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> @ 4.28 Executive Order No. 28: Establishing a Task Force on Sexual Orientation Discrimination

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9 NYCRR § 4.28

NEW YORK CODES, RULES AND REGULATIONS

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TITLE 9. EXECUTIVE DEPARTMENT
SUBTITLE A. GOVERNOR'S OFFICE
CHAPTER I. **EXECUTIVE ORDERS**
PART 4. ***EXECUTIVE ORDERS** (MARIO M. CUOMO)

9 NYCRR § 4.28 (2002)

@ 4.28 **Executive Order** No. 28: Establishing a Task Force on **Sexual Orientation Discrimination**

Ours is a unique government. It was created and has been preserved by people from all over the world who came here seeking one thing above all others: freedom--freedom to believe and to act on those beliefs; freedom that says that so long as an individual's conduct and actions remain a matter of personal expression and do not deprive others of their rights, they should be neither restrained nor punished by government.

Our nation values freedom so greatly, it has been written into our Constitution. We all prize that freedom and millions have fought to protect and to extend it.

Each generation has come to understand the basic wisdom of our Constitution: that only by protecting the freedom of others can we ensure it for ourselves; that to encourage or allow government to discriminate against any belief or creed or private way of life would threaten us all. This is so because we could never be sure which particular value would dominate government at any particular point in time. Only neutrality by government was deemed safe and that is what our Constitution assures.

This freedom makes us strong. It is essential to our pluralism. It protects religious believers, and agnostics, and atheists, and political dissenters, and conservatives and liberals, creating a nation and a state where the right to live as conscience dictates is enshrined as law. Because of such freedom we enjoy a cultural and religious diversity unmatched by any other nation.

The freedom our Constitution grants, however, requires that government exercise a degree of tolerance unthinkable in societies less open or diverse than ours. It demands a tolerance for the privacy of each individual, a refusal to use the state as an instrument of coercion of belief or thought, however desirable the majority regards a particular belief or thought to be.

Even when this freedom is unchallenged, it is so precious to us all that our commitment to preserve it from encroachment by government deserves constant reaffirmation and reiteration. But when this freedom is questioned or when evidence of unfair **discrimination** exists, then our reaffirmation is not an option--it is a simple necessity.

I have seen evidence of such encroachment. As Secretary of State, I was required to issue

special regulations to prohibit **discrimination** against individuals seeking licenses for certain occupations or corporate privileges. Up to that time such licenses were denied on the basis of **sexual orientation** or even presumed **sexual orientation**. There is no reason to believe that the **discrimination** apparent in that part of government was confined there.

No one argued then against my change in the State's regulations. No one was heard to say that government had no place in fighting unfair **discrimination**. In fact, in recognition of this, a personnel directive against **discrimination** in hiring was issued during the prior administration.

I suggest, respectfully, that what was right then is right now. And I believe that there is no justification for the failure to announce freedom from **discrimination** as the policy, not just of the Department of State but of this entire State government.

Indeed, the most persistent argument that has been offered in opposition to my stating the views contained in this Order does not really contradict any of them. Rather it says, in effect, we ought not to state this constitutional truth because it may be misrepresented to be something else. Specifically, it is suggested that the argument against **discrimination** will be distorted into an argument promoting homosexuality.

The argument is beside the mark. There is no perfect protection against distortion. Indeed one could as easily argue that silence on this issue could be distorted into an argument promoting **discrimination** against homosexuals.

In this case, this statement and **Executive Order** are clear. Their essence is that our government cannot promote any religion, creed, belief or life-style without thereby threatening all others.

This is an argument for securing freedom by insisting on neutrality. It is a proposition that is at the very foundation of our nation's strength. We ought never be embarrassed nor afraid to repeat it.

Accordingly, for all the above reasons, I am this day reiterating the law set down by the Constitution of the United States and the Constitution of the State of New York as the policy of this Administration.

Statement of Policy

1. No State agency or department shall discriminate on the basis of **sexual orientation** against any individual in the provision of any services or benefits by such State agency or department.
2. All State agencies and departments shall prohibit **discrimination** based on **sexual orientation** in any matter pertaining to employment by the State including, but not limited to, hiring, job appointment, promotion, tenure, recruitment and compensation.
- 3.* The Office of Employee Relations is hereby directed to promulgate clear and consistent guidelines prohibiting **discrimination** based on **sexual orientation** to maintain an environment where only job-related criteria are used to assess employees or prospective employees of the State. The Office shall also implement a procedure to ensure the swift and thorough investigation of complaints of **discrimination** based on **sexual orientation**. Particular effort should be made to conduct investigations with due regard for confidentiality.

