

Hamilton-Madison House, Inc.	
Compliance Program Policies and Procedures	
SUBJECT: Non-Retaliation, Non-Intimidation for Participation in the Compliance Program	
APPROVED BY: Lilya Berns	EFFECTIVE: November 20, 2024
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I. POLICY

The purpose of this Policy is to ensure that all personnel understand Hamilton-Madison House, Inc. (the “Agency”) commitment to prohibiting intimidation, retaliation, harassment and discrimination for “good faith participation in the Compliance Program” (as defined below).

Intimidation or retaliatory action in any form by any individual associated with the Agency is strictly prohibited and is itself a serious violation of the Code of Conduct and this Policy. This includes, but is not limited to, any adverse employment action and any other negative treatment, resulting from good faith participation in the Compliance Program.

II. PARTICIPATION IN THE COMPLIANCE PROGRAM

“Good faith participation in the Compliance Program” includes, but is not limited to:

- reporting actual or potential issues or concerns, including but not limited to, any action or suspected action taken by or within the Agency that is illegal, fraudulent or in violation of any adopted Agency policy to appropriate personnel (as indicated below);
- cooperating with or participating in the investigation of potential compliance issues;
- assisting with or participating in self-evaluations, audits, and/or implementation of remedial actions;
- reporting instances or intimidation or retaliation; or
- reporting potential fraud, waste or abuse to the appropriate State or Federal entities, including the appropriate regulatory officials as provided in New York Labor Law §§ 740 and 741.¹

¹ For a brief summary of New York Labor Law §§ 740-741, as of February 2023, please see the appendix to this Policy.

III. REPORTING AND CONFIDENTIALITY

As required by the Agency’s Compliance Program, all Affected Individuals are expected to report suspected misconduct or possible violations of the Compliance Program to the Compliance Officer, at the phone number or e-mail address below. Affected Individuals may also report compliance issues or concerns to the Compliance Hotline anonymously at (877) 320-8293 or hamiltonmadisonhouse@compliancehotline.com. Affected Individuals may report compliance issues or concerns anonymously, if they choose by way of the Compliance Hotline.

If you report compliance issues, your identity will be kept confidential, whether requested or not, unless the matter is subject to a disciplinary proceeding, referred to, or under investigation by, MFCU, OMIG or law enforcement, or disclosure is required during a legal proceeding.

Compliance Program Contact Information	
<u>Compliance Officer:</u> Lilya Berns	Ph: (212) 720-4524 Email: lilyaberns@hmhonline.org
<u>Compliance Hotline</u>	Ph: (877) 320-8293 Email: hamiltonmadisonhouse@compliancehotline.com

IV. PROCEDURE

A. Investigation of Intimidation / Retaliation Complaints

- All allegations of intimidation or retaliation for good faith participation in the Compliance Program will be promptly investigated. The Compliance Officer, or designee, will oversee the investigation and take all necessary and appropriate actions. The Compliance Officer, or designee, will be assisted by internal staff and/or may solicit the support of external resources (including counsel), as necessary and appropriate.
- All individuals who may have relevant information will be promptly interviewed. At the outset of the interview process, the interviewee will be reminded that retaliation and intimidation is unlawful and a violation of the Agency’s Code of Conduct. The interviewee will also be reminded of the

Agency's disciplinary policy regarding failure to cooperate (See the "Protocols for Investigations and Implementing Corrective Action, Including Discipline").

- All documentation related to the investigation will be kept secured in a central location under the control of the Compliance Officer or designee. Such investigative files will be kept separate from personnel files.
- If the Compliance Officer determines that an individual was improperly intimidated or retaliated against for good faith participation in the Compliance Program, the Agency will, in accordance with the Agency's Compliance Program, take all appropriate corrective action as to the individual who was intimidated or retaliated against.
- In addition, if the Compliance Officer determines that an individual was intimidated or retaliated against for good faith participation in the Compliance Program, appropriate disciplinary action will be taken against the offending person, in accordance with the Agency's Compliance Program.
- The Agency may terminate contracts and affiliations as a result of retaliation or intimidation.

B. Reporting to the Executive Director

The Compliance Officer will advise the Agency's Executive Director regarding any alleged acts of retaliation or intimidation in violation of this Policy on an on-going basis.

APPENDIX:

A BRIEF SUMMARY OF NEW YORK LABOR LAW SECTIONS 740 & 741²

New York Labor Law Sections 740 and 741 are laws that provide protection to “whistleblowers” in certain cases. This Appendix provides a brief summary of these laws. Full copies of Sections 740 and 741 are posted in the waiting areas of the clinics.

New York Labor Law Section 740

Section 740 prohibits the taking of “retaliatory action” by an employer against an employee (including former employees and natural persons working as independent contractors), whether or not the employee is acting within the scope of his or her job duties, because the employee does any of the following:

- a. discloses or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety;
- b. provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by such employer; or
- c. objects to, or refuses to participate in, any such activity, policy or practice.

Under Section 740, “retaliatory action” is defined to mean an adverse action taken by an employer or his or her agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his or her rights under Section 740. This includes: (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms or conditions of employment (including but not limited to discharge, suspension, or demotion); (ii) actions or threats to take such actions that would adversely impact a former employee’s current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee’s suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee’s family or household member to a federal, state, or local agency.

Conditions and Exceptions Under New York Labor Law Section 740

² This Appendix is not intended to be a comprehensive description of the law, a legal interpretation or legal advice.

An employee's disclosure to a public body of an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety will not be protected under Section 740 unless the employee has made a good faith effort to notify his or her employer. Specifically, when such notice is required, the employee is required to bring the activity, policy or practice to the attention of a supervisor of the employer and to afford the employer a reasonable opportunity to correct it.

However, such employer notification is not required where:

- a. there is an imminent and serious danger to the public health or safety;
- b. the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice;
- c. such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor;
- d. the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or
- e. the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct it.

New York Labor Law Section 741

Section 741 prohibits certain defined health care employers from taking "retaliatory action" against an employee because the employee does any of the following:

- a. discloses or threatens to disclose to a supervisor, to a public body, to a news media outlet, or to a social media forum available to the public at large, an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety; or
- b. objects to, or refuses to participate in, any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.

Section 741 defines "retaliatory action" to mean the discharge, suspension, demotion, penalization or discrimination against an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

Conditions and Exceptions Under New York Labor Law Section 741

An employee will not be protected under Section 741 unless he or she has brought the improper quality of patient care or improper quality of workplace safety to the attention of a supervisor and has afforded the employer a reasonable opportunity to correct the activity, policy or practice.

However, such notice and opportunity to correct is not required in connection with disclosures or threats to disclose an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety where it presents an imminent threat to public health or safety or to the health of a specific patient or specific health care employee and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

Relief/Enforcement Under Both New York Labor Law Sections 740 and 741

Under both Sections 740 and Section 741, an employee who has been the subject of retaliatory action in violation of the law may bring a civil action within two years after the alleged retaliatory action was taken. The parties to such an action are entitled to a jury trial.

In connection with such an action, a court may order: an injunction to restrain continued violation of the law; the reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position, or “front pay”; the reinstatement of full fringe benefits and seniority rights; the compensation for lost wages, benefits and other remuneration; the payment by the employer of reasonable costs, disbursements and attorneys’ fees; a civil penalty not to exceed \$10,000; and/or the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

Under both Sections 740 and 741, it is a defense that the retaliatory action was predicated on grounds other than the employee’s exercise of the rights that these sections of the law protect.³

³ Under Section 740, a court may also order that reasonable attorneys’ fees and court costs and disbursements be awarded to an employer if the action the employee brings is without basis in law or fact.