PLEASE REFER TO THE PORTION OF THE EMPLOYEE POLICIES ENTITLED DISCLAIMERS WHERE YOU WILL FIND A STATEMENT, WHICH PERTAINS TO ALL EMPLOYEE POLICIES, INCLUDING THIS ONE.

FAMILY & MEDICAL LEAVE ACT (FMLA)

1.1 This policy applies to all employees at all NYPA sites and offices and provides guidelines for qualifying leaves under the Family and Medical Leave Act ("FMLA"). The Notice to Employees of Rights under the FMLA (WHD Publication 1420) ("Notice") is found in Attachment 1 and fully incorporated into this policy. The policies and guidelines stated in this FMLA policy shall be subject to such other terms and conditions as are provided in the FMLA and its regulations.

ELIGIBILITY FOR FAMILY MEDICAL LEAVE ACT ("FMLA")

2.1 To be eligible for FMLA leave, an employee must have been employed with the Authority for at least 12 months and have worked at least 1,250 hours during the previous 12 months.

2.2 Type of Leaves Covered Under the FMLA:

1) Employee Medical Leave ("EML") (see Section 4) - for an employee's "serious health condition" (see attached Notice) that makes the employee unable to perform the functions of his or her position, including "serious health conditions" also eligible for workers' compensation;

2) Family Medical Leave ("FML") (see Section 4) - for the care of an employee's spouse, child, or parent (not parent-in-law) who has a "serious health condition";

3) Newborn Leave ("NL") (see Section 5) - for the care of a healthy newborn child;

4) Adoption Leave ("AL") (see Section 5) - for the care of a newly adopted or newly placed foster care child;

5) Military Family Leave ("MFL") (see Section 6) - for spouse, child, parent or next of kin of a covered servicemember to care for that servicemember; and

6) Qualifying Exigency Military Family Leave ("QEL") (see Section 7) - to take care of certain qualifying exigencies arising when a spouse, parent, or child has been called to, or is on, active duty in the National Guard or Reserves.

2.3 Eligible employees may receive up to a total of 12 weeks of FMLA leave on a rolling 12 month period starting with the first day that an employee commences any approved FMLA leave. However, Military Family Leave qualifies eligible employees to receive up to a combined total (with any other FMLA leave) of 26 weeks in a single rolling 12 month period.

NOTIFICATION/CERTIFICATION

3.1 When the need for FMLA leave is foreseeable, an employee should notify his/her supervisor and Human Resources at least 30 days in advance of the start date of the intended leave, or as soon as it is foreseeable. When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to his/her supervisor and Human Resources as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, an employee will be expected to comply with his/her site/department's normal procedures for requesting leave and calling in absences. Failure to follow such procedures may result in a delay or denial of FMLA protection.

3.2 FMLA leaves can only be approved by the Vice President Human Resources, or designee(s), at the headquarters office, or the Facility Manager of Human Resources, or designee(s), at the sites. In situations when there is no Facility Manager of Human Resources at a site, FMLA leaves will be approved by the Vice President Human Resources, or designee(s). Once approved, FMLA leave is applied retroactively to the first day of absence.

3.3 The applicable fully completed Certification of Health Care Provider form or Certification of Serious Injury or Illness of Covered Servicemember ("Certifications"), signed by a health care provider, is required for all types of FMLA leave other than Qualifying Exigency Military Family Leave, which has its own separate form and requirements. Copies of the Certifications are attached in Attachments 2-5.

3.4 It is the employee's responsibility to see that the applicable Certification is completed, and returned to the Authority as soon as possible after the leave is requested, but no later than 15 calendar days from the date that the employee receives the Certification form from Human Resources.

3.5 If the Certification is incomplete or insufficient, the Authority will notify the employee and provide him/her up to seven calendar days to remedy any deficiencies. After this opportunity to remedy deficiencies has passed, a health care provider, human resources professional, leave administrator, or management official may contact the health care provider for purposes of limited clarification or authentication of the Certification. Under no circumstances may the employee's direct supervisor contact the employee's health care provider. In addition, in those situations where NYPA seeks to speak to the health care provider directly to obtain or discuss medical information related to the Certification, the employee may need to provide his/her doctor a HIPAA authorization allowing NYPA to do so.

