



Meeting Date: September 25, 2019

Agenda Item: # 8

AGENDA SUMMARY REPORT

SUBJECT:

Amended Nepotism Policy – MTA Policy Section 3.7 – Second Draft

SUMMARY:

At its July 2019 Board meeting the Board directed staff to prepare and present an updated Nepotism Policy.

Sloan Sakai Yeung & Wong, MTA's legal team, reviewed MTA's current Nepotism policy and has updated the policy in accordance with applicable law.

At the August 2019 Board meeting the Board directed staff to remove paragraph 8 for redundancy and the Board directed staff to add wording to the policy which would include a Personnel Review Committee to ensure the policy is followed if there is a candidate that could be considered 'high risk' in accordance with the Nepotism Policy. Chair Rodriguez confirmed the goal is to have a review of any employee hired if there is the possibility or appearance of nepotism. She also requested the creation of a Personnel Committee when the Nepotism Policy is approved. It was also requested that staff contact legal counsel for incorporation of Board direction.

Sloan, Sakai, Yeung & Wong, MTA's legal team advised that appointment of a standing Personnel Committee is subject to Brown Act. This would require a 72-hour posting of an agenda. As part of the Brown Act, any discussion involving personnel is a closed session discussion. This would significantly delay hiring process and could become problematic regarding a public meeting when only a closed session is ajenized. They recommend either the approval be done by the Chair only or legal counsel. Legal Counsel also advised to retain paragraph 8.

STAFF RECOMMENDATION:

Utilize legal counsel as an objective review of potential nepotism candidates for hire.

1. Approve Nepotism Policy - Section 3.7 as presented.
or
2. Approve Nepotism Policy - Section 3.7 with modifications.
or
3. Provide direction to staff and request final Nepotism Policy be presented to the Board in October.

7. Nepotism

The MTA believes that the most qualified candidates should be selected for positions in the department, for promotions, and for assignment to specialized positions. Employees who are related to or who are engaged in a romantic relationship with candidates for hiring, selection, promotion, or assignment to specialized positions must ensure that all reasonable precautions are taken to avert any undue influence in the selection process or even the appearance of impropriety in the process.

The MTA recognizes the rights of employees to become involved in personal relationships with their co-workers. However, it is also the policy of the MTA to ensure that its employees carry out their duties with impartiality and fairness so that public and organizational confidence in the actions of MTA employees is maintained. Also, public trust, efficient MTA operations, proper supervision, security, workplace safety, and MTA morale require that employees avoid the appearance of or actual conflicts of interest between their professional responsibilities and any involvement in a family or personal relationship with other employees.

The general employment policies of the MTA do not permit discrimination against employees or applicants on the basis of marital or familial status. This policy is to be interpreted and applied consistent with those general employment policies. This policy is not intended to change or conflict with policies providing for equal employment opportunity or prohibiting unlawful discrimination.

- (1) *Members of an employee's immediate family will be considered for employment by the MTA, provided the applicant possesses all the qualifications for employment in the same manner as other, non-family member applicants. An immediate family member will not be hired into a position if such employment would:***
 - a) Create either a direct or indirect supervisor/subordinate relationship; or***
 - b) Create either an actual conflict of interest or the appearance of a conflict of interest.***

- (2) *For purposes of this policy, "immediate family" includes: grandparent, parent, parent-in-law, spouse or domestic partner, sibling or child, or a corresponding half or step-relationship, or any member of the employee's household.***

- (3) *Hiring, Promotion and Assignment to Specialized Positions***

Employees who have a family or personal relationship with a candidate for hiring selection, promotion, or assignment to specialized positions shall not be involved in the selection, appointment, or assignment process.

- (4) *Supervisory Procedures***

An employee generally shall not directly supervise a relative or another employee where a family or personal relationship exists. It will be incumbent upon the subordinate to select assignments which will not put them under the

supervision or management of someone with whom they have a family or personal relationship.

(5) Working Conditions

The assignment or employment of employees with a family or personal relationship within a department or division may be limited or prohibited, even if the employees are not in the direct line of supervision, depending on the conditions. Since these situations could involve conflicts of interest, these situations will be decided on a case-by-case basis by the Department Head and the General Manager or designee. For example, one person typically should not be employed in a position where that person would approve or process payroll for a spouse.

(6) Employees who marry or become members of the same household during their employment with MTA may continue employment so long as:

- a) There is no direct or indirect supervisor/subordinate relationship between such employees; or**
- b) It does not create an actual conflict of interest or the appearance of a conflict of interest.**

(7) Duty to Notify and Accommodation

In the event that employees in the same department or division become involved in a personal relationship, they shall notify their immediate supervisor or manager as soon as possible. Employees who find themselves working in close proximity to a relative or another employee with whom they have a personal relationship, even if in different departments or divisions, shall notify their immediate supervisor or manager of the circumstances.

The General Manager or designee will review the working relationship of the two employees and determine if it violates this policy. The General Manager or designee, in conjunction with the department head, will make reasonable efforts to transfer, reassign, or otherwise resolve the situation so that one of the employees is placed in a position where the conflict potential no longer exists. Prior to any reassignment, the MTA will receive input from the involved employees.

Any failure to report relationships as required by this policy shall constitute misconduct and may subject an employee to disciplinary action.

(8) Should one of the above situations occur, the MTA will attempt to reassign one of the employees to another position for which he or she is qualified, provided such a position is available. If no such position is available, then one of the employees will be required to leave the MTA. The decision as to which individual will leave the MTA is left solely to the two employees.

(9) In all cases of potential nepotism, MTA staff will complete the check sheet and send to legal counsel for review and recommendation of candidate hire.



MTA EMPLOYMENT CANDIDATE CHECKLIST

NAME:		DATE:	
1	Does this candidate meet all employment qualifications as a non-family member applicant?	Yes	No
2	What is the candidates familial relationship:		
3	Will this candidate be employed in a direct or indirect subordinate position from the family member and/or romantic relationship staff member?	Yes	No
4	If so, can the direct or indirect supervisory position be removed from the direct or indirect supervision?	Yes	No
5	If so, how?		
6	Does employment of this candidate create a conflict of interest?	Yes	No
7	If applicable, does this candidates position conflict with the financial internal controls - segregation of duties?	Yes	No
8	Is this candidate the best qualified applicant for the position?	Yes	No

ADDITIONAL NOTES: