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 KATHERINE BRENNAN, : SUPERIOR COURT OF NEW JERSEY
 : LAW DIVISION: MERCER COUNTY
 Plaintiff, : DOCKET NO.: MER-L-0034-19
 :
 : Civil Action
 v. :
 :
 ALBERT J. ALVAREZ, STATE OF NEW JERSEY, :
 MURPHY FOR GOVERNOR, INC., : FIRST AMENDED COMPLAINT
 ABC COMPANIES (1-10) (fictitious names of :
 unknown entities) and JOHN DOES (1-10) :
 (fictitious names of unknown entities), :
 Defendants. :
 :
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Plaintiff, Katherine Brennan, having an address in Hudson County, New Jersey (hereinafter "Plaintiff"), by way of Complaint against Defendants, Albert J. Alvarez, State of New Jersey, Murphy for Governor, Inc., and ABC Companies (1-10) (fictitious names of unknown entities) and John Does (1-10) (fictitious names of unknown individuals), says as follows:

FACTS COMMON TO ALL COUNTS

A. Parties and Relevant Individuals

1. Defendant, State of New Jersey (the "State") is a state within the United States of America that makes and enforces laws via its local government which includes but is not

limited to the Transition Office for Governor-Elect Philip D. Murphy and Lieutenant-Governor-Elect Sheila Oliver (“Transition Office”) and the Office of the Attorney General of New Jersey.

2. Pursuant to New Jersey Senate Concurrent Resolution No. 148 creating the New Jersey Legislative Select Oversight Committee, “Gubernatorial [T]ransition [O]ffice employees are, in fact, employees of the State of New Jersey”

3. Defendant Murphy for Governor, Inc. (“Murphy Campaign”) is a non-profit corporation which planned and executed Philip D. Murphy’s campaign for the 2017 gubernatorial election with its headquarters located at One Gateway Center, Suite 511, Newark, New Jersey.

4. Pursuant to the State Policy Prohibiting Discrimination in the Workplace and state law, persons who worked for the Murphy Campaign constitute “prospective employees” of the State.

5. Defendant Albert J. Alvarez (“Alvarez”), at times relevant herein, is an individual who was affiliated with, worked with and/or was employed by Defendant Murphy Campaign as the director of Latino/Muslim outreach from in or about 2016 through November 2017, Deputy Director of Personnel for the Transition Office from in or about November 2017 through in or about January 2018, and Chief of Staff of the New Jersey Schools Development Authority for the State of New Jersey from in or about January 2018 through on or about October 2, 2018.

6. Philip D. Murphy (“Murphy”), at times relevant herein, is the current Governor of the State of New Jersey. Prior to winning the 2017 New Jersey gubernatorial election, Murphy organized and incorporated Defendant Murphy Campaign in anticipation of and in fact running for the position of Governor of New Jersey.

7. Justin Braz (“Braz”), at times relevant herein, is an individual who, in or about mid-2017 joined the Democratic State Committee staff as Labor Director. Beginning in or about November 2017, Braz became employed by the State, first as an aide in the Transition Office, until in or about January 2018, at which time Braz became Governor Murphy’s Deputy Chief of Staff for Legislative Affairs, responsible for liaising with the Legislature on behalf of Governor Murphy’s office, a position he continues to hold through the present.

8. Peter Cammarano (“Cammarano”), at times relevant herein, is an individual, who, in or about November 2017, became affiliated with, worked with and/or was employed by the State in the Transition Office, and in or about January 2018, became Governor Murphy’s Chief of Staff, a position he continues to hold through the present. Cammarano reports directly to Governor Murphy and has been Braz’s direct supervisor at times relevant herein.

9. Matt Platkin (“Platkin”), at times relevant herein, is an individual who was affiliated with, worked with and/or was employed by Defendant Murphy Campaign in the position of Policy Director from in or about 2016 through 2017 and employed by the State as Governor Murphy’s Chief Counsel from in or about January 2018 to the present.

10. Parimal Garg (“Garg”), at times relevant herein, is an individual who was affiliated with, worked with and/or was employed by Defendant Murphy Campaign as a senior policy advisor from in or about 2016 or 2017 and employed by the State as Governor Murphy’s Deputy Chief Counsel from in our about January 2018 to the present.

11. Heather Taylor, Esq., (“Taylor”) at times relevant herein, is an individual who is employed by the State as Chief Ethics Officer for the Office of the Governor.

12. Charles McKenna (“McKenna”) is the former CEO of the New Jersey Schools

Development Authority and was Defendant Alvarez's direct supervisor during Alvarez's employment as Chief of Staff of the New Jersey Schools Development Authority.

13. Rajiv D. Parikh, Esq. ("Parikh") is an attorney with the law office of Genova Burns, LLC, who represented Defendant Murphy Campaign and/or the State at times relevant herein.

14. Jonathan Berkon, Esq. ("Berkon") is an attorney at Perkins Coie, LLP who represented Defendant Murphy Campaign and/or the State at times relevant herein.

15. Jose Lozano ("Lozano"), at times relevant herein, is an individual who was affiliated with, worked with and/or was employed as the Transition Director for Defendant State and/or Defendant Murphy Campaign.

16. Defendants ABC Companies (1-10) are fictitious sole proprietorships, companies, limited liability companies, partnerships, and/or other companies/entities which are not specifically named Defendants, who are unknown to Plaintiff at this time but which may be identified during discovery in this matter and which are responsible to Plaintiff for the claims set forth herein and/or which companies are responsible to Plaintiff as an employer and/or an aider and/or abettor for claims set forth herein.

17. Defendant John Does 1-10 are and/or were employees at the entity Defendant(s) at times relevant in this action. John Does (1 through 10), represent fictitious names for defendants whose names are presently unknown who were employees who worked for the entity Defendant(s) during Plaintiff's employment. Upon information and belief, these defendants live in the State of New Jersey. These individual defendants engaged in illegal and tortious conduct against Plaintiff and/or engaged in and/or created a hostile work environment for Plaintiff, and/or conspired to engage in and/or create such conduct and/or environment.

B. New Jersey “State Policy” Prohibiting Discrimination in the Workplace

18. According to its website (<https://www.state.nj.us/csc/about/divisions/eeo/>):

The Division of Equal Employment Opportunity/Affirmative Action (“EEO/AA”) was created by law to ensure equal employment opportunities for all New Jersey state employees and prospective employees. The Division also serves to prevent State employees, prospective State employees, and persons doing business with the State, from being subjected to discrimination and/or harassment.

The Division of EEO/AA is charged with ensuring that all employees and applicants for employment with the State of New Jersey work in an environment free from all forms of employment discrimination in accordance with the State of New Jersey’s Policy Prohibiting Discrimination in the Workplace. The Division of EEO/AA is also charged with insuring that all State Departments and Agencies comply with the applicable law, policies and procedures.

19. The EEO/AA website contains a webpage entitled “Complaints” (<https://www.state.nj.us/csc/about/divisions/eeo/complaints.html>). On this webpage, the EEO/AA refers to the Strict Confidentiality Directive contained in N.J.A.C. 4A:7-3.1(j) that the State implements in connection with EEO/AA harassment and discrimination investigations. By reference, the webpage states that “[t]he provisions of the New Jersey State Policy Prohibiting Discrimination, Harassment or Hostile Work Environment in the Workplace require that all complaints and related investigations be confidential. ***Each individual involved in the investigation is obligated to maintain confidential.***” (emphasis added). A copy of the “Complaints” webpage is annexed hereto as **Exhibit A**.

20. The State of New Jersey maintains a “Policy Prohibiting Discrimination in the Workplace” (hereafter the “State Policy”). The stated purpose of the State Policy is to provide “every ***State employee and prospective State employee*** with a work environment free from

prohibited discrimination or harassment.” (emphasis added).

21. Under the State Policy, “forms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability.”

22. The State Policy further states that in order “[t]o achieve the goal of maintaining a work environment free from discrimination and harassment, the State of New Jersey strictly prohibits the conduct that is described in this policy. This is a zero tolerance policy. This means that the state and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment.”

23. The “Applicability” provision of the State Policy reads:

Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale and interferes with work productivity. Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, and authorities (hereafter referred to in this section as “State agencies” or “State agency”). The State of New Jersey will not tolerate harassment or discrimination by anyone in the workplace including supervisors, co-workers, or persons doing business with the State. This policy also applies to both conduct that occurs in the workplace and conduct that occurs at any location which can be reasonably regarded as an extension of the workplace (any field location, any off-site business-related

social function, or any facility where State business is being conducted and discussed).

This policy also applies to third party harassment. Third party harassment is unwelcome behavior involving any of the protected categories referred to in (a) above that is not directed at an individual but exists in the workplace and interferes with an individual's ability to do his or her job. Third party harassment based upon any of the aforementioned protected categories is prohibited by this policy.

24. The "Prohibited Conduct" provision of the State Policy states:

It is a violation of this policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories referred to in (a) above. This policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, transfer, assignment, layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions and career development.

25. The "Sexual Harassment" provision of the State Policy states:

It is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature

26. The "Employee Responsibilities" provision of the State Policy states:

Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, or who witnesses others being subjected to such discrimination/harassment is encouraged to promptly report the incident(s) to a supervisor or directly to the State agency's Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by the State agency to receive workplace discrimination complaints.

All employees are expected to cooperate with investigations undertaken pursuant to VI below. Failure to cooperate in an investigation may result in administrative and/or disciplinary action, up to and including termination of employment.

27. The "Supervisor Responsibilities" provision of the State Policy states:

Supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. Supervisors shall immediately refer allegations of prohibited discrimination/harassment to the State agency's Equal Employment Opportunity/Affirmative Action Officer, or any other individual designated by the State agency to receive complaints of workplace discrimination/harassment. A supervisor's failure to comply with these requirements may result in administrative and/or disciplinary action, up to and including termination of employment. For purposes of this section and in the State of New Jersey Model Procedures for Processing Internal Complaints Alleging Discrimination in the Workplace (Model Procedures), a supervisor is defined broadly to include any manager or other individual who has authority to control the work environment of any other staff member (for example, a project leader).

28. The "Complaint Process" provision of the State Policy reads:

Each State agency shall follow the Model Procedures with regard to reporting, investigating, and where appropriate, remediating claims of discrimination/harassment. See N.J.A.C. 4A:7-3.2. Each State agency is responsible for designating an individual or individuals to receive complaints of discrimination/harassment, investigating such complaints, and recommending appropriate remediation of such complaints. In addition to the Equal Employment Opportunity/Affirmative Action Officer, each State agency shall designate an alternate person to receive claims of discrimination/harassment.

All investigations of discrimination/harassment claims shall be conducted in a way that respects, to the extent possible, the privacy of all the persons involved. The investigations shall be conducted in a prompt, thorough and impartial manner. The results of the investigation shall be forwarded to the respective State agency head to make a final decision as to whether a violation of the policy has been substantiated.

Where a violation of this policy is found to have occurred, the State agency shall take prompt and appropriate remedial action to stop the behavior and deter its reoccurrence. The State agency shall also have the authority to take prompt and appropriate remedial action, such as moving two employees apart, before a final determination has been made regarding whether a violation of this policy has occurred.

The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment.

Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate.

29. The “Confidentiality” provision of the State Policy relating to the obligations of the State, under N.J.A.C. 4A:7-3.1(j), states:

All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigatory process. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter.

30. The “Confidentiality” provision of the State Policy relating to the obligations of all witnesses or persons with knowledge of any harassment or discrimination claim, who are interviewed in connection with an investigation undertaken pursuant to N.J.A.C. 4A:7-3.1(j), states:

All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment. (emphasis added).

(the “Strict Confidentiality Directive”).

31. N.J.A.C. 4A:7-3.2 sets forth the “Model Procedures for Internal Complaints Alleging Discrimination in the Workplace” as follows:

Each State department, commission, State college or university, agency, and authority (hereafter referred to in this section as “State agency”) is responsible for implementing this model procedure, completing it to reflect the structure of the organization, and filing a copy of the completed procedure with the [Civil Service Commission,] Division of EEO/AA.

(a) All employees and applicants for employment have the right and are

encouraged to immediately report suspected violations of the State Policy Prohibiting Discrimination in the Workplace, N.J.A.C 4A:7-3.1.

(b) Complaints of prohibited discrimination/harassment can be reported to either (name of Officer), the EEO/AA Officer, or to any supervisory employee of the State agency. Complaints may also be reported to (Authorized Designee).

(c) Every effort should be made to report complaints promptly. Delays in reporting may not only hinder a proper investigation but may also unnecessarily subject the victim to continued prohibited conduct.

(d) Supervisory employees shall immediately report all alleged violations of the State of New Jersey Policy Prohibiting Discrimination in the Workplace to (Name of Officer), EEO/AA Officer. Such a report shall include both alleged violations reported to a supervisor, and those alleged violations directly observed by the supervisor.

(e) If reporting a complaint to any of the persons set forth in subsections (a) through (d) above presents a conflict of interest, the complaint may be filed directly with the [Civil Service Commission,] Division of EEO/AA, PO Box 315, Trenton, NJ 08625. An example of such a conflict would be where the individual against whom the complaint is made is involved in the intake, investigative or decision making process.

(f) In order to facilitate a prompt, thorough, and impartial investigation, all complainants are encouraged to submit a Discrimination Complaint Processing Form (DPF-481). An investigation may be conducted whether or not the form is completed.

(g) Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate. A copy of all complaints (regardless of the format in which submitted) must be submitted to the [Civil Service Commission,] Division of EEO/AA, by the State agency's EEO/AA Officer, along with a copy of the acknowledgement letter(s) sent to the person(s) who filed the complaint and, if applicable, the complaint notification letter sent to the person(s) against whom the complaint has been filed. If a written complaint has not been filed, the EEO/AA Officer must submit to the Division of EEO/AA a brief summary of the allegations that have been made. Copies of complaints filed with the New Jersey Division on Civil Rights, the U.S. Equal Employment Opportunity Commission, or in court also must be submitted to the Division of EEO/AA.

(h) During the initial intake of a complaint, the EEO/AA Officer or authorized

designee will obtain information regarding the complaint, and determine if interim corrective measures are necessary to prevent continued violations of the State's Policy Prohibiting Discrimination in the Workplace.

(i) At the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

(j) An investigative report will be prepared by the EEO/AA Officer or his or her designee when the investigation is completed. The report will include, at a minimum:

1. A summary of the complaint;
2. A summary of the parties' positions;
3. A summary of the facts developed through the investigation; and
4. An analysis of the allegations and the facts. The investigative report will be submitted to (State agency head) who will issue a final letter of determination to the parties.

(k) The (State agency head or designee) will review the investigative report issued by the EEO/AA Officer or authorized designee, and make a determination as to whether the allegation of a violation of the State's Policy Prohibiting Discrimination in the Workplace has been substantiated. If a violation has occurred, the (State agency head or designee) will determine the appropriate corrective measures necessary to immediately remedy the violation.

(l) The (State agency head or designee) will issue a final letter of determination to both the complainant(s) and the person(s) against whom the complaint was filed, setting forth the results of the investigation and the right of appeal to the Civil Service Commission as set forth in subsections (m) and (n) below. To the extent possible, the privacy of all parties involved in the process shall be maintained in the final letter of determination. The Division of EEO/AA[, Civil Service Commission,] shall be furnished with a copy of the final letter of determination.

1. The letter shall include, at a minimum:

- i. A brief summary of the parties' positions;
- ii. A brief summary of the facts developed during the investigation; and
- iii. An explanation of the determination, which shall include whether:

(1) The allegations were either substantiated or not substantiated; and

(2) A violation of the Policy Prohibiting Discrimination in the Workplace did or did not occur.

2. The investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint referred to in (h) above is completed.

3. The time for completion of the investigation and issuance of the final letter of determination may be extended by the State agency head for up to 60 additional days in cases involving exceptional circumstances. The State agency head shall provide the Division of EEO/AA and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension. (m) A complainant who is in the career, unclassified, or senior executive service, or who is an applicant for employment, who disagrees with the determination of the (State agency head or designee), may submit a written appeal, within [twenty] 20 days of the receipt of the final letter of determination from the (State agency head or designee), to the Civil Service Commission, PO Box 312, Trenton, NJ 08625. The appeal shall be in writing and include all materials presented by the complainant at the State agency level, the final letter of determination, the reason for the appeal, and the specific relief requested.

1. Employees filing appeals which raise issues for which there is another specific appeal procedure must utilize those procedures. The Commission may require any appeal, which raises issues of alleged discrimination and other issues, such as examination appeals, to be processed using the procedures set forth in this section or a combination of procedures as the Commission deems appropriate. See N.J.A.C. 4A:2-1.7.

2. If an appeal under this chapter raises issues concerning the employee not receiving an advancement appointment, the Commission shall decide those issues in the course of its determination.

3. The Civil Service Commission shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1(d).

4. The appellant shall have the burden of proof in all discrimination appeals brought before the Civil Service Commission.

(n) In a case where a violation has been substantiated, and no disciplinary action recommended, the party(ies) against whom the complaint was filed may appeal the determination to the Civil Service Commission at the address indicated in (m) above within 20 days of receipt of the final letter of determination by the State agency head or designee. 1. The burden of proof shall be on the appellant. 2. The appeal shall be in writing and include the final letter of determination, the reason for the appeal, and the specific relief requested. 3. If disciplinary action has been recommended in the final letter of determination, the party(ies) charged may appeal using the procedures set forth in N.J.A.C. 4A:2-2 and 3.

(o) The Director of the Division of EEO/AA shall be placed on notice of, and given the opportunity to submit comment on, appeals filed with the Civil Service Commission of decisions on discrimination complaints, regardless of whether or not the complaint was initially filed directly with the Director of EEO/AA.

(p) Any employee or applicant for employment can file a complaint directly with external agencies that investigate discrimination/harassment charges in addition to utilizing this internal procedure. The time frames for filing complaints with external agencies indicated below are provided for informational purposes only. An individual should contact the specific agency to obtain exact time frames for filing a complaint. The deadlines run from the date of the last incident of alleged discrimination/harassment, not from the date that the final letter of determination is issued by the State agency head or designee.

1. Complaints may be filed with the following external agencies:

i. Division on Civil Rights N.J. Department of Law & Public Safety (Within 180 days of the discriminatory act)

ii. US Equal Employment Opportunity Commission (EEOC) (Within 300 days of the discriminatory act).

32. In January 2018, the trial of the matter Jennifer L. Schiavone v. the New Jersey Department of Corrections was held in the Superior Court of New Jersey, Law Division, Mercer County, Docket No.: MER-L-00657-15.

33. During the trial, Leila Lawrence, Esq., the Director of the Equal Employment Division (“EED”) of the New Jersey Department of Corrections, provided sworn testimony concerning the State Policy, including more specifically, the Strict Confidentiality Directive imposed on complainants and witnesses in State harassment investigations.

34. The EED Director’s job duties include overseeing investigations of harassment and discrimination complaints made pursuant to the State Policy within the Department of Corrections.

35. According to the EED Director, “[t]he EED Department is responsible for reviewing any allegations of discrimination or harassment. If the allegations implicate or touch the policy, we – we’re the department that handles any allegations under the policy prohibiting discrimination in the workplace. If the allegations implicate or touch the policy, we open it up for investigation. At the conclusion of the investigation we make a finding and we determine whether or not discipline should be issued or not. We also handle training for staff under the policy. We’re responsible for disseminating the policy. We also handle any position statements or other matters that need to be addressed or answered with regard to claims filed with the United States Equal Employment Opportunity Commission, as well as the New Jersey Division of Civil Rights. And we also handle any appeals after the conclusion of our internal investigation. Complainants if they are not satisfied with the outcome have the ability to claim to the New Jersey Civil Service Commission, and we handle those; we respond on behalf of the department

to those appeals as well.”

36. During her testimony, the EED Director was questioned concerning the confidentiality obligations of complainants and other witnesses in connection with their participation in investigations into discrimination complaints undertaken pursuant to the State Policy.

37. In response to this questioning, EED Director testified that, “The complaints are confidential in that the only people who are aware of them are my office and the – whoever the complaint was reported to.”

38. The EED Director further testified:

It should not be discussed. When witnesses are interviewed as part of an investigation, they have to sign a statement that they’re aware that the – everything discussed in the investigation is confidential, and if they are found to have violated that policy that they – you know, that they signed, they could be subject to discipline for discussing the EED investigation.

39. The EED Director was then asked whether this confidentiality directive also applied to the person who makes the complaint, whether that person also would be subject to discipline if they discussed their complaint with somebody else.

40. The EED Director responded, “Other – outside of the realm of the reporting process, yes.”

41. The EED Director then confirmed that the complainant is also required “to sign a confidentiality form.”

42. The “confidentiality form” reads, in relevant part, that “all persons who are interviewed or otherwise advised of a complaint are directed not to discuss any aspect of the investigation with others. Failure to comply with this confidentiality directive may result in

disciplinary action, up to and including removal.”

43. A copy of the “confidentiality form” that complainants, accused and all other witnesses are required to sign in connection with their obligation to participate in State discrimination and harassment investigations is attached hereto as **Exhibit B**.

44. The EED Director was then questioned as follows: “Okay. So just bear with me because I want to make sure we get it all clear. So, if I’m the complainant and I go complain, say, to the assistant superintendent, who then passes it on to the EED, I’m not to tell anybody else about the fact that I made that complaint. Is that correct?”

45. The EED Director responded to this question as follows:

When I – at that point they haven’t signed the form, but I wouldn’t – when you say tell anyone else, do you mean just running around, just going around the facility talking about it? If that’s the case, they’re not expected – it would depend on – it would really depend on the context. If you’re saying that this is someone who’s a confidant who they’re talking to, that’s different, but if you’re saying the person is around the facility saying, I filed an EED complaint, I filed an EED complaint, no, they should not be doing that. Even if – and, hopefully, they’re aware, but even if they aren’t aware, once they speak with the investigator and sign that confidentiality form, then they are definitely aware that they should not be discussing the investigation.

46. The questioning continued as follows:

Q. Okay, so let’s go ahead to that point in the process. So, if EED starts investigating, part of the investigation would be interviewing people.

A. Yes.

Q. Okay. And so, obviously, you’d interview the person who made the complaint.

A. Correct.

Q. And you’d interview the person who was accused of doing

something wrong.

A. Correct.

Q. And if there were names of other witnesses who came up, you'd interview those folks, too.

A. Yes.

Q. Okay. And you're saying for all those people who get interviewed there's some form they have to sign.

A. Yes.

Q. Which says what as far as confidentiality goes?

A. That they are not to discuss the allegations and what was discussed during their interview, and that if the EED finds that they did and substantiates that they did, they could be subject to punishment.

Q. Like even being suspended or fired?

A. Would not fire someone for discussing an EED complaint, but depending on the circumstances, yes, suspension, possibly.

Q. Okay. So, they could get some real punishment if they breach confidentiality.

A. Yes.

47. The EED Director was also questioned concerning the ramifications a State employee might face if they were asked to participate as a witness in an EEO/AA investigation, conducted pursuant to the State Policy, and refused to sign the Strict Confidentiality Directive Form.

48. In response to this line of questioning, the EED Director testified that she had never had that happen yet, that "[e]veryone thus far has signed it" and that she "[doesn't] know what would happen, because it has not happened."

49. The EED Director was further questioned on the State Policy concerning confidentiality of investigation records.

50. In response to this line of questioning, the EED Director testified that all investigation records, including witness statements and investigation reports, are kept in the EED office and are “completely confidential from the general public.”

51. The EED Director further admitted that all records produced in connection with investigations into internal complaints of harassment, whether the complaints “are found to be valid or not to be found valid, how many they are, what types they are, what punishments were imposed or not imposed, are all kept confidential from the public.”

52. Based upon this policy and practice, all records concerning prior complaints made against Alvarez that implicated the State Policy and were investigated by the EEO/AA would be kept “confidential” and would not be discoverable by any “special” background check allegedly conducted by the Transition into Defendant Alvarez.

C. Plaintiff’s Time Working for the Murphy Campaign

53. Plaintiff is a trained city and regional planner who has worked in the field of affordable housing both in the public and not-for-profit sectors. Serving as the Program Director of Housing for the County of Hudson, Plaintiff led the County’s various housing related efforts.

