UNITED AGAINST WORKPLACE DISCRIMINATION

LOCAL 1000 AFSCME, AFL-CIO
143 Washington Avenue
Albany, New York 12210

MARY E. SULLIVAN, PRESIDENT
cseany.org

TABLE OF CONTENTS

INTRODUCTION

For decades, the labor movement in the United States has been instrumental in protecting working people from employment discrimination through successful organizing, collective bargaining, advocacy and lobbying. In fact, by working together with its political allies, the labor movement has played an important role in the expansion and scope of laws that protect working people against various forms of employment discrimination.

By organizing workers into unions, engaging in political action and actively supporting social movements that are working to eliminate discrimination and other social injustices, the labor movement has greatly improved the well-being of all working people in our country. That is why labor rights and civil rights are both part and parcel of that progressive fabric known as "human rights."

In a speech before an AFL-CIO convention, Dr. Martin Luther King, Jr. emphasized the connection between the labor movement and the civil rights movement.

> Our needs are identical with labor's needs: decent wages, fair working conditions, livable housing, old age security, health and welfare measures, conditions in which families can grow, have education for their children and respect in the community. That is why Negroes support labor's demands and fight laws that curb labor. That is why the labor-hater and the labor-baiter is virtually always a twin-headed creature spewing anti-Negro epithets from one mouth and anti-labor propaganda from the other mouth.

In 1999, CSEA distributed the original edition of this handbook. As a result of various legislative successes, as well as various court decisions in the area of employment discrimination, this edition has been prepared.

The purpose of this Handbook is to provide CSEA activists with basic information regarding discrimination in the workplace. The handbook is aimed at providing assistance in recognizing discrimination issues that arise in our existing bargaining units and during campaigns to organize new workers.

NOTE: This Handbook is not intended to provide specific legal advice regarding any particular pending discrimination case. Legal issues relating to potential discrimination claims, including where to file a discrimination claim, can be very complicated. Therefore, it is always wise to consult with your Labor Relations Specialist who can then communicate with the CSEA Legal Department. CSEA attorneys make regular Region Office visits to talk directly with bargaining unit members about particular discrimination issues. Such meetings are by appointments made through the Region office.

In addition, CSEA Legal Department attorneys are available to conduct presentations and trainings on discrimination and harassment issues. Such consultations and presentations can be requested through your CSEA Labor Relations Specialist or CSEA Organizer.

CHAPTER ONE:
AN OVERVIEW

Federal, state and local civil rights laws, as well as some collective bargaining agreements, prohibit employers from discriminating against employees by negatively affecting the terms and conditions of their employment based on specified impermissible factors such as race, gender, national origin, disability, age, etc. In other words, employers cannot fire, discipline, or treat employees less favorably regarding compensation and benefits when the reason for that differing treatment is the employee's membership in one of the groups protected under the law. In addition, employers are prohibited from discriminating against employees based on various protected activities and conduct by employees, including: a) union activism or support; b) opposition to unlawful discriminatory practices; c) complaints to federal or state authorities about health and safety problems; and d) participation in certain political or leisure activities.

1. The Critical Importance of Establishing Motivation

The central question in most discrimination cases is whether the employer's action or policy was motivated by an unlawful discriminatory motive, i.e., it must be shown that the employer's action was intentional.[1] For example, it must be proven that the employer took the action because of the employee's race or union activity. The unlawful reason does not have to be the sole basis for the decision, but it must be a reason that makes a difference.

Judges recognize that proving discrimination is difficult because employers rarely discriminate in an open and obvious manner. Frequently, an employer will use subtle and devious means to discriminate, covering-up its true intent with a phony non-discriminatory reason. This is what is known as a "pretext." For example, an employer may say it disciplined an employee because of her attendance, but after close scrutiny it is clear that the employee's attendance record is similar to other employees. However, the only difference between her and the rest is that she is over 60 years of age while the rest are under 55 years of age. The poor attendance record allegation is a "pretext" for age discrimination in the treatment of this employee.

In order to have a solid claim of employment discrimination, an individual needs to be able to present <u>proof</u> of the employer's discriminatory motivation. Claims based only on speculation, such as "I believe I have been discriminated against," will not be sufficient. Concrete facts and evidence must be presented to prove that the employer was motivated by discrimination. In other words, there must be objective evidence showing or pointing to a discriminatory motive. While it is difficult for an individual employee to uncover this information (and in some cases the union may be able to assist) only the governmental agencies charged with enforcing the anti-discrimination law can always demand information once a complaint or charge is filed.

---

[1] As will be seen in Chapter Four, discriminatory intent is not required for claims of salary discrimination under the Equal Pay Act of 1963.

2. Evidence Aimed at Proving Discrimination

Direct Evidence ("The Smoking Gun")

Although rare, the strongest evidence of discrimination is what is known as direct evidence. Direct evidence is a "smoking gun" type of statement by the employer showing a clear bias or prejudice against an employee due to the employee's membership in a particular protected group, or the employee's participation in a protected activity. An example of this is a comment like, "We don't hire women for this work."

Direct evidence can be a written document, an e-mail message, or an oral statement made to the employee, a co-employee, or a CSEA official or activist. Because direct evidence is very important in showing discriminatory intent, when such statements are heard or read, they need to be written down immediately for possible future use on behalf of the employee.

It is particularly important that CSEA officials and activists document any and all discriminatory statements made by management officials. While not always obvious at the time, these statements can be very useful in the future.

Circumstantial Evidence

Along with direct evidence, another important tool used to demonstrate discrimination is circumstantial evidence. The most common form of circumstantial evidence is showing that an employee has been treated differently than other employees. Treating similarly situated employees differently can create an inference that discrimination has taken place. However, an employer can challenge the suggestion or inference by setting forth a legitimate, non-discriminatory reason for the difference in treatment. Being treated differently does not, by itself, prove illegal discrimination.[2]

For example, an employer may have a work rule stating that any employee who steals will be severely disciplined. If an African-American employee is fired allegedly for stealing, the firing may appear consistent with the work rule. But if the same employer caught a similarly situated white employee stealing and did not fire him, the difference in the penalty would create a strong inference that the employer fired the African-American due to his race. However, the employer can rebut this inference by

---

[2] Disparate treatment can be an important defense in many disciplinary cases. In a disciplinary arbitration or hearing, CSEA may be able to stop a termination by establishing the employer's difference in treatment toward employees without having to prove that the employer was motivated by discrimination. It is a cardinal rule of arbitration that all employees within the bargaining unit should be treated similarly when discipline is being imposed, regardless of race, gender, or any other factor. Differences in treatment may be justified based on differences in years of seniority. For example, an employee with 20 years of service will not be penalized as harshly for the same offense as an employee with only five years of service.

The employer's motivation is relevant only when the employee or CSEA is seeking to establish that the employer has engaged in unlawful discrimination for an unlawful reason like age, disability, national origin, etc.

presenting evidence that there is a valid non-discriminatory reason for the difference in treatment. In the above example, the employer may be able to show a non-discriminatory reason for the difference in treatment by pointing to the difference in the values of the items stolen, or by comparing the work history or years of service of each employee.

CHAPTER TWO:
GENERAL CONCEPTS FOR ANALYZING AND INVESTIGATING DISCRIMINATION CLAIMS

A. A general three-step analysis for proving discrimination.

Courts apply a general three-step process to cases alleging "disparate treatment" or intentional discrimination. This three-step process can be applied equally to most forms of discrimination cases when there is no direct evidence of discrimination, but the precise nature of proof may vary depending on the nature of the discrimination. The courts have a precise way of analyzing discrimination cases such as race, sex, etc., and the NYS Public Employment Relations Board also has a prescribed way of analyzing cases of anti-union discrimination.

In addition to the above described methods of proving discrimination, there is a concept in discrimination law known as "adverse impact." Adverse impact that applies to cases where a neutral non-discriminatory factor, such as formal educational attainment, which adversely impacts a protected group, has no real relevance to successful performance of the job, and therefore, operates as a barrier to an equal employment opportunity. Thus, the factor has a discriminatory impact and should be eliminated because the employer cannot show a "business necessity" for it. In this type of case, the three-step process does not apply.

The three-step process described below is a very helpful tool when considering allegations of discrimination, or when advocating on behalf of an employee. CSEA activists and staff can play a key role in gathering the facts for each of these steps.

1. Step One: Establishing a Prima Facie Case of Discrimination

In the first step, facts must be gathered that create a minimum inference that the employee has been discriminated against. These might be:

a. He or she is a member of a distinct group (e.g. the employee is Latino) or has engaged in protected activity;

b. He or she is qualified for the position;

c. He or she has been subjected to some form of negative employment action, such as a firing or demotion, or has been denied equal terms and conditions of employment, i.e., salary and benefits;

d. Other evidence may create an inference of discrimination, such as different treatment of other employees who are not in the protected group or who have not engaged in the protected activity, or discriminatory statements by supervisory staff.

2. Step Two: Employer's Non-Discriminatory Reason

In step two, learning the Employer's "business reason" or the alleged non-discriminatory reason for the decision is important. When confronted with an allegation of discrimination, the employer will respond with a purported non-discriminatory reason for its actions, such as: a) the employee was disciplined due to his or her misconduct, and the penalty was based on work rules consistently applied to all employees; or b) the employee's salary and benefits are equal to the salary and benefits of all employees in the same title and grade.

