

# NYC Anti-Nepotism Policy and Guidance for Not-for-Profit Contractors of Human Services

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## New York City Anti-Nepotism Policy

New York City's standard human service contract prohibits anyone from "hold[ing] a job or position with [the] Contractor over which a member of his or her immediate family exercises any supervisory, managerial, or other authority whatsoever..." unless they have the "prior written consent of the Commissioner..."<sup>1</sup>

This prohibition is intended to prevent improper payments to family members of the Contractor's Board of Directors, Key People and other supervisors and managers because of their familial relationships, thereby ensuring fairness, safeguarding transparency, and promoting an equitable work environment. This prohibition is also intended to prevent unqualified Employees and unfair hiring and promotion practices, abuse of time and attendance policies, compromised internal control environments, low employee morale, high staff turnover, and poor contract performance by the Contractor.

## Requirements

All human services Contractors with the City of New York (the "City") are required to do the following (all defined terms are capitalized; terms are defined below):

1. Identify instances where any Key Person, member of the Board of Directors, or other supervisor or manager exercises any authority over an Immediate Family member;
2. Determine the feasibility of transferring or reassigning personnel to a position over which their Immediate Family member does not have any authority, or otherwise eliminating instances where one Immediate Family member exercises authority over another;
3. If the Contractor does not eliminate an instance where one Immediate Family member exercises authority over another, the Contractor must disclose all such Immediate Family relationships by submitting a REQUEST FOR WRITTEN CONSENT within 30 days, in accordance with the "Procedure to Request Written Consent Under NYC Anti-Nepotism Policy"; and
4. Comply with the Contracting Agency's decision following its review of the Request for Written Consent.

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<sup>1</sup> City of New York Standard Contracts for Health and Human Services (April 2017), Section 6.05(C).

# Contractor Practices to Support Compliance

As a best practice, the Contracting Agency urges that all Contractors maintain written anti-nepotism policies and procedures for personnel as follows:

1. Contractors with existing contracts should have an anti-nepotism policy that supports the Contractors' compliance with the NYC Human Services Standard Contract and the NYC Anti-Nepotism Policy, or adopt such a policy within 60 days of publication of this Guidance. New Contractors should comply with this provision within 60 days of executing a new human services contract.
2. If an Immediate Family relationship between Employees exists that predates the policies and procedures in this Guidance and is currently in violation of contract terms, steps must be taken by the Contractor to rectify any direct supervisory relationship between known Immediate Family members within thirty (30) days from the publication of this Guidance.
3. Contractors' anti-nepotism policy and procedures should be incorporated into their existing policies and procedures, and should include the following requirements:

## a. Employees

- i. An Employee shall not directly supervise an Immediate Family member, and may not have an Immediate Family member within their chain of command without the prior written approval of the Contracting Agency Commissioner.<sup>2</sup>
- ii. Even if written consent is provided by the Contracting Agency Commissioner, Immediate Family members shall not be involved in evaluating each other's job performance, reviewing or approving an Immediate Family member's action relating to the Contractor's finances, and/or making recommendations for compensation, promotions, work hours, and termination.
- iii. Current Employees shall be required to immediately notify the Contractor's human resources department of:
  - Any Immediate Family relationships between the Contractor's staff created by blood, marriage, domestic partnership, or co-habitation;
  - The potential employment by the Contractor of an Immediate Family member; and
  - Any change in personal circumstances which may appear to violate the Contractor's anti-nepotism policy.

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<sup>2</sup> See "Procedure to Request Written Consent Under NYC Anti-Nepotism Policy" and the "REQUEST FOR WRITTEN CONSENT."

## **b. Hiring Process**

- i. Job applicants shall be required to disclose to the Contractor the existence of an Immediate Family relationship with a current Employee, member of the Board of Directors, and/or Key Person during the application process. Failure to disclose such information shall be grounds for dismissal.
- ii. A job applicant with an Immediate Family relationship with a current Employee, member of the Board of Directors, and/or Key Person shall: (i) be subject to the same hiring process as other applicants; and (ii) have the necessary qualifications for the position.
- iii. Should a job applicant be hired who has an Immediate Family relationship with a current Employee, member of the Board of Directors, and/or Key Person, that person's salary shall match the job specification, position, experience, and market standards.