54. In order to make a broader impact and set housing policy for New Jersey, Plaintiff aspired to serve in a State position. Plaintiff believed that the New Jersey Housing and Mortgage Finance Agency offered a unique opportunity for her to serve the people of New Jersey, particularly low- and moderate-income residents.

55. In or about December 2016, Plaintiff had a conversation with Platkin about working for Defendant Murphy Campaign and applying for a position in the Murphy administration should Murphy be elected, which was highly probable at the time based upon Murphy's strong polling numbers.

56. Plaintiff and Platkin had known each other as a result of serving as fellows on the New Leaders Council, "a non-profit organization that works to recruit, train and promote young progressive leaders," according to the organization's website.

57. At this time, Platkin was the Policy Director for Defendant Murphy Campaign.

58. During this conversation, Platkin asked Plaintiff whether she would be willing to leave her current job and serve in the administration should Murphy win the gubernatorial election.

59. Plaintiff responded that she would be interested in working for Defendant Murphy Campaign and Murphy administration should he win the election.

60. Plaintiff believed Murphy's progressive values aligned with her own and that there would be opportunity to impact policies to create homes that people can afford. Plaintiff believed serving in the administration would be a valuable next step for her career.

61. Platkin requested that Plaintiff send him her resume and policy memo proposing a housing and healthcare program.

62. In or about February 2017, Plaintiff began working for Defendant Murphy Campaign.

63. From the outset of Plaintiff's time working for Defendant Murphy Campaign, Plaintiff's duties and responsibilities included millennial outreach for the campaign, which

consisted of assisting in the launch of the Millennials for Murphy Facebook page, inviting people to events, conducting outreach and performing other duties and responsibilities associated with Defendant Murphy Campaign.

64. In order to further formalize Plaintiff working for Defendant Murphy Campaign, Plaintiff was required to execute a Non-Disclosure Agreement (“NDA”).

65. Plaintiff executed the NDA on April 6, 2017.

66. The NDA prohibited Plaintiff from disclosing certain information she learned while working, or as a result of working, on Defendant Murphy Campaign.

67. As a campaign organization with the express mission of electing Governor Murphy as Governor of New Jersey, Defendant Murphy Campaign was required to adhere to the State Policy concerning sexual misconduct, discrimination and harassment.

68. Both as a limited liability corporation and as a place of public accommodation, Defendant Murphy Campaign was also legally required to have in place effective anti-discrimination, anti-harassment, and/or employment policies against sexual misconduct.

69. All volunteers, workers and employees of Defendant Murphy Campaign were considered “employees” and/or “prospective employees” under the State Policy and state law, including the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq. (“LAD”).

70. At no time did anyone from Defendant Murphy Campaign inform Plaintiff of any anti-discrimination or anti-harassment policy, including the State Policy.

71. Defendant Murphy Campaign did not maintain any anti-harassment or anti-discrimination policy.

72. Defendant Murphy Campaign did not provide any anti-harassment or anti-

discrimination training to any of its employees, workers and/or volunteers.

73. Defendant Murphy Campaign also did not provide any anti-harassment or anti-discrimination training to any of its supervisors or managerial employees, workers and/or volunteers.

74. Defendant Murphy Campaign further did not maintain or publicize any unequivocal statement or commitment from Murphy or Defendant Murphy Campaign leadership to its employees, workers or volunteers that discrimination, harassment or assault would not be tolerated by the corporation.

75. Plaintiff sent an email to Platkin enclosing her resume on March 27, 2017.

76. In the email, Plaintiff wrote to Platkin:

Matt:

Hope you are well. It has been too long! Perhaps there is a way we can bring you in to meet our 2017 fellows and I'll get to say hello.

I am writing today, quite delinquent, to provide my write-up of housing as healthcare and my resume. When we met I discussed the role of hospitals using community benefit funds (how they stay exempt) to provide affordable housing for the frequent user homeless population. Other hospitals across the country have done this to great effect and, in the process, saved millions of dollars. With the future of Medicaid uncertain, COAH requirements coming back, and hospital tax exemption in question the time is right in New Jersey for creative best practices. I have attached a basic write-up and would be happy to expound upon it should you like.

I also wanted to say that I saw Murphy's plan to clean up foreclosures and provide affordable housing. Great idea! I think it pairs very well with a foreclosure registry initiative that a few NJ counties, including we here in Hudson, have recently implemented. Basically, local towns pass ordinances that require banks to register properties in any phase of foreclosure and pay a

fine. Municipal housing offices can use the list for foreclosure prevention and intervention and housing code/safety departments can use it to hold banks responsible for blight and violations. The local towns receive most of the funds and Hudson County receives a small portion. We are the only town or county where these funds are going straight back into foreclosure prevention and affordable housing. Everywhere else is using it for the general fund. Either way, there is a good strategy with Murphy's plan!

If you ever want to talk housing and community development, I would be happy to help. Hope you are taking care.

77. Prior to Plaintiff working for Defendant Murphy Campaign, female workers, volunteers and/or employees had complained about the existence of a toxic work environment and workplace violence that existed within Defendant Murphy Campaign.

78. For example, Julia Fahl, the in-state Finance Director for Defendant Murphy Campaign, had lodged at least three (3) complaints concerning the work environment between October 2016 and February 2017.

79. By in or about Spring 2017, Fahl decided to leave Defendant Murphy Campaign.

80. After leaving Defendant Murphy Campaign, Fahl publicly stated that, based upon what she witnessed while she worked for the campaign, she believed the work environment within Defendant Murphy Campaign was "toxic."

81. On the evening of Friday, April 7, 2017, members of Defendant Murphy Campaign gathered to celebrate Fahl's departure from Defendant Murphy Campaign at Porta Restaurant in Jersey City.

82. At the end of the event, Defendant Alvarez, who was at the time the director of Latino/Muslim outreach for Defendant Murphy Campaign, advised Plaintiff that he was driving and offered to drive her to her apartment.

83. When they arrived at Plaintiff's home, Defendant Alvarez asked to use Plaintiff's bathroom and have a drink of water before continuing the drive to his own home.

84. Once inside Plaintiff's apartment, Defendant Alvarez pushed Plaintiff onto a couch and forced himself on top of her.

85. Defendant Alvarez then pulled down Plaintiff's white V-neck T-shirt in order to put his mouth on her breasts before reaching behind her and shoving his hand down her pants and putting his fingers inside her vagina.

86. Plaintiff said, "Stop, why are you doing this?"

87. Plaintiff further made clear that Defendant Alvarez's conduct was rejected, including by stating to him, "This is not consensual."

88. Defendant Alvarez then pulled off Plaintiff's pants and underwear and took off some of his clothing before thrusting onto Plaintiff in a way that made her believe he was trying to force sexual intercourse.

89. Plaintiff was able to kick Defendant Alvarez off her and run across the apartment and lock herself in the bathroom.

90. Defendant Alvarez then left the apartment.

91. Plaintiff immediately contacted her husband, Travis Miles, who was in Sweden on a three-month Fulbright Scholarship.

92. After telling her husband that Defendant Alvarez had sexually assaulted her, Plaintiff called and told her good friend, Katy Baldwin, that she had been sexually assaulted.

93. Baldwin traveled from Queens, New York, arrived in the early morning hours of Saturday, April 8, 2017, and stayed with Plaintiff for several days.

94. On Saturday, April 8, 2017, Defendant Alvarez called Plaintiff. Plaintiff, suspecting the call was from Defendant Alvarez, did not answer. Defendant Alvarez did not leave a message.

95. Shortly thereafter, also on Saturday, April 8, 2017, Defendant Alvarez sent Plaintiff a text message asking how she was and whether they could talk.

96. Plaintiff did not respond to Defendant Alvarez's text message.

97. On Saturday, April 8, 2017, Plaintiff contacted Braz who, upon information and belief, was also becoming involved with, volunteering for, and/or working for Defendant Murphy Campaign, and asked him to come over to her apartment so that she could tell him in person about something important.

98. Braz arrived at Plaintiff's apartment on the evening of Sunday, April 9, 2017, and Plaintiff told Braz that Defendant Alvarez had raped her the previous day.

99. Plaintiff further explained to Braz that she would inevitably cross paths with Defendant Alvarez again while working for Defendant Murphy Campaign and in the administration, should Murphy win the gubernatorial election, and, therefore, she needed to inform someone involved in Defendant Murphy Campaign of the rape.

100. Braz never informed anyone working with or employed by Defendant Murphy Campaign that Plaintiff had been sexually assaulted by Defendant Alvarez.

101. Defendant Murphy Campaign took no action to investigate Plaintiff's report of being raped.

102. On the evening of Sunday, April 9, 2017, Plaintiff reported the sexual assault to the Jersey City Police Department.

103. Several Jersey City police officers arrived at Plaintiff's apartment to take down her statement for an official police report.

104. On Monday, April 10, 2017, at approximately 10:56 a.m., Plaintiff received a voicemail from Sergeant Maria Dargan, who identified herself as a member of the Special Victims Unit ("SVU") with the Hudson County Prosecutor's Office ("HCPO"). The voicemail stated that the HCPO received a police report from Jersey City Police Department concerning Plaintiff's report of sexual assault and they wished to speak with her.

105. Plaintiff reported to work that day, Monday, April 10, 2017, at her job with the Hudson County Division of Housing & Community Development, but was unable to function and had to leave work in the late morning.

106. Immediately after leaving work, Plaintiff called a rape crisis hotline to seek advice and referrals for appropriate healthcare.

107. Plaintiff called a therapist's office asking to become a client immediately.

108. Plaintiff then went to the Jersey City Medical Center ("JCMC") Emergency Department and submitted to a physical evaluation for sexual assault, also known as a "rape kit."

109. A JCMC nurse told Plaintiff that JCMC would inform the Special Victims Unit at the HCPO of the situation and Plaintiff could expect to receive contact from HCPO SVU.

110. On April 17, 2017, Plaintiff sent a letter to Defendant Alvarez via Federal Express to Defendant Murphy Campaign's headquarters at One Gateway Center in Newark, which read:

The event that occurred during the early morning of Saturday, April 8, 2017 was sexual assault. I ask that you please refrain from contacting me ever again.

111. After sending the letter to Defendant Alvarez, Plaintiff contacted the HCPO to move forward with formal sexual criminal conduct charges against Defendant Alvarez.

112. The HCPO took Plaintiff's sworn testimony concerning Defendant Alvarez's sexual assault of her on multiple occasions.

113. After reporting the sexual assault to law enforcement, Plaintiff was frightened that she would have to be in Defendant Alvarez's presence at a campaign event for Defendant Murphy Campaign and/or in further prospective State employment should they both be offered positions after a successful gubernatorial election, including for the Transition Office.

114. However, as a victim of sexual assault, Plaintiff believed that she should not be forced to give up her career goals in favor of the career goals of her rapist

115. In or about May 2017, approximately one month after the sexual assault, Plaintiff saw Defendant Alvarez at Defendant Murphy Campaign's office at One Gateway Center in Newark, New Jersey, the same location where she had directed her April 17, 2017, letter to Defendant Alvarez.

116. In or about August 2017, Plaintiff was invited to work for Defendant Murphy Campaign in a more formal role as a policy advisor on the Economy, Jobs and Anti-Poverty Working Group.

117. Defendant Alvarez continued to work for Defendant Murphy Campaign as the director of Latino/Muslim outreach.

118. Plaintiff constantly feared encountering Defendant Alvarez at Defendant Murphy Campaign events and did see him at these events.

119. In or about October 2017, Plaintiff encountered Defendant Alvarez at a

gubernatorial debate at William Paterson University.

120. Braz, whom Plaintiff had told about the sexual assault on April 9, 2017, the day after it happened, was present at the debate.

121. Upon information and belief, Braz was working for the New Jersey Democratic State Committee in support of Defendant Murphy Campaign in the paid staff position of Labor Director. Plaintiff observed Braz actively engage Defendant Alvarez in conversation to allow her to walk past Defendant Alvarez without having to speak with him.

122. On October 19, 2017, Plaintiff again encountered Defendant Alvarez in Newark, New Jersey, at President Obama's event to support Defendant Murphy Campaign.

123. Plaintiff also encountered Defendant Alvarez at a volunteer 'get out the vote' event at Rutgers University.

D. The Transition

124. In early November 2017, following the election, Defendant Alvarez was appointed Deputy Director of Personnel for the Transition Office, reporting directly to the Director of Personnel, Lynn Haynes.

125. As Deputy Director of Personnel for the Transition Office, Defendant Alvarez was responsible for making personnel, hiring, and other employment decisions on behalf of Governor-Elect Murphy and the State.

126. By letter dated December 1, 2017, Governor Murphy wrote to Plaintiff:

Please accept my sincerest thanks for the work you put in throughout the campaign to ensure that the policy ideas we talked about were not only rooted in fact, but also responsive to the challenges facing New Jersey. As we now move from campaigning to governing, your work will never have mattered more. Regardless of the issue, I know we have strong and

practical solutions for many of our state's vexing problems.

Being elected to serve as New Jersey's 56th Governor is an honor beyond I could imagine. As an integral part of our policy team, you share in this success, and in the future successes as we move New Jersey forward.

Again, thank you.

127. Murphy appointed Plaintiff to Defendant State's Transition Office in the role of Deputy Policy Director for the Housing Committee.

128. Between November 2017 and January 2018, several individuals employed by Defendant State in the Transition Office, including Amit Jani and Stephanie Brown, asked Plaintiff if she had yet spoken to and/or interviewed with Defendant Alvarez in connection with her application for employment as Chief of Staff at the New Jersey Housing and Mortgage Finance Agency.

129. As Deputy Director of Personnel for the Transition Office, Defendant Alvarez's responsibilities included hiring for the position Plaintiff sought, Chief of Staff at the New Jersey Housing and Mortgage Finance Agency.

130. As a result, on or about January 3, 2018, Plaintiff's then-attorney sent a letter to Defendant Alvarez requesting he recuse himself from any decisions relating to Defendant State's decision to hire Plaintiff.

131. Defendant Alvarez did not respond to Plaintiff's counsel's letter.

132. In late November 2017, the HCPO informed Plaintiff that a decision would soon be made regarding whether they would be criminally prosecuting Defendant Alvarez. Believing that Defendant Alvarez's arrest was imminent, Plaintiff asked Braz what action he thought should be taken in view of the negative public impact Defendant Alvarez's arrest could have on

the then-Governor-Elect Murphy's administration.

133. Braz suggested to Plaintiff that she authorize him to notify counsel for the Transition Office, Rajiv D. Parikh, Esq., to which Plaintiff agreed.

134. Plaintiff's initial April 9, 2017 disclosure and/or subsequent late November 2017 disclosure to Braz while both worked in the Transition Office, of Defendant Alvarez's sexual assault of her and pending criminal investigation regarding her claim constitute reports of discrimination and harassment under the State Policy and state law.

135. According to his December 18, 2018, testimony before the New Jersey Legislative Select Oversight Committee, in or about November 2017, Braz notified Transition Counsel, Rajiv D. Parikh, Esq., that a woman working for the Transition Office had reported to him that Defendant Alvarez raped her during the campaign, that a criminal investigation was pending, and that the victim believed Defendant Alvarez could be arrested imminently.

136. According to Braz's testimony, Parikh instructed Braz to inform Chief of Staff Peter Cammarano that Defendant Alvarez had been accused of raping a woman during the campaign, that she was working for the Transition Office, and that the victim believed Defendant Alvarez could be arrested imminently.

137. As instructed, Braz informed Cammarano of his conversation with Parikh and that a woman working for the Transition Office told him that Defendant Alvarez had raped her during the campaign and that Defendant Alvarez could be arrested imminently.

138. Braz told Cammarano that Parikh had instructed him to tell Cammarano.

139. The State Policy required Braz, as a State employee and/or supervisor, to refer Plaintiff's report of the rape and potential criminal charges to the Transition Office's EEO/AA

Officer, or other individual designated by the State to receive complaints of sexual misconduct, workplace discrimination, or harassment.

140. Parikh was an outside legal counsel who, upon information and belief, was hired to provide legal services to the Transition Office.

141. Parikh was not an EEO/AA Officer, or an individual designated by the State agency to receive complaints of workplace discrimination or harassment.

142. Parikh had no responsibilities or obligations under the State Policy, was never trained on the State Policy, nor did he have any understanding of the State Policy or the obligations of any state employee under the State Policy.

143. Braz's disclosures to Parikh and Cammarano of Plaintiff's reports of the rape and potential resulting criminal charges, rather than to an appropriate EEO/AA officer or other individual designated by the State, is in violation of the State Policy.

144. Upon information and belief, the State has taken no disciplinary action against anyone for the aforesaid violations of the State Policy.

145. Upon learning from Braz of the report of rape and the potential criminal charges that could follow, the State Policy required Cammarano, as a State employee and/or supervisor, to refer Plaintiff's reports to the Transition Office's EEO/AA Officer, or other individual designated by the State to receive complaints of sexual misconduct, workplace discrimination, or harassment.

146. Cammarano's failure to advise an appropriate EEO/AA officer or other individual designated by the State agency of Plaintiff's report that she was raped by Defendant Alvarez is a violation of the State Policy.

147. Upon information and belief, the State has taken no disciplinary action against Cammarano for the aforesaid violation of the State Policy.

148. Braz and Cammarano were not properly trained by the State concerning their obligations under the State Policy and/or state law on how to respond upon receiving complaints of sexual misconduct, harassment or discrimination.

149. Braz and Cammarano failed to inform the Ethics Liaison, the EEO/AA officer or other individual designated by the State agency about Plaintiff's report of rape and that criminal charges could potentially be filed against another State employee.

150. No one asked or instructed Braz to speak to Plaintiff to inform her that her report of rape required the State to conduct an investigation pursuant to the State Policy and state law.

151. No one asked or instructed Braz to speak to Plaintiff to request that she fill out a complaint form or otherwise place her disclosures in writing.

152. The State did not conduct any investigation into Plaintiff's report to Braz that she was raped.

153. No one instructed or asked Plaintiff to participate in any investigation into her report of rape to Braz.

154. On the same day that Plaintiff informed Braz that she believed Defendant Alvarez's arrest was imminent, the HCPO notified Plaintiff that it was declining to prosecute her criminal case against Defendant Alvarez.

155. On or about December 1, 2017, after learning that the HCPO would not pursue charges, Plaintiff again called Braz and advised him that the HCPO was not going to pursue

charges.

156. On or about December 1, 2017, Braz informed Parikh and Cammarano that the HCPO would not pursue charges against Defendant Alvarez.

157. Braz's disclosure to Parikh and Cammarano of the fact that the HCPO was not going to pursue charges against Alvarez is a violation of the State Policy, including the Strict Confidentiality Directive.

158. Upon information and belief, the State has taken no disciplinary action against anyone for the aforesaid violation of the State Policy.

159. During the December 18, 2018, New Jersey Legislative Select Oversight Committee hearing, it was revealed that Parikh set forth in an email, "So there are the options; one is discussing the situation privately with A --which would be Mr. Alvarez, obviously -- and advising him that he must recuse himself from any matters involving *her*. The other is keeping *him* in the dark, but monitoring...monitoring the hiring process closely for Departments in which *she* applies for a job; or remove those from his plate. And finally, we could do nothing and let everything play out and simply prepare for reactionary issues."

160. During the December 18, 2018, New Jersey Legislative Select Oversight Committee hearing, Cammarano testified that, based upon the information provided by Braz, certain persons within and/or associated with the Transition Office made the decision to strip Defendant Alvarez of any hiring duties or responsibilities in connection with his position as Deputy Director of Personnel for the Transition Office.

161. This included allegedly instituting a blanket policy that Defendant Alvarez was not permitted to reject any applicants and had no involvement in the hiring for any positions.

162. Despite the foregoing, Defendant Alvarez was included on the “green-light” list for persons to be offered a job within the Murphy Administration and Defendant State.

163. Instead of reporting the complaint of rape against Defendant Alvarez by an unidentified Transition Office staffer to the EEO/AA and conducting an investigation, Defendant State and Transition Office allegedly conducted a “special” background check into Defendant Alvarez.

164. The Transition Office’s decision to take action in response to the reporting of the rape by conducting a “special” background check into Defendant Alvarez, rather than forwarding the allegation to the appropriate EEO/AA officer or other person designated by the State, is a violation of the State Policy.

165. Upon information and belief, Defendant State has taken no disciplinary action against anyone for the aforesaid violation of the State Policy.

166. According to Defendant State, the background check showed no pending charges and no past convictions.

167. Upon information and belief, Defendant State did not contact Defendant Alvarez’s educational institutions, including Rutgers Law School, in connection with its “special” background check.

168. Upon information and belief, Defendant State did not contact the New Jersey Board of Bar Examiners Committee on Character in connection with its “special” background check.

169. Upon information and belief, Defendant State did not obtain any records held by the EEO/AA concerning any other EEO/AA investigations undertaken by the EEO/AA in

connection with Defendant Alvarez during any of his previous or current employment with the Defendant State.

170. According to Defendant State, its “special” background check of Defendant Alvarez concluded that he had a clean record.

171. Moreover, consistent with the State Policy, any EEO/AA investigation into prior allegations of sexual misconduct, harassment or discrimination lodged against Alvarez would have been “confidential.” Likewise, any records produced by such an investigation would have been kept “confidential” by the Division of EEO/AA and would not have appeared in Alvarez’s personnel file or in any other place accessible to the “special” background check.

172. As such, upon information and belief, the “special” background check could not have included any review of any EEO/AA file concerning Defendant Alvarez, any complaints lodged against him and/or other issues of improper or unlawful behavior during his employment with the State.

173. Defendant Alvarez was offered and accepted the position of Chief of Staff for the New Jersey Schools Development Authority in the Murphy Administration, effective January 2018.

174. Defendant Alvarez was compensated with a salary of \$140,000 in his position of Chief of Staff for the New Jersey Schools Development Authority.

175. Prior to this position, Defendant Alvarez had no direct experience with school construction.

176. No one from the Transition Office or anyone else affiliated with the Defendant Murphy Campaign, Defendant State, or the Murphy Administration contacted Plaintiff to speak

to her in connection with any background check performed on Defendant Alvarez.

177. Braz became Governor Murphy's Chief of Staff for Legislative Affairs.

178. On December 5, 2017, Plaintiff came into close physical proximity of Defendant Alvarez in a doorway on her way to attend a Transition Committee Meeting.

179. On December 12, 2017, Governor Murphy selected Gurbir Grewal, Esq., to be Attorney General.

180. On January 16, 2018, Plaintiff was again in close physical proximity of Defendant Alvarez at the Governor's Inaugural Ball.

181. Plaintiff spent the entirety of the evening at the Governor's Inaugural Ball knowing Defendant Alvarez was present and fearing his immediate presence.

E. Plaintiff's Employment as Chief of Staff of the New Jersey Housing and Mortgage Finance Agency

182. In or about January 2018, Platkin informed Plaintiff that she would be receiving a call from Charles Richman, Executive Director of the New Jersey Housing and Mortgage Finance Agency, who will advise her that she had been chosen as the Chief of Staff of the New Jersey Housing and Mortgage Finance Agency.

183. Soon thereafter, Plaintiff received a call from Charles Richman who offered her the position of Chief of Staff of the New Jersey Housing and Mortgage Finance Agency.

184. Plaintiff began her employment with the Murphy Administration and Defendant State as Chief of Staff of the New Jersey Housing and Mortgage Finance Agency on February 20, 2018.

185. The Murphy Administration and Defendant State hired Defendant Alvarez in the position of Chief of Staff of the New Jersey Schools Development Authority.

186. Throughout her association with Defendant Murphy Campaign, the Transition Office and her employment with Defendant State, Plaintiff lived under the constant threat of seeing and interacting with her rapist, Defendant Alvarez, including at joint meetings of the Administration's Chiefs of Staff or in or around Trenton.

187. On March 20, 2018, Plaintiff met Platkin in Jersey City and informed him that Defendant Alvarez had raped her.

188. Plaintiff's March 20, 2018 communication to Platkin that she had been raped by a State employee coworker constitutes a report of discrimination and harassment under the State Policy and state law.

