Evaluating the Attorney

Why Evaluate?

- Career Development
- Reward good employees
- Warn marginal employees
- Self-defense

When to Evaluate?

- Constant, nearly daily, feedback
- Periodic conversation
- Annual written reviews

What to Evaluate?

- How well the lawyer has developed his or her skills
- Attitude
- Interpersonal skills
- Supervisory skills

Who Evaluates?

- Immediate supervisor
- Unit Head
- County Attorney

Evaluation Work Both Ways:

- Invite an evaluation of yourself as supervisor (so-called 360° evaluation)
- Invite comments on the status of the office
- Encourage self-evaluations

How to Use Evaluations:

- Tool for employee rewards
- Hard evidence for refusing rewards
- Discipline

Using Evaluations to Correct Poor Job Performance:

- Clear identification of issues
- Creation of a plan to correct those issues
- Time limit
- Follow-up evaluations
- Discipline
- Firing

Special Situations:

- Sudden improvement
- Sudden deterioration

Exit Interviews:

- Where all the secrets are revealed
- How to use

NEW YORK CITY LAW DEPARTMENT

ASSISTANT CORPORATION COUNSEL EVALUATION

Reviewer: {TEXT}~ **Date:** {TEXT}~

Assistant: {TEXT}~ **Division Chief:** {TEXT}~

Class Year: {TEXT}~ **Division:** {TEXT}~

Evaluation Period: {TEXT}~

Brief description of work of assistant:
Please specify the type of activity performed, e.g., research, briefs/memos, negotiation, contract drafting, document production or coding, depositions, client or witness interviewing, trial preparation, trials, court appearances, 50-h hearings.

{TEXT}~

Please use the rating scale described below:
Select the rating that best describes this assistant's performance in comparison to other Law Dept. assistants whom you have observed at a similar point in their careers. Rate only those skills and characteristics of which you have personal knowledge.

1 = Consistently exceeds highest expectations by a wide margin. Should be reserved for truly outstanding individuals who are significantly ahead of the generally expected performance level for assistants of comparable experience.

2 = Clearly above the generally expected performance level for assistants of comparable experience. Quality of work is consistently very good. Assistant's development is progressing rapidly and continued growth is anticipated.

3 = At the performance level generally expected for assistants of comparable experience. Quality of work is generally good. Assistant's development is progressing and there are no clear impediments to continued improvement.

4 = Below the generally expected performance level for assistants of comparable experience. Quality of work varies and/or improvement necessary in substantive or other areas which should be specified in the evaluation form.

5 = Significantly below the generally expected performance level for assistants of comparable experience. Considerable weaknesses in substantive or other areas which should be specified on the evaluation form.

N/O = Not observed

NEW YORK CITY LAW DEPARTMENT

ASSISTANT CORPORATION COUNSEL EVALUATION

A. **Legal Knowledge, Analytical Ability and Research Skills:**

RATING	{TEXT}~
Describe with some detail the Assistant Corporation Counsel's legal knowledge, analytical ability and research skills. Your discussion should include examples demonstrating whether he or she has appropriate knowledge of the law in his or her area consistent with the experience level, his or her ability to research, identify and analyze issues and exercise creativity in solving problems.	
{TEXT}~	

B. **Judgment:**

RATING	{TEXT}~
Indicate whether he or she demonstrates good judgment by discussing whether he or she plans effective strategies, exercises common sense and prudence and, if it is a significant part of his or her duties, whether he or she provides sound and practical legal advice in a timely manner.	
{TEXT}~	

C. **Negotiation:**

RATING	{TEXT}~
Evaluate the attorney's ability to negotiate effectively in those instances where negotiations are a part of his or her duties.	
{TEXT}~	

D. **Writing Skills:**

RATING	{TEXT}~
Describe whether he or she writes persuasively in a manner that is grammatical, clear and concise.	
{TEXT}~	

E. **Oral Communication:**

RATING	{TEXT}~
Describe whether he or she communicates in an articulate and professional manner. Indicate whether he or she appears knowledgeable and confident and participates effectively in meetings.	
{TEXT}~	

F. **Courtroom Skills:**

RATING	{TEXT}~
Where applicable, describe his or her courtroom skills, including the ability to be persuasive and effective at oral argument and to handle matters appropriately at pre-trial conferences. For trial attorneys, include a discussion of his or her knowledge of the rules of evidence, ability to conduct direct and cross examinations, present experts and handle documents.	
{TEXT}~	

