

State of New York
Offices of the Inspector General



Investigation of the New York State
Office of Information Technology Services and
Office of General Services
Domestic Violence Incident Response

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This report includes details of a person's experience with domestic violence. If you or someone you know is a victim of domestic violence and wants help, emergency shelter, information, or support, contact the New York State Domestic and Sexual Violence Hotline: Call 1-800-942-6906 or Text 844-997-2121.

EXECUTIVE SUMMARY

Domestic violence is a widespread community problem that affects thousands of New York families, but also one that extends beyond the family into all areas of society, including the workplace. Combating this problem requires the State's participation in a coordinated community response to support victims and families. To do their part, State agencies are tasked with developing and implementing Domestic Violence and the Workplace policies designed to promote safety in the workplace and respond effectively to the needs of State employees who experience domestic violence.

The New York State Office for the Prevention of Domestic Violence (OPDV) was created in 1992 with a mission “[t]o improve New York State’s response to and prevention of domestic violence with the goal of enhancing the safety of all New Yorkers in their intimate and family relationships.”¹ OPDV offers agencies a Model Domestic Violence and the Workplace Policy, appended hereto as Appendix A, which identifies and prescribes agency practices. Since 2008, pursuant to executive order, State agencies have been required to utilize OPDV’s model to formulate and adopt policies of their own.² The New York State Office of General Services (OGS) and New York State Office of Information Technology Services (ITS) have each formulated and implemented such domestic violence policies.

On August 22, 2019, a then OGS employee filed a complaint with OGS alleging that his wife, then an ITS employee, was misusing her State-issued cellular telephone. At the time, the OGS employee was the subject of an internal disciplinary action, and his termination was being sought by the agency. On September 12, 2019, when ITS commenced an investigation into the alleged work telephone misuse, the ITS employee disclosed to certain ITS employees that she was the victim of domestic violence by her husband and was using her State-issued cellular telephone to document his abuse.³ Almost a year later, in September 2020, the husband, who was by then no longer employed by OGS, killed his wife in their home before taking his own life. The facts of this ultimate tragedy are beyond the scope of the Inspector General’s investigation, which assessed only the agencies’ compliance with internal controls during the period of August 2019 through January 2020.

¹ The New York State Office for the Prevention of Domestic Violence, <https://opdv.ny.gov/about-us/> (last accessed April 19, 2022).

² Executive Order (Spitzer) No. 19, 9 NYCRR 6.19, signed on October 22, 2007.

³ The ITS employee’s direct supervisor testified that during the labor relations investigation, the ITS employee indicated that she had a personal cellular telephone that was monitored by her husband.

On October 13, 2020, following a referral from the Governor's Office, the Inspector General commenced an investigation of OGS' and ITS' handling of the matter with respect to issues of domestic violence in the workplace. This investigation found that despite ITS' awareness that its employee had reported that she was a victim of domestic violence, ITS did not follow its Domestic Violence and the Workplace policy (Domestic Violence policy) in a manner that was responsive to her needs as a victim or that promoted workplace safety.

To effectively increase agency awareness of domestic violence issues, the Inspector General recommends that ITS takes the following steps:

- Require staff to read the Domestic Violence policy and annually verify that they understand its contents.
- Assign one or more OPDV liaisons, distribute the liaison name(s) and contact information to staff, and require agency staff to submit certifications advising that they are aware of the identity of the liaison(s).
- Engage with the New York State Office of Employee Relations (OER) and OPDV to provide initial and ongoing training and support to the OPDV liaison(s) regarding their roles and responsibilities and their knowledge of domestic violence, policies, and resources.
- Educate staff about the impacts of trauma and encourage staff to take a trauma-informed approach to communicating with and supporting anyone who identifies as a survivor of domestic violence.
- Review and update ITS' Domestic Violence policy to ensure that the resources and trainings referenced therein remain current and available to staff.
- Engage with OER and OPDV to update and make available Domestic Violence and the Workplace online training for all employees.
- Invite OPDV to train staff on the substance of the Domestic Violence policy as well as on how to implement procedures in real-life situations. Thorough training on the policy should be required for every new hire during the onboarding process and should be ongoing for all employees.
- OGS and ITS must also clarify relevant human resources policies and roles in light of the outsourcing of ITS' human resources' responsibilities to OGS. The agencies should evaluate the efficacy of an existing agreement that outlines such administrative roles in general, and more specifically as they relate to domestic violence policies and responses.

Given these findings, the Inspector General will be conducting a survey of executive branch agencies to assess compliance with State Domestic Violence and the Workplace mandates.

BACKGROUND

Complaint Background

On August 22, 2019, an OGS employee emailed an OGS human resources specialist, alleging that his wife, an ITS employee, had been using her State-issued cellular telephone for personal reasons. Several days later, the OGS human resources specialist forwarded the OGS employee's email to a Senior ITS Labor Relations Employee, who was tasked with handling employee disciplinary matters.⁴

On or around August 26, 2019, upon receipt of the complaint, ITS Labor Relations opened an investigation into the ITS employee's use of her State-issued cellular telephone. This investigation, which was conducted by a human resources specialist, was supervised by the Senior ITS Labor Relations Employee, who regularly updated a Senior ITS Legal Employee, and a Senior ITS Human Resources Employee.⁵

On September 6, 2019, the OGS employee again emailed the OGS human resources specialist, repeating this allegation against his wife. In the email, the OGS employee further wrote that he secretly recorded his wife's conversations, believed his life was in danger, his wife believed that he was mentally ill, he had been transported by police for mental health evaluations, his wife recorded their "arguments" with her State-issued cellular telephone, and he had found a bag of cocaine in his car fifteen years earlier. The OGS human resources specialist forwarded this message to the Senior ITS Labor Relations Employee as well.⁶

On September 12, 2019, during the investigation into the alleged work telephone misuse, the ITS employee reported to ITS that she was the victim of domestic violence by her husband and was using her State-issued cellular telephone to document his abuse.

