I. PURPOSE
The purpose of this Corporate Policy and Procedure (Policy) is to establish a process for Accident/Incident reporting that complies with the Federal Railroad Administration (FRA) regulations under Title 49, Part 225 of the Code of Federal Regulations (CFR) and the Federal Rail Safety Act (FRSA), in conjunction with improving safety and the prevention of Accidents/Incidents at Long Island Rail Road (LIRR).

II. SCOPE
The Policy applies to all employees of the LIRR, contractors, and non-employees as defined in Section III below.

III. DEFINITIONS
A. Employees - Employees for the purposes of the Policy are:
   1. Class A - Employees on duty.
   2. Class B - Employees who receive compensation from the LIRR and are on LIRR property for purposes connected with their employment, but who are off duty at the time of an Accident/Incident.

B. Supervisors – Represented and non-represented employees with direct reports who are not supervisors.

C. Managers – Employees with direct report employees who are supervisors.

D. Accident/Incident (Referred to throughout as Accident) – An event or exposure that arises out of the operation of the railroad and is a discernible cause of the resulting death, injury, or occupational illness, or is a discernible cause of a significant aggravation to a pre-existing injury or illness. Accidents covered by this Policy include all injuries and occupational illnesses regardless of whether they meet FRA reporting criteria.

E. Contractor – A third party entity or any employee thereof who does not receive direct compensation from LIRR but who is contracted to work on LIRR property engaged in the operation of on-track equipment, safety-sensitive functions, or other railroad operations.

F. Non-Employees -
   1. Passengers: Persons who are on, boarding or alighting a train for the purpose of traveling on the LIRR.
   2. Non-Trespassers: Persons who are lawfully on LIRR property or adjacent to LIRR premises who are injured as a result of the operations of the railroad.
   3. Trespassers: Persons whose presence on LIRR property is prohibited, forbidden, or unlawful.

IV. ESSENTIAL FUNCTIONS
A. Corporate Safety
   1. Reports Accidents as required by law and regulation, including making formal FRA reportability determinations, filing monthly Accident reports with the FRA,
2. Coordinates the Corporate Safety Program and provides assistance to departments regarding accident reporting and related procedures.

3. Assists Departments and interdepartmental committees in conducting investigations of Accidents.

B. LIRR Medical Facility (Medical)

1. Assists employees involved in Accidents in obtaining medical treatment if needed. (The LIRR Physician-in-Charge and other Medical staff are not authorized to treat employees beyond providing first aid).

2. Performs medical assessments of an employee’s condition, illnesses or injury to determine whether the employee can perform the essential functions of his/her job, whether the employee is fit for duty, and whether there are physical restrictions on the employee’s ability to work.

3. Enters medical related documentation into the Accident Control System (ACS).

C. Law Department (Claims Bureau)

1. Receives originals of all accident forms and all other relevant documents generated and forwarded by other departments, MTA agencies and/or external entities regarding Accidents.

2. Assists Corporate Safety Department in Accident case reconciliations.

D. Labor Relations

1. Provides guidance to Departments concerning issues covered by Safety Policies, including the return to duty of employees injured in Accidents, medical disqualifications or transfers, and discipline.

E. Diversity Management

1. Provides employees, upon request, with an AR-40 Complaint Procedure for Alleging Harassment/Intimidation Form regarding harassment/intimidation complaints.

2. Investigates harassment/intimidation complaints and issues findings.

F. Departments

1. Ensure that employees perform their duties safely, consistent with Safety Policies, Operating Rules, and Corporate and Department policies and procedures, rules, and instructions.

2. Ensure that employees involved in Accidents receive medical attention, if needed.

3. Investigate Accidents and ensure that both hard copy and electronic copies of Accident/Incident reporting forms are completed, distributed, and submitted within the required time periods.

4. Immediately notify Transportation Services’ Movement Bureau (a/k/a “204”) upon learning of an employee’s or contractor’s death, serious injury to two (2) or more persons, or any injury to five (5) or more persons.
5. Designate a liaison to communicate with Corporate Safety, Medical, Claims, Labor Relations and other Departments in connection with issues arising under Safety Policies.

G. Movement Bureau

1. Immediately notify the applicable federal and/or state regulatory agency upon receipt of notification of an employee’s or contractor’s death, serious injury to two or more persons, or any injury to five or more persons.

H. Employees

1. Work safely by complying with Safety Policies, Operating Rules, and Safety Rules, and with applicable Corporate and Department policies, procedures, rules and instructions. Understand that safety performance is recognized as an essential portion of an employee’s comprehensive service record to the LIRR.

2. Cooperate with Departments, Corporate Safety, Medical, and Claims in connection with all issues arising under Safety Policies, including the investigation of Accidents.

3. Comply with all provisions of the Absence Control Policy (CP&P 2407), Medical Assessment Policy (CP&P MED-001), and with other applicable Corporate and Department policies, procedures, rules, and instructions.

V. PROCEDURES

A. Employee Accidents

1. Notification of Accident/Recurrence of Symptoms/Aggravation
   
   a. An employee involved in an Accident/Recurrence of Symptoms/Aggravation must notify his/her supervisor, or the designated superior, of the occurrence as soon as practicable, but not later than the end of the employee’s tour of duty.

   b. When an employee involved in an Accident/Recurrence of Symptoms/Aggravation is physically unable to notify his/her supervisor or designated superior, the employee’s supervisor or designated superior must ensure proper notification is made in accordance with department policies.

2. Medical Attention for Employee Involved
   
   a. It is the first responsibility of an employee involved in an Accident/Recurrence of Symptoms/Aggravation to request medical attention, if necessary, when the employee is physically able to do so.

   b. Where the employee has not requested medical attention, it is the responsibility of the supervisor to determine if the employee needs medical attention (based upon the supervisor’s reasonable, non-medical observation). It is also the responsibility of the supervisor to arrange medical attention if requested or otherwise necessary.
3. **Employee Losing Time - Notification**

   If an employee is losing any time from work due to an Accident/Recurrence of Symptoms/Aggravation, then he/she must notify his/her department that he/she is unable to work by following his/her department’s notification procedure.

4. **Employee Returns to Work:**

   a. When an employee is cleared by his/her Treating Medical Professional (TMP) to return to work within three (3) days of the Accident/Recurrence of Symptoms/Aggravation, a visit to LIRR Medical is **not** required; however, the employee must provide a return to duty clearance from the TMP prior to his/her return. This documentation can be a completed Sick Leave Administration Application Form (SLA-28). Official documentation from a TMP containing all the medical information required on the Physician’s Statement portion of the SLA-28 form is also acceptable in lieu of having the physician complete the medical information on the SLA-28 form. The employee can return to duty with the medical documentation. The completed Employee Statement portion of the SLA-28 form (Page 1) must be submitted within three (3) days of return to duty.

   b. TMP clearance documentation is required anytime the employee leaves the premises prior to the end of his/her shift because of his/her Accident/Recurrence of Symptoms/Aggravation, even if the employee does not lose time (per FRA’s Guidelines) and returns to work for his/her next tour of duty/shift following the Accident/Recurrence of Symptoms/Aggravation.

   c. Documentation of TMP clearance must be provided by the employee to the designated department superior (Transportation Services – Crew Management; Maintenance of Equipment – Central Manpower; Engineering – designated Fax Number; and Stations – Crew Manpower Office) or, for other departments the supervisor/office manager, prior to reporting back to work. The department must send a copy of such documentation to Corporate Safety at Safemedfiling@lirr.org, as soon as practicable but no later than seven (7) days after the Accident or notification of the Accident. In addition, the documentation must be sent to LIRR Medical by email at LIRRMedical@lirr.org or by fax at 516-248-3419.

   d. If the employee has not provided such return to duty clearance within three (3) days of the Accident/Recurrence of Symptoms/Aggravation, then on the fourth day, he/she must report to LIRR Medical for an assessment as to fitness for duty.

   e. In any case where the employee is losing time, a completed SLA-28 form must be provided by the employee to the employee’s department within three (3) days of returning to duty from an Accident/Recurrence of Symptoms/Aggravation as required by the applicable collective bargaining agreement. Per department procedure, the completed SLA-28 form must be provided to the designated department superior (Transportation Services – Crew Management; Maintenance of Equipment – Central Manpower; Engineering – designated Fax Number; and Stations – Crew Manpower Office) or, for other departments, your supervisor/office manager.
f. A failure by the employee to provide medical documentation that substantiates the employee’s claim that he/she is physically unable to report to duty, or to provide a completed SLA-28 form, may result in loss of benefits or other action against the employee.

5. Harassment/Intimidation
   a. The LIRR will not tolerate harassment, intimidation or any other improper conduct towards any employee who reports an Accident, an occupational illness, or any safety issue that arises from LIRR operations, or who requests medical treatment for an on the job Accident. The LIRR also will not tolerate harassment, intimidation or any other improper conduct towards any employee who complains about such harassment, intimidation or other improper conduct.
   b. If an employee has reason to believe that he/she is the subject of harassment, intimidation or improper conduct in connection with reporting an Accident, an occupational illness, or any safety issue that arises from LIRR operations, or for requesting medical treatment for an on the job injury, the employee should request an AR-40 form from the Diversity Management Department (Attachment E). Upon receipt of a completed AR-40, the Diversity Management Department will investigate the complaint and issue findings. If the employee’s complaint is substantiated, the LIRR will pursue all appropriate disciplinary penalties, up to and including dismissal from service, and the individual who engages in such improper conduct may also be subject to civil and criminal penalties.

6. Accident Reporting
   a. Initial Report of Employee Accident/Incident - AR-1 (Attachment A)
      i. The AR-1 must be completed by the supervisor of an employee involved in an Accident as soon as practicable after an Accident or notification of an Accident, but in no event more than 24 hours after such notification.
      ii. The information required for the AR-1 includes, but is not limited to: name, job title and employee ID number of the employee involved; date, time, and location of the occurrence; date and time the occurrence was reported, and to whom; description of the employee’s injury and medical treatment, if any; a description of how the accident occurred; names of any witnesses; immediate responsive actions taken; and whether the employee was provided with post-accident/incident instructions.
      iii. Hard Copy of AR-1 – Departments are required for each Accident to complete a hard copy of the AR-1 and distribute the original and any attachments, along with any related reports, memoranda, photographs and other material to Claims as soon as practicable but no later than 24 hours after the Accident or notification of the Accident.
      iv. Designated department personnel must send a copy of the completed AR-1 via email to Corporate Safety at Accidentfiling@lirr.org as soon as practicable but no later than 24 hours after the Accident or notification of the Accident.
v. Departments should retain a copy of the AR-1 for their records.

vi. **Electronic Filing of AR-1** – Departments are also required for each Accident to input information from the hard copy AR-1 into the Accident Control System (ACS) as soon as practicable but no later than 24 hours after an Accident or notification of an Accident. This electronic filing is in addition to and not instead of completion and distribution by the employee’s supervisor of a hard copy of the AR-1 as required above.

b. **Employee Injury/Illness Record - AR-20 (Attachment B)**

   i. The AR-20 must be completed by a supervisor/manager, who is at least two levels above the employee, as soon as practicable, but no later than seven (7) days after the Accident or notification of the Accident.

   ii. The information required for the AR-20 includes, but is not limited to, a description of all facts surrounding the occurrence and observations, such as the premises, tools, protective equipment, time of day and weather conditions, description of the injury/illness and how it occurred, and medical treatment, if any.

   iii. The supervisor/manager should complete all portions of the AR-20 except the final section (Part VIII) regarding medical related information, and attach all documentation required by the AR-20.

   iv. **Hard Copy of AR-20** – Departments are required for each Accident to complete a hard copy of the AR-20 and to distribute the original and any attachments to Claims along with any related reports, memoranda, photographs and other material as soon as practicable, but no later than seven (7) days after the Accident or notification of the Accident.

   v. Designated department personnel must send a copy of the completed AR-20 via email to Corporate Safety at Accidentfiling@lirr.org as soon as practicable, but no later than seven (7) days after the Accident or notification of the Accident.

   vi. Departments should retain a copy of the AR-20 for their records.

   vii. **Electronic Filing of AR-20** – Departments are also required to input information from the hard copy AR-20 into the ACS as soon as practicable, but no later than seven (7) days after the Accident or notification of the Accident. This electronic filing is in addition to and not instead of completion and distribution by the employee’s supervisor of a hard copy of the AR-20 as required above.

   viii. Designated department personnel must send all medical related documentation required by the AR-20, as well as a completed SLA-28 form, via email to Corporate Safety at Safemedfiling@lirr.org, as soon as practicable but no later than seven (7) days after the Accident or notification of the Accident.

c. **Accident/Incident Findings - AR-21 (Attachment C)**

   i. The AR-21 must be completed by a supervisor/manager, who is at least two levels above the employee, as soon as practicable, but no later than fifteen (15) days after the Accident or notification of the Accident.
ii. The information required for the AR-21 includes, but not limited to, a description of all facts surrounding the occurrence and observations, such as the premises, tools, personal protective equipment, time of day and weather conditions, employee, supervisor and witness statements, root cause, and corrective actions.

iii. The supervisor/manager should complete all portions of the AR-21 and attach all documentation as required by the AR-21.

iv. Hard Copy of AR-21 – Departments are required for each Accident to complete a hard copy of the AR-21 and to distribute the original and any attachments to Claims along with any related reports, memoranda, photographs and other material as soon as practicable, but no later than fifteen (15) days after the Accident or notification of the Accident.

v. Designated department personnel must send a copy of the completed AR-21, together with all attachments, via email to Corporate Safety at Accidentfiling@lirr.org, as soon as practicable but no later than fifteen (15) days after the Accident or notification of the Accident.

vi. Departments should retain a copy of the AR-21 for their records.

vii. Electronic Filing of AR-21 – Departments are also required to input the most current information from the hard copy AR-21 into the ACS as soon as practicable, but no later than fifteen (15) days after the Accident or notification of the Accident.

d. Safety Counseling - AR-30 (Attachment D)

i. Safety Counseling is mandatory after an employee’s first, third, and fifth Accident, and for each subsequent Accident. Departments may conduct Safety Counseling consistent with departmental rules and procedures.

ii. Safety Counseling is not discipline. It should be a positive dialogue between supervisor and employee concerning ways to avoid Accidents. The counseling session should include the supervisor’s review of relevant Safety Rules. Supervisors shall use the AR-30 form to document when an employee received Safety Counseling and the subject matter of the session.

iii. Union representation is not mandatory for such counseling, but may be allowed at LIRR’s discretion if requested by an employee.

iv. The AR-30 should be completed by the employee’s supervisor or designee as soon as practicable, but no later than fifteen (15) days after the Accident or notification of the Accident.

v. Departments are required to submit a completed AR-30 when submitting the AR-21, or within three (3) days working days of the employee’s return to duty, whichever is later.

vi. Departments are required to distribute the original and any attachments to Claims, with a copy to Corporate Safety. The designated department personnel must send the completed AR-30 to Corporate Safety via email at Accidentfiling@lirr.org.
vii. Departments should retain a copy of the AR-30 for their records.

e. Every employee Accident, independent of whether it is a “critical incident” as defined by CP&P SAFE-020 Critical Incident Stress Plan or applicable regulations (49 CFR Part 272), must be reviewed to determine whether it is subject to the above employee accident reporting procedures.

f. All requests for accident/incident copies and related documentation, etc. must be made through a Freedom of Information Act (FOIA) request via the Law Department.

B. Contractor Accident

1. All Accidents experienced by a Contractor are subject to FRA accident/incident reporting requirements.

2. A LIRR Supervisor or Manager from the department responsible for supervising the work of the Contractor involved in an Accident must complete a Contractor Accident/Incident Report (ARC Form) – Attachment F. The ARC Form must be completed as soon as practicable after the Accident, but no later than seven (7) days after the Accident or notification of the Accident.

3. All sections of the ARC Form must be completed with all relevant documents attached including, but not limited to, photographs, MV-104 Form, Job Briefing Card, and statements. The department should retain a copy for their records.

4. LIRR personnel completing the ARC Form shall comply with all MTA, LIRR, and Departmental rules and procedures regarding the completion and internal routing/approval of contractor accident reporting forms, as applicable.

5. The designated LIRR Supervisor or Manager shall send the hard/original copy of the ARC Form together with any attachments, related reports, memoranda, photographs, and other material to Claims with copies emailed to Corporate Safety at Accidentfiling@lirr.org as soon as practicable after the Accident, but no later than seven (7) days after the Accident or notification of the Accident.

6. Corporate Safety will be responsible for inputting relevant information regarding the Contractor’s accident into the ACS as well as making appropriate FRA reporting determinations and issuing required reports.

C. Non-Employee Accident

1. All Accidents experienced by a Non-Employee (passenger, non-trespasser, and trespasser) are subject to FRA accident/incident reporting requirements.

2. An Employee’s first responsibility to a Non-Employee involved in an Accident is to assist in obtaining appropriate first aid or medical attention. Where the Non-Employee has not or is unable to request medical attention, it is the responsibility of the Employee to determine if the Non-Employee needs medical attention (based upon the Employee’s reasonable, non-medical observation). A Non-Employee’s refusal of medical attention should be documented.

3. An Employee should immediately notify the Movement Bureau if he/she witnesses a Non-Employee Accident, or is subsequently notified of a Non-Employee Accident involving a customer injured on a train or platform.
4. An Employee who witnesses a Non-Employee Accident, or is subsequently notified of a such an Accident, must complete the Employee Section of an Accident Report Non-Employee Form (AR-NE Form) – Sample Attachment G, as soon as practicable, but no later than the end of the employee’s tour of duty. The completed AR-NE form must be sent to Corporate Safety via LIRR inter-office mail. AR-NE Forms are available at designated crew counters/areas within Terminals and Stations throughout the LIRR or from the on-shift supervisor/employee-in-charge. Departmental safety liaisons must ensure that sufficient AR-NE Forms are available by contacting the Senior Manager, Safety Management Systems, Corporate Safety to re-order as needed.

5. Corporate Safety will be responsible for inputting the relevant information regarding the Non-Employee’s accident into the ACS as well as making appropriate FRA reporting determinations and issuing required reports.

D. Immediate Telephone Notification

1. Upon notification of an occurrence of (a) the death of an employee, contractor, or non-employee; (b) the death or injury of five (5) or more persons; or (c) the serious injury (requiring hospitalization) of two (2) or more persons, LIRR must immediately report the occurrence via telephone to the FRA and/or other regulatory agencies, as required.

   a. Departments upon learning of an occurrence as described above must immediately notify the Movement Bureau.

   b. Upon receipt of the notification from the applicable department, the Movement Bureau shall immediately report by telephone to the applicable federal and/or state regulatory agencies.

2. Immediate telephone notification by the Movement Bureau must be made regardless of the suspected cause or circumstances of the occurrence.

3. Every employee, contractor, and non-employee Accident subject to the immediate telephone notification requirement as described herein shall be reviewed to determine whether it is subject to the accident reporting procedures set forth in this Policy.

VI. RELATED POLICIES & PROCEDURES

CP&P 2407 Absence Control Policy
MED-001 Medical Assessment Policy
SAFE-005 FAQs on LIRR Intranet - Corporate Safety homepage

VII. FORMS & ATTACHMENTS

Attachment A - Initial Report of Employee Accident/Incident - AR-1
Attachment B - Employee Injury/Illness Record - AR-20
Attachment C - Accident/Incident Findings - AR-21
Attachment D - Safety Counseling/Review Work Sheet - AR-30
Attachment E - Complaint for Alleging Harassment/Intimidation - AR-40
Attachment F - Contractor Accident/Incident Report – ARC
Attachment G - Accident Report-Non-Employee - AR-NE (Sample)
VIII. REVISION TRACKING

October 2005

March 2010

May 2012  Inserted language that should lead to corporate-wide accident reporting procedures.

October 2015  Changed requirements for employees regarding documentation and when to report to Medical in the event of an injury;

January 2016  Clarified the requirement of the Treating Medical Professional (TMP) clearance documentation whenever the employee leaves the premises prior to the end of his/her shift; Added the reference of the SAFE-005 FAQs posted on Corporate Safety’s homepage.

April 2017  Modified requirements of employee accident reporting forms and related procedures; Attached revised employee accident reporting forms.

December 2017  Modified language for policy to specifically address accident reporting; inserted language regarding Contractor and Non-Employee accident reporting; inserted telephone notification requirements, “critical incident” reporting, and, role of the Movement Bureau; removed Safety Committees and Safety Meetings; added sample forms for Contractor and Non-Employee accident reporting.

March 2018  Updated to show where employees can find forms. ARC form made PDF fillable. Added sending original ARC forms to Safety & Claims. Added language re: obtaining report copies via FOIA.
I. PURPOSE

The purpose of this Corporate Policy and Procedure (Policy) is to stipulate safety footwear requirements to ensure Long Island Rail Road (LIRR) employees maintain appropriate levels of foot and ankle protection as required by their assigned responsibilities and as conditions warrant.

II. SCOPE

This Policy applies to all employees regularly assigned to workplace locations, whose regular activities and job scope expose them to risk of foot/toe/ankle injury as well as other employees whose activities and job scope require them to frequent locations where safety footwear is required.

III. ESSENTIAL FUNCTIONS

A. Deputy Chief Safety Officer – Occupational and Environmental Safety / Designee
   1. Administer this Policy.
   2. Review requests for safety shoes required for specific tasks.
   3. Perform compliance and policy exception reviews.

B. Department Heads
   1. Request footwear allowances for MPA employees.
   2. Confer with Employee Services regarding non-compliance due to medical issues.

C. Chief Safety Officer
   Confer with Department Heads, as needed.

D. Human Resources - Employee Services
   Confer with Department Heads regarding non-compliance due to medical issues.

E. LIRR Employees
   All employees covered under this Policy:
   1. Shall be required to wear safety footwear at all times while on duty for protection against injury to the feet and ankles except as otherwise determined by their Department Head after consultation with the Chief Safety Officer, as needed.
   2. Must purchase safety footwear that meets the requirements and specifications detailed in this Policy (see Section IV. D).

F. Supervisors
   Supervisors are responsible for ensuring that all applicable employees are in compliance with this Policy.

G. Controller’s Office – Payroll
   1. Process payments for represented employees as per their Collective Bargaining
Agreement (CBA).

2. Receive, approve and process safety footwear allowance requests for MPA employees.

IV. PROCEDURE

A. Compliance

1. All employees are responsible for complying with this Policy and for maintaining safety footwear in proper condition without alteration.

2. Corporate Safety (CS) shall conduct and record compliance and policy exception reviews as part of field compliance audits, SAFERs, at random, as a result of an incident investigation, etc. If non-compliance is observed, the employee shall be reinstructed and their direct supervisor shall be informed. If it is determined that the non-compliance is egregious or an immediate danger exists, the supervisor shall remove the employee from the hazard until proper footwear is available.

3. Any employee not in compliance for any reason will not be permitted to perform any of his/her duties that require safety protective footwear until such time that compliance can be achieved.

4. Any represented employee who fails to comply with this Policy may be subject to warnings and disciplinary action consistent with the CBA in effect.

5. In the event that an employee is unable to comply with this Policy and/or approved safety footwear specifications due to medical reasons, the employee shall be required to provide his/her Department Head with documentation explaining in detail the medical condition(s) precluding compliance and recommendations for an alternative for protection from foot/ankle injury. The Department Head shall forward the documentation to and consult with Employee Services with regard to the validity of the medical reasons stated and to explore acceptable alternatives.

B. Annual Allowance

Employees covered by this Policy will receive an annual safety footwear allowance to be used for the purchase of LIRR-approved safety footwear. Employees shall be responsible for any costs that exceed the annual allowance.

1. Represented Employees

   a. Employees hired for or transferring from a position not covered by this Policy to a position covered under the scope of this Policy after July 1st of any year will acquire safety footwear at their own expense and, if still in the covered position as of July 1st of the following year, will receive the agreement allowance.

   b. Each year, LIRR will pay an allowance to each represented employee as per the signed safety footwear agreement in their CBA as follows:

      ➢ Transportation Communication Union (Clerks, Exception 5, Towers/Agents)
      ➢ National Conf. of Firemen and Oilers-Service Employees International Union
      ➢ Independent Railway Supervisors Association (Gang Foremen)
      ➢ Brotherhood of Railroad Signalmen
      ➢ International Association of Machinists
      ➢ United Transportation Union (Carmen, Track/B&B, Track Supervisors)
      ➢ Sheet Metal Workers
International Brotherhood of Electrical Workers

c. Represented employees with management benefits if required to wear safety shoes whose CBA includes eligibility for a footwear allowance are as follows:

- National Transportation Supervisors Association
- Independent Railway Supervisors Association (Supervisor of Equipment, Material Coordinators)

d. Represented employees whose CBA does not include eligibility for a footwear allowance are as follows:

- Brotherhood of Locomotive Engineers (BLE)
- United Transportation Union (UTU): Trainmen, Special Service Attendants, Yardmasters
- Transportation Communication Union (TCU): Train Dispatchers

2. Management (MPA) Employees

a. Department Heads must provide a list of MPA employees by completing an Annual Safety Footwear Approval Request (Attachment A) submitting the request to Payroll by the second calendar week of June each year.

b. The Payroll Manager will review and approve the request and forward to the Payroll Supervisor for processing.

c. The Payroll Supervisor creates a file to be uploaded to the BSC for the gross to net payment process.

C. Triennial Allowance

1. For those MPA and represented employees with management benefits whose regular work locations or situations do not require safety footwear but actively participate in the Customer Assistance Program (CAP) or whose job responsibilities require that they periodically enter work locations where safety footwear is required, the safety footwear allowance will be provided every three (3) years from their date of eligibility based on the date they began working in their applicable position (see Section IV. B. 1. b).

2. Department Heads must provide a list of MPA employees by completing a Triennial Safety Footwear Approval Request (Attachment B) and submit the request to Payroll by the second calendar week of June each year.

3. The Payroll Supervisor shall verify the last time the employee received an allowance to ensure the timing of the request is valid.

4. The Payroll Manager will review and approve the request and forward to the Payroll Supervisor for processing.

5. Employees are responsible for any costs that exceed the triennial allowance.

D. Footwear Requirements and Specifications

1. When employees are purchasing safety footwear all shoes and boots must be in compliance and labeled with American Society for Testing and Materials (ASTM) standard F2413-11 with protection ratings of (See Attachment C):

   a. ASTM Compression protection ratio of C-75;
b. ASTM Impact protection rating of I-75; and

c. ASTM Electrical Hazard Protection EH designated.

(Note: Safety footwear with composite toe caps and the Z41 standard label is acceptable).

2. Older safety footwear in good condition with ASTM 2413-05 compliant labelling is allowed for use when conducting duties at LIRR facilities, projects and operations. Footwear with ASTM compliance prior to Standard 2413-05 is not acceptable for use at the LIRR.

3. All ASTM certified safety footwear must be:

a. Identifiable by a label imprinted inside the safety footwear (See Attachment C).

b. Constructed to a minimum of six inch high uppers to provide ankle protection and support ("low-quarter" shoes are not acceptable for use by employees who are regularly assigned to work locations/tasks which require ankle support and protection).

c. A laced model, preferably with non-conductive eyelets.

d. Constructed with one-piece, nail-less, vulcanized heel/sole with the highest degree of chemical, solvent, oil, electrical, slip, abrasion, and puncture resistance for the type of work being performed by the wearer.

e. In addition, the heel rise must be at a ninety-degree angle to the sole and is not to exceed a rise of one inch from the sole except as required with lineman’s boots.

V. FORMS & ATTACHMENTS

Attachment A - Annual Safety footwear Approval Request
Attachment B - Triennial Safety footwear Approval Request
Attachment C - LIRR Specific Requirements for Safety Footwear

VI. RELATED POLICIES/DOCUMENTS

Safety Rule Book for Employees

VII. REVISION TRACKING

July 2005 - New
August 2006
May 2009
February 2016 - Four year review per BPM-001 Issuance of CP&P’s;
Revised date of submission for forms to Payroll;
Removed Appendices – incorporated into the Policy;
Updated to current ASTM safety footwear standard for new shoe purchases;
Identified oldest ASTM safety footwear standard acceptable for current shoes in good condition;
Updated title acting as Policy Administrator; and
Updated Attachment C to reflect current ASTM safety footwear standard.
LIRR Specific Requirements for Safety Footwear

Protective footwear must be certified as meeting the requirements of the standard via a stitched-in label, stamping, pre-sensitized label, or a combination of all of these methods of at least one of the pair.

ASTM F 2413-11
M/I/75/C/75
EH

Example Label

<table>
<thead>
<tr>
<th>Label Identification</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASTM F 2413-11</td>
<td>Identifies that the footwear is protective footwear that complies with the 2011 ASTM standard. Note: ASTM F 2413-05 is allowable for older shoes, if in good condition.</td>
</tr>
<tr>
<td>M or F/I/75/ C/75</td>
<td>M=Male F=Female I=Impact resistance C=Compression resistance 75= resistant to 75 foot-pound test standards for impact and compression</td>
</tr>
<tr>
<td>EH</td>
<td>Identifies footwear with outsole and heel made of electrical insulation properties; shock resistant.</td>
</tr>
</tbody>
</table>

Laced models, preferably with non-conductive eyelets.

