

## 2020 CBA Renewal

This document contains the sections in the union contract that are proposed to be changed, with sufficient context to be able to understand the changes. Any sections that do not appear in this document are unchanged. Those sections that appear in normal text were part of the prior contract and have not been changed.

Underline = Language Added  
~~Strikethrough~~ = Language Deleted

### MANAGEMENT LAST/BEST/FINAL OFFER ON SALARY

See attached PDF for full summary.

- We will provide an increase to the base salaries of all staff on Scales A-F of at least \$1500. With the addition of compounding, this will mean that more experienced staff will get even larger amounts built into their base salaries.
- We will provide an increase to the base salaries of all staff on Scales G-J of at least \$2000. With the addition of compounding, this will mean that more experienced staff will get even larger amounts built into their base salaries.
- We will provide an additional \$500 for each staff member who receives the \$1500 bump for interpretation and/or translation services provided to LSNYC.

### FINALIZED PROVISIONS

#### **Date to return to the table, all unresolved items reserved**

In the event we reach a tentative agreement:

The union and LSNYC management agree that all demands and proposals not resolved in this agreement are reserved without prejudice until the parties return to the table. The parties agree to commence bargaining on the July 2021 CBA no later than Feb 1, 2021.

#### **Layoffs**

Notwithstanding any provisions contained in Section 7.6(A)(5) of the CBA, this Side Letter shall incorporate the mutual understanding of the parties that, in the event significant layoffs

become necessary, the layoff plans subject to these procedures must be reasonable and fair in addition to establishing good faith economic and business-related reasons:

1. These procedures will be available only when the Employer proposes to lay off, within a twelve (12) month period, at least 9% of the bargaining unit staff (with a minimum of three), in the respective borough or at 40 Worth Street, as of the date of the notice of intent to layoff. Temporary employees shall not be counted for purposes of this threshold.
2. The procedures described in this Side Letter are intended as an alternative to the procedures described in CBA paragraph 7. 6 (A) (5) and the procedures shall not be invoked simultaneously or serially with respect to the same layoff plan.
3. The Employer shall provide advance notice of planned layoffs, at least 45 days preceding the 30-day notice to the employee required under 7.6(A)(5) of the CBA. Within ten (10) business days of the first 30-day notice, the Union may request that the Employer bargain over the proposed plan for layoffs. The parties shall each bargain in good faith over possible alternatives to layoffs and other aspects of the proposed plan.
4. In the event that the parties are unable to agree on an alternative plan during the notice period, the Employer may proceed to implement its proposed plan. Nothing in these procedures limits the Employer's right to serve the 30-day notice of layoff required under 7.6(A)(5) of the CBA.
5. The Union retains the right to grieve and arbitrate whether the layoff plans subject to this Side Letter are reasonable and fair under all of the circumstances. The Union must first file a written grievance with the Executive Director within ten (10) business days of the Employer's notice to the Union that it intends to implement its proposed layoff plan. If the grievance is not resolved to its satisfaction, the Union may submit the dispute to arbitration under the expedited arbitration rules of the American Arbitration Association within ten (10) business days of the written decision of the Executive Director.
6. In determining whether the layoff plan is reasonable and fair under all of the circumstances the Arbitrator shall consider, among other things, the following factors, none of which is dispositive: (a) the impact of the layoffs on the bargaining unit; (b) the impact of the layoffs on diversity; (c) the need for quality supervision of legal work of the remaining bargaining unit staff, including the need for supervisors with appropriate substantive expertise; (d) the need to fulfill obligations imposed by a funder under a grant or contract; (e) any organizational changes that the Employer has implemented, or proposes to implement, within six (6) months preceding the opening of the bargaining period regarding the proposed layoffs, or six (6) months following the layoffs, including the reduction or departure of management or bargaining unit staff; and (f) the need to maintain efficiency and flexibility in the operation of Legal Services NYC.
7. In determining the reasonableness and fairness of the layoff plans subject to this Side Letter, the Arbitrator shall only consider facts specifically related to the layoff plan and shall not reject any plan which is otherwise reasonable and fair solely on grounds that any other plan would be more reasonable and fairer.
8. If the Arbitrator finds that the Employer's layoff plan is not reasonable and fair under all of the circumstances, the sole remedy available shall be to remand the plan to the

Employer who shall rescind the plan and restore the Union members, with back pay offset by any severance payments made, to the pre-layoff status quo. The Employer may devise a new plan, which thereafter shall be subject to the procedures set forth in this Side Letter.

The terms of this Side Letter shall remain in effect through the ratification of the next contract.

### **Side Letter: Remote Work at LSNYC**

Delivering high-quality, client-centered services through a community lawyering model is critical to our mission. Technology enables us to work remotely consistent with that goal.

1. Accordingly, employees are permitted to work remotely up to four days a month subject to:
  - a. Advance notice; and
  - b. Any specific duties or obligations, including duties related to practice group or office needs, that reasonably require the employee to work from the office on the relevant date. Barring the above, permission shall be granted to work remotely.

Except in emergencies, written notice that the employee will be working remotely must be made by 3:00 pm the day prior if arrangements for coverage are necessary. Such permission shall not be unreasonably withheld.

Notwithstanding the above, this does not preclude any supervisor and employee from developing alternative arrangements, to accommodate Covid-related concerns, within reason and subject to Project Director or Chief of HR & Diversity approval, during the period after LSNYC offices open fully and the beginning of the next contract.