* (Paragraph 3 amended by **Executive Order** No. 28.1, infra.)

4. In order to assure that we understand fully the extent and nature of any **discrimination** that exists, I will appoint a task force, including the Commissioners of the Departments of

Correctional Services, Health, Mental Health, Labor, Social Services and the Division of Human Rights, the Superintendent of State Police, the President of the Civil Service Commission, the directors of the Women's Division, the Office of Employee Relations, the Division for Youth and the Office for the Aging, the Chairman of the State Liquor Authority and seven private citizens whom I shall designate. The task force shall submit such reports and recommendations as it sees fit, dealing with individuals' rights to the benefit of government services and opportunity for government service regardless of **sexual orientation**.

I shall designate a chairperson and vice-chairperson of the task force. Its members shall receive no compensation, but shall be entitled to reimbursement for any necessary expenses incurred directly in connection with the performance of their duties.

Signed: Mario M. Cuomo

Dated: November 18, 1983.

Executive Order No. 28.1

WHEREAS, It is appropriate to place responsibility for promulgating and enforcing guidelines that prohibit **discrimination** based on **sexual orientation** with the Division of Human Rights; and

WHEREAS, The State must maintain an environment where only job-related criteria are used to assess employees or prospective employees, and it is necessary to develop a procedure to ensure the swift and thorough investigation of complaints of **discrimination** based on **sexual orientation** by State agencies:

NOW, THEREFORE, I, Mario M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby continue **Executive Order** Number 28 dated November 18, 1983, except that paragraph 3 of the Statement of Policy in such **Executive Order** is amended to read as follows:

3. The Division of Human Rights is hereby directed to review and promulgate guidelines prohibiting **discrimination** based on **sexual orientation** to maintain an environment where only job-related criteria are used to assess employees or prospective employees of the State. The division shall also implement a procedure to ensure the swift and thorough investigation of complaints of **discrimination** based on **sexual orientation**. Particular effort should be made to conduct investigations with due regard for confidentiality.

Signed: Mario M. Cuomo

Dated: April 21, 1987

Statutory Authority: Executive Law; Art. 2

HISTORY:

Added 4.28 on 11/21/83; added 4.28.1 on 4/21/87.

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9 NYCRR § 5.32

NEW YORK CODES, RULES AND REGULATIONS

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CHAPTER I. **EXECUTIVE ORDERS**
PART 5. **EXECUTIVE ORDERS** (GEORGE E. PATAKI)

9 NYCRR § 5.32 (2002)

@ 5.32 **Executive Order - 32: Reissuing Certain Executive Orders**

WHEREAS, **Executive Order** No. 3, issued January 5, 1995, directed a comprehensive review of all **executive orders** and amendments thereto in effect as of that date; and

WHEREAS, during the course of that review it has been determined that certain **executive orders** should be continued unamended and unmodified;

NOW, THEREFORE, I, GEORGE E. PATAKI, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order that the following **executive orders** and any amendments thereto shall remain in full force and effect until otherwise revoked, continued or modified:

EXECUTIVE ORDER NO. 1, issued January 11, 1983 (Relating to the Continued Validity of **Executive Orders** Previously Issued);

EXECUTIVE ORDER NO. 7, issued February 18, 1983 (Establishing a Governor's Advisory Committee For Hispanic Affairs);

EXECUTIVE ORDER NO. 12, (Directing the State Office for the Aging to Review and Comment Upon Policies Affecting the Elderly);

EXECUTIVE ORDER NO. 19, issued on May 31, 1983 (New York State Policy Statement on Sexual Harassment in the Workplace);

EXECUTIVE ORDER NO. 23, issued on September 1, 1983 (Establishing the Office of New York State Ombudsman);

EXECUTIVE ORDER NO. 26, issued October 7, 1983 (Directing the State Office of Advocate for the Disabled to Review and Comment Upon Policies Affecting Persons with Disabilities);