3.6 The employee's request for FMLA leave may be denied in the event that an employee fails to: a) provide a Certification, b) timely remedy deficiencies in a Certification, or c) to provide a HIPAA authorization when requested as necessary for his/her health care provider to provide medical information directly to the Authority.

3.7 Employees attempting to obtain, or obtaining, FMLA leave by fraudulent means, shall be denied the restoration of their job or any other job at the Authority and utilization of paid time for time out of work.

3.8 Recertification of the need for FMLA leave may be required at various intervals, but generally not more than every 30 days, unless the Certification indicates that the minimum duration of the condition is more than 30 days, there is a change in circumstances or return to work date, an extension of leave is requested, or other circumstances cast doubt on the continuing validity of the leave.

EMPLOYEE MEDICAL LEAVE ("EML") AND FAMILY MEDICAL LEAVE ("FML")

4.1 When an employee has been absent from work for three (3) consecutive or closely occurring intermittent business days due to a "serious health condition," or when it appears that an employee will not be returning to work for a lengthy or undetermined amount of time due to a "serious health condition," he/she may be eligible for an Employee Medical Leave ("EML") under the FMLA.

4.2 If more than three (3) business days (consecutive or intermittent) are needed to care for the "serious health condition" of a spouse, child, or parent (not parent-in-law), an employee may be eligible for Family Medical Leave ("FML") under the FMLA.

4.3 When the absences exceed this three day period for a "serious health condition," the employee should provide notification to Human Resources, at which point the FMLA process will be initiated for eligible employees.

4.4 EML and FML may be taken on a consecutive, intermittent or reduced work schedule basis as provided by the health care provider on the Certification.

4.5 FMLA leave on an intermittent basis is leave which is taken in separate blocks of full or half day increments, on a non-regular basis, because of a single qualifying reason. FMLA leave on a reduced schedule is leave which reduces the number of working hours in a basic work week or workday for a period of time. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the Authority's operations.

4.6 Employees who qualify for EML and FML must first utilize all accrued sick time. Employees may then request and utilize any approved accrued vacation or accrued floating holidays (see Sections 10.6 and 10.8 below). Vacation time may only be used prior to sick time for salaried employees EML's for service credit purposes related to sick leave at half-pay (see Sick Leave Policy EP: 3.9). In all cases, qualifying time absent, whether paid or not, will be applied toward the maximum 12-week FMLA time period. Use of vacation time does not alter the status of the leave as FMLA leave, nor does it extend any Authority provided job security periods. (For EMLs related to Workers Compensation also see Sections 9.1-9.3).

4.7 Once accrued sick time is exhausted (and where vacation or floating holiday time is not being used, or has been exhausted), eligible salaried (non-bargaining unit) employees on EML will be placed on sick leave at half-pay (see Sick Leave Policy EP: 3.9), or on no-pay status if not eligible. In certain circumstances, salaried employees may also be eligible to receive donated vacation leave (see Attachments 6 and 7). Sick leave at half-pay is not available for any other type of FMLA Leave. If an employee on FML has no sick or vacation credits, or elects not to apply vacation credits, non-worked hours will be unpaid.

4.8 After three consecutive months of EML, and after all accrued sick leave and sick leave at half pay has been exhausted, a salaried employee may be eligible for benefit payments under the Long-Term Disability ("LTD") benefits. (See Sick Leave Policy EP: 3.9). Employees covered under a Collective Bargaining Agreement ("CBA") may be entitled to short and/or long term disability benefits. Such employees should contact their Human Resources Facility Manager and refer to their applicable Collective Bargaining Agreement and Benefit book for information on their benefits.

4.9 Employees returning to work from an EML must provide Human Resources with written medical documentation verifying their ability to return to work and fitness for duty. This should be provided at the earliest practicable time **before** returning to work. An employee will not be allowed back to work without sufficient written medical documentation.

NEWBORN ("NL")/ADOPTION ("AL") LEAVE

5.1 An employee may take a Newborn Leave ("NL") to care for a healthy newborn under the FMLA.

5.2 An employee may take an Adoption Leave ("AL") in connection with travel for and placement of a child for adoption or foster care within one year of initial placement in the home, or adoption, whichever comes first. Documentation from an agency or attorney verifying such placement of a child must be submitted to Human Resources within 15 business days or as soon as practicable.

5.3 Newborn and Adoption Leave may only be taken as consecutive leave and will be without pay unless the employee chooses, and receives approval, to use accrued vacation time. In all cases, time absent, whether paid or not, will be applied toward the maximum yearly 12-week FMLA period.