Minimum 6” Uppers

Heel rise must be at ninety-degrees (90) to the sole and is not to exceed a rise of one (1) inch from sole except as required with lineman’s boots.
ABSENCE CONTROL POLICY

I. PURPOSE

To ensure that adequate human resources are available to provide continual effective customer service, it is essential that the Long Island Rail Road (LIRR) establish a system to identify and control excessive absence.

The Absence Control Policy (Policy) is subject to cancellation or modification at the sole discretion of the LIRR at any time. The Policy complies with all applicable labor agreements and related corporate policies (See Section VIII, Related Corporate Policies).

II. GOAL

It is the responsibility of each LIRR employee to report at the times, on the days and at the designated locations for which he/she is scheduled, and to remain on duty for the full workday. This is the most important basic obligation an individual assumes as a condition of employment with the LIRR.

All employees have an obligation to the LIRR, our customers, the taxpayers of our service territory and their fellow employees to strive for perfect attendance. Unscheduled employee absences adversely affect productivity and efficiency, unnecessarily increase costs, put additional burdens on employees who do report to work and reduce the quality of service the LIRR can provide to our customers. Employees are expected to maintain reasonable health standards, take intelligent precautions against illness and make every effort to live and work safely, both at home and at work. Employees are further expected not to allow minor ailments or inconveniences to prevent them from reporting to work as assigned.

III. PROVISIONS FOR ABSENCE

All employees are provided with adequate amounts of leave. Collective Bargaining Agreements (“Agreements”) describe exceptions to an employee’s daily obligation to report for duty (e.g., holidays, vacation and personal leave, jury duty and similar bona fide absences).

Employees are permitted to use sick leave for personal illness or injury. Employees who attempt to use sick leave for any other reason or who use sick leave in violation of this procedure will be subject to disciplinary actions up to and including dismissal. Absences covered by an approved FMLA leave shall not be assessed points under this policy. Approved FMLA leaves for an employee’s own personal illness shall run concurrently with sick leave usage.

Hard copy is uncontrolled - online version is most current.
IV. SCOPE

The Policy applies to all LIRR employees represented by the following Organizations while on straight time or in an overtime status:

UTU- Carmen and M of W Workers  Bro. of Railroad Signalmen
UTU – Train Service  Bro of Locomotive Engr & Trainmen
IRSA (Gang Foremen Only)  Int'l. Bro. of Electrical Workers
Int'l. Association of Machinists  Nat'l. Conf. of Firemen & Oilers
Sheet Metal Workers  Transportation Communications Union
UTU – Special Services  UTU – Yardmasters

V. DEFINITIONS

A. Sick Leave Form – Form established by the LIRR and submitted by the employee in accordance with the applicable Collective Bargaining Agreement (CBA), providing a medical statement by the employee's physician as to the reason for the absence.

B. Absence Control Classifications

1. Disabled/Sick (D/S) - Time lost by an employee due to illness or injury not received in performance of duty that is charged against the employee’s allowable sick leave bank, paid or unpaid.

2. Disabled/Accident (D/A) – Time lost by an employee due to injury received in performance of duty that may or may not be charged against the employee’s allowable sick leave bank in accordance with the applicable CBA and corporate policy.

3. Absence Known (AK)
   a. Employee notifies appropriate supervisor that he/she needs a day off without pay due to an unforeseeable circumstance.
   b. Employee returns timely from other approved leave (e.g. military leave, jury duty, bereavement leave) but fails to complete appropriate forms or provide necessary documentation in accordance with LIRR policy.
   c. Employee properly notifies department and is granted a personal or vacation day and has no days remaining in bank (vacation/personal day overuse).
   d. Employee who returns to work immediately following a DS occurrence and fails to notify the LIRR that he/she is returning to duty and who is sent home.

Hard copy is uncontrolled - online version is most current.
e. Maintenance of Equipment (M of E) Department Employees only - Days off taken after "bump" until employee exercises his/her seniority to another position.

4. Absence Unauthorized (AU) - (Straight-time or overtime assignment)

a. Employee fails to call off sick timely in accordance with the applicable CBA; or

b. Employee out D/S fails to file a sick leave form in accordance with the applicable provision of the CBA within three (3) days of returning to duty.

5. Unauthorized Sick (US) – Employee out D/S is not available when called or visited in accordance with the applicable CBA.

6. Absent Without Leave (AWOL) – (Straight-time or overtime assignment)

Employee fails to report to duty at the required time without having properly notified the appropriate supervisor or designee (within one (1) hour of start of tour for M of E and M of W employees) or employee abandons job site prior to end of tour of duty without notifying appropriate supervisor or designee.

Passenger Service Department only – Should an employee and the Passenger Services Crew (“Crew”) make contact, regardless of who initiated the call, within thirty (30) minutes after the start of the assigned tour and the employee reports to the assigned location within sixty (60) minutes after the start of the tour, the employee will be considered late and marked as a “Late Start”. If, however, contact is made within thirty (30) minutes after the start of the assigned tour and the employee cannot report to the assigned location within sixty (60) minutes after the start of the tour, the employee will be considered AWOL.

Should there be no communication between “Crew” and the employee within thirty (30) minutes after the start of the assigned tour, the employee will be considered AWOL.

An employee contacting Crew before the start of the assigned tour, but cannot report for his/her assigned tour within sixty (60) minutes after the start of the assigned tour will be considered Absence Unauthorized (AU)

7. Early Quit (EQ) - (Straight-time or overtime assignment)
Employee leaves before the end of his/her tour of duty after having notified and received approval from appropriate supervisor.
8. **Late Start (LS) – (Straight-time or overtime assignment)**

Employee notifies his/her supervisor or designee as soon as possible and if practical, prior to their report time and reports to duty after he/she is required to report.

9. **Record Discipline** – Suspension on the record only, in accordance with progressive discipline, as outlined in the Policy. The actual suspension from service is not imposed. When record discipline is used, time held in abeyance cannot be used in subsequent discipline.

10. **Lost Guarantee - Train & Engine (T&E) Only**

An extra list employee who is not home or does not answer the telephone when the LIRR calls with his/her assignments.

11. **Run Failure (Train Service)**

Fails to report for his/her assignment by report time but notifies his/her supervisor before the end of his/her tour of duty. A Train Service employee who fails to report his/her absence prior to the end of his/her tour or is found to be absent after his/her first train of the assignment shall be Absent Without Leave (AWOL).

**Run Failure (Train Movement & Yardmasters)**

Fails to report for his/her assignment by report time, but notifies his/her supervisor within one (1) hour of report time. If notified after one hour of absence, Run Failure will become an AWOL. If an employee from a craft other than those mentioned above does not report for duty on time (and it is not a late start), discipline will be handled similar to Run Failure.

**UTU ONLY –** Fails to call off in accordance with the applicable contractual limits before the start of his/her tour of duty.

12. **Article 17 of BLE&T Agreement**

Fails to call off at least three (3) hours in advance of his/her reporting time in accordance with Article 17 of the BLE&T Agreement.

13. **Family Leave (FMLA)**

Leave pursuant to the LIRR Family and Medical Leave Policy (FMLA Policy).
C. Absence Control Committees

There will be two separate and distinct review committees:

1. Absence Control Review Committee – consists of director level representatives responsible for the administration of the Policy from Human Resources, Labor Relations, M of E, Maintenance of Way (M of W), Transportation, Passenger Services, Controller, Strategic Investments, Service Planning, Technology and CPM, Public Affairs, Safety, Law and Procurement. The Review Committee shall meet monthly to review each department’s employee’s identified on the absence control list, trial charges issued, management exceptions applied, trial waivers agreed to, status of pending trials, etc.

2. Executive Committee - consists of the Executive Director – Human Resources, Vice President – Labor Relations, Chief Engineer, Chief Mechanical Officer, Chief Transportation Officer and General Manager – Passenger Services. This committee will report quarterly to the President.

VI. PROCEDURE FOR DOCUMENTING POINTS

An employee who experiences an absence will have the following point schedule applied to his/her attendance record.

A. Absences with Points

1. Absence Known (AK) - six (6) points

2. Absence Unauthorized (AU) - nine (9) points
   a) When an employee is going to be out D/S, if he/she does not call within the applicable time period before their scheduled tour of duty the employee will be assessed nine (9) points for an AU for that occurrence (Providing there are no other violations of the ACP), except that Train/Engine, Train Movement and Yardmasters will be charged similar to a Run Failure/Article 17 violation.
   b) An employee who is D/A or D/S and is required to submit a sick leave form and fails to provide a completed form within the contractual time period, such employee shall be considered as violating the applicable CBA, and such absence shall be considered as Absence Unauthorized. The employee will be assessed an additional nine (9) points for the absence. (Employee will be assessed five (5) points for the D/S occurrence plus nine (9) points for failure to submit a sick form (AU), for a total of fourteen (14) points.

3. Early Quits (EQ) - four (4) points
4. Injury (D/A) - five (5) points

5. Late Starts (LS) - four (4) points

6. Sick (D/S) - five (5) points
   a. If an employee out D/S gives proper notification every day or in accordance with established departmental practice, when he/she is out sick, only five (5) points are assigned for the occurrence, regardless of length.
   b. When an employee’s status changes between D/A and D/S, he/she will not be assessed additional points for this absence because it is considered as one occurrence.

7. Lost Guarantee - Nine (9) points

8. Unauthorized Sick (US) - nine (9) points. In addition to the assessed five (5) points for the DS occurrence.
   An employee is considered out US if not available when called or visited. The employee will be assessed an additional nine (9) points for each day absent when called and not available. (Employee would be assessed five (5) points for the D/S occurrence plus nine (9) points for not being home when called or visited (US), for a total of fourteen (14) points.)

B. Criteria for Evaluating the Discipline Process

1. Accumulation of Points.
   Employees are assigned points for the absences set forth above, per occurrence, not number of days of the absence. Points for employee absences accumulate on a rolling (i.e., ongoing, not calendar) basis.

2. Schedule of Excessive Points.
   Employees whose attendance records indicate an accumulation of points in accordance with the following schedule may be disciplined for violation of this policy.
   a. Twelve (12) or more points during a one (1) -month period;
   b. Eighteen (18) or more points during a three (3) -month period;
   c. Twenty-four (24) or more points during a six (6) -month period; or
   d. Thirty (30) or more points during a twelve (12) -month period.
3. Discipline based on the points system is not automatic. Department Heads and/or
designee should exercise discretion as to whether it is appropriate to discipline an
employee. Such discretion should be exercised consistently based on objective
factors, including the employee’s overall attendance record. A written explanation
shall be provided to the Absence Control Review Committee.

Employees whose attendance records indicate a pattern of abuse in conjunction
with other days not worked will also be considered to have unsatisfactory
attendance and may be subject to discipline.

Patterns of abuse, such as the repeat occurrences of taking days off in conjunction
with relief days, vacations, personal days, or other approved time off constitutes a
pattern of abuse subject to discipline without requiring the accumulation of points
as described in this Policy.

5. When a review of an employee’s attendance record is conducted because of a
violation of the Policy for excessive points, AWOL or Run Failure/Article 17 and the
employee has been disciplined for other violations (i.e. operating violations, cash
remittance violations, etc.) the discipline may be accelerated to the next level of
discipline above the one that would otherwise be applied. For example, an
employee whose second violation for excessive points normally results in a Letter
of Reprimand. However, if the LIRR discovers from the employees record that the
employee had an operating rule violation, the discipline may be accelerated to a
third step violation where a suspension may be issued if a trial waiver is accepted.

C. Discipline for Violations of Excessive Absenteeism

1. Time limits

a. The LIRR is deemed to have actual knowledge of an employee’s violation of the
Policy when his/her Department Head receives the monthly Absence Control
Report or when the Department Head has actual knowledge in accordance with the
applicable CBA. (Employees represented by the BLE&T are covered by paragraph
[b] below.)

b. Brotherhood of Locomotive Engineers & Trainmen (BLE&T) – Employees
represented by the BLE&T must be charged within fifteen (15) calendar days after
the occurrence of the last date of the absence for which the employee is charged.
The employee must receive seventy-two (72) hours notice of the trial, which must
be held within fifteen (15) calendar days after the last date of the absence for which
the employee is charged.
2. Assessments for Violations Based on Points or Unacceptable Patterns
   (All references to record discipline apply to Transportation Department only. All other departments shall continue to impose suspensions without pay, where applicable.)

   a. A first violation will result in a Letter of Warning (or Caution), which is not discipline. Note: a Letter of Warning should remain part of the employee’s department file for a minimum of three years presuming there is no intervening absence control discipline and unless otherwise provided in their applicable CBA.

   b. A second violation will result in a Letter of Reprimand with a trial waiver or a suspension of five (5) working days, if the charge is upheld after a trial. Referral to EAP at Department discretion.

   c. A third violation results in a ten (10) working day suspension with a trial waiver. A suspension resulting from a trial waiver for this violation is a “record discipline” only, in accordance with progressive discipline. The actual suspension from service is not imposed. The trial waiver warns of the need to correct attendance and that a fifth violation may result in dismissal. A twenty (20), calendar day suspension is imposed if the charge is upheld after a trial. EAP is mandatory if the charge is upheld after a trial or the employee accepts a trial waiver.

   d. A fourth violation results in a thirty (30) calendar day suspension with a trial waiver. A suspension resulting from a trial waiver for this violation is a “record discipline” only, in accordance with progressive discipline. The actual suspension from service is not imposed. The trial waiver warns of the need to correct attendance and that a fifth violation may result in dismissal. A forty-five (45), calendar day suspension is imposed if the charge is upheld after a trial. EAP is mandatory if the charge is upheld after a trial or the employee accepts a trial waiver.

   e. For a fifth violation, the employee will receive a sixty (60) calendar day suspension and a Last Chance Agreement with a trial waiver that includes mandatory EAP, or dismissal if the charge is upheld after a trial.

   f. A copy of all disciplinary notices referenced in this section will be forwarded to Human Resources - Personnel Records.
3. Penalties – Violations Based on Run Failure and/or BLE&T Article 17

a. A first violation will result in a Letter of Warning (or Caution), which is not discipline. Note: A Letter of Warning should remain part of the employee’s department file for a minimum of one year. It is the corporate document that indicates that the employee was notified of the applicable LIRR policy and may be produced at any time, if warranted.

b. A second violation, the employee will receive a Letter of Reprimand with a trial waiver, or a three (3) working day suspension if the charge is upheld after a trial. Referral to EAP at department discretion.

c. A third violation results in a five (5) working day suspension, if a trial waiver is accepted. The trial waiver warns of the need to correct attendance and that a fifth violation may result in dismissal. A fifteen (15) calendar day suspension is imposed if the charge is upheld after a trial. Referral to EAP is mandatory.

d. A fourth violation results in a twenty (20) calendar day suspension with a trial waiver. The trial waiver warns of the need to correct attendance and that a fifth violation may result in dismissal. A forty-five (45) calendar day suspension is imposed if the charge is upheld after a trial. Referral to EAP is mandatory.

e. A fifth violation results in a sixty (60) calendar day suspension and Last Chance Agreement if a trial waiver is accepted (with mandatory referral to EAP) or dismissal if the charge is upheld after a trial.

f. A copy of all disciplinary notices referenced in this section will be forwarded to Human Resources - Personnel Records.

D. A.W.O.L. Violation

This is considered a major infraction of the Policy and will result in a trial charge. Points are not assigned to the employee’s record. An employee may be disciplined for each day the employee is reported A.W.O.L. Each day an employee is marked A.W.O.L. may constitute a separate charge.

1. Assessments for AWOL Violations

a. A first violation results in a five (5) working day suspension, if a trial waiver is accepted. A ten (10) working day suspension is imposed if the charge is upheld after a trial.

b. A second violation results in a ten (10) working day suspension, if a trial waiver is accepted. A twenty (20) calendar day suspension is imposed if the charge is upheld after a trial.
upheld after trial. Referral to EAP at department discretion.

c. A third violation results in a fifteen (15) calendar day suspension with a trial waiver. A thirty (30) calendar day suspension is imposed if the charge is upheld after trial. In either case, the employee is mandated to EAP.

d. A fourth violation results in a thirty (30) calendar day suspension with a trial waiver. A sixty (60) calendar day suspension is imposed if the charge is upheld after a trial. In either case, the employee is mandated to EAP.

e. A fifth violation results in a sixty (60) calendar day suspension and a Last Chance Agreement with a trial waiver (with mandatory referral to EAP) or dismissal if the charges are upheld after trial.

f. A copy of all disciplinary notices referenced in this section will be forwarded to Personnel Records.

E. Expunging of Discipline

Some CBA’s provide for the expunging of disciplinary actions from the personnel files after three (3) years for minor offenses. A violation occurring after the expunging will revert back to the last violation received should there be absence control discipline remaining on the employee’s record.

Transportation Department – Run Failures/Article 17 only will be expunged after (1) year.

F. Other Provisions

An employee will not be disciplined for the same date(s) on more than one attendance trial notice. However, the accurate dates in a trial notice or warning letter that are withdrawn may be used again in a future trial notice.

While the employee is serving any of the aforementioned discipline suspension, that employee will be prohibited from working an overtime assignment from first date of suspension to end date including any relief day that falls in that period.

The disciplinary penalties assessed under the Policy should be considered when assessing discipline for other non-absence control violations.
VII. ESSENTIAL FUNCTIONS

A. Department Heads

1. Ensure compliance with the Policy in all respects.

2. Ensure that records of employee discipline are maintained in Department files and forwarded to Human Resources.

3. When an employee transfers to another department, under all circumstances, the Department Head should ensure that the employee's entire departmental file, with regard to Letters of Warning and discipline, is forwarded to the new department.

B. Human Resources

1. Maintain copies of records of employee discipline under the Policy in employee personnel files.

2. The Executive Director-Human Resources chairs the Absence Control Policy Executive Review Committee.

3. Employee Assistance Program (EAP) – provides counseling to employees on a voluntary basis regarding how to improve their attendance. Counseling is mandatory as noted above.

C. Labor Relations

Ensures that disciplinary and other actions taken in connection with the Policy comply with CBA’s.

VIII. RELATED CORPORATE POLICIES

Americans with Disabilities Act Policy  Family and Medical Leave Policy
Attendance Policy  Military Leave Policy
Bereavement Leave Policy  Restricted Duty Policy

IX. EFFECTIVE DATE

December 2006
I. PURPOSE

The MTA Long Island Rail Road (LIRR) is committed to an alcohol and drug free workplace. This Corporate Policy and Procedure (Policy) is in furtherance of that commitment.

This Policy notifies employees of the conduct that is prohibited by the LIRR and that the consequences of engaging in prohibited conduct include discipline, up to and including dismissal.

This Policy explains the LIRR’s drug and alcohol testing program under:

- 49 CFR Part 219, which applies to employees designated by the Federal Railroad Administration (FRA) as performing Regulated Service;
- 49 CFR Part 382, which applies to employees performing commercial driving functions for the LIRR as covered by the Federal Motor Carrier Safety Administration (FMCSA); and
- LIRR authority, which applies to all LIRR employees.

This Policy describes the LIRR resources available to employees in need of treatment for drug and/or alcohol problems and encourages them to voluntarily seek such treatment before jeopardizing their safety, the safety of others, and their continued LIRR employment.

II. SCOPE

This Policy applies to all LIRR employees. Compliance is a condition of accepting and continuing LIRR employment.

Nothing in this Policy prohibits the LIRR from taking disciplinary action, up to and including dismissal, with or without conducting drug and/or alcohol testing, when there is a violation of this Policy or a reasonable suspicion of a violation of this Policy.

III. DEFINITIONS

A. Substances

1. Alcohol - The intoxicating agent in beverage alcohol, ethanol, or other low molecular weight alcohols including methyl or isopropyl alcohol.

2. Controlled Substances - All substances listed in Schedules I to V as set forth in 21 C.F.R. 802 Parts 1301-1316, or as the Schedules may be revised from time to time by publication in the Federal Register. Controlled Substances include Narcotics/Opiates, Depressants, Stimulants, Hallucinogens, and Cannabis.

3. Drug - Any substance other than alcohol that has known mind or function-altering effects on humans; specifically, including any psychoactive substance, including but not limited to, controlled substances.

4. Intoxicant - Any agent that produces intoxication, including but not limited to a drug or toxic substance or alcoholic beverages.

5. Over-the-Counter (OTC) Medications - Medications that do not require a prescription, that can be purchased from pharmacies or other retail establishments.

B. Employee Classifications

1. Regulated Service Employees - 49 CFR Part 219:
   a. Covered Service Employees - Employees who perform service subject to the Hours of Service Act (49 U.S.C. § 20101, et seq.) (Covered Service), both represented and non-represented. This category includes the following:
      i. Engine Service Employees: Locomotive Engineer, Locomotive Engineer Trainee, Road Foreman; Training Specialist – Engine Service;
      ii. Train Service Employees: Assistant Conductor, Conductor, Collector, Special Duty Assistant Conductor, Special Duty Conductor, Transportation Manager, Assistant Trainmaster, Transportation Rules and Air Brake Examiner, Training Specialist – Train Service;
      iii. Dispatch Employees: Assistant to Chief Train Dispatcher, Assistant Train Director, Assistant to Train Director, Block Operator, Block Operator Trainee, Chief Train Dispatcher, Customer Communications Coordinator, Information Coordinator, Lead Train Director, PSCC Console Operator, Train Director, Train Dispatcher;
   b. Maintenance of Way/Roadway Work Protection Employees (MOW/RWP Employees) - Employees whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts as defined 49 CFR 214.7.
      Attachment A to this Policy is a list of titles designated, or that may be designated, as performing MOW/RWP duties.
   c. When an Employee is Designated as Performing Regulated Service - An employee is designated as performing Regulated Service (subject to drug/alcohol testing under federal authority) if he/she is likely to perform Covered Service or MOW/RWP duties at least four (4) times annually or an average of once per quarter. An employee may be designated as performing De Minimis Regulated Service (subject to drug/alcohol testing under federal authority) if he/she performs Covered Service or MOW/RWP duties at least once but fewer than four (4) times annually.
2. **Commercial Motor Vehicle Drivers (Commercial Drivers) - 49 CFR Part 382**

   Employees who perform service requiring a commercial driver’s license (CDL) issued by a state authorizing operation of a commercial motor vehicle:
   
   a. Weighing 26,001 or more pounds; or
   
   b. That has a gross combination weight of 26,001 or more pounds, inclusive of a towed unit with a gross weight rating more than 10,000 pounds; or
   
   c. Carrying sixteen (16) or more passengers, or
   
   d. Transporting placardable hazardous material.

3. **Safety Sensitive Employees**

   Though Regulated Service Employees are designated as safety sensitive under 49 CFR Part 219 and Commercial Drivers are designated as safety sensitive under 49 CFR Part 382, for the purposes of this Policy, the Safety Sensitive Employee classification refers to those employees whose job titles/duties LIRR has designated as safety sensitive under LIRR authority, but does not include Regulated Service Employees or Commercial Motor Vehicle Drivers, who are classified separately (see 1. and 2. above).

4. **Non-Safety-Sensitive Employees** - Employees whose job titles/and or duties do not fall within the Employee Classifications in Section III.B.1, 2, or 3 of this Policy.

C. **Other**

1. **Medical Review Officer (MRO)** - A licensed physician designated by the LIRR who is qualified per 49 CFR 40.121 and is responsible for receiving and reviewing laboratory results generated by the LIRR’s drug testing program and evaluating medical explanations for certain drug test results.

2. **Substance Abuse Professional (SAP)** - A licensed physician or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor, with the credentials required under 49 CFR 40.281 with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. For the purposes of this Policy, an LIRR Employee Assistance Professional (EAP) is the SAP, who also performs the functions of a Drug and Alcohol Counselor (DAC) under 49 CFR 219, Subpart K, and 49 CFR 240 and 242.7.

3. **Supervisor** - Any employee who is responsible for supervising or monitoring the conduct or performance of one (1) or more employees.

4. **Co-Worker** - Another employee, including a representative of the employee’s collective bargaining unit.

5. **Accident/Incident** - An event or occurrence related to a LIRR operation that is required to be reported, including: fatality, injury, or illness; collision, derailment, and/or similar events involving the operation of on-track equipment that resulted in monetary damage in excess of the current reporting threshold; and impact between rail on-track equipment and highway users at crossings.
6. “Identifying the Troubled Employee” - A training course given by the LIRR and required for all Supervisors, which provides instruction on the requirements of FRA regulations, Federal Motor Carrier Safety Administration (FMCSA) regulations, and LIRR policies and rules regarding drug and alcohol use and testing.

7. **Co-Worker Referral** – As per 49 CFR 219, Subpart K, a report by a Co-worker to a Supervisor that a Regulated Service Employee appeared to be unsafe to work with and/or appeared to be in violation of this Policy. The name of the Co-worker will be confidential and the Co-worker who made the report will not be called as a witness should a subsequent administrative or disciplinary action be required. If the Regulated Service Employee who is the subject of a Co-Worker Report is referred to EAP, accepts such referral and follows the EAP’s recommendation(s) disciplinary action may be held in abeyance.

8. **Voluntary Referral** – As per 49 CFR 219, Subpart K, a program designed to encourage and facilitate the identification of a Regulated Service Employee who abuses drugs or alcohol by providing the employee the opportunity to obtain counseling or treatment before the Regulated Service Employee's drug or alcohol abuse manifests itself in a detected violation of federal regulation and/or this Policy.

9. **Verified Positive Test Result**
   a. For a **drug** test, a test result that was positive on an initial immunoassay test, confirmed by a gas chromatography/mass spectrometry assay or other chromatographic methods with mass spectrometry and reviewed and verified as positive by an MRO in accordance with the procedures set forth in 49 C.F.R. Part 40 - "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."
   b. For an **alcohol** breath test, an initial breath or saliva test performed on a Department of Transportation (DOT) approved "Evidential Breath Testing" or "Saliva Screening Test" device. A result of .02 or higher on the initial breath or saliva test will be confirmed by a second breath test on a DOT-approved "Evidential Breath Testing" device; the result of the second breath test must be .02 or higher for a verified positive test result.

IV. **PROHIBITED CONDUCT**
   A. All employees are prohibited from:
      1. Using alcoholic beverages, intoxicants or controlled substances, or from being under the influence or impaired by same, while subject to duty or while on duty.
      2. Possessing alcohol while on duty.
      3. Illegally manufacturing, distributing, selling, dispensing, possessing or using any illegally obtained controlled substance on or off duty.
      5. Consuming alcohol during working hours, including meal and break periods.
      6. Refusing to cooperate or intentionally interfering with the LIRR’s efforts to enforce this Policy or related federal regulations, including, but not limited to, refusing to submit to
drug and/or alcohol testing conducted pursuant to this Policy or related federal regulations, or tampering with the integrity of a breath, saliva, or urine sample in connection with any such test.

7. Violating the LIRR rules and regulations (customer rules) applicable to customers on LIRR terminals, trains and stations. If there is a conflict between employee conduct that is prohibited by this Policy and conduct that is prohibited under the customer rules, this Policy governs.

B. All employees, whether on or off duty, are prohibited from:

1. Consuming alcohol on LIRR property.
2. Possessing an open container of an alcoholic beverage on LIRR property.
3. Possessing or consuming alcohol while wearing an LIRR uniform.
4. Possessing or being under the influence of or impaired by alcohol on non-public LIRR property, including, but not limited, to shops, tracks, towers and offices.

C. No alcoholic beverages are permitted at LIRR-sponsored functions.

D. Employees who are directed to take a breath and/or urinalysis test are expected and required to comply. A refusal to test will be considered insubordination and the equivalent of a “positive” test result. Any employee refusing to cooperate in a breath and/or urinalysis test shall be subject to discipline up to and including dismissal.

Note: The LIRR recognizes a refusal to test as defined in 49 CFR 40.191 and 40.261 and specified in Attachment C to this Policy (Sections VII and VIII); please see these documents for full descriptions of what constitutes a refusal to test under both federal and LIRR authority.

E. The detection of a prohibited substance resulting from any required toxicological test is a violation of this Policy.

F. Regulated Service Employees and Commercial Drivers are prohibited from working while taking prescription and/or OTC medications unless:

1. Such use is brought to the attention of the MRO or designee by the employee;
2. The medication is prescribed or authorized for the employee’s use by a licensed medical practitioner and;
3. The MRO or designee has made a good faith judgment that use of the substance as prescribed is consistent with the safe performance of the employee’s duties. The determination of the MRO or designee is final and binding.

V. CONSEQUENCES OF ENGAGING IN PROHIBITED CONDUCT

A. Employees determined to be in violation of this Policy will be subject to dismissal. At the discretion of the LIRR, employees may be offered a suspension of nine (9) months without pay. A represented employee may be offered the opportunity to sign a Trial Waiver and a
Last Chance Agreement after a first violation of this Policy and will be dismissed after a second violation.

B. Pursuant to the federal Drug-Free Workplace Act, 41 U.S.C. §8102, et seq., an employee convicted of violating a criminal drug statute in the workplace must report the conviction to his/her department head within five (5) days of the conviction. An employee convicted of violating a criminal drug statute in the workplace and/or who fails to report such conviction may be subject to disciplinary action, up to and including dismissal.

C. An employee who is a Regulated Service Employee, a Commercial Driver or a Safety Sensitive Employee arrested for, or convicted of, violating a criminal drug or alcohol statute (including the New York State Vehicle & Traffic Law and Penal Law), in or out of the workplace, must report the arrest or conviction to his/her department head within five (5) days of the arrest or conviction. A Regulated Service Employee, a Commercial Driver or a Safety Sensitive employee who fails to report such arrest or conviction may be subject to disciplinary action, up to and including dismissal.