189. The State Policy required that Platkin, a State employee and/or supervisor, refer Plaintiff's report of rape to the Office of the Governor's EEO/AA Officer, or other individual designated by the state to receive complaints of sexual misconduct, workplace discrimination, or harassment immediately upon receiving the report of rape from Plaintiff.

190. The State Policy also required that Platkin keep Plaintiff's complaint of rape confidential to the extent possible in order for the State to initiate and conduct an EEO/AA or other appropriate investigation.

191. Platkin was not properly trained by the State concerning his obligations under the State Policy or state law in connection with receiving complaints of sexual misconduct, discrimination or harassment.

192. In relating her complaint, Plaintiff described to Platkin the rape and expressed what a difficult period the hiring process was for her. Plaintiff further advised Platkin that she has lived and continues to live in constant fear of retaliation from Defendant Alvarez or others

in the State.

193. Plaintiff further stated to Platkin that she feared that she would not receive a position in the Administration if Defendant Alvarez had influence or if she came forward to the transition team or the Governor-Elect.

194. Platkin informed Plaintiff that he would contact the Attorney General's office right away to inform them of her disclosure and complaint and for them to take appropriate action.

195. On March 22, 2018, at a meeting in Princeton, Plaintiff informed Garg, that Defendant Alvarez had raped her.

196. Plaintiff described the rape to Garg and informed him that she had alerted Platkin.

197. Plaintiff's reporting of the rape to Garg constitutes a report of discrimination and harassment under the State Policy and state law.

198. Garg was not properly trained by the State concerning his obligations under the State Policy or state law in connection with receiving complaints of sexual misconduct, discrimination or harassment.

199. The State Policy required Platkin and Garg, as supervisors, to refer Plaintiff's report of rape to the Office of the Governor's EEO/AA Officer, or other individual designated by the State agency to receive complaints of workplace discrimination/harassment.

200. Plaintiff's report of rape was conveyed to Heather Taylor.

201. Pursuant to the State Policy, Taylor was obligated to forward the report to the EEO/AA Officer to conduct an investigation.

202. Taylor failed to initiate or conduct any investigation into Plaintiff's report of rape, a violation of the State Policy.

203. Neither Taylor, nor anyone else, provided Plaintiff with a copy of the Discrimination Complaint Processing Form as required by N.J.A.C. 4A:7-3.2(f).

204. Neither Taylor, nor anyone else, instructed Plaintiff to submit any Discrimination Complaint Processing Form as required by N.J.A.C. 4A:7-3.2(f).

205. Neither Taylor, nor anyone else, maintained any written record of Plaintiff's reports of the rape as required by N.J.A.C. 4A:7-3.2(g).

206. Neither Taylor, nor anyone else, submitted a brief summary of Plaintiff's report of rape as required by N.J.A.C. 4A:7-3.2(g).

207. No investigation report was prepared in connection with Plaintiff's report of rape.

208. No final letter of determination was prepared in connection with Plaintiff's report of rape.

209. Plaintiff was never provided notice of any appeal rights she may have had in connection with any determination reached by an investigation into Plaintiff's report of rape.

210. No one from Defendant State interviewed Plaintiff concerning her report of rape to Platkin and/or Garg, as required under the State Policy and state law.

211. Defendant State did not conduct any investigation into Plaintiff's report of rape to Platkin or Garg.

212. No one instructed or asked Plaintiff to participate in any investigation into her report of rape.

213. Platkin notified Cammarano of Plaintiff's report of rape on or about March 22, 2018.

214. Cammarano was not an EEO/AA officer nor did he have any investigative duties or responsibilities in connection with Plaintiff's complaint of rape or other complaints of sexual misconduct, workplace discrimination, or harassment.

215. As such, there was no legitimate reason for Platkin to inform Cammarano of Plaintiff's complaints of rape; the State Policy did not allow Platkin to make such a disclosure.

216. Platkin's act of reporting Plaintiff's complaint to Cammarano is a violation of the State Policy, including his "confidentiality" obligations set forth in N.J.A.C. 4A:7-3.1(j).

217. Platkin's action of informing Cammarano of the reporting of the rape is a violation of the State Policy, including his "confidentiality" obligations set forth in N.J.A.C. 4A:7-3.1(j).

218. Upon information and belief, Defendant State has taken no disciplinary action against Platkin for the aforesaid violations of the State Policy.

219. In response to learning of Plaintiff's complaint of the rape by Defendant Alvarez, Cammarano met with Defendant Alvarez and advised him that Defendant State had received a complaint he raped Plaintiff.

220. During this communication, Cammarano advised Defendant Alvarez that he needed to start looking for a job outside the administration and Defendant State because of Plaintiff's complaint that he raped her.

221. Cammarano's actions in informing Defendant Alvarez of rape complaint lodged against him is a flagrant violation of the State Policy, including Cammarano's "confidentiality"

obligations set forth in N.J.A.C. 4A:7-3.1(j).

222. Upon information and belief, Defendant State has taken no disciplinary action against Cammarano for the aforesaid violation of the State Policy.

223. Instead of conducting any investigation into Plaintiff's complaint of rape, Defendant State and Cammarano informed Defendant Alvarez that he should make arrangements to leave state government.

224. Cammarano testified that he did not inform Governor Murphy because he was informed that the rape was confidential and that he was not permitted to disclose the reporting of the allegation to anyone.

225. Specifically, Cammarano testified that he made it "clear" to Defendant Alvarez that he needed to leave the administration as a result of the report of rape.

226. Cammarano testified, "It's not very common for a chief of staff in a department or an authority to get called into governor's chief of staff office."

227. Cammarano further stated, "I think it was pretty clear, and I believe Mr. Alvarez understood exactly what I was telling him."

228. Defendant Alvarez ignored what Cammarano was telling him and decided to continue his employment with Defendant State.

229. Defendant State allowed Defendant Alvarez to remain employed.

230. Defendant State and Cammarano's decision to take action in response to Plaintiff's complaint by informing Defendant Alvarez that he should make arrangements to leave state government is a violation of the State Policy.

231. Upon information and belief, Defendant State has taken no disciplinary action

against Cammarano for the aforesaid violation of the State Policy.

232. Cammarano testified that he did not inform Governor Murphy because Cammarano had been instructed that the rape complaint was confidential and that he was not permitted to disclose the reported allegation to anyone.

233. Plaintiff never heard back from anyone concerning her report of the rape to Platkin or Garg.

234. As a result, Plaintiff sent Platkin a text message on April 24, 2018 at 8:31 a.m., which reads: "Good morning! FYI, in regard to our previous conversation in JC no one has reached out to me as of yet."

235. Later that day on April 24, 2018, Plaintiff received a phone call from Heather Taylor, Esq., Chief Ethics Officer for Defendant State.

236. During the telephone call, Taylor informed Plaintiff that Defendant State would not take any action because Defendant Alvarez and Plaintiff were not employees of Defendant State at the time of the alleged sexual assault.

237. As such, Defendant State did not initiate or conduct an investigation into Plaintiff's reporting of the rape, in violation of the State Policy.

238. Neither Defendant State nor Taylor conducted any interview of Plaintiff concerning her report of rape or any other related complaints.

239. Neither Defendant State nor Taylor asked Plaintiff any questions about her report of rape or any other related complaints.

240. Neither Defendant State nor Taylor provided Plaintiff with any information, written or oral, on any State policy relating to her report of rape or any other related

complaints.

241. Neither Defendant State nor Taylor informed Plaintiff of any appeal rights she may have had in response to the State's decision to not conduct any investigation into her report of rape or any other related complaints.

242. Plaintiff's action in reporting the rape was a complaint of a violation of the State Policy.

243. Plaintiff's report of rape should have triggered Defendant State's obligation to conduct an investigation under the State Policy.

244. No one reported the alleged violation to the EEO/AA.

245. No one provided Plaintiff with a copy of the Discrimination Complaint Processing Form as required by N.J.A.C. 4A:7-3.2(f).

246. No one instructed Plaintiff to submit any Discrimination Complaint Processing Form as required by N.J.A.C. 4A:7-3.2(f).

247. No one from Defendant State maintained any written record of Plaintiff's reports of rape as required by N.J.A.C. 4A:7-3.2(g).

248. No one from the Division of EEO/AA or Defendant State submitted a brief summary of Plaintiff's report of rape as required by N.J.A.C. 4A:7-3.2(g).

249. No investigation report was prepared in connection with Plaintiff's report of rape.

250. No final letter of determination was prepared in connection with Plaintiff's report of rape.

251. No one was provided notice of any appeal rights they may have had in

connection with any investigation into Plaintiff's report of rape.

F. The Denial of Plaintiff's Request for a Meeting with the Governor

252. On the evening of Friday, June 1, 2018, Plaintiff emailed Governor Murphy and First Lady Tammy Murphy. Plaintiff asked to have a meeting with one or both of them about a "sensitive matter" that occurred during the campaign.

253. Plaintiff did not indicate that this "sensitive matter" involved Defendant Alvarez.

254. Within the hour, Defendant Murphy responded, in relevant part, "We know you well....Hang in. We are on it."

255. The meeting with Plaintiff and Governor Murphy and/or First Lady Murphy was never scheduled.

256. Upon information and belief, no one forwarded or provided a copy of Plaintiff's email to the Governor or the First Lady to the Division of EEO/AA.

257. Instead, Jonathan Berkon, an attorney from Perkins Coie, LLP, who served as counsel to Defendant Murphy Campaign, contacted Plaintiff and advised her that Defendant Alvarez would be leaving the Administration and State employment.

258. The State Policy required all persons who Governor Murphy informed of Plaintiff's email and understood that Plaintiff was referring to her complaints of rape, to refer this further report to the Office of the Governor's EEO/AA Officer, or other individual designated by the State agency to receive complaints of sexual misconduct workplace discrimination or harassment.

259. Berkon was an outside legal counsel and was not employed by the State.

260. Berkon was not an EEO/AA Officer or an individual designated by the State

agency to receive complaints of workplace discrimination or harassment.

261. Berkon had no responsibilities or obligations under the State Policy, was never trained on the State Policy, nor did he have any understanding of the State Policy or obligations under the State Policy.

262. The disclosure to Berkon concerning Plaintiff's disclosure of the rape is a further violation of the State Policy.

263. The failure of all persons who Governor Murphy informed of Plaintiff's email and knew that Plaintiff was referring to her complaints of rape to advise an appropriate EEO/AA Officer or other individual designated by the State agency of Plaintiff's disclosure that she was raped by Defendant Alvarez is a violation of the State Policy.

264. Governor Murphy was not properly trained by Defendant State concerning his obligations under the State Policy or state law in connection with receiving complaints of sexual misconduct, harassment or discrimination.

265. In response to Plaintiff's email requesting a meeting with Murphy to inform him of the rape, Berkon misrepresented to Plaintiff that Defendant Alvarez would be leaving State employment.

266. In a subsequent conversation, Plaintiff asked Berkon to explain the impetus for Defendant Alvarez's departure.

267. Berkon responded that he could not disclose any further information because it was an HR matter.

268. Berkon advised that he would seek additional information for Plaintiff but never again communicated with Plaintiff or provided her with any further information.

269. Based upon Berkon's representation, Plaintiff believed that the Administration and Defendant State had taken action against Defendant Alvarez and that she would no longer have to work in fear of being in the presence of Defendant Alvarez while at work.

270. In response to Plaintiff's email to Governor Murphy requesting a meeting with him and his wife to discuss the rape, Platkin instructed Defendant Alvarez's boss, Charles McKenna, to inform Defendant Alvarez that he needed to look for a new job.

271. According to McKenna's testimony, Platkin called McKenna into his office and informed him that the administration had received a complaint concerning Defendant Alvarez and, as a result, Defendant Alvarez needed to start looking for a new job outside the administration.

272. Platkin's conduct, including his disclosure of a "complaint" to McKenna and his instruction that Defendant Alvarez start looking for a new job outside the administration, are in violation of the State Policy, including his "confidentiality" obligations set forth in N.J.A.C. 4A:7-3.1(j).

273. Platkin was not an investigator and did not have any investigatory duties or responsibilities in connection with an EEO/AA investigation.

274. As such, Platkin had no authority to make any determinations in connection with any issues relevant to Plaintiff's report of rape.

275. Platkin's decision to instruct McKenna to speak to Defendant Alvarez and advise him to start looking for a job outside the administration is a violation of the State Policy, including his "confidentiality" obligations set forth in N.J.A.C. 4A:7-3.1(j).

276. In accordance with Platkin's instructions, McKenna communicated to Defendant

Alvarez that he had been told by the Governor's office that Defendant Alvarez should leave the administration and that if he didn't leave, it could become "ugly" or "embarrassing" for the Governor.

277. McKenna further informed Defendant Alvarez that he could speak to Platkin if he had any questions or comments.

278. Defendant Alvarez ignored McKenna's instruction to leave the administration and instead remained employed by Defendant State.

279. Upon information and belief, Defendant Alvarez was provided a \$30,000 raise by Defendant State in or about the Fall 2018.

280. Contrary to all the foregoing violations of the State Policy, Governor Murphy has publicly stated he has "no reason to believe that folks operated in any way other than out of respect for their obligations both ethically, legally to confidentiality. There is no evidence that they did otherwise."

G. Plaintiff's Decision to Go Public

281. In early September 2018, Plaintiff learned that Defendant Alvarez was still employed with Defendant State.

282. Learning that Defendant Alvarez was still employed by Defendant State confirmed that Defendant State was not going to take any action in response to Plaintiff's report of rape and, believing that she had exhausted all other avenues, Plaintiff determined that all she had left was her voice.

283. As such, Plaintiff decided she would have to go public with her story in order to obtain justice.

284. On October 14, 2018, the Wall Street Journal published Plaintiff's complaints of rape and Defendant State's failure to investigate.

285. In response to Plaintiff's story, in a joint statement provided to the Wall Street Journal, Governor Murphy and Ms. Murphy stated, "We are confident that this allegation was handled appropriately by the administration and policies and procedures were properly and promptly followed. However, it is clear the process during the transition was inconsistent with our values, and the hire should not have happened. We must now ask: How can we hold ourselves to a higher standard moving forward?"

286. Governor Murphy further stated that "[t]hese processes, within government at least, are confidential and treated confidentially. And that's for a reason, to make sure that there's a fairness associated with it. That you're not, even inadvertently, putting your hand on the scale. I believe in this case it obviously was followed because we did not hear about it until October 2."

287. In late October 2018, shortly after Kate King's article concerning Plaintiff was published in the Wall Street Journal, the New Jersey Legislature announced the formation of the New Jersey Legislative Select Oversight Committee.

288. The New Jersey Legislative Select Oversight Committee is tasked with examining public sector hiring practices and to review the procedures the government follows in response to allegations of sexual assault, abuse and harassment, both generally with regard to Defendant State and specifically with regard to the hiring practices of Defendant Murphy Campaign and/or the Transition Office.

289. On or about November 8, 2018, the New Jersey Legislative Select Oversight

Committee held a meeting at which time it was determined Plaintiff would be invited to testify before the Committee.

290. During the public hearing of the New Jersey Legislative Select Oversight Committee on December 4, 2018, Plaintiff testified for approximately five (5) hours concerning the disclosures and complaints she made to the State concerning her rape and the State's failure to conduct any investigation into those disclosures and complaints.

291. Plaintiff did not testify concerning any aspect of the criminal case because the Middlesex County Prosecutor Office's review of the Hudson County Prosecutor's actions with regard to her complaint against Defendant Alvarez is ongoing.

H. The State's EEO/AA "Limited" Investigation of Plaintiff's Work Environment Since October 2018

292. By letter dated December 12, 2018, the State informed Plaintiff that the State had determined that her testimony that she has "'felt ostracized and things have not been the same since October 2018,' after going public with a complaint of sexual assault against a former State employee" may implicate the State Policy.

293. As a result, Defendant State instructed the Division of EEO/AA to review Plaintiff's allegation of feeling "ostracized" since October 2018.

294. The letter further stated that the review is for "administrative reasons for further action as deemed necessary pursuant to the State Policy."

295. The letter further advised Plaintiff that the "EEO takes all allegations of discrimination/retaliation seriously and would therefore, like to discuss these issues with you further."

296. The letter further directed Plaintiff that she should be prepared to provide

“relevant information including documentation and the names of individuals who you believe have specific knowledge regarding your concerns of being ‘ostracized.’”

297. The letter further stated that the “Division of EEO/AA will make every attempt to conclude the investigation and issue a determination letter responding to the complaint within 120 days from the date of [Plaintiff’s] interview. If necessary, that time may be extended for an additional 60 days, of which you will be notified.”

298. The letter further instructed Plaintiff as follows: “The provisions of the State Policy require all related complaints and investigations to be handled on a confidential basis, to the extent possible. Consequently, you should not discuss this matter with anyone who does not have a legitimate reason to have knowledge of it.”

299. The State Policy is ineffective as a matter of law, including through its failure to promptly, fairly, thoroughly and effectively investigate complaints of discrimination, harassment and assault such as Plaintiff’s, enforcement of the Strict Confidentiality Directive, reservation of up to 180 days to conduct an investigation and other provisions.

300. Pursuant to the State Policy set forth in N.J.A.C. 4A:7-3.1(j), Plaintiff and all other witnesses of the investigation have and/or will be threatened with discipline, up to and including termination, if they breach the Strict Confidentiality Directive by disclosing their knowledge of relevant facts relating to this matter.

301. Moreover, Plaintiff and all other witnesses of the investigation have been and/or will be required and/or will require other individuals to execute confidentiality agreements threatening their employment if they disclose any aspect of the investigation.

I. **The State's EEO/AA Unilateral Decision to Close its Investigation into Plaintiff's Allegation That She Had Felt "Ostracized" Since Going Public**

302. On January 7, 2019, Plaintiff applied to the court for emergent relief seeking a declaration that the Defendant State be restrained and enjoined from forcing Plaintiff and any other witnesses to keep any aspect of the rape, Defendant State's failure to investigate and/or any other term, condition or issue of employment through imposition of the Strict Confidentiality Directive (hereinafter, the "OTSC").

303. Plaintiff is aware that the State Policy requires her to participate in any EEO/AA investigation.

304. At no time did Plaintiff inform the State or EEO/AA that she was not willing to participate in the EEO/AA investigation.

305. The State and EEO/AA were fully aware that Plaintiff had responded to the EEO/AA investigation by filing for relief in Court to prevent the State from disciplining her, up to and including termination, should she disclose any facts concerning the investigation or other facts relevant to the matter.

306. Plaintiff further, through her attorneys, had communications with the State's attorneys concerning the EEO/AA investigation and her participation in connection therewith.

307. The State and EEO/AA were fully informed that Plaintiff was not unwilling to participate in the EEO/AA investigation, but that she believed the Strict Confidentiality Directive violated her constitutional and statutory rights and as a result, needed relief from the Court to address same.

308. By letter dated March 1, 2019, the State and the EEO/AA informed Plaintiff that because "neither Investigator Mistichelli nor the Division of EEO/AA has received any written or

verbal communications” in further response to its December 12, 2018 letter, “the Division of EEO/AA has no choice but to close this matter due to the limited information regarding your concerns.”

309. The State’s decision to unilaterally terminate the EEO/AA investigation was made in direct response to Plaintiff seeking relief from the Court concerning the State’s imposition of its unlawful Strict Confidentiality Directive.

J. The State’s Proposed Revisions to the State’s Policy

310. Upon information and belief, on or about January 16, 2019, a regular meeting of the Defendant State Civil Service Commission took place in Trenton, New Jersey.

311. Pursuant to the Minutes of the Regular Meeting of the Civil Service Commission on January 16, 2019 (“the Civil Service Meeting”) the Civil Service Commission Chair and Chief Executive Officer, Dierdre Webster Cobb, served as Chairperson of the Civil Service Meeting at which Civil Service Commission Members Dolores Gorczyca and Daniel W. O’Mullan, Deputy Attorney General Pamela Ulman and Division of Appeals and Regulatory Affairs Director Christopher Myers were present.

312. Item B-31 of the January 16, 2019 Minutes of the Civil Service Meeting states:

Proposed Amendments to N.J.A.C. 4A

Submitted for the Commission’s approval is a Notice of Proposal for various amendments to N.J.A.C. 4A. Substantive and technical amendments are proposed.

ACTION: The Civil Service Commission approved the proposed amendments for public notice and comment.

313. On or about February 5, 2019, Governor Murphy issued a press release announcing “Revised State Policies and Procedures for the Handling of Allegations of Sexual

Misconduct Against State Employees and Applicants for Employment.” A copy of the press release is annexed hereto as **Exhibit C**.

314. Governor Murphy’s press release further announced that the “Governor Supports Full Recommendations Outlined by Mamta Patel, Director of the Statewide Division of Equal Employment Opportunity (EEO) and Affirmative Action.”

315. The New Jersey Register, 51 N.J.R. 191 (February 19, 2019), sets forth the revisions (in bold) to N.J.A.C. 4A:7-3.1(j) as follows:

All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout **and after** the investigative process **has been completed**. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. All persons interviewed, including witnesses, shall be directed to not discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive **[may] will** result in administrative and/or disciplinary action, up to and including termination of employment.

A copy of the relevant portions of New Jersey Register 51 N.J.R. 191 are annexed hereto as **Exhibit D**.

316. The proposed revisions to N.J.A.C. 4A:7-3.1(j) mandating discipline for breach of the Strict Confidentiality Directive were excluded from Governor Murphy’s February 5, 2019 press release concerning the recommended changes to the New Jersey State Policy and Procedures Prohibiting Discrimination in the Workplace.

317. The proposed revisions to N.J.A.C. 4A:7-3.1(j) were also not disclosed to the

public in Ms. Webster Cobb and Ms. Patel's memoranda of December 3, 2018 and January 28, 2019 to Governor Murphy. Copies of the memoranda are annexed hereto as **Exhibit E**.

318. The proposed revisions to N.J.A.C. 4A:7-3.1(j) were concealed in the link contained in the February 5, 2019 press release to "review all changes to New Jersey State Policy and Procedures Prohibiting Discrimination in the Workplace" (https://nj.gov/governor/news/news/562019/docs/20190205_Revised.pdf). A copy of the link to the proposed revisions currently available on the state's website is annexed hereto as **Exhibit F**.

319. Additionally, in Governor Murphy's press release and Ms. Webster-Cobb and Ms. Patel's January 28, 2019 publicized memoranda to Governor Murphy, the State represents that the revised changes to N.J.A.C. 4A:7-3.1 (a)(1) include the following revision clarifying that State employees include employees of Gubernatorial Transition Offices.

320. Specifically, the State represented that the revision was as follows:

N.J.A.C. 4A:7-3.1 Policy prohibiting discrimination in the workplace

1. Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale, and interferes with work productivity. **Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, authorities and Gubernatorial Transition Offices (hereafter referred to in this section as "State agencies" or "State agency."**

321. The revisions to the State policy of N.J.A.C. 4A:7-3.1(a)(1) set forth in 51 N.J.R. at 198 do not clarify that State employees include employees for Gubernatorial Transition Offices but instead clarify that New Jersey does not tolerate harassment or discrimination by employees of Gubernatorial Transition Offices.

322. Specifically the proposed revisions to N.J.A.C. 4A:7-3.1, Policy prohibiting discrimination in the workplace, read:

Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale, and interferes with work productivity. Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, authorities (hereinafter referred to in this section as “State agencies” or “State agency”). The State of New Jersey will not tolerate harassment or discrimination by anyone in the workplace including supervisors, co-workers, **employees of Gubernatorial Transition Offices**, or persons doing business with the State. This policy also applies to [both] conduct that occurs in the workplace and conduct that occurs at any location [which] **that** can be reasonably regarded as an extension of the workplace (any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed). **This policy also applies to posts on any social media site and/or electronic device, personal or business, that adversely affects the work environment defined by the State Policy.**

323. Because the proposed changes to the N.J.A.C. 4A:7-3.1(j) and the clarification concerning Gubernatorial Transition employees being State employees under the State Policy were not included in the memos, it is unclear as to whether Governor Murphy has been informed of the State’s Civil Service Commission’s proposed changes to the state policy.

324. As a result of the foregoing, Plaintiff has suffered emotional distress and continues to experience ongoing severe emotional distress and economic damages.