5.4 If both parents of a healthy newborn or a newly placed foster or adopted child work for the Authority, only one parent is entitled to these types of FMLA leave for each qualifying occurrence. However, both parents will be allowed leave for travel necessary for placement of a child for adoption or foster care.

5.5 In all cases, time absent, whether paid or not, will be applied toward the applicable 12-week FMLA time period.

MILITARY FAMILY LEAVE ("MFL")

6.1 Military Family Leave ("MFL") provides eligible employees unpaid leave to care for a covered family member who has incurred a serious injury or illness in the line of duty as a covered service member while on covered active duty in the Armed Forces.

6.2 A covered family member is a spouse, son, daughter, parent or next of kin. A covered service member is a person either in the military or a veteran for up to five years after he or she leaves military service, even if the injury did not manifest itself until the service member became a veteran.

6.3 An employee who is a covered family member may take up to 26 weeks of leave during a single 12-month period to care for the covered service member. This 26-week period is the maximum amount of leave that may be taken in combination with any other FMLA-qualifying leaves in a single 12-month period beginning with the employee's first day out.

6.4 Such leaves may be on a consecutive basis, intermittent or a reduced schedule basis, as detailed by the health care provider on the Certification.

6.5 Employees must utilize accrued sick time first until sick leave accruals are exhausted. Employees may then request and utilize any accrued floating holidays (salaried only), vacation or other accrued paid time off (see Section 10.6 below) or be placed on no-pay status.

6.6 In all cases, time absent, whether paid or not, will be applied toward the applicable 26-week FMLA time period.

QUALIFYING EXIGENCY MILITARY FAMILY LEAVE ("QEL")

7.1 An employee who is a spouse, son, daughter, or parent of a covered service member called to, or on, covered active duty in regular or reserve components of the Armed forces during a deployment of the service member to a foreign country may take up to 12 workweeks of leave during any 12 month period for a "qualifying exigency."

7.2 Reasonable documentation of family relationship may be required.

7.3 A "qualifying exigency" is limited to the following: a) short notice deployment; b) attending certain military events and related activities; c) arranging for alternative childcare and school activities; d) addressing financial and legal arrangements; e), counseling ; f) rest and recuperation; g)attending post-deployment activities; and h) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on time and duration of the leave.

7.4 Leaves for Qualifying Exigencies shall be unpaid, unless the employee requests and is given permission to use accrued vacation time, floating holidays (salaried only) or other accrued time off (excluding sick time).

7.5 In all cases, time absent, whether paid or not, will be applied toward the applicable 12-week FMLA time period.

JOB SECURITY FOR SALARIED EMPLOYEES WHILE ON FMLA OR EXTENDED MEDICAL LEAVE

8.1 When a salaried employee is absent from work on any qualified consecutive FMLA leave, other than Military Family Leave, their position will only be held open for a period of three months beginning on the first day of absence for the first FMLA leave within a 12-month period, even if the employee has accumulated sick and/or vacation leave that extends beyond that three month period.

8.2 If a department intends to fill a salaried position held by someone on FMLA leave (other than qualifying Military Family Leave) at any time after the expiration of the three month job security period, the employee's supervisor must notify site/headquarters Human Resources and the employee of this intent.

8.3 For all FMLA leaves other than Military Family Leave, any extended leave beyond the three months FMLA and job security period up to, but not exceeding, six months must be approved by the employee's Business Unit head or Regional Manager in conjunction with Human Resources prior to informing the employee of the approval of the extension. By approving the extension, the Authority will attempt to maintain the availability of a position, but not necessarily the same position, for the agreed upon leave period. In these circumstances, there is no guarantee that the employee's current position will remain open. The Authority will attempt to place the employee in a similar (or lesser) position for which they are qualified at the time of return. A position will not be created. At the conclusion of six months, the employee will be advised that his/her continued employment has been terminated.

8.4 When an employee is absent from work on a qualifying Military Family Leave, their position will be held open for a period of up to six months beginning on the first day of absence for the first FMLA leave within a 12-month period, even if the employee has accumulated sick and/or vacation leave that extends beyond that six month period. At the conclusion of six months, the employee will be advised that his/her employment has been terminated.