G. **Attitude and Commitment to Work:**

RATING	{TEXT}~
Discuss whether he or she shows initiative and appropriately accepts assignments and supervision, provides assistance to colleagues as needed, and contributes to a positive working environment.	
{TEXT}~	

H. **Productivity and Efficiency:**

RATING	{TEXT}~
Indicate whether he or she is productive and efficient. Include a discussion of whether he or she willingly and capably handles a number of matters simultaneously, completes assignments on time, and works well under pressure.	
{TEXT}~	

I. **Interpersonal Skills:**

RATING	{TEXT}~
Describe whether he or she works harmoniously and effectively with colleagues, clients, adversaries and the judiciary.	
{TEXT}~	

NEW YORK CITY LAW DEPARTMENT

ASSISTANT CORPORATION COUNSEL EVALUATION

Please answer the following questions:

1. **If this assistant has improved or declined dramatically in performance since you last reviewed him or her, please explain the change in brief detail:**

   {TEXT}~

2. **Provide specific suggestions for correcting deficiencies and further improving strengths:**

   {TEXT}~

Overall Rating: (check appropriate box)

☐ 1 = Consistently exceeds highest expectations by a wide margin. Should be reserved for truly outstanding individuals who are significantly ahead of the generally expected performance level for assistants of comparable experience.

☐ 2 = Clearly above the generally expected performance level for assistants of comparable experience. Quality of work is consistently very good. Assistant's development is progressing rapidly and continued growth is anticipated.

☐ 3 = At the performance level generally expected for assistants of comparable experience. Quality of work is generally good. Assistant's development is progressing and there are no clear impediments to continued improvement.

☐ 4 = Below the generally expected performance level for assistants of comparable experience. Quality of work varies and/or improvement necessary in substantive or other areas which should be specified in the evaluation form.

☐ 5 = Significantly below the generally expected performance level for assistants of comparable experience. Considerable weaknesses in substantive or other areas which should be specified on the evaluation form.

NEW YORK CITY LAW DEPARTMENT

SUPERVISORY EVALUATION

Reviewer: Date:

Assistant: Division Chief:

Division: Appointment Date to Position:

Evaluation Period:

Brief description:

BELOW IS SAMPLE LANGUAGE: PLEASE AMEND TO REFLECT THE RESPONSIBILITIES OF THE SUPERVISOR BEING EVALUATED.

An effective supervisor develops a work environment that encourages and motivates team members to meet clearly defined objectives; provides quality coaching/teaching to elicit the best performance from the team members; sets clear expectations to promote growth and development for each team member; and identifies and resolves the obstacles impacting work performance by developing and cultivating relationships throughout the Law Department.

Please use the rating scale described below:

Select the rating that best describes this supervisor's performance in comparison to other Law Department supervisors whom you have observed at a similar point in their careers. Rate only those skills and characteristics of which you have personal knowledge.

1	=	Consistently exceeds highest expectations by a wide margin. Should be reserved for truly outstanding individuals who are significantly ahead of the generally expected performance level for supervisors of comparable experience.
1.5	=	Performance falls between rating 1 and rating 2.
2	=	Clearly above the generally expected performance level for supervisors of comparable experience. Quality of work is consistently very good. Supervisor's development is progressing rapidly and continued growth is anticipated.
2.5	=	Performance falls between rating 2 and rating 3.
3	=	At the performance level generally expected for supervisors of comparable experience. Quality of work is generally good. Supervisor's development is progressing and there are no clear impediments to continued improvement.
3.5		Performance falls between rating 3 and rating 4
4	=	Below the generally expected performance level for supervisors of comparable experience. Quality of work varies and/or improvement necessary in substantive or other areas which should be specified in the evaluation form.
4.5		Performance falls between rating 4 and 5.
5	=	Significantly below the generally expected performance level for supervisors of comparable experience. Considerable weaknesses in substantive or other areas which should be specified on the evaluation form.
N/O	=	Not observed

NEW YORK CITY LAW DEPARTMENT

SUPERVISORY EVALUATION

I. EFFECTIVE LEADERSHIP

RATING	

A. Creates a Supportive Work Environment:

1. Treats all staff fairly and with respect
2. Readily available and approachable for advice
3. Accepts and delivers positive feedback and constructive criticism
4. Shares information both up and down the reporting structure