VI. DRUG TESTING PROGRAM

A. General

1. All employees are subject to drug and/or alcohol testing as required by applicable federal regulations and/or this Policy.

   Attachment B to this Policy is a list of the current Drug Testing Panels under federal authority and under LIRR authority. Federal and/or LIRR Drug Testing Panels are subject to change at any time without notice.

2. Pursuant to 49 CFR Part 219, the FRA requires and/or permits the LIRR to conduct, for Regulated Service Employees, the following types of drug and/or alcohol testing:
   a. Pre-Placement;
   b. Reasonable Suspicion;
   c. Reasonable Cause;
   d. Post-Accident;
   e. Random; and
   f. Return-to-Duty and Follow-up.

3. Pursuant to 49 CFR §219.23, guidance for Regulated Service Employees about 49 CFR Part 219 is in Attachment C to this Policy.

4. Pursuant to 49 CFR Part 382, the FMCSA requires and/or permits the LIRR to conduct, for Commercial Drivers, the following types of drug and/or alcohol testing:
   a. Pre-placement;
   b. Reasonable Suspicion;
   c. Post-Accident;
   d. Random; and
   e. Return-to-Duty and Follow-up.
5. The LIRR may conduct drug and/or alcohol testing of all employees for:
   a. Reasonable Suspicion;
   b. Reasonable Cause; and
   c. Discretionary.

6. The LIRR may conduct drug and/or alcohol testing of Regulated Service Employees, Commercial Drivers and Safety Sensitive Employees for:
   a. Pre-placement; and as part of:
   b. Periodic Physical Examination; and
   c. A Return-to-Duty Physical Examination.

7. Employees and applicants whose initial drug test results are returned as negative-dilute will be retested for the following tests: Pre-Placement; Reasonable Suspicion, Reasonable Cause, Follow-Up, and Return-to-Duty.

8. The LIRR is not required to conduct drug and/or alcohol testing before taking disciplinary action, up to and including dismissal, for a violation of this Policy.

B. Types of Drug/Alcohol Testing

1. Pre-Placement
   Human Resources will schedule a Pre-Placement drug test for applicants or employees who have received offers to perform service for the LIRR as a Regulated Service Employee; as a Commercial Driver; or as a Safety Sensitive Employee. No such employee may perform service prior to passing a drug test administered by the LIRR Medical Facility.

2. Random
   Regulated Service Employees and Commercial Drivers are subject to a drug and/or alcohol test performed randomly under FRA/FMCSA regulations as applicable.

3. Reasonable Suspicion
   a. Guidelines for Regulated Service Employees:
      i. When Reasonable Suspicion exists for a Regulated Service Employee, drug and/or alcohol testing is mandatory under 49 CFR Part 219.
      ii. Alcohol Test - At least one (1) Supervisor who has completed the LIRR training course “Identifying the Troubled Employee” must make the required observation before sending a Regulated Service Employee for an alcohol test.
      iii. Drug Test - At least two (2) Supervisors, one (1) of whom has completed the LIRR Training course “Identifying the Troubled Employee,” must make the required observation before sending a Regulated Service Employee for a drug test.
      iv. The LIRR must make diligent efforts to conduct a drug and/or alcohol test within two (2) hours of the required observation of a Regulated Service Employee. If testing is not conducted within two (2) hours, the Supervisor must provide the
Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted. No alcohol testing may be performed after the expiration of eight (8) hours from the time of the required observation.

v. Regulated Service Employees may not be tested after they have been released from duty.

b. Guidelines for Commercial Drivers

i. All Commercial Drivers are subject to drug and/or alcohol testing when Reasonable Suspicion exists.

ii. **Alcohol Test** - A Commercial Driver may not be subjected to alcohol testing under FMCSA regulations unless the Supervisor’s observation is made just prior to, during, or just after the time the Commercial Driver is performing safety-sensitive (FMCSA) functions. At least one (1) Supervisor who has completed the LIRR’s training course, “Identifying the Troubled Employee,” must make the required observation before sending a Commercial Driver for a test. The LIRR must make all reasonable efforts to conduct alcohol testing within two (2) hours of the observed behavior. If testing is not conducted within two (2) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to why the test was not promptly administered. No alcohol testing may be performed after the expiration of eight (8) hours from the time of observation.

**Note:** A Commercial Driver may be subjected to alcohol testing under company authority (Guidelines for Safety Sensitive and Non-Safety Sensitive employees) if the Supervisor’s observation is made at a time other than just prior to, during, or just after the time the Commercial Driver is performing safety-sensitive (FMCSA) functions.

iii. **Drug Test** - At least one (1) Supervisor who has completed the LIRR’s Training Program, “Identifying the Troubled Employee,” must make the required observation before sending a Commercial Driver for a test. The LIRR must make diligent efforts to conduct a drug test within two (2) hours of the required observation. If testing is not conducted within two (2) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted.

iv. Commercial Drivers may not be tested after they have been released from duty.

c. **Guidelines for Safety Sensitive and Non-Safety Sensitive Employees:**

i. All employees are subject to drug and/or alcohol testing when Reasonable Suspicion exists.

ii. The decision that Reasonable Suspicion exists must be based on specific contemporaneous and articulable observations by a Supervisor who has completed the required LIRR training course on “Identifying the Troubled Employee” and can document one or more of the following criteria about an on-duty employee’s appearance, behavior, speech, or body odor associated with drug and/or alcohol use:
- Staggered gait, difficulty walking
- Slurred speech
- Drowsiness/sleepiness
- Odor of an intoxicant
- Disorientation (time/place/person)
- Rapid mood swings with no apparent reason
- Poor coordination or body control

iii. Note that direct observation of the possession or use of an intoxicant or controlled substance is a violation of this Policy; no alcohol and/or drug test should be done upon such observation.

iv. The criteria in VI.B.3.c.ii above also applies to the direct observation necessary for a Supervisor to corroborate and investigate an FRA Co-Worker Referral.

v. Alcohol Test - At least one (1) Supervisor who has completed the LIRR training course “Identifying the Troubled Employee” must make the required observation before sending a Safety Sensitive or Non-Safety Sensitive Employee for an alcohol test.

vi. Drug Test - At least one (1) Supervisor who has completed the LIRR training course “Identifying the Troubled Employee” must make the required observation before sending a Safety Sensitive or Non-Safety Sensitive Employee for a drug test.

vii. The LIRR must make diligent efforts to conduct a drug and/or alcohol test within two (2) hours of the required observation. If testing is not conducted within two (2) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted. No alcohol testing may be performed after the expiration of eight (8) hours from the time of the required observation.

viii. Safety Sensitive and Non-Safety Sensitive Employees may not be tested after they have been released from duty.

ix. Documentation - Within a reasonable time following a Supervisor's determination of Reasonable Suspicion, the Supervisor must document the date, time, and place, as well as a description of the observed behavior, and send a copy of such documentation to the Assistant Director-Employee Services or designee.

4. Reasonable Cause
   a. Guidelines for Regulated Service Employees

   Reasonable Cause drug and/or alcohol testing will be conducted for Regulated Service Employees under the following circumstances:

   i. Accident/Incident - There is an Accident/Incident and a Supervisor has a reasonable belief, based on specific, articulable facts that the employee's acts
or omissions contributed to the occurrence or the severity of the Accident/Incident; or

ii. **Rule Violation** - The Regulated Service Employee has been directly involved in one (1) or more of the following Operating Rule violations or errors.

- Non-compliance with a train order, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves:
  - Occupancy of a block or other segment of track to which entry was not authorized;
  - Failure to clear a track to permit opposing or following movement to pass;
  - Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);
- Failure to protect a train as required by a rule consistent with 49 CFR §218.37 (including failure to protect a train that is fouling an adjacent track);
- Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour;
- Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch;
- Failure to apply or stop short of derail as required;
- Failure to secure sufficient hand brakes;
- Entering a crossover before both switches are lined for movement; or
- In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.

iii. The LIRR must make diligent efforts to conduct the drug and/or alcohol test within four (4) hours of an accident/incident. If testing is not conducted within four (4) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted. **No alcohol testing may be performed after expiration of eight (8) hours from the time of the accident/incident.**

iv. Regulated Service Employees may not be tested after they have been released from duty.

v. **Documentation** - The Supervisor must document the date, time, and place of the occurrence, giving rise to testing, as well as the reason for testing, and send a copy of such documentation to the Assistant Director-Employee Services or designee.

vi. All Reasonable Cause testing is performed under LIRR authority.
b. Guidelines for Commercial Drivers

The LIRR will test any Commercial Driver for drugs and/or alcohol following an Accident/Incident giving rise to Reasonable Cause testing as set forth in Section VI.B.4(c) of this Policy.

c. Guidelines for All Employees

There is Reasonable Cause for LIRR to test any employee for drugs and/or alcohol under the following circumstance:

i. There is an Accident/Incident and/or a Supervisor has a reasonable belief, based on specific, articulable facts that the employee’s acts or omissions contributed to the occurrence or the severity of the Accident/Incident.

ii. The LIRR must make diligent efforts to conduct the drug and/or alcohol test within four (4) hours of an accident/incident. If testing is not conducted within four (4) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted. No alcohol testing may be performed after expiration of eight (8) hours from the time of the accident/incident.

iii. Employees may not be tested after they have been released from duty.

iv. All Reasonable Cause testing is performed under LIRR authority.

5. Post Accident

a. Regulated Service Employees - The FRA regulations set forth in 49 CFR Part 219, Subpart C on the control of alcohol and drug use require toxicological testing after accidents that involve one (1) or more of the circumstances described below:

i. Major train accident - Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) that involves one (1) or more of the following:

1) A fatality;

2) Release of hazardous material lading from railroad equipment accompanied by:
   - An evacuation; or
   - A reportable injury resulting from the hazardous material release, e.g. from fire, explosion, inhalation, or skin contact with the material); or

3) Damage to railroad property of $1,500,000 or more.

ii. Impact accident - An impact accident (i.e., a rail equipment accident defined as an “impact accident” in § 219.5 that involves damage in excess of the current reporting threshold) resulting in:

1) A reportable injury; or

2) Damage to railroad property of $150,000 or more.
iii. **Fatal train incident** - Any train incident that involves a fatality to any on-duty railroad employee.

iv. **Passenger train accident** - Reportable injury to any person in a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) involving a passenger train.

v. **Human-factor highway-rail grade crossing accident/incident** - A highway rail grade crossing accident/incident when it involves:

1) A Regulated Service Employee who interfered with the normal functioning of a grade crossing signal system, in testing or otherwise, without first taking measures to provide for the safety of highway traffic that depends on the normal functioning of such system, as prohibited by § 234.209 of this chapter;

2) A train crewmember who was, or who should have been, flagging highway traffic to stop due to an activation failure of the grade crossing system, as provided by § 234.105(c)(3) of this chapter;

3) A Regulated Service Employee who was performing, or should have been performing, the duties of an appropriately equipped flagger (as defined in 49 CFR § 234.5 due to an activation failure, partial activation, or false activation of the grade crossing signal system, as provided by 49 CFR § 234.105(c)(1)(2), 49 CFR § 234.106, or 49 CFR § 234.107(c)(1)(i);

4) A fatality to any Regulated Service Employee performing duties for the railroad, regardless of fault; or

5) A Regulated Service Employee who violated an FRA regulation or railroad operating rule and whose actions may have played a role in the cause or severity of the accident/incident.

**Exceptions** - Except for a human-factor highway-rail grade crossing accident/incident as described above: No test shall be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test shall be required in the case of an accident/incident, the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado or other natural disaster) or vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

In the event of an accident requiring a toxicological test, a Supervisor must contact the Assistant Director-Employee Services or designee to advise of the use of a toxicological test kit and the need for a replacement.

The determination of whether an FRA Post Accident test is required should be made based on the above and review of the FRA’s most current Post Accident Testing Criteria flowchart.
b. Commercial Drivers

The FMCSA regulations set forth in 49 CFR § 382.303 on the control of alcohol and drug use require toxicological testing as soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce. The LIRR shall test for alcohol and controlled substances for each surviving driver:

i. Who was performing safety-sensitive functions with respect to the vehicle, if the accident/incident involved the loss of human life; or

ii. Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:

1) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

2) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Alcohol Test - If a test required by this section is not administered within two (2) hours following the accident/incident, the LIRR shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a required test is not administered within eight (8) hours following the accident/incident, the LIRR shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request of the Associate Administrator.

Controlled Substance Test - If a required test is not administered within thirty-two (32) hours following the accident/incident, the LIRR shall cease attempts to administer a controlled substance test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request of the Associate Administrator.

A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident/incident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident/incident or to obtain necessary emergency medical care.

Exceptions - No test shall be conducted for:

1) An occurrence involving only boarding or alighting from a stationary motor vehicle;

2) An occurrence involving only the loading or unloading of cargo; or

3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 49 CFR Part 382.303 § 571.3) unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to
be marked or placarded in accordance with 49 CFR Part 382.303 § 177.823.

In the event of an accident requiring toxicological testing, a Supervisor must contact the Assistant Director-Employee Services or designee.

6. Return-to-Duty and Follow-up Testing
   a. Any Regulated Service Employee or Commercial Driver who has engaged in conduct in violation of federal regulations (i.e., FRA or FMCSA) as applicable must pass a federal drug and/or alcohol test in order to return to his/her position.
   b. Any Regulated Service Employee or Commercial Driver who has engaged in conduct in violation of federal regulations (i.e., FRA or FMCSA) is subject to unannounced federal follow-up drug and/or alcohol testing as directed by applicable FRA/FMCSA federal laws and regulations or as directed by the SAP.

7. Discretionary Testing
   a. Any employee who has engaged in conduct in violation of this Policy (i.e., non-federal) must pass an LIRR-authorized drug and/or alcohol test in order to return to his/her position.
   b. Any employee who has engaged in conduct in violation of this Policy (i.e., non-federal) is subject to unannounced LIRR-authorized follow-up drug and/or alcohol testing as directed by LIRR EAP or as a condition of discipline.

8. Periodic Physical Examinations – Regulated Service Employees whose positions require Periodic Physical Examinations may be subjected to drug testing as part of those examinations if the examination occurs on the randomly selected monthly test date.

9. CDL Medical Examinations – Employees who perform commercial driving functions for the LIRR and who elect to have LIRR Medical perform their required CDL medical examination will be subject to a drug test at that time; this test will be performed under LIRR authority.

10. Return-to-Duty Physical Examinations – Regulated Service Employees, Commercial Drivers, and Safety Sensitive Employees who have been absent from work for any reason for thirty (30) calendar days or more will be subject to drug and/or alcohol testing as part of a Return-to-Duty physical examination. All employees who are returning to work following a violation of this policy that was not also a violation of federal regulations will be subject to drug and/or alcohol testing as part of a Return-to-Duty physical examination.

C. Summary of Types of Drug Testing Applicable to Employee Classifications

1. Pre-Placement
   a. Regulated Service Employees are subject to Pre-Placement testing under federal and LIRR authority.
Note: Regulated Service Employees may only be given one federal Pre-Placement test; once the employee has a negative Pre-Placement test result on file with the LIRR, the employee may only be given LIRR authority Pre-Placement tests.

b. Commercial Drivers are subject to Pre-Placement testing under federal and LIRR authority.

Note: Commercial Drivers may only be given one federal Pre-Placement test; once the employee has a negative Pre-Placement test result on file with the LIRR, the employee may only be given LIRR authority Pre-Placement tests.

c. Safety Sensitive employees are subject to Pre-Placement testing under LIRR authority.

d. Non-Safety Sensitive employees are not subject to Pre-Placement testing.

2. Random

a. Regulated Service Employees are subject to Random testing under federal authority.

b. Commercial Drivers are subject to Random testing under federal authority.

c. Safety Sensitive Employees are not subject to Random testing.

d. Non-Safety Sensitive Employees are not subject to Random testing.

3. Reasonable Suspicion

a. Regulated Service Employees are subject to Reasonable Suspicion testing under federal authority.

b. Commercial Drivers are subject to Reasonable Suspicion testing under federal and LIRR authority.

Note: Commercial Drivers will be subject to federal Reasonable Suspicion testing in all instances except when an alcohol test is being given based on a Supervisor’s observation that was made at a time other than just prior to, during, or just after the time the Commercial Driver is performing safety-sensitive (FMCSA) functions.

c. Safety Sensitive employees are subject to Reasonable Suspicion testing under LIRR authority.

d. Non-Safety Sensitive employees are subject to Reasonable Suspicion testing under LIRR authority.

4. Reasonable Cause

a. Regulated Service Employees are subject to Reasonable Cause testing under LIRR authority.

b. Commercial Drivers are subject to Reasonable Cause testing under LIRR authority.

c. Safety Sensitive employees are subject to Reasonable Cause testing under LIRR authority.

d. Non-Safety Sensitive employees are subject to Reasonable Cause testing under LIRR authority.
5. **Post-Accident**
   a. Regulated Service Employees are subject to FRA Post Accident testing under federal authority.
   b. Commercial Drivers are subject to FMCSA Post-Accident testing under federal authority.
   c. Safety Sensitive Employees are not subject to Post Accident Testing.
   d. Non-Safety Sensitive Employees are not subject to Post Accident Testing.

6. **Return-to-Duty and Follow-Up Testing**
   Note: This category of Return-to-Duty testing applies only to those employees returning to duty following a violation of federal drug and alcohol regulations.
   a. Regulated Service Employees are subject to Return-to-Duty and Follow-Up testing under federal authority.
   b. Commercial Drivers are subject to Return-to-Duty and Follow-Up testing under federal authority.
   c. Safety Sensitive employees are not subject to Return-to-Duty and Follow-Up testing.
   d. Non-Safety Sensitive employees are not subject to Return-to-Duty and Follow-Up testing.

7. **Discretionary Testing**
   a. Regulated Service Employees are subject to Discretionary testing under LIRR authority.
   b. Commercial Drivers are subject to Discretionary testing under LIRR authority.
   c. Safety Sensitive employees are subject to Discretionary testing under LIRR authority.
   d. Non-Safety Sensitive employees are subject to Discretionary testing under LIRR authority.

8. **Periodic**
   a. Regulated Service Employees are subject to Periodic testing as applicable under LIRR authority.
   b. Commercial Drivers are not subject to Periodic testing.
   c. Safety Sensitive employees are not subject to Periodic testing.
   d. Non-Safety Sensitive employees are not subject to Periodic testing.

9. **CDL Medical Examinations**
   a. Regulated Service Employees are not subject to CDL Medical Examination testing.
   b. Commercial Drivers are subject to CDL Medical Examination testing under LIRR authority.
c. Safety Sensitive employees are not subject to CDL Medical Examination testing.

d. Non-Safety Sensitive employees are not subject to CDL Medical Examination testing.

10. Return-to-Duty

**Note:** This category of Return-to-Duty testing applies only to those employees returning to duty following an absence of thirty (30) calendar days or more OR following a violation of this policy that was not also a violation of federal regulations.

a. Regulated Service Employees are subject to Return-to-Duty testing under LIRR authority.

b. Commercial Drivers are subject to Return-to-Duty testing under LIRR authority.

c. Safety Sensitive employees are subject to Return-to-Duty testing under LIRR authority.

d. Non-Safety Sensitive employees are subject to Return-to-Duty testing under LIRR authority.

**Note:** Non-Safety Sensitive employees are not subject to Return-to-Duty testing following an absence of thirty (30) calendar days or more except when specified following a violation of LIRR policy.

VII. RESOURCES

A. **LIRR Employee Assistance Program (EAP) – 516-248-3434**

1. EAP is an employee benefit available to all employees and their family members. EAP’s role is to offer professional assistance in the form of short-term confidential counseling and referrals for a wide range of personal assistance, including alcohol/substance abuse.

2. Regarding alcohol/substance abuse, an EAP Substance Abuse Professional qualified by experience, education, and training (a) counsels persons affected by alcohol and/or substance abuse and evaluates their recovery; and (b) provides alcohol and drug awareness training to Supervisors.

B. An employee may seek the confidential services of the EAP regarding his/her use of controlled substances and/or alcohol or may be referred by a Supervisor, another employee, the employee’s union representative or as a condition of discipline. All requests for information and assistance are held in the strictest confidence except as indicated in Section VII.D.4, below.

C. **Health Insurance Benefits** - The LIRR’s group health insurance plans include coverage for alcohol and/or drug abuse treatment.

D. **Referral Programs (FRA)** – A Regulated Service Employee will be classified as participating in a Referral Program from the time he/she seeks assistance through LIRR’s designated DAC, provided that said assistance is requested before the employee has been charged with conduct deemed by LIRR sufficient to warrant dismissal, except as noted in Section VII.D.5. below, and that the employee reports to the DAC either (1) during non-
I. PURPOSE

The purpose of this Corporate Policy and Procedure (Policy) is to ensure compliance with those provisions of Title I of the Americans with Disabilities Act (ADA) that mandate reasonable accommodation (accommodation) of individuals with disabilities in all terms, conditions and privileges of employment. This Policy provides guidance and does not confer rights on any individual beyond those set forth in the applicable law.

The Long Island Rail Road (LIRR) is committed to ensuring equal access to employment and career opportunity for all qualified current and potential employees (qualified individuals).

II. SCOPE

The ADA requires LIRR to make reasonable accommodations for qualified individuals with disabilities in all aspects of employment, including application, testing, hiring, assignments, evaluation, discipline, training, promotion, transfer, medical examination, termination, compensation, leave, benefits and all other terms, conditions and privileges of employment. ADA also prohibits the LIRR from entering collective bargaining agreements that prevent compliance with these ADA provisions.

In all cases, the LIRR will select the best qualified individual who is able to perform the essential functions of the job.

III. DEFINITIONS

A. A Qualified Individual With Disability

1. A qualified individual who meets the skill, experience, education, and other job-related requirements (as defined by the Position Descriptions, Job Specifications, Collective Bargaining Agreements and/or LIRR Policy) and who, with or without reasonable accommodation, can perform the essential functions of a job.

B. An Essential Function Is One of the Primary Duties of an Existing Position That:

1. If removed, would fundamentally change the job;
2. Only a limited number of employees are available to perform;
3. Is highly specialized and for which the person in the position is hired for special expertise or ability to perform the function.

C. An Individual Has Disability Under the ADA if He/She:

1. Has a physical or mental impairment that substantially limits one or more major life activities; or
2. Has a record of such impairment; or
3. Is regarded as having such impairment.

D. Reasonable Accommodation

1. Is a key non-discrimination requirement of the ADA. If an otherwise qualified individual with a disability requires an accommodation to enable him/her to perform the essential functions of a job, an assessment will be made to determine what modifications or adjustment would enable that individual to perform those functions. Guidelines and procedures for ensuring that qualified individuals with disabilities are provided with reasonable accommodation(s) are included in the LIRR’s Reasonable Accommodation Policy & Procedure (MED-003).

E. Undue Hardship

1. If providing reasonable accommodation to a qualified individual with a disability would pose an "undue hardship" to the LIRR, under ADA guidelines, that accommodation need not be provided.

2. In determining whether an accommodation constitutes an "undue hardship", the following criteria may be used:
   a. Nature and cost of proposed accommodation;
   b. Impact on operations or facilities, including other employees’ ability to perform their duties and the LIRR’s ability to conduct business;
   c. Workforce composition, function, organization structure, geographic location, administrative and fiscal impact;
   d. Applicable collective bargaining agreements;
   e. If the accommodation poses a direct threat, or significant risk, to the health or safety of the individual or others.

3. If it is determined that the cost of a particular accommodation constitutes an "undue hardship," the qualified individual must be afforded the opportunity to pay for the accommodation.

IV. ESSENTIAL FUNCTIONS

A. Human Resources Department

1. Ensure that the written Position Description Questionnaire accurately reflects the essential functions of the job.

2. Occupational Health Services Office (LIRR Medical Facility) reviews and keeps records of all requests for reasonable accommodation to perform the job.
B. Employees
   1. Must submit a Reasonable Accommodation Request Form (see CP&P MED-003 – Reasonable Accommodation Policy) before the request can be processed.

C. Operations Departments
   1. Assist the Human Resources Department in identifying the essential functions of jobs.

D. Law Department
   1. Provide legal guidance concerning the application of ADA requirements and this Policy.

E. Diversity Management Department
   1. Ensure that anti-discrimination laws and relevant LIRR policies are enforced.
   2. Responsible for all grievances relating to this Policy.

V. PROCEDURES
A. General
   1. A qualified individual with a disability including LIRR employees who become disabled seeking accommodation to enable him/her to perform the essential functions of a job are covered under ADA if the disability substantially limits a major life activity as defined under the ADA and the qualified individual is able to perform the essential functions of the job, with or without reasonable accommodation. This determination must be made on a case-by-case basis.

   2. The qualified individual must submit a Reasonable Accommodation Request Form (see CP&P MED-003) to be considered for reasonable accommodation and processing.

   3. The procedure for assessing an individual’s physical or mental ability to perform the essential functions of the job is included in the LIRR’s policies including Reasonable Accommodation Policy (CP&P MED-003) and the Medical Assessment Policy (CP&P MED-001).

B. Reassignment
   1. When an accommodation is not possible in an employee’s present job, or if an accommodation would cause an “undue hardship” to the Company, reassignment may be considered.

   2. Reassignment for a qualified employee may be assignment to a vacant position or to a position that will become vacant within a reasonable period of time. Reassignment may also be considered when an employee’s disability becomes
more severe or when changes in equipment or technology affect his/her job performance.

3. The LIRR is not required to create a position if no vacant position exists.

4. If there are no vacant positions equivalent in pay or status, a qualified individual with a disability may be reassigned to a position of lower pay and/or status. The LIRR is not required to maintain a qualified individual’s higher salary unless otherwise provided for in his/her collective bargaining agreement.

5. If a qualified individual refuses a position offered as a reasonable accommodation and no other vacancy exists, for which he/she is qualified, his/her employment may be terminated unless otherwise provided for in his/her collective bargaining agreement.

6. The LIRR is not required to promote a qualified individual with a disability as an accommodation.

C. Grievance Procedure

1. A qualified individual who feels he/she has been discriminated against on the basis of a disability should immediately report the matter to the Equal Employment Opportunity (EEO) Officer, Michael Fyffe, Diversity Management Department, Jamaica Station #1141, Fourth floor, extension 8170, in person (by appointment), by telephone, or in writing.

2. Any supervisory employee who is aware of an instance or instances of discrimination based on a disability must also notify the EEO Officer, Michael Fyffe.

3. Formal complaints of discrimination may also be filed with the local EEO Commission or the New York State Division of Human Rights.

VI. RELATED POLICIES

MED-001 – Medical Assessment Policy
MED-003 – Reasonable Accommodation Policy

VII. FORMS AND ATTACHMENTS

None

VIII. REVISION TRACKING

October 2001 - New
I. PURPOSE

The purpose of this Corporate Policy and Procedure (Policy) is to establish procedures for the MTA Long Island Rail Road (LIRR) to safeguard against the influence of nepotism in employment-related decision making and to further ensure that decision making on employment-related matters is based on merit and qualifications.

II. SCOPE

This Policy applies to all LIRR employees and to internal and external applicants for employment and/or promotion, demotion or lateral move, except when in conflict with a contractual provision, i.e. collective bargaining agreement or an applicable law.

III. DEFINITION

A. Family Member – The MTA Code of Ethics defines a “family member” as (i) an LIRR employee’s spouse, domestic partner, child or sibling; (ii) a person who is a direct descendant (or the spouse of a direct descendant) of a grandparent of the LIRR employee or a grandparent of the LIRR employee’s spouse or domestic partner; or (iii) any person living in the same household as an LIRR employee. This definition applies to this Policy.

IV. ESSENTIAL FUNCTIONS

A. Human Resources Department (Human Resources)
   1. Senior Director - Human Resources is responsible for the administration of this Policy.
   2. Human Resources – Ensures compliance with this Policy concerning the hiring of external applicants for LIRR employment and employment-related decisions concerning LIRR employees.

B. Department Heads
   1. Responsible for communicating this Policy to employees in their departments and for ensuring compliance within their departments.

C. Employees
   1. Responsible to comply with this Policy.

V. PROCEDURE

A. Responsibilities of all LIRR Employees
   1. The Basic Rule
      a. Employee participation in a hiring or promotional or placement process involving a family member is prohibited. There will be no preferential treatment for family members of current LIRR employees and/or union officials.
2. Scope

a. This prohibition extends beyond formal participation in the hiring or promotional or placement process, such as by participation on screening panels or an interview process. The prohibition includes any knowing involvement in the LIRR’s process of receiving and considering applications for a vacant position or promotional opportunity if a family member is an applicant or candidate. Any activity (including through communications with staff at the LIRR or any MTA Agency) to influence, directly or indirectly, the LIRR’s consideration of a family member who is known or believed to be an applicant for such a vacant position is forbidden. Prohibited activity includes not only express advocacy in the workplace on behalf of a family member’s application, but also any other form of direct or indirect involvement in the LIRR’s hiring process to promote or facilitate a family member’s application for hire or promotion at the LIRR.

b. This prohibition includes, without limitation, an employee submitting or referring to the LIRR, or providing to an LIRR employee involved in the hiring/promotional process, a family member’s application, resume or other expression of interest with respect to a vacant position, or asking an LIRR employee involved in the hiring/promotional process about the status of a family member’s application.

c. Consideration and/or appointment of an applicant whose family member is an LIRR manager or officer of an LIRR union is subject to review and recommendation by the applicable Vice President and the Director-Diversity Management and approval by the Senior Director – Human Resources.