3. Step Three: Refuting the Employer's Reason

In many cases, the most important facts in a discrimination case are evidence refuting the employer's purported non-discriminatory reason for its action. If the employer's non-discriminatory reason is not refuted, the claim of discrimination will be rejected. Therefore, in order for a discrimination claim to succeed, additional evidence must be presented showing that the employer's reason is not the real reason, and that the actual reason was the employee's membership in a protected group, or the employee's participation in a protected activity. If an employer lies about its real reason this could also be used to show discriminatory motive.

4. "Mixed motive" cases

In some cases there may be both a legitimate motive and an unlawful motive for the employer's action. For example, there may be evidence that a supervisor referred to a gay employee by a derogatory epithet, but there may also be evidence that the employee engaged in misconduct. If the employer can show that the employee would have been disciplined regardless of the derogatory remarks of the supervisor then the employer would probably prevail. For example, in a theft case if the employer shows that all employees who have been found guilty of theft are fired, then this employee's termination would most likely be upheld.

B. What is a "Constructive Discharge?"

It is also unlawful for an employer to cause an employee to resign by engaging in unlawfully motivated behavior toward the employee, such as badgering, harassment, or humiliation. Such conduct by an employer, if it causes an employee to quit the job, is known as a "constructive discharge." A constructive discharge occurs when an employer or its agents deliberately make an employee's working conditions so intolerable that the employee is forced into an involuntary resignation. An employee must show that the working conditions were so difficult or unpleasant that a "reasonable person" in the employee's shoes would have felt compelled to resign.

CHAPTER THREE:
RACE DISCRIMINATION

Since the end of the Civil War, various constitutional amendments and laws have been passed aimed specifically at ending race discrimination in our nation. During the Reconstruction era, the 14th Amendment to the U.S. Constitution was approved prohibiting states from denying equal protection of the laws to U.S. citizens. In addition, during that same era, Congress passed laws prohibiting race discrimination by states and other governmental agencies. More recently, as a result of the Civil Rights movement of the 1950s and 1960s, Congress enacted the Civil Rights Act of 1964, which was aimed primarily at ending race discrimination by employers as well as by labor unions. Similarly, the New York Human Rights Law contains prohibitions against race discrimination in employment.

Equal employment opportunity cannot be denied to any person because of his/her racial group or perceived racial group, his/her race-linked characteristics (e.g., hair texture, color, facial features), or because of his/her marriage to, or association with, someone of a particular race or color. The law also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups. The prohibition applies regardless of whether the discrimination is directed at Whites, Blacks, Asians, Latinos, Native Americans, Native Hawaiians and Pacific Islanders, multi-racial individuals, or persons of any other race, color, or ethnicity.

It is unlawful to discriminate against any individual in regard to recruiting, hiring and promotion, transfer, work assignments, performance measurements, the work environment, job training, discipline and discharge, wages and benefits, or any other term, condition, or privilege of employment. As previously noted, the law prohibits not only intentional discrimination, but also neutral job policies that disproportionately affect persons of a certain race or color, and that are not related to the job and the needs of the business. These laws make it illegal for most private employers and all governmental employers to discriminate based on race.

1. Racial Harassment

An employer can be held responsible for the existence of a hostile work environment when an employee's workplace is filled with racially-based intimidation, ridicule and insult so severe as to create an objectively hostile or abusive work environment, thereby changing the employee's working conditions.

In order to prove racial harassment, an employee must show more than a few isolated incidents of discriminatory comments or conduct. This is also true for other forms of discriminatory harassment, such as sexual harassment and harassment based on national origin.[3]

[3] A detailed discussion regarding sexual harassment is contained in Chapter Four. Harassment based on national origin is discussed in Chapter Five.

The issue of racial harassment is of particular importance to CSEA as a labor union. At times, racial harassment claims can be based on the conduct of other bargaining unit members employed in the same workplace. Co-workers who engage in racially charged conduct are vulnerable to disciplinary charges by the employer (even if the conduct does not rise to the level of creating a hostile work environment).

In order to maintain the unity, solidarity and harmony necessary for a strong and vital labor movement, it is important that we work together to eliminate racism in the workplace and in our nation. Discrimination in the workplace can be reduced, and even eliminated, through regular training and distribution of information.

2. Race Discrimination by Unions

In addition to the prohibitions on employers, both federal and state laws also prohibit unions from discriminating against their members because of their race. The duty of fair representation was an outgrowth of the failure of some unions, in the past, to provide equal representation to minority union members.

It is unlawful for a union to:

a. Exclude or expel a member due to his or her race;

b. Refuse to represent a member because of his or her race;

c. Limit, segregate or classify members based on their race;

d. Refuse to process a grievance challenging racial discrimination by an employer;

e. Fail to object to the discriminatory practice or procedures of an employer; or

f. Cause, or attempt to cause, an employer to discriminate against an individual because of his or her race.

CSEA is committed to fighting for racial justice and building a stronger union. It is very important that all activists and representatives make sure that their behavior, conduct and statements are fully consistent with CSEA's legal obligations to represent all of its members without regard to race.

CHAPTER FOUR:
GENDER/SEX DISCRIMINATION

It is unlawful to discriminate against any employee or applicant for employment because of his/her sex in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. The law also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals on the basis of sex. The law prohibits both intentional discrimination and neutral job policies that disproportionately exclude individuals on the basis of sex and that are not job related.

Prohibitions against sex-based discrimination also cover:

Sexual Harassment: See more about this below.

Pregnancy Based Discrimination: See more about this below.

The Equal Pay Act of 1963 requires that men and women be given equal pay for equal work in the same establishment. The jobs need not be identical, but they must be substantially equal. Both state and federal law prohibit compensation discrimination on the basis of sex. Unlike the Equal Pay Act, however, the state and federal laws do not require that the claimant's job be substantially equal to that of a higher paid person of the opposite sex, or require the claimant to work in the same establishment. (See more below.)

Both federal and state law prohibit most private employers and all government employers from discriminating against employees based on their sex, unless the employer can establish that sex is a bona fide occupational qualification ("BFOQ"). Both federal and state law prohibit virtually all differing treatment based on sex-based classifications, such as describing a job as a "man's job," or refusing to hire a woman who is married while, at the same time, hiring married men.

1. What is a BFOQ?

In certain narrow circumstances an employer is allowed to use sex-based classifications if the employer can demonstrate that, due to the nature of the job responsibilities, an employee's gender is a necessary qualification for that particular job. Whether sex is a necessary qualification for a particular job is a legal issue that must be determined by a court or arbitrator. For example, it has been determined that, in certain limited circumstances, employees working in an institutional setting where intimate care is provided to residents, can be assigned to a particular unit based on their sex in order to address the special privacy needs of the inmates, residents, or clients.

2. Pregnancy Discrimination

It is illegal to fail to treat a pregnant employee in the same manner as other employees regarding salary and benefits. Employers cannot fire or treat a pregnant employee differently because of the pregnancy, unless it can be shown that she is unable to reasonably perform her job duties. Policies that deny employment benefits to pregnant employees are presumed to be illegal.[4]

3. Sexual Harassment

Both federal and state law prohibitions against sex discrimination include a prohibition against sexual harassment. The United States Equal Employment Opportunity Commission ("EEOC") has issued regulations that provide the clearest definition of sexual harassment. Courts and arbitrators rely heavily upon the EEOC regulations. The EEOC regulations state:

> Harassment on the basis of sex violates both federal and state law. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
>
> a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
>
> b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
>
> c. Such conduct has a purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

4. What Constitutes Sexual Harassment?

The EEOC and the courts have identified two different forms of sexual harassment: **quid pro quo** and **hostile environment**. These forms of sexual harassment apply equally to heterosexual and same-sex behavior.

To be able to identify and respond to unlawful sexual harassment, it is important to consider the differences between quid pro quo and hostile environment sexual harassment. These differences may impact whether the employer will be held legally responsible for the improper conduct.

Quid pro quo sexual harassment involves situations where there is a direct link between a grant or denial of an economic benefit, i.e., promotion or demotion, increase or decrease in salary, and the employee's consent to engage in sexual activity. An example

[4] As a practical matter, the Family Medical Leave Act ("FMLA") grants far greater rights to pregnant employees than do federal and state prohibitions against sex discrimination.

of quid pro quo sexual harassment would be evidence establishing that a supervisor fired or demoted an employee for refusing explicit sexual advances.

In order to demonstrate a hostile environment due to sexual harassment, it is necessary to demonstrate that the sexually related behavior had the purpose or effect of interfering with the employee's work performance, or created an intimidating, hostile, or offensive working environment that adversely affected work performance.

In determining whether the alleged sexually related conduct created a hostile environment, courts and arbitrators will consider the "totality of the circumstances." Some factors that are considered in determining whether an unlawful hostile environment has been created are:

a. The frequency of the discriminatory conduct;

b. The severity of the conduct, i.e., whether the conduct is physically threatening or humiliating, or merely a single offensive statement;

c. Whether the conduct unreasonably interfered with an employee's work performance.