COMMENTS	

B. Promotes Professional Development:

1. Identifies training needs and is proactive in recommending the needs are met
2. Provides support necessary to allow staff to participate in Professional Development activities
3. Prepares staff to act independently
4. Gives opportunities to act independently and acquire new skills
5. Provides sufficient support to act independently

COMMENTS	

C. Identifies and Solves Problems:

1. Identifies problems in a timely manner
2. Gathers and analyzes information
3. Seeks advice when appropriate
4. Develops and implements effective solutions
5. Gives information about where to get help

COMMENTS	

II. EFFECTIVELY SUPERVISES WORKFLOW

RATING	

A. Sets and Achieves Goals:

1. Sets short and long-term goals
2. Establishes and coordinates procedures to achieve goals
3. Effectively monitors progress to achieve goals
4. Readjusts goals and workloads to reflect needs and resources

5. Works well with others, including outside agencies and court personnel to achieve goals	
COMMENTS	

B. Communicates Effectively:

1. Communicates in an articulate and professional manner 2. Clearly conveys goals and expectations to staff 3. Conducts and participates effectively at meetings 4. Appropriately interacts with opposing counsel 5. Writes effective evaluations, memoranda and other administrative reports 6. Shows appropriate discretion in using email	
COMMENTS	

C. Assigns Tasks and Follows-Up:

1. Delegates tasks to staff while not abdicating responsibilities 2. Follows up on staff work assignments 3. Assures that work is of good quality 4. Edits written work effectively and in a timely manner 5. Knows strengths of staff and makes appropriate assignments 6. Sets and maintains appropriate deadlines for staff and self 7. Establishes effective chain of supervision	
COMMENTS	

D. Utilizes Resources:

1. Ensures that staff uses available technology effectively and appropriately 2. Reallocates work and staff as needed 3. Encourages staff to use available resources (library, operations, interdivision expertise, support staff expertise) and creates means to do so	
COMMENTS	

III. HIGH QUALITY PERSONAL PERFORMANCE

RATING	

A. Demonstrates Sound Judgment

1. Provides staff and clients with practical advice in a timely manner 2. Discusses strategies 3. Respects the confidentiality of information 4. Responsive to division management in urgent situations 5. Makes decisions within the scope of his or her authority 6. Exercises common sense	

COMMENTS	

B. Demonstrates Subject Matter Knowledge and Analytical Ability

1. Has adequate knowledge in subject specialty 2. Has analytical abilities commensurate with experience 3. Applies knowledge and analysis to the effective resolution of matters 4. Stays informed of developments in subject specialty
COMMENTS |

C. Demonstrates Flexibility

1. Demonstrates willingness and ability to handle a number of matters simultaneously 2. Works well under pressure 3. Demonstrates willingness to assist other attorneys and supervisors
COMMENTS |

IV. ADVANCED LAWYERING SKILLS

Please complete the following competency if the person being evaluated has line attorney responsibilities in addition to supervisory responsibilities. If the person being evaluated spends more than 50% of his or her time engaging in line attorney work, then please complete the ACC evaluation and the supervisory skills competency on that form.

Estimate of Percentage of Attorney Work:
- ☐ Less than 25%
- ☐ Between 25% and 50%

Actual Percentage of Attorney Work:
- ☐ Less than 25%
- ☐ Between 25% and 50%

Advanced Lawyering Skills:

RATING |
1. Writes persuasively 2. Ability to negotiate when appropriate 3. Has oral argument and trial skills commensurate with experience level
COMMENTS |

NEW YORK CITY LAW DEPARTMENT

SUPERVISORY EVALUATION

Please answer the following questions. Answer question one only if it is applicable:

1. **If this supervisor has improved or declined dramatically in performance since you last reviewed him or her, please explain the change in brief detail:**

2. **Provide specific suggestions for correcting deficiencies and further improving strengths:**

Overall Rating: (check appropriate box)

☐ 1 = Consistently exceeds highest expectations by a wide margin. Should be reserved for truly outstanding individuals who are significantly ahead of the generally expected performance level for supervisors of comparable experience.

☐ 1.5 = Performance falls between rating 1 and rating 2.