2. While working remotely, the employee is expected to:
  - a. Be available by email or by phone similar to as if they were in the office when working remotely;
  - b. Account for their time in Legal Server and use appropriate leave time if you are not working;
  - c. Make themselves available for emergencies that may affect their clients or colleagues. This may require, for example, that they call their client, call the court, go to court, or come into the office if possible.
3. If you seek to work remotely as a reasonable accommodation for a qualifying disability, please contact the Benefits Administrator. This in no way curtails the ability of those applying for a reasonable accommodation to utilize the remote work provision described above.

This Side Letter is intended to apply once LSNYC offices open fully. The union management Covid committee will address ongoing remote work arrangements for the period before LSNYC offices fully open.

This Side Letter remains in effect until the ratification of the next contract.

## **Side Letter on Covid-19**

During the COVID-19 pandemic, given the uncertainty with regard to virus transmissibility and immunity and rapidly changing public health recommendations, the employer and the union shall meet upon demand of either party to negotiate and/or update policies for safeguarding the health of our staff, our families, and our clients. Potential subjects include but are not limited to: provision of personal protective equipment (PPE), office sanitation, staggered work schedules, reduction of number of staff on-site on a given day, adequate physical space between staff member seating, social distancing measures in the office, ensuring fairness and equity for staff in-office who may be called to cover for a staff member working remotely, considerations for staff in high risk categories or with high-risk family members, sick time policies, identifying triggers for closing offices or re-opening offices (resuming remote work for all or resuming in-office work), and other appropriate subjects.

For the purposes of this Side Letter, the resolution process described in Article 8.2(D) applies, with the following exceptions:

- a. Bargaining shall take place with the Executive Director or their designee(s);
- b. If the Parties are unable to agree on how to resolve an issue following good faith negotiations, either Party may submit the dispute to arbitration. Each party shall submit a "Final Offer" to the arbitrator. After considering the valid interests of all parties, the arbitrator shall choose one of the proposed resolutions without modification, or may craft a resolution solely from elements of the two Final Offers. The decision of the arbitrator shall be final and binding upon the parties.
- c. The decision of the arbitrator shall be issued within 7 days of the hearing date.

In the event of a disagreement about a particular topic, pending the arbitrator's decision the parties shall make best efforts to proceed with negotiations on other topics and to find a mutually acceptable interim solution on the topic that is the subject of arbitration. Should no such solution be reached within 14 days of the date the notice of demand for arbitration is delivered to LSNYC, and only if implementation does not violate any of CDC, New York State or New York City guidelines for health and safety, the employer, after serving a Notice of Intent detailing their proposed policy, specifically how it does not violate said health and safety guidelines, and the specific staff affected by the policy, may implement the policy detailed within the Notice of Intent provided.

Within thirty (30) days of the execution of this Agreement, the Employer and the Union shall designate jointly a panel of arbitrators from which the arbitrator to hear a grievance pursuant to this section shall be chosen.

All terms of the CBA not explicitly modified by agreements under this side letter remain unaffected by this provision.

This Side Letter remains in effect until the ratification of the next contract.

**DACA/TPS**

1. LSNYC will not terminate the staff member upon the end of DACA or TPS, as long as they retain lawful authorization to work;
2. LSNYC will provide four month's salary in addition to accrued annual leave and the benefits that are described in CBA 7.6 C as if they had been laid off;
3. A staff member who is terminated because of the loss of DACA or TPS status and who reapplies for employment will retain both their internal status and whatever seniority had accrued at the time of termination;
4. LSNYC will reimburse staff for DACA and TPS work permit and renewal fees upon submission of receipts demonstrating payment;
5. LSNYC will make best efforts to secure pro bono assistance for staff who have legal issues regarding their immigration status that arise from the termination of DACA or TPS;
6. LSNYC will offer employment visa sponsorship to former DACA or TPS staff members who ask for it and who may qualify, as determined by counsel.

## **Empire**

Staff members enrolled in the Empire Blue Cross plan will be offered a choice between enrolling in Cigna and enrolling in Emblem Health (HIP).

Management agrees to pay the full cost of LSNYC's VSP vision plan for one (1) year for those staff members.

For staff members who elect Cigna, management agrees to pay the additional \$10 cost of primary and specialist office visits, and the cost of the Cigna out-of-network deductible for one (1) year upon submission of documentation indicating the payment of the \$20 Cigna copayment for those visits or payment of the Cigna out-of-network deductible. The documentation need not contain any diagnostic information. USI would simply need a copy of the Cigna Explanation of Benefits form. Given the difficulty many are experiencing in scheduling office visits during the Covid pandemic, the start date for each staff member's one (1) year eligibility period will be the first date of service for which that staff member submits a reimbursement request or July 1, 2021, whichever is earlier.

## **Commitment to Immediate Implementation of Time-Sensitive Agreements Agreed to 6/5/2020**

We are in the process of negotiating agreements on several urgent and time-sensitive topics: protections for union members with DACA/TPS, a Covid-19 side letter governing joint labor-management negotiation of policies to safeguard health and safety in light of the Covid-19 pandemic, and an agreement responding to Empire's unilateral termination of its health insurance plan. We here memorialize LSNYC's agreement that it will implement and follow

each of these agreements immediately once they are made, without waiting for the ratification of the complete contract renewal, due to the urgency of these items.