325. The proposed revisions to the State Policy announced in the February 5, 2019 press release (and which are currently publicized on the State’s website) are not the same revisions to the State Policy that were approved by the Civil Service Commission during their January 16, 2019 meeting and proposed in the New Jersey Register, 51 N.J.R. 191.

FIRST COUNT

DECLARATORY JUDGMENT THAT THE STATE'S ANTI-HARASSMENT POLICY VIOLATES EMPLOYEES' CONSTITUTIONAL AND STATUTORY RIGHTS AND VIOLATES NEW JERSEY STATE PUBLIC POLICY

326. Plaintiff repeats and realleges each and every prior allegation of the Complaint as if set forth at length herein.

327. Plaintiff seeks relief under the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50 et seq. which allows parties to sue for a judicial declaration in order to declare and settle the rights and obligations of the parties.

328. Plaintiff seeks a declaration that New Jersey's "State Policy" Prohibiting Discrimination in the Workplace runs contrary to and is in violation of the State Constitution, the LAD and New Jersey state public policy.

329. The First Amendment of the New Jersey State Constitution § 6 states, in relevant part:

Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.

330. New Jersey maintains a strong public policy against discrimination.

331. It is of significant public interest that victims be able to freely and openly speak about discrimination and exercise their rights under the New Jersey State Constitution and the LAD.

332. In enacting the LAD, the Legislature found and declared that practices of discrimination against any of its inhabitants, because of race, creed, color, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital

status, familial status, liability for service in the Armed Forces of the United States, disability or nationality, are matters of concern to the government of the State, and that such discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State.

333. The Legislature further found that because of discrimination, people suffer personal hardships, and the State suffers a grievous harm.

334. The Legislature intends that damages resulting from LAD violations be available to all persons protected by this act and that this act shall be liberally construed in combination with other protections available under the laws of this State.

335. The LAD requires employers to maintain an effective anti-harassment policy in place that includes the employer conducting fair, prompt and thorough investigations into complaints of sexual harassment and not retaliating against persons who are involved in a harassment investigation.

336. Under the LAD, the State “is directly and strictly liable for all equitable damages and relief to the extent any state employees, who is subjected to discrimination or sexual harassment [including but not limited to Plaintiff,] seeks equitable remedies, that is, restoration to the terms, conditions and privileges of employment the employee would have enjoyed but for the workplace discrimination or harassment.” See Aguas v. State of New Jersey, 220 N.J. 449, 509 (2015) quoting Lehman v. Toys ‘R’ Us, 132 N.J., 587, 617 (1993).

337. The State has adopted the State Policy to prevent and address discrimination and harassment in the State work environment.

338. The State Policy, as set forth in N.J.A.C. 4A:7-1.1(a), states that “[t]here shall be equal employment opportunity for all persons in, or applicants for, the career, unclassified, and senior executive services, regardless of [their protected trait], except where a particular qualification is specifically permitted and is essential to successful job performance.”

339. N.J.A.C. 4A:7-1.1(b) defines an “[e]qual employment opportunity” as including:

but is not limited to recruitment, selection, hiring, training, promotion, transfer, work environment, layoff, return from layoff, compensation, and fringe benefits. Equal employment opportunity further includes policies, procedures, and programs for recruitment, employment, training, promotion, and retention of minorities, women, and persons with disabilities.

340. As set forth in in N.J.A.C. 4A:-7-1-1(f), the State Policy prohibits:

all forms of discriminatory conduct against any State employee by any other State employee or person doing business with the State. In addition, this chapter prohibits any form of discriminatory conduct by a State employee against a person doing business with the State. A ‘person doing business with the State’ means an independent vendor performing services or supplying goods pursuant to a contract with the State.

341. The Equal Employment Opportunity Advisory Commission consists of 11 members who are appointed by the Governor.

342. The Equal Employment Opportunity Advisory Commission is tasked under N.J.A.C. 4A:7-2.2 (b) to advise the Division of EEO/AA and make recommendations on improving the State’s affirmative action efforts.

343. Under N.J.A.C. 4A:7-2.1(a), “the [EEO/AA] “shall develop, implement and administer an equal employment opportunity and affirmative action program for all State employees in the career, senior executive and unclassified services.”

344. Under N.J.A.C. 4A:7-2.1(a)(3), the EEO/AA is responsible to “monitor each State agency to ensure compliance with all laws and rules relating to equal employment opportunity and affirmative action and to determine that the purposes of [the State Policy] are implemented through the State agency’s [EEO/AA] Officers.”

345. The EEO/AA is responsible under N.J.A.C. 4A:7-2.1(a)(6) to “review State personnel policies, practices, and procedures, and where appropriate, eliminate artificial barriers to equal employment opportunity.”

346. Under N.J.A.C. 4A:7-2.1(a)(9), the EEO/AA is responsible to “[r]eview its rules, selection devices, and testing procedures in order to amend or eliminate those which are discriminatory.”

347. Under N.J.A.C. 4A:7-2.1(a)(12), the EEO/AA is responsible to “[r]eview all discrimination complaints under Title VII of the Civil Rights Act of 1964, the New Jersey Law Against Discrimination and the New Jersey State Policy Prohibiting Discrimination in the Workplace; and evaluate trends and recommend appropriate policy.”

348. Under N.J.A.C. 4A:7-2.3(b)(8) “[e]ach State agency shall...[a]dopt and implement the Model Procedures for Internal Complaints Alleging Discrimination in the Workplace, N.J.A.C. 4A:7-3.2.”

349. The State Policy as set forth in N.J.A.C. 4A:7-3.1 and 3.2, as well as in practice and through the system is not “survivor centric” in violation of New Jersey’s stated public policy.

350. Governor Murphy has repeatedly acknowledged New Jersey’s strong public policy in creating a safe and discrimination-free work environment for state employees.

351. In response to the Wall Street Journal article, Governor Murphy requested that the Civil Service Commission and the EEO/AA conduct a review of the state's policies and procedures to determine whether there are ways to improve the State Policy and the system on how the State handles allegations of sexual misconduct.

352. In response to Governor Murphy's request, the Civil Service Commission and EEO/AA reviewed the policy and proposed certain revisions to the language of the State Policy.

353. According to the State's February 5, 2019 press release, the revisions included "a broader definition of inappropriate, coerced touching to clarify that an allegation of sexual assault would implicate the state policy, and also strengthens protocols for all complainants of discrimination and sexual harassment."

354. In the press release announcing the proposed revisions to the State Policy, the Civil Service Commission Chair and Chief Executive Officer, Deirdre Webster Cobb, Esq., stated that "[t]he Civil Service Commission is pleased to have worked alongside the Governor's office to make substantive changes that will strengthen the state's sexual harassment policies and procedures[.]"

355. Ms. Webb further stated, "I firmly support the Governor's call to modify the sexual harassment policy which promotes an environment where survivors of sexual harassment or misconduct can come forward. I commend Mamta Patel, Director of EEO and Affirmative Action and Chris Myers, Director of Division of Appeals and Regulatory Affairs for their tireless work on enhancing the existing policy."

356. Ms. Patel was also quoted in the press release, in which she stated, "[t]he New Jersey State Policy and Procedures Prohibiting Discrimination in the Workplace is a strong,

comprehensive policy designed to support state employees and applicants for employment.”

357. Ms. Patel further stated, “[t]he revisions to the state policy include a broader definition of inappropriate, coerced touching to clarify that an allegation of sexual assault would implicate the state policy, and also strengthens protocols for all complainants of discrimination and sexual harassment.”

358. Governor Murphy commented on the changes by stating, “These sweeping revised policies and procedures make significant and impactful changes to how sexual harassment and misconduct allegations are handled in state government,” Governor Phil Murphy said. “These additional measures clearly dictate the appropriate course of action to be taken by both survivors and the state. By embracing a survivor-centered approach in New Jersey, we are creating an environment where survivors of sexual harassment, misconduct, or assault are not only encouraged to come forward, but when doing so, they are met with dignity, respect, and a straightforward process to attain justice.”

359. Despite the revisions made to the language of the State Policy as announced February 5, 2019, and contrary to the public statements made by Webb, Patel and Governor Murphy, the State Policy runs contrary to and is in violation of the State Constitution, the Law Against Discrimination and the New Jersey state public policy.

360. Additionally, the proposed revisions to the State Policy announced by the Governor on February 5, 2019 are not the revisions to the State Policy that are set forth in 51 N.J.R. 191.

361. The State Policy is ineffective as matter of law because it violates employees’ constitutional and statutory rights and violates New Jersey’s State’s “victim centric” public

policy.

362. Plaintiff made numerous disclosures and/or complaints to the State concerning the rape.

363. The disclosures and complaints constitute the reporting of an event that implicates the State Policy and the State's obligations under applicable state law to conduct a thorough, complete and prompt investigation.

364. The State failed to conduct any investigation into Plaintiff's reports of rape.

365. As a result of Defendant State's refusal to investigate and other violations of its obligations under the State Policy, Plaintiff was compelled to go public with her complaints of rape to the Wall Street Journal.

366. The publication of Plaintiff's complaints prompted the New Jersey Legislative Select Oversight Committee to invite Plaintiff to testify regarding her complaints.

367. On December 4, 2018, Plaintiff publicly testified before the New Jersey Legislative Select Oversight Committee.

368. Plaintiff was questioned for approximately five (5) hours concerning the disclosures and complaints she made to Defendant State concerning the rape and Defendant State's failure to conduct any investigation into them.

369. In response to a question during the hearing, Plaintiff stated that she had "felt ostracized and things have not been the same since October 2018."

370. In response to Plaintiff's testimony, Defendant State has now launched an investigation into Plaintiff's allegation of feeling "ostracized" since October 2018.

371. As an employee of Defendant State, Plaintiff is required under N.J.A.C. 4A:7-3.1(d) to cooperate in the investigation, which includes being interviewed by an EEO/AA investigator.

372. As set forth in N.J.A.C. 4A:7-3.1(d), Plaintiff's "failure to cooperate in an investigation may result in administrative and/or disciplinary action, up to and including termination of employment."

373. Defendant State has specifically "limited" its current EEO/AA investigation into Plaintiff's feeling of being ostracized since October 2018.

374. To date, Defendant State has continued to refuse to conduct any investigation into Plaintiff's underlying claims concerning the rape and Defendant State's refusal to investigate same.

375. Defendant State has advised Plaintiff that the EEO/AA will make every attempt to conclude its "limited" investigation and issue a determination letter 120 days from the date of [Plaintiff's] interview.

376. Defendant State has further reserved itself an additional 60 days, in its own discretion, for a total of a potential 180 days, to complete an investigation and issue a determination.

377. The State's reservation of up to 180 days to conduct and complete an investigation is not a prompt or effective investigation under the law and established legally complaint guidelines for conducting harassment investigations.

378. For example, the State of New York recently changed its State harassment policy to replace the prior "30 day" time frame for completing a harassment investigation with

language that State investigations in New York will be “commenced immediately and completed as soon as possible.”

379. As an employee of Defendant State, and complainant to be interviewed, Plaintiff has been “directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned” as set forth in N.J.A.C. 4A:7-3.1(j).

380. Defendant State’s State Policy specifically threatens Plaintiff that “[f]ailure to comply with this confidentiality directive may result in disciplinary action, up to and including removal.” N.J.A.C. 4A:7-3.1(j).

381. Consistent with Defendant State’s practice concerning implementing N.J.A.C. 4A:7-3.1(j), Plaintiff will be required to execute the State’s “Strict Confidentiality Directive” form.

382. The State’s threatening and attempting restraint of Plaintiff through its “Strict Confidentiality Directive” is a violation of Plaintiff’s constitutional and state rights.

383. In response to Plaintiff’s lawsuit, the State is attempting to strengthen the Strict Confidentiality Directive to require disciplinary action for anyone who breaches the Strict Confidentiality Directive.

384. Plaintiff seeks a declaration that the State Policy, and all of its proposed revisions, are ineffective as a matter of law and in violation of the State Constitution, LAD and State Public Policy.

385. Plaintiff further seeks a declaration that the State be restrained and enjoined from forcing Plaintiff and any other witnesses to keep confidential any aspect of the rape,

Defendant State's failure to investigate and/or any other term, condition or issue of employment.

386. Plaintiff further seeks a declaration that Defendants may not attempt to preclude, deter, discourage or discipline any witness from discussing this matter with anyone at any time by reasons of the provisions of N.J.A.C. 4A:7-3.1(j) or the Strict Confidentiality Directive used in EEO/AA investigations.

387. Plaintiff further seeks a declaration that Defendant State's confidentiality provisions, policies and practices in connection with investigations, as set forth in N.J.A.C. 4A:7-3.1(j), are in violation of Plaintiff's and other state employee's First Amendment rights, the LAD, and public policy and therefore must be deemed null and void.

388. The State Policy, by its expressed terms and through the EEO/AA's enforcement of same, is ineffective as a matter of law.

389. Plaintiff seeks equitable relief in requiring the State to revise its State Policy in a meaningful and significant way in which it would become compliant with the State constitution, state law and state public policy.

390. Such revisions to the State Policy may include, but are in no way limited to, the following:

(A) Eliminate the Strict Confidentiality Directive and replace it with "All persons interviewed, including complainant's and witnesses, shall be asked to use discretion in communicating any aspect of the investigation so as to avoid interfering with the investigation. Nothing in this request should be interpreted as any restriction upon

- any state employee's rights under state or federal law, including their right of free speech and/or right to communicate any allegations to another other person[.]”;
- (B) Allow complainants and respondents of harassment allegations be accompanied with a support person or advisor of their choice to any meeting or interview that is conducted under the State Policy. An advisor or support person, may not, however, stand in place of the complainant or the respondent, or otherwise interfere in the investigation process;
 - (C) Change the requirement that EEO/AA investigations be completed and the final letter of determination issued from the current regulation of “within 120 days” and “up to 60 additional days in cases involving exceptional circumstances” to “as soon as possible”;
 - (D) Require any state employee found personally liable in a final judgment or an adjudicated award for intentional violations of the State Policy to reimburse the State for that individual's proportionate share of the total monetary award paid by the State to any other person;
 - (E) Require that if the person found to have violated the policy is not employed by the State, other appropriate action shall be taken, including notice to the actual subsequent employer in a manner similar to the provisions of the State of Hawaii Discrimination/Harassment-free Workplace Policy No. 601.00;
 - (F) Eliminate the “At the EEO/AA Officer's discretion” of N.J.A.C 4A:7-3.2(i) and change to provision to confirm that the State will investigate “all reasonable and good faith complaints that implicate under the Policy”;

- (G) Permit any complainant who has filed a civil action for a claim of discrimination, harassment or retaliation to gain access to at a minimum any investigation undertaken by the EEO/AA of any discrimination, harassment or retaliation complaint within their Department within the last (5) years; and,
- (H) Adopt a comprehensive conflict of interest policy that, at minimum, describes policies and procedures for in which an investigator and/or other individual who participates in any EEO/AA investigation must recuse themselves because of a conflict of interest.

WHEREFORE, in addition to the equitable relief sought herein and above, Plaintiff respectfully requests that the Court enter judgment in their favor and against Defendants as follows:

- A. Declaring that Defendant State's policy is ineffective as a matter of law;
- B. Enjoining State Defendant from implementing any further revisions to N.J.A.C. 4A that do not comply with and/or are contrary to the State Constitution, the LAD and public policy of "survivor-centric";
- C. Requiring Defendant State to take appropriate measures to revise the State Policy to be effective and not violate State employees' rights;
- D. Declaring that the Strict Confidentiality Directive contained in N.J.A.C. 4A:7-3.1(j) violates state law, including the First Amendment and the LAD as applied to Plaintiff and similarly situated employees of the State of New Jersey;

- E. Requiring Defendant State to notify any State employees who have executed Strict Confidentiality Directive Forms that they are null and void by so informing by means of:
 - 1. Oral notification;
 - 2. Written notification; and
 - 3. Publicly posted notification;
- F. Attorney's fees and costs; and
- G. Awarding any and all such other relief as deemed just and warranted.

SECOND COUNT

**NEW JERSEY LAW AGAINST DISCRIMINATION ("LAD")
N.J.S.A. 10:5-1, et seq. – HOSTILE "PUBLIC ACCOMMODATION" ENVIRONMENT**

391. Plaintiff repeats and realleges each of the prior allegations of the within Complaint as if set forth at length herein.

392. Defendant Murphy Campaign is an entity that qualifies as a public accommodation under the LAD.

393. Defendant Murphy Campaign engaged in broad public solicitation for campaign volunteers, workers and employees and for the votes of New Jersey registered voters.

394. Defendant Murphy Campaign maintained a close relationship with the government and other public accommodations.

395. Defendant Murphy Campaign is similar to enumerated or other previously recognized public accommodations recognized under the LAD.

396. The LAD prohibits unlawful discrimination and harassment at the workplace and in places of public accommodation.

397. Defendant Alvarez's sexual assault of Plaintiff was unwelcomed and would not have occurred but for Plaintiff's sex.

398. The complained of conduct was severe or pervasive enough to make a reasonable woman believe that the conditions of the public accommodation were altered and the public accommodation was hostile or abusive.

399. The harassing conduct was caused, in part, by the conduct of supervisors, managers, owners and/or alter egos of Defendant Murphy Campaign.

400. Defendant Murphy Campaign knew of the rape and failed to undertake appropriate remedial action and was otherwise negligent in allowing the harassing atmosphere and hostile public accommodation environment to exist.

401. Defendant Murphy Campaign is vicariously, strictly, and/or directly liable to Plaintiff pursuant to the LAD, et seq., in that the affirmative acts of harassment, discrimination and sexual assault committed by Defendant Alvarez which occurred within the scope of the public accommodation; the creation of the hostile public accommodation environment was aided by Defendant Murphy Campaign in delegating power to the Defendants to control the day-to-day working environment; Defendant Murphy Campaign was deliberately indifferent, reckless, negligent and/or tacitly approved the hostile work environment; and/or Defendant Murphy Campaign failed to create and/or have in place well-publicized and enforced anti-harassment policies, effective formal and informal complaint structures, training, monitoring mechanisms for same despite the foreseeability of sexual harassment and discrimination in the place of public accommodation; and/or by having actual knowledge of the harassment and/or

hostile public accommodation environment and failing to promptly and effectively act to stop it.

402. The authority delegated by Defendants to Defendant Alvarez, aided him in sexually harassing, assaulting and injuring Plaintiff.

403. The authority was delegated to Defendants to investigate Plaintiff's complaints and it failed to do so.

404. Defendants' acts or omissions were the cause of Plaintiff's harm, and Defendants' acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.

405. As a result of Defendants' conduct, Plaintiff has suffered, and continues to suffer, emotional distress, economic loss and other damages recoverable under the LAD.

WHEREFORE, Plaintiff demands judgment against Defendants for harm suffered due to the aforesaid violations of the LAD as follows:

- A. Compensatory damages;
- B. Consequential damages;
- C. Punitive damages;
- D. Pre-judgment interest and enhancements to off-set negative tax consequences;
- E. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof

required to off-set negative tax consequences and/or enhancements otherwise permitted under law);

- F. Declaring that Defendants have violated the LAD and requiring Defendants to take appropriate corrective action to end discrimination in the workplace;
- G. Ordering Defendants to take appropriate corrective action to stop and prevent discrimination at the workplace;
- H. Ordering Defendants to take appropriate corrective action to stop and prevent retaliation at the workplace;
- I. Ordering Defendants to take appropriate corrective action to stop and prevent harassment at the workplace;
- J. Ordering Defendants to undergo anti-discrimination training;
- K. Ordering Defendants to undergo anti-retaliation training;
- L. Ordering Defendants to undergo anti-harassment training;
- M. Ordering Defendants to undergo workplace civility training;
- N. Ordering Defendants to undergo bystander intervention training;
- O. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-discrimination training;
- P. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-retaliation training;
- Q. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-harassment training;

- R. Ordering Defendants to engage a research organization to assess the effectiveness of their workplace civility training;
- S. Ordering Defendants to engage a research organization to assess the effectiveness of their bystander intervention training;
- T. Ordering Defendants to identify an appropriate professional to investigate any future complaints of discrimination;
- U. Ordering Defendants to identify an appropriate professional to investigate any future complaints of harassment;
- V. Ordering Defendants to identify an appropriate professional to investigate any future complaints of retaliation; and
- W. Such other relief as may be available and which the Court deems just and equitable.

THIRD COUNT

LAD -- HOSTILE WORK ENVIRONMENT

406. Plaintiff repeats and realleges each of the prior allegations of the within Complaint as if set forth at length herein.

407. Defendants Murphy Campaign and the State are employers under the LAD.

408. Plaintiff was an “employee” and a “person” under the LAD as an applicant, volunteer, prospective employee and/or employee of Defendants the State and the Murphy Campaign.

409. Plaintiff was also a “State employee” and/or a “prospective State employee” under N.J.A.C. 4A:7-3.1(a).

410. The sexual assault, harassment and other discrimination directed toward Plaintiff was unwelcome and based upon her sex.

411. The complained of conduct would not have occurred but for Plaintiff's sex.

412. The complained of conduct was severe or pervasive enough to make a reasonable woman believe that the conditions of her employment and/or prospective employment were altered and the working environment was hostile or abusive.

413. The harassing conduct included living in constant fear that Defendant Alvarez would confront, approach, or come into contact with her at her place of employment.

414. The harassing and other unlawful conduct described herein was caused, in part, by the conduct of supervisors and/or managers of Defendants.

415. Defendants Murphy Campaign and the State knew of the harassment and failed to undertake appropriate remedial action and/or were otherwise negligent in allowing the harassing atmosphere and hostile work environment to exist and perpetuate.

416. As set forth herein, Defendant State repeatedly violated the State Policy in responding to the reporting of Plaintiff's allegations of the rape.

417. As the employer of Plaintiff, Defendants Murphy Campaign and the State are vicariously, strictly, and/or directly liable to Plaintiff pursuant to the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1, et seq., in that the affirmative acts of sexual harassment and discrimination committed by Defendant Alvarez occurred within the scope of their employment; the creation of the hostile work environment was aided by Defendants Murphy Campaign and the State in delegating power to the Defendants to control the day-to-day working environment; Defendants Murphy Campaign and the State were deliberately

indifferent, reckless, negligent and/or tacitly approved the hostile work environment; and/or Defendants Murphy Campaign and the State failed to create and/or have in place well-publicized and enforced anti-harassment policies, effective formal and informal complaint structures, training, monitoring mechanisms for same despite the foreseeability of sexual harassment and discrimination in the workplace; and/or by having actual knowledge of the harassment and/or hostile work environment and failing to promptly and effectively act to stop it.

418. As a result of Defendants' conduct, Plaintiff has suffered, and continues to suffer, emotional distress, economic loss and other damages recoverable under the LAD.

WHEREFORE, Plaintiff demands judgment against Defendants for harm suffered due to the aforesaid violations of the LAD as follows:

- A. Compensatory damages;
- B. Consequential damages;
- C. Punitive damages;
- D. Pre-judgment interest and enhancements to off-set negative tax consequences;
- E. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law);

- F. Declaring that Defendants have violated the LAD and requiring Defendants to take appropriate corrective action to end discrimination in the workplace;
- G. Ordering Defendants to take appropriate corrective action to stop and prevent discrimination at the workplace;
- H. Ordering Defendants to take appropriate corrective action to stop and prevent retaliation at the workplace;
- I. Ordering Defendants to take appropriate corrective action to stop and prevent harassment at the workplace;
- J. Ordering Defendants to undergo anti-discrimination training;
- K. Ordering Defendants to undergo anti-retaliation training;
- L. Ordering Defendants to undergo anti-harassment training;
- M. Ordering Defendants to undergo workplace civility training;
- N. Ordering Defendants to undergo bystander intervention training;
- O. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-discrimination training;
- P. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-retaliation training;
- Q. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-harassment training;
- R. Ordering Defendants to engage a research organization to assess the effectiveness of their workplace civility training;

- S. Ordering Defendants to engage a research organization to assess the effectiveness of their bystander intervention training;
- T. Ordering Defendants to identify an appropriate professional to investigate any future complaints of discrimination;
- U. Ordering Defendants to identify an appropriate professional to investigate any future complaints of harassment;
- V. Ordering Defendants to identify an appropriate professional to investigate any future complaints of retaliation; and
- W. Such other relief as may be available and which the Court deems just and equitable.