EXECUTIVE ORDER NOS. 28 AND 28.1, issued on November 18, 1983 and April 21, 1987, respectively (Establishing a **Sexual Orientation** Policy and Creation of A Task Force on **Sexual Orientation Discrimination**), CONTINUED AND AMENDED BY **EXECUTIVE ORDER** NOS. 33 AND 34;

EXECUTIVE ORDER NO. 34, issued January 13, 1984 (Creating A Human Rights Advisory Council);

EXECUTIVE ORDER NO. 51, issued October 30, 1984 (Designating the Division of the Budget to Coordinate the Intergovernmental Review of Federal Programs);

EXECUTIVE ORDER NO. 66, issued June 5, 1985 (Establishing A Governor's Advisory Committee for Black Affairs);

EXECUTIVE ORDER NO. 82, issued May 2, 1986 (Establishing a Governor's Office for Hispanic Affairs);

EXECUTIVE ORDER NO. 99, issued August 10, 1987 (Restructuring the Interagency Task Force on Acquired Immune Deficiency Syndrome (AIDS));

EXECUTIVE ORDER NO. 113, issued October 27, 1988 (Replacing Derogatory Place Names);

EXECUTIVE ORDER NO. 169, issued March 22, 1993 (Directing State Agencies to Act Consistently with the Upper Delaware River Management Plan); and

EXECUTIVE ORDER NO. 180, issued February 17, 1994 (Requiring Attorney General to Supersede District Attorney of St. Lawrence County with Respect to the Investigation into the Allegations Involving Mario Pistoiesi, Mark Hartle, David Cummings, Michael Curcio and Greg Streeter).

Signed: George E. Pataki
Dated: April 9, 1996

Statutory Authority: Executive Law; Art. 2

HISTORY:

Added 5.32 on 4/09/96.

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9 NYCRR § 5.33

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9 NYCRR § 5.33 (2002)

@ 5.33 **Executive Order - 33: Establishing a State Policy Against **Discrimination** on the Basis of **Sexual Orientation** and Reviving a Task Force to Address Individuals' Rights to the Benefit of Government Services and Opportunity for Government Service Regardless of **Sexual Orientation****

WHEREAS, it has been, and it remains, the policy of this state not to discriminate on the basis of **sexual orientation** in the provision of benefits or services and in the state's capacity as an employer;

WHEREAS, **Executive Order** No. 28, issued November 18, 1983, amended by **Executive Order** No. 28.1, issued April 21, 1987, established a Task Force to address individual's rights to the benefit of government services and opportunity for government service regardless of **sexual orientation**;

WHEREAS, according to records in the Governor's Appointments Office, no appointments have been made to the Task Force and the Task Force has not met since at least 1990; and

WHEREAS, such a Task Force serves a useful purpose in supporting the goals of **Executive Order** No. 28;

NOW, THEREFORE, I, GEORGE E. PATAKI, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby continue **Executive Order** Nos. 28 and 28.1, issued November 18, 1983 and April 12, 1987 respectively; and do hereby amend paragraph 4 of the Statement of Policy in **Executive Order** No. 28 to read as follows:

4.(a) In order to assure that we understand fully the extent and nature of any **discrimination** that exists, I will appoint a Task Force, including the Commissioners of the Departments of Correctional Services, Health, Mental Health, Labor, Social Services and the Division of Human Rights, the Director of Criminal Justice Services, the President of the Civil Service Commission, the Directors of the Division for Women, the Office of Employee Relations, the Division for Youth and five private citizens whom I shall designate and who shall serve for a term of two years or until a successor is appointed.

(b) The Task Force shall meet at least once a year and shall submit an annual report on or before September 1 of each year to the Office of the Secretary to the Governor and the Office of the Counsel to the Governor. The annual report shall include such recommendations as the Task Force sees fit, dealing with individuals' rights to the benefit of government services and opportunity for government service regardless of **sexual orientation**. The report due September 1, 1997 shall, in addition, include the Task Force's recommendations, if any, regarding the guidelines promulgated by the Division of Human Rights to prohibit **discrimination** based on **sexual orientation** to maintain an environment where only job-related criteria are used to assess employees or prospective employees of the state.

(c) The Governor's Office of Community Affairs shall provide such staff support and assistance as the Task Force may require to carry out its responsibilities under this order.

Signed: George E. Pataki

Dated: April 9, 1996

Statutory Authority: Executive Law; Art. 2

HISTORY:

Added 5.33 on 4/09/96.

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