⁴ A September 2019 memorandum of understanding (MOU) between OGS and ITS, discussed later in this report, addressed the transfer of ITS' human resources function to OGS.

⁵ The ITS employees referenced herein are management-level employees. Due to potential safety concerns and as other employees may currently hold the positions referenced in this report, they will be referred to as the Senior ITS Labor Relations Employee, the Senior ITS Legal Employee, and the Senior ITS Human Resources Employee. Of note, pursuant to the MOU, the Senior ITS Labor Relations Employee was transferred to OGS in November 2019.

⁶ In an August 26, 2019, email to the Senior ITS Legal Employee and the Senior ITS Human Resources Employee, the Senior ITS Labor Relations Employee advised that the OGS employee was "well known to [Labor Relations] at OGS" due to numerous disciplinary issues. In fact, at the times when he sent his complaints to the OGS human resources specialist, OGS was actively investigating the OGS employee for allegedly sexually harassing a subordinate in March 2019. The sexual harassment allegations against the OGS employee were substantiated, leading the OGS employee to resign from State service, effective September 15, 2020.

ITS Human Resources Hosted by OGS

Pursuant to a September 17, 2019, memorandum of understanding (MOU) between OGS and ITS that addressed the transfer of ITS' human resources function to OGS, OGS would be responsible for the implementation of ITS' employee discipline provisions and oversight of investigations for contract grievances and discipline. The MOU specified that "upon the full and complete transfer[.]" OGS would "assume full responsibility for the direction and implementation of the human resources function for ITS[.]" OGS and ITS also agreed that "all positions substantially engaged in ITS Human Resources Services" would be transferred to OGS on October 31, 2019. However, the Senior ITS Legal Employee testified that they believed ITS' human resources function was fully transferred to OGS by December 2019.

ITS' Domestic Violence and the Workplace Policy

Like all State agencies, ITS is required to adopt and implement a Domestic Violence and the Workplace policy to promote safety in the workplace and respond effectively to the needs of victims of domestic violence. At minimum, each State agency, in formulating its policy must give due regard to:

. . . the importance of increasing awareness of domestic violence and informing employees of available resources for assistance; ensuring that personnel policies and procedures are fair to domestic violence victims and responsive to their needs; developing workplace safety response plans; . . . [and] encouraging and promoting domestic violence education and training for employees[.]

To meet this requirement, agencies are authorized to adopt OPDV's model policy or to create a policy which expands upon the practices identified in the model.⁷

ITS' Domestic Violence policy, last updated in 2013, largely mirrors the model policy. Both define "domestic violence" 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."⁸ Also like the model policy, ITS' policy guidelines focus on increasing employee awareness of domestic violence issues and resources available for victims, preventing discrimination against victims and ensuring their needs are met, developing and implementing workplace safety plans, and training employees to provide support to victims in need of

⁷ Testimony of the OPDV general counsel.

⁸ New York State Office of Information Technology Services Policy No. ITS-P08-004 (2013), at sec. 5.0.

assistance.⁹ Implementation of ITS’ Domestic Violence policy is delegated to “appropriate management, supervisory, and/or human resources staff.”¹⁰

ITS DID NOT FOLLOW THE AGENCY’S OWN DOMESTIC VIOLENCE POLICY

ITS’ Domestic Violence policy is a comprehensive tool thoughtfully designed to promote safety in the workplace and respond effectively to the needs of victims of domestic violence. Unfortunately, during the relevant timeframe, and on multiple occasions, ITS did not implement this policy in a manner consistent with its purpose.

Failure to Reasonably Assist a Victimized Employee with a Workplace Safety Plan

The Inspector General’s investigation found that contrary to ITS policy, members of ITS and OGS staff who were aware that the ITS employee had reported that she was a victim of domestic violence, that she had an active court case pending, and that she had been granted an order of protection against the OGS employee¹¹—did not take the required steps to ensure that staff understood how to provide a safe and supportive work environment for the ITS employee or other staff members who may be experiencing domestic violence.

ITS’ Domestic Violence policy recognizes that “[i]n addition to exacting a tremendous toll from the individual it directly affects, domestic violence often spills over into the workplace, compromising the safety of both victims and co-workers.”¹² In order to keep victims and co-workers safe, ITS is required to “develop and have in place domestic violence workplace safety response plans and provide reasonable means to assist victimized employees in developing and implementing individualized domestic violence workplace safety plans.”¹³ Once aware that an employee is a victim, ITS is required to “consult with [the] victimized employee to develop and implement individualized workplace safety plans.”¹⁴ The policy further notes that to facilitate agency awareness, “employees are encouraged to bring their orders of protection (OP) to the attention of the Director of Human Resources Management, or the Director of Labor Relations” who “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.”¹⁵

⁹ *Id.* at sec. 3.0.

¹⁰ *Id.* at sec. 4.0.

¹¹ On September 16, 2019, Albany County Family Court (Hon. Richard Rivera) issued a temporary order of protection to the ITS employee, effective thru December 16, 2019.

¹² *Id.* at sec. 1.0.

¹³ *Id.* at sec. 3.0(III).

¹⁴ *Id.* at sec. 3.0(III)(h).

¹⁵ *Id.* at sec. 3.0(III)(d).