### **Gender-Affirming Care CIGNA Commitment**

The Union and LSNYC Management agree that they will jointly work to remove barriers to comprehensive gender-affirming care in our Cigna health plan and seek fully inclusive coverage that meets current WPATH standards.

Cigna alleges that in order to meet WPATH standards and expand health care coverage options, it must file its intended policy with the New York State Department of Financial Services and receive their approval of the policy. Otherwise, Cigna claims they are prohibited from providing inclusive coverage to fully insured programs like LSNYC.

Our Cigna coverage currently excludes many types of trans-related health care, incorrectly categorizing them as not medically necessary despite the fact that Medicaid, in accordance with the World Professional Association of Transgender Health Position (WPATH), deems them medically necessary with justification from doctors and prior authorization. Cigna's exclusionary policies are unacceptable, discriminatory, and presents obstacles for LSNYC trans, gender non-conforming, non-binary staff members seeking gender-affirming health care.

By September 30, 2020, LSNYC will gather information to confirm whether Cigna intends to file or has filed a WPATH-compliant policy for approval to the NYS Dept. of Financial Services. LSNYC agrees to work jointly with the union through litigation, permissible lobbying, or other means to secure approval for Cigna to offer WPATH-compliant health care services, and to begin pursuing these changes by October 30, 2020. LSNYC also agrees that by December 31, 2020 it will calculate the cost of adding fully inclusive trans care to our Cigna plan via a rider or other method, the cost of switching to a self-insurance type plan through Cigna, will research similar fully-insured Cigna programs at sister organizations for possible coalition building, and will explore any other possible options. This agreement does not obligate LSNYC to purchase this coverage if it believes that it is not financially feasible.

### **Amend 5.3 Educational Loan Reimbursement**

LSNYC shall establish a fund of ~~\$200,000~~ \$260,000 per year to assist bargaining unit members with educational debt (i.e. law school, social work school, undergraduate, graduate, paralegal certificate, etc.) related to their job function. Benefits provided under this fund will be determined based on household income and assets in the fund and will be contingent upon fulfillment of term-of-employment obligations that will be determined. LSNYC will establish a Union-Management Committee to make recommendations for an appropriate mechanism for administration of this fund. The parties agree that the ~~\$200,000~~ \$260,000 provided for loan reimbursement ~~forgiveness~~ will be distributed by September 1st in each calendar year based on eligibility during the prior calendar year. The plan shall distribute available funds based on level

of indebtedness and family income and in accordance with the plan adopted by the LSNYC board.

**Amend 12.9(H) Clinical Social Work Supervision**

Clinical supervision shall be provided by a contracted, Licensed Clinical Social Worker. At the request of the employee, clinical supervision shall be provided for up to four (4) hours monthly for staff MSWs. No staff social worker shall be asked to receive clinical supervision from a supervisor who is also providing clinical supervision to a supervising social worker. Clinical Supervision is not intended to mean supervision as commonly defined in labor law.

**Amend 14.3(H) Interpretation & Translation**

*Amend 14.3(H) as follows. (Additions (underlined) and deletions (~~strikethroughs~~) are shown below; this provision has additionally been re-organized to streamline it.)*

Both Union and Management recognize the importance of making our services accessible to clients who do not speak English by providing high quality translation and interpretation in the languages spoken by our clients.

It is understood that any employee possessing bilingual skills ~~may be required, consistent with their other job responsibilities, to perform the following tasks~~ is an important asset to LSNYC's work defending low income residents of NYC, many of whom are immigrants whose first language may not be English. Consistent with their other job responsibilities, these employees may be required to provide interpretation and translation services to LSNYC, and they may not be asked to provide these services until the following steps have been taken:

1. Employees who are asked to provide oral or written interpretation services will receive appropriate training that includes a component on legal terminology and interpretation best practices. These employees will not be required to provide oral or written interpretation services until such training is provided.
2. Legal worker staff members who are asked to provide Translation and Interpretation services as a routine part of their job will be eligible for a ~~\$1500~~ \$2000 annual bump in salary, not built into the base rate. Those individuals who are asked to routinely provide translation or interpretation services will receive the bump.
3. Regular on-going training will be provided to staff providing interpretation and translation services.
4. Within one year of hire if possible, appropriate training that includes a component on best practices for working with interpreters, will be provided to employees who use translators and interpreters as well.
5. Staff who do not have the below-referenced bump as of 1/30/15 and who are asked to provide translation or interpretation services will receive the below-referenced bump after they attend appropriate training and agree to provide translation or interpretation services.

6. Each LSNYC program will develop a system for Translation and Interpretation services to be rotated among non-casehandling legal worker staff members who are asked to perform such services and are receiving the bump.
7. No staff providing interpretation services shall be required to interpret for more than 45 continuous minutes. A break of 15 minutes shall be provided after every 45 minutes of translation.
8. If expected to translate, draft, or interpret affidavits, or any other highly technical or legal documents, or emotionally demanding matters, best efforts will be made to provide a minimum of 1-day notice, along with documents necessary for the task, whenever possible. Lack of 1-day notice shall not be a reason to refuse the request.
9. The workload of staff providing interpretation and translation services shall be adjusted to reflect the time spent on this important activity, except where the sole responsibility of the staff person is to interpret and translate.
10. It is understood that attorneys, social workers and casehandling paralegals may be asked to provide such services when no legal worker is available, but that attorneys, social workers and casehandling paralegals will not be included in the rotation schedule. It is further understood that casehandling staff should not be used routinely or excessively to provide translation and interpretation services.