The Supreme Court has determined that an "objective test" must be applied in deciding whether the sexually offensive conduct was severe enough to be the basis for a hostile environment sexual harassment claim.

The laws prohibiting sexual harassment were not intended to create a civility code for the workplace. Generally, simple teasing, offhand comments, or isolated incidents are not sufficient to constitute illegal sexual harassment because they are not considered severe enough to change the "terms and conditions of employment."[5]

The fact that one employee is offended by certain behavior does not necessarily demonstrate that illegal sexual harassment has taken place. In order to have a meritorious legal claim of illegal sexual harassment, it must be shown that the offensive behavior was so severe that a "reasonable person" would find that the work environment has become objectively hostile. However, an employee is not precluded from making a complaint to the employer about conduct or filing a grievance, even though such a complaint would not be sufficiently serious to constitute a meritorious lawsuit.

5. CSEA's Role in the Fight Against Sexual Harassment

Union activists are frequently the first people to whom fellow workers may talk to about conduct they believe constitutes sexual harassment. Under the law, unions have a responsibility to investigate and process grievances under a contractual sexual harassment

[5] However, even if the offensive conduct does not rise to the level of violating federal or state laws, employees still may face disciplinary charges for engaging in such offensive behavior.

provision and/or assist the individual with regard to the employer's sexual harassment complaint procedures.

Various CSEA locals and units have taken a proactive approach regarding sexual harassment by negotiating sexual harassment complaint procedures with their employer. In addition, CSEA regularly participates in training programs for locals and units regarding sexual harassment.

ALSO SEE THE CSEA booklet on sexual harassment for members and activists. Copies of the booklet are available through the CSEA Legal Department.

6. Salary Discrimination: The Equal Pay Act

Under the Equal Pay Act ("EPA"), it is illegal for an employer who is subject to the Fair Labor Standards Act ("FLSA") to pay different wages based on the sex of the employees who perform substantially equal work. It is also illegal for a union to encourage an employer to violate the EPA.

Proving an Equal Pay Act Salary Discrimination violation.

In order to establish a case of sex-based salary discrimination under the EPA, it must be shown that:

a. The employer pays different wages to male and female employees; and

b. These employees perform equal work on jobs requiring equal skill, effort and responsibility; and

c. The work is performed under similar working conditions and at the same work location.

For an EPA claim to be successful it **must** be shown that the jobs are "substantially equal" and that they are located in the same work location. The jobs do not have to be identical. Whether the jobs are "substantially equal" will depend on the actual work performed rather than the duties listed in written job descriptions.

NOTE: Unlike other discrimination laws, the EPA does not require proof that the employer intended to discriminate.

Employer Defenses to Equal Pay Act Cases

After an employee establishes that male and female employees are paid different wages for equal work, an employer must show that the salary difference is justified by either a merit pay system, a seniority system, a system that measures earnings by quantity or quality of production, or a differential based on any other factor other than sex.

Collective Bargaining Agreements and the Role of the Union

The fact that a contract contains unequal rates of pay for equal work of substantially similar jobs does not constitute a defense to an EPA claim for either an employer or the union. Contracts that provide for unequal rates of pay in conflict with the EPA would be viewed by the courts as null and void. It is totally inappropriate for a CSEA local or unit to knowingly enter into or renew a contract that continues known wage differences that violate the EPA. As noted, differences in pay based on years of service under a bona fide salary schedule may not be a violation.

Enforcement of the Equal Pay Act

The EPA can be enforced through a complaint with the United States Department of Labor ("US DOL"), or through a lawsuit in federal or state court.

Generally, EPA claims must be commenced within two (2) years of the date of the alleged offense. However, if it can be shown that the employer willfully violated the law, a three (3) year time frame is allowed. If successful, an employee can receive back wages for a maximum of two (2) years, or three (3) years in the case of a willful violation.

7. Lilly Ledbetter Fair Pay Act of 2009.

On January 29, 2009, President Obama signed the Lilly Ledbetter Fair Pay Act of 2009 ("Act"), which supersedes the Supreme Court's decision in Ledbetter v. Goodyear Tire & Rubber Co., Inc., 550 U.S. 618 (2007). The Ledbetter decision had required a compensation discrimination charge to be filed when the pay discrimination first commenced, thus, not allowing Lilly Ledbetter to complain about pay discrimination that had occurred for over ten years before she realized she was not being paid equal to that of a man doing the same work.

The Act provides that each paycheck that delivers discriminatory compensation is a wrong actionable under the federal EEO statutes, regardless of when the initial discrimination began.

Under the Act, an individual subjected to compensation discrimination under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, or the Americans with Disabilities Act of 1990 may file a charge within 180 (or 300) days of any of the following:

- when a discriminatory compensation decision or other discriminatory practice affecting compensation is adopted;

- when the individual becomes subject to a discriminatory compensation decision or other discriminatory practice affecting compensation; or

- when the individual's compensation is affected by the application of a discriminatory compensation decision or other discriminatory practice, including each time the individual receives compensation that is based, in whole or part, on such compensation decision or other practice.

The Act has a retroactive effective date of May 28, 2007, and applies to all claims of discriminatory compensation pending on or after that date.

CHAPTER FIVE:
NATIONAL ORIGIN DISCRIMINATION

Both federal and state law prohibit discrimination against an employee because of his or her national origin, i.e., the country where the employee was born or the country where the employee's ancestors came from, or because of the employee's physical, cultural or linguistic characteristics stemming from a particular national origin group.

National origin discrimination means treating someone less favorably because he or she comes from a particular place, because of his or her ethnicity or accent, or because it is believed that he or she has a particular ethnic background. National origin discrimination also means treating someone less favorably at work because of marriage or other association with someone of a particular nationality. Examples of violations covered under state and federal law include:

Employment Decisions
Title VII prohibits any employment decision, including recruitment, hiring, and firing or layoffs, based on national origin.

Language

- Accent discrimination
  An employer may not base a decision on an employee's foreign accent, unless the accent materially interferes with job performance.

- English fluency
  A fluency requirement is only permissible if required for the effective performance of the position for which it is imposed.

- English-only rules
  English-only rules must be adopted for nondiscriminatory reasons. An English-only rule may be used if it is needed to promote the safe or efficient operation of the employer's business.

1. Examples of National Origin Discrimination

The prohibition against national origin discrimination prohibits discrimination based on:

a. Marriage to, or association with, persons of a national origin group;

b. Membership in, or association with, an organization identified with or seeking to promote the interests of national origin groups;

c. Attendance or participation in schools, churches, and temples generally used by persons of a national origin group;

d. Name or spouse's name which is associated with a national origin group.

2. English Only Requirements

The EEOC will presume that a work rule requiring employees to speak only English at all times at work constitutes national origin discrimination. However, when the employer can show that the rule is justified by business necessity, the employer can require employees to speak only English at certain times.

3. National Origin Harassment

Like racial and sexual harassment, work place harassment on the basis of national origin constitutes illegal national origin discrimination. Ethnic slurs and other verbal or physical conduct may constitute illegal harassment when it is found to create a hostile work environment that interferes with an employee's work performance.

As part of CSEA's commitment to inclusiveness and building a stronger union, it is vitally important that all activists and representatives conduct themselves in a manner that respects the ethnic diversity of CSEA's entire membership.

CHAPTER SIX:
AGE DISCRIMINATION

1. Federal Law

Under the federal Age Discrimination in Employment Act ("ADEA"), it is illegal for an employer to discriminate against an employee because that employee is forty (40) years of age or older. The ADEA prohibits discrimination in terms and conditions of employment or other employer actions that materially impact an employee's employment (i.e. forced early retirement, age-based harassment, etc.). In addition, the ADEA prohibits employers from applying age-based classifications of employees in any manner that would deprive them of employment opportunities or would otherwise negatively affect their employment status. However, the ADEA does not prohibit employers from granting greater benefits to older employees.

Age Discrimination Against State Workers

Although the ADEA prohibits New York State from discriminating against its employees based on age, a slim conservative majority of the U.S. Supreme Court ruled in 2000 that the U.S. Constitution bars ADEA lawsuits against state employers. In essence, the majority ruled that the ADEA was unconstitutional to the extent that it permitted state workers to commence age discrimination lawsuits against their employer. Based on that ruling, New York State workers can only sue the State of New York for age discrimination in state court under New York's Human Rights law.[6]

Substantive Employer Defenses Under ADEA

a. Age as a Bona Fide Occupational Qualification ("BFOQ")

In certain narrow circumstances under the ADEA, an employer can act based on an employee's age where the employer can show that age is a BFOQ. In such situations, an employer can use age-based classifications when the employer shows that, due to the nature of the job responsibilities, an employee's age is a necessary qualification for that particular job.

b. Bona Fide Seniority System

The ADEA permits employers to use a seniority system as long as it is not a mask for discrimination. The seniority system must be based on the length of service as the primary criterion.

[6] In certain rare situations, the EEOC can sue a state employer for age discrimination in federal court on behalf of state workers.

2. New York Law

New York's Human Rights Law contains certain broader protections against age discrimination. Unlike the ADEA, which applies to workers over 40, New York's statute protects individuals eighteen (18) years of age or older from age discrimination. In addition, it provides a legal mechanism for state workers to challenge employment discrimination based on age.