The investigation found that after receiving the OGS employee's August 22, 2019, and September 6, 2019, complaints from the OGS human resources specialist about the alleged misuse of a State-issued cellular telephone, the Senior ITS Labor Relations Employee immediately forwarded the matter to the Senior ITS Legal Employee and the Senior ITS Human Resources Employee¹⁶. On September 12, 2019, after consulting with the Senior ITS Legal Employee, the Senior ITS Labor Relations Employee confiscated the ITS employee's State-issued cellular telephone for forensic analysis as part of the investigation into its alleged misuse. When surrendering the telephone, the ITS employee reported to the Senior ITS Labor Relations Employee that she was a victim of domestic violence and had used her State-issued cellular telephone to document her husband's abusive conduct. The Senior ITS Labor Relations Employee testified that during the telephone confiscation, they "believe[d]" they informed the ITS employee of the existence of Employee Assistance Program (EAP) resources. On September 13, 2019, the Senior ITS Labor Relations Employee emailed the Senior ITS Legal Employee advising:

I would like to add that at the time of the confiscation, [the ITS employee] stated that there were numerous personal items on the phone and asked that nothing on the phone be deleted. I reminded her that the device was State-issued and should not have been treated as a personal device. She then stated that she does not have a personal cell phone and uses the State issue phone as her personal device. She then claimed to be in an abusive relationship and stated she might have items on the phone that she could use in court... I told her I would pass this information along.

On October 28, 2019, a lengthy email dialogue started between the ITS employee, the Senior ITS Labor Relations Employee, and the Senior ITS Legal Employee about the confiscated State-issued cellular telephone. In these communications, the ITS employee repeatedly requested access to digital materials that could be considered evidence in a family or criminal court proceeding, which were stored on the telephone. Included in this email dialogue was an October 28 email from the ITS employee to the Senior ITS Labor Relations Employee, in which the ITS employee advised that she "filed for an order of protection" against her husband, and requested "the voice recordings, voicemail messages, pictures . . . and video recordings" stored on the telephone. In support of her request, the ITS employee reiterated that she had been a victim of domestic violence by her husband, including physical, verbal, and mental abuse, for a

¹⁶ The Senior ITS Human Resources Employee was on leave and unavailable to be interviewed by the Inspector General as part of this investigation.

number of years and that she felt threatened. She stated that her husband's conduct had escalated in the prior eight months, as his mental health declined and his drinking increased, and provided examples of her husband going to great lengths to track her activities including placing recording devices in her house and car and affixing a tracking device to her personal vehicle. The ITS employee further explained that she had used her State-issued cellular telephone to take pictures and recordings of her husband acting in these ways in case she ever needed to provide proof in order get him help or pursue other avenues for self-protection.

On that same date, the Senior ITS Labor Relations Employee forwarded the ITS employee's email to the Senior ITS Human Resources Employee and the Senior ITS Legal Employee. On November 4, 2019, the Senior ITS Human Resources Employee emailed the Senior ITS Legal Employee and asked what her thoughts were on the ITS employee's request. During the Inspector General's instant investigation, the Senior ITS Legal Employee advised the Inspector General that they may have spoken with the Senior ITS Labor Relations Employee subsequently about this matter, but that the issue went no further because the Senior ITS Labor Relations Employee did not hear back from the ITS employee about the files on the State-issued cellular telephone.

A number of weeks earlier, in September 2019, the ITS employee had made many of the same allegations to her direct supervisor as were contained in her October 28, 2019 emails. At that time, the ITS employee also informed her supervisor that her husband had untreated mental health issues, had recently been transported by police to a mental health facility for evaluation, frequently abused alcohol, and destroyed their common property. And on September 17, 2019, the ITS employee informed her supervisor that her husband's conduct was causing her great distress, and she had recently obtained an order of protection against him.

Although ITS' Domestic Violence policy provides that "[a]ny employee who feels threatened or witnesses anyone engaging in threatening behavior should promptly notify his/her immediate supervisor" who, in turn, should "contact Human Resource Services to report the incident,"¹⁷ no such report was made. The employee's supervisor later testified that they did

¹⁷ *Id.* at sec. 3.0(III)(f).

refer the ITS employee to the Employee Assistance Program. The supervisor did also subsequently corroborate the employee's claims during the labor relations investigation.¹⁸

On January 30, 2020, in consultation with the Senior ITS Labor Relations Employee, the Senior ITS Human Resources Employee confirmed that they should not consider the ITS employee's "domestic situation" in determining what penalty should be imposed against her. The Senior ITS Human Resources Employee, however, did note the ITS employee's 33-year satisfactory performance evaluations as justification to issue a counseling memorandum in lieu of formal discipline for her misuse of a State-issued cellular telephone. She was ultimately counseled, and her employment continued.

In sum, contrary to ITS policy, no ITS personnel took action to consult with the victimized ITS employee to develop and implement an individualized workplace safety plan and take steps to ensure that staff knew how to provide a safe environment for the ITS employee or other staff.

Failure to Effectively Train Staff and Increase Awareness of Domestic Violence Issues

Per its Domestic Violence policy, ITS is required to train staff and increase awareness of domestic violence issues. To promote safety in the workplace and respond effectively to the needs of victims, the policy states, "ITS supports the increased awareness of domestic violence by informing employees of available sources of assistance."¹⁹ To this end, ITS is required to post information on domestic violence and available resources in the work site including the names of service programs and providers, as well as "contact information for human resources personnel who are trained and available to serve as confidential sources of information, support, and referral."²⁰ This personnel includes the agency's OPDV liaison²¹ who is trained to:

[I]dentify possible signs and indicators of victimization, make appropriate referrals to domestic violence service providers, work with professionals to assist identified victims and safety planning, and develop individualized responses in

¹⁸ It should also be noted that during the course of Labor Relations' investigation, the ITS employee's supervisor repeatedly advocated for the ITS employee and encouraged Labor Relations to place a greater emphasis on the fact that the ITS employee was a victim of domestic violence.

¹⁹ *Id.* at sec. 3.0(I).

²⁰ *Id.* at sec. 3.0(I)(a). This personnel includes the Senior ITS Human Resources Employee who, as the agency's OPDV liaison, would have received such training.

²¹ The OPDV liaison is tasked with "ensur[ing] agency-wide implementation of the domestic violence and the workplace policy, and serv[ing] as the primary liaison with OPDV regarding the domestic violence workplace policy." (*Id.* at sec. 3.0(III)(a)).

recognition of the physical, social and cultural realities that may affect an individual victim's situation.²²

At the time of this matter, the agency's OPDV liaison was the Senior ITS Human Resources Employee.²³

Under its policy, ITS is required to make training resources available to staff on domestic violence and its impact on the workplace and all employees must complete an online course entitled "ITS Domestic Violence and the Workplace training."²⁴ However, the investigation found that although this training had been utilized by ITS in the past, OER closed this course prior to the period at issue in this investigation and staff are no longer able to enroll to complete the training module.

The investigation further found that ITS did not effectively train staff to increase their awareness of domestic violence issues and resources, including that interviewed staff, including the Senior ITS Labor Relations Employee and Senior ITS Legal Employee, did not know who their OPDV liaison was although they had regularly worked with that employee during the relevant period. While ITS did post its Domestic Violence policy on the agency's intranet, the agency had no mechanism to confirm that staff members had read or understood the policy, and a review of the Statewide Learning Management System (SLMS) training histories for the interviewed employees indicated that none had completed the ITS Domestic Violence and the Workplace training between 2018 and 2020. Indeed, the Inspector General's investigation revealed that interviewed staff had little, if any, knowledge about ITS' Domestic Violence policy or of resources available to assist victims, in clear contravention of agency policy.

Failure to Implement Agency Personnel Policy in a Manner Responsive to the Needs of a Victim

ITS' Domestic Violence policy recognizes that domestic violence is multi-faceted and can negatively affect various aspects of victims' lives, including their work. Accordingly, ITS is required to "continually review personnel policies and procedures to ensure that they do not discriminate against victims of domestic violence and are responsive to the needs of victims of domestic violence."²⁵ Despite this mandate, the investigation found that ITS, in seeking to

²² *Id.* at sec. 3.0(V)(a).

²³ The Inspector General's investigation was unable to ascertain how this assignment was made and/or by whom.

²⁴ *Id.* at sec. 3.0(V)(c).

²⁵ *Id.* at sec. 3.0(II).

enforce its “Acceptable Use of Information Technology Resources” policy, failed to adequately respond to the ITS employee’s needs as a victim of domestic violence.

Labor Relations commenced an investigation of the ITS employee, which ultimately concluded that she had violated ITS’ “Acceptable Use of Information Technology Resources” policy.²⁶ This policy states:

Any personal use of the ITS internet access, telephone or VOIP should, consistent with the requirements of *Executive Order No. 7*, be limited in amount and duration and should not conflict with the proper performance of one’s official duties or ITS operations.

Personal use is subordinate to ITS business needs and must not interfere with the conduct of official business or interfere with or disrupt ITS systems, network users, services or equipment. Where not specifically authorized, long distance communication is prohibited.

As detailed above, the investigation found that on September 12, 2019, during the confiscation of her State-issued cellular telephone, the ITS employee informed the Senior ITS Labor Relations Employee that she was a victim of domestic violence and had documented some of her husband’s conduct on her State-issued cellular telephone. Around that time, ITS performed a forensic analysis of the telephone and prepared a report identifying: 7,011 image files; 271 video files; 1,143 SMS messages; and 142 WhatsApp messages stored on the device.²⁷

Additionally, on October 28, 2019, the Senior ITS Labor Relations Employee received the above-detailed email from the ITS employee in which she advised that she had “filed for an order of protection” against her husband, and requested “the voice recordings, voicemail messages, pictures . . . and video recordings” stored on her work telephone that captured some of her husband’s abusive conduct and detailed the abuse. On that same date, the Senior ITS Labor Relations Employee forwarded the ITS employee’s email to the Senior ITS Legal Employee and the Senior ITS Human Resources Employee.

In a series of emails to the ITS employee in November 2019, the Senior ITS Legal Employee and the Senior ITS Labor Relations Employee reiterated their position that they could not consent to returning the materials on the cellular telephone without prior review and would thus need greater detail about the materials sought. The ITS employee enumerated some specific

²⁶ New York State Office of Information Technology Services Policy No. ITS-P14-001.

²⁷ A forensic analysis conducted by the Inspector General found this report is not an entirely accurate reflection of the ITS employee’s telephone misuse. For example, of the 7,011 images located on the device, only 398 (approx. 5.68% of the total amount) were created using the telephone’s camera. By way of contrast, 4,852 images (69.2%) were “thumbnail images” or metadata created by the device to assist in the storing and organizing of photos.

photos, voicemails, and videos, and indicated that she needed them for a court appearance the following day related to the abuse. At the direction of the Senior ITS Legal Employee, the Senior ITS Labor Relations Employee advised that the ITS employee should have her attorney reach out about the requested materials. The ITS employee did not respond.