FOURTH COUNT

ASSAULT

419. Plaintiff repeats and realleges each and every prior allegation of the Complaint as if set forth at length herein.

420. Plaintiff was subject to the intentional tort of assault by Defendant Alvarez.

421. Defendant Alvarez intentionally touched Plaintiff without Plaintiff's consent at times during her employment.

422. Defendant Alvarez's actions were committed with actual malice or accompanied by a wanton and willful disregard of Plaintiff, who foreseeably might be harmed by those acts.

423. Defendant Alvarez's actions and conduct constitute assault under New Jersey common law and Defendant is liable in tort to Plaintiff.

424. Defendant Alvarez acted with the intent to cause a harmful and offensive

physical contact with Plaintiff.

425. Plaintiff was put in immediate apprehension and fear of harmful and offensive physical contact with Defendant Alvarez as a result of his actions.

426. Defendant Alvarez is liable in damages to Plaintiff for all injuries proximately caused by his actions which put Plaintiff in immediate apprehension and fear of harmful and offensive physical contact.

427. As a result of Defendant Alvarez's conduct, Plaintiff has suffered and/or continues to suffer bodily injury, emotional distress, economic loss, and other damages.

WHEREFORE, Plaintiff demands judgment against Defendant Alvarez for harm suffered due to the aforesaid conduct as follows:

- A. Compensatory damages;
- B. Consequential damages;
- C. Punitive damages;
- D. Pre-judgment interest and enhancements to off-set negative tax consequences;
- E. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law); and
- F. Such other relief as may be available and which the Court deems just and equitable.

FIFTH COUNT

BATTERY

428. Plaintiff repeats and realleges each and every prior allegation of the Complaint as if set forth at length herein.

429. Plaintiff was subject to the intentional tort of battery by Defendant Alvarez.

430. Defendant Alvarez intentionally touched Plaintiff without Plaintiff's consent and over Plaintiff's objections.

431. Defendant Alvarez's actions were committed with actual malice or accompanied by a wanton and willful disregard of Plaintiff, who foreseeably might be harmed by those acts.

432. Defendant Alvarez's actions and conduct constitute battery under New Jersey common law and Defendant is liable in tort to Plaintiff.

433. Defendant Alvarez acted with the intent to cause a harmful and offensive physical contact and touching of Plaintiff.

434. Defendant Alvarez's conduct caused harmful physical contact with Plaintiff, who suffered physical pain and impairment to her body as a result of Defendant Alvarez's actions.

435. Defendant Alvarez's conduct caused offensive physical contact with Plaintiff, who suffered an affront to her personal dignity as a result of Defendant Alvarez's actions.

436. Defendant Alvarez is liable in damages to Plaintiff for all injuries proximately caused by his nonconsensual touching of Plaintiff.

437. As a result of Defendant Alvarez's conduct, Plaintiff has suffered and/or continues to suffer bodily injury, emotional distress, economic loss, and other damages.

WHEREFORE, Plaintiff demands judgment against Defendant Alvarez for harm suffered due to the aforesaid conduct as follows:

- A. Compensatory damages;
- B. Consequential damages;
- C. Punitive damages;
- D. Pre-judgment interest and enhancements to off-set negative tax consequences;
- E. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law); and
- F. Such other relief as may be available and which the Court deems just and equitable.

SIXTH COUNT

VIOLATION OF NEW JERSEY CIVIL RIGHTS ACT, N.J.S.A. 10:6-2(c)

439. Plaintiff repeats, realleges and incorporates by reference each and every allegation stated above as if fully set forth herein.

440. N.J.S.A. 10:6-2(c) states, in pertinent part:

Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been

interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.

441. N.J.A.C. 4A:7-3.1(j) states, in pertinent part:

In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment.

442. The First Amendment of the New Jersey State Constitution § 6 states, in relevant part:

Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.

443. Defendants have subjected Plaintiff to the Strict Confidentiality Directive contained in N.J.A.C. 4A:7-3.1(j) in connection with Defendants' investigation into Plaintiff's complaint of feeling "ostracized."

444. Defendants' imposition of the Strict Confidentiality Directive interfered with Plaintiff's rights under the First Amendment by threatening, intimidating, and/or coercing Plaintiff to keep "all aspects of the investigation" into her complaints confidential or else face disciplinary action, up to and including termination.

445. This threat of disciplinary action, up to and including termination, was made by persons acting under color of law.

446. Plaintiff's rights under the First Amendment are substantive rights, privileges or immunities secured by the Constitution of this State, within the meaning of N.J.S.A. 10:6-2(c).

447. Discussing the facts and circumstances surrounding Plaintiff's complaint of feeling "ostracized," as well as the investigation into same, is inherently speech on a matter of public concern, bringing it within the protection of the First Amendment.

448. Defendants' Strict Confidentiality Directive, barring Plaintiff from discussing any matters related to Plaintiff's complaint of feeling "ostracized" and Defendants' investigation into same, is not a restriction on speech that is necessary for Defendants to operate efficiently and effectively.

449. In retaliation for Plaintiff filing of the OTSC, the State unilaterally dropped the EEO/AA investigation in retaliation of Plaintiff exercising her rights and enjoying a protected action.

450. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered and continues to suffer career damage, financial loss, damage to her reputation and emotional distress.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in their favor and against Defendants as follows:

- A. Economic damages for career path losses;
- B. Compensatory damages, including damages for emotional distress;
- C. Compensation for reputational damage;
- D. Attorneys' fees and costs of suit;
- E. Punitive damages; and

F. Such other relief as the Court may deem equitable and just.

SEVENTH COUNT

LAD – RETALIATION

451. Plaintiff repeats, realleges and incorporates by reference each and every allegation stated above as if fully set forth herein.

452. Plaintiff exercised her right under the LAD to engage in protected activity and file a lawsuit against the Defendant State to seek a declaration that the Defendant State be restrained and enjoined from forcing Plaintiff and any other witnesses to keep any aspect of the rape, Defendant State's failure to investigate and/or any other term, condition or issue of employment as confidential through imposition of the Strict Confidentiality Directive.

453. Defendant State's conduct, including but not limited to, unilaterally closing the EEO/AA and attempting to strengthen the Strict Confidentiality Directive by now requiring the issuance of discipline to any victim of sexual harassment and/or assault (or witness) who exercises their First Amendment and statutory rights to disclose their protective activity to anyone, including their spouses, lawyers, medical professional or a court of law, is a further attempt to silence victims of sexual harassment and sexual assault, and is in retaliation for Plaintiff's exercise, attempted exercise and/or enjoyment of rights provided to her under the LAD.

454. Defendant State's acts and/or omissions are the cause of Plaintiff's harm and Defendant State's actor's acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.

455. The conduct involved Defendant State's upper management and was egregious, willful, wanton, and in reckless disregard for Plaintiff's rights for which punitive damages are appropriate.

456. As a direct and proximate result of Defendant State's violations of the LAD, Plaintiff has suffered emotional distress, and other compensatory damages.

457. As a result of Defendants' conduct, Plaintiff has suffered, and continues to suffer, emotional distress, economic loss and other damages recoverable under the LAD.

WHEREFORE, Plaintiff demands judgment against Defendants for harm suffered due to the aforesaid violations of the LAD as follows:

- A. Compensatory damages;
- B. Consequential damages;
- C. Punitive damages;
- D. Pre-judgment interest and enhancements to off-set negative tax consequences;
- E. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law);
- F. Declaring that Defendants have violated the LAD and requiring Defendants to take appropriate corrective action to end discrimination in the workplace;

- G. Ordering Defendants to take appropriate corrective action to stop and prevent discrimination at the workplace;
- H. Ordering Defendants to take appropriate corrective action to stop and prevent retaliation at the workplace;
- I. Ordering Defendants to take appropriate corrective action to stop and prevent harassment at the workplace;
- J. Ordering Defendants to undergo anti-discrimination training;
- K. Ordering Defendants to undergo anti-retaliation training;
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- Q. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-harassment training;
- R. Ordering Defendants to engage a research organization to assess the effectiveness of their workplace civility training;
- S. Ordering Defendants to engage a research organization to assess the effectiveness of their bystander intervention training;

- T. Ordering Defendants to identify an appropriate professional to investigate any future complaints of discrimination;
- U. Ordering Defendants to identify an appropriate professional to investigate any future complaints of harassment;
- V. Ordering Defendants to identify an appropriate professional to investigate any future complaints of retaliation; and
- W. Such other relief as may be available and which the Court deems just and equitable.

EIGHTH COUNT

LAD – VIOLATION OF THE LAD’s “NON-DISCLOSURE PROVISIONS”

458. Plaintiff repeats and realleges each of the prior allegations of the within Complaint as if set forth at length herein.

459. Defendant State is an employer under the LAD.

460. Plaintiff was and is an “employee” and a “person” under the LAD as an applicant, volunteer, prospective employee and/or employee of Defendants the State and the Murphy Campaign.

461. Plaintiff is also an employee under the LAD.

462. As amended and signed into law on March 18, 2019, the LAD prohibits employers from requiring employees to agree to conceal the details of a claim of discrimination, retaliation or harassment.

463. The State’s imposition of the Strict Confidentiality Directive upon Plaintiff and other state employees is in direct violation of the “Non-Disclosure Provisions” of the LAD.

464. The Non-Disclosure Provisions of the LAD further prohibits an employer from taking any retaliatory actions against any person who does not enter into an agreement or contract that contains any provision deemed against public policy or under the LAD.

465. The Strict Confidentiality Directive, which requires victims and witnesses to keep facts concerning discrimination, harassment and retaliation as confidential under the threat of disciplinary action, up to and including termination, is a violation of the Non-Disclosure Provisions of the LAD.

466. Plaintiff filed an OTSC for relief, including but not limited to, relief from the State's imposition of the Strict Confidentiality Directive upon her as a requirement for her participation in the EEO/AA investigation.

467. In response to the OTSC, the State unilaterally closed the EEO/AA investigation.

468. Plaintiff has been and continues to be damaged by the State's actions.

469. As a result of Defendants' conduct, Plaintiff has suffered, and continues to suffer, emotional distress, economic loss and other damages recoverable under the LAD.

WHEREFORE, Plaintiff demands judgment against Defendants for harm suffered due to the aforesaid violations of the LAD as follows:

- A. Compensatory damages;
- B. Consequential damages;
- C. Punitive damages;
- D. Pre-judgment interest and enhancements to off-set negative tax consequences;

- E. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law);
- F. Declaring that Defendants have violated the LAD and requiring Defendants to take appropriate corrective action;
- G. Ordering Defendants to take appropriate corrective action to stop and prevent discrimination at the workplace;
- H. Ordering Defendants to take appropriate corrective action to stop and prevent retaliation at the workplace;
- I. Ordering Defendants to take appropriate corrective action to stop and prevent harassment at the workplace;
- J. Ordering Defendants to undergo anti-discrimination training;
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- P. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-retaliation training;

- Q. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-harassment training;
- R. Ordering Defendants to engage a research organization to assess the effectiveness of their workplace civility training;
- S. Ordering Defendants to engage a research organization to assess the effectiveness of their bystander intervention training;
- T. Ordering Defendants to identify an appropriate professional to investigate any future complaints of discrimination;
- U. Ordering Defendants to identify an appropriate professional to investigate any future complaints of harassment;
- V. Ordering Defendants to identify an appropriate professional to investigate any future complaints of retaliation; and
- W. Such other relief as may be available and which the Court deems just and equitable.

NINTH COUNT

DEFAMATION AGAINST DEFENDANT ALVAREZ

470. Plaintiff repeats and realleges the aforesaid allegations as if fully set forth herein.

471. Defendant Alvarez made false and defamatory statements, knowing them not to be true, including to the Hudson County Prosecutor's Office, the news media, New Jersey Legislative Select Oversight Committee and others, respecting Plaintiff's allegations that Defendant Alvarez sexually assaulted her.

472. The false and defamatory statements include, but are not limited to:

- a. Concerning Defendant Alvarez's statements made in connection with an NJ.com article entitled "Ex-Murphy staffer, who faced rape charges, plans to sue accuser. 'I've become a pariah,' he says[.]", dated March 20, 2019, and
- b. On at least eleven (11) occasions stating to the New Jersey Legislative Select Oversight Committee that the allegations made by Plaintiff against Defendant Alvarez are "false".

473. The statements made by Defendant Alvarez concerned Plaintiff and are defamatory and false.

474. The foregoing false and defamatory statements were intentional and made in reckless disregard of their truth or falsity.

475. Defendant Alvarez's acts or omissions were the cause of Plaintiff's harm and were actuated by actual malice or accompanied by a wanton and willful disregard of Plaintiff who foreseeably might be harmed by those acts or omissions.

476. As a result of Defendant Alvarez's conduct, Plaintiff's name and reputation have been damaged and Plaintiff has suffered emotional distress, compensatory and other damages.

WHEREFORE, Plaintiff demands judgment against Defendant Alvarez for harm suffered due to the aforesaid violation as follows:

- A. Compensatory damages;
- B. Consequential damages;
- C. Damages to Plaintiff's reputation;
- D. Punitive damages;

- E. Prejudgment interest and enhancements to off-set negative tax consequences;
- F. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law); and
- G. Such other relief as may be available and which the Court deems just and equitable.

SMITH EIBELER, LLC

**By: /s/ Kathryn K. McClure
Kathryn K. McClure
Attorneys for Plaintiff**

Dated: March 20, 2019

CERTIFICATION

Pursuant to Rule 4:5-1, it is hereby stated to the best of my knowledge and belief that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding, with the exception of two. On March 8, 2019, Defendant Alvarez filed suit against Middlesex County Prosecutor's Office ("MCPO"), under Docket No. MID-L-2007-19, seeking an Order to obtain the MCPO investigatory file with respect to Plaintiff's allegations of sexual assault against Defendant Alvarez. On March 12, 2019, Plaintiff filed for identical relief under Docket No. MID-L-2072-19.

Further, Plaintiff is unaware of any non-party who should be joined in the action

pursuant to R. 4:28 or who is subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts. I further certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b). Subject to the foregoing, Plaintiff served a Tort Claim Notice upon the Defendant State dated December 28, 2018. I recognize the continuing of each party to file and serve on all parties should be joined herein. I recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification, if there is a change in the facts stated in this original certification.

SMITH EIBELER, LLC

By: /s/ Kathryn K. McClure
Kathryn K. McClure
Attorneys for Plaintiff

Dated: March 20, 2019

JURY DEMAND

Plaintiff hereby demands trial by jury on all issues so triable.

SMITH EIBELER, LLC

By: /s/ Kathryn K. McClure
Kathryn K. McClure
Attorneys for Plaintiff

Dated: March 20, 2019

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Kathryn K. McClure, Esq. is designated as trial counsel for the above-captioned matter.

SMITH EIBELER, LLC

**By: /s/ Kathryn K. McClure
Kathryn K. McClure
Attorneys for Plaintiff**

Dated: March 20, 2019

EXHIBIT A



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Complaints

The New Jersey State Policy

The *New Jersey State Policy Prohibiting Discrimination in the Workplace* (Policy) prohibits discrimination and harassment against State employees, prospective State employees, and persons doing business with the State of New Jersey on the basis of race, creed, color, national origin, ancestry, age, sex (including pregnancy), marital/civil union status, familial status, religion, affectional or sexual orientation, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability (including mental disability, and perceived disability). To view policy, please [click here](#).

- ▶ [Overview](#)
- ▶ [Laws Prohibiting Employment Discrimination](#)
- ▶ [Complaints](#)
- ▶ [Resource Links](#)
- ▶ [Policies and procedures](#)

Confidentiality and Retaliation

The provisions of the New Jersey State Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace require that all complaints and related investigations be confidential. Every individual involved in the investigation process is obligated to maintain confidentiality. This Policy also prohibits retaliation against anyone who files a complaint or participates in a complaint investigation.

Who can file

Any employee, job applicant, or other individual doing business with a New Jersey State department, agency, commission or college may file a complaint of discrimination or harassment with the EEO/AA Officer of the state entity in which the alleged discrimination/harassment occurred.

If there is a conflict of interest, the complaint may be filed with the Division of EEO/AA. In addition to filing an internal complaint, individuals have the right to file complaints simultaneously with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the New Jersey Division on Civil Rights (DCR). Please be advised that both agencies have time limits for filing complaints. For more information, please visit their websites: www.eeoc.gov and www.state.nj.us/lps/dcr/index.html.

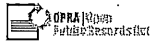
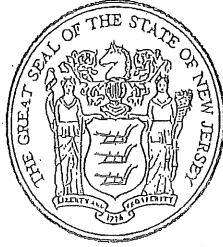


EXHIBIT B



New Jersey State Policy Prohibiting Discrimination in the Workplace

The provisions of the *New Jersey State Policy Prohibiting Discrimination in the Workplace* require all related complaints and investigations to be handled on a confidential basis. In addition, there is a prohibition of retaliation against anyone who files a complaint, participates in a complaint investigation, or opposes a discriminatory practice.

Confidentiality

All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality will be maintained throughout the investigatory process. During the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom a complaint has been made and other persons who may have relevant knowledge. It may also be necessary to disclose information to persons with a legitimate need to know about the matter. All persons who are interviewed or otherwise advised of a complaint are directed not to discuss any aspect of the investigation with others. Failure to comply with this confidentiality directive may result in disciplinary action, up to and including removal.

Prohibition Against Retaliation

Retaliation against any person who either alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by the Policy. Any employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under the Policy will not be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation.

-
1. I have been advised of and/or read the provisions of Confidentiality and Prohibition Against Retaliation; and
 2. I understand this complaint investigation must be confidential and I may not take retaliation against anyone who has filed a complaint, participated in a complaint investigation or opposes a discriminatory practice.

Name and Title: _____ (Print)

Signature: _____ Date: _____

EXHIBIT C

Governor Murphy Announces Revised State Policies and Procedures for the Handling of Allegations of Sexual Misconduct Against State Employees and Applicants for Employment

02/5/2019

Governor Supports Full Recommendations Outlined by Mamta Patel, Director of the Statewide Division of Equal Employment Opportunity (EEO) and Affirmative Action

TRENTON – Governor Phil Murphy today announced important revised state policies and procedures to strengthen the handling of allegations of sexual misconduct against state employees and applicants for employment. The revised state policy updates key areas of the state’s discrimination and sexual harassment policies in support of state employees who have experienced sexual harassment or discrimination. The new protocols follow a request by Governor Murphy of Mamta Patel, Director of the Statewide Division of Equal Employment Opportunity and Affirmative Action within the Civil Service Commission, to review the state’s policies and procedures addressing how allegations of sexual misconduct are handled to determine whether there are ways to improve the system.

“These sweeping revised policies and procedures make significant and impactful changes to how sexual harassment and misconduct allegations are handled in state government,” **Governor Phil Murphy said**. “These additional measures clearly dictate the appropriate course of action to be taken by both survivors and the state. By embracing a survivor-centered approach in New Jersey, we are creating an environment where survivors of sexual harassment, misconduct, or assault are not only encouraged to come forward, but when doing so, they are met with dignity, respect, and a straightforward process to attain justice.”

“The Civil Service Commission is pleased to have worked alongside the Governor’s office to make substantive changes that will strengthen the state’s sexual harassment policies and procedures,” **said Deirdre Webster Cobb, Esq., Civil Service Commission Chair and Chief Executive Officer**. “I firmly support the Governor’s call to modify the sexual harassment policy which promotes an environment where survivors of sexual harassment or misconduct can come forward. I commend Mamta Patel, Director of EEO and Affirmative Action and Chris Myers, Director of Division of Appeals and Regulatory Affairs for their tireless work on enhancing the existing policy.”

“The New Jersey State Policy and Procedures Prohibiting Discrimination in the Workplace is a strong, comprehensive policy designed to support state employees and applicants for employment,” **said Mamta Patel, Director of the Statewide Division of Equal Employment Opportunity and Affirmative Action within the Civil Service Commission**. “The revisions to the state policy include a broader definition of inappropriate, coerced touching to clarify that an allegation of sexual assault would implicate the state policy, and also strengthens protocols for all complainants of discrimination and sexual harassment.”

The revised policies address specific areas of the *New Jersey State Policy and Procedures Prohibiting Discrimination in the Workplace*, New Jersey Administrative Code, 4A, Chapter 7, including:

Explicitly Adding Gubernatorial Transition Offices – The revised policy now applies to all employees and applicants for employment in state departments, commissions, state colleges or universities, agencies, authorities and Gubernatorial Transition Offices.

Stronger Language to Clarify the Definition of “Sexual Assault” – A broader definition of inappropriate, coerced touching that may constitute sexual harassment has been added to the Administrative Code, to specifically prohibit behaviors such as “sexual physical contact that involves any form of coercion, force, or lack of consent, such as sexual assault.”

Clarified Reporting Guidance – The Administrative Code now includes updated guidance on a two-pronged approach to reporting. Specifically, language has been added to specify that “victims of prohibited sexual physical contact can file a criminal complaint with law enforcement where the incident occurred. Victims can also make a criminal complaint and a report to his/her supervisor and/or EEO Officer; one does not have to choose one or the other.”

New Interim Measures After an EEO Complaint – The Administrative Code now includes more examples of interim corrective measures that may be implemented after a complaint is reported, but prior to initiating an investigation. These measures include, but are not limited to, separation of parties; removal of parties from the workplace; and involvement of law enforcement when appropriate for instances involving bodily harm.

Expanded Factors to Consider When Determining State Policy Jurisdiction – The rules now include an expanded number of factors that may be considered when determining whether a case should be opened for investigation. Factors that may be considered by an EEO/AA officer include, but are not limited to, the facts presented; whether the complainant articulated a sufficient nexus between the alleged conduct to a protected category; the time the incident occurred; the time the incident was reported; and whether the complainant and/or respondent is a current state employee (regardless of when the incident occurred).

On December 15, 2018, the Office of the Governor sent the New Jersey Legislative Select Oversight Committee a draft of the Division of EEO/AA’s proposed changes to New Jersey State Policy and Procedures Prohibiting Discrimination in the Workplace N.J.A.C. 4A, Chapter 7, and invited the Committee to provide feedback as part of our review process.

Although these revised policies and procedures will require a formal rule change in the New Jersey Administrative Code, which will be initiated by the Civil Service Commission, the Division of Equal Opportunity Employment Opportunity and Affirmative Action will begin to immediately train EEO Officers to the State Appointing Authorities of the changes so that there is no delay in implementation.

To access Mamta Patel’s memorandum to the Governor outlining recommended changes to the Administrative Code, Chapter 7, please click [here](#).

To view the State of New Jersey's Discrimination Complaint Form, please click [here](#).

To review all changes to the *New Jersey State Policy and Procedures Prohibiting Discrimination in the Workplace*, please click [here](#).

EXHIBIT D

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Notice of Extension of Comment Periods for Certain Notices of Proposal Published in the January 22, 2019, New Jersey Register

Take notice that, with the permission and on behalf of the State agencies affected, the Office of Administrative Law announces that the comment periods for the notices of proposal from the Department of Children and Families; and the Department of Military and Veterans' Affairs, published in the January 22, 2019, New Jersey Register are hereby extended an additional 13 days. The extension of these comment periods is necessitated by a disruption in the mail delivery of that issue of the New Jersey Register, in order to provide the public with the amount of time to comment set forth in the notices of proposal.

The affected notices of proposal, in Code title order, are as follows, with the new comment deadlines and comment addresses included:

Department of Children and Families, Proposed Readoption with Amendments: N.J.A.C. 3A:10, 51 N.J.R. 125(a). Submit comments by April 5, 2019, to: Pamela Wentworth, M.S.W., L.S.W., Department of Children and Families, PO Box 717, Trenton, NJ 08625 or e-mail: rules@dcf.nj.gov.

Department of Children and Families, Proposed Readoption with Amendments: N.J.A.C. 3A:23, 51 N.J.R. 131(a). Submit comments by April 5, 2019, to: Debra A. Hayes, Department of Children and Families, PO Box 717, Trenton, NJ 08625 or e-mail: rules@dcf.nj.gov.

