

May 24, 2017

- Review of LIPA Whistleblower Protection



Why Review The Whistleblower Policy?

- ▲ The Governance Committee is tasked with, among other things, periodically:
 - ✧ developing and recommending to the Board any required revisions to the Authority's written policies regarding the protection of whistleblowers from retaliation . . .

Why Does LIPA Have a Whistleblower Policy?

- ▲ The general rule is that most employees may be fired at any time - *for any reason or for no reason at all* – under the at-will employment doctrine.
- ▲ Accordingly, to protect themselves from retaliation New York employees making a complaint must rely on statutory protections passed by the Legislature or on policies adopted by their employers.

Examples of Typical Statutory Protections

- ▲ **General Whistleblower Protection:** An employee may not be discharged (or discriminated against) in retaliation for making a complaint regarding violations of the state's occupational safety and health laws. *N.Y. Lab. Law § 215*
- ▲ **Civil Service:** A public employee may not be retaliated against for disclosing government information regarding a violation of the law resulting in a in a threat to public health and safety or improper governmental action. *N.Y. CLS Civ. S. § 75-b.*
- ▲ **Discrimination:** An employee may not be discharged (or discriminated against) in retaliation for opposing a practice that is forbidden under New York's anti-discrimination laws. *N.Y. Exec. Law § 296(1)(e).*

Basic Policy Protected Under NY Statutes

- ▲ Public and private employers cannot discipline or take retaliatory action against employees who disclose or threaten to disclose activities, policies or practices that violate laws or regulations or threaten public health or safety.
- ▲ These protections extend to public employees who disclose to a governmental body information that they reasonably believe to be an improper governmental action.

What is Expected of LIPA Employees and How are They Protected?



▲ LIPA's Employee Code of Conduct

✧ X. Reporting of Violations of the Code

- ✧ Employees and Former Employees are encouraged to promptly report any violations of the Code to the President and Chief Executive Officer or General Counsel of the Authority and shall cooperate in any official investigation of such violations.
- ✧ Retaliation against Employees or Former Employees who in good faith report violations of the Code, other provisions of law or policies, or the public trust, is prohibited. (*See the Authority's Anti-Retaliation Policy, attached hereto as Appendix H.*)

LIPA Also Has an Explicit Whistleblower Protection Policy



- ▲ It is found in the Intranet available to all LIPA employees
- ▲ No LIPA employee shall retaliate against any Whistleblower for the disclosure of potential wrongdoing, whether through threat, coercion, or abuse of authority.
- ▲ No LIPA employee shall interfere with the right of any other LIPA Employee by any improper means aimed at deterring disclosure of potential Wrongdoing.
- ▲ The Whistleblower Policy amplifies rights or remedies that LIPA employees have under State laws of the State of New York, including but not limited to the following provisions: *Civil Service Law § 75-b, Labor Law § 740, State Finance Law § 191*

Recommendations

- ▲ LIPA's whistleblower protection policies and procedures are consistent with applicable statutes and best practices
 - ✦ Con Edison has an ETHICS HELPLINE maintained by the Chief Ethics and Compliance Officer - similar to the LIPA policy
 - LIPA employees are encouraged to make a written report to his or her supervisor, or to the Director of Internal Audit, an Officer, any member of General Counsel's Office, the Special Counsel for Ethics, or a representative from human resources.
 - ✦ NYPA, which operates statewide, additionally utilizes an outside vendor to provide 24/7 access to its Employee Concerns Line.
 - We don't believe that is necessary for an organization our size

▲ **Questions?**

WHISTLE BLOWER POLICY

December 2016

PURPOSE

It is the policy of LIPA to afford certain protections to individuals who, in good faith, report violations of LIPA's Code of Ethics and Conduct or other instances of potential wrongdoing including accounting, internal accounting controls or auditing matters within LIPA. The Whistleblower Policy and Procedures set forth below are intended to encourage and enable employees to raise concerns in good faith within LIPA and without fear of retaliation or adverse employment action.

DEFINITIONS

Good Faith: Information concerning potential wrongdoing is disclosed in "good faith" when the individual making the disclosure has reason to believe such information to be true and reasonably believes that the information constitutes potential wrongdoing.

LIPA Employee: All LIPA board members, officers, and staff whether full-time, part-time, employed pursuant to contract, employees on probation, and temporary employees.

Personnel action: Any action affecting compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement, or evaluation of performance.

Whistleblower: Any LIPA Employee who in good faith discloses information concerning wrongdoing by another LIPA Employee, or wrongdoing concerning the business of LIPA itself.

