

UNION AGREEMENT

Between

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1021

and

BERKELEY YOUNG MEN'S
CHRISTIAN ASSOCIATION

dba

YMCA of the Central Bay Area Early Childhood
Services

March 23, 2012 through March 23, 2015

LETTER OF UNDERSTANDING

This Agreement is between the Berkeley Young Men's Christian Association dba YMCA of the Central Bay Area/Early Childhood Services (ECS) (Employer) and Service Employees International Union, Local 1021 (Union).

Upon the execution of the Collective Bargaining Agreement between the Employer, and the Union on or about September 1, 2012 and each September 1st thereafter, the Employer shall provide the Union with information concerning the amount of funds allocated by the Federal Head Start Agency for training, education and conferences for the Employer's Early Childhood Services Employees.

If during any fiscal year the information provided in the paragraph above increases or decreases in an amount which will impact the bargaining unit, the Employer will give reasonable notice of this to the Union with relevant detailed written information.

Upon request by the Union, the Employer shall provide information about the number of requests for training, education and conferences made and/or approved during the then current fiscal year.

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SECTION 1. PREAMBLE

This Agreement is entered into by the Berkeley Young Men's Christian Association; dba YMCA of the Central Bay Area Early Childhood Services, herein referred to as the "Employer" or the "Association" and the Service Employees International Union Local 1021, herein referred to as the "Union" or "SEIU" herein collectively referred to as the "Parties."

SECTION 2. RECOGNITION

The Employer recognizes the Union as the exclusive collective bargaining representative of the Employees in the following appropriate unit:

All full-time and regular part-time Early Childhood Services and State pre-school employees and "On-Call" employees including teachers, teacher assistants, family advocates, head teachers, associate teachers, enrollment specialists, maintenance/courier, parent interns, primary caregivers, teacher/primary caregiver, early head start teachers, site supervisors and center assistants; excluding mental health consultants, nursing care coordinators, managerial employees, confidential employees, all other employees, guards and supervisors as defined by the National Labor Relations Act.

The term "Employee" and Employees" as used in this Agreement, refer to members of the bargaining unit.

SECTION 3. MANAGEMENT RIGHTS

Except as expressly modified or restricted by a specific provision of this Agreement, all statutory and inherent managerial rights, prerogatives, and functions are retained and vested exclusively in the Employer, including but not limited to, the rights, in accordance with its sole and exclusive judgment and discretion: to reprimand, suspend, discharge, or otherwise discipline Employees for cause; to determine the number of Employees to be employed; to hire Employees, determine their qualifications and assign and direct their work; to promote, demote, transfer, lay off, recall to work, and retire Employees; unless specified elsewhere in this agreement, to set the standards of productivity, the products to be produced, and/or the services to be rendered; to determine the amount and forms of compensation for Employees; to maintain the efficiency of operations; to determine the personnel, methods, means and facilities by which operations are conducted; to set the starting and quitting time and the number of hours and shifts to be worked; to use independent contractors to perform work or services; to subcontract, contract out, close down, or relocate the Employer's operations or any part thereof; to expand, reduce, alter, combine, transfer, assign, or cease any job, department, operation, or service; to control and regulate the use of facilities, equipment and other property of the Employer; to introduce new or improved research, production, service, distribution, and maintenance methods, materials and equipment; to determine the number, location and operation of departments, divisions, and all other units of the Employer; to issue, amend and revise policies, rules, regulations, and practices; and to take whatever action is

either necessary or advisable to determine, manage and fulfill the mission of the Employer and to direct the Employer's Employees.

The exercise of any right herein reserved to the Employer in a particular manner, or the non-exercise of any such right, shall not be deemed a waiver of the Employer's right or preclude the Employer from exercising the right in the future, or in a different manner, provided that it is not in conflict with the expressed provisions of this Agreement.

The Employer agrees to carry out its responsibility within the scope of the law.

No arbitrator may impair the rights specified herein, even though the Parties may agree to arbitrate the issue involved.