3. Permitted Activity

a. This prohibition does not prevent an LIRR employee from providing to his/her family member(s) information that is publicly available and not confidential about job opportunities/listings/promotional opportunities at the LIRR or other MTA Agencies or providing advice outside of the workplace to a family member with regard to an application with respect to such employment opportunity. However, an employee providing such advice or information to a family member may not communicate confidential LIRR information to a family member.

4. Disclosure Requirements

a. Supervisors and managers are required to make a written disclosure to their Department Heads as soon as they become aware that a family member is to be appointed to, or picks into, pursuant to a collective bargaining agreement, a unit in which the supervisor or manager would make employment decisions with respect to that family member.

b. An employee whose family member is a supervisor or manager in the Department or who is an officer of the union that represents the employee must disclose that relationship in writing to his/her Department head.

c. An employee who becomes a family member of another employee must promptly disclose the relationship to his/her Department Head. If the two employees are in the same Department, further action may be required by Human Resources and the Department.
B. Responsibilities of Employees Directly Involved in LIRR Hiring or Employment Process

1. The Basic Rule
   a. An LIRR employee directly involved in the LIRR’s hiring or promotional process, either as part of his/her regular job responsibilities or by particular request or invitation of the LIRR (“Involved Employee”) must not participate in any hiring or employment process involving a family member applicant, internal or external, and may not give favorable or unfavorable consideration to any such applicant because he/she is a family member of an LIRR employee.

2. Self-Recusal Responsibility/Requirement
   a. An Involved Employee may not participate in any aspect of the hiring or employment process for a vacant position (the “hiring process”) if a family member is an applicant for the vacant position. An employee whose participation in a hiring process is part of his/her regular job responsibilities must submit a signed recusal to the Recruiting Manager in Human Resources promptly upon learning of a family member’s application for a vacant internal or external position. The written recusal shall provide for the employee’s recusal from participation in such hiring process and shall identify the family relationship between the employee and the applicant in question
   
   b. All external and internal applicants for employment must complete an “Applicant Family Member Disclosure Form” (Attachment A).
   
   c. Consideration and/or appointment of an applicant whose family member is an LIRR manager or officer of an LIRR union is subject to the review and recommendation of the applicable Vice President and the Director-Diversity Management and the approval of the Senior Director – Human Resources.

C. Senior Staff and Human Resources Employees

1. A family member of an employee who is a Department Head or a family member of an employee in Human Resources may be hired only with the written approval of the Senior Director – Human Resources and the Senior Vice President - Administration.

2. A family member of a Vice President may be hired only with the written approval of the President.

D. Supervision of Family Members

1. In the event a non-LIRR employee seeks a position or the promotion, demotion or lateral movement of a current LIRR employee to a position, would result in one family member being directly supervised by another family member, such non-LIRR employee or current LIRR employee shall not be considered eligible for such position. If any legal question arises regarding the application of this exclusion, the hiring department or Human Resources shall confer with the General Counsel. In the event the General Counsel shall determine such an application should be considered under the circumstances in view of an applicable law or contractual provision, i.e. collective bargaining agreement, such application shall be given consideration without regard to the family relationship, provided, however, that in the event such family member is
placed in said position, the hiring department and the Human Resources Department shall: (1) take appropriate steps to eliminate or mitigate any conflict arising from the supervisory structure, including making arrangement for alternative supervision of the family member hired, promoted, demoted or who moves laterally into such position, such that a family member does not provide direct supervision over another family member; and (2) the applicant family member signs the acknowledgment form set forth as Attachment B - Avoidance of Nepotism Policy Employee Acknowledgment Form.

2. In the event Human Resources desires to hire a non-LIRR employee into a position, or desires to promote, demote or permit the lateral movement of a current LIRR employee into a position which would (absent other arrangements) result in his or her indirect supervision (i.e. two or more levels apart within the same chain of command) by an existing family member, such family member shall not be hired, promoted, demoted or permitted to move laterally without prior review and recommendation of the heads of the hiring department and Human Resources, made in consultation with the LIRR’s General Counsel, and upon approval by the LIRR’s President or his or her designee. In determining whether to grant such approval, the LIRR President (or his or her designee) shall consider, among other factors, the number of levels of separation in supervisory authority between the vacant position and the family member with supervisory authority within the Department in question and whether there exists suitable means for addressing any conflicts or appearances of conflict that might arise from hiring, promoting, demoting or allowing the lateral transfer of a family member into such position.

E. Other

Romantic relationships within the chain of command create a potential for conflicts of interest. Employees who are involved in a romantic relationship in the chain of command are encouraged to bring the situation to the attention of management, who will work with both employees to facilitate a transfer of one of the employees, if possible. An employee who becomes a family member of another employee must promptly disclose the relationship to his/her Department Head.

VI. ENFORCEMENT

A. Perceived violations of this Policy should be reported to the LIRR Ethics Officer for investigation, in consultation with the Vice President, Secretary & General Counsel. When such initial investigation indicates a report appears to have merit or warrants further investigation, notice of the reported matter shall be transmitted to the LIRR President, with a copy to the MTA Chair/CEO, as provided in the MTA All-Agency Anti-Nepotism Employment Procedures.

B. Violation of this Policy may subject an employee to discipline, up to and including termination.

VII. RELATED POLICIES AND PROCEDURES

MTA Code of Ethics
MTA All Agency Policy Directive # 11-0511 – Anti-Nepotism Employment Procedures
EMPL-001 - Corporate Policy for Filling Vacancies
EMPL-007 – Confidentiality & Security Policy
VIII. ATTACHMENTS
Attachment A - Applicant Family Member Disclosure Form
Attachment B – Avoidance of Nepotism Policy Employee Acknowledgment Form

IX. REVISION TRACKING
June 2001
July 2002
April 2007
June 2011
August 2014 - Updated to conform to MTA procedures; added definition for family member; replaced Attachment B “Employee Relative Referral Form” with Avoidance of Nepotism Policy Employee Waiver Acknowledgment Form; and changed the word “Relative” in Attachment A to the term “Family Member”.

I. PURPOSE
The purpose of this Corporate Policy and Procedure (Policy) is to establish procedures for Long Island Rail Road (LIRR) employees who wish to engage in outside employment (i) to ensure that such outside employment does not interfere with the employee's ability to perform his or her LIRR employment safely and efficiently, and (ii) to guard against any potential conflict of interest.

II. SCOPE
This Policy applies to all LIRR employees.

III. ESSENTIAL FUNCTIONS
A. Senior Director - Human Resources Department (HR)
   1. Transmit information regarding an employee’s approved outside employment to the MTA Business Service Center (BSC) to be maintained in the employee’s permanent personnel file.
   2. Advise new employees of this Policy and ensure that those new employees who wish to continue non-LIRR employment seek permission of their prospective Department Heads before commencing employment at LIRR.

B. Senior Vice President – Administration & Chief Safety Officer/Designee
   Consider appeals from an adverse determination by a Department Head regarding a non-represented employee’s request to engage in outside employment.

C. Vice President - Labor Relations/Designee
   Consider appeals from an adverse determination by a Department Head regarding a represented employee’s request to engage in outside employment.

D. Department Heads
   1. Review forms submitted by employees within their department regarding proposed outside employment; and
   2. Ensure that employees within their departments are aware of this Policy.

E. LIRR Ethics Officer
   Following review and approval by the Department Head, or a successful appeal to either the Senior Vice President – Administration & Chief Safety Officer/Designee or the Vice President – Labor Relations/Designee from an adverse determination by a Department Head, the LIRR Ethics Officer is responsible for:
   1. Reviewing requests to engage in outside employment from employees who have been designated as policy makers pursuant to Public Officers Law § 73-a and the MTA Code of Ethics; and
   2. Recommending to the LIRR’s Ethics Committee whether such requests should be granted.
3. The Ethics Officer is also available to assist Department Heads, the Senior Vice President – Administration & Chief Safety Officer/Designee and the Vice President – Labor Relations/Designee in conducting their review if the form submitted by the employee raises a conflict of interest concern.

F. Ethics Committee
Makes final determinations regarding requests for approval of outside employment filed by employees who have been designated as policy makers pursuant to Public Officers Law § 73-a and the MTA Code of Ethics. However, if the request is for outside employment with compensation of more than $4,000, the employee must also seek the approval of the Joint Commission on Public Ethics LIRR Law Department - Ethics Compliance (formerly known as the State Public Integrity Commission).

G. LIRR Employees
All employees are required to comply with this Policy.

IV. PROCEDURE
A. Guidelines
1. Full-time employment with the LIRR is deemed to be an employee’s primary employment. It is the responsibility of every employee to report to work and remain at work according to schedule and to devote appropriate time and attention to his or her LIRR responsibilities so that he or she is able to perform such responsibilities in a safe and efficient manner.

2. LIRR employees may engage in outside employment provided such employment does not interfere with their regular full-time LIRR employment, violate hours of service or other legal requirements or raise any other safety-related concern, and/or constitute a conflict of interest under the Public Officers Law or the MTA Code of Ethics.

3. LIRR employees may not use any LIRR resources in connection with their outside employment, including, but not limited to, equipment, materials, vehicles, telephones, information technology resources, and office supplies.

4. Employees who use sick time, additional sick leave at 60% of the daily rate, short-term or long-term disability leave, or leave granted pursuant to the federal Family and Medical Leave Act to engage in outside employment will be subject to disciplinary action up to and including dismissal.

B. Process
1. All current employees who wish to engage in new outside employment must notify their department by completing the form included as Attachment A to this Policy and submitting the completed form to his or her Department Head. Each outside activity will be reviewed separately; accordingly, an employee who seeks to engage in more than one outside activity must submit a separate form for each outside activity. Failure to submit the required form may result in disciplinary action up to and including dismissal.
2. Department Heads should process the forms as expeditiously as possible and are encouraged to complete their review within 10 business days of receipt.

3. The following are relevant factors in reviewing an outside employment form:
   a. the type of outside employment being proposed;
   b. the company or person that the employee would be working for;
   c. hours that the employee intends to work at the outside employment;
   d. the length of the commute to the outside employment;
   e. the potential for inefficiencies in the employee’s ability to perform work for LIRR;
   f. the potential for a conflict between the employee’s LIRR schedule and the scheduled outside employment;
   g. the potential for interference with the statutorily mandated rest periods (if applicable); and
   h. whether the outside employment creates the potential for a conflict of interest because of the identity of the proposed employer. For example, a conflict of interest exists where a LIRR employee seeks employment with a prohibited source as defined in the MTA Code of Ethics, which includes, but is not limited to, current or recent LIRR vendor, or someone seeking to do business with LIRR.

4. In the case of an employee who is not designated by HR as a policy maker for purposes of Public Officers Law § 73-a and the MTA Code of Ethics, if the Department Head has no objection after review, he or she should notify the employee, sign the form as indicated, keeping a copy for the department’s files, and forward the original to the Senior Director-Human Resources who should transmit the form to the BSC to be placed in the employee’s permanent personnel file.

5. In the case of an employee who has been designated by HR as a policy maker for purposes of Public Officers Law §73-a and the MTA Code of Ethics, where the Department Head has no objection to the outside employment after review, the following process should be followed:
   a. If annual compensation is less than $1,000, the Department Head should notify the employee, sign the form as indicated, keeping a copy for the department’s files, and forward the original to HR, which should transmit the form to the BSC to be placed in the employee’s permanent personnel file.
   b. If annual compensation is in excess of $1,000 up to $4,000, the Department Head should notify the employee, sign the form as indicated, keeping a copy for the department’s files, and forward the original to the LIRR Ethics Officer for review and recommendation to the LIRR’s Ethics Committee. The Ethics Committee will make the final determination. Upon approval by the Ethics Committee, the Ethics Officer will send the original form to the Senior Director-Human Resources who will transmit the form to the BSC to be placed in the employee’s permanent personnel file. A copy will be maintained by the LIRR Ethics Officer.
c. If annual compensation exceeds $4,000, or the outside employment otherwise would require approval by the Joint Commission on Public Ethics, the same procedure should be followed as in IV(B)(5)(b); however, the employee must also obtain permission for the outside employment from the Joint Commission on Public Ethics.

d. An employee who has been designated by HR as a policy maker for purposes of Public Officers Law §73-a and the MTA Code of Ethics is required to list outside employment on his or her annual financial disclosure statement.

6. If the Department Head determines that the proposed outside employment interferes with the employee’s LIRR responsibilities and/or presents a conflict of interest, the employee will be advised that he or she may not engage in the outside activity. Nothing herein precludes an employee from modifying his or her request to address concerns raised by the Department Head and resubmitting a revised form for Department Head review. The Department Head will maintain a record of all forms that are denied.

7. A represented employee may appeal an adverse determination or the failure to receive a determination from his or her Department Head to the Vice President – Labor Relations/Designee. The decision of the Vice President – Labor Relations/Designee is final.

8. A non-represented employee may appeal an adverse determination or the failure to receive a determination from his or her Department Head to the Senior Vice President – Administration & Chief Safety Officer/Designee. The decision of the Senior Vice President – Administration & Chief Safety Officer/Designee is final.

9. In the case of a designated policy maker under Public Officers Law §73-a and the MTA Code of Ethics, if the designated appeal officer does not object to the employee’s outside employment request, the process set forth in IV(B)(5) above should be followed.

10. Once necessary sign-off is obtained, an outside employment determination remains valid for three years unless there has been a material change in the outside employment. In such event, a new notification form must be submitted. A material change would include, but not be limited to, any significant change in the hours or scope of the outside employment or the development of a conflict of interest that did not exist at the time that the outside employment was originally disclosed (e.g., if the outside employer begins to do business with the LIRR).

11. All new employees will be advised by HR that if they wish to continue non-LIRR employment they must file a dual employment notification form prior to commencing employment with the LIRR. If the prospective employee’s Department Head determines not to grant the request, the prospective employee must terminate the outside employment within two (2) weeks of receiving notice of the determination and must provide proof of termination to his or her Department Head before commencing work at LIRR. In no event may a new employee whose outside activity request has been denied begin employment at LIRR before terminating his or her outside employment. In the case of a new employee, there is no further appeal and the decision of the Department Head is final.
12. All existing employees currently engaged in dual employment who have not filed a notification form within the past 18 months must submit the form included as Attachment A to this Policy to his or her Department Head no later than 120 days from the date that this Policy becomes effective.

V. RELATED POLICIES & PROCEDURES
MTA All-Agency Code of Ethics

VI. ATTACHMENTS
Attachment A – Request for Approval of Outside Activity

VII. REVISION TRACKING
December 2011 (New)
August 2013 – Revision made to modify the Request for Approval of Outside Activity (Attachment A) – Section III: Category of Request, to clarify who is required to complete a NYS Joint Commission on Public Ethics Outside Activity Report form. Revision also made to update the title of the Senior Vice President – Administration to Senior Vice President – Administration & Chief Safety Officer.
I. PURPOSE

The purpose of this Corporate Policy and Procedure (Policy) is to set forth the comprehensive and uniform method used to evaluate a represented employee of the MTA Long Island Rail Road (LIRR) during his or her probationary period. Employment is at-will during the probationary period.

II. SCOPE

This Policy applies to all represented employees who are newly hired, promoted or reassigned to a title belonging to a different craft (collectively called “Probationary Employees”).

III. ESSENTIAL FUNCTIONS

A. Human Resources Department

1. On a bi-monthly basis forwards a list of Probationary Employees to all departments with the following information: name, employee number, job title, hire/transfer/promotion date and dates of probation period.

2. Distributes Probationary Evaluation Forms (Attachment A) to departments for completion.

3. Conducts training as needed, in conjunction with Labor Relations, for department managers and supervisors who review and complete Probationary Evaluation Forms.

4. Ensures timely completion and collection of all Probationary Evaluation Forms from departments.

5. Reviews collected Probationary Evaluation Forms for completeness and consistency.

6. Ensures completed Probationary Evaluation Forms are forwarded to the MTA Business Service Center for inclusion in employee personnel file.

7. Reviews department requests to extend the probationary period for a Probationary Employee - See Section IV. B. of this Policy.

8. Reviews department requests to terminate a Probationary Employee during the probationary period – See Section IV. C. of this Policy. Before a department can terminate a Probationary Employee, the department must have obtained prior Human Resources Department approval.

9. Assists Labor Relations in placing Probationary Employees rejected/resigned from their probationary positions who have retained seniority rights in their former craft.

B. Department Heads or Designees

1. Inform the Probationary Employee of the expectations of the LIRR and the department and define the performance standards expected.

2. Complete timely Probationary Evaluation Forms for each Probationary Employee with input from supervisory personnel and other managers where required.

3. Counsel Probationary Employees when their performance is below minimum expectations or unsatisfactory. The counseling should include reiteration of LIRR and department
expectations. Counseling and the reason(s) for counseling must be documented by the supervisor. This information should be included in the Probationary Evaluation Form, which may serve as the necessary documentation of the incident(s)/reason for counseling. (Counseling is not appropriate for situations involving serious misconduct. In the event of serious misconduct by a Probationary Employee, department supervision must immediately contact Human Resource and Labor Relations for guidance.)

4. Advise Probationary Employee of extended probationary period prior to conclusion of the initial probation period.

5. Review with the Senior Director – Human Resources or designee the request to extend the probationary period of a Probationary Employee – See Section IV. B. of this Policy. Submits requests approved by Human Resources to Labor Relations. This requires the written concurrence of the department head or his/her designee.

5. Request the Senior Director – Human Resources’ prior approval to terminate a Probationary Employee during the probationary period - See Section IV. C. of this Policy. This requires the written concurrence of the department head or his/her designee.

C. Labor Relations Department

1. Counsels departments and Human Resources as needed in the evaluation process.

2. When necessary, obtains union approval to extend the probationary period of a Probationary Employee after receiving Human Resources’ approval of the department’s request, in accordance with Section IV. B. of this Policy.

3. Assists Human Resources and departments in the placement of a Probationary Employee who has been rejected or resigned from the probationary position, when seniority rights in another craft was retained after determining that the Probationary Employee did not engage in conduct during the probationary period that would otherwise warrant dismissal from LIRR employment.

IV. PROCEDURES

A. Completion of Forms

Department managers must discuss each Probationary Evaluation Form with supervisors to ensure it is accurate and complete. All completed Probationary Evaluation Forms must be timely returned to the Human Resources Department upon completion of each three (3) month review period.

B. Extension of Probation Period

With prior Human Resources concurrence, in compliance with the procedures below, probation periods can be extended by the LIRR for an additional period where it is determined that such an extension is appropriate and in the best interest of the LIRR.

The supervisor or manager of the Probationary Employee, with the concurrence of the department head or his/her designee, should file a written request for an extension of the probationary period to the Director of Labor Relations Administration no later than the first day of the eleventh (11th) month of service. However, requests for an extension that are
necessitated by information that is discovered at any point during the probationary period will be considered.

The request must include supporting documentation, including accounting of current performance levels in the assigned area of responsibility, the basis for the request, and the amount of time requested.

The department will forward requests approved by Human Resources for an extension of a probationary period to Labor Relations for further action as appropriate, including obtaining the written consent of the appropriate labor organization, if necessary. Employees will be advised by their department head or designee of an extended probationary period prior to conclusion of the initial probation period.

C. Termination of Employment

Employment may be terminated at the will and sole discretion of the LIRR, at any time, for any reason, during the probation period. In cases of a Probationary Employee’s release from service, formal advance notice by the LIRR is not required.

A department seeking the termination of a Probationary Employee from LIRR employment during his/her probationary period must request and obtain approval from Human Resources before taking such action. This request must be in writing by the department head or his/her designee to the Senior Director – Human Resources with supporting documentation. The Probationary Employee must be released from service no later than the last day of the probation period.

A Probationary Employee who has maintained seniority roster rights in another craft may have the opportunity to be restored to a position in that craft in accordance with LIRR policy and the applicable collective bargaining agreement of the employee’s former craft. However, if during the probationary period the conduct of the Probationary Employee could otherwise warrant dismissal from service, the Department must contact Labor Relations and Human Resources for guidance before the Probationary Employee is advised of his/her options.

V. FORMS AND ATTACHMENTS

Attachment A - Probationary Evaluation Form

VI. REVISION TRACKING

July 2009 – New
February 2014 – This Policy was due for review based on CP&P BPM-001 – Issuance of Corporate Policies and Procedures. Reference to MTA BSC’s receiving of Probationary forms to be included in employee personnel files was added; and a change was made from Human Resources to Labor Relations regarding the receiving of written extension probation requests.
I. PURPOSE
The purpose of this Corporate Policy and Procedure (Policy), pursuant to New York State Labor Law, Sec. 27-b (New York Workplace Violence Prevention Law), is to prevent and minimize the risk of Workplace Violence, as defined in this Policy. The MTA Long Island Rail Road (LIRR) is committed to maintaining a safe and secure work environment for its employees and customers.

II. SCOPE
This Policy applies to all LIRR employees.

III. DEFINITIONS
As provided in 12 NYCRR Part 800.6, the following terms used in this Policy mean:

A. Workplace – Any location away from an employee’s domicile, permanent or temporary, where an employee performs any work-related duty in the course of his/her LIRR employment.

B. Workplace Violence – Any physical assault or acts of aggressive behavior occurring where an LIRR employee performs any work-related duty in the course of his/her LIRR employment, including but not limited to:
   1. An attempt or threat, whether verbal or physical, to inflict physical injury upon an employee;
   2. Any intentional display of force which would give an employee reason to fear or expect bodily harm;
   3. Intentional and wrongful physical contact with a person without his/her consent that entails some injury;
   4. Stalking an employee, examples include, but are not limited to calling, texting, and instant messaging, with the intent of causing fear of material harm to the physical safety and health of such employee when such stalking has arisen through and in the course of employment.

IV. ESSENTIAL FUNCTIONS
A. LIRR Employees
   1. All employees are prohibited from engaging in Workplace Violence, as defined in Section III.B. of this Policy.
   2. All employees are required to report any incident of Workplace Violence to a supervisor or manager and to the MTAPD (1-800-836-6673).
   3. All employees are prohibited from retaliating against anyone in violation of this Policy, as provided in Section V.C. of this Policy.
   4. All employees are required to conspicuously display their employee identification at all times when on LIRR property.
   5. Uniformed (operational) employees are required to be in uniform that identifies them as LIRR employees at all times when on duty.
6. Employees are required by LIRR Policy to cooperate with the MTAPD and the Office of Security, which requires them, among other things, to refuse access to LIRR properties not open to the public to any individual who does not have a valid LIRR identification.

B. Human Resources (HR) Department
   1. Senior Director or Designee
      a. Assists Department Heads and Designees with Workplace Violence incidents involving non-represented employees in their Departments.
      b. Provides a copy of LIRR's Workplace Prevention Program to employees upon written request.

   2. Employee Assistance Program (EAP) - An employee benefit available to all employees and their families, offering professional assistance in the form of short-term counseling and referral to those experiencing behavioral disorders, mental disorders, substance abuse problems or emotional difficulties. Also provides information to employees and their families about available services and resources regarding domestic violence.

C. Labor Relations Department
   Assists Department Heads and Designees with Workplace Violence incidents involving represented employees in their Departments, in accordance with applicable collective bargaining agreements.

D. Office of Security
   Provides LIRR's system-wide security program, which with respect to this Policy includes, but is not limited, to:
      1. Providing direction and support for implementation and installation of all access control and electronic surveillance devices.
      2. Promoting employee security awareness.
      3. Assisting Departments as requested with security issues.
      4. Acting as liaison with MTA Police Department (MTAPD).

E. Employee Training & Corporate Development
   1. Trains employees on security awareness and Workplace Violence Prevention, working with the Office of Security and vendors as needed.

F. Corporate Safety
   1. Maintains records involving Accidents/Incidents on LIRR property as defined in the LIRR System Safety Program Plan (Section 3.5, Element 5; Section 5.2, Element 19.) With respect to this Policy, such records would include the results of the investigation by Departments on hard copy and electronic AR-1 and AR-20/21 forms of incidents of Workplace Violence that resulted in some injury to an employee.
G. **Department Heads & Designees**

1. Comply with reporting Workplace Violence as provided in this Policy and with all LIRR policies relating to suspensions and separation of employment, security access requests, LIRR Transportation Passes, all other security-related matters, and the investigation of employee injuries on property.

2. Ensure proper procedures and protocols are adhered to when employees in their departments are determined to have engaged in Workplace Violence and/or retaliated against an employee in violation of this Policy.

3. Consult with Labor Relations when represented employees in their Departments are involved in an incident of Workplace Violence.

4. Consult with HR when non-represented employees in their Departments are involved in an incident of Workplace Violence.

5. Perform Risk Assessments – Assist Office of Security, Safety and Training and other Departments as needed, in assessing jobs in their Departments with respect to the following risk factors:
   
   a. Whether employees have contact with the public;
   
   b. Whether employees work late or early morning shifts;
   
   c. Whether employees exchange money with the public;
   
   d. Whether employees work alone or in small numbers;
   
   e. Whether there is uncontrolled access to the workplace; and
   
   f. Whether there are security issues involved with particular facilities/work sites.

6. Promptly bring any security issues involving employees in their Department or Department facilities/worksites to the attention of the Office of Security.

V. **PROCEDURE**

A. **Workplace Violence Prohibited**

1. All employees are prohibited from engaging in Workplace Violence.

2. Any employee who is determined to have engaged in Workplace Violence is subject to disciplinary action, up to and including dismissal.

B. **Reporting of Workplace Violence Incidents**

1. Employees are required to report, as soon as possible, every incident of Workplace Violence as this term is defined in Section III. B. of this Policy to a supervisor or manager and to the MTAPD (1-800-836-6673).

2. Managers and supervisors are required to report as soon as possible every incident of Workplace Violence to the MTAPD (1-800-836-6673).

3. Managers and supervisors are required to promptly investigate incidents of reported Workplace Violence involving employee(s) in their Departments, maintaining documentation that includes: the name(s) of the employee(s) involved; the results of the investigation (i.e., whether the incident was...
substantiated or unsubstantiated); and the action(s) taken, including any discipline assessed.

C. Retaliation Prohibited

1. Retaliation against an employee for reporting an incident of Workplace Violence or for assisting an employee in making such report, whether under this Policy or under the New York State Workplace Violence Prevention Law, is strictly prohibited.

2. An employee determined to have been involved in such retaliation is subject to disciplinary action, up to and including dismissal.

VI. RELATED CORPORATE POLICIES AND PROCEDURES

- MED-005 - Alcohol & Substance Abuse Policy
- DIV-001 - Anti-Harassment Policy
- MISC-003 – LIRR Domestic Violence and the Workplace Policy
- OOS-002 - LIRR Employee & Authorized Personnel Security Responsibility
- OOS-001 - LIRR Identification & Transportation Pass
- P-REC-003 - Employee Status Changes
- SAFE-004 - Protocol for Responding to Unattended Packages and/or Suspicious Behaviors on the Property
- System Safety Program Plan

VII. FORMS AND ATTACHMENTS

None

VIII. REVISION TRACKING

March 2006
May 2010
May 2012 – Updated to add calling, texting and instant messaging to the definition of stalking; clarifying department responsibilities regarding reporting requirements and procedures; and listing the MTAPD phone # to call to report an incident of workplace violence.

October 2015 – Updated essential functions to revise department names and responsibilities.
I. PURPOSE

The purpose of this Corporate Policy and Procedure (Policy) is to establish a process for handling and resolving internal complaints by Long Island Rail Road (LIRR) employees and applicants that allege unlawful harassment or retaliation.

II. SCOPE

This Policy applies to all LIRR employees and applicants for employment.

III. POLICY STATEMENT

It is the policy of MTA Long Island Rail Road (LIRR) to maintain a work environment that is free of all forms of discriminatory harassment. In addition, an employee or applicant for employment at LIRR (applicant) must be able to exercise his/her right to file a complaint of unlawful harassment freely, without retaliation, penalty or any resulting adverse difference in treatment. This Policy and Procedure (Policy) prohibits harassment in the workplace based on an individual’s race, color, national origin, religion, creed, sexual orientation, gender (including gender expression and identity and pregnancy), age, disability, genetic information, military status, marital status, domestic violence victim’s status, arrest/conviction records, or any other basis prohibited by applicable law, and also prohibits retaliation against an employee or applicant who has filed a complaint of illegal harassment or interference with an employee’s or applicant’s right to file such a complaint.

IV. DEFINITIONS

A. Discriminatory Harassment

1. Any type of conduct that has the purpose or effect of unreasonably interfering with an individual’s work performance or that creates an intimidating, hostile or offensive working environment based on the individual’s race, color, national origin, religion, creed, sexual orientation, gender (including gender expression and identity), age, disability, genetic information, military status, marital status, domestic violence victim’s status, arrest/conviction records, or any other basis prohibited by applicable law.

2. Examples of prohibited conduct include, but are not limited to: demeaning, derisive, or hostile comments or conduct towards an individual or group based on membership in a protected class; and the display or transmission, by electronic or other means, of offensive posters, pictures, symbols, objects or graphic material that demean or show hostility toward an individual or group based on membership in a protected class.