☐ 2 = Clearly above the generally expected performance level for supervisors of comparable experience. Quality of work is consistently very good. Supervisor's development is progressing rapidly and continued growth is anticipated.

☐ 2.5 = Performance falls between rating 2 and rating 3.

☐ 3 = At the performance level generally expected for supervisors of comparable experience. Quality of work is generally good. Supervisor's development is progressing and there are no clear impediments to continued improvement.

☐ 3.5 = Performance falls between rating 3 and rating 4.

☐ 4 = Below the generally expected performance level for supervisors of comparable experience. Quality of work varies and/or improvement necessary in substantive or other areas which should be specified in the evaluation form.

☐ 4.5 = Performance falls between rating 4 and rating 5.

☐ 5 = Significantly below the generally expected performance level for supervisors of comparable experience. Considerable weaknesses in substantive or other areas which should be specified on the evaluation form.

ACTION PLAN – [redacted]

1. By December 1, 2007, [redacted] will complete a thorough review of her open cases with her supervisors and develop a case plan for each case and a priority of tasks.

2. Prior to drafting pleadings, motions, discovery responses, deposition outlines, etc., [redacted] will meet with one of her supervisors to discuss the issues in the case. It is expected that for the case being discussed, [redacted] will (a) have identified the claims; (b) present some ideas as to what should be done next and explain why; (c) present a discovery plan, if applicable; (d) discuss whether a dispositive motion is a possibility or whether settlement is more advisable.

3. [redacted] will submit drafts of to her written work to her supervisors for review at least 4 business days in advance of the due date or notify her supervisor of her inability to provide the papers in that time frame and work out an acceptable schedule.

4. All written work that [redacted] submits to her supervisors for review will reflect a grasp of the legal and factual issues in the case and her best efforts to address them. Further, while an occasional typo or grammatical error is excusable, sloppiness and misstatements of the law or misidentification of the parties shall not occur.

5. [redacted] compliance with this plan and overall performance will be re-evaluated no later than February 29, 2008.

MEMORANDUM

TO: [redacted]

FROM: GEORGIA PESTANA
CHIEF, LABOR AND EMPLOYMENT LAW

DATE: DECEMBER 15, 2006

SUBJECT: ACTION PLAN

As discussed at our meeting on December 15, 2006, we have concerns about your performance, including, but not limited to, your failure to keep your supervisors apprised of important activity in your cases, your failure to meet deadlines, your overuse of adjournments, and questions about your productivity. Accordingly, the following action plan is being implemented to take effect immediately.

1. By December 22, 2006, you will complete a thorough review of your cases with [redacted](DV) and develop a case plan for each case and a priority of tasks.
2. You will be responsible for maintaining and updating on a daily basis a calendar with due dates and a corresponding daily "to-do" list. You must email the updated calendar/to-do list to DV every morning.
3. You will meet with DV at 1:00 p.m. every Wednesday, unless scheduling issues require another date/time to be set in a particular week. At the meetings, you will discuss any need to modify case plans or re-prioritize tasks,

as necessary. A meeting may be rescheduled only with the expressed approval of DV.

4. At the case review and at each weekly review session with DV, as well as in other discussions with DV about your cases, it is expected that for each case, you will (a) have identified the claims; (b) present some ideas as to what should be done next and explain why; (c) present a discovery plan; (d) discuss whether a dispositive motion is a possibility or whether settlement is more advisable.
5. You will provide DV with copies of all scheduling and other written orders issued by the Court on the same date it is received.
6. You will notify DV of any verbal orders or directions issued by the Court on the same date it is issued.
7. You will notify DV by email, attaching scanned copies (or providing photocopies) of any letter applications, motions or correspondence, etc. to the Court by plaintiff's counsel on the same date it is received.
8. You will submit drafts of letter applications, motions, discovery responses, correspondence, settlement abstracts, etc. to DV for review at least 3 business days in advance of any due date unless an immediate response is required, in which case you must give the draft to DV as soon as possible.
9. You will not send any applications, motions, discovery requests, discovery responses or correspondence, etc. either to the Court, to plaintiff's counsel or the client until you have received a final approval from DV or another supervisor designated by DV.

[redacted]

10. You will prepare and submit deposition outlines for all depositions you plan to take to DV for her review sufficiently in advance of the deposition, unless DV directs otherwise.