SECTION 4. UNION SECURITY

Each Employee subject to the terms of this Agreement, as a condition of continued employment, shall become and remain a member in good standing of the Union within the requirement of the National Labor Relations Act by tendering normal dues or service fees and initiation fees on the same basis as other members not later than the thirtieth (30th) day of employment or the effective date of the Agreement, whichever is later. Thereafter each Employee shall tender the Union's monthly dues or service fees (so long as they have worked 20 hours in one week or a total of 40 hours during the pay period). In the case of a regular service fee payer, service fees shall be equal to the Union's dues, and in the case of an objecting service fee payer shall be the proportion of the dues corresponding to the proportion of the Union's total expenditures that support representational activities.

If an Employee fails to become or remain a member of the Union in good standing, and upon written notice from the Union to the Employer addressed to the President, that the Employee is in noncompliance with this requirement, the Employer shall discharge the Employee for noncompliance within seven (7) days after receipt of such notice.

A. NOTICE TO THE UNION

The Employer shall provide the Union with the name, address and job title of each Employee hired or terminated within thirty-one (31) business days of said action. The Employer shall allow the Union to supply a new member packet to be distributed to newly hired Employees in classifications represented by the Union. The Employer will provide the union with copies of signed dues deduction and/or COPE deduction cards.

B. PAYROLL DEDUCTION:

Upon authorization of the Employee, the Employer agrees to deduct dues, voluntary contributions and fair share fees in accordance with the Constitution and Bylaws of the Union from the pay of the Employees who execute deduction(s) authorization cards. The Employer will deduct authorized dues, fees and contributions from each paycheck. All authorized deductions shall be transmitted to the Union no later than the fifteen (15) day

following the end of the month in which the deduction is made along with a list of the Employees in the bargaining unit and the amount deducted from each.

The Union shall indemnify and hold harmless the Association, its officers and Employees from any and all claims, demands, suits, or any other action arising from the Agency Fee provisions herein. In no event shall the Employer be required to pay from its own funds Union dues, service fees, voluntary or charitable contributions which the Employee was obligated to pay, but failed to pay, regardless of the reason.

SECTION 5. UNION REPRESENTATION

- A. The Union may designate from among the Employees, and the Employer shall recognize, a maximum of four (4) Shop Stewards from different centers and two (2) Officers to serve as the Union's agents in administering this Agreement. The Employer shall not be required to recognize any Employee as a Shop Steward/Officer unless the Union has notified the Employer, in writing, of the Employee's designation.
- B. Shop Stewards shall perform contract administrative duties including investigations of potential grievances on their own time when they are not scheduled to work, and shall not be compensated therefore by the Employer. In the situations which require a Shop Steward's/Officer's performance of contract administrative duties including investigations during his/her scheduled work time, the Steward/Officer shall first obtain permission from his/her supervisor to perform such business., and shall do so off the clock. Investigations will be done jointly by the Employer and Union whenever possible.
- C. The Steward/Officer may act as the representative of a Grievant/Employee at the specified steps of the grievance procedure and provide representation during Weingarten investigatory interviews conducted by the Employer, if the Grievant so desires. Representation by the Steward/Officer shall be conducted and paid as work time not to exceed an aggregate of six (6) hours per month for the entire union.
- D. Subject to giving reasonable advance notice, the Union's non-Employee Officers and representatives may be granted access during and after working hours, to such areas of the Employer's premises for matters within the scope of representation, and at such times, the Human Resource Director or the Executive Director may approve. The Union shall not be unreasonably denied.
- E. The Union's Shop Stewards and non-Employee Officers and representatives shall not interfere with the Employer's normal operations and shall not enter teaching spaces on Union business during class times.
- F. The Employer agrees to provide space on existing bulletin boards in non-public areas of the Employer's facilities, which the Union may use to post appropriate notices of Union business. The space provided will be maintained by the Union.

SECTION 6. DEFINITIONS

For the interpretation of this Agreement, the following words and terms shall be construed as follows:

Active Service: Typically refers to the period of employment when an individual is involved in the performance of their duties and is receiving compensation.

Association: The Berkeley Young Men's Christian Association dba YMCA of the Central Bay Area.

Board: The Board of Directors of the YMCA of the Central Bay Area Association.