B. Sexual Harassment

1. Sexual advances, requests for sexual favors and other conduct of a sexual nature (whether physical, verbal, or through other means) when:

   a. ...
a. submission to or rejection of such conduct is made explicitly or implicitly a term or condition of an individual’s employment; or

b. submission to or rejection of such conduct by an individual is used as basis for employment decisions; or

c. such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creates an intimidating, hostile or offensive work environment.

2. Examples of conduct that may constitute sexual harassment include, but are not limited to:

a. Unwelcome sexual advances or propositions;

b. Demands/threats for sexual favors or actions, including implied or expressed promises of preferential treatment or negative employment consequences.

c. Unwelcome physical contact;

d. Graphic or offensive comments of a sexual nature, including but not limited to sexual innuendoes or jokes, either directed at the individual or made about the individual in the presence of another person;

e. Suggestive gestures, sounds or stares;

f. Harassing telephone calls, voicemail, e-mail, letters, notes, or other forms of communication, including but not limited to via the Intranet or Internet; and

g. Posting, distributing, transmitting or displaying materials of a sexual nature in the workplace.

V. ESSENTIAL FUNCTIONS

A. Diversity Management – Director

1. Administers this Policy.

B. Department Heads and Designees

1. Assist in maintaining a workplace free from all forms of unlawful harassment or retaliation.

2. Ensure that this Policy is conspicuously posted in the workplace.

3. Advise employees within their respective departments of Diversity Management’s role.

4. Assist Diversity Management as requested in resolving matters raised in complaints to Diversity Management, including taking appropriate remedial action as provided in Section VI.A.7. of this Policy, and in accordance with applicable collective bargaining agreements when represented employees are involved.

C. Managers and Supervisors

1. Have a duty to take appropriate action, including by their own conduct, to promote a positive workplace that is free of unlawful harassment or retaliation.
2. Are required to promptly notify Diversity Management of a complaint under this Policy made to them by an employee or applicant.

3. Any manager or supervisor who permits unlawful harassment or retaliation in violation of this Policy to continue, whether he/she has actual knowledge of such conduct or, in the exercise of reasonable care, should have known about it, is subject to discipline, up to and including dismissal.

VI. PROCEDURE

A. Filing of Complaint with Diversity Management

1. If an employee or applicant believes that he/she has been subjected to unlawful harassment or retaliation and wishes to file an internal complaint, the individual is encouraged to promptly report the matter to Diversity Management by contacting Michael Fyffe, Director - Diversity Management (718-558-8170) Shibu Jacob, Manager – Diversity Management (718-558-8174), or Carolyn Kumah, Assistant Manager – Diversity Management (718-558-3822), Mail Code #1141, Jamaica Station Headquarters, Jamaica, New York 11435.

2. An employee may also promptly report the matter to any supervisor or higher-level manager, who in turn should promptly notify Diversity Management of the complaint. An applicant may promptly report the matter to the Human Resources Department, who in turn should promptly notify Diversity Management of the complaint.

3. The complainant is encouraged to meet with Diversity Management for an intake interview about the complaint and complete Diversity Management's Internal Discrimination Complaint Form (Attachment A).

4. Following either Diversity’s intake interview of the complainant and receipt of the Internal Discrimination Complaint Form, or notification by a Department supervisor or higher-level manager or by Human Resources of a complaint of unlawful harassment or retaliation, Diversity Management will promptly initiate a thorough and impartial investigation of the complaint, maintaining confidentiality to the extent practicable and consistent with LIRR’s obligations to undertake a full inquiry and to make a determination. Employees are required to fully cooperate with any such investigation.

5. Retaliation against an employee or applicant who has filed a complaint of illegal harassment or interference with an employee’s or applicant’s right to file such a complaint is a violation of this Policy that may subject the employee to disciplinary action, up to and including dismissal.

6. Diversity Management will issue a written decision regarding the complaint.

7. Appeals may be filed with the Director – Diversity Management.

8. If it is determined by Diversity Management that there is Probable Cause to believe a violation of this Policy has occurred, Diversity Management will refer the matter back to the relevant Department Head(s) to take immediate action to remedy the situation, including imposing discipline on any employee found to have violated this Policy, up to and including dismissal.
B. **Filing of External Complaints**

If an employee/applicant who has filed a complaint with Diversity Management then files a complaint alleging the same underlying facts with the New York State Division of Human Rights or the U.S. Equal Employment Opportunity Commission, Diversity Management will administratively close the complaint. Diversity Management will not accept a complaint by or about an employee/applicant who has already filed an external complaint alleging the same underlying facts.

**VII. RELATED POLICIES**

DIV-002 - Equal Employment Opportunity Policy  
MED-002 - Americans with Disabilities Act (ADA) Policy  
LEAVE-011 - Military Leave Policy

**VIII. FORMS & ATTACHMENTS**

Attachment A – Internal Discrimination Complaint Form

**IX. REVISION TRACKING**

March 2008  
January 2009  
March 2010  
March 2012 – Revised due to a personnel change.  
October 2013 – Revised due to a personnel change.  
March 2014 – Revised to clarify gender discrimination.  
February 2016 – Revised due to personnel addition, and institution of appeals process.
I. PURPOSE

The purpose of this Corporate Policy and Procedure (Policy) is to establish a process for handling and resolving internal complaints by Long Island Rail Road (LIRR) employees and applicants for LIRR employment (applicants) that allege unlawful discrimination relating to any terms and conditions of employment, including, but not limited to, hiring, promotion, demotion, transfer, recruitment, discharge, and benefits. An employee or applicant must be able to exercise his/her right to file a complaint freely without retaliation, penalty or any resulting adverse difference in treatment.

II. SCOPE

This Policy applies to all LIRR employees and applicants for employment.

III. POLICY STATEMENT

LIRR is committed to being an equal employment opportunity (EEO) employer, administering all terms and conditions of employment in a non-discriminatory manner.

This commitment means that employment decisions at LIRR are to be made without unlawful consideration being given to an individual’s race, color, national origin, religion, creed, sexual orientation, gender (including gender expression and identity and pregnancy), age, disability, genetic information, military status, marital status, domestic violence victim’s status, arrest/conviction records, or any other basis prohibited by applicable law.

LIRR is also committed to complying with all applicable laws for establishing and implementing a program providing equal employment opportunities for all employees and applicants for employment. LIRR has developed an EEO program, setting goals with timetables to provide minorities and women equal opportunities in its workforce. Realizing the goals of the EEO program will benefit the LIRR by making its workforce more representative of the community as a whole and will provide opportunities for advancement and career development for women and minorities.

Michael Fyffe, LIRR’s Director - Diversity Management, is responsible for coordinating LIRR’s EEO Program.

IV. ESSENTIAL FUNCTIONS

A. Diversity Management – Director

Administers this Policy and coordinates the EEO Program.
B. **Department Heads and Designees**
   1. Assist in maintaining a workplace free from all forms of unlawful discrimination.
   2. Ensure that this Policy and the President’s annual EEO Policy Statement, which confirms LIRR’s EEO commitment, are conspicuously posted in the workplace.
   3. Advise employees within their respective departments of Diversity Management’s role.
   4. Assist Diversity Management as requested in resolving matters raised in complaints to Diversity Management, including taking appropriate remedial action as provided in Section V.A.7 of this Policy, further to applicable collective bargaining agreements when represented employees are involved.

C. **Managers and Supervisors**
   1. Have a duty to take appropriate action, including by their own conduct, to promote a positive workplace that is free of unlawful discrimination.
   2. Are required to promptly notify Diversity Management of an EEO complaint made to them by an employee or job applicant.

V. **PROCEDURE**

A. **Filing of Complaint with Diversity Management**
   1. If an employee or applicant believes that he/she has been subjected to unlawful discrimination, harassment or retaliation and wishes to file an internal complaint, the individual should promptly report the matter to Diversity Management by contacting Michael Fyffe, Director - Diversity Management (718-558-8170), Shibu Jacob, Manager – Diversity Management (718-558-8174), or Carolyn Kumah, Assistant Manager – Diversity Management (718-558-3822), Mail Code # 1141, Jamaica Station Headquarters, Jamaica, New York 11435.
   2. An employee may also promptly report the matter to any supervisor or higher-level manager, who in turn should promptly notify Diversity Management of the complaint. An applicant may promptly report the matter to the Human Resources Department, who in turn should promptly notify Diversity Management of the complaint.
   3. The complainant is required to meet with Diversity Management for an intake interview about the complaint and complete Diversity Management’s Internal Discrimination Complaint Form (Attachment A).
   4. Following the intake interview and receipt of the Internal Discrimination Complaint Form, Diversity Management will promptly initiate a thorough and impartial investigation of the complaint, maintaining confidentiality to the extent practicable and consistent with LIRR’s obligations to undertake a full inquiry and to make a determination. Employees are required to fully cooperate with any such investigation.
5. Retaliation against an employee or applicant who has filed a complaint or interference with an employee’s or applicant’s right to file a complaint concerning such matters is a violation of this Policy that may subject the employee to disciplinary action, up to and including dismissal.

6. Diversity Management will issue a written decision regarding the complaint.

7. Appeals may be filed with the Director – Diversity Management.

8. If it is determined by Diversity Management that there is Probable Cause to believe a violation of this Policy has occurred, Diversity Management will refer the matter back to the relevant Department Head(s) to take immediate action to remedy the situation, including imposing discipline on any employee found to have violated this Policy, up to and including dismissal.

B. Filing of External Complaints

1. If an employee/applicant who has filed a complaint with Diversity Management then files a complaint alleging the same underlying facts with the New York State Division of Human Rights or the U.S. Equal Employment Opportunity Commission, Diversity Management will administratively close the complaint. Diversity Management will not accept a complaint by an employee/applicant who has already filed an external complaint alleging the same underlying facts.

VI. RELATED POLICIES

DIV-001 - Anti-Harassment Policy
MED-002 - Americans with Disabilities Act (ADA) Policy
LEAVE-011 – Military Leave Policy

VII. FORMS AND ATTACHMENTS

Attachment A – Internal Discrimination Complaint Form

VIII. REVISION TRACKING

March 2010
- Revised to clarify gender discrimination.
February 2016 - Revised due to personnel addition, and institution of appeals process.
All-Agency

CODE OF ETHICS

Adopted by the MTA Board December 16, 2015
CODE OF ETHICS

Originally Issued
June 1, 2005

Revised

March 29, 2006
March 28, 2007
December 16, 2009
November 16, 2011
February 26, 2014
November 19, 2014
December 16, 2015

Additional copies may be obtained from MTA Corporate Compliance or your Agency’s Human Resources Department

Internal Control Number GRC001921
Introduction

The Metropolitan Transportation Authority provides services to more than eight million customers a day, each one of whom expects a high standard of service. As employees of the MTA, you are entrusted with the duty to provide this high standard of service. The ability to provide a high standard of service is grounded in a strong work ethic, clear corporate policies, and the dedication of a creative work force. The adherence to a strict code of ethics is central to gaining and keeping the trust of our customers.

This Metropolitan Transportation Authority All-Agency Code of Ethics (“Code of Ethics”) applies to every employee of the MTA, including its current and future subsidiaries and affiliates. For ease of reference, this Code of Ethics will refer to all such employees as “Employees.” In addition, persons performing services for the MTA and its subsidiaries and affiliates may be subject to the Code of Ethics by contract or agreement.

There is only one Code of Ethics for the entire MTA. You are expected to become familiar with this Code, and the various applicable statutes, regulations, professional codes of ethics, and disciplinary rules. You are expected to read this Code immediately upon receipt.

The Code of Ethics is intended to provide guidance to all Employees with respect to applicable laws governing ethical conduct and the MTA’s ethical standards, which sometimes exceed the requirements of State law.

While the Code of Ethics sets out specific standards, in our evolving business environment, no written code can anticipate every possible situation. However, this Code of Ethics establishes a standard against which you can measure your daily decisions and actions. The Code of Ethics is not a restatement of all applicable laws and standards; you are expected to be familiar with and comply with all laws and standards related to your specific job. The principal source of most New York State law governing the ethical conduct of public employees and officers is the Public Officers Law, the applicable provisions of which are available from the Law and Human Resources departments at each MTA Agency.

As an Employee, you are expected to be an ethical role model. Managers and supervisors must foster an atmosphere that encourages Employees to seek
assistance if faced with ethical dilemmas. Every Employee must be alert to potential ethical issues and be ready to respond appropriately. Responsibility for compliance with the applicable rules and standards for ethical conduct, including the related financial disclosure requirements, ultimately rests with you. If you have an ethics-related question, you should ask your supervisor or the applicable Agency Ethics Committee for guidance.

VIOLATIONS OF THE CODE OF ETHICS OR APPLICABLE STATUTORY PROVISIONS MAY SUBJECT AN EMPLOYEE TO DISCIPLINE UP TO AND INCLUDING DISMISSAL AND/OR EXPOSE THE EMPLOYEE TO CIVIL OR CRIMINAL PENALTIES. (SEE CHAPTER 9)
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Chapter 1: Definitions/Structure

Section 1.01 Definitions

As used in this Code, capitalized terms shall have the following meanings:

**Agency Ethics Committee** means the committee established by an individual MTA Agency.

**All-Agency Ethics Committee** means the committee comprised of the Agency Ethics Officers or chairpersons of each Agency Ethics Committee and the Chief Compliance Officer.

**Annual Statement of FinancialDisclosure** means the financial disclosure statement required to be filed with the Joint Commission on Public Ethics by certain Employees pursuant to Public Officers Law Section 73-a and this Code.

**Business** means any activity, paid or unpaid, by an Employee or any individual, firm, company, corporation or other entity, wherein the goal or objective is obtaining monetary income or other things of value or operating an enterprise. Such activity may be for profit or not-for-profit.

**Code** means this MTA All-Agency Code of Ethics.

**Confidential Information** means information, whether or not set forth in writing, that is available to an Employee only because of such Employee’s position within an MTA Agency and which is treated by such MTA Agency as being confidential or which the Employee has reason to believe is confidential. Information does not have to be formally labeled “confidential” to be confidential.

**Conflicts of Interest** means a situation in which the financial, familial, or personal interests of an Employee come into real or apparent conflict with their duties and responsibilities to the MTA. Apparent Conflicts of Interest are situations where there is the appearance that an Employee can personally benefit from actions or decisions made in their official capacity, or where an Employee may be influenced to act in a manner that does not represent the best interests of the MTA. The appearance of a conflict may occur if circumstances would suggest to a reasonable person that an Employee may have a conflict. The appearance of a conflict and a real conflict should be treated in the same manner for the purposes of this Code.

**Department Head** means a Department Head as that term is generally used within the applicable MTA Agency.

**Employee** means an officer or employee of an MTA Agency.
**Employment** means performance of services, for or on behalf of any entity or individual, to obtain economic or other material benefit.

**Family Member** means (i) an Employee’s spouse, domestic partner, child or sibling; (ii) a person who is a direct descendant (or the spouse of a direct descendant) of a grandparent of the Employee or a grandparent of the Employee’s spouse or domestic partner; or (iii) a person living in the same household as an Employee.

**Fundraising** means the raising of funds for an organization through solicitation of funds or sale of items or participation in the conduct of an event.

**Gift (s)** means the transfer, without equivalent consideration, of anything or benefit, tangible or intangible, having more than nominal value, including, but not limited to, loans, forbearance, services, travel, gratuities of any kind, favors, money, meals, refreshments, entertainment, hospitality, promises, tickets to entertainment or sporting events, weekend trips, golf outings, loans of equipment, or other thing or benefit. (See definition of “Items of Nominal Value” below.) Note: The State Legislature has determined that provision of local transportation by a Prohibited Source for purposes of inspection or touring of facilities, operations or property located in New York State, where such inspection or tour is related to an Employee’s official duties or responsibilities, does not constitute a Gift.

**Honorarium** means (a) payment, fee or other compensation in connection with a service rendered by an Employee not related to the person’s official duties, and for which MTA Agency equipment or staff are not used, which is in the nature of a gratuity or as an award or an honor (e.g., for delivering a speech, for attending a conference, for writing an article); and (b) a payment, whether to a lodging site or a provider of transportation, for travel expenses made to or on behalf of an Employee, or reimbursement made to the Employee for travel expenses incurred, for services rendered by an Employee not related to their official duties.

**Items of Nominal Value** means items such as mugs, key rings, calendars, pens and the like that are of minimal value unless such items are being given under circumstances where it reasonably can be inferred that such item was intended to influence the Employee in the performance of such Employee’s official duties. For purposes of determining value, an item is not deemed reduced in value by virtue of its being embossed or otherwise marked with a company logo, identification, or advertising.

**Joint Commission on Public Ethics** means the Commission established within
the New York Department of State under Section 94 of the New York Executive Law pursuant to the Public Integrity Reform Act of 2011.

MTA Agency or MTA means any of the following: Metropolitan Transportation Authority Headquarters, MTA New York City Transit, Manhattan and Bronx Surface Transit Operating Authority, MTA Long Island Rail Road, MTA Metro-North Railroad, MTA Bus Company, MTA Capital Construction Company, the Staten Island Rapid Transit Operating Authority, the First Mutual Transportation Assurance Company, MTA Bridges and Tunnels and all future affiliated and subsidiary entities of the MTA.

New York State Agency means any New York State department, or division, board, commission, or bureau of any state department, any public benefit corporation, public authority, or commission at least one of whose members is appointed by the Governor, or the State University of New York, or the City University of New York, including all their constituent units except community colleges of the State University of New York and the independent institutions operating statutory or contract colleges on behalf of the State. All MTA Agencies are New York State Agencies for purposes of this Code.

Participation in the Conduct of an Event means active and visible participation in the promotion, production or presentation of the event and includes serving as honorary chairperson or committee member or sitting at the head table during the event. The term does not mean the mere attendance at the event, provided the Employee’s attendance is not being used by the non-profit to promote the event.

Policy-Making Position means those management and non-management positions designated as policy-making positions by each MTA Agency, because the individual holding the position exercises responsibilities of a broad scope in the formulation of plans for the implementation of action or policy for an MTA Agency or has an effective or substantial influence on an individual in such a position; e.g., positions in which Employees have discretion to (i) significantly influence, control, or bind an MTA Agency in the expenditure or receipt of money, (ii) significantly influence the discretionary selection or rejection of Employees, their promotion, transfer, or salary increases, (iii) select or supervise Prohibited Sources, (iv) negotiate leases, real estate agreements, estates, purchase or sale of goods or services, or (v) supervise or approve additional work orders and progress payments to Prohibited Sources retained by an MTA Agency.
Prohibited Source means:

(a) a Vendor including any person, seller of goods or services, bidder, proposer, consultant, contractor, trade, contractor or industry association, or any other person/entity with which your MTA Agency is doing business, as well as those persons and business entities who have expressed an interest in doing business with your MTA Agency, whose activities directly or indirectly benefit your Agency, or who have a history of doing business with your Agency in the recent past; or

(b) a tenant or licensee of your MTA Agency; or

(c) any person or entity who on his, her or its own behalf, or on behalf of any other person or entity, satisfies any one of the following:

(1) is regulated by, negotiates with, appears before in other than a ministerial matter, seeks to contract with or has contracts with, or does other business with: (i) the Employee, in his or her official capacity; (ii) your MTA Agency; or (iii) any other New York State Agency when your MTA Agency is to receive the benefits of the contract; or

(2) is required to be listed on a statement of registration pursuant to §1-e(a)(1) of article 1-A of the Legislative Law and lobbies or attempts to influence actions, decisions, or policies of your MTA Agency; or

(3) is the spouse or unemancipated child of any individual satisfying the requirements of subsection (c)(2) above; or

(4) is involved in any action or proceeding, in which administrative and judicial remedies thereto have not been exhausted, and which is adverse to either: (i) the Employee in his or her official capacity; or (ii) your MTA Agency; or

(5) has received or applied for funds from your MTA Agency at any time during the previous 12 months up to and including the date of the proposed or actual receipt of the item or service of more than Nominal Value. This does not include a request for funds received by the MTA in the ordinary course of business. For example, this does not include a customer’s request for a refund or MTA’s purchase of tickets or a table to an event.

For purposes of this definition, the term “your Agency” refers to the Agency by which you are employed. However, certain Employees working on matters involving more than one MTA Agency may be considered an Employee of multiple MTA Agencies for purposes of this Code.
Solicitation means any request, invitation, or suggestion (oral or written) made under circumstances where it reasonably could be concluded that the individual or entity receiving same is being asked to, or is expected to, comply with a request, invitation, or suggestion.

State Ethics Law means New York Public Officers Law Sections 73, 73-a, 74 as may be amended or modified by the New York State Legislature and the rules and regulations promulgated thereunder.

Section 1.02 Agency Ethics Committees/All-Agency Ethics Committee

The Metropolitan Transportation Authority Headquarters, MTA New York City Transit, MTA Long Island Rail Road, MTA Metro-North Railroad, MTA Bus Company, MTA Capital Construction Company, and MTA Bridges and Tunnels shall each appoint an Agency Ethics Officer and can establish an Ethics Committee to render guidance on ethics-related questions, including Conflicts of Interest. The procedures for the appointment of the Agency Ethics Officer shall be determined by each MTA Agency upon consultation with the Chief Compliance Officer. However, each Committee will designate one senior-level executive as Chairperson of the Agency Ethics Committee. Upon request, information disclosed to the Agency Ethics Committees and their members shall be deemed confidential, provided that appropriate disclosure of such information must be made in accordance with applicable laws, rules, and regulations.

MTA's Chief Compliance Officer shall serve as Chairperson of the All-Agency Ethics Committee. The Committee will meet periodically to review the current state of ethics at the MTA and to review or revise the Code of Ethics as needed.

Section 1.03 Ethics & Financial Disclosure Questions

Questions concerning this Code or potential Conflicts of Interest may be directed to the applicable Agency Ethics Officer or Ethics Committee at the phone number set forth in Appendix A. It is not the function of a supervisor, an Agency Ethics Officer or Ethics Committee, or an MTA Agency lawyer to act as counsel to any individual Employee.

Information regarding violations of this Code or questions concerning ethics-related matters, may also be directed to:

MTA Corporate Compliance
Metropolitan Transportation Authority
2 Broadway, 16th Floor
New York, New York 10004
888-U-ASK-MTA (888-827-5682)
Any MTA Employee who has a complaint or allegation regarding the MTA may also contact the MTA Inspector General.

Office of the Inspector General,
Metropolitan Transportation Authority
Two Penn Plaza, 5th Floor
New York, New York 10121
800-MTA-IG4U (800-682-4448)

Section 1.04 Revocation of Agencies Ethics Policies

This Code supersedes and by effect rescinds the MTA All-Agency Acceptance of Gifts Policy Statement 11-007, the MTA Guideline Document—Gifts, and all MTA Agencies’ Ethics Policies and Codes.

Section 1.05 Duty to Disclose

“Employees must promptly report any violation of this Code”

Employees must promptly report any violation or potential violation of the MTA’s Codes of Ethics (All-Agency Code of Ethics, Board Member Code of Ethics or Vendor Code of Ethics) as well as any actual or potential violation of law, regulations, or policies and procedures, relating to the MTA, whether committed by an Employee or by a person doing business with the MTA. Employees should report to the MTA Inspector General allegations or information involving corruption, fraud, criminal activity or abuse.

Employees should report to their Agency’s Ethics Officer, their Agency General Counsel, the MTA’s Chief Compliance Officer or to the MTA Inspector General, all other violations or potential violations. Employees should feel free to discuss their concerns initially with their supervisor, but no supervisor may discourage an Employee from making a report.

Note: To obtain answers to questions or increase their understanding, Employees are encouraged to discuss particular situations or concerns they have regarding violations or potential violations of this Code or any laws, regulations or policies or procedures with their Agency Ethics Officer, the MTA Chief Compliance Officer or the MTA Inspector General.

Section 1.06 No Reprisals/Whistle-Blowing

Employees who report violations or potential violations of this Code or any actual or potential violations of laws, regulations or policies and procedures are
protected under MTA All-Agency Whistleblower Protection Policy, No. 11-041 and will not be subjected to punitive sanctions, reprisals, or other penalties solely for reporting such violations. Employees who file an intentionally false report may be subject to appropriate disciplinary penalty, up to and including dismissal as well as civil or criminal charges.

Section 1.07 Cooperation with Audits and Investigations

Employees must cooperate fully and honestly with audits and investigations conducted by the MTA Inspector General, Joint Commission on Public Ethics, Auditor General, Chief Compliance Officer, Agency Ethics Officer, or other governmental agencies. Failure to so cooperate will subject an Employee to appropriate disciplinary penalty, up to and including dismissal.

Section 1.08 Mandatory Ethics Training

Employees subject to the financial disclosure requirements of Section 6.01 of this Code must complete a comprehensive ethics training course within three months of becoming subject to that requirement.

Employees subject to the financial disclosure requirements and such other Employees as may be determined by their Agency Ethics Officer or Ethics Committee are required to attend continuing ethics training every three years.

Section 1.09 Certifications

Employees upon hire must certify to the MTA Code of Ethics by signing an Acknowledgment Form. Additionally, Employees are required to annually sign a certification attesting to their familiarity with the MTA Code of Ethics.

Chapter 2: Gifts, Awards, and Honoraria

Section 2.01 Gift Prohibition – Zero Tolerance

Employees are prohibited from soliciting or receiving Gifts, directly or indirectly, from any Prohibited Source. The defined term “Gift” does not include items of truly nominal value. (See definitions of “Gifts” and “Items of Nominal Value.”)

However, Employees may accept Gifts from employees of a Prohibited Source if these Gifts are reflective of a personal relationship independent of the relationship between the Prohibited Source and the MTA. For example, if the sibling of an MTA Agency Employee worked for a Prohibited Source, the MTA Agency
Employee could nonetheless accept a Gift that reflects this personal relationship. In addition, an Employee can accept a modest, reasonable, and customary offering on an extraordinary occasion, such as a wedding, retirement, funeral, or serious illness. A Gift shall not be considered representative of a personal relationship, if the donor seeks to charge or deduct the value of the Gift as a business expense or seeks reimbursement from a Prohibited Source or when gifts from the same Prohibited Source are offered to multiple Employees at or about the same time.

Employees are permitted to accept discounts or special offers from a Prohibited Source so long as those discounts or special offers are generally available to similarly situated employees of other public and private sector organizations. Employees should check with their Agency Ethics Officer before accepting such discounts or special offers from a Prohibited Source.

Under no circumstances may an Employee accept an item, even an Item of Nominal Value, under circumstances in which it could be reasonably inferred that the item was intended to influence the Employee, or could reasonably be expected to influence the Employee, in the performance of the Employee’s official duties or was intended as a reward for any official action on such Employee’s part.

**Reminders:**

(a) Employees should avoid accepting numerous items of nominal value from the same Prohibited Source because their aggregate value is likely to exceed the nominal threshold. The MTA will aggregate the value of items received from the same Prohibited Source in any 12-month period.

(b) Accepting Gifts in connection with the performance of official duties from persons or entities other than Prohibited Sources could still be a violation of State law and this Code, if it could be reasonably inferred that the Gift was intended to influence the Employee, or could reasonably be expected to influence the Employee, in the performance of the Employee’s official duties or was intended as a reward for any official action on such Employee’s part.

(c) Proof that an Employee was actually influenced by a Gift is not necessary for a finding of a violation of this Code or State Ethics Law.

(d) Employees should use caution in accepting such items they believe are of nominal value because it may not always be easy to determine if an item is truly of nominal value.

(e) An Employee may not designate a friend, Family Member, or entity (such as
a charity) to receive a Gift that the Employee would not be permitted to receive.

**Example:**

(a) A Prohibited Source offers an Employee a briefcase with the Prohibited Source’s logo embroidered on it. Because that briefcase, without such logo, would have a retail cost greater than nominal value, the Employee is prohibited from accepting it, even if the Employee considers it valueless because of the logo.

**Common Gift Issues:** It is not practical in a code of this type to describe all of the circumstances that might give rise to a prohibited Gift. The following are some of the situations that have come up in the past and are examples of Gift-related actions that are prohibited:

(a) Any Solicitation or attempt to Solicit a job for a relative from a Prohibited Source, including a summer job; or

(b) Any Solicitation or acceptance from a Prohibited Source of:

   (1) tickets to a concert, play, sporting event, or show;
   
   (2) meals;
   
   (3) a golf outing, a weekend trip, a vacation, use of a vacation home, or an airline ticket; or
   
   (4) individual discounts to Employees on goods or services (such as televisions, computers, clothing, home improvements, or car or appliance repairs).

**Section 2.02 Monetary Gifts and Kickbacks**

Gifts of money to an Employee from a Prohibited Source are prohibited regardless of amount and shall be deemed to be a kickback or bribe intended to influence the Employee in the performance of the Employee’s official duties. Employees may not give or promise to give any portion of their compensation or any money or valuable thing to any person, nor shall any person accept any such money, or valuable thing, in connection with appointment, employment, promotion, assignment, or reassignment by an MTA Agency. Employees may not, directly or indirectly, make (or request that other Employees make) any contribution or pay any assessment in order to secure promotion, compensation, or to affect job status, duties, or functions, or in consideration of being appointed or employed at an MTA Agency.
Section 2.03 Tips

Employees are not permitted to accept tips or other gratuities in connection with the performance of their official duties unless:

1. the Employee is represented by a labor union;
2. it has been customary in the past for MTA Agency Employees in the relevant job classification to receive tips in connection with the performance of their official duties; and
3. in the private sector it would be customary for an Employee in the equivalent job classification (such as a bartender) to receive tips as part of their income.