Department of Military and Veterans' Affairs, Proposed Amendments: N.J.A.C. 5A:3-2.1 and 2.3, 51 N.J.R. 132(a). Submit comments by April 5, 2019, to: Mr. Mark Preston, Chief, Administrative Services Bureau, IASD, New Jersey Department of Military and Veterans' Affairs, PO Box 340, Trenton, NJ 08625-0340, or mark.preston@dmava.nj.gov.

CIVIL SERVICE

(b)

CIVIL SERVICE COMMISSION

Job Banding Program

Proposed Amendments: N.J.A.C. 4A:1-1.3; 4A:3-2.3, 2.9, 3.3, 3.5, 3.6, 3.7, 3.7B, 3.9, and 4.9; 4A:4-1.9, 2.3, 2.5, 2.9, 3.2, 4.7, 5.1, 5.2, 5.3, 7.1, 7.1A, 7.6, and 7.8; 4A:6-1.2, 1.5, 4.2, 4.4, 4.5, and 4.10; 4A:7-3.1 and 3.2; and 4A:8-1.1 and 2.2

Proposed Repeal: N.J.A.C. 4A:3-3.2A

Authorized By: Civil Service Commission, Diedre Webster Cobb, Chairperson.

Authority: N.J.S.A. 11A:2-6.d, 11A:2-11.h, 11A:2-11.1, 11A:3-1 through 7, 11A:4-1 through 16, 11A:6-1 through 28, and 11A:7-1-13; and P.L. 2018, c. 10.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2019-021.

A public hearing concerning the proposed amendments will be held on:

March 27, 2019, at 3:00 P.M.
Civil Service Commission Room
44 South Clinton Avenue
Trenton, New Jersey

Please call Walker Ristau at (609) 777-0910 if you wish to be included on the list of speakers.

Submit written comments by April 20, 2019, to:

Christopher Myers, Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
PO Box 312
Trenton, New Jersey 08625-0312
E-mail: Rule.comments@csc.nj.gov

The agency proposal follows:

Summary

In light of P.L. 2018, c. 10, the Civil Service Commission (Commission) has reviewed the definition of "immediate family" in N.J.A.C. 4A:1-1.3 and proposes an amendment that would broaden the definition to other individuals with whom the employee has a significant personal bond, including step-parents, step-children, and step-siblings that is, or is like, a family relationship. It is anticipated that the proposed amendment will principally affect requests for sick leave and make-up examinations.

Existing N.J.A.C. 4A:3-3.9(c)8i and ii permit the Commission to issue an abbreviated decision letter when the Commission representative, agency representative, and appellant agree with the proposed title in a classification review. A proposed amendment will additionally require the agreement of a program manager or division director. The Commission also proposes an amendment to N.J.A.C. 4A:3-3.9(d) to allow a classification appeal filed by a local service employee to be forwarded to the Commission without a supervisor's signature from five days after the supervisor's receipt to 15 days, which will standardize the timeline between State and local appointing authorities. It is further proposed that "appeal" and "appellant," as used in subsections (a) through (d), be changed to "petition" and "petitioner," respectively. This amendment will reduce confusion, as "appeal" is defined differently in subsections (a) through (d) than in subsection (e).

A proposed amendment to N.J.A.C. 4A:4-2.3(b) would make the rule consistent with N.J.A.C. 4A:4-2.6(a)2, by clarifying that if an announcement for an open-competitive examination is amended, all requirements must be met by the announced closing date whether or not the application filing date is changed.

N.J.A.C. 4A:6-1.2(c)2 is proposed for amendment to provide that a leave of absence while an employee is receiving Workers' Compensation benefits should not be deducted from an employee's "continuous service" or seniority for the calculation of vacation leave accrual. The proposed amendment would implement the Commission's decision in *In the Matter of Thomas M. Jardine and Karriem Beyah, Department of Corrections* (CSC, decided August 13, 2014), where it was determined that a leave of absence while a State service employee is receiving Workers' Compensation benefits should not be deducted from an employee's "continuous service" or seniority for the calculation of vacation leave increments. However, proration of leave entitlements during a Workers' Compensation leave will continue. Thus, employees who are receiving Workers' Compensation benefits will not accrue vacation leave while they are out of work, but will retain their continuous service for purposes of determining when the vacation increment is increased, that is, when the annual vacation leave allotment changes from 12 to 15 days, from 15 to 20 days, and from 20 to 25 days. See, *In the Matter of Richard Latham, et al.* (CSC, decided August 16, 2017).

N.J.A.C. 4A:6-1.5 provides instances in which an employee's vacation, administrative, and sick leave entitlements must be adjusted due to an unpaid leave of absence, workweek changes, and other similar circumstances. Currently, subsection (b) provides that an employee earns one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month. Subsection (b) is proposed for amendment to state that an employee earns one-half month's allowance if he or she is on the payroll for greater than 14 calendar days in a month, but less than 23 calendar days in a month. The Commission has received appeals regarding the equity of the application of this rule in instances where an employee was in a pay status for more than 15 days in a month, but the employee was not in pay status on the 9th or 23rd of the month, and he or she was not entitled to leave time for that month. This proposed amendment corrects this problem as it will ensure that employees who are on the payroll for at least 15 calendar days in a month will receive one-half month's allowance of leave. See, for example, *In the Matter of Maryellen Marnier* (CSC, decided March 27, 2018).

N.J.A.C. 4A:6-4.10 provides for counseling, rehabilitative, and/or community services for employees who meet certain criteria involving job performance or who have personal problems that affect job performance. N.J.A.C. 4A:6-4.10(f) is proposed for amendment to modify the requirement that an appointing authority "must" consult with the supervisor of the Employee Advisory Program (EAS) program to a recommendation that an appointing authority "should" consult with the EAS program staff, rather than the supervisor of the EAS program, seeking removal of an employee receiving service from the EAS program.

Several amendments are proposed at N.J.A.C. 4A:7-3.1 and 3.2 to reflect current practice. For example, the Commission has determined that discriminatory comments made on social media or outside of work may violate the State Policy Prohibiting Discrimination in the Work Place (State Policy). See, *In the Matter of N.J.* (CSC, decided September 17, 2014); and *In the Matter of L.N.* (CSC, decided March 27, 2018). Additionally, a proposed amendment would specify that sexual physical

contact that involves any form of coercion, force, or lack of consent is an example of a violation of the State Policy and would advise that victims of such behavior may file a criminal complaint with law enforcement and/or report the conduct to his or her supervisor and/or EEO/AA officer. Similarly, proposed amendments clarify that the complainant has the burden to articulate a sufficient nexus between the alleged conduct to a protected category pursuant to the State Policy, that the State Policy applies to gubernatorial transition office staff members, that employees are required to comply with investigations and are subject to administrative or disciplinary action for violating confidentiality directives, and, when a violation of the State Policy is found and disciplinary action is recommended, only employees in the career service may appeal using the disciplinary procedures set forth in N.J.A.C. 4A:2-2 and 3. More substantially, proposed amendments to N.J.A.C. 4A:7-3.1 (g)4 and (j) requires State departments and agencies to retain written records of discrimination and harassment complaints as confidential records indefinitely.

In order to standardize the intake of complaints, a proposed amendment to N.J.A.C. 4A:7-3.2(i) establishes criteria for EEO/AA officers to consider when determining whether an investigation is warranted. A proposed amendment to N.J.A.C. 4A:7-3.2(h) lists the types of interim corrective actions that may be taken while an investigation is pending. Currently, complainants are encouraged to promptly report their complaints. Proposed amendments to N.J.A.C. 4A:7-3.1 and 3.2 will empathize that complainants shall promptly report their complaints. Complaints that are promptly reported can be remedied faster and prevent continued violations and investigations of alleged violations of the State Policy can be investigated more effectively. Nevertheless, there would be no penalty for failing to promptly report a complaint. Further, N.J.A.C. 4A:7-3.2(b) is proposed for amendment to include language indicating that a Discrimination Complaint Processing Form (DPF-481) can be found on an appointing authority's intranet or the Commission's website. Additionally, N.J.A.C. 4A:7-3.2(n)3 is proposed for amendment to clarify that when disciplinary action is recommended, only employees in the career service may appeal using the procedures set forth in N.J.A.C. 4A:2-2 and 3, since those subchapters only apply to permanent employees in the career service or persons serving in a working test period.

In response to the New Jersey Supreme Court's decision in *Communication Workers of America, AFL-CIO v. New Jersey Civil Service Commission*, 234 N.J. 483 (2018), which invalidated the Job Banding program, all references to the Job Banding program in Title 4A of the New Jersey Administrative Code are proposed for deletion.

Technical amendments are proposed to N.J.A.C. 4A:6-4.2, 4.4, and 4.5 in response to the renaming of the Office of Training as the Center for Learning and Improving Performance (CLIP). Likewise, technical amendments are proposed to N.J.A.C. 4A:3-3.7B and 4A:4-2.9, 4.7, 5.2, and 5.3 to reflect a recent amendment to N.J.S.A. 11A:2-11.1, which renamed the State service title of Correction Officer Recruit to Correctional Police Officer. It is finally proposed that "Correction Officer Apprentice" at N.J.A.C. 4A:3-3.7B be amended to "Correctional Police Officer Apprentice" for consistency.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

A positive social impact is expected from the proposed amendment to N.J.A.C. 4A:1-1.3, as, for example, an employee will be able to utilize sick leave to care for a step-relative, whereas under the current definition of "immediate family," he or she could not. The amendments to N.J.A.C. 4A:3-3.9 are expected to have a positive social impact. First, requiring a project manager's or division director's agreement with a proposed title will ensure the most accurate position classification and document that all stakeholder input was considered during the process. Second, providing 15 days to a supervisor in local service to review and sign a classification appeal, rather than five days will improve the position classification review process by ensuring greater participation from supervisors, which will in turn result in more accurate position classification. Third, distinguishing position classification reviews in N.J.A.C. 4A:3-3.9(a) through (d) from appeals of a determination made in a position

classification review in N.J.A.C. 4A:3-3.9(e) will provide greater clarity in the rule.

A positive social impact is expected from the proposed amendment to N.J.A.C. 4A:4-2.3(b), as applicants for employment will be provided with greater clarity regarding open-competitive examinations when eligibility requirements in an announcement are amended. The proposed amendment to N.J.A.C. 4A:6-1.2 will be beneficial to employees who are on a leave of absence and receiving Workers Compensation, since it correlates with rules governing other Civil Service security-based programs. See, N.J.A.C. 4A:8-2.4(d)3, 4A:4-2.15(d), and 4A:3-4.6(a) and (b)6. The proposed amendment to N.J.A.C. 4A:6-1.5 would make the rule more equitable to affected employees and reduce appeals to the Civil Service Commission. The proposed amendment to N.J.A.C. 4A:6-4.10(f) is expected to encourage dialogue with the EAS prior to seeking disciplinary action, but to clarify that such consultation is not required before an appointing authority can seek disciplinary action. The proposed amendments to N.J.A.C. 4A:7-3.1 and 3.2 are expected to have a positive social impact by clarifying the State Policy and its model procedures and facilitating the prompt reporting of alleged violations and standardizing complaint intake across State departments and agencies. No social impact is expected from the proposed technical amendments and repeal related to job banding, as the amendments do not affect the application of the chapters.

Economic Impact

No appreciable economic impact is anticipated from the amendment to N.J.A.C. 4A:1-1.3, as the amendment will principally affect sick leave and make-up examination rules. The proposed amendments to N.J.A.C. 4A:3-3.9 will likely have a positive economic impact by ensuring that employees' positions are properly classified. Classifying positions with a higher-level title than warranted by the assigned duties could negatively impact taxpayers by overcompensating employees for the work they perform. Conversely, misclassification of positions could also result in employees being undercompensated, which may adversely impact delivery of public services, recruitment, and employee retention. No appreciable economic impact is expected from the proposed amendment to N.J.A.C. 4A:6-1.2. The amendment to N.J.A.C. 4A:6-1.5 is expected to have a positive economic impact on civil service employees affected by this rule by ensuring that they receive the proper amount of leave time to which they are entitled. Requiring the prompt reporting of alleged violations of the State Policy and standardizing the process for determining whether an investigation is appropriate will result in more efficient utilization of State resources when initially reviewing allegations. No economic impact is expected from the amendments to N.J.A.C. 4A:4-2.3(b) and 4A:6-4.10(f). Likewise, no economic impact is expected from the proposed amendments and repeal pertaining to the job banding program, as the changes are mostly technical in nature and do not affect the application of the chapters.

Federal Standards Statement

The proposed amendments and repeal are not subject to any Federal requirements or standards. Therefore, a Federal standards analysis is not necessary.

Jobs Impact

It is not anticipated that any jobs will be generated or lost if the proposed amendments and repeal are adopted. The proposed amendments and repeal concern the existing classification and compensation program, as well as selection and appointment, and leaves and hours of work in the Civil Service System.

Agriculture Industry Impact

The proposed amendments and repeal concern the existing classification and compensation program, as well as selection and appointment, and leaves and hours of work in the Civil Service System.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required as the proposed amendments and repeal will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules will regulate employment in the public sector.

Housing Affordability Impact Analysis

Since the proposed amendments and repeal concern job classification, compensation, selection and appointment, and leaves and hours of work under the Civil Service System, they would have no impact on the affordability of housing or the average cost of housing in New Jersey.

Smart Growth Development Impact Analysis

Since the proposed amendments and repeal concern job classification, compensation, selection and appointing, and leaves and hours of work under the Civil Service System, they would have no impact on smart growth or on new construction within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commission has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 4A:3-3.2A.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 1

GENERAL RULES AND AGENCY ORGANIZATION

SUBCHAPTER 1. PURPOSE, SCOPE, AND DEFINITIONS

4A:1-1.3 Definitions

The following words and terms, when used in any Commission rule, shall have the following meanings unless the context clearly indicates otherwise:

["Advancement appointment" means a movement within a job band, upon achievement of a specific number of predetermined competencies, to a higher title level and, where applicable, associated higher class code, which does not require competitive examination.]

["Class code" means a designation assigned to job titles in State and local service with ranking based upon an evaluation of job content. [In the case of job bands, all references to class code shall mean a designation assigned to title levels, unless a job band class code is specifically stated.]

["Competency" means the minimum level of training and orientation needed to successfully perform at a particular title level within a job band.]

["Immediate family" means an employee's spouse, domestic partner (see section 4 of P.L. 2003, [c.246] c. 246), civil union partner, child, legal ward, grandchild, foster child, father, mother, legal guardian, grandfather, grandmother, brother, sister, father-in-law, mother-in-law, and other relatives residing in the employee's household or any other individual whose close association with the employee is the equivalent of a family relationship, such as a step-relative.

["Job band" means a grouping of titles or title series into a single broad band consisting of title levels with similar duties, responsibilities, and qualifications.]

["Lateral movement" means an employee movement from one position to another with a similar salary and level of duties, responsibilities, and qualifications and, where applicable, the same class code. [In the case of job bands, a lateral movement means a movement to a title level in another job band with a similar salary and level of duties, responsibilities, and qualifications and, where applicable, the same class code.]

["Promotion" means, in local service, an advancement in title, and in State service, an advancement to a title having a higher class code than the former permanent title. [In the case of job bands, a promotion means a movement to a title with a higher class code not in the employee's current job band.]

"Title" means a descriptive name that identifies a position or group of positions with similar duties, responsibilities, and qualifications. [In the case of those titles approved for inclusion in job bands (see N.J.A.C. 4A:3-3.2A), any references to such titles in any Commission rule shall mean the title level within the job band, and, where applicable, the level's associated class code, unless otherwise stated, or the context clearly suggests otherwise.]

CHAPTER 3
CLASSIFICATION, SERVICES, AND COMPENSATION

SUBCHAPTER 2. SENIOR EXECUTIVE SERVICE

4A:3-2.3 SES appointments: State service

(a) (No change.)

(b) A permanent employee holding a position allocated to the SES who is not selected to join the SES or chooses not to join the SES (referred to as a "non-appointed incumbent"), shall be placed in a career service position in the same organizational unit for which he or she is qualified at the same class code.

1.-3. (No change.)

4. The organizational unit and the non-appointed incumbent may agree to use the following optional procedures:

i. The non-appointed incumbent may accept an appointment to another title at the same or lower class code, in the same or different title series [or job band, as the case may be,] for which the employee is qualified in the same or another organizational unit.

ii.-iv. (No change.)

5.-6. (No change.)

(c) (No change.)

4A:3-2.9 Separation from the SES: State service

(a)-(b) (No change.)

(c) An employee with underlying career status who is separated from the SES shall have the right to return to his or her highest held class code permanent title in the same organizational unit.

1.-3. (No change.)

4. The appointing authority and the returning employee may agree to use the following optional procedures to effect the return of the permanent employee:

i. The employee may accept appointment to other titles at the same or lower class code, in the same or a different title series [or job band, as the case may be,] for which the employee is qualified in the same or another organizational unit.

ii.-iv. (No change.)

5.-7. (No change.)

(d)-(e) (No change.)

SUBCHAPTER 3. CLASSIFICATION

4A:3-3.2A (Reserved)

4A:3-3.3 Administration of classification plans

(a) The Chairperson or designee shall implement and administer the classification plans and, in this regard, shall:

1.-2. (No change.)

3. Modify specifications for existing titles[,] or series[, or job bands, as the case may be,] to ensure their accuracy; and

4. (No change.)

(b)-(f) (No change.)

4A:3-3.5 Reclassification of positions

(a)-(b) (No change.)

(c) No reclassification of any position shall become effective until notice is given to affected permanent employees and approval is given by an appropriate Commission representative.

1. (No change.)

2. Should an employee in the career or unclassified service in State or local service, or an appointing authority in local service, disagree with a reclassification determination, an appeal to the Civil Service Commission may be filed in accordance with N.J.A.C. 4A:3-3.9. [In State service,

appeals pertaining to an employee's title level within his or her particular job band are governed by N.J.A.C. 4A:3-3.9(c)4, 5, and 6.]

4A:3-3.6 New titles

(a) The Civil Service Commission may determine that a new title[,] or title series[, or job band] is necessary, when it is found that a new set of functions is assigned to the position(s) being reviewed and these new functions are not appropriately described by an existing title[,] or title series[, or job band].

(b) Requests for new titles[,] or title series[, or job bands] must be submitted in writing by the appointing authority to an appropriate representative of the Civil Service Commission on a designated form. In State service, such requests shall be submitted by the agency representative. The request must include:

1.-3. (No change.)

(c) If the Commission representative determines that there is a need for a new title[,] or title series[, or job band], new job specification(s) will be prepared and in State service the title[,] or series[, or band] will be evaluated for compensation purposes.

(d) Pending approval by the appropriate Commission representative of a new title[,] or title series[, or job band], the designation "Tentative Title" may be used for affected positions. See N.J.A.C. 4A:3-4.15 for compensation procedures in State service.

(e)-(f) (No change.)

4A:3-3.7 Trainee, apprentice, recruit, and intern titles

(a) Trainee, apprentice, recruit, and intern titles may be established in State and local service to provide for entry level employment.

1. (No change.)

2. A single trainee title may provide entry level employment for more than one title[,] or title series[, or job band], under appropriate circumstances.

3. (No change.)

(b)-(k) (No change.)

4A:3-3.7B [Correction] Correctional Police Officer Apprentice title: State service

(a) The appointment of an employee to the title of [Correction] Correctional Police Officer Apprentice shall be a temporary appointment from a certification of [Correction] Correctional Police Officer [Recruit] eligibles on an entry-level law enforcement eligible list. The purpose of this temporary appointment is to ensure that individuals so appointed shall receive training appropriate to the duties of a [Correction] Correctional Police Officer [Recruit] in accordance with the Police Training Act. See N.J.S.A. 52:17B-66 et seq.

(b) Notwithstanding the employee's temporary appointment in State service, the employee shall not accrue seniority for purposes of layoffs (N.J.A.C. 4A:8-2.4) or vacation leave accruals (N.J.A.C. 4A:6-1.2) while serving in the title of [Correction] Correctional Police Officer Apprentice.

(c) The length of the period of temporary appointment to the title of [Correction] Correctional Police Officer Apprentice shall be established by the Department of Corrections; provided, however, that the length of this period shall be the same for all employees receiving the appointment from the same certification, but in no case longer than six months.

(d) Upon successful completion of the residential training program required by the Police Training Act, and in-service training provided by the Department of Corrections under the authority of the Police Training Commission, the employee serving in the title of [Correction] Correctional Police Officer Apprentice shall receive a regular appointment to the title of [Correction] Correctional Police Officer [Recruit].

(e) An individual who receives a regular appointment to the title of [Correction] Correctional Police Officer [Recruit] in accordance with (d) above but who had permanent status in another title in State service as of the time of temporary appointment shall be considered to have been on an unpaid leave of absence from his or her original State position during the period of temporary appointment. Such permanent service prior to the leave of absence shall be aggregated to calculate the employee's seniority for layoff purposes, as well as to determine his or her vacation benefit at

the time of the employee's regular appointment to the title of [Correction] Correctional Police Officer [Recruit].

(f) Notwithstanding any provisions in Title 4A of the New Jersey Administrative Code to the contrary, employees receiving a temporary appointment to the title of [Correction] Correctional Police Officer Apprentice shall not have any appeal rights to the Civil Service Commission during the period of temporary appointment. Such employees' sole right of appeal shall be to the Police Training Commission. See N.J.A.C. 13:1-11.

4A:3-3.9 [Appeal] Position review request and appeal procedure

(a) [An appeal] A position review request is a petition for a review from the classification or reclassification of a position [is a request for review], or a complaint that the duties of a specific position do not conform to the approved job specification for the title assigned to that position.

(b) (No change.)

(c) In State service, a classification [appeal] petition by an employee or union representative shall be made in writing. The [appeal] petition shall include a position classification questionnaire completed by the [appellant] petitioner, and shall specify the title [which] that the [appellant] petitioner believes is appropriate to the duties performed by the employee and explain how the duties at issue are more appropriate to the requested title than to the title in which the employee is currently serving.

1. The employee's immediate supervisor shall indicate on the position classification questionnaire the supervisor's agreement or disagreement with the [appellant's] petitioner's description of job duties, the [appellant's] petitioner's cited percentage of time spent on each duty, and the title proposed by the [appellant] petitioner as appropriate to the duties performed. To the extent that the supervisor disagrees with information on the questionnaire, the supervisor shall explain in writing the nature of the disagreement. The supervisor shall also sign the position classification questionnaire.

2. The employee's immediate supervisor shall forward the completed position classification questionnaire to the program manager/division director, as applicable, who shall indicate on the questionnaire agreement or disagreement with the [appellant's] petitioner's description of job duties, the [appellant's] petitioner's cited percentage of time spent on each duty, and the title proposed by the [appellant] petitioner as appropriate to the duties performed. To the extent that the program manager/division director disagrees with information on the questionnaire, he or she shall explain in writing the nature of the disagreement. The program manager/division director shall also sign the questionnaire.

3. The supervisor and program manager/division director shall complete their portions of the questionnaire and provide their signatures on the form in accordance with (c)1 and 2 above within 15 days of the employee's submission of the [appeal] petition to the immediate supervisor. By no later than the end of this period, the program manager/division director shall submit to the agency representative the completed questionnaire, along with the [appellant's] petitioner's most recent PAR form (see N.J.A.C. 4A:6-5).

4. In the case of an employee challenging his or her title level within a job band, the agency representative shall review the appeal and determine one of the following:

- i. The position is properly placed at the existing title level;
- ii. The position is properly placed at the existing title level, but that duties of a different title level are being performed, in which case the appointing authority shall immediately remove all inappropriate duties; or
- iii. The position should be placed at a different title level.

5. If an employee serving in a job band title is found to be performing duties at a higher level in the band, the appointing authority:

- i. May post a notice of advancement appointment opportunity for the position and select the employee who has demonstrated the attainment of the required competencies for that level (see N.J.A.C. 4A:3-3.2A(d)); or
- ii. If the incumbent employee has not demonstrated the attainment of the required competencies, shall remove the higher level duties.