Once these steps have been taken, with a system in place, and after all parties have received the appropriate training, those staff members who agree to provide these services and are placed on the bump will be asked to perform the following tasks:

1. ~~Interpreting~~ Translating for clients who do not speak English;
2. Providing simple verbal summaries (not word-for-word) of letters and legal documents in a foreign language known to the staff member (unless the staff member is fully capable of word-for-word translation of legal documents).

### **Interpretation and Translation Working Group**

Management and the Union agree to convene, no later than September 14, 2020, a working group that will assess and seek to improve LSNYC's approach to the provision of, and compensation for, interpretation and translation assistance.

The working group will address interpretation and translation needs, training for staff, a system to provide interpretation and translation services, and approaches to reasonable and fair compensation for those services.

The working group will make recommendations to be considered by the union and management during bargaining in 2021 and beyond.

**Amend 14.3(K) Offsite Intake**

***The underlined language incorporates into the contract language that management agreed to in a recent arbitration.***

(K) It is normally expected that Legal Server intake and associated data entry, including uploading of retainers, citizenship attestations, and other such documents, is done by intake officers, intake paralegals, and hotline paralegals. It is not expected that non-intake staff will be assigned intake duties on a regular basis. This does not apply to offsite intake.

Generally, Legal Server is preferred for offsite intake. However, when performing offsite intake, case handlers are permitted to collect information on paper when:

1. There are too many clients to allow sufficient time to enter the information into Legal Server; or
2. Technological problems (internet access, glitchy connections, etc.) make the use of Legal Server unworkable or onerous; or
3. There is a good faith basis, in the professional judgment of the casehandler, that particular circumstances during intake, including but not limited to the needs of the client, render the use of Legal Server unworkable or onerous.

It is understood that in those circumstances when case handlers collect intake information on paper, the case handler may provide the information later to intake staff for entry into Legal Server.

**Amend 17.1(B) Leave to Study**

All employees required by LSNYC to take the New York State Bar Examination (and pro haec vice attorneys who choose to take the Examination) shall be granted two (2) weeks off, with pay, prior to the date of each New York State Bar Examination for which they have registered, as well as paid days for the exam days.

Legal workers enrolled to take the bar exam shall also be entitled to this leave time.

**Amend 17.2 LMSW and Process Server Exams, Legal Worker Exams**

All MSWs employed in MSW positions who have not taken and passed the LMSW licensing exam shall be granted four (4) "~~two and a half (2.5)~~" days off, with pay, to prepare for the exam prior to the date of an exam for which they are registered, as well as paid days for the exam days. This time off to study will only be granted to each eligible employee on one occasion.

The Employer agrees to provide training on a yearly basis to help process servers pass the process server exam. In addition, Process servers shall be granted one (1) day off with pay to prepare for the exam prior to the date for the exam for which they are registered, as well as one (1) day paid time off for the actual exam. This time off will be offered each time the

process server is required to take the exam. Where there are multiple process servers in an office, the process servers will stagger the days off for preparation and exam days.

The Employer shall reimburse each legal worker the exam fee to take the LSAT or GRE or other such exam, and shall grant each legal worker one paid release day to take that exam. Each legal worker is eligible for this provision once.

### **Amend 17.3(A) Expense Reimbursement**

(A) The Employer shall reimburse employees for all actual job-related expenses incurred by the employee in the course of the employee's appropriate work activities, including, but not limited to, filing fees, xerox costs, telephone, transportation, process serving costs, license renewals (including but not limited to bar, social worker, process server, and notary licenses), social work exam fees (registration and examination fee), and supper money [...]

[...]

(A)(6) The Employer shall reimburse employees for cab fare home from the office or any employment-related activity if they live within the City of New York, or if they live outside the City, the employee shall be reimbursed for cab fare to the commuter rail or bus station within New York City, the cost of the commuter rail or bus up to \$20, and home from their suburban rail or bus station. Only costs that exceed regular commuting costs will be reimbursed under this section. The employee will make reasonable efforts to give the Employer notice of the need for cab or other commuter fare under this section. If prior notice is not possible, employee should inform the Employer as soon as practicable. Employees shall provide documentation of actual paid expenses in the form of a receipt or other similar documentation and Cab fare will be reimbursed under the following conditions: [...]

[...]

(A)(6)c. The Employer shall not place any other restrictions on an employee from using transportation car or cab services under the conditions described in paragraphs (a) and (b) above. LSNYC shall contract with a cab or car service company in each borough within three months of the signing of the 2017-2020 CBA in order to ensure that staff are not required to front payment for cab fare.

### **Amend Discrimination and Harassment Policy (Appendix A to CBA)**

#### **1. General Provisions**

Legal Services NYC is committed to a work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere that promotes equal opportunities and prohibits discriminatory practices based on any legally-protected characteristic, including but not limited to race, color, national origin, alienage or citizenship status, religion, creed, sex, gender, gender identity or expression, disability, age, any protected military or veteran status, prior record of arrest or conviction, marital or partnership status, pregnancy or pregnancy-related medical condition, genetic predisposition or carrier status, genetic

information, sexual orientation, or status as a victim of domestic violence, a sex offense or stalking. Conduct prohibited by these policies is unacceptable in the workplace and in any work-sponsored setting outside the workplace, such as during meetings, conferences, trips, and business-related social events.