11. You will respond to any emails sent to you by DV or any other supervisor upon receipt thereof.

Your full compliance with this plan is expected. Your compliance will be reviewed periodically between the date of this Action Plan and March 31, 2007. If, at any time, you have not demonstrated full and complete compliance with this Action Plan, you may be asked to find other employment.

MEMORANDUM

TO: Camille Barnett

FROM: GEORGIA PESTANA
CHIEF, LABOR AND EMPLOYMENT LAW

DATE: APRIL 5, 2007

SUBJECT: ACTION PLAN

On December 15, 2006, your supervisors and I discussed with you concerns about your performance. Specifically, we noted your failure to keep your supervisors apprised of important activity in your cases, your failure to meet deadlines, and your overuse of adjournments, among other issues. We were also concerned that your productivity was not commensurate with the hours you put in. That is, despite keeping very long hours, your cases were not moving forward. At that time, you agreed to meet with _____ to review the status of all your cases and develop strategies and prioritize your work. You also agreed to consult your supervisors more regularly for advice and to immediately notify them of problems that arise in your cases and to be more responsive to your supervisors' requests for information about your cases.

Unfortunately, the issues that we were concerned about in December have persisted. I emphasized when we met in December that your supervisors' role is to assist you in getting the work done in an efficient and effective manner and that you should utilize them earlier in cases and more often. While perhaps you have sought out your supervisors more often, it is often at the eleventh hour before the papers must be served or the deposition taken. Your

supervisors' effectiveness in helping you with an understanding of the law or in planning strategy or developing arguments is directly related to how much time there is to work with you before the deadline arrives. As _____ pointed out when we met yesterday, you have often not given an answer or motion to a supervisor to review until the day it is due. This not only impacts on the other members of your team because supervisors have to drop everything else to deal with your papers, it has also resulted in a last minute scramble to ascertain additional facts or to draft an additional point for a brief. If you had discussed the case or your strategy with a supervisor earlier, such last minute scrambles – and the many late nights you have had to work might have been avoided.

In addition on several occasions, you did not consult with your supervisors until after serious problems arose in some of your cases (e.g., _____, _____, _____). Further, despite Diana's efforts to get you to provide accurate and up-to-date information as to the status and deadlines in your cases, you have not done so for all your cases. I have reviewed an email record that shows that Diana must sometimes send you multiple emails to ensure that she has up-to date information and that you meet deadlines. As I noted during our discussion yesterday, supervisors should not have to send reminders to or keep track of deadlines for attorneys with nearly seven years of experience.

As our discussion in December did not achieve the improvement I expected, the following action plan is being implemented to take effect immediately.

1. At least one business day before a court appearance (including status conferences, oral argument, or other case management conferences) you shall meet with the supervisor working with you on the case to discuss the issues

that may be addressed in court. After the court appearance, you are to promptly report to that supervisor what transpired in court.

2. You will be responsible for maintaining and updating, on a daily basis, a calendar with due dates and a corresponding daily "to-do" list. You must email the updated calendar/to-do list to _____ (DV) every morning.
3. You will meet with DV at 11:00 a.m. every Tuesday, unless scheduling issues require another date/time to be set in a particular week. At the meetings, you will discuss any need to modify case plans or re-prioritize tasks, as necessary. A meeting may be rescheduled only with the express approval of DV.
4. At each weekly review session with DV, as well as in other discussions with your other supervisors about your cases, it is expected that for each case, you will (a) have identified the claims; (b) present some ideas as to what should be done next and explain why; (c) present a discovery plan; (d) discuss whether a dispositive motion is a possibility or whether settlement is more advisable.
5. You will provide DV with copies of all scheduling and other written orders issued by the court on the same date it is received.
6. You will notify DV of any verbal orders or directions issued by the Court on the same date it is issued.
7. You will notify DV by email, attaching scanned copies (or providing photocopies) of any letter applications, motions or correspondence, etc. to the court by plaintiff's counsel on the same date it is received.
8. You will submit drafts of letter applications, motions, discovery responses, correspondence, settlement abstracts, etc. to DV for review at least 3 business