6. If an appellant challenging his or her title level disagrees with the determination rendered by the agency representative, the appellant may

file a grievance appeal regarding job band title level issues. See N.J.A.C. 4A:2-3.

i. The appointing authority shall notify the appropriate representative of the Civil Service Commission of the determination for recordkeeping purposes.]

[7.] 4. [In the case of an appeal not pertaining to a title level within the employee's particular job band, the] The agency representative shall review the [appeal] petition, affix to it an organizational chart, and ensure that the information set forth in (c)1, 2, and 3 above has been included. Within 10 days of receipt of the [appeal] petition, the agency representative shall either notify the [appellant] petitioner that specific additional information is required, or forward the [appeal] petition with organizational chart to the appropriate representative of the Civil Service Commission. The agency representative may, in writing, indicate with the submitted [appeal] petition a recommended approval or rejection of the [appeal] petition for specified reasons. The agency representative shall notify the [appellant] petitioner of the submission to the Commission representative. If additional information is required of the [appellant] petitioner, the agency representative shall forward the [appeal] petition with organizational chart and the additional information to the appropriate representative of the Civil Service Commission within 10 days of receipt of the [appellant's] petitioner's response to the request for additional information.

[8.] 5. A representative of the Civil Service Commission shall review the [appeal] petition filed pursuant to [(c)7] (c)4 above, request additional information, if needed, order a desk audit, where warranted, and issue a written decision letter. The decision letter shall be issued within 180 days of receipt of the [appeal] petition and all completed documentation as required by the representative of the Civil Service Commission, and shall:

i. Where the agency representative, Commission representative, program manager/division director, and [appellant] petitioner are in agreement with the proposed title, issue an abbreviated decision letter; or

ii. Where the agency representative, Commission representative, program manager/division director, and [appellant] petitioner are not in agreement with the proposed title, include a summary of the duties of the position, findings of fact, conclusions, a notice to an employee or authorized employee representative of appeal rights to the Civil Service Commission, and a determination that:

(1)-(3) (No change.)

(d) In local service, [an appeal] a petition from an employee, union representative, or appointing authority shall be submitted, in writing, to the appropriate representative of the Civil Service Commission. The [appeal] petition must identify the specific duties that do not conform to the specification for the title and, if the [appellant] petitioner proposes a different title for the position, an explanation of how that existing title more accurately describes the duties of the position than the current or proposed title. If requested by a representative of the Commission, the [appeal] petition shall also include a completed position classification questionnaire and an organizational chart. If the [appellant's] petitioner's supervisor has not signed the questionnaire within [five] 15 working days of receipt of the questionnaire from the [appellant] petitioner, the [appellant] petitioner may forward the questionnaire to the appropriate representative of the Commission without the supervisor's signature but with a notation of the date of presentation to the supervisor.

1. A representative of the Civil Service Commission shall review the [appeal] petition, request additional information if needed, order a desk audit where warranted, and issue a written decision letter. The decision letter shall be issued within 180 days of receipt of the [appeal] petition and of all completed documentation as required by the Commission representative, and shall include a summary of the duties of the position, findings of fact, conclusions, a notice to the employee or authorized employee representative of appeal rights to the Civil Service Commission, and a determination that:

i-iii. (No change.)

(e) Appeals from the decision of the Commission representative to the Civil Service Commission pursuant to [(c)7] (c)4 and [8] 5 or (d) above may be made by an employee, authorized employee representative, or local appointing authority. The appeal shall be submitted in writing within 20 days of receipt of the decision letter and include copies of all materials submitted, the determination received from the lower level, statements as

to which portions of the determination are being disputed, and the basis for appeal. Information and/or arguments [which was] that were not presented at the prior level of appeal shall not be considered. When new information and/or arguments [is] are presented, the appeal may be remanded to the prior level.

- 1.-4. (No change.)
- (f) (No change.)

SUBCHAPTER 4. COMPENSATION

4A:3-4.9 Advancement pay adjustments: State service

(a) (No change.)
 (b) Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range. If the workweek changes, workweek adjustments will be made prior to the determination of anniversary date. If the workweek increases, workweek adjustments will be made prior to salary determinations. (See (g) below). This subsection shall apply when the following conditions are met:

1. (No change.)
2. Employees are serving in a title which is reevaluated to a higher class code; or
3. Employees receive an advancement appointment to a higher title level with a higher class code in a job band; or
- [4.] 3. (No change in text.)
- (c)-(h) (No change.)

CHAPTER 4 SELECTION AND APPOINTMENT

SUBCHAPTER 1. TYPES OF APPOINTMENTS

4A:4-1.9 Return of employees to their permanent titles

(a)-(f) (No change.)
 [(g) For purposes of this section, in the case of a position within a job band, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.]

SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

4A:4-2.3 Open competitive examinations

(a) (No change.)
 (b) Unless otherwise specified, an applicant shall meet the following criteria by the announced closing date:

- 1.-2. (No change.)
3. File an application with all supporting documents or proofs by the announced filing date and time. If an announcement for an open-competitive examination is amended, all requirements must be met by the announced closing date, whether or not the application filing date is changed.
- (c)-(d) (No change.)

4A:4-2.5 Promotional title scope: State service

(a) (No change.)
 (b) When a promotion is within the same category as listed in (a) above, the examination, with or without all or part of the open competitive requirements, as appropriate, shall be open to permanent competitive division employees serving in one of the following:

- 1.-4. (No change.)
- [5. When open to a job band, to the highest level within the band.]
- [6.] 5. (No change in text.)
- (c) When a promotion is between categories as listed in (a) above, the examination shall be open to permanent competitive division employees currently serving in the announced unit scope and who meet one of the following criteria:
- 1.-2. (No change.)
3. All titles that are in the same category as the announced title and that are in specified class codes below the announced title, including the next lower in-series title, if one exists, with or without all or part of the open competitive requirements, as appropriate, and all applicants as described in (c)2 above; or
4. When open to a job band, to the highest level within the band; or]

- [5.] 4. (No change in text.)
- (d)-(e) (No change.)

4A:4-2.9 Make-up examinations

(a) (No change.)
 (b) For professional level engineering, police, fire, correction officer, correctional police officer, sheriff's officer, juvenile detention officer, and other public safety promotional examinations, make-up examinations may be authorized only in cases of:

- 1.-5. (No change.)
- (c)-(i) (No change.)

SUBCHAPTER 3. ELIGIBLE LISTS

4A:4-3.2 Order of names on eligible lists

(a)-(b) (No change.)
 (c) Eligibles on special reemployment lists shall be ranked in descending order of the class code or class level of the title from which the eligible was displaced. [In the case of special reemployment lists containing the names of eligibles laid off from a job band, the eligibles shall be ranked in descending order of the class code or class level of the job band, as applicable.] Within each class code or class level, eligibles shall be ranked in accordance with N.J.A.C. 4A:8-2.3(c)1.

- EXAMPLE 1.-2. (No change.)
- (d)-(e) (No change.)

SUBCHAPTER 4. CERTIFICATION FROM ELIGIBLE LISTS

4A:4-4.7 Removal of names

(a) The name of an eligible may be removed from an eligible list for any of the following reasons:

- 1.-3. (No change.)
4. The eligible has a criminal record [which] that adversely relates to the employment sought.
- i. (No change.)
- ii. The presentation of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer, correctional police officer, juvenile detention officer, firefighter, or judiciary titles and other titles as the Chairperson or designee may determine.
- 5.-11. (No change.)
- (b)-(h) (No change.)

SUBCHAPTER 5. WORKING TEST PERIOD

4A:4-5.1 General provisions

(a)-(d) (No change.)
 [(e) Advancement appointments to a higher title level in a job band are subject to a developmental period. See N.J.A.C. 4A:3-3.2A.]

4A:4-5.2 Duration

(a)-(c) (No change.)
 (d) Persons appointed to entry level law enforcement, correction officer, correctional police officer, juvenile detention officer, and firefighter titles shall serve a 12-month working test period. A law enforcement title is one that encompasses use of full police powers, but shall not include the local service competitive title of [Police Assistant] police assistant. See N.J.A.C. 4A:3-3.7A. Persons appointed in local service to the competitive title of [Police Assistant] police assistant shall serve a three-month working test period.

- 1.-2. (No change.)
- (e) An approved leave of absence, including a furlough extension leave or a voluntary furlough shall extend the completion of the working test period for a period of time equal to that leave or voluntary furlough.
1. When a paid leave of absence is granted to a correction officer or juvenile detention officer for the purpose of training required by N.J.S.A. 52:17B-68.1, such leave shall not extend the length of the working test period, unless the course in which the appointee is enrolled is scheduled to end after the one-year period. Regarding appointments to the title of [Correction Officer Apprentice] correctional police officer apprentice, see N.J.A.C. 4A:3-3.7B.

4A:4-5.3 Progress reports

- (a) (No change.)
 (b) For entry level law enforcement, correction officer, correctional police officer, and firefighter titles, the appointing authority shall prepare a progress report on the employee at the end of six months and a final report at the conclusion of the working test period.
 (c)-(e) (No change.)

SUBCHAPTER 7. OTHER APPOINTMENTS OR EMPLOYEE MOVEMENTS

4A:4-7.1 Transfers within the same governmental jurisdiction

- (a) (No change.)
 (b) If the transferred employee is concurrently appointed to a title [or job band, as applicable,] other than that held on a permanent basis at the time of transfer to accurately reflect new duties, the permanent transfer shall be made in combination with appropriate promotional, lateral title change, or voluntary demotion procedures. See N.J.A.C. 4A:4-2.4 through 2.7, 7.6, and 7.8, respectively.

1. The employee shall retain permanent status in the previously held permanent title [or job band] with the recipient organizational unit until examination and working test period procedures are concluded.

2. If the employee does not successfully complete the examination or working test period procedures, the recipient organizational unit shall return the employee to his or her permanent title [or job band] within this organizational unit pursuant to N.J.A.C. 4A:4-1.9, unless the employee has been disqualified for further employment.

- (c)-(f) (No change.)

4A:4-7.1A Intergovernmental transfers

- (a)-(d) (No change.)
 [(e) For purposes of this section, in the case of a position within a job band in State service, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.]

- [(f)] (e) (No change in text.)

4A:4-7.6 Lateral title change

- (a)-(d) (No change.)
 [(e) For purposes of this section, in the case of a position within a job band, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.]

4A:4-7.8 Voluntary demotion

- (a) A voluntary demotion is:
 1. The voluntary movement of a permanent employee from his or her permanent title to a lower title in local service; or
 2. In State service, the voluntary movement to another title with a lower class code, within the same organizational unit; or;
 [3. In the case of a job band, the voluntary movement to:
 i. A lower title level within the same band; or
 ii. Another job band with a lower level of duties, responsibilities, and qualifications and, where applicable, a lower class code.]

- (b)-(f) (No change.)

[(g) For purposes of this section, in the case of a position within a job band, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.]

CHAPTER 6

LEAVES, HOURS OF WORK, AND EMPLOYEE DEVELOPMENT

SUBCHAPTER 1. LEAVES OF ABSENCE

4A:6-1.2 Vacation leave

- (a)-(b) (No change.)
 (c) Continuous service, for purposes of this section, shall mean employment for the same jurisdiction, or, if the requirements of N.J.A.C. 4A:4-7.1A are met, employment for different jurisdictions (except as provided in (d) below), without actual interruption due to resignation, retirement, or removal.
 1. (No change.)
 2. Periods of employment before and after a suspension or leave without pay shall be considered continuous service. However, the period of time on a suspension or leave without pay, except for military leave, furlough extension leave, leave for a job-related injury under the

Worker's Compensation Statute, N.J.S.A. 34:15-1 et seq., and voluntary furlough, shall not be included in calculating years of continuous service.

3. (No change.)
 (d)-(k) (No change.)

4A:6-1.5 Vacation, administrative, and sick leave adjustments: State service

- (a) (No change.)
 (b) An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll [from the 9th through the 23rd day of the month] for greater than 14 calendar days, but less than 23 calendar days in a month.
 1.-2. (No change.)
 (c)-(g) (No change.)

SUBCHAPTER 4. HUMAN RESOURCE DEVELOPMENT: TRAINING, EDUCATION, CAREER DEVELOPMENT, AND EMPLOYEE ASSISTANCE PROGRAMS

4A:6-4.2 Civil Service Commission functions: State service

(a) The Chairperson or designee shall administer [an Office of Training] a Center for Learning and Improving Performance (CLIP), which is responsible for the following functions:

1. Planning, development, and delivery of all training and education programs for State employees, except for programs exempted by Executive Order No. 12 (1990) or by the Chairperson through a written delegation order. The [Office of Training] CLIP shall also be responsible for the planning, development, and delivery of all evaluations (see, for example, N.J.A.C. 4A:6-4.5) and assistance programs (see, for example, N.J.A.C. 4A:6-4.3 and 4.6) for State employees.

i. Delivery of training and education programs, evaluation programs, and assistance programs shall be provided by the New Jersey Community College Consortium for Workforce and Economic Development. If the New Jersey Community College Consortium for Workforce and Economic Development is available to deliver a specific program, the [Office of Training] CLIP shall negotiate the most cost-effective contract with an outside vendor or consultant to deliver the program. Under limited circumstances, [Office of Training] CLIP staff shall deliver training.

2.-3. (No change.)

(b) In cooperation with State agencies, the [Office of Training] CLIP shall assess State government Human Resource Development (HRD) needs and develop training and education plans and programs for each agency and for the State government as a whole. The [Office of Training] CLIP shall deliver or, consistent with (a)1i above, arrange the delivery of these programs, as appropriate.

1. Neither agency employees nor outside vendors or consultants may develop or deliver training and education programs that the [Office of Training] CLIP is capable of developing or delivering, as provided in (a)1i above, without the prior written approval of the designated [Office of Training] CLIP representative. If the [Office of Training] CLIP is not capable of developing or delivering, as provided in (a)1i above, a program of instruction that an agency needs, the [Office of Training] CLIP [director] manager may authorize the agency to assign employees temporarily to develop or deliver the program, or to hire a pre-approved vendor or consultant for the same purpose. The [Office of Training] CLIP staff shall supervise and direct the delivery of any such program.

2. No State agency, except the [Office of Training] CLIP, may employ or retain any person whose primary duty is staff training or human resource development, except as specifically permitted by Executive Order No. 12 (1990) or by the Chairperson or designee through a written delegation order.

(c) The [Institute] CLIP shall establish guidelines and procedures for career development programs, help State agencies develop these

programs, and review and approve career development plans and programs.

(d) The [Office of Training] CLIP shall evaluate the results and effects of all State government HRD programs based on the following criteria:

1.-4. (No change.)

(e) The [Office of Training] CLIP shall maintain a comprehensive system to record the training and education experiences of its clients, including all State government employees.

(f) Each State agency may designate a customer liaison to the [Office of Training] CLIP, whose responsibilities, which shall be in addition to his or her other job assignments in the agency, shall be the following:

1. Review and approve the designation of members of the agency to participate in HRD programs, subject to eligibility criteria established by the [Office of Training] CLIP.

2. Assist the [Office of Training] CLIP in setting HRD priorities related to the agency's mission and goals.

4A:6-4.4 Certified Public Manager Program: State service

(a) The [Office of Training] CLIP shall develop and administer the Certified Public Manager Program (CPM) for supervisors and managers. The program shall meet criteria established by the National Certified Public Managers Consortium. The Chairperson or designee shall be Chief Administrative Officer of the program. The Director of the [Office of Training] CLIP shall be the Program Director.

(b) The Program shall consist of progressive levels of instruction delivered jointly by the [Office of Training] CLIP and an institution of higher education selected by the Civil Service Commission.

4A:6-4.5 Career Development Programs: State service

(a) Departments or agencies may, with the written approval of the [Office of Training Director] CLIP manager and consistent with their goals, workforce planning, and technological changes, implement programs that prepare employees to move to new assignments or career opportunities.

1. A department or agency shall seek written approval from the [Office of Training Director] CLIP manager for a program referred to in (a) above by submitting a written plan. This plan shall include the program's goals, objectives, target population, projected outcome, and evaluation criteria for the program's success.

(b) (No change.)

4A:6-4.10 Employee Advisory Service: State service

(a)-(e) (No change.)

(f) An appointing authority that is informed that an employee is receiving services through EAS, [shall] should consult with [the supervisor of] the EAS [program] prior to seeking removal of the employee.

(g) (No change.)

CHAPTER 7

EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

SUBCHAPTER 3. POLICY PROHIBITING DISCRIMINATION IN THE WORKPLACE; COMPLAINT PROCEDURES, AND APPEALS

4A:7-3.1 State Policy [prohibiting discrimination] Prohibiting Discrimination in the [workplace] Workplace (State Policy)

(a) The State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender, [(including pregnancy)], marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. To achieve the goal of maintaining a work environment free from discrimination and harassment, the State of New Jersey strictly

prohibits the conduct that is described in this policy. This is a zero tolerance policy. This means that the State and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment.

1. Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale, and interferes with work productivity. Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, and authorities (hereafter referred to in this section as "State agencies" or "State agency"). The State of New Jersey will not tolerate harassment or discrimination by anyone in the workplace including supervisors, co-workers, employees of Gubernatorial Transition Offices, or persons doing business with the State. This policy also applies to [both] conduct that occurs in the workplace and conduct that occurs at any location [which] that can be reasonably regarded as an extension of the workplace (any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed). This policy also applies to posts on any social media site and/or electronic device, personal or business, that adversely affects the work environment defined by the State Policy.

2.-3. (No change.)

(b) It is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background, or any other protected category set forth in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

1. Examples of behaviors that may constitute a violation of this policy include, but are not limited to:

i.-vi. (No change.)

vii. Displaying or distributing materials, [(including electronic communications)] in the workplace or outside of the workplace that has an adverse impact on the work environment, including electronic communications, that contains derogatory or demeaning language or images pertaining to any of the protected categories.

(c) It is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment.

1. (No change.)

2. Examples of prohibited behaviors that may constitute sexual harassment and are, therefore, a violation of this policy include, but are not limited to:

i. (No change.)

ii. Unwanted physical contact, such as intentional touching, grabbing, pinching, brushing against another's body, or impeding or blocking movement;

iii. Sexual physical contact that involves any form of coercion, force, or lack of consent, such as sexual assault;

[iii.] iv. Verbal, written, or electronic sexually suggestive or obscene comments, jokes, or propositions, including letters, notes, e-mail, text messages, invitations, gestures, or inappropriate comments about a person's clothing;

Recodify existing iv.-vii. as v.-viii. (No change in text.)

(d) Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, or who witnesses others being subjected to such discrimination/harassment, [is encouraged to] should promptly report the incident(s) to a supervisor or directly to the State agency's Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by the State agency to receive workplace discrimination complaints. Victims of prohibited sexual physical contact can file a criminal complaint with law enforcement of the municipality where the incident occurred. Victims can also make a criminal report and a report to his or her supervisor/manager and/or Equal Employment Opportunity/Affirmative Action Officer; one does not have to choose one or the other. All employees [are expected to] shall cooperate with investigations undertaken pursuant to (g) below. Failure to cooperate in an investigation may result in

administrative and/or disciplinary action, up to and including termination of employment.

(e)-(f) (No change.)

(g) Each State agency shall follow the State of New Jersey Model Procedures for Processing Internal Complaints Alleging Discrimination in the Workplace with regard to reporting, investigating, and where appropriate, remediating claims of discrimination/harassment. See N.J.A.C. 4A:7-3.2. Each State agency is responsible for designating an individual, or individuals, to receive complaints of discrimination/harassment, investigating such complaints, and recommending appropriate remediation of such complaints. In addition to the Equal Employment Opportunity/Affirmative Action Officer, each State agency shall designate an alternate person to receive claims of discrimination/harassment.

1.-3. (No change.)

4. Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records, consisting of the investigative report and any attachments, including witness statements, shall be maintained as confidential records to the extent practicable and appropriate and will remain so indefinitely.

(h) (No change.)

(i) The burden is on the complainant to articulate a sufficient nexus between the alleged conduct to a protected category pursuant to the State Policy. An employee who knowingly makes a false accusation of prohibited discrimination/harassment or knowingly provides false information in the course of an investigation of a complaint, [may] will be subjected to administrative and/or disciplinary action, up to and including termination of employment. Complaints made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

(j) All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout and after the investigative process has been completed. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive [may] will result in administrative and/or disciplinary action, up to and including termination of employment.

(k)-(l) (No change.)

4A:7-3.2 Model procedures for internal complaints alleging discrimination in the workplace

Each State department, commission, State college or university, agency, and authority (hereafter referred to in this section as "State agency") is responsible for implementing this model procedure, completing it to reflect the structure of the organization, and filing a copy of the completed procedure with the Division of EEO/AA.

"(a) All employees and applicants for employment [have the right and are encouraged to immediately] shall promptly report suspected violations of the State Policy Prohibiting Discrimination in the Workplace, N.J.A.C. 4A:7-3.1 (State Policy). The complainant shall have the burden to articulate a sufficient nexus between the alleged conduct to a protected category pursuant to the State Policy.

(b) Complaints of prohibited discrimination/harassment can be reported to either (name of Officer), the EEO/AA Officer, or to any supervisory employee of the State agency. Complaints may also be reported to (Authorized Designee). To facilitate the reporting of a complaint, Discrimination Complaint Processing Forms (DPF-481) can be found on the Appointing Authorities' Intranet or the Civil Service Commission's website.

(c) [Every effort should be made to report complaints promptly.] Complaints and allegations of discrimination/harassment should be reported promptly. Delays in reporting may not only hinder a proper investigation, but may also unnecessarily subject the victim to continued prohibited conduct.

(d)-(g) (No change.)

(h) During the initial intake of a complaint, the EEO/AA Officer or authorized designee will obtain information regarding the complaint, and determine if interim corrective measures are necessary to prevent continued violations of the State's Policy Prohibiting Discrimination in the Workplace. Interim corrective actions include, but are not limited to:

1. Separation of parties;
2. Removal of parties from the workplace; and
3. Involvement of law enforcement, when appropriate, for instances involving bodily harm or serious bodily harm.

(i) At the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place. In determining whether or not a thorough and impartial investigation is warranted, the EEO/AA Officer when reviewing complaints shall consider, but is not limited to considering, the following factors: the facts presented, whether the complainant articulated a sufficient nexus between the alleged conduct to a protected category as set forth in N.J.A.C. 4A:7-3.1(a), the time the incident(s) occurred, the time the incident was reported, and whether the complainant and/or respondent is a current State employee (regardless of when the incident occurred).

(j)-(m) (No change.)

(n) In a case where a violation has been substantiated, and no disciplinary action recommended, the party(ies) against whom the complaint was filed may appeal the determination to the Civil Service Commission at the address indicated in (m) above within 20 days of receipt of the final letter of determination by the State agency head or designee.

1.-2. (No change.)

3. If disciplinary action has been recommended in the final letter of determination, [the] any party[(ies)] charged who is in the career service may appeal using the procedures set forth in N.J.A.C. 4A:2-2 and 3.

(o)-(p) (No change.)

CHAPTER 8
LAYOFFS

SUBCHAPTER 1. PROCEDURES

4A:8-1.1 General

(a) (No change.)

[(b) In the case of those titles approved for inclusion in job bands (see N.J.A.C. 4A:3-3.2A), all layoff rights, including lateral, demotional, and special reemployment rights, shall be based on the job band, not the title level within the band.

1. All references to titles in this chapter shall mean the job band in the case of those titles approved for inclusion in job bands.

2. All references to class codes in this chapter shall mean the class code of the lowest title level in the band in the case of those titles approved for inclusion in a job band.]

Recodify existing (c)-(d) as (b)-(c) (No change in text.)

SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

4A:8-2.2 Exercise of lateral and demotional rights

(a)-(f) (No change.)

(g) Employees who are placed in trainee titles shall serve a complete training period if the trainee title is outside of either the specialized or generalized title series [or job band] from which they were laid off.

(h) (No change.)