This policy is intended to ensure that all employees can work in an environment free from unlawful discrimination and harassment, whether in the workplace itself or during outside work-sponsored settings. LSNYC will make every reasonable effort to ensure that its entire workforce is familiar with this policy and is aware that any complaint received will be investigated and resolved appropriately. Anti-Discrimination Trainings will be conducted annually and all employees will be required to attend. In addition, members of the Anti-Discrimination and Sexual Harassment Committee shall be given adequate training regarding diversity, equity, and inclusion principles; sexual harassment, including decisional standards used in such cases; as well as LSNYC's policy and procedures.

This policy is for the benefit of all employees and applicants for employment (including interns and volunteers), whether permanent or temporary, full or part-time, and applies to the conduct of the above-stated employees, applicants for employment, supervisors, managers, LSNYC and constituent corporation board members, and those not directly connected with LSNYC (e.g., a client, volunteer, or outside vendor). Managers and supervisors are responsible for implementing this policy and must immediately advise the Chief Director of HR and Diversity if they become aware of possible discrimination or harassment.

The prohibitions contained in this policy extend to all work-related communications, activities, and behavior that impact LSNYC's employees, including e-mail and office or work space display of materials including, but not limited to, materials sent, received, or installed on a computer (games, screen savers, or other materials sent by e-mail, cartoons, pictures, objects, posters, etc.) that insult, degrade, or exploit others based on any characteristics protected by law.

Nothing in this policy shall be interpreted to limit a union member's right to speak with a delegate or union official about any workplace conditions, treatment, experiences, harassment, discrimination or any other matter. Nothing in this policy shall obligate a union delegate or other union official to discuss or otherwise reveal to management any information discussed by a union member in confidence.

This policy supersedes and replaces the LSNYC Sexual Harassment Policy, currently included as Appendix A in the Collective Bargaining Agreement between LSNYC and the Legal Services Staff Association. It does not supersede or amend any other provision of the CBA.

## **2. The Discrimination/Harassment Committee**

The Committee shall be comprised of the Chief Operating Officer, Chief Director of HR and Diversity, two Project Directors, and three Middle Managers. The Project Directors and Middle Managers will be selected by the Executive Director for staggered two-year terms, and may be reappointed, after considering recommendations from union and management staff of LSNYC, taking into account diversity and the need to have representation from all offices. No more than fifty percent of Committee members shall be individuals who self-identify as white or male. Names of Committee members must be published annually by January 15th of each year, and posted in each workplace in plain view.

Members of the Committee shall be given adequate training regarding diversity, equity, inclusion and sexual harassment in:

- (a) counseling employees seeking information guidance and advice;
- (b) resolving complaints between a complainant and a respondent;
- (c) investigating complaints and reporting findings and conclusions as well as decisional standards used in such cases and LSNYC's policy and procedures.

The union shall designate a member to sit in on the trainings and to participate, as described below, in Committee functions.

The Committee will meet regularly to review problems, suggest solutions and to receive on-going training. A union member designated by the union shall be present at all committee meetings, whether general or relating to an investigation, and copied on all communications and deliberations. In limited circumstances, when LSNYC retains private counsel for a particular case, the union designee will be excluded from some attorney/client communications in order to preserve LSNYC's attorney/client privilege.

### **3. Prior to Filing a Complaint**

Conflict resolution with the help of a third party is often effective in stopping behavior that may make us feel uncomfortable, is offensive or is otherwise unwanted. Accordingly, employees may initially wish to speak with their union delegate, other union official, supervisor, other manager, Project Director, or any other employee with whom they feel comfortable, before filing a complaint.

When help from a third party is sought, typically that person will meet privately with each of the persons involved, convey the perception and impact of the behavior, and attempt to develop a mutually acceptable understanding that can assure that the parties are comfortable with their future interactions.

Should a staff member choose to seek the help of a third party, that person will work with the involved persons to resolve the problem. Possible outcomes may include explicit agreements about future conduct, changes in workplace assignment, or other accommodations where appropriate. If management or the complainant is not satisfied with the thoroughness of the investigation or the resolution of the conflict, management may choose to conduct a formal investigation.

Consultation with a third party is intended to stop the behavior and to re-establish a cordial working relationship between parties. It is not intended to result in discipline, though it may.

A complainant may at any time make a formal complaint as described below or may pursue any other legal remedy they may have.

### **4. Immediate Intervention**

Individuals who believe they are being subjected to harassing conduct, and who are comfortable doing so, may promptly advise the alleged offender that their behavior is unwelcome and request that it be discontinued. However, it is not necessary for an individual to talk directly to an alleged offender if they feel uncomfortable doing so. If for any reason an individual does not wish to confront the alleged offender directly, or if such a confrontation does not successfully end the offending behavior, the individual should discuss these matters with any union representative, supervisor or manager; with any member of the Committee, all of whom are specifically designated and trained to receive such complaints; or directly with LSNYC's Chief Director of HR and Diversity.