8.5 Extensions of leave beyond the six month period will be considered on an individual basis. Such a request **must** be made in writing and can only be approved by the Human Resources Department Head. Such requests should be made as soon as practicable before the end of the six-month period and must include information from the health care provider about the employee's current medical status, expected return to work dates as well as any return to work conditions or limitations. Any remaining accrued sick leave

will also be taken into consideration in reviewing the request for an extension of the leave. For extensions of Military Family Leave beyond the six month period, the military member's current medical status and the employee's expected return to work date must be provided.

WORKERS' COMPENSATION

9.1 If an employee is out on a Workers' Compensation leave for a health condition which also qualifies as an FMLA leave, it will be treated concurrently as an FMLA leave.

9.2 In such cases, employees have the option of applying unused accrued sick and/or vacation time to their first three months of absence from work. The employee must complete a "Use of Vacation/Sick Accruals" form (provided by their Human Resources representative) to make their election, which is irrevocable. If the employee chooses to apply sick/vacation time towards a Workers' Compensation/FMLA leave and the Workers' Compensation claim is found to be compensable, sick/vacation time will be credited back to the employee on a prorated basis in a proportionate manner based on the amount of the award and the amount of sick/vacation time used or other Collective Bargaining Agreement contractual language.

9.3 Bargaining Unit employees are directed to their Human Resources Facilities Manager and the applicable Collective Bargaining Agreement or Benefit book.

PAYROLL STATUS WHILE ON FMLA LEAVE

10.1 Depending on the particular type of leave and an employee's individual circumstances (including whether they are salaried or members of a bargaining unit), an employee may be eligible for income while on a FMLA leave through sick leave, sick leave at half-pay for salaried employees, vacation leave, short term disability for bargaining unit employees, and/or long term disability, or all or part of a FMLA leave may be unpaid.

10.2 Applicable benefits and associated payroll deductions (taxes, flexible benefit credits and deductions, NYS Retirement System contributions, PowerFlex, Employees' Savings Plan, loans, Liberty Mutual insurance, other insurance, etc.) will continue while an employee is out on any qualified FMLA leave and is still receiving compensation regardless of whether it is full- or half-pay (using sick or vacation accruals) or sick leave at half-pay, if applicable.

10.3 Deductions are prioritized by the Payroll Department. Any questions concerning the priority of deductions should be addressed to the Payroll Department and/or the applicable Human Resources representative.

10.4 For salaried employees, if an employee works on a part-time schedule prior to going out on FMLA leave, and is receiving compensation while on that leave, they will be paid based on the days they work on their part-time schedule.

10.5 For bargaining unit employees, holidays will be fully paid if during the calendar week in which such holiday occurs the employee has been on paid status at least two full days and all absences from work on the employee's remaining regularly scheduled work days during that week are approved in writing by the supervisor in accordance with the applicable Collective Bargaining Agreement. Employees on unpaid status prior to the calendar week of the holiday will not be paid for the holiday.

10.6 An employee on an FMLA leave who wants to use their accrued vacation time to cover any part of that leave must make a request to their local Human Resources Department. Without notification, accrued vacation time will not be automatically applied.

10.7 Holidays will be fully paid only if an employee is on a full-pay status (using sick or vacation leave or floating holiday) on the business day prior to the holiday. Holidays will be paid at half-pay if the employee is on sick leave at half-pay on the business day prior to the holiday. Employees on unpaid status on the day prior to a holiday will not be paid for the holiday.

10.8 Floating holidays, if accrued but not used before FMLA leave commences, must be used before any unpaid leave begins. If an employee on half or full pay status will be on leave at the end of the calendar year, and has not yet used their floating holidays, they will automatically be applied toward the leave prior to year's end.

10.9 Deductions and Credits:

1) FlexAbility Deductions

a) Where applicable, FlexAbility credits for Salaried employees, or payments for Waiving Coverage for IBEW employees and/or any other applicable benefit costs, will continue to be paid/deducted while an employee is out on FMLA leave and is still receiving pay from NYPA.

b) Once on a no pay status, in order for the benefit costs to remain a pre-tax deduction, where applicable, Human Resources and Payroll must receive enough advance notice (30 days) before a leave begins, to be able to arrange for the pre-tax deductions to be taken from the paycheck.

c) Otherwise, an employee must pay their applicable contributions to the Authority monthly during their leave on an after-tax basis. (Bargaining unit employees contact your HR Department for appropriate no pay status form)

d) The Authority's obligation to maintain the above coverages ceases if the contribution is more than 30 days late. The Authority must give 15 days' notice to the employee prior to the termination of benefits.