The emails reflect that ITS employees were aware that the ITS employee reported that she was a victim of domestic violence. Despite this knowledge, rather than “consult[ing] with [the ITS employee] to develop and implement individualized workplace safety plans” or providing her with any of the evidence she requested, Labor Relations continued with its disciplinary action against her.²⁸

Ultimately, and over eight months later, Labor Relations shifted from pursuing formal discipline against the ITS employee to merely counseling her for her misuse of the State-issued cellular telephone. Although this marked a significant softening in Labor Relations’ position, it still placed the ITS employee on the defensive and did nothing to address her needs as a victim of domestic violence.²⁹ This was evident to the ITS employee herself, who, in response to an email from her supervisor on August 3, 2020, advising her that he was obligated to conduct a formal counseling session, wrote in pertinent part:

Okay, whatever you have to do. I understand your situation, but can anyone make [Labor Relations] think logically? It is so sad that they beat the horn about agencies protecting domestic violence victims, but when it actually comes to practice, they are not even willing to consider anything.

In seeking to enforce its “Acceptable Use of Information Technology Resources” policy in this investigation, ITS was not responsive to the needs of a victim of domestic violence. Despite the ITS employee’s repeated requests for assistance to obtain pictures, text messages, and videos from her State-issued cellular telephone, Labor Relations instead focused its efforts on enforcing a separate policy related to use of State-issued technologic devices.

²⁸ NYS ITS Policy No. ITS-P08-004 at sec. 3.0(III)(h).

²⁹ It should be noted that in situations where an “employee’s work performance difficulties are a result of being a victim of domestic violence” and a “disciplinary process is initiated[,]” ITS’ Domestic Violence policy states that “said employee shall be afforded all of the proactive measures outlined in this policy” and “special care should be taken to consider all aspects of the victimized employee’s situation, and all options in trying to resolve the performance problems should be exhausted . . .” (*Id.* at sec. 3.0(II)(g)). The Inspector General is not aware of any legitimate reason as to why this should not also be the case when a disciplinary process is *not* initiated (i.e., formal counseling).

Failure to Designate a New OPDV Liaison When the Previous Liaison Became Unavailable

ITS is required to designate a member of its personnel as the agency's OPDV liaison, who is tasked with "ensur[ing] agency-wide implementation of the domestic violence and the workplace policy, and serv[ing] as the primary liaison with OPDV regarding the domestic violence workplace policy."³⁰ While "appropriate management, supervisory, and/or human resources staff" are directed to implement ITS' Domestic Violence policy, the OPDV liaison must ensure that those individuals follow through with their responsibilities.³¹

Despite playing an important role in the implementation of the Domestic Violence policy, ITS effectively did not have an OPDV liaison for a significant period following this matter. According to OPDV's workplace domestic violence coordinator, as of July 16, 2021, ITS' designated OPDV liaison was the Senior ITS Human Resources Employee. However, the Inspector General's investigation learned that the Senior ITS Human Resources Employee had been on extended leave from February 3, 2021, through the end of the year. While the Senior ITS Human Resources Employee was on leave, ITS did not designate another staff member as the agency's OPDV liaison and failed to notify OPDV that the Senior ITS Human Resources Employee was unable to fulfill the liaison's responsibilities.

As such, during this period, ITS operated without an OPDV liaison, who is tasked with ensuring that the agency is properly implementing its Domestic Violence policy.

FINDINGS AND RECOMMENDATIONS

The Inspector General's investigation found that ITS' failure to implement and comply with its Domestic Violence policy was due to a lack of agency awareness regarding the policy, as well as a gap in staff's understanding of the sensitivities inherent in domestic violence situations. Simply making the policy available to personnel did not effectively increase agency awareness of these issues.

Accordingly, the Inspector General recommends that ITS take the following steps:

- Require staff to read the Domestic Violence policy and annually verify that they understand its contents.
- Assign one or more OPDV liaisons, distribute the liaison names(s) and contact information to staff, and require agency staff to submit certifications advising that they are aware of the identity of the liaison(s).

³⁰ *Id.* at sec. 3.0(III)(a).

³¹ *Id.* at sec. 4.0.

- Engage with OER and OPDV to provide initial and ongoing training and support to the OPDV liaison(s) regarding their roles and responsibilities and their knowledge of domestic violence, policies, and resources. In doing so, the agency should be mindful of the risks and impacts of vicarious trauma to both the OPDV liaison(s) as well as other employees exposed to these issues in a work setting.
- Educate staff about the impacts of trauma and encourage staff to take a trauma-informed approach to communicating with and supporting anyone who identifies as a survivor of domestic violence.
- Review and update ITS' Domestic Violence policy to ensure that the resources and trainings referenced therein remain current and available to staff. The policy should include components related to supporting a staff person who may be a victim of domestic violence as well as procedures to address/respond to staff who may be perpetrators of domestic violence. Also, the roles and responsibilities of supervisors of staff who may be victims or perpetrators should be updated in coordination with OER and OPDV.
- Engage with OER and OPDV to update and make available Domestic Violence and the Workplace online training for all employees. The training should provide staff with information about the nature and dynamics of domestic violence, safety issues, resources and support for survivors, and responses/accountability strategies for staff who may be perpetrators. Consider including intersecting topics such as stalking, mental health, and alcohol and substance abuse as they relate to domestic violence.
- Invite OPDV to train staff on the substance of the Domestic Violence policy as well as on how to implement procedures in real-life situations. Thorough training on the policy should be required for every new hire during the onboarding process and should be ongoing for all employees.
- OGS and ITS must also clarify relevant human resources policies and roles in light of the outsourcing of ITS' human resources' responsibilities to OGS. The agencies should evaluate the efficacy of an existing agreement that outlines such administrative roles in general, and more specifically as they relate to domestic violence policies and responses.