If, in either the judgment of the complainant or the person receiving the complaint, the working environment of the complainant has become untenable due to behavior that violates this policy or the complainant feels in any way physically threatened, the person receiving the complaint should notify a member of the Committee who shall, in consultation with the Project Director or Chief Director of HR and Diversity, immediately intervene to put a stop to the behavior. This may be accomplished by an immediate meeting between the Committee member, the Project Director and the respondent. At the meeting the respondent is to be orally informed of the nature of the complaint in as much detail as is currently available and that the continuation of the behavior, or retaliation in any manner for the complaint, will not be tolerated and may result in immediate discipline. The respondent shall be informed prior to the meeting that they may be accompanied in the meeting by any person of their choosing, including a representative of the Union. The goal of immediate intervention is to ensure the safety of the complainant, and to address the allegation without prejudicing the determination before the hearing.

If the complainant feels that they cannot immediately return to work with the respondent, they will be allowed to use up to five (5) days annual leave or, if they have exhausted all annual leave, sick leave. Senior management will make any adjustment in work assignment practicable to avoid a hostile or untenable work environment for the complainant.

## 5. Complaint Procedure

A complainant may choose to file a complaint at any time and may do so without first consulting any third parties. ~~A designated representative of LSNYC will investigate all complaints and reports of discrimination or harassment.~~ Complaints need not be in writing to initiate an investigation under the procedure outlined herein. A complaint or inquiry regarding discrimination or harassment should be brought to the attention of LSNYC's Chief Director of HR and Diversity, Project Director, or the employee's supervisor (in each case, so long as a report is made to someone other than the alleged offender). The Committee shall make all efforts to use consistent, though not necessarily identical, methods to resolve harassment and discrimination complaints throughout LSNYC for similar problems.

Selection of the third-party investigator: A third party investigator will be chosen jointly by unanimous vote of the Committee and union representative on an annual basis. Candidates will only be considered if they demonstrate to the committee the ability to bring an anti-oppressive and DEI lens to their investigations. Any complaint about the investigator shall be brought to the Committee promptly and the appointment of that investigator and decision about possible replacement made by the Committee immediately.

When a complaint is made, the Chief Director of HR and Diversity shall within five (5) business days ask the investigator ~~authorize a member of the Committee~~ to conduct an investigation of the complaint. ~~That Committee member must be selected on a rotating and sequential basis from the Committee, unless that is impossible due to that person's vacation or other such unavailability. The Project Director or Middle Manager of an affected office shall not be selected as investigator; similarly, if the complaint involves personnel at the central office, the investigator selected shall not be a staff member of the central office.~~ Written notice will then be given to the complainant and respondent within five (5) business days of the complaint, which will include a summary of the factual allegations and unless unnecessary to the investigation, the name of the complainant. If any person is determined to be a subject of any such investigation or a potential respondent in an investigation, that person shall also receive written notice within five (5) business days of that determination. The i#nvestigators and Committee members~~Participants~~ must disclose any special relationships with the complainant or respondent, and recuse themselves when fairness requires.

Semi-annually (every six months), LSNYC shall issue a report to the discrimination and harassment Committee and the union designee listing, for every complaint active during the period, the dates that: the complaint was commenced, written notice was given to the complainant and respondent, the date LSNYC receives the investigator's report, the report was given to the complainant and respondent, and the date of LSNYC senior management's decision.

The investigator shall review facts and interview involved parties and witnesses in order to provide the Committee with a record of the facts and circumstances concerning the complaint. The investigator shall incorporate into the investigation any evidence, including records and witnesses, offered or identified by the complainant. It is not the function of the investigator Committee to investigate or inquire into behavior or conduct that is not addressed by the complaint or could not violate this policy. All witnesses and other persons interviewed by the investigator Committee will be advised that confidentiality will be maintained to the extent allowed by law but that communications between the employee and investigator Committee member are not legally privileged. If a witness refuses to testify, their statements shall not be used in the report nor relied on by the investigator or Committee in any way. Witnesses and all others interviewed by the investigator Committee shall be informed that any retaliation, whether by the respondent or any other person, for participation in this process is a violation of

this policy and will be dealt with as a disciplinary matter. Persons interviewed shall be informed that they may be accompanied at the interview by any other person of their choosing, including a representative of the Union.

The ~~investigator~~ ~~Committee members~~ shall interview the respondent and give them an opportunity to respond, either orally or in writing, to the complaint and to identify any witnesses to the incident(s) or event(s) that they would like interviewed. In addition, the respondent may identify any other employee that the respondent feels can attest to their character and those employees shall be interviewed for that purpose. The respondent shall be informed prior to the interview that they may be accompanied in the interview by any person of their choosing, including a representative of the Union.

The investigation is limited to the conduct alleged or witnesses with direct knowledge of the alleged events, except that previous findings (not mere allegations) of harassment or discrimination may be reviewed. The investigator will submit an investigative report to the ~~Chief Director~~ of HR and Diversity with copies to the Committee, with a copy provided to the union designee. The Committee will review the ~~report~~ ~~case~~ and determine appropriate action to recommend to the Executive Director. A member of the Committee against whom a complaint is made will be suspended from the Committee pending resolution of the complaint. During the period of suspension, the Executive Director shall promptly appoint an interim Committee member in the place of the suspended Committee member.