Contract Employees: Independent contractors are not in the bargaining unit and are not employed by the Employer. Follows all rules and regulations proscribed by state and federal guidelines.

Director: The Executive Director of the Early Childhood Services Division.

Employer: The YMCA of the Central Bay Area Early Childhood Services/State Preschool Program

Employment Period: Employees are individually scheduled for a stated active service period, described as a number of work weeks by the state contract or federal grant.

Full-time Employee: An employee who works a regular schedule of thirty (30) hours or more per week.

Inactive period: Typically refers to the period following an Active Period of employment when an individual is not involved in the performance of their duties. The Employee may receive compensation that has been deferred during their Active Service Period.

Independent Contractor: Person(s) engaged to perform short term, distinct functions prescribed in the independent contractor guidelines. Independent contractors are not considered employees or receive YMCA benefits.

Immediate Family: Spouse (or live-in partner), Parent, Child, Sibling, Mother- or Father-In-Law, Grandparent and any other relative living in the employee's household.

No Strike-No Lockout: During the term of this Agreement, the Employer and the Union agree that no bargaining unit member may participate in a concerted action related to the terms and conditions of this Agreement or participate in any concerted action involving issues beyond the scope of this Agreement, i.e. sympathy strike, during working hours.

Non-Exempt Employees: An employee who is not exempt from the minimum wage and overtime provisions of the Federal Fair Labor Standards Act and the California Wage Orders.

Nine (9) Month Employee: An Employee whose employment period is less than 42 weeks of the year, where the probationary period has been satisfactorily served by the incumbent. This period is typically from September through June. These staff will have a pro-rated payroll withholding made during the active service period to cover equal distribution of wages through the summer break period, as well as pay for their continuation of medical/dental coverage. Continuity of employment is contingent upon adequate funding by the Federal government or other funding sources. There is no status, or right of transfer to any other division of the Association.

On Call: An employee who does not have regularly scheduled hours. This flexible work schedule is determined by department workload, as well as the employee's availability for work (substitutes).

Part-time: An employee who works a regular schedule of less than thirty (30) hours per week.

President: The Chief Executive Officer of the YMCA, employed by the YMCA Board of Directors.

Salary Range: A sequence of salary steps used to identify the minimum and maximum salary rates in the standard salary schedule which may be paid to employees within a class.

Suspension: An involuntary absence with or without pay imposed by the Director or other authorized person for disciplinary or investigative purposes.

Temporary Employment: Non-bargaining unit staff whose employment is expected not to exceed a period of ninety (90) days, and may not exceed 180 days.

Twelve (12) Month Employee: A full-year (52 week) appointment where the probationary period has been satisfactorily served by the Employee. Continuity of employment is contingent upon adequate funding by the Federal government or other funding sources. There is no status, or right of transfer to any other division of the Association.

SECTION 7. EQUAL EMPLOYMENT OPPORTUNITY

The Employer and the Union are committed to providing a work environment that entitles people to equal opportunities for employment.

The YMCA of the Central Bay Area is an equal opportunity employer. It is our policy to recruit, hire, train, and promote persons without regard to race, color, religion, creed, sex, age, national origin, ancestry, marital status, physical and/or mental disability, medical condition, sexual orientation, registered domestic partner status, or any other legally protected status. The YMCA strictly prohibits and will not tolerate any form of discrimination based on these attributes. This policy applies to all terms, conditions, and privileges of employment, including hiring, training and development, promotion, transfer, compensation, benefits, layoff, social and recreational programs, termination, and retirement. Related questions, complaints and comments may be made to the Director of Human Resources.

If you have a physical and/or mental disability and wish to discuss possible accommodations, you are encouraged to speak immediately with your supervisor. If you have questions about accommodations in general, you may contact the Director of Human Resources.

Engaging in any act that illegally discriminates against another employee because of any classification protected by local, state or federal law will not be tolerated. It is regarded by the YMCA as misconduct.