NEW YORK CITY LAW DEPARTMENT

SUBMANAGERIAL PERFORMANCE EVALUATION

Employee's Name: {TEXT}~ **Civil Service Title:** {TEXT}~
Soc. Sec. No.: {TEXT}~ **Division:** {TEXT}~
Supervisor's Name: {TEXT}~ **Section:** {TEXT}~

Evaluation Period: May 1, 200{TEXT}~ to April 30, 200{TEXT}~

State Rating Period if not for a full year: {TEXT}~

(When completing form, attach copy of Employee's Task and Standards Sheet)
Give Explanation of Each Rating Based on Standards for Task

A. **TASK RATING**

	TASK RATING
TASK I.	{TEXT}~
{TEXT}~	
TASK II.	{TEXT}~
{TEXT}~	
TASK III.	{TEXT}~
{TEXT}~	
TASK IV.	{TEXT}~
{TEXT}~	
TASK V.	{TEXT}~
{TEXT}~	
TASK VI.	{TEXT}~
{TEXT}~	
TASK VII.	{TEXT}~
{TEXT}~	
TASK VIII.	{TEXT}~
{TEXT}~	

B. **OVERALL RATING**

1. **Comments on performance factors not included among critical tasks (include special assignments, new tasks, excessive absences and latenesses impacting upon performance and work of other employees, etc.)**

{TEXT}~

2. **The employee's overall rating is:**

☐ Unratable	☐ Good
☐ Unsatisfactory	☐ Very Good
☐ Conditional	☐ Outstanding

Justification for overall rating:

{TEXT}~

C. PLANS AND RECOMMENDATIONS

1. **Plans to improve employee's performance:**

{TEXT}~

2. **Plans and recommendations to capitalize upon employee's strengths (i.e., change of assignment, on-the-job training, job rotation, etc.):**

{TEXT}~

3. **Plans to change conditions:**

{TEXT}~

D. RECORD OF APPRAISAL INTERVIEW AND ADDITIONAL COMMENTS:

{TEXT}~

1. **I have read the attached memorandum regarding my rights under the Appeal procedure.**

_____ _____
Employee's Signature Dated

2. ***The foregoing evaluation has been reviewed and discussed.***

_____ _____
Employee's Signature Dated

_____ _____
Supervisor's Signature Dated

_____ _____
Manager's/Reviewer's Signature Dated

RATING DEFINITIONS

UNRATABLE:

The employee is so new to the task that it is not possible at this time to give him or her meaningful rating for this task.

UNSATISFACTORY:

Performance did not meet one or more of the most critical standards; the employee's own lack of effort or of required skills, knowledge and abilities were responsible. Performance has been consistently at this level despite sufficient and adequate attempts by the supervisor to correct performance.

CONDITIONAL:

The employee's performance did not meet one or more of the attainable standards. This level of performance is not of long duration. It is considered possible that plans to develop knowledge, skills and abilities or to provide assistance will enable the employee to perform the task satisfactorily in the future.

GOOD (SATISFACTORY):

The employee, because of his or her own efforts, basically attained all of the standards; or failure to attain standards was primarily due to external conditions beyond the employee's control (which interfered with satisfactory performance of the task).

VERY GOOD (SUPERIOR):

The employee significantly exceeded the standards; or the employee merely attained standards but circumstances under which the task was carried out were so difficult as to require superior effort and/or knowledge, skills and abilities simply to attain standards.

OUTSTANDING:

The employee far exceeded the standards; or the circumstances under which the employee carried out the task were so extraordinarily difficult as to make attainment of the normal standards an outstanding achievement.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et. seq.* prohibits discrimination on the basis of race, color, sex, national origin, marital status or religion.

Section 1983 of the Civil Rights Act of 1866, 42 U.S.C. § 1983, prohibits the deprivation of any rights, privileges, or immunities secured by the Constitution or laws. Individuals have a constitutional right under the Equal Protection Clause to be free from discrimination in public employment. *Davis v. Passman*, 442 U.S. 228, 234-35 (1979); *Annis v. County of Westchester*, 36 F.3d 251 (2d Cir. 1994); *Gierlinger v. New York State Police*, 15 F.3d 32 (2d Cir. 1994). Individuals may be sued under Section 1983. For the City to be held liable under 1983, the plaintiff must establish that he was injured as a result of a municipal policy or practice or that a municipal policymaker either engaged in or condoned the discriminatory acts.

Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 is applicable only to claims of race or color discrimination. in the making, performance, modification, and termination of employment contracts. Like section 1983, the City may only be held liable if the plaintiff establishes that the discrimination was a result of a municipal policy or custom or that a policymaker engaged in or condoned the discriminatory acts.

The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et. seq.*, prohibits discrimination against applicants or employees who are forty years and older, with an exemption for executives and high policy-making employees. The ADEA does not provide for compensatory or punitive damages; however, liquidated damages in an amount not to exceed back pay may be awarded for willful violations. 29 U.S.C. § 626(b). Individuals may not be held liable under the ADEA.

The Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq* prohibits employers from discriminating against qualified persons with disabilities, i.e. persons who can perform the essential functions of the job, with or without a reasonable accommodation. Included among persons with disabilities are those who actually have, have a history of, or perceived as having a mental or physical impairment that substantially limits one or more major life activity. An employer is required to accommodate a qualified disabled person to enable him or her to perform a job, unless

the accommodation would change the essential nature of the position, presents an undue hardship, or threatens health or safety. Individuals may not be held liable under the ADA.

The Rehabilitation Act of 1973 29 U.S.C. § 794, also prohibits discrimination on the basis of a disability. To prevail on a claim under the Rehabilitation Act, a plaintiff must prove: that (a) she is a handicapped person under the Act; (b) she was otherwise qualified for the position; (c) she was excluded from the position solely by reason of her handicap; and (d) that the position exists as part of a program or activity receiving federal financial assistance. *Doe v. New York University*, 666 F.2d 761, 774 (2d Cir. 1981)

Family Medical Leave Act (FMLA) (29 U.S.C. 2601 et seq) Entitles covered employees to up to twelve weeks of unpaid leave during a 12 month period for the birth or adoption of a child or placement of a child in foster care; to cared for a spouse, parent, son or daughter with a swerious health condition; or when the employee is unable to work due the employee's own serious health condition. Recent amendments also grants up to 24 weeks of leave in a 12 month period for eligible employees to care for injured military servicemembers or to deal with "qualifying exigencies" arising out of a family member's active military duty or notification of an impending call to active duty

The Equal Pay Act (EPA), 29 U.S.C. § 206(d), prohibits discrimination in wage payments on the basis of sex where the employees in question are performing work requiring equal skill, effort, and responsibility. The limitations period is two years except for the case of a willful violation, in which case the period is three years. Under the EPA, remedies include back pay, liquidated damages in an amount equal to back pay, and injunctive relief.

Uniformed Services Employment and Reemployment Reform Act (38 U.S.C. 4300 et seq) A person who is absent from a position of employment by reason of service in the uniformed services is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person

would have attained if the person had remained continuously employed. Moreover, such person shall be entitled to such other rights and benefits not determined by seniority as are generally provided by the employer to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice.

The Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. §§ 1324(A) & (B), prohibits discrimination against any person (other than an unauthorized alien) on the basis of national origin or citizenship status.

State Human Rights Law (NYS Exec. Law § 296 *et. seq.),* prohibits employers from discriminating on the basis of age, race, color, sex, national origin, religion, disability, or marital status, sexual orientation.

New York City Human Rights Law, NYC Admin. Code Title 8, prohibits employers from discriminating on the basis of race, color, sex, national origin, religion, disability, marital status, sexual orientation, victim of domestic violence, genetic predisposition or carrier status.

Ponce, Blanca

From: Ponce, Blanca
Sent: Tuesday, August 12, 2008 1:03 PM
To: 'VKleffner@imla.org'
Subject: G. Foster Mills-Speaker's Materials for Laws Vegas, IMLA's 73rd - 2008 Annual Conf. Sept 14 -17, 2008

Dear Ms. Kleffner,

I am writing on behalf of Mr. G. Foster Mills in regards to the materials for the above conference.

Please let me know, at your earliest convenience, how you would like us to submit these materials to you.

Mr. Mills informed that he will be speaking along with Ms. Marie Ellen Bench, he kindly requests that his materials will go with Ms. Bench's materials.

Thanks in advance for your assistance on this matter. Please e-mail me to bponce@law.nyc.gov

Regards,

Blanca E. Ponce
Executive Division
100 Church Street
New York, NY 10007
(212) 788-0302
bponce@law.nyc.gov