The ~~investigator~~ ~~selected Committee members~~ shall normally conclude the investigation of the allegations within twenty (20), but no more than thirty (30) business days.

Individuals who violate this policy will be subject to discipline in proportion to the violation, potentially up to and including termination of employment. When appropriate, discipline short of discharge should be used. Every effort should be made to impose discipline or other resolutions consistently throughout LSNYC. Any discipline taken under this policy against a bargaining unit member is subject to the disciplinary, grievance, and arbitration procedures in the CBA. Any bargaining unit member accused of violating this policy will be afforded union representation consistent with its duty of fair representation, and/or has the right to be represented or assisted by any other person of their choosing, including private counsel.

### **Report of the Committee**

Within ten (10) business days of ~~receipt of the investigator's report~~ ~~including their investigation~~, the Committee shall complete a written report of ~~its~~ ~~their~~ findings, including a summary of each witness's statement, the Committee's supported conclusion as to whether the respondent has violated this policy and a recommendation as to any steps necessary to remedy the problem. The report shall address any evidence offered or identified by the complainant. A copy of the report that does not identify complainant or adverse witnesses by name will be provided to the complainant and the respondent and they will be given five (5) business days to comment on the report either orally or in writing. The report and any responses will be given to the complainant's Project Director or Senior Manager, with a copy to the union's designee. The Project Director or Senior Manager shall render a decision within five (5) business days of any steps necessary to remedy the problem and appropriate disciplinary action if any.

In the event that the complaint involves a Project Director, the Committee's report and any responses will be given to the Executive Director who shall render a decision within five (5) business days of any steps necessary to remedy the problem and appropriate disciplinary action if any. A copy of the decision will be provided to the complainant, respondent, and union's designee.

In the event that the complaint involves the Executive Director, the Committee's report and any responses will be given to the Operations, Compliance and Personnel Committee of the LSNYC Board of Directors which shall render a decision within ten (10) business days of any steps necessary to remedy the problem and appropriate disciplinary action if any.

Written records of a complaint, the results of the investigation, and the resolution of the process, will be maintained in the personnel files of the complainant and the target of the complaint (if founded) or in the HR Office (if unfounded), in the sole discretion of the Committee. Unless a subsequent complaint against the respondent is substantiated, these records will be removed from personnel files after five years, but retained under seal by the HR Office for purposes of information if similar incidents occur.

## **6. What Happens After a Complaint Is Made?**

### **(a) Cooperation**

All employees, including employees who witness harassment, are encouraged to cooperate with investigations of complaints of harassment. Managers and supervisors are responsible for implementing this policy and should immediately advise the Director of HR and Diversity if they become aware of possible discrimination or harassment. The investigation may include interviews with the parties involved and, where necessary, with the individuals who may have observed the alleged conduct or may have relevant knowledge. Any reported allegations will be handled in a sensitive and discreet manner to the extent possible.

LSNYC encourages any individual with a complaint to come forward immediately so that prompt corrective action may be taken. Failure of an employee who believes they have been a victim of harassment or discrimination, or who has witnessed an ambiguous event to report such event, shall not be subject of disciplinary action by the Employer.

### **(b) Who Is Responsible?**

The investigation of complaints is the responsibility of senior management of LSNYC acting through the Committee. The Chief Director of HR and Diversity has the authority and responsibility to make a report to the Committee or directly to the Executive Director in the event that the Chief Director of HR and Diversity concludes that the discrimination and harassment requires attention at that level of the organization. Timeliness in reporting an incident is important. Prompt reporting of incidents is important so that appropriate action may be taken. However, due to the sensitivity of these problems and because of the emotional toll such misconduct may have on the individual, no fixed period has been set for reporting incidents of harassment or discrimination.

### **(c) Confidentiality**

Confidentiality will be maintained throughout the investigatory process to protect the privacy of the persons involved. In the event the respondent grieves the final disposition of the complaint, witnesses will have to be identified and the content of their statements disclosed to the respondent. They may also be obligated to testify before the Executive Director and/or an arbitrator. In the event there is a violation of confidentiality by any member of the Committee or the union designee, that person may be removed from any future involvement in Committee processes at the sole discretion of the Chief Director of HR and Diversity, and shall be replaced.

### **(d) Protection Against Retaliation**

Employees will not be retaliated against in any way for good faith inquiries or complaints regarding discrimination or harassment. Retaliation against an individual who makes a good faith report of alleged harassment, discrimination, or retaliation, or who assists in providing information relevant to a claim of such discrimination or harassment, or who has refused to obey an illegal order, is a violation of this policy. Acts of retaliation should be reported immediately and the offender will be subject to disciplinary action. LSNYC and the LSSA will make all reasonable efforts to protect employees from retaliation.

### **(e) Responsive Action**

Misconduct constituting sexual or other unlawful harassment or discrimination based on any legally-protected characteristic, including but not limited to race, color, national origin, alienage or citizenship status, religion, creed, sex, gender, gender identity or expression, disability, age, any protected military or veteran status, prior record of arrest or conviction, marital or partnership status, pregnancy or pregnancy-related medical condition, genetic predisposition or carrier status, genetic information, sexual orientation, or status as a victim of domestic violence, a sex offense or stalking will be dealt with appropriately and in proportion to the misconduct. Responsive action may include, for example, training or referral to counseling, and/or disciplinary action such as warnings, reprimands, reassignment, temporary suspension without pay, or termination of employment.