SECTION 8. FUNDING SOURCE POLICIES

The funding source has existing policies, general operating procedures, regulations and practices. These shall remain fully in force unless otherwise specifically abridged, modified or changed. The Employer may make any change(s), modification(s) and/or addition(s) to its policies and procedures not inconsistent with or prohibited by this Agreement. Upon reasonable notice to the Union, all regulations and requirements of the funding sources of Early Childhood Services and State Preschool will be adhered to when in conflict to the Agreement. The Employer agrees to meet with the Union upon request regarding changes to funding source policies.

SECTION 9. PROBATIONARY PERIOD

All Employees hired into job classifications covered by this Agreement shall serve an initial probationary period of one-hundred twenty (120) work days. The Employer, at its option, can extend the probationary period for an additional sixty (60) work days upon written notice to the Employee and the Union. Such written notice shall include reasons for the extension and identify areas of improvement the Employee must make. Termination during or at the conclusion of the probationary period, to include extensions, are not subject to the grievance procedures with the exception of violations of the non-discrimination articles.

A. PROMOTIONAL PROBATION

A promotion is defined as a change in classification to one of higher pay. An Employee shall serve ninety (90) calendar days probation in the new classification. If an Employee fails promotional probation, the Employee shall have reinstatement rights to his/her previous position.

SECTION 10. EMPLOYMENT STATUS

Within forty-five (45) calendar days of the effective date of this Agreement, all regular full-time and part-time incumbent Employees covered by this Agreement shall be given written notice including the following: Name of Employee, job title, job description, program title, normal hours of work, date of most recent hire, and hourly wage rate. On-Call Employees shall be given written notice including the following: Name of Employee, job title, job description, program title, and hourly wage rate. All future hires will be given this notice upon hire.

Each classification has a job description with primary responsibilities and specified minimum qualifications.

It is understood that the Early Childhood Services and State Preschool Programs may shut down for a period of one to three months every year, depending upon attendance and financial condition. The Employer will provide Employees with as much notice as possible regarding the end dates for each school year.

Temporary vacancies due to the failure of an Employee to report to work, illness, leaves of absence, vacation, or other reasons shall be filled by Employees within the classification in order of seniority. If bargaining unit Employees are not available, able or willing to fill such vacancies, or if overtime premiums would be incurred by Employees in filling such vacancies, temporary non-bargaining unit Employees may fill the vacancy for a period not to exceed ninety (90) days, and may be extended not to exceed 180 days.

Temporary employees and contract employees are not considered members of the bargaining unit.

SECTION 11. PERFORMANCE APPRAISALS

- A. Performance appraisals are conducted within the first 120 days of employment, and annually thereafter. Supervisors are responsible for the evaluation of Employees. Employee evaluations are recognized as a cooperative effort between the Employee and his/her supervisor with the express purpose of achieving excellence in the program.
- B. Procedural Guarantees. Employees are guaranteed the following in connection with the performance review process:
 - 1. Performance appraisal shall be based on performance in the workplace. Such performance review shall be based on direct observation of the employee's Supervisor as well as review of written work as applicable to the position.
 - 2. For teaching staff, supervisors will formally observe employee conducting lessons, review written documentation of child progress, in addition to other performance indicators.
 - 3. Employees will be given the opportunity to provide their comments in the appraisal.

4. Employees will be given a copy of the appraisal.

SECTION 12. SENIORITY

For the purposes of determining eligibility for any benefits provided pursuant to this Agreement, Overall Seniority is defined as continuous length of service in years, months and days from the last date of hire. Classification Seniority is defined as continuous length of service in years, months and days from the last date of hire in a classification of the Employer. Classification Seniority shall apply to layoff and recall situations.

The Employer shall provide the Union with an accurate and updated Overall Seniority list and Classification Seniority List within thirty (30) calendar days of the ratification of this Agreement, and on an annual basis thereafter as of August 1st of each year. For any Employee hired into the bargaining unit after the annual notice period, the Employer shall provide the Union and the Employee with Employee's hire date and classification.

New Employees do not have seniority status during their probationary period. At the end of the probationary employment period, seniority will date back to the initial date of employment.

Independent Contractors, On-Call Employees and temporary Employees shall not accrue seniority for any purpose. However, for seniority purposes if such Employees are subsequently hired as Full time or Part-Time Employees the date of the change to regular employment will be used.