Like the ADEA, New York law permits employers, in certain narrow circumstances, to act based on an employee's age where the employer can demonstrate that age is a BFOQ reasonably necessary for the normal operation of a particular business.

New York's prohibition against age discrimination does not deny employers the ability to terminate an employee when the employee is physically unable to perform his or her duties, even upon the provision of a reasonable accommodation. In addition, New York law permits employers to act based upon a retirement policy or system, as long as the policy or system is not used to mask age discrimination.

CHAPTER SEVEN:
DISABILITY DISCRIMINATION

Both federal and New York law contain prohibitions against disability discrimination and require, in certain circumstances, that an employer provide a "reasonable accommodation" to a disabled employee. As a result of a series of unfavorable legal decisions by the U.S. Supreme Court, the federal Americans with Disabilities Act ("ADA") suffered some poor interpretation and became a weak legal tool to challenge alleged disability discrimination. New York's Human Rights Law, in contrast, provided better protections than the ADA against discrimination for disabled employees.

However, on September 25, 2008, the President signed the Americans with Disabilities Act Amendments Act of 2008 ("ADA Amendments Act" or "Act"). The Act emphasizes that the definition of disability should be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA, and generally shall not require extensive analysis.

The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of the EEOC's ADA regulations. The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.

The Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways. Most significantly, the Act:

(a) directs the EEOC to revise that portion of its regulations defining the term "substantially limits";

(b) expands the definition of "major life activities" by including two non-exhaustive lists:

- the first list includes many activities that the EEOC has recognized (e.g., walking) as well as activities that the EEOC has not specifically recognized (e.g., reading, bending, and communicating);

- the second list includes major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions");

(c) states that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability;

(d) clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;

(e) changes the definition of "regarded as" so that it no longer requires a showing that the employer perceived the individual to be substantially limited in a major life activity, and instead says that an applicant or employee is "regarded as" disabled if he or she is subject to an action prohibited by the ADA (e.g., failure to hire or termination) based on an impairment that is not transitory and minor; and,

(f) provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation.

1. Disability Discrimination Against State Workers

Although the ADA prohibits New York State from discriminating against its employees based on disability, a slim conservative majority of the U.S. Supreme Court ruled in 2001 that the U.S. Constitution does not permit state workers to commence ADA lawsuits for damages against state employers. In essence, the majority ruled that the ADA was unconstitutional to the extent that it permitted state workers to bring lawsuits for damages. Therefore, New York State employees can only obtain damages for disability discrimination by commencing a lawsuit under New York's Human Rights Law.[7]

2. Who is "Disabled"?

The fundamental issue in virtually every disability discrimination case is whether the individual's condition constitutes a "disability" under either state and/or federal law. In order to have a legal claim for a reasonable accommodation an employee must have a diagnosed impairment that constitutes a "disability" under either state or federal anti-discrimination laws.

The term "disability" under these discrimination laws does not cover every form of physical or mental impairment. The mere fact that an employee has some form of physical or mental impairment does not guarantee that the employee would be considered "disabled" under the disability discrimination laws.

[7] In certain rare situations, the EEOC can sue a state employer for disability discrimination under the ADA in federal court on behalf of state workers.

3. Differing Definitions of Disability

New York's Human Rights Law and the ADA contain different definitions for what constitutes a disability. An employee can be found to be disabled under the New York State Human Rights Law, but not disabled under the ADA. Furthermore, the fact that an individual is considered disabled under some other federal or state law, such as the Social Security Law or Workers' Compensation Law, does not guarantee that the individual's impairment would constitute a disability under the ADA or the New York State Human Rights law.

4. New York's Definition of Disability

Under New York law, an employee is protected against disability discrimination, and may be entitled to a reasonable accommodation, if the employee has:

a. A physical, mental, or medical impairment resulting from anatomical, physiological, genetic, or neurological conditions; and

b. The impairment prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques; and

c. The impairment does not prevent the individual, with a reasonable accommodation, from performing in a reasonable manner, the activities involved in the job or occupation; or

d. A record of such impairment or a condition regarded by others as such an impairment.

Under state law, an employee can be disabled if the impairment can be proven by medically accepted techniques. Unlike the ADA, state law does not require that the impairment "substantially limits" normal life activities of the employee. The broader state law definition has led courts to find that employees with conditions such as obesity or panic disorder with agoraphobia are disabled under the New York law.

However, not every disabled employee under New York law is entitled to a reasonable accommodation. According to a regulation issued by the New York State Division of Human Rights ("NYSDHR"), only a disability that actually restricts an individual from performing the job is entitled to be considered for an accommodation.

New York law also contains separate and distinct provisions prohibiting discrimination against a blind person, a hearing impaired person or a person with a disability on the basis of his or her use of a guide dog, hearing dog or service dog.

5. The ADA Definition of Disability

The ADA definition of disability was far narrower than the state law definition but the ADA Amendments Act of 2008 narrowed that difference. Under the ADA an employee is disabled if the employee:

a. Has a physical or mental impairment; and

b. The impairment substantially limits one or more major life activities; and

c. The employee cannot perform the essential functions of the job with or without a reasonable accommodation; or

d. The employee has a record of such impairment or is perceived as having such impairment.

As noted above, the ADA Amendments Act of 2008 has required the Courts to expand the definition of "disability" from the way the term has been defined by the Supreme Court and certain EEOC regulations in the past. As noted, the intent of the Act is to make it easier to establish that an employee is disabled.

The Act also requires the EEOC to revise the definition of the phrase "substantially limits." The EEOC, as of this writing has not made the revision yet.

The phrase "major life activities" has also been expanded to include the two non-exhaustive lists mentioned above. The phrase "substantially limits" means that the employee is unable to perform a major life activity, or is significantly restricted as to the condition, manner, or duration of performing a major life activity, as compared to an average person. A "major life activity" traditionally included such things as taking care of oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working, and now includes such things as reading, bending, and communicating.

6. Mental Disabilities Are Now Given Greater Consideration.

The EEOC regulations interpreting the amended Act states, "a physical or mental impairment," meaning "any mental or psychological disorder, such as an intellectual disability (formerly termed 'mental retardation'), organic brain syndrome, emotional or mental illness and specific learning disabilities." 29 CFR § 1630.2(h).

Learning disability is a condition that affects approximately 15 million Americans. "Learning disability" is a phrase that includes many disorders, some that are not yet well-understood. This may involve reading and reading comprehension (dyslexia); difficulty with understanding and working with numbers and mathematical

operations (dyscalculia); auditory perceptual deficit (an impaired ability to receive accurate information from one's sense of hearing); difficulty transmitting messages from the brain to the body (dyspraxia); visual perceptual deficit (inability to transmit and process information from one's sense of sight, etc.).

Like an individual with a recognized physical disability, an employee with a learning disability is also entitled to reasonable accommodation of the disability. Such an accommodation may be related to taking a civil service examination or learning a new job.

7. What is a Reasonable Accommodation?

New York's Human Rights Law defines "reasonable accommodation" as actions taken by the employer to permit a disabled employee "to perform in a reasonable manner the activities involved in the job or occupation," including, but not limited to: providing an accessible worksite; obtaining or modifying equipment; providing support services for persons with impaired hearing or vision; job restructuring; and altering a work schedule.

NYSDHR has concluded that when an employer seeks to restructure a position it is not required to create a completely unique position tailored to the particular abilities of the disabled employee. In addition, NYSDHR has determined that employers do not have to grant an accommodation to an employee when the disability or accommodation would constitute a direct threat to the health and safety of the employee or others. The NYS Court of Appeals has mandated an informal, interactive process between the employer and the disabled employee regarding accommodation.

Under the ADA, reasonable accommodations may include but are not limited to:

a. Making existing employment facilities readily accessible to the disabled;

b. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices;

c. Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials or policies, and providing qualified readers or interpreters.

8. Determining an Appropriate Accommodation

The EEOC recommends an informal, interactive process between the employer and the disabled employee regarding potential accommodations to overcome the employee's limitations. Under both federal and state law, a reasonable accommodation is not required if it would impose an "undue hardship" on the employer. To determine whether a particular accommodation would constitute an undue hardship, the courts consider:

a. The cost of the accommodation;

b. The size, number of employees, and financial resources of the employer;

c. The impact the accommodation will have on the employer's operation, including the impact the accommodation will have on the ability of other employees to perform their duties, and the impact the accommodation would have on the seniority rights of other employees.

9. The Role of the Union and Collective Bargaining Agreements

Due to the complexity of the law regarding disability discrimination and reasonable accommodation, it is extremely important that CSEA locals and units contact CSEA labor relations staff immediately when reasonable accommodation issues arise. Where necessary, the Legal Department should be contacted as well.

Under both federal and state law, unions are prohibited from discriminating against a member because that member has a disability. We have a legal obligation to make sure that CSEA offices, meetings, programs, and publications are accessible to members who are disabled. In addition, we have an obligation to protect confidential information regarding a member's disability.

The importance of CSEA locals and units obtaining CSEA labor relations staff advice in dealing with discrimination issues is particularly necessary when a proposed reasonable accommodation may lead to a violation of the contract.