Section 2.04 Reporting Gift or Gift Offers

An Employee to whom a Gift is offered or given in violation of Section 2.01 above shall promptly report such offer or Gift to the applicable Agency Ethics Officer or Ethics Committee and, in the case where a Gift has been given, the Employee or Agency Ethics Officer or Ethics Committee shall promptly return the Gift to the person or entity giving the Gift with a copy of the MTA Gift return letter. A copy of the executed gift return letter shall be sent to MTA Corporate Compliance.

Section 2.05 Awards, Plaques, and Honors

“Awards and plaques publicly presented in recognition of MTA Agency or public service may be accepted”

Awards and plaques publicly presented in recognition of an Employee’s service to an MTA Agency or non-job-related public service may be accepted. Employees must notify and seek the approval of their Agency Ethics Officer or Ethics Committee prior to accepting an award, plaque, or honor presented by a Prohibited Source.

However, awards or plaques presented by a Prohibited Source in recognition of job-related MTA Agency service and valued at more than seventy-five dollars ($75) shall become the property of the applicable MTA Agency. The MTA Agency’s Ethics Officer or Ethics Committee can determine the disposition of the award or plaque.

Section 2.06 Honoraria

An Employee may not accept an honorarium for services related to his or her duties for the MTA.
Employees must obtain written approval for each honorarium from their Agency Ethics Officer or Ethics Committee with the concurrence of Corporate Compliance prior to accepting an Honorarium. The approval request should be in writing and received by the Agency Ethics Officer or Ethics Committee no less than thirty (30) days prior to the time performance of the service for which the Honorarium is being offered is due to occur or thirty (30) days prior to the receipt of the honorarium. A detailed statement of all of the circumstances in which an Employee may accept an honorarium from a third party is set forth in Title 19 NYCRR Part 930.

The following is a summary of the rules relating to honoraria.

**Prohibited Honoraria.** Prohibited Honoraria: An Employee may not accept an Honorarium (or payment in lieu of Honorarium) that is offered for services related to his or her official duties for the MTA. In such circumstances, payment for services related to official MTA duties must be made directly to the applicable MTA Agency.

In addition, an Honorarium may not be accepted by any Employee from a Prohibited Source without the written approval of the Chief Compliance Officer.

Irrespective of whether approval was obtained in advance, however, any receipt of an honorarium in excess of $1000 must be included in the Employee’s annual financial disclosure statement.

**Chapter 3: Prohibited-Source Sponsored Events, Receptions, and Meals**

**Section 3.01 Business Meals**

In general, Employees are prohibited from accepting a meal from a Prohibited Source. However, an Employee may accept free modest meals or refreshments from a Prohibited Source under the following limited circumstances:

(a) in the course of and for the purpose of conducting MTA Agency business at a Prohibited Source’s facility, when offered unexpectedly during a meeting which the Employee is attending for official reasons, or when offered at a company cafeteria or other company facility at the Prohibited Source’s place of business and individual payment is impractical; or

(b) when attending a seminar or conference in connection with an MTA Agency and meals or refreshments are provided to all participants.
A meal is considered modest for purposes of the foregoing if the food and beverage is valued at fifteen dollars or less. Under the MTA Code of Ethics, an Employee may accept such a modest meal only under the circumstances noted above.

An Employee may not accept a meal from a Prohibited Source outside of a Prohibited Source’s facility (except at a seminar or conference as set forth in Section 3.01(b) above). If an Employee has a meal with a Prohibited Source, the Employee shall pay the full value of such meal with his or her own funds with or without MTA Agency reimbursement.

**Reminders:** If you have a meal with a Prohibited Source and simply split the bill, you may be in violation of this Code if you do not pay the full value of your meal. It is prudent for Employees to obtain proof of payment because simply putting money on the table may not provide an adequate basis for proving that an Employee paid for his or her own meal. The better practice is to get a separate check and keep the receipt.

**Section 3.02 Educational Seminars**

Employees are encouraged to continue to participate in events that will enhance their professional development. In certain professions, it is customary for Prohibited Sources, including companies that do business with the MTA, and industry groups, to sponsor lectures and continuing education seminars. Occasionally, such educational events are targeted to Employees and do not include other similarly situated public or private sector employees. Employees may attend such educational events if attendance at the event would further the interests of the MTA Agency, if the event relates to the Employee’s official duties, and if the invitation does not involve recreational activities such as golf, tennis, or cruises.

However, Employees who manage the Prohibited Source’s work or are involved in the review/approval of payments to the Prohibited Source must consult with their Agency’s Ethics Officer before accepting professional continuing education credits.

**Section 3.03 Attendance at Prohibited-Source/Industry-Sponsored Events and Receptions**

Employees are encouraged to continue to participate in events that will enhance their professional development. Employees frequently receive complimentary
invitations to Prohibited Source/industry groups sponsored events that include receptions or hospitality suites sponsored by a Prohibited Source/industry group. **Employees should evaluate any such invitations with caution and obtain prior approval from their Agency Ethics Officer.** Employees may attend complimentary Prohibited Source/industry-sponsored events, including receptions or hospitality suites only if all of the following conditions are met:

1. Attendance at the event would further the interests of the MTA Agency;
2. The event relates to the Employee’s official duties or responsibilities or allows the Employee to perform a ceremonial function appropriate to his or her position;
3. The event is a “widely attended event” at which at least twenty-five individuals other than Employees attend or were, in good faith, invited to attend and the event is also complimentary to such other non-Employees attending or invited to attend;
4. Any reception or hospitality suite is open to all event attendees; and
5. The event does not include a formal sit-down meal or involve recreational activities such as golf, tennis, or cruises.

In evaluating approval of such participation, your Agency Ethics Officer will take into consideration a number of factors, including but not limited to: the nature of any pending matter affecting the sponsor or donor's interest, the importance of the event to the MTA, the significance of the Employee's role in the event and whether the MTA Agency's interest in the Employee's participation outweighs the likelihood that such participation would be perceived as improperly influencing the Employee in the performance of his or her official duties, the timing of the event, the purpose of the event, the identity of other expected participants and the monetary value of the event.

In circumstances in which a significant activity at the event will be a speaker or attendee addressing an issue of public interest or concern, the State Legislature has determined the requirement that the event “relate to official duties or responsibilities” is satisfied.

An Employee’s travel expenses relating to attendance at an industry or Prohibited Source-sponsored event may not be reimbursed or paid for by the event sponsor or other Prohibited Source. (See Travel Reimbursement Section 3.08)

An Employee may attend a Prohibited Source-sponsored event at his or her own expense but the cost paid by the Employee shall be based on the price paid by
the other paying attendees or if there is no admission fee required, then based
on the actual cost to the sponsor. **It is prudent for Employees to obtain proof
of payment.**

**Section 3.04 Senior Management Attendance at
Prohibited-Source-Sponsored Events**

The Chair/Chief Executive Officer of MTA, the President of an MTA Agency,
or their designee(s) may attend functions sponsored and paid for by Prohibited
Sources when attendance is related and appropriate to that attendee’s official
duties or when the purpose of attendance is the performance of a cerem onial or
other function that is appropriate to that attendee’s official duties with their MTA
Agency. The attendee shall provide advance written notice of such invitation to
the MTA Chief Compliance Officer and their Agency’s General Counsel.

**Section 3.05 Attendance at Banquets, Galas, and Fund-Raising Events**

(a) Employees may purchase tickets using their own funds and may attend
fund-raising and charitable events sponsored by Prohibited Sources on their
own time, subject to compliance with the applicable provisions of the State
Ethics Law, this Code, and any other applicable statutes, rules, regulations,
policies, or procedures.

(b) Employees may attend fund-raising and charitable events with tickets
purchased by an MTA Agency in compliance with the applicable policies
and procedures relating to such purchases.

(c) Employees may not accept from any individual or firm, directly or
indirectly, tickets to any banquet, gala, or fund-raising
event by a Prohibited Source, if those tickets were
subsidized or paid for directly or indirectly by the
Prohibited Source including without limitation the
Transit Museum Gala. Such tickets may not be
donated by an individual or firm to an MTA Agency
and then distributed to Employees of an MTA
Agency.

**Section 3.06 Charitable/Political Benefits, Contributions, and Fundraising
Activities**

Solicitation by Employees of charitable or political contributions from Prohibited
Sources, including giving Prohibited Sources invitations to charitable or political
functions or events, is prohibited.
ALL-AGENCY CODE OF ETHICS

Employees are prohibited from using the MTA’s name, their official title, position or authority in any fundraising activity unless authorized by MTA’s Chief Compliance Officer. Authorization may be granted only if the fundraising is in furtherance of the MTA’s mission and does not create an appearance of or any actual conflict of interest.

Employees may engage in fundraising in a personal capacity provided they do not use their title, position or authority to further their fundraising activities and do not personally solicit funds from a subordinate or from persons known to the Employee to be a Prohibited Source.

Section 3.07 Events Honoring an Employee

Prohibited Sources should only be invited to events honoring an Employee (such as an Employee’s retirement dinner or an event where the Employee is one of the honored guests) if they have a personal relationship with the honored Employee and there is no actual, implied, or apparent promise of benefit from accepting, or actual, implied, or apparent threat of retaliation from refusing, such invitation. Such invitations should be made with caution.

Section 3.08 Reimbursement of Travel Expenses for Official Duties

Under no circumstances shall an Employee accept reimbursement of travel expenses, including but not limited to, transportation costs, registration fees, food or lodging from a Prohibited Source.

Employees may accept reimbursement from entities other than Prohibited Sources for travel expenses related to the Employees’ official duties if the purpose of the travel benefits the MTA Agency in the conduct of its business and prior approval has been received in accordance with the procedures set by the applicable MTA Agency and this Code.

Employees must obtain approval from their Agency Ethics Officer with the concurrence of Corporate Compliance prior to accepting such travel reimbursement. The approval request must be in writing and received by the Agency Ethics Officer reasonably in advance of the time the travel is to begin.

Employees required to file a financial disclosure statement must report any reimbursement for travel expenses which totals in excess of $1,000.
Chapter 4: Conflicts Of Interest, Other Employment, and Political Activities

Section 4.01 Conflicts of Interest/Recusal

**Conflict of Interest**

Employees shall not have any interest, personal, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is or may be in conflict with the proper discharge of his or her duties.

Employees must notify their Agency Ethics Officer or Ethics Committee directly regarding any possible Conflict of Interest.

Employees must not only avoid Conflicts of Interest with the MTA but also even the appearance of a conflict.

**Reminders:**

(a) If an Employee is uncertain as to whether a given situation creates a real or apparent Conflict of Interest, such Employee should promptly disclose that situation to, and seek guidance from, his or her supervisor, Department Head, the applicable Agency Ethics Officer or Ethics Committee, or MTA Chief Compliance Officer.

(b) With respect to all work an Employee performs, such Employee must be vigilant about the existence of any circumstances, interests, or relationships which might create or might be reasonably perceived by others as constituting a Conflict of Interest. If an Employee is uncertain as to whether a given situation creates a real or apparent Conflict of Interest, such Employee must promptly disclose that situation to, and seek guidance from, such Employee’s Agency Ethics Officer, Ethics Committee, or MTA Chief Compliance Officer. In order to avoid a Conflict of Interest or the appearance of one, it may be necessary for Employees to seek recusal from involvement with a matter creating the Conflict of Interest or the appearance of a Conflict of Interest. Employees must adhere strictly to the Conflict of Interest guidance they receive from their applicable Agency Ethics Officer or Ethics Committee.

**Examples:** It could be a Conflict of Interest if an Employee participated in a transaction involving an MTA Agency in which transaction the Employee or someone associated with the Employee (Family Member
or by a Business or financial relationship) had, directly or indirectly, a financial or other private interest (other than a de minimis financial interest as discussed in Section 4.04 below).

It could be a Conflict of Interest if an Employee participates in a transaction or business decision in their official capacity involving someone with whom they have a personal relationship.

Recusal

If an Employee believes he or she has an actual or apparent Conflict of Interest involving the MTA on a particular matter, the Employee shall not participate in the matter pending a determination by their Agency Ethics Officer. Recusals are at the Agency’s discretion and shall be approved only if practical and in the best interests of the applicable MTA Agency.

The recusal requires that the Employee not participate directly or indirectly in any discussion or decision that in any way relates to the matter that gives rise to the Conflict of Interest.

The recusal must be in writing and contain:

(a) The nature of the actual or apparent Conflict of Interest;
(b) A delegation of authority to a non-subordinate employee;
(c) Any requirements and conditions of the recusal;
(d) The period of time the recusal will remain in effect;
(e) The approval of the Agency Ethics Officer; and
(f) The concurrence of the Chief Compliance Officer.

A copy of the recusal must be sent to all employees who are likely to work on the matter giving rise to the recusal.

Section 4.02 Public Trust

(a) Employees shall not engage in a course of conduct that will raise suspicion among the public that they are likely to be engaged in acts that are in violation of the public trust. Employees shall avoid even the appearance that they can be improperly (1) influenced in the performance of their official duties or (2) induced to violate the public trust or impair
their independence of judgment in the exercise of their official duties.

Example: An Employee’s undisclosed social relationship with a Prohibited Source might create an impression of impropriety if the Employee were in a position to act favorably toward the Prohibited Source in an MTA Agency matter.

(b) Employees shall not use or attempt to use their official position to secure unwarranted privileges or exemptions for themselves or others.

(c) Employees shall not by their conduct give reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties, or that they are affected by the kinship, rank, position, or influence of any party or person.

Section 4.03 Confidential Information

Employees shall not disclose Confidential Information without the permission of the General Counsel of the MTA Agency at which such individual is employed for any purpose, or use such information to further their personal interests.

Section 4.04 Financial Interest

(a) An Employee, or firm or association of which such Employee is a member, or corporation, ten per cent (10%) or more of the stock of which is owned or controlled directly or indirectly by such Employee, shall not (1) sell any goods or services having a value in excess of twenty-five dollars ($25) to any New York State Agency, or (2) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by a New York State Agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding.

Exception: This restriction does not apply to the publication of resolutions, advertisements, or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

(b) Employees shall not knowingly engage in any transaction on behalf of an MTA Agency with any business entity in which they or a Family Member has a direct or indirect financial interest, excluding mutual funds or exchange traded funds, that might reasonably tend to conflict with the
proper discharge of their official duties. These provisions may be waived if both the Head of the Agency’s Procurement Department and the Agency General Counsel state in writing that it is in the best interests of the Agency to waive the provisions.

In addition, New York Public Officers Law §74 provides for civil penalties in circumstances of self dealing and makes it a misdemeanor offense for an Employee of NYCT to have any interest, direct or indirect, in any contract entered into by the Employee’s Agency.

Section 4.05 Employees Engaged in Selection, Award, and Administration of Contracts

(a) Employees shall not participate in the selection, award, or administration of a contract if the Employee knows that he/she or any of his/her Family Members, his/her business partner, or an organization that employs or is about to employ any of the above, has a financial or other interest, other than mutual funds or exchange traded funds, in any of the companies, their parent company, its affiliates or subsidiaries (“the company”) that propose or bid on or are awarded such contract. The provisions of Section 4.05(a) may be waived if the Head of the relevant Agency’s Department, as well as the Agency General Counsel, and the Agency’s Ethics Officer state in writing that it is in the best interests of the Agency to waive the provisions of this Section for a specific procurement or contract. Copies of any approved Waiver Request must also be filed with MTA Corporate Compliance.

(b) If a waiver is granted, (1) the Employee engaged in the award or selection of a contract, shall not during the selection process and for two weeks after the award of the contract buy or sell any of the company’s securities or (2) the Employee engaged in the administration of a contract shall not buy or sell any of the awarded company’s securities for six months after the award of the contract.

(c) An Employee shall not buy or sell any of the company’s securities based upon information received as a result of their employment with an MTA
Agency or for two weeks after the public release of information by any MTA Agency regarding the company.

(d) For two years from the commencement of employment with an MTA Agency, an Employee shall not do either of the following in relation to the Employee’s immediate past non-governmental employer: (1) participate in the selection or award of a contract in which a bidder or proposer is such immediate past employer; or (2) administer a contract awarded to such immediate past employer, unless the Employee has notified the Employee’s Department Head in writing of the potential conflict and has received from such Department Head, Agency General Counsel, and the Agency Ethics Officer or Ethics Committee a written waiver stating that it is in the best interests of the applicable MTA Agency for such Employee to act in such a role. A copy of such waiver request must be submitted to the MTA Chief Compliance Officer for approval.

(e) No Employee may ask a current or former contractor, or any officer, director or employee thereof, to disclose: (i) the political party affiliation of such contractor, or any officer, director or employee thereof; (ii) whether such contractor, or any officer, director or employee thereof, has made campaign contributions to any party, elected official, or candidate for elective office; or (iii) whether such contractor, or any officer, director or employee thereof, cast a vote for or against any elected official, candidate or political party. No Employee may award or decline to award any contract, or recommend, promise or threaten to do so, in whole or in part, because of a current or prospective contractor’s refusal to answer any inquiry regarding the above.

Section 4.06 Representation of Other Parties and Certain Appearances and Services

Employees shall not, directly or indirectly, act or appear on behalf of any individual, firm, or corporation, in any Business dealings with, or any matter against the interests of, an MTA Agency, or any other New York State Agency, other than as a fact witness. Employees of an MTA Agency are prohibited from appearing for compensation of any kind before a New York State Agency in connection with the purchase or sale of real estate, any rate-making proceeding, licensing, obtaining grants of money or loans, proceedings related to franchise(s), or the adoption or repeal of any rule having the force of law.
Exceptions

(a) Employees may appear before an MTA Agency or any New York State Agency or tribunal (1) in a representative capacity on behalf of an Employee organization or association or (2) in connection with a ministerial matter, such as acting as a notary or translator.

(b) Uncompensated work by Employees for not-for-profit entities doing Business with the State or City is not automatically a conflict of interest if the Employee takes no part in such Business dealings and the entity in question is not subject to supervision, control, or regulation by an MTA Agency. For example, an Employee might serve, without fee, on the Board of a community or church-sponsored day-care center that receives State funds. In such a case, the Employee cannot communicate with the State concerning receipt of those funds.

Section 4.07 Other Employment and Outside Activities

Outside employment/activities may pose ethical issues if there is a conflict between the Employee’s duties as an Employee and the requirements of the outside employment/activity.

"Full-time employment with an MTA Agency is deemed to be an Employee’s primary employment."

Employees are prohibited from outside employment, business, professional, or other outside activity that interferes or is in conflict with the proper and effective discharge of the individual’s official duties or responsibilities. Each MTA Agency requires that Employees devote appropriate time and attention to their employment with that agency. Full-time employment with an MTA Agency is deemed to be an Employee’s primary employment. All Employees must be fit for duty during their work hours.

Employees who wish to engage in outside employment/activities must consult with their Agency’s Human Resources Department or Ethics Officer or Ethics Committee to determine what dual employment or outside activity policy exists at the employing Agency.

Employees may engage in outside employment/activity provided that (1) such employment/activity does not interfere with their ability to devote appropriate time and attention to their employment with their MTA Agency; (2) such employment/activity does not violate the specific guidelines for other
employment set by their MTA Agency; (3) they do not use any MTA Agency resources (e.g., time, equipment, telephone, etc.) in connection with such employment; and (4) they obtain the required approvals as set forth in the specific procedures for approval of other employment set by their MTA Agency. Any Employee interested in running for elective office must also comply with the provisions of Section 4.08 of the Code.

Employees holding Policy-Making Positions must comply with certain additional requirements in connection with engaging in outside employment/activities:

(1) Employees holding Policy-Making Positions are prohibited from serving as a director or officer of a Prohibited Source (including nonprofit organizations) or a corporation or institution engaged in profit-making activities, holding an appointed or elected public office, or serving as a compensated director or officer of a nonprofit organization, without the prior approval of the applicable Agency Ethics Committee or Ethics Officer, and possibly the Joint Commission on Public Ethics.

(2) Employees in Policy-Making Positions shall not engage in any private employment, profession or Business or other outside activity, without the following prior approvals:

   (a) Annual compensation up to $1,000—No approval required.

   (b) Annual compensation in excess of $1,000 to $5,000—Written approval by the applicable MTA Agency Ethics Officer.

   (c) Annual compensation in excess of $5,000—Written approval by the applicable MTA Agency and the Joint Commission on Public Ethics.

(3) Employees in Policy-Making Positions with approved outside activities must inform their Agency Ethics Officer if there is any material change to either their approved outside activity or their current job responsibilities which would require a new evaluation of their outside activity approval.

(4) In addition, employees in Policy-Making Positions with approved outside activities shall annually complete a certification attesting to the fact that there have been no material changes to either their approved outside activity or their current job responsibilities which would require a new evaluation of their outside activity approval.

**Remember:**

(a) These approvals are in addition to any approvals which may be required by your Agency.
(b) Employees must comply with all conflict of interest rules and may not use any MTA Agency resources in connection with such activities.

(c) Employees holding Policy-Making Positions who request approval from the Joint Commission on Public Ethics to engage in outside activities must file a written request with the Commission which contains the approval of the activity by the applicable MTA Agency. Each Agency Ethics Officer or Ethics Committee shall establish a form for requests of approval of such outside activity. The Agency Ethics Officer or Ethics Committee acts as the agent of the applicable MTA Agency in approving or disapproving such requests. The Agency Ethics Officer’s or Ethics Committee’s disapproval is final.

Section 4.08 Political Activities of Employees

(a) An Employee interested in running for elective office shall give written notice of his or her intentions to the applicable Agency Ethics Officer or Ethics Committee, so that it may determine whether, and upon what conditions, seeking elective public office would be consistent with the ethics laws and regulations. Notice and approval of the Joint Commission on Public Ethics may also be required for Employees holding Policy-Making Positions pursuant to Title 19 NYCRR Part 932. In advance of running as a candidate in any election, the provisions of the Hatch Act should also be evaluated to determine whether such a candidacy is permitted under its terms.

(b) Employees shall not conduct political activities during work hours. MTA Agency property, including, without limitation, telephone, copy machines, computers, and other MTA Agency equipment, vehicles, office space, and services may not be used for political activities under any circumstances.

(c) Employees are prohibited from using federal funds for partisan political purposes of any kind in the administration of MTA Agency programs, either directly or through individuals or organizations with whom the MTA Agency contracts.

(d) Employees shall not use their positions or influence for the purpose of interfering with or affecting the result of an election. No Employee shall, directly or indirectly, use his or her official authority to compel or induce any other Employee or state official to make or promise to make any political contribution, whether by gift of money, service or other thing of value.

(e) Employees holding Policy-Making Positions shall not serve as: (1) officers
of any political party or political organization or (2) members of any political party committee, including political party district leaders or as members of a political party national committee. “Political organization” means any organization affiliated with a political party but does not include a judicial nominating committee, an organization supporting a particular cause with no partisan activities, a campaign or fundraising committee, or serving as a delegate to a state or national party convention.

(f) Consistent with this Code, Employees are otherwise free to participate in the political process on their own time, but there must be a clear separation between their political activities and the discharge of their duties as Employees of an MTA Agency.

(g) No Employee may during the consideration of an employment decision ask any applicant to disclose: (i) their political party affiliation; (ii) whether they made campaign contributions to any party, elected official or candidate for elective office; or (iii) whether the applicant cast a vote for or against any elected official, candidate or political party. The provisions of this paragraph shall not apply where such inquiry is necessary for the proper application of any state law or regulation.

No Employee may decline to hire or promote, discharge, discipline, or in any manner change the official rank or compensation of any Employee, or applicant for employment, or promise or threaten to do so, based upon a refusal to answer any inquiry prohibited by this section or for giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

(h) The MTA’s Chairman and Chief Executive Officer and Agency Presidents shall not seek nomination or election to any compensated federal, state or local public office, or shall become a candidate for such office, unless such individual first resigns from his or her employment, or requests and is granted a leave of absence without pay, such resignation or leave must commence before such individual engages in any campaign activities, including but not limited to, announcing a candidacy, circulating petitions, soliciting contributions, distributing literature, or taking any other action to actively promote oneself as a candidate for elective office.

Section 4.09 Other State Employment

Employees who are subject to the New York State Civil Service Law shall not accept appointment or employment on a full-time or part-time basis, in a State
department or agency, or in the Legislature or the judiciary, for which compensation is payable, without the prior consent in writing of the Agency President and Agency Ethics Officer. The written consent shall be filed with the NYS Office of the Comptroller and MTA Corporate Compliance.

Chapter 5: Future Employment

Section 5.01 Restrictions on Future Employment – Purpose

Employment with an MTA Agency restricts to a degree the type of employment one may accept upon leaving an MTA Agency. These restrictions are based upon statutory requirements. Both this Code and applicable statutes seek to discourage actual conflicts of interest and conduct from which reasonable inferences may be drawn that Employees of an MTA Agency might not have been loyally serving such MTA Agency’s interests during their employment or, thereafter, might be taking undue advantage of inside information or positioning derived from their former employment with an MTA Agency.

Section 5.02 Restrictions on Future Employment – Limited and Lifetime Bars

(a) Two-Year Bar

No former Employee shall, within two (2) years after termination of employment with an MTA Agency, appear before such agency or receive compensation for, or render compensated services on behalf of, any person, firm, corporation, or association in relation to any case, proceeding or application or any other matter before such MTA Agency.

(b) Lifetime Bar

No former Employee shall ever appear, practice, communicate, or otherwise render any services or receive compensation for such services rendered before an MTA Agency or any New York State Agency for, or on behalf of, any person, firm, corporation, or other entity in relation to any case, proceeding, or transaction with respect to which such person was directly concerned and in which he or she personally participated during the period of service or employment, or which
was under their active consideration. The definition of what constitutes “ever appear, practice, communicate or otherwise render any services” is given a broad interpretation. Employees should contact their Agency Ethics Officer regarding this definition before rendering any such service.

**Exceptions:**

1. These restrictions on future employment do not apply to subsequent services rendered in an official capacity as an elected official or an Employee of another governmental entity.

2. The Agency may seek a waiver with respect to a former Employee pursuant to Public Officer Law Section 73 if the Employee has expertise, knowledge, or experience with respect to a particular matter that meets the needs of the agency and is otherwise unavailable at a comparable cost.

3. The Agency may seek a waiver with respect to a former Employee pursuant to Public Officer Law Section 73 if the services of such former officer or Employee are required in connection with the agency’s response to a disaster emergency declared by the governor pursuant to section twenty-eight of the Executive Law.

**Reminders:**

1. For purposes of the post-employment bars, certain Employees, particularly those at MTA Headquarters and MTA Capital Construction, may be considered to be Employees of multiple MTA Agencies based on the scope of their job responsibilities. For clarification of their particular circumstances, the Employees may seek guidance from their former Agency Ethics Officer or MTA Corporate Compliance.

2. The Joint Commission on Public Ethics may not consider not-for-profit entities in the transportation field and certain quasi-governmental organizations as governmental entities for purposes of the exception noted above and employment at such entities may be subject to the post-employment bars described above.

The following are examples of the application of the two-year and lifetime bars:

**Example 1:** A former Construction Manager in the Department of Capital Program Management at New York City Transit (NYCT) may not, within two years after termination of NYCT employment, render services on behalf of a contractor in connection with any Business the contractor has with NYCT.
Example 2: No former Metro-North Employee, for a period of two years subsequent to his or her termination from employment (including retirement) may contract with Metro-North as a consultant to perform services of any kind on behalf of Metro-North, unless MNR has obtained a waiver from the Joint Commission on Public Ethics as set forth above.

Example 3: A former procurement representative in the procurement department at LIRR who was directly concerned with, or was responsible for, the negotiation of a contract during his or her LIRR employment may never appear before an MTA Agency or any other New York State Agency or render services on behalf of any outside person or firm, such as a contractor or subcontractor with regard to that contract, including but not limited to, the preparation or evaluation of claims, or the negotiations of change orders, relating to the contract.

Section 5.03 Negotiations for Future Employment

(a) Solicited

Employees are prohibited from soliciting, negotiating or having any arrangement concerning an employment opportunity with a non-governmental individual or entity that has a specific pending matter before the Employee.

Those Employees seeking employment outside of government with an entity or individual that has a specific pending matter before the Employee may only solicit an employment opportunity with the non-governmental individual or entity after waiting:

(1) 30 days from the time the matter before the Employee is closed, or
(2) 30 days from the time the Employee has no further involvement with the matter because of recusal or reassignment.

(b) Unsolicited

Employees who receive an unsolicited post-government employment-related communication from a non-governmental individual or entity that has a specific pending matter before the Employee cannot pursue employment with the non-governmental entity or individual unless the following occurs:

(1) they are recused from the matter and any further official contact with the entity or individual and
(2) they wait 30 days from such recusal to enter into post-government employment communications with the entity or individual.
(c) Notification

Employees must promptly notify their supervisor and Agency Ethics Officer of such outside employment related communications whether or not they intend to pursue the post-government employment opportunity.

In the event of such notification of a solicitation and Employee’s desire to pursue the solicitation, the Employee’s supervisor is obligated to advise such supervisor’s superiors, in writing, up to and including the Department Head, of the Employee’s desire to pursue the solicitation and the manager’s intention to establish recusal procedures, if practical, to reassign the individual or to refuse reassignment.