## **c. Members of the Board of Directors**

- i. A member of a Contractor's Board of Directors is deemed to exercise authority over all Employees;<sup>3</sup> therefore, a member of the Board of Directors shall not be involved in or attempt to influence any work-related decision that may involve an Immediate Family member (e.g., promotion, compensation, work hours, performance evaluation and termination).
- ii. An Employee and/or members of their Immediate Family may only serve on the Board of Directors or any committee with authority to order personnel actions affecting his or her job under the following conditions:
  - The Board of Directors consists of more than five (5) Directors;
  - The Employee and/or Immediate Family member is prohibited from deliberating and/or voting and being present during deliberations and/or voting on any such personnel matters;
  - The Employee and/or Immediate Family member fully discloses all conflicts and potential conflicts to the Board of Directors; and
  - The Employee and/or Immediate Family member does not serve in the capacity either of Chairperson or Treasurer of the Board of Directors (or equivalent titles), nor do they make up more than one-third of either the Board of Directors or any such committee.<sup>4</sup>

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<sup>3</sup> City of New York Standard Contracts for Health and Human Services (April 2017), Section 6.05(C).

<sup>4</sup> City of New York Standard Contracts for Health and Human Services (April 2017), Section 6.05(B).

## Definitions

The following definitions apply to this Guidance and to the “Procedure to Request Written Consent Under NYC Anti-Nepotism Policy” unless explicitly stated otherwise. These defined terms are capitalized throughout both documents.

**Authorized Person** – a person, whether or not a member, officer, or director, who is authorized to act on behalf of a corporation or foreign corporation.<sup>5</sup>

**Board of Directors** – the board of directors, board of trustees, or a similar body vested with the duty and responsibility for management and oversight of the Contractor’s affairs as they relate to its performance under its human services contract.<sup>6</sup>

**Contractor** – any person [legally incorporated entity] having a contract with a governmental body [City of New York].<sup>7</sup>

**Director** – any member of the governing board of a corporation, whether designated as director, trustee, manager, governor, or by any other title.<sup>8</sup>

**Employee** – any person employed for hire<sup>9</sup> by the Contractor.

**Immediate Family** – includes, but is not limited to, spouse, domestic partner,<sup>10</sup> father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, cousin, and separated spouse. Where a member of an immediate family has that status because of that person’s relationships to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner.<sup>11</sup> As a result, this provision also applies to stepchildren where applicable.

**Key Person** – any person, other than a director or officer, whether or not an employee of the corporation, who (i) has responsibilities, or exercises powers or influence over the corporation as a whole similar to the responsibilities, powers, or influence of directors and officers; (ii) manages the corporation, or a segment of the corporation that represents a substantial portion of the activities, assets, income or expenses of the corporation; or (iii) alone or with others controls or determines a substantial portion of the corporation’s capital expenditures or operating budget.<sup>12</sup>

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<sup>5</sup> NY Not-For-Profit Corporation Law § 102(a)(18) (Definitions).

<sup>6</sup> City of New York Standard Contracts for Health and Human Services (April 2017), Section 1.01(A).

<sup>7</sup> City of New York Procurement Policy Board Rules, Section 1-01(e)(Definitions).

<sup>8</sup> NY Not-For-Profit Corporation Law § 102(a)(6) (Definitions).

<sup>9</sup> NY Labor Law, Article 6.

<sup>10</sup> A couple of the same or opposite sex who live together and share a domestic life but are not married or joined by a civil union. (See <https://www.healthcare.gov/glossary/domestic-partnership/>).

<sup>11</sup> City of New York Standard Contracts for Health and Human Services (April 2017), Section 6.05(C).

<sup>12</sup> NY Not-For-Profit Corporation Law § 102(a)(25) (Definitions).

**Nepotism** – is a demonstration of partiality towards a family member or close relative in both economic and employment practices. Nepotism includes the practice of granting favors, jobs, and contracts to family and close relatives (by blood, adoption, marriage, domestic partnership, or co-habitation) to work or do work in the same organization and/or the potential of such practice.

## **Penalties For Late and Non-Compliance**

Contractors found to be operating in violation of the NYC Human Services Standard Contract may be subject to one or more of the following actions:

- Withholding of funds until Contractor certifies compliance.
- Denial of funds for related Employees during any period of non-compliance.
- An adverse performance evaluation in PASSPort.
- The inability of the Contracting Agency to find the Contractor responsible for future contracts until Contractor certifies compliance.
- Corrective action plan.
- Any other adverse contract action, including termination.