NOTE: An accommodation that requires a violation of a contract may be the equivalent of an undue hardship. A common form of accommodation is a request by an employee to change a work schedule. Such an accommodation may conflict with the seniority clause of a negotiated contract. It has been determined by the U.S. Supreme Court that, generally, it is an undue hardship to require an employer to violate the seniority rights of other employees (i.e., breaching the collective bargaining agreement) in order to reasonably accommodate a particular employee. In such situations it may become necessary for CSEA to oppose a particular accommodation and propose to the employer and the disabled employee an alternative accommodation that would not result in a violation of the contract.

Since these are technical legal issues, contact with CSEA labor relations staff and the CSEA Legal Department is imperative before taking a position opposing or supporting a proposed accommodation that may impact or violate the contract.

10. Medical Examinations and Disability Related Inquiries

Employers may not ask an employee about the existence, nature, or severity of a disability if there is no evidence that the employee has difficulty performing the duties of his or her position, or the employer has no reason to know the disability due to "business

necessity." Specifically, the ADA states that the employer cannot "require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature and severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity." 42 U.S.C. § 12112(d)(4)(A). One of the purposes of this provision is to prevent employers and others from learning about disabilities that are not apparent from observation and the disclosure of which could cause the employee to be stigmatized unnecessarily. This type of issue arises frequently when employers demand that employees produce detailed medical information when the employee has used sick leave in a manner that the employer finds unacceptable. The remarkable thing about this provision is that it applies to all employees regardless of whether they are disabled or not because it is the inquiry that is unlawful. Therefore, even though the information produced demonstrates that the employee is not disabled, the question should never have been asked in the first place.

11. Drug and Alcohol Abuse

Employees and applicants currently engaging in the illegal use of drugs are not covered by the disability discrimination laws when an employer acts on the basis of such use. However, an employee in active recovery from drug use may be protected from discrimination, particularly based on a perception that the employee is unreliable. Tests for illegal drugs are not subject to the law's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees. Active alcoholics in recovery may be entitled to reasonable accommodation such as going to a treatment program if that will help them successfully perform the duties of their position.

CHAPTER EIGHT:
RELIGIOUS DISCRIMINATION

Under both federal and state law it is illegal to discriminate against an employee because of his or her religion.

1. The Limited Duty to Reasonably Accommodate

Under federal law, it is illegal for an employer to fail to reasonably accommodate the religious practices of an employee, unless the employer can prove that the accommodation would result in an "undue hardship." "Undue hardship" is a legal phrase used in these circumstances, and there have been many decisions interpreting and defining the phrase. So, if you are presented with an issue involving an employer's claim of undue hardship, consult the CSEA Legal Department, or your Labor Relations Specialist for guidance.

Under New York's Human Rights Law, it is illegal for an employer to require an employee to remain at work during a Sabbath or other holy day, unless granting such an accommodation would constitute an undue hardship on the employer. In addition, the Human Rights Law mandates that, in some circumstances, employers must allow employees to utilize their accrued vacation and personal leave for the period of an absence related to religious observance. Alternatively, if the employee lacks such accrued leave, the employer is obligated to permit the employee to treat the time for religious observance as leave without pay.

An employer's refusal to permit an employee to use accrued leave solely because the leave would be used to accommodate the employee's religious observance constitutes an unlawful discriminatory practice.

Under federal law, an employer can establish the undue hardship of a reasonable accommodation by showing that the accommodation would require a significant expense, or a significant interference, with the safe or efficient operation of the workplace, or would constitute a violation of a bona fide seniority system.

The most common form of accommodation is a request by an employee to change a work schedule due to religious practices. Such an accommodation may conflict with the seniority clause of a negotiated contract. It has been determined by the U.S. Supreme Court that it is an undue hardship to require an employer to violate the seniority rights of other employees under a collective bargaining agreement in order to reasonably accommodate the religious practices of a particular employee.

Nevertheless, employers and labor unions under federal and state law have a duty to explore other means of providing a reasonable accommodation that would not result in a contractual violation, or cause another form of undue hardship. Such an accommodation may include a program permitting voluntary substitution between employees, or through flexible scheduling.

CHAPTER NINE:
ACTIVITIES PROTECTED AGAINST DISCRIMINATION

1. Retaliation for Opposing Discrimination

Under both federal and state law, it is illegal for an employer to retaliate against any individual for opposing the employer's discriminatory actions or policies, or for participating in any manner with a discrimination investigation, proceeding, or hearing. In order to establish a claim of retaliation, it must be shown that:

a. The individual participated in protected activity opposed to discrimination;

b. The employer was aware of the protected activity;

c. The employer took an adverse action against the employee; and

d. There is evidence showing a connection between the protected activity and the adverse employment action.

An individual claiming retaliation does not have to prove that the employer's underlying conduct actually violated federal or state anti-discrimination laws. However, the individual must demonstrate that he/she had a good faith and reasonable belief that the employer's practice was illegal. Further, it must be shown that the employer understood, or reasonably understood, that the individual's complaint was related to some form of alleged employer discriminatory conduct. Courts will evaluate the reasonableness of the individual's belief based on a totality of the circumstances.

The anti-retaliation provision is intended to protect an employee against a wide variety of employer conduct that is intended to deter or restrain employees from complaining about unlawful practices, and produces injury or harm. To establish that such an injury occurred, a plaintiff "must show that a reasonable employee would have found the challenged [employer] action" significantly adverse so that it would dissuade an employee from making a complaint of discrimination in the future.

For example, where an employee is given a more arduous job than she normally has, even though it is in her job description, it could be found to be retaliation if it would deter another employee from filing a future complaint of discrimination.

The non-retaliation provisions of the non-discrimination laws even protect those who do not initiate complaints of discrimination, but who are interviewed during investigations of discrimination, and during such interviews report acts of discrimination that they may have suffered or observed. Thus, a person can "oppose" discrimination by responding to someone else's question (such as during an employer's investigation of a complaint of discrimination), and giving an account of conduct that may constitute unlawful discrimination.

2. Free Speech Protections Under the First Amendment

The First Amendment provides public employees with certain limited protections against retaliation by public employers for speaking out on issues of public concern. However, the First Amendment is not applicable to private sector employees because the First Amendment only protects individual's free speech rights from restrictions by a governmental entity.

Generally, speech regarding work and working conditions will not be found to be protected activity under the First Amendment because the courts have determined that work disputes are not issues of public concern. However, when a public employee "blows the whistle" on corruption in government, or speaks out in public regarding a social issue, such speech may be found to be protected.

Even when speech is found to touch upon an issue of public concern, courts will balance the right of the public employee to speak out on the issue against the public employer's interest in providing governmental services.

Again, this is an area with many court decisions, so guidance must be sought before an employee speaks out on matters that could be found not to be protected and thus, result in discipline. The union, as an organization, has greater protection to speak out than individual employees.

3. Political Activities Protected Under the First Amendment

The U.S. Supreme Court has determined that most public employees are protected against retaliation for partisan political activities under the First Amendment. Therefore, unless a public employee is considered a policymaker, the employee cannot be terminated, disciplined, or treated adversely for running for public office, or campaigning for an unsuccessful candidate.

4. New York's Lawful Activities Law

The New York Lawful Activities Law prohibits employment discrimination by private and public sector employers based on various employee activities outside of working hours, off of the employer's premises, and without use of the employer's equipment or other property.

Specifically, the law prohibits discrimination by public and private employers against employees for engaging in off-duty political activity, union activity,[8] use of legal consumable products (such as cigarettes), and other "recreational activities."

Individuals victimized by such discrimination have a right to bring a lawsuit in state court for damages and injunctive relief. However, one court has ruled that claims of discrimination based on public sector union activity must be pursued before New York's

[8] A detailed discussion of discrimination based on union activity is contained in Chapter Thirteen.

Public Employment Relations Board ("PERB"). In addition, another court has ruled that political and recreational activity claims against the State of New York must be filed in the New York Court of Claims.

The law defines political activities as: 1) running for office; 2) campaigning for a candidate for public office; and 3) participating in fund raising activities for the benefit of a candidate, political party or political advocacy group. However, the statute does not protect activities banned by the federal Hatch Act. Under the Hatch Act, individuals holding certain federally funded jobs may be prohibited from running for public office.

The law defines recreational activities as: sports, games, hobbies, exercise, reading and the viewing of television, movies, and similar material. Courts have ruled that dating between a married employee and another employee, cohabitation and adultery do not constitute recreational activities protected by the law.

5. Discrimination for Displaying the American Flag

In 2002, the State Legislature amended New York's Labor Law to prohibit private and public employers from discriminating against employees who wear an American flag at work or display the flag at his or her workstation.

6. Statutory Protections for Whistleblowers

As noted above, the First Amendment protects public employees who "blow the whistle" against corruption in government. In addition, various New York statutes protect both public and private employees against retaliation for being a whistleblower.

7. The Taylor Law

The Taylor Law prohibits public employers from retaliating against union representatives for filing complaints and/or grievances regarding a health and safety hazard. Such filings constitute protected activity under the Taylor Law.

8. PESHA

The Public Employment Safety and Health Act ("PESHA") prohibits retaliation against a public employee because the employee filed a health and safety complaint under the Public Employment Safety and Health Act.