This investigation underscores that domestic violence awareness and responses must become a greater priority for all State agencies. In furtherance of this, the Inspector General will be conducting a survey of executive branch agencies to assess compliance with State Domestic Violence and the Workplace mandates with a hope that the results can help make the wealth of resources and support offered by OPDV more readily available to our fellow State employees.

ITS AND OGS' JOINT RESPONSE

Thank you for giving ITS and OGS the opportunity to respond to the report entitled “Investigation of the New York State Office of Information Technology Services and Office of General Services Domestic Violence Incident Response.” Both ITS and OGS take the issue of domestic violence very seriously, recognizing the significant impacts on individual victims. We also appreciate an employer’s responsibility to ensure a safe, healthy, and supportive work environment for all staff while at work, and to provide resources to support the general well-being of employees whenever possible. ITS and OGS are committed to supporting a safe environment for all employees, and we appreciate the recommendations provided in this report.

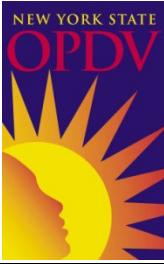
ITS and OGS have already implemented several of these recommendations, including:

- Working closely with OPDV to revise ITS’ Domestic Violence policy to include OPDV’s best practices and communicate its importance to agency employees.
- Communicating to all employees the placement of a dedicated agency domestic violence liaison, who can provide confidential assistance to anyone who has been a victim of domestic violence, and periodically informing all employees of the contact information for the liaison.
- Creating an easily accessible page on the ITS’ Intranet with comprehensive resources for all employees, including the contact information for the agency’s domestic violence liaison as well as information for the New York State Domestic and Sexual Violence Hotline’s 24-7 call, text, and chat services, for OPDV, and for local domestic violence programs across the State.
- ITS and OGS have scheduled a meeting for next week to discuss the findings of this report. OPDV will also be invited to this meeting. The agencies’ staff previously met to ensure that Human Resources staff is fully aware of ITS’ Domestic Violence policy and is confidentially documenting any referrals to Domestic Violence services or the EAP program.

In sum, ITS and OGS acknowledge that there is always more that can be done, and we will fast-track outstanding recommendations, including requiring employees to verify that they have read and understand the Domestic Violence policy. ITS and OGS will also continue to work with OPDV and OER to ensure all employees are offered training on the subject of Domestic Violence when released and available and that all supervisory employees receive additional training, including on the importance of a trauma-informed approach of communicating, and on real-life scenarios involving domestic violence and the workplace, to ensure that best practices are followed

APPENDIX A

OPDV Model Domestic Violence and the Workplace Policy



State of New York

Model 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.

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

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

Therefore, (Agency name), to the fullest extent possible without violating any existing rules, regulations, statutory requirements, contractual obligations or collective bargaining agreements, designates and directs appropriate management, supervisory, and/or human resources staff to implement the following model policy.

Definitions

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

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

Intimate Partner: Includes persons legally married to one another; persons formerly married to one another; persons who have a child in common, regardless of whether such persons are married or have lived together at any time, couples who are in an “intimate relationship” including but not limited to couples who live together or have lived together, or persons who are dating or who have dated in the past, including same sex couples.

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

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

Guidelines

I. Employee Awareness

Agencies shall increase awareness of domestic violence and inform employees of available sources of assistance.¹

- a. Agency shall post information on domestic violence and available resources in the work site in places where employees can obtain it without having to request it or be seen removing it, such as agency intranet, rest rooms and lounge areas. Such information shall include available sources of assistance such as 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. An Agency Contact Information Poster is available at <http://www.opdv.ny.gov/professionals/workplace/workplcres.html#tools> This template can be easily personalized and displayed identifying contact information for trained domestic violence support personnel within your agency.
- b. Referrals shall be made to licensed/approved domestic violence programs located on the New York State Coalition Against Domestic Violence (NYSCADV) website at <http://www.nyscadv.org/local-domestic-violence-programs/>. Additional referrals may be made to best meet the needs of the employee. Information shall be made available on employee bulletin boards and included in employee newsletters, as appropriate.
- c. Agency shall include information on domestic violence awareness and services in written materials provided to new employees and as part of new employee orientation.
- d. Agency shall inform employees that New York State law prohibits insurance companies and health maintenance organizations from discriminating against domestic violence victims. The law prohibits designation of domestic violence as a pre-existing condition. An insurance company cannot deny or cancel an insurance policy or require a higher premium or payment because the insured is or has been a domestic violence victim. [§2612 of the Insurance Law.]
- e. Agency shall integrate information on domestic violence and the agency’s domestic violence and the workplace policy into existing materials and literature, policies,

¹ Whenever possible, the domestic violence and the workplace policy should also be extended to consultants, contractors, and other non-state, on-site providers.

protocols, and procedures, including Public Employer Workplace Violence Prevention Programs² as appropriate.

- f. Agency shall consider conducting domestic violence awareness activities such as "brown bag" lunch programs and other health and wellness programs.

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

Ensure that personnel policies and procedures do not discriminate against victims of domestic violence and are responsive to the needs of victims of domestic violence.

