subjects an individual to inferior terms, conditions, or privileges of employment.
- i. Every New York State employer must have a policy on sexual harassment prevention, including a procedure for the receipt and investigation of complaints of sexual harassment.
- l. **Reporting Discrimination or Harassment:** For all forms of discrimination and harassment, if an employee, including an intern or contractor, 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 with the employer.
- i. Any complaint of potential discrimination, whether verbal or written, must be investigated.

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<sup>6</sup> NYS Labor Law § 593(1)(b)(i)

- ii. Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, to Steven Billings, Personnel Officer.
- iii. Herkimer County shall maintain the confidentiality of the complainant to the extent practical.
- iv. Any employee in NYS may file a complaint with the New York State Division of Human Rights.

## VII. **Non-Retaliation Policy**

Herkimer County shall not engage in any retaliatory practices against employees who disclose they are a victim of gender-based violence, or any employee seeking accommodations or to exercise their rights under this policy.

Herkimer County will not retaliate, tolerate retaliation by any superiors, terminate, or discipline any employees for reporting information about alleged incidents of gender-based violence that may have been committed by an employee, including those in management positions.

Retaliatory practices may include, but are not limited to:

- a. Commencing discipline against victimized employees for actions taken to promote their safety
- b. Fewer promotions
- c. Inappropriate jokes
- d. Comments that communicate bias or minimization
- e. Excluding the employee from conversations, etc.
- f. Discussing employee's status or experience in open/non-private settings with individuals other than the employee and the related staff (GBVL, HR, etc).

Retaliation may be carried out by anyone, not just the original perpetrator.

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

Retaliation against any employee who files a complaint of violation of the policy is also prohibited.

## VIII. **Workplace Safety Plans**

Gender-based violence can lead to safety concerns at the workplace. Safety plans are simple but critical steps an employee can take to increase their safety and the safety of coworkers. While not all employee-survivors will need help with safety planning, employers should be prepared to provide referrals to the local service provider.

Employers shall have workplace safety response plans in place, including procedures for reporting to supervisors or contacting law enforcement, if necessary, should an event take place in the workplace.

- a. **Orders of Protection:** Herkimer County shall comply and assist with the enforcement of all known Orders of Protection (OP).
  - i. If requested by the victim or by law enforcement, Herkimer County will provide any relevant information regarding an alleged OP violation.
- b. If the circumstances indicate a need for Herkimer County to take steps to increase the safety for the victim, other employees, and the workplace, the organization should follow their internal protocols.

**IX. Accountability for Employees who Perpetrate Acts of Gender-Based Violence**

Herkimer County will hold accountable and shall subject to corrective or disciplinary action any employee who violates this policy, in accordance with existing collective bargaining agreements, applicable statutes, and regulations. The following behaviors are prohibited under the policy:

- a. Using the authority of their employment and/or misusing any workplace resources in order to:
  - i. negatively impact any victim of gender-based violence;
  - ii. assist a perpetrator in locating a victim;
  - iii. assist a perpetrator in perpetrating any act of gender-based violence; or
  - iv. protect a perpetrator from receiving appropriate consequences.
- b. Committing acts of gender-based violence from or at the workplace, or from any location conducting official business, except for locations where employees are telecommuting.

**X. Training:**

Gender-based violence can be complex. To effectively respond to employee-survivors' needs in a survivor-centered, trauma-informed, and culturally responsive manner, bidders are encouraged to attend trainings offered by OPDV or local service providers, but are not required to do so. Supervisors, Human Resources, and organizational leadership are encouraged to attend OPDV's available trainings and utilize resources on OPDV's website: [opdv.ny.gov](http://opdv.ny.gov).

**XI. Firearms:**

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

In addition to complying with State and Federal law, employees who are authorized to carry a firearm as part of their job-related duties are required to notify the organization if they are arrested for a domestic violence-related offense and/or are served with an Order of Protection. Under certain circumstances, such employees are responsible for surrendering their firearms to the issuing organization or to the appropriate police organization.

Should an employee fail to comply with the above-listed requirements of this policy, they would be subject to corrective or disciplinary action, under existing collective bargaining unit agreements, statute, or regulations. In addition, law enforcement may be notified of possible criminal action.

## **XII. Violations of Policy**

Employers must investigate complaints of policy violations. Employers should outline in their policy any applicable steps for filing a grievance or complaint. Section VIII of the policy prohibits retaliation for filing a complaint.

Employees may also report alleged violations of the New York State Human Rights Law to the New York State Division of Human Rights (DHR). DHR is the state agency responsible for enforcing the New York State Human Rights Law. DHR reviews every report of discrimination filed with the agency. In every case where the alleged discrimination falls within the agency's jurisdiction, DHR will investigate and seek to hold violators of the law accountable. The discrimination reporting form and all related information can be found on [DHR's website](#).