9. Labor Law Sections 740, 741 and Civil Service Law Section 75-b

a. Retaliation for Health and Safety Complaints

Labor Law Section 740 protects <u>private sector employees</u> from retaliation for reporting health and safety violations by a private employer. An employee has the right to file a lawsuit within one year of the retaliatory action. In such a

lawsuit, an employee can seek reinstatement, back wages, and attorney's fees. However, the commencement of a Labor Law Section 740 lawsuit is deemed a waiver of all other rights and remedies available under any law, rule, regulation, contract, or collective bargaining agreement.

b. Retaliation for Patient Care Complaints

In 2002, the State Legislature enacted Labor Law Section 741, which provides whistleblower protections for health care workers who disclose, threaten to disclose, or refuse to participate in any activity, policy, or practice by the employer that the employee reasonably believes constitutes improper quality of patient care. A health care worker has the right to file a lawsuit within two years of the retaliatory action. In such a lawsuit, an employee can seek reinstatement, back wages and attorney's fees, as well as civil penalties against the employer.

c. Retaliation against Public Employees for Reporting Governmental Misconduct

Civil Service Law Section 75-b protects all public employees against retaliation for reporting certain governmental conduct, including what the employee reasonably believes to be a violation of a federal law, state law, or local rule or regulation. Civil Service Law Section 75-b is not limited to the reporting of health and safety violations that present a substantial and specific danger to the public health and safety, or reporting patient care issues. Claims of retaliation under Civil Service Law Section 75-b must be raised during the course of a Civil Service Law Section 75 disciplinary hearing, or a contractual arbitration. However, public employees without disciplinary protections under Civil Service Law Section 75, or a collective bargaining agreement, have the right to commence a lawsuit challenging the retaliation.

10. Family Medical Leave Act (FMLA)

a. The Statutory Right

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding related to FMLA.

b. Enforcement

The Wage and Hour Division of the U.S. Department of Labor investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also be able to bring a private civil action against an employer for violations.

c. Job Restoration

Upon return from FMLA leave, an employee must be restored to his/her original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of FMLA leave cannot result in the loss of any employment benefit that he/she earned or was entitled to **before** using FMLA leave, nor can it be counted against the employee under a "no fault" attendance policy. If a bonus or other payment, however, is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to FMLA leave, payment may be denied unless it is paid to an employee on equivalent leave status for a reason that does not qualify as FMLA leave.

An employee has no greater right to restoration, or to other benefits and conditions of employment, than if the employee had been continuously employed.

CHAPTER TEN:
DISCRIMINATION BASED ON MARITAL STATUS, MILITARY STATUS, GENETIC STATUS, ADOPTIVE PARENT STATUS, AND WORKERS' COMPENSATION

1. Marital Status Discrimination

Under New York's Human Rights Law, it is illegal for an employer to discriminate against an employee based on marital status. However, the prohibition against marital status discrimination does not prohibit an employer from imposing a rule barring spouses from working together.

Although federal law does not prohibit discrimination based on marital status, the EEOC has determined that it is illegal sex discrimination for an employer to refuse to hire women who are married, but not apply the same rule to married men.

2. Military Status Discrimination

In 2003, New York's Human Rights Law was amended to prohibit employers from discriminating based on an individual's military status in the U.S. armed forces or the National Guard.

3. Genetic Status Discrimination

New York's Human Rights Law prohibits employers from discriminating based on the genetic disposition or carrier status of any individual. In other words, employees cannot be discriminated against because they may have a genetic predisposition to a particular illness. In most situations, state law also prohibits employers from requiring or administering a genetic test as a condition of employment, or to acquire an individual's genetic test results. An employer may require a specific genetic test as a condition of employment where the test is shown to be able to establish that a particular genetic anomaly might increase the risk of disease as a result of working in a particular occupational environment.

The Genetic Information Nondiscrimination Act of 2008 became effective November 2009. This federal Act prohibits employers and unions from discriminating against employees based on their genetic predispositions or perceived genetic predispositions.

4. Adoptive Parent Status

Under New York's Labor Law, employers are prohibited from discriminating against adoptive parents with regard to the childcare leave granted to employees after the birth of a child.

5. Workers' Compensation

New York's Workers' Compensation Law prohibits discrimination against an employee for filing a workers' compensation claim, or for participating in a workers' compensation hearing. Unlike other forms of discrimination, claims of discrimination relating to workers' compensation must be brought before the New York State Workers' Compensation Board.

6. Family Responsibility Discrimination (FRD)

The EEOC has issued Enforcement guidance on Unlawful Disparate Treatment of Workers with Caregiving Responsibilities. (See EEOC Compliance Manual § 615 (May 23, 2007) at https://www.eeoc.gov/policy/docs/caregiving.html.)

What has become known as a "Family Responsibility Discrimination" (FRD) under the anti-discrimination laws, especially Title VII of the Civil Rights Act of 1964, relates to discrimination against individuals because of their family responsibilities based on factors like gender, age, disability, etc. In other words, just because an employee has family responsibilities does not mean he/she will have a claim of discrimination. As the EEOC has stated, FRD "is not intended to create a new protected category, but rather to illustrate prohibition under the ADA in which stereotyping or other forms of disparate treatment may violate Title VII or the prohibition under the ADA against discrimination based on a worker's association with an individual with a disability."

It is obvious that while women have entered employment in numbers equal to men, in many instances though, they continue to be most families' primary caregivers. However, caregiving protection is not limited to children or women. For example, an older male worker may have responsibilities to care for an elderly parent that an employer may perceive as an obstacle to a promotion with greater responsibilities. In some instances, job discrimination could be related to an employer's unwillingness to accommodate an employee who must care for a disabled family member. Stereotypes about working mothers, single working mothers, men as caregivers, and other such notions have no validity in the workplace where employees should be judged on performance and other relevant criteria. As one Federal Appeals Court has stated, employment decisions based on stereotypes about working mothers are unlawful because "the anti-discrimination laws entitle individuals to be evaluated as individuals rather than members of groups having certain average characteristics." *Lust v. Sealy, Inc.*, 383 F. 3d 580 (7th Cir. 2004).

Analysis of Evidence

Intentional sex discrimination against workers with caregiving responsibilities can be proven using any of the types of evidence used in other sex discrimination cases. As with any other charge, investigators faced with a charge alleging sex-based disparate treatment of female caregivers should examine the totality of the evidence to determine whether the particular challenged action was unlawfully discriminatory. All evidence

should be examined in context. The presence or absence of any particular kind of evidence is not dispositive. For example, while comparative evidence is often useful, it is not necessary to establish a violation. There may be evidence of comments by officials about the reliability of working mothers, or evidence that, despite the absence of a decline in work performance, women were subjected to less favorable treatment after they had a baby. It is essential that there be evidence that the adverse action taken against the caregiver was based on sex.

Relevant evidence in charges alleging disparate treatment of female caregivers may include, but is not limited to, any of the following:

- Whether the respondent asked female applicants, but not male applicants, whether they were married or had young children, or about their childcare and other caregiving responsibilities;

- Whether decision-makers or other officials made stereotypical or derogatory comments about pregnant workers or about working mothers or other female caregivers;

- Whether the respondent began subjecting the charging party or other women to less favorable treatment soon after it became aware that they were pregnant;

- Whether, despite the absence of a decline in work performance, the respondent began subjecting the charging party or other women to less favorable treatment after they assumed caregiving responsibilities;

- Whether female workers without children or other caregiving responsibilities received more favorable treatment than female caregivers based upon stereotypes of mothers or other female caregivers (sex discrimination against working mothers is prohibited by the Title VII even if the employer does not discriminate against childless women);

- Whether the respondent steered or assigned women with caregiving responsibilities to less prestigious or lower paid positions;

- Whether male workers with caregiving responsibilities received more favorable treatment than female workers;

- Whether statistical evidence shows disparate treatment against pregnant workers or female caregivers;

- Whether respondent deviated from workplace policy when it took the challenged action;

- Whether the respondent's asserted reason for the challenged action is credible.

Mixed motive cases

An employer violates Title VII if the charging party's sex was a motivating factor (e.g., stereotype that women with small children cannot engage in international business travel because of childcare responsibilities) in the challenged employment decision, regardless of whether the employer was also motivated by legitimate business reasons. However, when an employer shows that it would have taken the same action even absent the discriminatory motive (e.g., the employee sent on the international business trip needed to speak Chinese and the charging party did not speak Chinese), the complaining employee will not be entitled to reinstatement, back pay, or damages.

Benevolent Stereotyping

Adverse employment decisions based on gender stereotypes are sometimes well-intentioned and perceived by the employer as being in the employee's best interest. For example, an employer might assume that a working mother would not want to relocate to another city, even if it would mean a promotion. Of course, adverse actions that are based on sex stereotyping violate Title VII, even if the employer is not acting out of hostility.

Discrimination Against Male Caregivers

The Supreme Court has observed that gender-based stereotypes also influence how male workers are perceived: "Stereotypes about women's domestic roles are reinforced by parallel stereotypes presuming a lack of domestic responsibilities for men. These mutually reinforcing stereotypes created a self-fulfilling cycle of discrimination." Stereotypes of men as "bread winners" can further lead to the perception that a man who works part-time is not a good father, even if he does so to care for his children. Thus, while working women have generally borne the brunt of gender-based stereotyping, unlawful assumptions about working fathers and other male caregivers have sometimes led employers to deny male employees opportunities that have been provided to working women or to subject men who are primary caregivers to harassment or other disparate treatment. For example, some employers have denied male employees' requests for leave for childcare purposes even while granting female employees' requests.