- a. New York State law makes it a crime for employers to penalize an employee who, as a victim or witness of a criminal offense, is appearing as a witness, consulting with a district attorney, or exercising his/her rights as provided in the Criminal Procedure Law, the Family Court Act, and the Executive Law. This law requires employers, with prior day notification, to allow time off for victims or subpoenaed witnesses to exercise his/her rights as provided in the Criminal Procedure Law, the Family Court Act, and the Executive Law [Penal Law §215.14]. If there are any questions or concerns regarding the leave that must be granted to victims or subpoenaed witnesses, contact the agency's Personnel Office or the Attendance and Leave Unit at the Department of Civil Service.
- b. The agency, upon request, will assist the employee in determining the best use of his/her attendance and leave benefits when an employee needs to be absent as a result of being a victim of domestic violence. If an employee requests time off to care for and/or assist a family member who has been a victim of domestic violence, the agency will evaluate the employee's request for leave for eligibility under existing law and collective bargaining agreements applicable to the employee and the attendance rules.
- c. The agency should be aware that victims of domestic violence may lack the required documentation or have difficulty obtaining the required documentation to justify absences without compromising their safety. Therefore, consult with the employee to identify what documentation she/he might have, or be able to obtain, that will not compromise his/her safety-related needs and will satisfactorily meet the documentation requirement of the employer. Because there are confidentiality issues associated with the submission of documentation in these instances, agencies should consult with the Attendance and Leave Unit at the Department of Civil Service.
- d. Employees who are victims of domestic violence and who separate from a spouse (or terminate a relationship with a domestic partner, if covered), shall be allowed to make reasonable changes in benefits at any time during the calendar year where possible, in accordance with statute, regulation, contract and policy.
- e. NYS has established that victims of domestic are now a protected class in the employment provisions of NYS human rights law. This law prevents an employer from firing or refusing to hire any individual based on their status as a victim of domestic violence and prevents discrimination in compensation or in the terms, conditions or privileges of employment. The agency should prohibit inquiries about a job applicant's current or past domestic violence victimization, and prohibit employment decisions to be based on any assumptions about or knowledge of such exposure.

² 12 NYCRR pt. 800.16 Public Employer Workplace Violence Prevention Programs

- f. In cases in which it is identified that an employee's work performance difficulties are a result of being a victim of domestic violence, said employee shall be afforded all of the proactive measures outlined in this policy, and shall be provided clear information about performance expectations, priorities, and performance evaluation. If a disciplinary process is initiated, special care should be taken to consider all aspects of the victimized employee's situation, and all available options in trying to resolve the performance problems should be exhausted, including making 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 performance problems of victimized employees, but the performance problems persist and the employee is terminated or voluntarily separates from employment, inform the employee of his or her potential eligibility for unemployment insurance and respond quickly to any requests for information that may be needed in the claims process. New York State law provides that a victim of domestic violence who voluntarily separates from employment may, under certain circumstances, be eligible for unemployment insurance benefits. [§593 of NYS Labor Law.]

III. Workplace Safety Plans

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

- a. Agency shall designate an agency/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 the domestic violence workplace policy.
- b. Agency shall designate personnel available to support those in need of assistance around the issue of domestic violence. Designated support personnel's contact information, including name, agency phone number and location will be included in agency materials and clearly posted.
- c. Agency 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 (OP).

Employees are encouraged to bring their orders of protection to the attention of [**Provide two Names or two Positions**]. Once the OP has been brought forward, [**detail where the document will be kept and who will have access to it, for example, in a locked filing cabinet in HR office, accessible only to the person who initially received it from the employee**]. In the case of a workplace emergency requiring the presentation of the OP to law enforcement, if [**Previously listed two Names or two Positions**] is unavailable to obtain the document [**Name or Position (consider Counsel or Director of HR)**] will have access to the cabinet where the document is locked.

[Name or Position] 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 your workplace, for example, providing a copy of the OP and/or photo of perpetrator to security or front desk personnel; discussion of who should be told if there is no security or front desk staff, such as identifying supervisor/colleagues who would be able to assist with the identification of the perpetrator; blocking the subject, perpetrator of the OP from being entered into the Visitor Management System (VMS); and creating a personal workplace safety plan (See Section III f.)**.

The employee is responsible to notify [Name or Position] if there are any changes to the OP.

- d. Agency shall have an emergency security response plan in place, including procedures for contacting the appropriate law enforcement agency, and provide employees with clear instructions about what to do and who to contact if they observe anyone engaging in threatening behavior. Such a plan will allow appropriate actions to be taken if an abuser gains unauthorized access to the work site, or if an abuser engages in any acts that threaten the safety of employees or clients.
- e. Agency shall discuss with the victim of domestic violence the agency confidentiality policy and the limitation thereto. (See Section VII. NYS Agencies Responsibility d – g).
- f. Agency shall consult with victimized employees to develop and implement individualized workplace safety plans, which may include, when appropriate, advising co-workers and, upon request, the employee's bargaining representative, of the situation; setting up procedures for alerting security and/or the police; temporary relocation of the victim to a secure area; options for voluntary transfer or permanent relocation to a new work site; change of work schedule, reassignment of parking space; escort for entry to and exit from the building; responding to telephone, fax, e-mail or mail harassment; and keeping a photograph of the abuser and/or a copy of any existing court orders of protection in a confidential on-site location and providing copies to security personnel. Plans must address additional concerns if the victim and the offender are both employed by the same agency.
- g. Agency shall review domestic violence and the workplace policy annually. Policy revisions and updates shall be forwarded to OPDV.

IV. Accountability for Employees Who Are Offenders

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

- a. In cases in which an agency has found that an employee has threatened, harassed, or abused an intimate partner at the workplace using state resources such as work time, workplace telephones, FAX machines, mail, e-mail or other means, said employee

shall be subject to corrective or disciplinary action in accordance with existing collective bargaining unit agreements, statutes and regulations.