(d) Recusal

Recusal shall be granted only if practical and in the best interests of the applicable MTA Agency. Reassignment shall be refused when the manager determines that reassignment would be impractical or inappropriate. The manager may not take action with respect to notifying the Employee of such manager’s decision until approved by the Department Head. If recusal is not practical, and in the best interests of the applicable MTA Agency, or if reassignment is refused, the Employee is prohibited from pursuing the solicitation.

Exception: This provision does not apply to employment negotiations with other government agencies.

Remember: The higher the level of responsibility which an Employee holds within an MTA Agency, the greater the number of matters which are likely to be deemed as specific pending matters before him or her. Employees should take an expansive view as to the existence of possible conflicts when deciding whether to give notice as described in this Section.

The following are examples of the application of the employment negotiation procedures:

Example 1: A Deputy Vice President in the Department of Capital Program Management at NYCT who receives an unsolicited job offer from a Prohibited Source with specific pending matters before such Employee may not negotiate for such position without full compliance with the notice, approval, and recusal procedures set forth above.

Example 2: A manager at LIRR whose duties include procurement is approached by a firm with which he or she has a specific pending matter
and told “if you ever decide to leave the LIRR, we have a place for you in our firm.” The LIRR manager must notify his or her supervisor and ethics officer of this conversation because it would be considered a communication intended to solicit employment.

Section 5.04 Notice of Future Employment Restrictions

An Employee who provides notice of leaving service at an MTA Agency, either by retirement or resignation, or whose employment is terminated, will receive a memorandum summarizing the future-employment restrictions of the Ethics Law and of this Code. All Employees in management and non-represented titles and Employees in certain represented titles designated by the applicable MTA Agency may be required to sign a certification stating that the policies outlined in the memorandum have been complied with, and to state the name of a new employer, if applicable.

Exception: From time to time, the Future-Employment restrictions have been legislatively modified to permit exceptions to these policies when Employees are laid off. An Employee in such a position should consult with the applicable Agency Ethics Officer or Ethics Committee if there is a question of whether such exceptions are in force.

Chapter 6: Financial Disclosure

Section 6.01 Covered Employees

Employees must file an Annual Statement of Financial Disclosure if such Employee:

(a) Has a gross salary within the preceding calendar year that exceeded the annual salary of state employees at the SG-24 job rate as of April 1 of the year in which the Annual Statement of Financial Disclosure is to be filed, unless specifically exempted in accordance with the State Ethics in Government Act; or

(b) Regardless of income, holds a Policy-Making Position.

Notes:

(a) The Joint Commission on Public Ethics is required to make Annual Statements of Financial Disclosure available to the public upon request, except as to values and amounts, and except to the extent the reporting
individual has obtained a ruling from the Joint Commission on Public Ethics preventing or limiting public disclosure.

(b) Each MTA Agency shall prepare a list of Employees in Policy-Making Positions and shall, during February of each year, notify the Joint Commission on Public Ethics of the identity of all such titles and persons required to file an Annual Statement of Financial Disclosure with the Commission. Procedures shall also be established for identifying to the Joint Commission on Public Ethics all Employees newly subject to the filing requirements by reason of having assumed Policy-Making Positions. The Joint Commission on Public Ethics may be asked to render advisory opinions or issue guidelines for such determinations.

(c) The Annual Statement of Financial Disclosure solicits various items of information concerning the finances and employment of the Employee, the Employee’s spouse, and unemancipated children.

Exceptions:

(a) Non-policy making Employees, or their bargaining or other representatives, may request that the Joint Commission on Public Ethics grant exemptions, either in whole or in part, from the reporting requirements. Appeals from denials of such an exemption are to be made to the Joint Commission on Public Ethics.

(b) Employees who are required to file an Annual Statement of Financial Disclosure based on their gross salary but do not hold Policy-Making Positions may be entitled to an exemption from the financial disclosure requirements, on the grounds that the public interest does not require disclosure and that the Employee is not involved with the discretionary, Business, or regulatory activities of the applicable MTA Agency.

(c) Employees may seek an exemption from any requirement to report one or more items of information pertaining to the financial status of their spouse or unemancipated child. An Employee may also request deletion of portions of information called for on the Annual Statement of Financial Disclosure form that could otherwise be publicly disclosed. Grounds

“The Annual Statement of Financial Disclosure solicits various items of information concerning the finances and employment of the Employee, the Employee’s spouse, and unemancipated children.”
supporting such requests are that the spouse or child (where applicable) objects to providing the information necessary to make such disclosure and that such information would have no material bearing on the discharge of the reporting Employee’s duties.

Section 6.02 Dates for Filing and Related Penalties

(a) Employees required to file pursuant to Section 6.01 must file their Annual Statement of Financial Disclosure by May 15th of each year, or within thirty (30) days of a covered Employee’s appointment or promotion, whichever is later. An Employee may indicate with respect to any item of the Annual Statement of Financial Disclosure that information with respect thereto is lacking and will be supplied in a supplemental statement to be filed no later than the seventh (7th) day following the date to which that Employee could have received an automatic extension to file their income tax returns for that year. The Joint Commission on Public Ethics may also grant hardship applications.

(b) If an Employee fails to file the Annual Statement of Financial Disclosure as required or omits relevant information, he or she shall be subject to discipline, up to and including dismissal. In addition, criminal or civil penalties may be imposed as set forth in Chapter 9 below.

Chapter 7: Books And Records

Section 7.01 Accuracy and Completeness of Financial Records

(a) Employees who are involved in the preparation of the MTA Agency’s financial records must ensure that the accounting and financial records of their MTA Agency meet the highest standards of accuracy and completeness. Reporting accurate and complete information about the MTA Agency’s financial condition is an essential responsibility of all Employees.

(b) If you have reason to believe that any of the MTA Agency’s financial records are not being maintained in an accurate or complete manner, you are expected to report this immediately to your Agency’s General Counsel’s Office or Chief Compliance Officer or your Agency’s Chief Financial Officer or the Auditor General.

Section 7.02 Financial Statements and Accounts

Employees who are involved in the preparation of the MTA Agency’s financial
statements must do so according to generally accepted accounting principles and other applicable accounting standards and rules, so that the statements fairly and completely reflect the operations and financial condition of the MTA Agency.

**Chapter 8: Other Ethics Issues**

**Section 8.01 Nepotism**

It is the policy of the MTA Agencies to ensure that all job opportunities at MTA Agencies are based on merit and qualifications. Employees are prohibited from participating in any hiring or employment decision relating to a Family Member. If a hiring or employment matter arises relating to a Family Member, then the Employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter. There will be no preferential treatment for Family Members of current or former Employees and/or union officials.

Employees are required to comply with and should consult the All-Agency Policy Directive, Anti-Nepotism Employment Procedures.

MTA Agencies must ensure that contracting opportunities are based only on merit and qualifications. There will be no preferential treatment for Family Members of current or former Employees and/or union officials. Employees are prohibited from taking part in any contracting decision: (i) relating to a Family Member; or (ii) relating to any entity in which either they or a Family Member is an officer, director or partner, or in which a Family Member owns or controls 10% or more of the stock (or 1% or more if in the case of a corporation whose stock is regularly traded on an established securities exchange) of such entity.

If a contracting matter arises relating to a Family Member, then the Employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

An Employee cannot participate in any decision to invest MTA funds in any security of any entity in which that Employee or any Family Member of that Employee has a financial interest, is an underwriter, or receives any brokerage, origination or servicing fees.

**Section 8.02 Business Relationships between Employees**

MTA managers and supervisors are prohibited from hiring Employees whom
they directly or indirectly supervise or manage to work for or with them as full-time, part-time, or temporary employees or as consultants in any outside business entity.

Section 8.03 Financial Transactions between Employees

MTA managers and supervisors are prohibited from engaging in financial transactions with Employees whom they directly or indirectly supervise or manage. MTA managers and supervisors may not obtain or use or attempt to use the credit of any Employee whom they directly or indirectly supervise or manage as applicant, maker, co-signer, or endorser of any credit instrument in any connection with a loan or similar transaction.

Section 8.04 Prohibition Against the Use of MTA Property

MTA's names, logos, supplies, equipment, computer resources, personnel, and other resources may not be utilized for non-governmental purposes, including for personal purposes or for outside activities of any kind except as may be specifically authorized herein:

a) Official stationery may not be used for non-governmental purposes, nor may MTA resources be used to mail personal correspondence. The designation "personal" on MTA Agency stationery means only that the contents are meant for the personal viewing of the addressee and not that the sender is acting unofficially. All letters and other written materials printed on such official stationery are considered official, and thus the designation “unofficial” has no meaning and may not be used

b) Under no circumstances may MTA mail, postage, internal office mail, or inter city couriers be used for non-governmental purposes.

c) MTA telephones may not be used for non-governmental long distance calls, except for toll free calls, collect calls, and calls billed to a personal telephone number. MTA telephones may be used for incidental and necessary personal local calls that are of limited number and duration and do not conflict with the proper exercise of the duties of the Employee.

d) MTA computer resources may be used for incidental and necessary personal purposes, such as sending personal electronic mail messages, provided that such use is in a limited amount and duration and does not conflict with the proper exercise of the duties of the Employee. (See MTA Computer Usage and Social Media Policy Directive)
c) MTA vehicles shall be used for official business or incidental use associated with official business away from an Employee’s official work station. Individuals who are authorized by their Agency to use a vehicle for personal purposes shall keep records of such use, and the value of such personal use shall be calculated and reported as personal income to such individual for tax purposes.

Any Agency policy regarding use of MTA property must be consistent with or more restrictive than this Section of the Code.

Chapter 9: Discipline/Penalty for Violation of this Code or State Ethics Laws

Section 9.01 General

Employees who violate any provision of the State Ethics Laws or of this Code may be subject to disciplinary action consistent with that administered for violations of the rules and regulations of the applicable MTA Agency, up to and including termination.

Section 9.02 Civil Penalties

A violation of Public Officers Law Sections 73(2), (3), (4), (5), (7), (8), (12), (14), (15), (16), (17) and Sections 73-a, may result in the Joint Commission on Public Ethics imposing a civil penalty of up to forty thousand dollars ($40,000) and the value of any gift, compensation, or benefit received as a result of such violation. These sections include but are not limited to prohibitions concerning gifts, future employment, and financial interests in MTA contracts as well as obligations in connection with the filing of Annual Statements of Financial Disclosure.

A violation of Public Officers Law Section 74 may result in the Joint Commission on Public Ethics imposing a civil penalty of up to ten thousand dollars ($10,000) and the value of any gift, compensation, or benefit received as a result of such violation.

Section 9.03 Criminal Penalties

A violation of Public Officers Law Section 73(2), (3), (4), (5), (7), (8), and Section 73-a, may result, in lieu of civil penalties, the Joint Commission on Public Ethics referring the violation to the New York State Attorney General or local prosecutor for criminal prosecution as a Class A misdemeanor, punishable by imprisonment for up to one year and a fine up to one thousand dollars ($1,000).
APPENDIX A: AGENCY ETHICS OFFICER CONTACT INFORMATION

MTA Headquarters
Lamond Kearse
646-252-1329

MTA New York City Transit
Paige Graves
718-694-5719

MTA Long Island Rail Road
Stephen N. Papandon
718-558-8327

MTA Metro-North Railroad
Susan Sarch
212-340-4933

MTA Bridges and Tunnels
M. Margaret Terry
646-252-7619

MTA Capital Construction
Evan Eisland
646-252-4274

MTA Bus Company
Elizabeth Cooney
646-252-3754

To obtain a current list of Ethics Officers, please call the Ethics/Compliance Helpline at 888 U ASK MTA or go to MTA Today page and search for Code of Ethics.
Metropolitan Transportation Authority

New York City Transit
Long Island Rail Road
Metro-North Railroad
Bridges and Tunnels
Capital Construction
Bus Company
§ 73. Business or professional activities by state officers and employees and party officers.

1. As used in this section:

(a) The term "compensation" shall mean any money, thing of value or financial benefit conferred in return for services rendered or to be rendered. With regard to matters undertaken by a firm, corporation or association, compensation shall mean net revenues, as defined in accordance with generally accepted accounting principles as defined by the joint commission on public ethics or legislative ethics commission in relation to persons subject to their respective jurisdictions.

(b) The term "licensing" shall mean any state agency activity, other than before the division of corporations and state records in the department of state, respecting the grant, denial, renewal, revocation, enforcement, suspension, annulment, withdrawal, recall, cancellation or amendment of a license, permit or other form of permission conferring the right or privilege to engage in (i) a profession, trade, or occupation or (ii) any business or activity regulated by a regulatory agency as defined herein, which in the absence of such license, permit or other form of permission would be prohibited.

(c) The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

(d) The term "ministerial matter" shall mean an administrative act carried out in a prescribed manner not allowing for substantial personal discretion.

(e) The term "regulatory agency" shall mean the department of financial services, department of financial services, state liquor authority, department of agriculture and markets, department of education, department of environmental conservation, department of health, division of housing and community renewal, department of state, other than the division of corporations and state records, department of public service, the industrial board of appeals in the department of labor and the department of law, other than when the attorney general or his agents or
employees are performing duties specified in section sixty-three of the executive law.

(f) The term "representative capacity" shall mean the presentation of the interests of a client or other person pursuant to an agreement, express or implied, for compensation for services.

(g) The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department, any public benefit corporation, public authority or commission at least one of whose members is appointed by the governor, or the state university of New York or the city university of New York, including all their constituent units except community colleges of the state university of New York and the independent institutions operating statutory or contract colleges on behalf of the state.

(h) The term "statewide elected official" shall mean the governor, lieutenant governor, comptroller or attorney general.

(i) The term "state officer or employee" shall mean:
  (i) heads of state departments and their deputies and assistants other than members of the board of regents of the university of the state of New York who receive no compensation or are compensated on a per diem basis;
  (ii) officers and employees of statewide elected officials;
  (iii) officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies other than officers of such boards, commissions or councils who receive no compensation or are compensated on a per diem basis; and
  (iv) members or directors of public authorities, other than multi-state authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, who receive compensation other than on a per diem basis, and employees of such authorities, corporations and commissions.

(j) The term "city agency" shall mean a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include the board of education, the board of higher education, school boards, city and community colleges, community boards, the New York city transit authority, the New York city housing authority and the Triborough bridge and tunnel authority, but shall not include any court or corporation or institution maintaining or operating a public library, museum,
botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.

(k) The term "political party chairman" shall mean:

(i) the chairman of the state committee of a party elected as provided in section 2-112 of the election law and his or her successor in office;

(ii) the chairman of a county committee elected as provided in section 2-112 of the election law and his or her successor in office from a county having a population of three hundred thousand or more or who receives compensation or expenses, or both, during the calendar year aggregating thirty thousand dollars or more; and

(iii) that person (usually designated by the rules of a county committee as the "county leader" or "chairman of the executive committee") by whatever title designated, who pursuant to the rules of a county committee or in actual practice, possesses or performs any or all of the following duties or roles, provided that such person was elected from a county having a population of three hundred thousand or more or was a person who received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more:

(A) the principal political, executive and administrative officer of the county committee;

(B) the power of general management over the affairs of the county committee;

(C) the power to exercise the powers of the chairman of the county committee as provided for in the rules of the county committee;

(D) the power to preside at all meetings of the county executive committee, if such a committee is created by the rules of the county committee or exists de facto, or any other committee or subcommittee of the county committee vested by such rules with or having de facto the power of general management over the affairs of the county committee at times when the county committee is not in actual session;

(E) the power to call a meeting of the county committee or of any committee or subcommittee vested with the rights, powers, duties or privileges of the county committee pursuant to the rules of the county committee, for the purpose of filling an office at a special election in accordance with section 6-114 of the election law, for the purpose of filling a vacancy in accordance with section 6-116 of such law; or

(F) The power to direct the treasurer of the party to expend funds of the county committee. The terms “constituted committee” and "political committee", 

PUBLIC OFFICERS LAW §73
NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS
as used in this paragraph (k), shall have the same meanings as those contained in section 14-100 of the election law.

(I) A person has a "financial interest" in any entity if that person: (i) owns or controls ten percent or more of the stock of such entity (or one percent in the case of a corporation whose stock is regularly traded on an established securities exchange); or (ii) serves as an officer, director or partner of that entity.

(m) The "relative" of any individual shall mean any person living in the same household as the individual and any person who is a direct descendant of that individual's grandparents or the spouse of such descendant.

2. In addition to the prohibitions contained in subdivision seven of this section, no statewide elected official, state officer or employee, member of the legislature or legislative employee shall receive, or enter into any agreement express or implied for, compensation for services to be rendered in relation to any case, proceeding, application, or other matter before any state agency, or any executive order, or any legislation or resolution before the state legislature, whereby his or her compensation is to be dependent or contingent upon any action by such agency or legislature with respect to any license, contract, certificate, ruling, decision, executive order, opinion, rate schedule, franchise, legislation, resolution or other benefit; provided, however, that nothing in this subdivision shall be deemed to prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

3. (a) No statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by himself or another against the interest of the state in relation to any case, proceeding, application or other matter before, or the transaction of business by himself or another with, the court of claims.

(b) No state officer or employee who is required to file an annual statement of financial disclosure pursuant to the provisions of section seventy-three-a of this article, and is not otherwise subject to the provisions of this section, shall receive, directly or indirectly, or enter into any agreement express or implied, for any compensation, in whatever form, for the appearance or rendition of services by himself or another against the interest of the state agency by which he is employed or affiliated in relation to any case, proceeding, application or other matter before, or the transaction of business by himself or another with, the court of claims.
4. (a) No statewide elected official, state officer or employee, member of the legislature, legislative employee or political party chairman or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any state agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by a state agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

(b) No political party chairman of a county wholly included in a city with a population of more than one million, or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any city agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised directly or indirectly, by a city agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

(c) For purposes of this subdivision, the term "services" shall not include employment as an employee.

5. No statewide elected official, state officer or employee, individual whose name has been submitted by the governor to the senate for confirmation to become a state officer or employee, member of the legislature or legislative employee shall, directly or indirectly:

(a) solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence
him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part. No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances.

(b) solicit, accept or receive any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law unless under the circumstances it is not reasonable to infer that the gift was intended to influence him; or

(c) permit the solicitation, acceptance, or receipt of any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law to a third party including a charitable organization, on such official’s designation or recommendation or on his or her behalf, under circumstances where it is reasonable to infer that the gift was intended to influence him.

5-a. (a) For the purpose of this subdivision only, the term "honorarium" shall mean any payment made in consideration for any speech given at a public or private conference, convention, meeting, social event, meal or like gathering.

(b) No statewide elected official or head of any civil department shall, directly or indirectly, solicit, accept or receive any honorarium while holding such elected office or appointed position.

(c) No member of the legislature or legislative employee shall, directly or indirectly, solicit, accept or receive any honorarium while holding such elected office or employment, other than honorarium paid in consideration for a speech given on a topic unrelated to the individual’s current public employment or as earned income for personal services that are customarily provided in connection with the practice of a bona fide business, trade or profession, such as teaching, practicing law, medicine or banking, unless the sole or predominant activity thereof is making speeches.

6. (a) Every legislative employee not subject to the provisions of section seventy-three-a of this chapter shall, on and after December fifteenth and before the following January fifteenth, in each year, file with the joint commission on public ethics and the legislative ethics commission a financial disclosure statement of
(1) each financial interest, direct or indirect of himself, his spouse and his unemancipated children under the age of eighteen years in any activity which is subject to the jurisdiction of a regulatory agency or name of the entity in which the interest is had and whether such interest is over or under five thousand dollars in value.

(2) every office and directorship held by him in any corporation, firm or enterprise which is subject to the jurisdiction of a regulatory agency, including the name of such corporation, firm or enterprise.

(3) any other interest or relationship which he determines in his discretion might reasonably be expected to be particularly affected by legislative action or in the public interest should be disclosed.

(b) Copies of such statements shall be open for public inspection and copying.

(c) Any such legislative employee who knowingly and willfully with intent to deceive makes a false statement or gives information which he knows to be false in any written statement required to be filed pursuant to this subdivision, shall be assessed a civil penalty in an amount not to exceed ten thousand dollars. Assessment of a civil penalty shall be made by the legislative ethics committee in accordance with the provisions of subdivision twelve of section eighty of the legislative law. For a violation of this subdivision, the committee may, in lieu of a civil penalty, refer a violation to the appropriate prosecutor and upon conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor.

7. (a) No statewide elected official, or state officer or employee, other than in the proper discharge of official state or local governmental duties, or member of the legislature or legislative employee, or political party chairman shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by himself or another in relation to any case, proceeding, application or other matter before a state agency where such appearance or rendition of services is in connection with:

(i) the purchase, sale, rental or lease of real property, goods or services, or a contract therefor, from, to or with any such agency;

(ii) any proceeding relating to rate making;

(iii) the adoption or repeal of any rule or regulation having the force and effect of law;

(iv) the obtaining of grants of money or loans;

(v) licensing; or
(vi) any proceeding relating to a franchise provided for in the public service law.

(b) No political party chairman in a county wholly included in a city having a population of one million or more shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by himself or another in relation to any case, proceeding, application or other matter before any city agency where such appearance or rendition of services is in connection with:

(i) the purchase, sale, rental or lease of real property, goods or services, or a contract therefor, from, to or with any such agency;

(ii) any proceeding relating to ratemaking;

(iii) the adoption or repeal of any rule or regulation having the force and effect of law;

(iv) the obtaining of grants of money or loans;

(v) licensing. For purposes of this paragraph, the term "licensing" shall mean any city agency activity respecting the grant, denial, renewal, revocation, enforcement, suspension, annulment, withdrawal, recall, cancellation or amendment of a license, permit or other form of permission conferring the right or privilege to engage in (i) a profession, trade, or occupation or (ii) any business or activity regulated by a regulatory agency of a city agency which in the absence of such license, permit or other form of permission would be prohibited; and

(vi) any proceeding relating to a franchise.

(c) Nothing contained in this subdivision shall prohibit a statewide elected official, or a state officer or employee, unless otherwise prohibited, or a member of the legislature or legislative employee, or political party chairman, from appearing before a state agency in a representative capacity if such appearance in a representative capacity is in connection with a ministerial matter.

(d) Nothing contained in this subdivision shall prohibit a member of the legislature, or a legislative employee on behalf of such member, from participating in or advocating any position in any matter in an official or legislative capacity, including, but not limited to, acting as a public advocate whether or not on behalf of a constituent. Nothing in this paragraph shall be construed to limit the application of the provisions of section seventy-seven of this chapter.

(e) Nothing contained in this subdivision shall prohibit a state officer or employee from appearing before a state agency in a representative capacity on behalf of
an employee organization in any matter where such appearance is duly authorized by an employee organization.

(f) Nothing contained in this subdivision shall prohibit a political party chairman from participating in or advocating any matter in an official capacity.

(g) Nothing contained in this subdivision shall prohibit internal research or discussion of a matter, provided, however, that the time is not charged to the client and the person does not share in the net revenues generated or produced by the matter.

(h) Nothing contained in this subdivision shall prohibit a state officer or employee, unless otherwise prohibited, from appearing or rendering services in relation to a case, proceeding, application or transaction before a state agency, other than the agency in which the officer or employee is employed, when such appearance or rendition of services is made while carrying out official duties as an elected or appointed official, or employee of a local government or one of its agencies.

8. (a) (i) No person who has served as a state officer or employee shall within a period of two years after the termination of such service or employment appear or practice before such state agency or receive compensation for any services rendered by such former officer or employee on behalf of any person, firm, corporation or association in relation to any case, proceeding or application or other matter before such agency.

(ii) No person who has served as a state officer or employee shall after the termination of such service or employment appear, practice, communicate or otherwise render services before any state agency or receive compensation for any such services rendered by such former officer or employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration.

(iii) No person who has served as a member of the legislature shall within a period of two years after the termination of such service receive compensation for any services on behalf of any person, firm, corporation or association to promote or oppose, directly or indirectly, the passage of bills or resolutions by either house of the legislature. No legislative employee shall within a period of two years after the termination of such service receive compensation for any services on behalf of any person, firm, corporation or association to appear, practice or directly communicate before either house of the legislature to
promote or oppose the passage of bills or resolutions by either house of the legislature.

(iv) No person who has served as an officer or employee in the executive chamber of the governor shall within a period of two years after termination of such service appear or practice before any state agency.

(b)(i) The provisions of subparagraph (i) of paragraph (a) of this subdivision shall not apply to any state officer or employee whose employment was terminated on or after January first, nineteen hundred ninety-five and before April first, nineteen hundred ninety-nine or on or after January first, two thousand nine and before April first, two thousand twelve because of economy, consolidation or abolition of functions, curtailment of activities or other reduction in the state work force. On or before the date of such termination of employment, the state agency shall provide to the terminated employee a written certification that the employee has been terminated because of economy, consolidation or abolition of functions, curtailment of activities or other reduction in the state work force, and that such employee is covered by the provisions of this paragraph. The written certification shall also contain a notice describing the rights and responsibilities of the employee pursuant to the provisions of this section. The certification and notice shall contain the information and shall be in the form set forth below:

**CERTIFICATION AND NOTICE**

TO:  
EMPLOYEE’S NAME: ________________________________  
STATE AGENCY: ________________________________  
DATE OF TERMINATION: ________________________________  

I, (name and title) of (state agency), hereby certify that your termination from State service is because of economy, consolidation or abolition of functions, curtailment of activities or other reduction in the State work force. Therefore, you are covered by the provisions of paragraph (b) of subdivision eight of section seventy-three of the Public Officers Law.

YOU WERE DESIGNATED AS A POLICY MAKER:  
YES  NO  
(TITLE)
This certification affects your right to engage in certain activities after you leave state service.

Ordinarily, employees who leave State service may not, for two years, appear or practice before their former agency or receive compensation for rendering services on a matter before their former agency. However, because of this certification, you may be exempt from this restriction.

If you were not designated as a Policymaker by your agency, you are automatically exempt. You may, upon leaving State service, immediately appear, practice or receive compensation for services rendered before your former agency.

If you were designated as a Policymaker by your agency, you are eligible to apply for an exemption to the New York State Commission on Public Integrity at 540 Broadway Plaza, Albany, New York 12207.

Even if you are or become exempt from the two year bar, the lifetime bar of the revolving door statute will continue to apply to you. You may not appear, practice, communicate or otherwise render services before any State agency in relation to any case, proceeding, application or transaction with respect to which you were directly concerned and in which you personally participated during your State service, or which was under your active consideration.

If you have any questions about the application of the post-employment restrictions to your circumstances, you may contact the New York State Commission on Public Integrity at 518-408-3976 or 1-800-87ETHIC (1-800-873-8442).

(ii) The provisions of subparagraph (i) of this paragraph shall not apply to any such officer or employee who at the time of or prior to such termination had served in a policymaking position as determined by the appointing authority, which determination had been filed with the state ethics commission or the commission on public integrity, provided that such officer or employee may so appear or practice or receive such compensation with the prior approval of the state ethics commission or the commission on public integrity. In determining whether to grant such approval the state ethics commission or the commission on public integrity shall consider:

A. whether the employee’s prior job duties involved substantial decision-making authority over policies, rule or contracts;
B. the nature of the duties to be performed by the employee for the prospective employer;
C. whether the prospective employment is likely to involve substantial contact with the employee’s former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee;
D. whether the prospective employment may be beneficial to the state or the public; and
E. the extent of economic hardship to the employee if the application is denied.

(c) The provisions of paragraph (b) of this subdivision shall not apply to employees whose employment has been discontinued as a result of retirement or to employees who, prior to termination, have declined to exercise a right to another position with a state agency unless such position would require the employee to travel more than thirty-five miles in each direction to the new position or accept a reduction in base salary of more than ten per centum.

(d) Nothing contained in this subdivision shall prohibit any state agency from adopting rules concerning practice before it by former officers or employees more restrictive than the requirements of this subdivision.

(e) This subdivision shall not apply to any appearance, practice, communication or rendition of services before any state agency, or either house of the legislature, or to the receipt of compensation for any such services, rendered by a former state officer or employee or former member of the legislature or legislative employee, which is made while carrying out official duties as an elected official or employee of a federal, state or local government or one of its agencies.

(f) Nothing in this subdivision shall be deemed to prevent a former state officer or employee who was employed on a temporary basis to perform routine clerical services, mail services, data entry services or other similar ministerial tasks, from subsequently being employed by a person, firm, corporation or association under contract to a state agency to perform such routine clerical services, mail services, data entry services or other similar ministerial tasks; provided however, this paragraph shall in no event apply to any such state officer or employee who was required to file an annual statement of financial disclosure pursuant to section seventy-three-a of this article.

(g) Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of this subdivision, a former state officer or employee may contract individually, or as
a member or employee of a firm, corporation or association, to render services to any state agency when the agency head certifies in writing to the state ethics commission that the services of such former officer or employee are required in connection with the agency’s efforts to address the state’s year 2000 compliance problem.

(h) Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of this subdivision, a former state officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to any state agency when the agency head certifies in writing to the joint commission on public ethics that the services of such former officer or employee are required in connection with the agency’s response to a disaster emergency declared by the governor pursuant to section twenty-eight of the executive law.

(i) The provisions of subparagraphs (i) and (ii) of paragraph (a) of this subdivision shall not apply to any person as a result of his or her temporary employment by the New York state department of agriculture and markets in the civil service title of veterinarian one or animal health inspector one and their service, in that capacity, as a member of the New York state emergency veterinary corps.