Wrongdoing: Any alleged corruption, fraud, criminal or unethical activity, misconduct, waste, conflict of interest, intentional reporting of false or misleading information, or abuse of authority engaged in by a LIPA Employee that relates to LIPA.

SECTION I: REPORTING WRONGDOING

All LIPA Employees who discover or have knowledge of potential Wrongdoing concerning board members, officers, or employees of LIPA; or a person having business dealings with LIPA; or concerning LIPA itself, shall report such activity in accordance with the following procedures:

a) All LIPA Employees who discover or have knowledge of Wrongdoing shall report such Wrongdoing in a prompt and timely manner.

b) The LIPA Employee shall disclose any information concerning Wrongdoing either orally or in a written report to his or her supervisor, or to the Director of Internal Audit, an Officer, any member of General Counsel's Office, the Special Counsel for Ethics, or a representative from human resources.

c) The identity of the whistleblower and the substance of his or her allegations shall be kept confidential to the maximum extent possible.

d) Upon receipt of an allegation of Wrongdoing, the individual to whom the potential Wrongdoing is reported shall notify the General Counsel, and the General Counsel shall determine who will conduct an investigation of the potential Wrongdoing. Once the investigation is complete, the General Counsel or the individual delegated by the General Counsel to conduct the investigation shall provide to the CEO a summary report, such report shall include findings and a recommendation for resolving the matter. The General Counsel shall share the report with the Director of Internal Audit who shall advise the Finance and Audit Committee at its next regularly scheduled meeting of any material or significant weaknesses or deviations identified in such report.

e) The individual to whom the potential Wrongdoing is reported may refer such information to the Authorities Budget Office or an appropriate law enforcement agency where applicable.

f) Allegations of corruption, fraud, criminal activity, conflicts of interest or abuse by a LIPA Employee or any persons having business dealings with LIPA must be reported to the State Inspector General by the General Counsel or the Finance and Audit Committee.

g) All LIPA Employees shall cooperate fully with internal investigations and investigations by the State Inspector General pertaining to LIPA operations.

h) All reports and draft reports delivered to LIPA by the State Inspector General shall be reviewed by the Finance and Audit Committee, which shall serve as the point of contact on such reports.

i) Should a LIPA Employee believe in good faith that disclosing information within LIPA pursuant to Section 1(a) above would likely subject him or her to adverse personnel action or be wholly ineffective, the LIPA Employee may instead disclose the information to the Authorities Budget Office or an appropriate law enforcement agency, if applicable. The Authorities Budget Office's toll free number (1-800-560-1770) should be used in such circumstances.

SECTION II: NO RETALIATION OR INTERFERENCE

No LIPA Employee shall retaliate against any Whistleblower for the disclosure of potential Wrongdoing, whether through threat, coercion, or abuse of authority; and, no LIPA Employee shall interfere with the right of any other LIPA Employee by any improper means aimed at deterring disclosure of potential Wrongdoing.

Any attempts at retaliation or interference are strictly prohibited. In addition:

a) No LIPA Employee who in good faith discloses potential violations of the LIPA Code of Ethics and Conduct or other instances of potential Wrongdoing, shall suffer harassment, retaliation or adverse personnel action as a result of such disclosure.

b) All allegations of retaliation against a Whistleblower or interference with an individual seeking to disclose potential Wrongdoing shall be thoroughly investigated by LIPA.

c) Any LIPA Employee who retaliates against or attempts to interfere with any individual for disclosing or attempting to disclose potential violations of the LIPA Code of Ethics and Conduct or other instances of potential Wrongdoing is subject to discipline, which may include termination of employment.

d) Any allegation of retaliation or interference will be taken and treated seriously and irrespective of the outcome of the initial complaint, such allegation will be treated as a separate matter.

SECTION III: OTHER LEGAL RIGHTS NOT IMPAIRED

The Whistleblower Policy and Procedures set forth herein are not intended to limit, diminish, or impair any other rights or remedies that an individual may have under law with respect to disclosing potential Wrongdoing free from retaliation or adverse personnel action.

a) Specifically, these Whistleblower Policy and Procedures are not intended to limit any rights or remedies that an individual may have under the laws of the State of New York, including but not limited to the following provisions: Civil Service Law § 75-b, Labor Law § 740, State Finance Law § 191 (commonly known as the “False Claims Act”), and Executive Law § 55(1).

b) With respect to any rights or remedies that an individual may have pursuant to Civil Service Law § 75-b or Labor Law § 740, any LIPA Employee who wishes to preserve such rights shall prior to disclosing such information to a government body, have made a good faith effort to provide the appointing authority or his or her designee the information to be disclosed and shall provide the appointing authority or designee a reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety. (See Civil Service Law § 75-b[2][b]; Labor Law § 740[3])