- b. In cases in which an agency has verification that an employee is responsible for a domestic violence-related offense, or is the subject of any order of protection, including temporary, final or out-of-state order, as a result of domestic violence, and said employee has job functions that include the authority to take actions that directly impact victims of domestic violence and/or actions that may protect abusers from appropriate consequences for their behavior, the agency shall determine if corrective action is warranted, in accordance with existing collective bargaining unit agreements, statutes and regulations.
- c. In cases in which any employee intentionally uses his/her job-related authority and/or intentionally uses state resources in order to negatively impact a victim of domestic violence, assist an abuser in locating a victim, assist an abuser in perpetrating acts of domestic violence, or protect an abuser from appropriate consequences for his behavior, said employee shall be subject to corrective or disciplinary action, in accordance with existing collective bargaining unit agreements, statutes and regulations.

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

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

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

VI. Training

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

- a. Agency/OPDV liaison and all personnel designated to provide support for those in need of assistance should complete OPDV's one-day training on Domestic Violence and the Workplace. Training will prepare support personnel to identify possible signs and indicators of victimization, make appropriate referrals to domestic violence service providers, work with professionals to assist identified victims with safety planning, and

develop individualized responses in recognition of the physical, social and cultural realities that may affect an individual victim's situation. Training will also include information on the ways in which domestic violence impacts the workplace, including the potential impact on worker productivity and the safety risks to on-site personnel and visitors.

- b. All appropriate managers, 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 would include information on the physical, social and cultural realities that may affect victims of domestic violence, the ways in which domestic violence impacts the workplace, including the potential impact on worker productivity and safety risks. When possible, OPDV-approved training materials can be integrated into existing union and management training programs, agency training programs, EAP training, Public Employer Workplace Violence Prevention Programs³ training, etc. Training may also be provided by OPDV or a local domestic violence service provider when scheduling permits.

VII. NYS Agencies Responsibility ⁴

- a. All NYS Agencies shall set a tone communicating that domestic violence is behavior that will not be tolerated and that the agency will actively provide information and support to employees who are victims of such abuse.
- b. All NYS Agencies shall disseminate copies of the agency's *Domestic Violence and the Workplace Policy* to all employees upon implementation and to all new employees upon hiring or appointment.
- c. All NYS employees shall review and follow their agency policy and procedures set forth in this domestic violence and the workplace policy.
- d. All NYS Agencies shall, consistent with applicable law and agency policy, document all incidents of domestic violence that happen in the workplace. Such documents should be provided to the Agency/OPDV Liaison as soon as practicable. Such documents shall be kept confidential to the extent permitted by law and agency policy and the provisions of section g detailed below.
- e. All agency employees providing domestic violence information and support services shall document, consistent with applicable law and agency policy, the number of employees who report domestic violence, the number of employees that request information/services, and the number of referrals made to domestic violence service providers. All information about employees who seek assistance shall be kept confidential to the extent permitted by law and agency policy and the provisions of section g detailed below, and documentation should not include any personal

³ 12 NYCRR pt. 800.16 Public Employer Workplace Violence Prevention Programs

⁴ For the purpose of this order, "state agency" shall mean: (1) any state agency, department, office, board, commission or other instrumentality of the state; and (2) any public authority or public benefit corporation created by or existing under any State law, at least one of whose members is appointed by the Governor (including any subsidiaries of such public authority or public benefit corporation), other than an interstate or international authority or public benefit operation.

information. The number of employees seeking assistance as outlined above shall be reported to the Agency/OPDV Liaison.

- f. All Agency/OPDV Liaisons shall, consistent with applicable law and agency policy, provide information about the number and general nature of domestic violence incidents that happen in the workplace, the number of employees who report domestic violence, the number of employees that request information/services, and the number of referrals made to domestic violence service providers, with no personally identifying information, to OPDV at the time and in a manner determined by OPDV.
- g. Information related to an employee being a victim of domestic violence shall be kept confidential, to the extent permitted by law and agency policy, and shall not be divulged without the written consent of the victimized employee, unless the agency determines that maintaining said confidentiality puts the victim or other employees at risk of physical harm, is required by law, or is deemed necessary to enforce an order of protection. In such circumstances where a determination has been made that maintaining confidentiality puts the victim or other employees at risk of physical harm, only those individuals (agency employees and/or safety and security personnel and/or rescue and first aid personnel) as deemed necessary by the agency to protect the safety of the victim and/or other employees or to enforce an order of protection shall be given such information. The agency shall disclose only the minimum amount of information necessary to protect the safety of the victim and/or other employees or enforce an order of protection. Where possible, an agency should provide to the victim of domestic violence notice of the intent to provide information to other employees and/or safety personnel. It is important for an agency to inform a victim of domestic violence of the agency policy of confidentiality toward domestic violence information and the limitations of that policy. Nothing herein shall prevent an agency from investigating an act or acts of domestic violence that happen within the workplace. The agency shall provide examples of situations where confidentiality cannot be maintained such as the following:
 - 1. Supervisors/managers may be informed about a domestic violence incident that happens in the workplace, or a report of domestic violence, if it is necessary to protect the safety of the employee or the employee's co-workers.
 - 2. First aid and safety personnel may be informed about a domestic violence incident that happens in the workplace or a report of domestic violence, if it is necessary to protect the safety of the employee or the employee's co-workers.
 - 3. Government officials investigating a domestic violence incident that happens in the workplace, or a report of domestic violence, shall be provided relevant information on request.
- h. All agencies should establish a clear statement informing staff providing services and victims of applicable confidentiality limitations that exist.