8-a. The provisions of subparagraphs (i) and (ii) of paragraph (a) of subdivision eight of this section shall not apply to any such former state officer or employee engaged in any of the specific permitted activities defined in this subdivision that are related to any civil action or proceeding in any state or federal court, provided that the attorney general has certified in writing to the joint commission on public ethics, with a copy to such former state officer or employee, that the services are rendered on behalf of the state, a state agency, state officer or employee, or other person or entity represented by the attorney general, and that such former state officer or employee has expertise, knowledge or experience which is unique or outstanding in a field or in a particular matter or which would otherwise be generally unavailable at a comparable cost to the state, a state agency, state officer or employee, or other person or entity represented by the attorney general in such civil action or proceeding. In those instances where a state agency is not represented by the attorney general in a civil action or proceeding in state or federal court, a former state officer or employee may engage in permitted activities provided that the general counsel of the state agency, after consultation with the joint commission on public ethics, provides to the joint commission on public ethics a written certification which meets the requirements of this subdivision. For purposes of this subdivision the term "permitted activities" shall mean generally any activity performed at the request of the attorney general or the attorney general’s designee, or in cases where
the state agency is not represented by the attorney general, the general counsel of such state agency, including without limitation:

(a) preparing or giving testimony or executing one or more affidavits;
(b) gathering, reviewing or analyzing information, including documentary or oral information concerning facts or opinions, attending depositions or participating in document review or discovery;
(c) performing investigations, examinations, inspections or tests of persons, documents or things;
(d) performing audits, appraisals, compilations or computations, or reporting about them;
(e) identifying information to be sought concerning facts or opinions; or
(f) otherwise assisting in the preparation for, or conduct of, such litigation. Nothing in this subdivision shall apply to the provision of legal representation by any former state officer or employee.

* 8-b. Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of subdivision eight of this section, a former state officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to any state agency if, prior to engaging in such service, the agency head certifies in writing to the joint commission on public ethics that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the needs of the agency and is otherwise unavailable at a comparable cost. Where approval of the contract is required under section one hundred twelve of the state finance law, the comptroller shall review and consider the reasons for such certification. The joint commission on public ethics must review and approve all certifications made pursuant to this subdivision.

* NB There are 2 sub 8-b's

* 8-b. Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of subdivision eight of this section, a former state officer or employee who, prior to his or her separation from state service, was employed as a health care professional and, in conjunction with his or her state duties, provided treatment and/or medical services to individuals residing in or served by a state-operated facility is not barred from rendering services to such individuals in their care prior to leaving state service, at the state-operated facility which employed the former state officer or employee.

* NB There are 2 sub 8-b's

9. No party officer while serving as such shall be eligible to serve as a judge of any court of record, attorney-general or deputy or assistant attorney-general or solicitor
general, district attorney or assistant district attorney. As used in this subdivision, the term "party officer" shall mean a member of a national committee, an officer or member of a state committee or a county chairman of any political party.

10. Nothing contained in this section, the judiciary law, the education law or any other law or disciplinary rule shall be construed or applied to prohibit any firm, association or corporation, in which any present or former statewide elected official, state officer or employee, or political party chairman, member of the legislature or legislative employee is a member, associate, retired member, of counsel or shareholder, from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with a state agency, or a city agency with respect to a political party chairman in a county wholly included in a city with a population of more than one million, otherwise proscribed by this section, the judiciary law, the education law or any other law or disciplinary rule with respect to such official, member of the legislature or officer or employee, or political party chairman, where such statewide elected official, state officer or employee, member of the legislature or legislative employee, or political party chairman does not share in the net revenues, as defined in accordance with generally accepted accounting principles by the joint commission on public ethics or by the legislative ethics committee in relation to persons subject to their respective jurisdictions, resulting therefrom, or, acting in good faith, reasonably believed that he or she would not share in the net revenues as so defined; nor shall anything contained in this section, the judiciary law, the education law or any other law or disciplinary rule be construed to prohibit any firm, association or corporation in which any present or former statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee or state officer or employee who is subject to the provisions of section seventy-three-a of this article is a member, associate, retired member, of counsel or shareholder, from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with, the court of claims, where such statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee or state officer or employee who is subject to the provisions of section seventy-three-a of this article does not share in the net revenues, as defined in accordance with generally accepted accounting principles by the joint commission on public ethics or by the legislative ethics committee in relation to persons subject to their respective jurisdictions, resulting therefrom, or, acting in good faith, reasonably believed that he or she would not share in the net revenues as so defined.
11. Notwithstanding any provision of the judiciary law, the education law or any other law or disciplinary rule to the contrary:

(a) Conduct authorized pursuant to subdivision eight of this section by a person who has served as a member of the legislature or as a legislative employee shall not constitute professional misconduct or grounds for disciplinary action of any kind;

(b) No member of the legislature or former member of the legislature shall be prohibited from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with, any state agency solely by reason of any vote or other action by such member or former member in respect to the confirmation or election of any member, commissioner, director or other person affiliated with such state agency, but nothing in this paragraph shall limit the prohibition contained in subdivision eight of this section;

(c) The appearance, practice, communication or rendition of services in relation to any matter before, or transaction of business with a state agency, or with the court of claims, or the promotion or opposition to the passage of bills or resolutions by either house of the legislature, by a member, associate, retired member, of counsel or shareholder of a firm, association or corporation, in accordance with subdivision ten of this section, is hereby authorized and shall not constitute professional misconduct or grounds for disciplinary action of any kind solely by reason of the professional relationship between the statewide elected official, state officer or employee, political party chairman, member of the legislature, or legislative employee and any firm, association, corporation or any member, associate, retired member, of counsel, or shareholder thereof, or by reason of the appearance created by any such professional relationship.

12. A statewide elected official, state officer or employee, or a member of the legislature or legislative employee, or political party chairman, who is a member, associate, retired member, of counsel to, or shareholder of any firm, association or corporation which is appearing or rendering services in connection with any case, proceeding, application or other matter listed in paragraph (a) or (b) of subdivision seven of this section shall not orally communicate, with or without compensation, as to the merits of such cause with an officer or an employee of the agency concerned with the matter.

13. For the purposes of this section, a statewide elected official or state officer or employee or member of the legislature or legislative employee or political party chairman who is a member, associate, retired member, of counsel to, or shareholder of any firm, association or corporation shall not be deemed to have made
an appearance under the provisions of this section solely by the submission to a state agency or city agency of any printed material or document bearing his or her name, but unsigned by him or her, such as by limited illustrations the name of the firm, association or corporation or the letterhead of any stationery, which pro forma serves only as an indication that he or she is such a member, associate, retired member, of counsel to, or shareholder.

14. (a) No statewide elected official, state officer or employee, member of the legislature or legislative employee may participate in any decision to hire, promote, discipline or discharge a relative for any compensated position at, for or within any state agency, public authority or the legislature.

(b) This paragraph shall not apply to (i) the hiring of a relative by a legislator with a physical impairment, for the sole purpose of assisting with that impairment, as necessary and otherwise permitted by law; (ii) the temporary hiring of legislative pages, interns and messengers; or (iii) responding to inquiries with respect to prospective hires related to an individual covered by this paragraph.

15. No statewide elected official, state officer or employee, member of the legislature or legislative employee shall: (a) participate in any state contracting decision involving the payment of more than one thousand dollars to that individual, any relative of that individual, or any entity in which that individual or any relative has a financial interest; or (b) participate in any decision to invest public funds in any security of any entity in which that individual or any relative of that individual has a financial interest, is an underwriter, or receives any brokerage, origination or servicing fees.

16. (a) No statewide elected official, state officer or employee involved in the awarding of state grants or contracts may ask a current or prospective grantee or contractor, or any officer, director or employee thereof, to disclose: (i) the party affiliation of such grantee or contractor, or any officer, director or employee thereof; (ii) whether such grantee or contractor, or any officer, director or employee thereof, has made campaign contributions to any party, elected official, or candidate for elective office; or (iii) whether such grantee or contractor, or any officer, director or employee thereof, cast a vote for or against any elected official, candidate or political party.

(b) No statewide elected official or state officer or employee may award or decline to award any state grant or contract, or recommend, promise or threaten to do so, in whole or in part, because of a current or prospective grantee's or contractor's refusal to answer any inquiry prohibited by paragraph (a) of this subdivision, or
giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

17. **(a)** No statewide elected official, or state officer or employee may during the consideration of an employment decision ask any applicant for public employment to disclose: (i) the political party affiliation of the applicant; (ii) whether the applicant has made campaign contributions to any party, elected official, or candidate for elective office; or (iii) whether the applicant cast a vote for or against any elected official, candidate or political party. The provisions of this paragraph shall not apply where (1) such inquiry is necessary for the proper application of any state law or regulation; or (2) such inquiry is consistent with publicly disclosed policies or practices of any state agency or public authority, whose purpose is to ensure the representation of more than one political party on any multi-member body.

**(b)** No statewide elected official or state officer or employee may decline to hire or promote, discharge, discipline, or in any manner change the official rank or compensation of any state official or employee, or applicant for employment, or promise or threaten to do so, based upon a refusal to answer any inquiry prohibited by paragraph (a) of this subdivision, or for giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

**(c)** No state officer or employee shall, directly or indirectly, use his or her official authority to compel or induce any other state officer or employee to make or promise to make any political contribution, whether by gift of money, service or other thing of value.

18. In addition to any penalty contained in any other provision of law, any person who knowingly and intentionally violates the provisions of subdivisions two through five, seven, eight, twelve or fourteen through seventeen of this section shall be subject to a civil penalty in an amount not to exceed forty thousand dollars and the value of any gift, compensation or benefit received in connection with such violation. Assessment of a civil penalty hereunder shall be made by the state oversight body with jurisdiction over such person. A state oversight body acting pursuant to its jurisdiction, may, in lieu of a civil penalty, with respect to a violation of subdivisions two through five, seven or eight of this section, refer a violation of any such subdivision to the appropriate prosecutor and upon such conviction such violation shall be punishable as a class A misdemeanor.
§ 74. Code of ethics.

1. **Definition.** As used in this section: The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor or corporations closely affiliated with specific state agencies as defined by paragraph (d) of subdivision five of section fifty-three-a of the state finance law or their successors.

   The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

2. **Rule with respect to conflicts of interest.** No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. **Standards.**
   a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.

   b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

   c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.
d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.

e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

g. An officer or employee of a state agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.
4. **Violations.** In addition to any penalty contained in any other provision of law, any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation.
I. PURPOSE

The purpose of this policy is to provide and establish All-Agency standards and guidelines for the acquisition, installation, maintenance, and acceptable use of Computer Resources.

Computer Resources are provided by the Metropolitan Transportation Authority and its affiliated and subsidiary agencies to employees and other authorized individuals to assist them with their work responsibilities and duties. Use of such resources is subject to a variety of laws, regulations, and MTA Agency policies. Inappropriate use may expose the MTA Agencies to risks including virus attacks, network compromises, and legal liability.

Making users aware of the parameters of acceptable use is an essential part of assuring that the Computer Resources are used only for intended purposes and will help mitigate the potential that inappropriate uses will expose the MTA Agencies to unnecessary risks.

II. SCOPE

This policy directive applies to:

A. All directors, officers and employees of the Metropolitan Transportation Authority (“MTA”), MTA Long Island Rail Road, MTA Capital Construction Company, MTA Bridges and Tunnels, MTA Bus Company, MTA Metro-North Railroad, MTA New York City Transit, including the Manhattan and Bronx Surface Transit Operating Authority and the Staten Island Rapid Transit Operating Authority, and all future subsidiary or affiliated agencies of the MTA. These entities are referred to in this Policy Directive as the (“MTA Agencies”); and

B. Any other entity or person who uses Computer Resources owned, managed or controlled by the MTA Agencies including, but not limited to, interns, temporary employees, consultants, vendors, contractors, and guests.

III. DEFINITIONS

Agency Approved Internet Services Provider: an Internet service provider approved by the applicable MTA Agency.
MTA IT Standards and Procedures: computer resource operating standards and procedures that currently exist or may be adopted in the future, as the same may be modified, amended or supplemented. Agency Standards and Procedures may refer to a particular MTA Agency’s standards and procedures or those adopted on an All-Agency basis which can be found on each MTA Agency Intranet.

Approved MTA Agency Software: software that
- is authorized by the MTA Chief Information Officer or their designee;
- is owned by or licensed to the applicable MTA Agency;
- has been tested and installed in accordance with MTA Agency Standards and Procedures; and
- is listed in the MTA Technology Standards document.

Approved MTA Agency Hardware: devices that have been tested and approved for use at any MTA Agency, such as personal computers (“PCs”), printing devices, telecommunication devices, data storage devices, MTA Agency-issued mobile devices, including but not limited to, laptops, tablets and notebooks, handhelds, personal digital assistants (“PDAs”), and smart phones, servers and Communications Networks.

Communication Networks: the collection of network segments, nodes, systems, and other associated devices that are fully managed, controlled and operated by any MTA Agency.

Computer Resources: items purchased or leased with MTA Agency funds, or under the custody or control of the MTA, including but not limited to, devices such as PCs, printing devices, telecommunication devices, mobile devices, including but not limited to laptops, tablets and notebooks, handhelds and PDAs, smart phones, servers, Communication Networks, and software owned by, contracted for, or under the custody or control of any MTA Agency at any location. In addition, Computer Resources include all data and information and data storage devices, and the MTA Agency-wide network, including email and the Internet and network infrastructure – Information and Physical.

Computer User: any user of Computer Resources, including employees, temporary employees, directors, officers, interns, consultants, contractors, vendors and guests.
## COMPUTER AND SOCIAL MEDIA USAGE

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<th>Policy Number</th>
<th>Responsible Agency/Department</th>
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<td>11-033</td>
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**Confidential Information:** information that is available to a Computer User only because of such a Computer User’s position within an MTA Agency and which is treated by such MTA Agency as being confidential or which the Computer User has reason to believe is confidential. Information does not have to be formally labeled “confidential” to be confidential, and may include, but not be limited to, the following categories of information:

- employees’ and their dependents’ dates of birth, social security numbers, driver’s license numbers, credit and debit card numbers with or without access passwords, personal health information, home address and phone numbers, employee benefits information; and

- MTA Agency intellectual property assets, security-sensitive infrastructure and operations information, and security procedures, including, without limitation, designs, plans, blueprints, drawings, security infrastructure and protocols, mobilization plans and non-public procurement, human resources or labor relations information.

**Information Assets:** intangible items that include, but are not limited to, passwords, software and data.

**LAN (Local Area Network):** a computer network that spans a relatively small area (a single building or group of buildings). A LAN connected to a LAN over long distances is known as a **WAN (Wide Area Network)**.

**MTA Agency Network:** a set of communication and data networks that allows transfer of information between users at various geographical points, shared use of application and storage servers, printers, fax machines, telecommunication devices and use of e-mail, instant messaging applications and Internet.

**MTA Chief Information Officer (“MTA CIO”):** MTA senior executive responsible for enterprise information technology and computer systems that support MTA’s mission. The MTA CIO manages the MTA IT Department.
MTA IT Department: the department within MTAHQ responsible for ensuring at a minimum that all IT services ranging from mainframe, server, network, data center, applications, security, help desk, telecommunications and program/project management work collaboratively to deliver agreed-upon service levels and capabilities to each agency while maximizing efficiency.

Physical Assets: tangible items, including, but not limited to, desktop PCs, printing devices, telecommunication devices, MTA Agency-issued mobile devices such as laptops, tablets and notebooks, handhelds and PDAs, smart phones, servers and Communications Networks.

Social Media: utilizes mobile and web-based technologies to create highly interactive platforms through which individuals and communities share, co-create, discuss, and modify user-generated content, such as Facebook, Twitter, Linkedin, You Tube, Flickr, Instagram, etc.

IV. RESPONSIBILITIES

A. General Guidelines

1. Computer Users are required to protect Computer Resources – both Information Assets and Physical Assets, and are responsible for the following:

   a. Preserving and protecting Computer Resources by following all password, protection and disposal requirements; and

   b. Using Computer Resources solely for their intended purposes. Examples of misuse include, but are not limited to, viewing inappropriate internet sites or allowing unauthorized persons to use Computer Resources. (See Prohibited Uses Section IV B. 2)
All Agency Policy Directive

COMPUTER AND SOCIAL MEDIA USAGE

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2. Occasional and incidental personal use must be consistent with the requirements and guidelines of this policy directive. Such uses are permitted only with the restrictions outlined below:
   a. Must be subordinate and subject to the business needs of MTA Agency and not interfere with the conduct of MTA Agency business;
   b. Must not interfere or disrupt in any way other Computer Users, Computer Resources or other MTA Agency services or equipment;
   c. Must be occasional and only account for an incidental amount of a Computer User’s time;
   d. Must be restricted to Computer Users and does not extend to the Computer User’s family members or other third parties;
   e. Must not be used in violation of any of the Prohibited Uses described in Section IV.B.2 of this Policy Directive; and
   f. Computer Users engaging in excessive personal use are subject to disciplinary or other action as determined by the MTA Agency.

3. E-mail
   a. Computer Users must keep in mind that e-mails from MTA and its Agencies are visible representations of the MTA and its Agencies. E-mails can be immediately broadcasted globally, and can be received by unintended parties. Computer Users must be cognizant that all written communications may be made public, monitored, reviewed and disclosed in litigation or other proceeding. Accordingly, Computer Users should use Computer Resources in a professional and responsible manner.
b. MTA IT Department will add to every e-mail a standard confidentiality and mis-transmission footer, stating the following:

   “Confidentiality Note: This e-mail, and any attachment to it, may contain privileged and confidential information and is intended for the use of the individual(s) or entity named on the e-mail. Unauthorized disclosure of this message is prohibited. If you have received this message in error, please notify the sender immediately by return e-mail and destroy this message and all copies thereof, including all attachments.”

c. MTA IT Department must encrypt all e-mails.

d. Only MTA IT Department approved e-mail systems may be used for sending and receiving business related e-mails; this includes the use of MTA Webmail. Computer Users may use their personal devices, such as a home computers or smart phones, to access MTA Agency Webmail or through the Citrix environment.

e. During an emergency declared by the Governor or the MTA Chairman, use of personal email accounts to conduct MTA Business is permitted only if the MTA IT Department’s approved e-mail systems are not available.

f. E-mails must not be used in violation of any of the Prohibited Uses described in Section IV.B.2 of this policy directive.

4. Internet Access

a. The Internet must be used responsibly. Excessive use of the Internet for non-MTA Agency business purposes can be a drain on productivity by interfering with a Computer User’s work responsibilities and MTA Agency resources.

b. Computer Users must obtain written permission from the applicable MTA Agency to be granted Internet access.
c. The Internet must not be used in violation of any of the Prohibited Uses described in Section IV.B.2 of this policy directive.

5. Passwords and Authorization

Computer Users must adhere to applicable MTA Agency Standards and Procedures for password use, including controls on password length, re-use, allowable passwords and frequency of password changes.

6. Privacy and Monitoring

a. Computer Users have no expectation of privacy with respect to e-mail messages sent or received, Internet usage, or files, information or data stored on Computer Resources.

b. Computer Resources and MTA Agency Networks, including any information contained therein, may be monitored or reviewed by the MTA, Agencies and other authorized entities.

c. The MTA and its Agencies reserve the right to inspect, and/or examine, at any time, Computer Resources.

B. General Details

1. Acceptable Uses

Computer Resources are provided to Computer Users to assist them with assigned work responsibilities and duties, and are intended to be used only for that purpose. Computer Users may use Computer Resources to:

a. Further the MTA Agency’s mission;
b. Deliver MTA Agency’s services;
c. Facilitate MTA Agency business-related research and access to information;
d. Discover new ways to use resources to enhance MTA Agency services;
e. Increase efficiency; or
f. Promote staff development.
As set forth above, Computer Users may use Computer Resources for occasional and incidental personal use (see Section IV.A.2).

2. Prohibited Uses

Computer Users are not permitted to use Computer Resources to:

a. Violate any laws and regulations;

b. Conduct any form of activity that would violate MTA Policies or Procedures, including but not limited to:
   i. the use of Computer resources to engage in outside employment/activities or engage in private marketing or private advertising of products or services;
   ii. engage in any conduct which would violate any of the MTA Agencies’ Equal Employment Opportunity and Sexual and Other Unlawful Harassment Policies; or
   iii. engage in political activity or solicit for or promote any not-for-profit, religious, political or personal causes. (See MTA Code of Ethics – Sections 4.07, 4.08 and 8.04);

c. Circumvent, probe, disengage or test security measures, unless such activity is part of their job responsibilities;

d. Write personal, non-business related communications in a manner that could reasonably be interpreted as official MTA Agency communication or policy;

e. Surf, display, receive, send, forward, store, or distribute offensive, sexually explicit, pornographic or obscene text or images; or any discriminatory or racist jokes or other material. If a Computer User accidentally connects to these sites, the Computer User must disconnect from those sites immediately and report the incident to their supervisor.
or, in the case of a non-employee Computer User, to an MTA Agency manager;

f. Engage in mass distribution of any communication materials such as chain letters without written authorization from your Agency Ethics Officer and MTA Corporate Communication;

g. Use any Computer Resources without having completed the attached “MTA Computer and Social Media Usage Computer User Acknowledgement Form” or an electronic equivalent thereof;

h. Physically damage Computer Resources;

i. Use hardware or computing devices which are not compliant with Agency Standards and Procedures;

j. Fail to return Computer Resources upon termination of employment, or upon request by the applicable MTA Agency;

k. Attach employee owned personal computing devices (laptops, PC’s and handhelds) to the MTA Agency Network, even if they are being used to support an MTA Agency business function, without approval from the MTA’s Chief Information Officer or their designee;

l. Install, delete, copy or modify Approved MTA Agency Software;

m. Configure, enable, disable or tamper with any Computer Resource;

n. Attach or disconnect Computers Resources to or from the MTA Agency Network, except MTA Agency purchased laptops and handhelds, after initial setup by MTA Agency IT Department support staff;

o. Open e-mail attachments received from unknown senders;

p. Download unauthorized software, including, but not limited to utilities, drivers or tools (freeware/shareware), music, movie files and pictures;
q. Obtain unauthorized access to MTA Agency Networks, servers or accounts;

r. Deliberately introduce destructive programs (e.g., viruses, worms, Trojan horses) to MTA Agency servers, networks or firewalls;

s. Engage in gambling and/or stock trading; or

t. Download licensed, trademarked or copyrighted material without appropriate permission from the owner of such material.

3. Social Media

a. MTA Agency Business-related Communications

Social networking technologies, such as Facebook Linkedin, and Twitter, can help drive MTA’s mission and support professional development.

However, improper uses of social media may raise a number of security and reputational risks and the potential for widespread damage to MTA. Authorized use of social networking technologies is subject to the following:

i. Computer Users must obtain permission from MTA Corporate Communications prior to conducting any MTA Agency business on social media accounts.

ii. All MTA Agency policies and work rules apply when an employee participates in a social network or using social media technologies for business use. Computer Users are responsible for all of their online activities that are conducted with a MTA Agency e-mail address; can be traced to MTA’s domain; and/or use Computer Resources.

iii. Computer Users must not discuss or post MTA Agency Confidential Information.
iv. Computer Users should be transparent when participating in any online community, disclosing their identities and affiliation with the MTA Agencies.

v. Computer Users should communicate in a professional manner, and adhere to the following:

- Be direct, informative and brief;
- Fact-check posts and include links to source information, if possible;
- Perform spell and grammar checks; and
- Correct errors promptly.

vi. Computer Users must obtain permission from MTA Corporate Communications before publishing photographs, videos or quotes of others.

vii. Computer Users must also obtain permission of all identifiable participants before publishing photographs, videos, or quotes of others.

viii. With the exception of authorized communications on behalf of the MTA Press Office, MTA Arts for Transit, the New York Transit Museum, and the MTA Agencies (each of which has designated one or more social media content managers), Computer Users may not use social media sites to store or distribute information (including text, photographs, and/or video) relating to internal MTA events.

b. Personal Communications

i. When not representing MTA, Computer Users who publish personal or professional opinions may not invoke their MTA Agency title.
ii. In cases where Computer Users publish personal or professional opinions which include information identifying them as an MTA employee, they must use a disclaimer such as the following where technically feasible: “The postings on this site are my own and do not necessarily represent the position, strategy or opinion of the MTA.”

iii. Nothing in this policy directive is intended to restrict personal use of social networking during Computer User’s personal time using non-MTA Agency resources unless such use relates to non public internal MTA events. However, users must avoid engaging in conduct that would raise suspicion among the public that they are violating the public’s trust (see MTA Code of Ethics Section 4.02).

4. Violations

MTA employees who violate this policy directive may be subject to discipline, up to and including dismissal. Computer Users who violate this policy directive may also be subjected to individual civil and/or criminal liability and/or other appropriate actions.

The applicable MTA Agency may revoke or restrict the use of Computer Resources where a Computer User fails or refuses to sign the MTA All-Agency Computer and Social Media Usage Policy Acknowledgement Form.

V. PROCEDURE

All Agencies – Department Management: For new Computer Users who will require access to Computer Resources, provide a copy of the MTA All-Agency Computer and Social Media Usage Policy Directive to the Computer User prior to allowing access to Computer Resources.

For existing Computer Users with access to Computer Resources, provide a copy of the MTA All-Agency Computer and Social Media Usage Policy Directive to the Computer User, within two-months from the effective date of this policy directive.
After Computer User signs the MTA All-Agency Computer and Social Media Usage Computer User Acknowledgement form, Department Management must file the original in the Computer User’s HR file or with the project manager and forward a scanned copy to the MTA IT Department. (Note this procedure only applies to employees unable to sign an electronic acknowledgement. Contact MTA Corporate Compliance with any questions.)

**MTA IT Department Responsibilities:**

1. **Protecting Computer Resources**

   MTA IT Department and Computer Users must protect Computer Resources and MTA Networks including accessing and administering LANS, Computer Resources, and remote access.

   a. The MTA IT Department requires that Computer Users have the appropriate written authorization, specifying user privileges, before allowing them access to Computer Resources.

   b. The MTA IT Department is responsible for monitoring and protecting LAN/WAN operations that include coordination of the work of Computer Users, recovery operations, network capacity and security, performance, and the removal of unauthorized software and equipment from the LAN/WAN.

   c. The MTA IT Department will implement procedures for protecting the transmission and receipt of communications over the Internet and e-mail including, but not limited to, the use of encryption technology.

   d. The MTA IT Department requires that all MTA issued mobile devices, including but not limited to, USB drives, flash drives, CD’s, laptops, smartphones, tablets, etc. that have MTA data stored on them in any format must be encrypted.

   e. The MTA IT Department will implement the standards and procedures for the designation and use of file transfer protocols to provide for the transfer of files or data to and from another network or system.
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f. The MTA IT Department will ensure that it has at all times, appropriate perimeter security (e.g., firewall) in place and that the Agency’s security devices are appropriately configured and monitored on an ongoing basis to ensure network security.

g. The MTA IT Department will ensure proper and secure remote access to the MTA Network in accordance with applicable Agency Standards and Procedures.

h. The MTA IT Department will maintain a database or file of each computer user’s MTA All-Agency Computer and Social Media Usage Policy Computer User Acknowledgement form.

2. **Virus Protection**

Virus detection software will be used, available and running at all MTA Agencies during system initialization (e.g., boot) operations. Where feasible, virus detection software should run in the background, scanning continuously for viruses. The MTA IT Department will determine, approve, acquire, install and maintain the required virus detection software in compliance with Agency Standards and Procedures.

3. **Purchase of Computer Resources**

All Computer Resources will be acquired in accordance with the applicable MTA procurement rules and practices.

4. **Installation of Computer Resources.**

Installation of Computer Resources will be performed in accordance with Agency Standards and Procedures.
5. Maintenance and Disposal of Computer Resources

Computer Resources will be maintained and disposed in accordance with MTA’s Personal Property Disposition Guidelines as well as Agency Standards and Procedures, such as asset tag procedures, encryption procedures, inventory management procedures and asset disposal procedures.

VI. POLICY LIFECYCLE MANAGEMENT

This policy directive will be reviewed on an as needed basis but no less than annually. Such review will include, but is not limited to, consideration of upgraded and new technologies, past experience with this policy directive, and new and revised applicable legal requirements.

VII. ATTACHMENTS

MTA All-Agency Computer and Social Media Usage Computer User Acknowledgement Form
MTA ALL-AGENCY COMPUTER AND SOCIAL MEDIA USAGE COMPUTER USER ACKNOWLEDGEMENT FORM

I have received a copy of the MTA All-Agency Computer and Social Media Usage Policy Directive which sets forth the acceptable and prohibited uses of Computer Resources.

By signing the document below, I agree to adhere to the Computer Resources policies as set forth in the MTA All-Agency Computer and Social Media Usage Policy Directive.

In addition, I am aware that I have no expectation of privacy with respect to e-mail messages, internet usage or any other use of Computer Resources and such use may be monitored or reviewed, and I fully understand that any violation of the policy directive may result in disciplinary action, including but not limited to termination of my employment or other appropriate action.

Check type of Computer User:

☐ MTA Employee (including all Subsidiary and Affiliated Entities)

☐ Non-MTA Employee

________________________________________________________________________  ______________________________________________________________________
Sign and date                                                                 Print First and Last Name

________________________________________________________________________  ______________________________________________________________________
Agency/Department                                                            BSC ID

________________________________________________________________________  ______________________________________________________________________
Telephone                                                                   Work Location