Significantly, while employers are permitted by Title VII to provide women with leave specifically for the period that they are incapacitated because of pregnancy, childbirth, and related medical conditions, employers may not treat either sex more favorably with respect to other kinds of leave, such as leave for childcare purposes. To avoid potential Title VII violations, employers should carefully distinguish between pregnancy-related leave and other forms of leave, ensuring that any leave specifically provided to women alone is limited to the period that women are incapacitated by pregnancy and childbirth.

Unlawful Caregiver Stereotyping Under the Americans with Disabilities Act

In addition to prohibiting discrimination against a qualified worker because of his or her own disability, the Americans with Disabilities Act (ADA) prohibits discrimination of the disability of an individual with whom the worker has a relationship or association, such as a child, spouse, or parent. Under the provision, an employer may not treat a worker less favorably based on stereotypical assumptions about the worker's ability to perform job duties satisfactorily while also providing care to a relative or other individual with a disability. For example, an employer may not refuse to hire a job applicant whose wife has a disability because the employer assumes that the applicant would have to use frequent leave and arrive late due to his responsibility to care for his wife.

Hostile Work Environment

Employers may be liable if workers with caregiving responsibilities are subjected to offensive comments or other harassment because of race, sex (including pregnancy), association with an individual with a disability, or another protected characteristic and the conduct is sufficiently severe or pervasive to create a hostile work environment. The same legal standards that apply to other forms of harassment prohibited by the EEO statutes also apply to unlawful harassment directed at caregivers or pregnant workers.

Retaliation

Employers are prohibited from retaliating against workers for opposing unlawful discrimination, such as by complaining to their employers about gender stereotyping of working mothers, or for participating in the EEOC charge process, such as by filing a charge or testifying on behalf of another worker who has filed a charge. Because discrimination against caregivers may violate EEO statutes, retaliation against workers who complain about such discrimination also may violate the EEO statutes.

The retaliation provisions under the EEO statutes protect individuals against any form of retaliation that would be reasonably likely to deter someone from engaging in protected activity. Caregivers may be particularly vulnerable to unlawful retaliation because of the challenges they face in balancing work and family responsibilities. An action that would be likely to deter a working mother from filing a future EEOC charge might be less likely to deter someone who does not have substantial caregiving responsibilities.

CHAPTER ELEVEN:
SEXUAL ORIENTATION DISCRIMINATION

In 2003, New York's Human Rights Law was amended to prohibit discrimination based on sexual orientation. Under the statute, it is unlawful for public employers and most private sector employers to discriminate against any individual based on that individual's sexual orientation. In addition, the law prohibits labor unions from discriminating based on sexual orientation.

The amendment to the Human Rights Law defines "sexual orientation" as "heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived," but does not protect "conduct otherwise proscribed by law." Therefore, both private and public sector employees are protected against discrimination, as well as discriminatory harassment based on sexual orientation.

In addition, under the New York City Administrative Code, private employers in New York City are prohibited from discriminating against employees based on sexual orientation.

Finally, under the State-CSEA contracts, both the State of New York and CSEA have agreed not to engage in discrimination based on sexual orientation. Some local government contracts also contain prohibitions against sexual orientation discrimination.

CSEA has been successful in combating the denial of health insurance coverage for the same-sex partner of a CSEA bargaining unit member. These cases have been based on either a violation of the Human Rights Law or the Equal Protection Clauses of the U.S. and State of New York Constitutions.

CHAPTER TWELVE:
DISCRIMINATION BASED ON AN ARREST RECORD OR CRIMINAL CONVICTION

1. Arrest Record

In general, under New York's Human Rights Law it is unlawful for a public employer to discriminate against an employee based on an arrest when the criminal charge was dismissed in the employee's favor.

2. Record of Conviction

Under both New York's Human Rights Law and Correction Law, it is unlawful in certain circumstances for an employer to discriminate against an employee due to his or her record of criminal conviction. If the conviction is directly related to the type of employment sought, or could cause an unreasonable risk to property or safety, an employer can lawfully refuse to hire an individual with a conviction record without violating the law.

CHAPTER THIRTEEN:
DISCRIMINATION BASED ON UNION ACTIVITY

The most common form of discrimination faced by CSEA activists is retaliation based on their union activity. Such discrimination and retaliation is particularly common during union organizing drives.

In both the public and private sectors, employers are prohibited from retaliating against union activists and supporters who engage in protected union activities.

1. Public Sector: The Taylor Law

The Taylor Law prohibits public employers from:

a. Interfering with, restraining, or coercing public employees in the exercise of their Taylor Law rights for the purpose of depriving them of such rights;

b. Discriminating against an employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization; and

c. Using any state funds to train managers or supervisors, regarding methods to discourage union organizing, or to discourage an employee from participating in a union organizing drive.

PERB Procedures

When a public employee has been retaliated against for protected activity, an improper practice charge can be filed with the New York State Public Employment Relations Board ("PERB"). The improper practice charge must be filed with PERB within four months of the employer's action. Therefore, if you suspect anti-union discrimination by your employer, it is critical that you contact your Labor Relations Specialist or CSEA Organizer immediately, so that a timely improper practice charge can be filed. After the charge has been filed, PERB will hold a pre-hearing conference to sort out the relevant issues and determine whether the case can be settled. Should the case not be settled during the conference, a hearing date will be set. At the hearing, CSEA will have to present evidence demonstrating that anti-union actions have taken place.

Injunctions

The Taylor Law permits courts to issue injunctions against employers while an improper practice charge is pending. In order to obtain an injunction, CSEA has to present proof showing that CSEA, more likely than not, will be successful in proving the improper practice charge, and that CSEA and its members will be irreparably harmed unless the employer's conduct is enjoined until a final decision is rendered.

"Irreparable harm" means that there will be an injury to CSEA and/or its members that cannot be compensated solely by money or other remedy. Upon such a showing, PERB will petition the court for an injunction against the employer, or permit CSEA to go to court to seek an injunction.

It is important to understand that injunctions under the Taylor Law are difficult to obtain because the union is gaining relief before a full hearing has been held and a final decision rendered.

2. Private Sector: National Labor Relations Act

The National Labor Relations Act ("NLRA") protects private sector workers against retaliation for participating in or supporting organizing campaigns, or engaging in other forms of protected Union activity. Federal law prohibits private sector employers from interfering, restraining, or coercing employees with respect to their rights to engage in union-related activity, or discriminating against employees for participating in such activity.

Private sector employees, even if they are not yet unionized, can engage in "concerted activity of their mutual aid and protection." The activity must be for the benefit of two or more employees and relate to wages, hours, and working conditions.

NLRB Procedures

Under federal law, an unfair labor practice charge must be filed with the National Labor Relations Board ("NLRB") within six months of the alleged conduct. After the charge is filed, the NLRB's regional office will conduct an investigation. During the investigation, an NLRB representative will interview witnesses and take sworn statements from the witnesses. After the investigation, the regional office will issue a finding that the charge either does or does not have merit. If the NLRB regional office finds merit to the charge following its investigation, it will issue a complaint. An administrative law judge will hear the complaint, and an NLRB attorney, along with a CSEA attorney, will present the case against the employer. An administrative law judge decision can be appealed to the full NLRB Board.

In some unfair labor practice cases, after the NLRB has issued a complaint, the NLRB will go to court seeking an injunction against the employer.

3. How to Prove Anti-Union Discrimination

Like other forms of discrimination, in order to win a case of anti-union discrimination, CSEA must present evidence showing the employer's illegal motivation. There are three essential elements necessary to prove a case of discrimination based on union activity:

a. The employee or employees have engaged in protected union activity; and

b. The protected activity was known to the person(s) making the adverse employment decision; and

c. The negative employment decision would not have been made "but for" the protected activity, or was inherently destructive of important employee rights. The illegal reason for the conduct does not have to be the sole reason, but a reason among others that made a difference.

4. What Is Protected Activity?

In the public sector, in order for conduct to be considered "protected activity," it must have some form of organizational context. The fact that an employee has complained to his or her supervisor about working conditions is not always sufficient to show protected activity, unless the employee was acting on behalf of the union or other union members, or there are other facts that demonstrate that the activity is protected activity, or was beneficial to the collective group and not just the individual employee.

The activity must in some way relate to the terms and conditions of employment. The following are examples of activity that have been recognized to be protected activity in the public sector: a) filing a grievance or an improper practice charge, or participating in those proceedings; b) a unit officer filing a health and safety complaint with the appropriate authority; c) announcing the intent to run for union office; d) a unit officer's vocal opposition to an employer's staffing decision; e) a written communication to the unit membership regarding terms and conditions of employment; and f) working to organize a union.

As noted, in the private sector, in order for conduct to be considered "protected," it must be: a) for the mutual aid and protection of workers; b) done in a concerted fashion; and c) not so disruptive as to go beyond the protections of the Act.