**(f) False Allegations/Good Faith Reporting**

Individuals who make reports that are later found to have been intentionally false or made maliciously without regard for the truth, may be subject to disciplinary action under the CBA or LSNYC Employee Handbook. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by an investigation.

**7. What Types of Behavior Are Covered by This Policy?**

**(a) Discrimination and Harassment**

Discrimination or harassment based on any legally-protected characteristic, whether blatant and overt or subtle and covert, is a violation of LSNYC's policy. Such behavior can demean, abuse, intimidate, or offend others because of their legally-protected characteristics, including but not limited to race, color, national origin, alienage or citizenship status, religion, creed, sex, gender, gender identity or expression, disability, age, any protected military or veteran status, prior record of arrest or conviction, marital or partnership status, pregnancy or pregnancy-related medical condition, genetic predisposition or carrier status, genetic information, sexual orientation, or status as a victim of domestic violence, a sex offense or stalking. Harassment can take the form of oral or written comments, signs, gestures, or other types of behavior. Whether the actions in question are verbal or nonverbal, often they are (1) directed toward an individual or group whom they insult, stereotype, or threaten, (2) designed to create or have the effect of creating an intimidating or hostile working environment, or (3) disrupt an individual's ability to pursue normal social or business activities. Examples of harassment may include, but are not limited to: the use of epithets and slurs, as well as jokes, statements, remarks, questions, or gestures that are derogatory or demeaning to an individual's or group's characteristics or that promote negative stereotyping, ridiculing or insulting behavior, threats, intimidation or hostile acts of denigrating or hostile visual displays (in hard copy or electronic medium, including text, photographs, cartoons, and drawings), written/graphic material displayed or circulated in the workplace, or any other degrading behavior.

**(b) Sexual Harassment**

Sexual harassment constitutes discrimination, is a violation of LSNYC's policies, and is illegal under federal, state, and local laws. For purposes of this policy, sexual harassment is defined as it is in the Equal Opportunity Commission Guidelines promulgated in 1980 as:

unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an

individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such conduct by an individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different genders. Depending on the circumstances, these behaviors may include, but are not limited to: unwanted sexual advances; subtle or overt pressure for sexual favors; sexual jokes, flirtations, innuendoes, advances or propositions; verbal abuse of a sexual nature; graphic commentary about an individual's body, sexual prowess or sexual deficiencies; sex-based leering, whistling, touching, pinching or assault; coerced sexual acts; suggestive, insulting or obscene comments or gestures; and display and circulation in the workplace of sexually suggestive objects or pictures, including through email. The absence of objection does not constitute or imply that the behavior is welcome, especially when there is a difference in job status between the individuals. Under EEOC Guidelines, behavior need not be explicitly "sexual" to constitute sexual harassment.

### **(c) Romantic Relationships**

All consenting romantic and sexual relationships between an employee and their subordinate are inappropriate, must be disclosed, and will result in reassignment so that the employee is no longer directly supervised by the person with whom s/he is or was in a relationship. A supervisor shall withdraw from and shall not participate in activities or decisions involving hiring, evaluations, promotions, and discipline which reward or penalize any person with whom the supervisor has or has had a romantic and/or sexual relationship. The parties should recognize that other employees and the workplace generally may be adversely affected by such behavior.

Employees should be aware that consenting romantic and sexual relationships between employees not involving supervisors and their subordinates can also impact the office environment and work performance.

## **8. Grievance and Appeal**

If a complainant or a respondent who is not a member of the Collective Bargaining Unit is dissatisfied with the decision at any level they may appeal to a higher level in the following order:

- (a) from the Project Director or other Senior Manager to the Executive Director;
- (b) from Executive Director to the Operations, Compliance and Personnel Committee of the LSNYC Board of Directors.

Nothing in this policy shall be construed to preclude a complainant from seeking any other legal remedy they may have at any time during or after the conclusion of these procedures.

If the respondent is a member of the Collective Bargaining Unit and is dissatisfied with the decision or the discipline imposed they may grieve beginning on Step 4 (Executive Director) of the grievance process. All evidence collected and/or produced during any stage of the procedure or investigation shall be subject to disclosure upon demand.

The Executive Director may accept the factual findings contained in the Committee's report unless the respondent/grievant can show, by substantial evidence, that the Committee's findings on material matters are inaccurate, incorrect, not supported by the record or beyond the scope of this policy or the investigation. The respondent shall have the right to respond to the report, present any evidence relevant to the Committee's findings, including the testimony of witnesses at a hearing, and make legal argument relevant to either liability or the appropriateness of the discipline imposed. If the Executive Director finds that the respondent/grievant has cast sufficient doubt on material matters, the Committee must support its findings by direct evidence at a hearing.

In the event the matter is taken to arbitration it shall be LSNYC's burden to prove liability. The alleged offender shall have the right to confront adverse witnesses on material matters.

Nothing in this policy shall preclude the Executive Director or other Senior Manager from immediately suspending and/or discharging the respondent of a complaint where the conduct involved amounts to gross misconduct and

where the conduct can be readily verified. In this event, the action of the Executive Director or other Senior Manager shall become immediately grievable commencing on Step 4 of the applicable section of Article 8 of the CBA.