2) If a portion of a salaried employee's FMLA leave will be unpaid, flex credits will be used to determine the premium they must pay to the Authority. The cost will

be based on the flex credits they were entitled to while being paid, minus the cost of deductions.

Bargaining Unit employees' payments will be based on their benefit elections and applicable contractual contribution.

3) All other deductions (i.e., PowerFlex accounts) will be doubled per pay-period when an employee returns to work until they are back on the appropriate annual deduction schedule or have made up the appropriate percentage amount.

4) Benefits Coverage Period:

a) Salaried employee's benefits will continue for 6 months (from first day of absence) as long as an employee pays the required employee contributions while they are out on leave.

b) A salaried employee's benefits will cease once the employee has been absent for six months from their first day of absence, even if their leave is approved to be extended beyond six months under the provisions of Section 8.5. If a salaried employee has 10 or more years of service with the Authority and is collecting long-term disability payments (see the Employee Benefits Handbook for Salaried Employees for LTD eligibility criteria), their health care coverage will be continued at a cost to them. The cost will be based on flex credits, minus the cost of the medical plan.

c) Bargaining unit employees should contact their Human Resources Facility Manager and refer to their applicable Collective Bargaining Agreement and Benefit book.

Vice President Human Resources

DONATION OF VACATION LEAVE

This attachment allows eligible salaried employees who are on medical leave to receive vacation leave that has been donated by other salaried employees.

Eligibility

An employee *absent for his/her own personal illness or injury* who has been out for at least 20 ***consecutive business*** days due to a ***serious health*** condition and who has exhausted ALL accumulated sick and vacation leave credits will be eligible to receive donated vacation leave. The 20-day waiting period has been established in order to limit eligibility to long-term serious ***health*** conditions rather than short-term sick leave.

An employee receiving any form of pay (i.e., workers' compensation, sick leave at half-pay, long-term disability) is not eligible to receive donated vacation leave.

Who May Donate

An employee who has accumulated vacation leave credits and who is on the active payroll may donate vacation leave.

Donated Vacation Information

An employee may donate vacation leave in increments of 1 day.

A donating employee must be left with a remaining vacation leave balance of 5 days, in the event he/she needs the time for unforeseen reasons.

If an employee returns to work and all of the donated vacation leave is not fully utilized by the recipient, ***up to 10 days of donated vacation may be kept by the employee. The remainder will be credited back proportionately to the donating employees based on the number of days donated by each employee compared to the total days donated.***

Procedures

When an eligible employee exhausts his or her accumulated sick and vacation leave credits, Payroll will notify the employee and his or her business group, unit/department head. The business group, unit/department head may, at his or her discretion, ask employees if they wish to donate vacation leave days. When determining whether an employee is eligible to receive donated vacation leave, the business group, unit/department head should consider factors such as the employee's attendance record. The business group, unit/department head, or his/her designee, should try to determine how much time is needed until the employee is eligible for long-term disability benefits.

When a department cannot provide an employee with a sufficient number of days at full pay until the employee is eligible for long-term disability benefits, the business group, unit/department head may request the Vice President of Ethics & Employee Resources at headquarters, or the Facility Manager of Human Resources at the sites, to solicit other departments to participate.

Donated vacation leave cannot exceed three months from commencement of the leave (the time at which the employee is eligible for long-term disability benefits).

An employee who wishes to donate vacation leave must complete a Vacation Donation Form (see Attachment 7) and submit the form to the employee's business group, unit/department head or designee, who in turn should forward the form to Payroll.

Payroll will credit the donated vacation leave days to the recipient employee's vacation leave balance (not calculated by rate of pay). Donated vacation leave will be paid to the employee at his or her regular rate of pay. Applicable payroll taxes and deductions will be withheld from such payments.

When an employee donates vacation leave, his or her vacation leave balance will be reduced by the number of days donated (not calculated by rate of pay).

VACATION DONATION FORM FOR SALARIED EMPLOYEES

TO: WPO Payroll

Donor's Name _____ **Date** _____

Department _____ **Location** _____ **Extension** _____

Number of Vacation Days to be Donated _____ **Donated To** _____

Signature _____ **Date** _____

Cc: Recipient