5. What is Unprotected Activity?

Although employees have a right to engage in union activity, that right will be balanced against the employer's right to maintain order and respect in the workplace. Therefore, the scope of protection for union activity depends upon the manner and context in which the employee engages in the activity. Any action that threatens bodily or physical harm, or destroys property will rarely be protected. Of course, under the Taylor Law, strikes or work stoppages by public employees are unlawful.

6. Showing that Management Knew of the Protected Activity

In most cases, it is not difficult to show that the employer knew that the employee was a union activist, or had engaged in protected union activity. Frequently, the protected activity is done in front of management, or management does not dispute that it was aware of the protected activity. However, it is not unusual for an employer to plead, as a defense, that it was unaware of the activity, and that the employee was an activist.

7. "But For" the Protected Activity

Generally, the most difficult aspect of any discrimination case is showing that the employer acted only because of the protected union activity. There are a number of ways of proving the employer's improper motivation through direct or circumstantial evidence.

In many successful cases, CSEA has been able to prove anti-union discrimination based on "in your face" type statements made by management. Angry comments critical of a member's union activity are the best evidence of anti-union motivation. Therefore, it is essential to keep records regarding such statements, especially when they involve a direct threat.

Circumstantial evidence of discrimination can be the timing and content of the employer's reaction. This type of evidence can be used to prove discrimination. For example, an employer resurrecting disciplinary charges that had been settled previously has been found to demonstrate animus.

Animus can also be shown through differences in treatment by the employer toward other similarly situated employees. For example, anti-union animus was found in a case where one of three members charged with stealing was terminated after he filed a grievance challenging a suspension. The other two employees who were suspended for stealing were not terminated.

8. Continuing the Fight Against Anti-Union Discrimination

As part of CSEA's continuing drive to organize new workers and to protect our current members, CSEA vigorously pursues cases of anti-union discrimination. Such cases can be proven, with the assistance of your Labor Relations Specialist or your CSEA Organizer, through a prompt and detailed investigation of the facts. Your role in gathering and analyzing the background and specifics of each situation, along with your Labor Relations Specialist or CSEA Organizer, is key to the development of a timely and successful case. Many times a case will turn on what was said or occurred, and a witness' recollection of events can be crucial. A good understanding of what goes on in your workplace and its history is very helpful in proving disparate or unequal treatment of a union activist.

CHAPTER FOURTEEN:
THE ROLE OF CSEA IN FIGHTING DISCRIMINATION

The courts have held that when a union fails to investigate a complaint of discrimination from a union member and/or refuses to take any action to prevent such discrimination, the union may be held responsible for condoning the discrimination. A union also can be held responsible when the union itself discriminates against a member due to his or her membership in a protected group.

As a labor union, CSEA is committed to fighting all forms of illegal discrimination. CSEA officials and activists must continue to be vigilant in the fight against such discrimination. Locals and units should consider sponsoring training for members regarding discrimination issues.

With the exception of charges regarding anti-union discrimination, before CSEA will consider commencing court litigation or administrative claims regarding alleged discrimination, the CSEA Labor Relations Specialist must file a request for legal assistance. To assist CSEA, members and activists interested in having CSEA represent them in a discrimination case may be requested to fill out a Discrimination Questionnaire.

All such requests for Legal Assistance are reviewed by the CSEA Legal Department and, where appropriate, by the CSEA Standing Legal Committee, before the proposed litigation is approved. If it is approved, CSEA will provide for representation and the costs of the litigation.

CHAPTER FIFTEEN:
FORUMS AND PROCEDURES REGARDING DISCRIMINATION CLAIMS AND RETALIATION CLAIMS

1. Procedures and Forums to Assert Federal Discrimination Claims

Under federal law, an employee can file a charge of discrimination against the employer under Title VII of the 1964 Civil Rights Act with the U.S. Equal Employment Opportunity Commission ("EEOC"). Title VII prohibits discrimination based on race, color, religion, sex, or national origin. The EEOC also investigates violations of the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and the Equal Pay Act. In New York, an EEOC charge must be filed within 300 days of the discriminatory action. An EEOC charge of discrimination may be filed at the following offices:

New York District Office
33 Whitehall Street, 5th Floor
New York, New York 10004
1-800-669-4000
TTY 1-800-669-6820

Buffalo Local Office
Olympic Towers
300 Pearl Street, Suite 450
Buffalo, NY 14202
1-800-669-4000
TTY 1-800-669-6820

Charges of discrimination under Title VII of the 1964 Civil Rights Act can also be dually filed at the offices of the New York State Division of Human Rights.

After the EEOC completes its investigation of a charge, it may commence legal action against the employer. However, due to EEOC budgetary constraints, it is more likely that, following its investigation, the EEOC will issue the complainant a “Right to Sue” notice. The Right to Sue notice grants the person filing the complaint the right to commence a lawsuit in federal court within 90 days.

2. Procedures and Forums to Assert State Law Claims

The New York State Division of Human Rights ("NYSDHR") or the New York State Supreme Court have jurisdiction over claims of race, color, creed, sex, national origin, religious, disability, marital status, predisposing genetic characteristics, arrest record, military service, familial status, and sexual orientation discrimination in employment. An individual who believes that he or she has been subjected to one of these forms of discrimination in employment has the right to file a charge of discrimination with the DHR. The DHR does not have jurisdiction over claims of

discrimination based on union activity, political activity, leisure activity, and workers' compensation.

Notice of Claim

In discrimination cases against some public employers, such as counties, an employee must file a Notice of Claim as a prerequisite to filing a complaint or lawsuit. A CSEA Labor Relations Specialist can assist in preparing a notice of claim.

State Division of Human Rights

Administrative charges of discrimination must be filed with NYSDHR within one year of the discriminatory act. Charges of illegal discrimination under New York's Human Rights Law can be filed with NYSDHR at any of the following offices:

Headquarters

New York State Division of Human Rights
One Fordham Plaza, 4th Floor
Bronx, New York 10458
1-888-392-3644

ALBANY
Empire State Plaza
Agency Building 1
2nd Floor
Albany, NY 12220-0049
518-474-2705

BINGHAMTON
State Office Building
44 Hawley Street, Room 603
Binghamton, NY 13901
607-721-8467

BROOKLYN
55 Hanson Place, Room 1084
Brooklyn, NY 11217
718-722-2385

BUFFALO
State Office Building
65 Court Street, Suite 506
Buffalo, NY 14202
716-847-3445

WHITE PLAINS
7-11 South Broadway, Suite 314
White Plains, New York 10601
(914) 989-3120

MANHATTAN (Upper)
State Office Building
163 West 125th Street, 4th Fl.
New York, NY 10027
212-961-4312

NASSAU
50 Clinton Street, Suite 301
Hempstead, NY 11550
(516) 539-6848

ROCHESTER
One Monroe Square
259 Monroe Avenue, Suite 308
Rochester, NY 14607
716-238-8250

QUEEENS AND ALL SEXUAL HARASSMENT CASES
55 Hanson Place, Room 900
Brooklyn, New York 11217
716-722-2060

SUFFOLK
State Office Building
250 Veterans Memorial Highway, Suite 2B-49
Hauppauge, NY 11788
516-952-6434

SYRACUSE
State Office Building
333 East Washington Street
Room 543
Syracuse, NY 13202
315-428-4633

After NYSDHR completes its investigation, it will issue a preliminary finding as to whether it believes discrimination has taken place. If NYSDHR finds merit to the charge, a hearing will be scheduled before a NYSDHR administrative law judge. However, due to NYSDHR budgetary constraints, there are extensive delays in NYSDHR investigating complaints and holding administrative hearings.

State Court Actions

State court lawsuits alleging employment discrimination under New York's Human Rights Law and the Lawful Activities Law must be commenced within three years of the discriminatory act.

3. Forums to Assert Anti-Union Claims

Claims of anti-union discrimination are filed with PERB in the public sector and the NLRB in the private sector. In some cases it is necessary to file a notice of claim with certain public sector employers, such as school districts, prior to filing an improper practice charge with PERB.

PERB Offices

ALBANY
ESP Agency Bldg. 2, Flrs. 18 & 20
P.O. Box 2074
Albany, New York 12220-0074
518-457-2578

BROOKLYN
55 Hanson Place, Suite 700
Brooklyn, NY 11217
718-722-4545

NLRB Offices

ALBANY RESIDENT OFFICE
Room 342
Leo W. O'Brien Federal Bldg.
11A Clinton Ave.
Albany, NY 12207-2366
518-431-4155

BROOKLYN/REGION 29
Two Metro Tech Center
100 Myrtle Avenue, Suite 5100
Brooklyn, New York 11201-4201
718-330-7713

BUFFALO
The Electric Tower
535 Washington St., Ste. 302
Buffalo, NY 14203
716-847-3449

BUFFALO/REGION 3
Niagara Center Building
130 S. Elmwood Avenue
Suite 630
Buffalo, NY 14202-2465
716-551-4931

MANHATTAN/REGION 2
26 Federal Plaza, Room 3614
New York, NY 10278-0104
212-264-0300

PL/09-000s/CRB/ac/United…Discrimination 2019#195158

Local 1000, AFSCME, AFL-CIO
143 Washington Ave., Albany, NY 12210

Mary E. Sullivan, President