EXHIBIT E



CIVIL SERVICE COMMISSION
Division of Equal Employment Opportunity/Affirmative Action

CONFIDENTIAL

MEMORANDUM

To: Honorable Philip Murphy, Governor
Office of the Governor

From: Mamta Patel, Esq., Director
Division of EEO/AA
Civil Service Commission

Date: December 3, 2018

Subject: Recommended Changes to Administrative Code, Chapter 7
New Jersey State Policy and Procedures Prohibiting
Discrimination in the Workplace

Stated below are the recommended changes to the *New Jersey State Policy and Procedures Prohibiting Discrimination in the Workplace* ("State Policy"), N.J.A.C. 4A, Chapter 7 to address concerns as requested by the Office of the Governor. Please note that these changes will require a formal rule change which will be initiated by the Civil Service Commission. However, the Division of EEO/AA will begin to immediately train the EEO Officers to the State Appointing Authorities of the changes so there is no delay in their implementation. The changes are reflected in bold on this memo and are highlighted on the attachment to reflect how the changes would appear in the actual rules.

There were not many changes since when the State Policy and Procedures are correctly interpreted and applied when complaints are reported, following the State Policy and Procedures will result in an effective resolution.

Additional example of what constitutes sexual harassment

More encompassing language was added to cover "sexual assault" (sec. iii). To just add "sexual assault" could be read as too limiting and therefore a broader definition of an inappropriate,

coerced touching that would constitute sexual harassment as well a possible crime was included.

N.J.A.C. 4A:7-3.1 Policy prohibiting discrimination in the workplace

2. Examples of prohibited behaviors that may constitute sexual harassment and are therefore a violation of this policy include, but are not limited to:

i. Generalized gender-based remarks and comments;

ii. Unwanted physical contact such as intentional touching, grabbing, pinching, brushing against another's body, or impeding or blocking movement.

iii. Sexual physical contact that involves any form of coercion, force or lack of consent, such as sexual assault.

iv. Verbal, written, or electronic sexually suggestive or obscene comments, jokes, or propositions including letters, notes, e-mail, text messages, invitations, gestures, or inappropriate comments about a person's clothing;

Reporting

N.J.A.C. 4A:7-3.1(d) which addresses the reporting of suspected violations, language was added to clarify that in instances where there is "prohibited physical contact" an employee can file a report with law enforcement. In addition, the proposed amendment states that it can also be reported to the supervisor or EEO Officer. I think in these types of instances the employee should contact law enforcement as soon as possible and report any workplace discrimination or harassment promptly.

(d) Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, or who witnesses others being subjected to such discrimination/harassment, is encouraged to promptly report the incident(s) to a supervisor or directly to the State agency's Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by the State agency to receive workplace discrimination complaints. Victims of prohibited sexual physical contact can file a criminal complaint with law enforcement where the incident occurred. Victims can also make a criminal complaint and a report to his/her supervisor and/or EEO Officer; one does not have to choose one or the other.

Examples of interim measures

The Procedures will now include examples of interim measures after a complaint is reported but prior to initiating an investigation. The examples include but are not limited to, reporting to law enforcement, to make clear that this is an option for serious allegations such as prohibited sexual physical contact.

N.J.A.C. 4A:7-3.2 Model procedures for internal complaints alleging discrimination in the workplace

(h) During the initial intake of a complaint, the EEO/AA Officer or authorized designee will obtain information regarding the complaint, and determine if interim corrective measures are necessary to prevent continued violations of the State's Policy Prohibiting Discrimination in the Workplace[.] which may include but are not limited to:

1. Separation of parties;
2. Removal of parties from the workplace;
3. Involvement of law enforcement when appropriate for instances involving bodily harm or serious bodily harm.

Factors to consider when determining State Policy Jurisdiction

Although covered during various EEO Officer/Investigator trainings, the rules will now include a number of factors the EEO Officer should consider when determining whether a case should be opened for investigation. The factors include whether the parties are current State employees, regardless of when the incident occurred.

(i) At the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place. In determining whether or not an investigation is warranted, the EEO/AA Officer when reviewing complaints shall consider but is not limited to considering the following factors:

1. The facts presented;

2. Whether the complainant articulated a sufficient nexus between the alleged conduct to a protected category as set forth in N.J.A.C. 4A:7-3.1(a) above;
3. The time the incident occurred;
4. The time the incident was reported;
5. Whether the complainant and/or respondent is a current State employee (regardless of when the incident occurred).

Please feel free to contact me with any questions or concerns.



CIVIL SERVICE COMMISSION
Division of Equal Employment Opportunity/Affirmative Action

CONFIDENTIAL

MEMORANDUM

To: Honorable Philip Murphy, Governor
Office of the Governor

From: Deirdre L. Webster Cobb, Esq.
Chair/Chief Executive Officer
Civil Service Commission

Mamta Patel, Esq., Director
Division of EEO/AA
Civil Service Commission

Date: January 28, 2019

Subject: Recommended Changes to Administrative Code, Chapter 7
New Jersey State Policy and Procedures Prohibiting
Discrimination in the Workplace

In addition to the recommended changes to the *New Jersey State Policy and Procedures Prohibiting Discrimination in the Workplace* ("State Policy"), N.J.A.C. 4A, Chapter 7, previously outlined in my Memo dated December 13, 2018, the Civil Service Commission is recommending one additional change as incorporated below to address concerns as requested by the Office of the Governor. The changes are reflected in bold on this memo and are highlighted on the attachment to reflect how the changes would appear in the actual rules.

Explicitly Adding Gubernatorial Transition Offices

N.J.A.C. 4A:7-3.1 Policy prohibiting discrimination in the workplace

1. Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale, and interferes with work productivity. Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, authorities and

Gubernatorial Transition Offices (hereafter referred to in this section as "State agencies" or "State agency").

2. Examples of prohibited behaviors that may constitute sexual harassment and are therefore a violation of this policy include, but are not limited to:

- i. Generalized gender-based remarks and comments;
- ii. Unwanted physical contact such as intentional touching, grabbing, pinching, brushing against another's body, or impeding or blocking movement.
- iii. Sexual physical contact that involves any form of coercion, force or lack of consent, such as sexual assault.
- iv. Verbal, written, or electronic sexually suggestive or obscene comments, jokes, or propositions including letters, notes, e-mail, text messages, invitations, gestures, or inappropriate comments about a person's clothing;

Reporting

N.J.A.C. 4A:7-3.1(d) which addresses the reporting of suspected violations, language was added to clarify that in instances where there is "prohibited physical contact" an employee can file a report with law enforcement. In addition, the proposed amendment states that it can also be reported to the supervisor or EEO Officer. I think in these types of instances the employee should contact law enforcement as soon as possible and report any workplace discrimination or harassment promptly.

(d) Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, or who witnesses others being subjected to such discrimination/harassment, is encouraged to promptly report the incident(s) to a supervisor or directly to the State agency's Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by the State agency to receive workplace discrimination complaints. Victims of prohibited sexual physical contact can file a criminal complaint with law enforcement where the incident occurred. Victims can also make a criminal complaint and a report to his/her supervisor and/or EEO Officer; one does not have to choose one or the other.

Discrimination Complaint Processing Form

Although the Discrimination Complaint Processing Form (DPF-481) has always been available and could be filled out on line, it could not be saved and emailed to the EEO Officer. The reason

for this was to preserve confidentiality, we did not want parties to e-mail the form to those that did not need to know about the complaint. However, now an employee will have the ability to fill out the form, save it and e-mail it to his/her Appointing Authorities' EEO Officer.

N.J.A.C. 4A:7-3.2 Model procedures for internal complaints alleging discrimination in the workplace

(b) Complaints of prohibited discrimination/harassment can be reported to either (name of Officer), the EEO/AA Officer, or to any supervisory employee of the State Agency. Complaints may also be reported to (Authorized Designee). To facilitate the reporting of a complaint, Discrimination Complaint Processing Forms (DPF-481) can be found on the Appointing Authorities' Intranet or the Civil Service Commission's website.

Examples of interim measures

The Procedures will now include examples of interim measures after a complaint is reported but prior to initiating an investigation. The examples include but are not limited to, reporting to law enforcement, to make clear that this is an option for serious allegations such as prohibited sexual physical contact.

N.J.A.C. 4A:7-3.2 Model procedures for internal complaints alleging discrimination in the workplace

(h) During the initial intake of a complaint, the EEO/AA Officer or authorized designee will obtain information regarding the complaint, and determine if interim corrective measures are necessary to prevent continued violations of the State's Policy Prohibiting Discrimination in the Workplace[.] **which may include but are not limited to:**

1. Separation of parties;
2. Removal of parties from the workplace;
3. Involvement of law enforcement when appropriate for instances involving bodily harm or serious bodily harm.

Factors to consider when determining State Policy Jurisdiction

Although covered during various EEO Officer/Investigator trainings, the rules will now include a number of factors the EEO Officer should consider when determining whether a case should be opened for investigation. The factors include whether the parties are current State employees, regardless of when the incident occurred.

(i) At the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place. In determining whether or not an investigation is warranted, the EEO/AA Officer when reviewing complaints shall consider but is not limited to considering the following factors:

1. The facts presented;
2. Whether the complainant articulated a sufficient nexus between the alleged conduct to a protected category as set forth in N.J.A.C. 4A:7-3.1(a) above;
3. The time the incident occurred;
4. The time the incident was reported;
5. Whether the complainant and/or respondent is a current State employee (regardless of when the incident occurred).

EXHIBIT F

SUBCHAPTER 3. POLICY PROHIBITING DISCRIMINATION IN THE WORKPLACE; COMPLAINT PROCEDURE AND APPEALS

4A:7-3.1 Policy prohibiting discrimination in the workplace

(a) The State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. To achieve the goal of maintaining a work environment free from discrimination and harassment, the State of New Jersey strictly prohibits the conduct that is described in this policy. This is a zero tolerance policy. This means that the State and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment.

1. Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale, and interferes with work productivity. Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, authorities and Gubernatorial Transition Offices (hereafter referred to in this section as "State agencies" or "State agency"). The State of New Jersey will not tolerate harassment or discrimination by anyone in the workplace including supervisors, co-workers, or persons doing business with the State. This policy also applies to both conduct that occurs in the workplace and conduct that occurs at any location which can be reasonably regarded as an extension of the workplace (any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed).

2. This policy also applies to third party harassment. Third party harassment is unwelcome behavior involving any of the protected categories referred to in (a) above that is not directed at an individual but exists in the workplace and interferes with an individual's ability to do his or her job. Third party harassment based upon any of the aforementioned protected categories is prohibited by this policy.

3. It is a violation of this policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the

protected categories referred to in (a) above. This policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, advancement appointment, transfer, assignment, layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions, and career development.

(b) It is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background, or any other protected category set forth in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

1. Examples of behaviors that may constitute a violation of this policy include, but are not limited to:

i. Discriminating against an individual with regard to terms and conditions of employment because of being in one or more of the protected categories referred to in (a) above;

ii. Treating an individual differently because of the individual's race, color, national origin, or other protected category, or because an individual has the physical, cultural, or linguistic characteristics of a racial, religious, or other protected category;

iii. Treating an individual differently because of marriage to, civil union to, domestic partnership with, or association with persons of a racial, religious, or other protected category; or due to the individual's membership in or association with an organization identified with the interests of a certain racial, religious, or other protected category; or because an individual's name, domestic partner's name, or spouse's name is associated with a certain racial, religious, or other protected category;

iv. Calling an individual by an unwanted nickname that refers to one or more of the above protected categories, or telling jokes pertaining to one or more protected categories;

v. Using derogatory references with regard to any of the protected categories in any communication;

vi. Engaging in threatening, intimidating, or hostile acts toward another individual in the workplace because that individual belongs to, or is associated with, any of the protected categories; or

vii. Displaying or distributing material (including electronic communications) in the workplace that contains derogatory or demeaning language or images pertaining to any of the protected categories.

(c) It is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment.

1. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example:

- i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

2. Examples of prohibited behaviors that may constitute sexual harassment and are therefore a violation of this policy include, but are not limited to:

- i. Generalized gender-based remarks and comments;
- ii. Unwanted physical contact such as intentional touching, grabbing, pinching, brushing against another's body, or impeding or blocking movement;
- iii. Sexual physical contact that involves any form of coercion, force or lack of consent, such as sexual assault;
- iv. Verbal, written, or electronic sexually suggestive or obscene comments, jokes, or propositions including letters, notes, e-mail, text messages, invitations, gestures, or inappropriate comments about a person's clothing;
- v. Visual contact, such as leering or staring at another's body; gesturing; displaying sexually suggestive objects, cartoons, posters, magazines, or pictures of scantily-clad individuals; or displaying sexually suggestive material on a bulletin board, on a locker room wall, or on a screen saver;
- vi. Explicit or implicit suggestions of sex by a supervisor or manager in return for a favorable employment action such as hiring, compensation, promotion, advancement appointment, or retention;
- vii. Suggesting or implying that failure to accept a request for a date or sex would result in an adverse employment consequence with respect to any employment practice such as performance evaluation, advancement appointment, or promotional opportunity; or

viii. Continuing to engage in certain behaviors of a sexual nature after an objection has been raised by the target of such inappropriate behavior.

(d) Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, or who witnesses others being subjected to such discrimination/harassment, is encouraged to promptly report the incident(s) to a supervisor or directly to the State agency's Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by the State agency to receive workplace discrimination complaints. Victims of prohibited sexual physical contact can file a criminal complaint with law enforcement where the incident occurred. Victims can also make a criminal complaint and a report to his/her supervisor and/or EEO Officer; one does not have to choose one or the other. All employees are expected to cooperate with investigations undertaken pursuant to (g) below. Failure to cooperate in an investigation may result in administrative and/or disciplinary action, up to and including termination of employment.

(e) Supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. Supervisors shall immediately refer allegations of prohibited discrimination/harassment to the State agency's Equal Employment Opportunity/Affirmative Action Officer, or any other individual designated by the State agency to receive complaints of workplace discrimination/harassment. A supervisor's failure to comply with these requirements may result in administrative and/or disciplinary action, up to and including termination of employment. For purposes of this section and N.J.A.C. 4A:7-3.2, a supervisor is defined broadly to include any manager or other individual who has authority to control the work environment of any other staff member (for example, a project leader).

(f) Each State agency shall annually distribute the policy described in this section, or a summarized notice of it, to all of its employees, including part-time and seasonal employees. The policy, or summarized notice of it, shall also be posted in conspicuous locations throughout the buildings and grounds of each State agency (that is, on bulletin boards or on the State agency's intranet site). The Department of the Treasury shall distribute the policy to Statewide vendors/contractors, whereas each State agency shall distribute the policy to vendors/contractors with whom the State agency has a direct relationship.

(g) Each State agency shall follow the State of New Jersey Model Procedures for Processing Internal Complaints Alleging Discrimination in the Workplace with regard to reporting, investigating, and where appropriate, remediating claims of discrimination/harassment. See N.J.A.C. 4A:7-3.2. Each State agency is responsible for designating an individual or individuals to receive complaints of discrimination/harassment, investigating such complaints, and recommending

appropriate remediation of such complaints. In addition to the Equal Employment Opportunity/Affirmative Action Officer, each State agency shall designate an alternate person to receive claims of discrimination/harassment.

1. All investigations of discrimination/harassment claims shall be conducted in a way that respects, to the extent possible, the privacy of all the persons involved. The investigations shall be conducted in a prompt, thorough, and impartial manner. The results of the investigation shall be forwarded to the respective State agency head to make a final decision as to whether a violation of the policy has been substantiated.

2. Where a violation of this policy is found to have occurred, the State agency shall take prompt and appropriate remedial action to stop the behavior and deter its reoccurrence. The State agency shall also have the authority to take prompt and appropriate remedial action, such as moving two employees apart, before a final determination has been made regarding whether a violation of this policy has occurred.

3. The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment.

4. Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate.

(h) Retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other

retaliation. Following are examples of prohibited actions taken against an employee because the employee has engaged in activity protected by this subsection:

1. Termination of an employee;

2. Failing to promote an employee or select an employee for an advancement appointment;

3. Altering an employee's work assignment for reasons other than legitimate business reasons;

4. Imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or

5. Ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees).

(i) An employee who knowingly makes a false accusation of prohibited discrimination/harassment or knowingly provides false information in the course of an investigation of a complaint, may be subjected to administrative and/or disciplinary action, up to and including termination of employment. Complaints made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

(j) All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigative process. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment.

(k) Any employee found to have violated any portion or portions of this policy may be subject to appropriate administrative and/or disciplinary action which may include, but which shall not be limited to: referral for training, referral for counseling, written or verbal reprimand, suspension, reassignment, demotion, or termination of employment. Referral to another appropriate authority for review for possible violation of State and Federal statutes may also be appropriate.

(l) All State agencies shall provide all new employees with training on the policy and procedures set forth in this section within a reasonable period of time after each new employee's appointment date. Refresher training shall be provided to all employees, including supervisors, within a reasonable period of time. All State agencies shall also provide supervisors with training on a regular basis regarding their obligations and duties under the policy and regarding procedures set forth in this section.

4A:7-3.2 Model procedures for internal complaints alleging discrimination in the workplace

Each State department, commission, State college or university, agency, and authority (hereafter referred to in this section as "State agency") is responsible for implementing this model procedure, completing it to reflect the structure of the organization, and filing a copy of the completed procedure with the [Civil Service Commission,] Division of EEO/AA.

(a) All employees and applicants for employment have the right and are encouraged to immediately report suspected violations of the State Policy Prohibiting Discrimination in the Workplace, N.J.A.C 4A:7-3.1.

(b) Complaints of prohibited discrimination/harassment can be reported to either (name of Officer), the EEO/AA Officer, or to any supervisory employee of the State agency. Complaints may also be reported to (Authorized Designee). To facilitate the reporting of a complaint, Discrimination Complaint Processing Forms (DPF-481) can be found on the Appointing Authorities' Intranet or the Civil Service Commission's website.

(c) Every effort should be made to report complaints promptly. Delays in reporting may not only hinder a proper investigation, but may also unnecessarily subject the victim to continued prohibited conduct.

(d) Supervisory employees shall immediately report all alleged violations of the State of New Jersey Policy Prohibiting Discrimination in the Workplace to (Name of Officer), EEO/AA Officer. Such a report shall include both alleged

violations reported to a supervisor, and those alleged violations directly observed by the supervisor.

(e) If reporting a complaint to any of the persons set forth in subsections (a) through (d) above presents a conflict of interest, the complaint may be filed directly with the [Civil Service Commission,] Division of EEO/AA, PO Box 315, Trenton, NJ 08625. An example of such a conflict would be where the individual against whom the complaint is made is involved in the intake, investigative or decision making process.

(f) In order to facilitate a prompt, thorough, and impartial investigation, all complainants are encouraged to submit a Discrimination Complaint Processing Form (DPF-481). An investigation may be conducted whether or not the form is completed.

(g) Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate. A

copy of all complaints (regardless of the format in which submitted) must be submitted to the [Civil Service Commission,] Division of EEO/AA, by the State agency's EEO/AA Officer, along with a copy of the acknowledgement letter(s) sent to the person(s) who filed the complaint and, if applicable, the complaint notification letter sent to the person(s) against whom the complaint has been filed. If a written complaint has not been filed, the EEO/AA Officer must submit to the Division of EEO/AA a brief summary of

the allegations that have been made. Copies of complaints filed with the New Jersey Division on Civil Rights, the U.S. Equal Employment Opportunity Commission, or in court also must be submitted to the Division of EEO/AA.

(h) During the initial intake of a complaint, the EEO/AA Officer or authorized designee will obtain information regarding the complaint, and determine if interim corrective measures are necessary to prevent continued violations of the State's Policy Prohibiting Discrimination in the Workplace[,] which may include but are not limited to:

1. Separation of parties;
2. Removal of parties from the workplace;
3. Involvement of law enforcement when appropriate for instances involving bodily harm or serious bodily harm.

(i) At the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place. In determining whether or not an investigation is warranted, the EEO/AA Officer when reviewing complaints shall consider but is not limited to considering the following factors:

1. The facts presented;
2. Whether the complainant articulated a sufficient nexus between the alleged conduct to a protected category as set forth in N.J.A.C. 4A:7-3.1(a) above;
3. The time the incident occurred;
4. The time the incident was reported;
5. Whether the complainant and/or respondent is a current State employee (regardless of when the incident occurred).

(j) An investigative report will be prepared by the EEO/AA Officer or his or her designee when the investigation is completed. The report will include, at a minimum:

1. A summary of the complaint;

2. A summary of the parties' positions;

3. A summary of the facts developed through the investigation; and

4. An analysis of the allegations and the facts. The investigative report will be submitted to (State agency head) who will issue a final letter of determination to the parties.

(k) The (State agency head or designee) will review the investigative report issued by the EEO/AA Officer or authorized designee, and make a determination as to whether the allegation of a violation of the State's Policy Prohibiting Discrimination in the Workplace has been substantiated. If a violation has occurred, the (State agency head or designee) will determine the appropriate corrective measures necessary to immediately remedy the violation.

(l) The (State agency head or designee) will issue a final letter of determination to both the complainant(s) and the person(s) against whom the complaint was filed, setting forth the results of the investigation and the right of appeal to the Civil Service Commission as set forth in subsections (m) and (n) below. To the extent possible, the privacy of all parties involved in the process shall be maintained in the final letter of determination. The Division of EEO/AA, Civil Service Commission,] shall be furnished with a copy of the final letter of determination.

1. The letter shall include, at a minimum:

i. A brief summary of the parties' positions;

ii. A brief summary of the facts developed during the investigation; and

iii. An explanation of the determination, which shall include whether:

(1) The allegations were either substantiated or not substantiated; and

(2) A violation of the Policy Prohibiting Discrimination in the Workplace did or did not occur.

2. The investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint referred to in (h) above is completed.

3. The time for completion of the investigation and issuance of the final letter of determination may be extended by the State agency head for up to 60 additional days in cases involving exceptional circumstances. The State agency head shall provide the Division of EEO/AA and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension.

(m) A complainant who is in the career, unclassified, or senior executive service, or who is an applicant for employment, who disagrees with the determination of the (State agency head or designee), may submit a written appeal, within 20 days of the receipt of the final letter of determination from the (State agency head or designee), to the Civil Service Commission, PO Box 312, Trenton, NJ 08625. The appeal shall be in writing and include all materials presented by the complainant at the State agency level, the final letter of determination, the reason for the appeal, and the specific relief requested.

1. Employees filing appeals which raise issues for which there is another specific appeal procedure must utilize those procedures. The Commission may require any appeal, which raises issues of alleged discrimination and other issues, such as examination appeals, to be processed

using the procedures set forth in this section or a combination of procedures as the Commission deems appropriate. See N.J.A.C. 4A:2-1.7.

2. If an appeal under this chapter raises issues concerning the employee not receiving an advancement appointment, the Commission shall decide those issues in the course of its determination.

3. The Civil Service Commission shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1(d).

4. The appellant shall have the burden of proof in all discrimination appeals brought before the Civil Service Commission.

(n) In a case where a violation has been substantiated, and no disciplinary action recommended, the party(ies) against whom the complaint was filed may appeal the determination to the Civil Service Commission at the address indicated in (m) above within 20 days of receipt of the final letter of determination by the State agency head or designee.

1. The burden of proof shall be on the appellant.

2. The appeal shall be in writing and include the final letter of determination, the reason for the appeal, and the specific relief requested.

3. If disciplinary action has been recommended in the final letter of determination, the party(ies) charged may appeal using the procedures set forth in N.J.A.C. 4A:2-2 and 3.

(o) The Director of the Division of EEO/AA shall be placed on notice of, and given the opportunity to submit comment on, appeals filed with the Civil Service Commission of decisions on discrimination complaints, regardless of whether or not the complaint was initially filed directly with the Director of EEO/AA.

(p) Any employee or applicant for employment can file a complaint directly with external agencies that investigate discrimination/harassment charges in addition to utilizing this internal procedure. The time frames for filing complaints with external agencies indicated below are provided for informational purposes only. An individual should contact the specific agency to obtain exact time frames for filing a complaint. The deadlines run from the date of the last incident of alleged discrimination/harassment, not from the date that the final letter of determination is issued by the State agency head or designee.

1. Complaints may be filed with the following external agencies:

i. Division on Civil Rights

N.J. Department of Law & Public Safety

(Within 180 days of the discriminatory act)

ii. US Equal Employment Opportunity Commission (EEOC)

(Within 300 days of the discriminatory act)"