If the last hire dates of two or more Employees are the same day, their placement on the seniority list shall be determined by the following:

- Date first worked: and
- If tied after above, by coin toss.

Classification Seniority shall be used to determine overtime decisions (opportunity to accept or reject overtime shall be afforded in seniority rotation order to the Employee(s) in the job classification in the site who is scheduled to be present at the beginning of the overtime period). It is understood that relationship-based needs of the children and/or their families may require a specific Employee or Employees to work overtime, notwithstanding seniority considerations. In such situations, the Employer shall specify the unusual circumstances, which shall not be arbitrary or capricious.

Seniority shall be used to determine vacation schedules in cases when vacation schedules conflict.

Overall Seniority and Classification Seniority shall be broken by discharge for cause, resignation or by six (6) consecutive months on layoff status. Leaves of absence granted by the employer in writing shall not be counted as part of such six (6) month period unless the Employee fails to return to work on the date specified; in which case his/her employment shall be considered terminated as of the date the Employee failed to return to work.

SECTION 13. STANDARDS OF CONDUCT

- A. These Standards of Conduct govern the conduct of all YMCA Early Childhood Services staff. The terms "employee" and "staff" are used throughout this document; these terms are meant to include all representatives of the YMCA, both paid and volunteer (policy and program). These standards do not attempt to address every possible situation, but should be considered a reasonable standard for conduct by all. Violations will be reviewed on a case by case basis to determine reasonable and fair outcome. The YMCA encourages the whole-hearted cooperation of all employees. Any reference to YMCA property or premises shall include property owned, leased, rented and donated, and anywhere business or programs are being conducted.

B. GETTING STARTED

1. Change of Name, Address or Tax Status

It is an employee's responsibility to provide the Human Resource Department with current name, address and telephone number as well as changes thereto. Tax deductions will be made in accordance with governmental laws and regulations. Changes in tax status information must be provided by the employee.

2. Outside Employment

The YMCA Personnel Policy defines outside employment. The following standards of conduct are to be adhered to in conjunction with the YMCA Personnel Policies.

Outside employment is allowed by the YMCA unless the attendance, health or productivity of the employee is adversely affected, or such job is contrary to the basic philosophy and teachings of the YMCA. When such is the case, a warning will be issued and the employee will be given two weeks to choose between the job with the YMCA and the other occupation(s). Failure to comply with this policy may result in termination.

- a. Early Childhood Services employees are prohibited from utilizing the Employer's equipment, supplies, buildings, staff, or phones to provide support to any private business, non-profit corporation or volunteer organization.
- b. Early Childhood Services employees are prohibited from utilizing Association time to provide support to any private business, non-profit corporation or volunteer organization.

3. Performing Other Than YMCA Work

YMCA employees are not allowed to perform non-YMCA work on YMCA premises during work time.

4. Personal Appearance

All employees must wear clothing appropriate for their work assignments. Every employee of the YMCA should be aware that his/her appearance directly affects the organization's public image. Employees are expected to maintain good personal hygiene and a neat appearance.

Nails must be kept short (less than ¼ inch long from fingertip) when working with children and food.

Mild scented products may be used, strong scented products are not allowed due to high sensitivity allergies, respiratory incidents being triggered. Incidents where staff have a reaction will be handled on a case by case basis.

5. Dress Code

All employees are expected to present themselves in a neat, orderly and professional appearance that enable them to perform their job functions. When job responsibilities require the use or wearing of special clothing or equipment for safety or other purposes, any employee not suitably dressed or conditioned may be sent home without pay until such time as the employee presents himself/herself in a state and dress required to perform the duties of his/her job. Staff must wear clothes that are comfortable, safe, and allow maximum movement while working around children. Clothes with slogans, or graphics that display profanity, nudity, political and religious messages are not permitted. Shirts, tops and dresses that expose chest, back, breast or abdomen, and skirts or shorts that expose upper thighs and buttocks are not allowed. Clothing that has specific symbols, insignias, etc. that is part of a particular group/gang's regalia is not to be worn. No torn clothing or inappropriately exposed flesh is allowed. Minimal cleavage only is allowed.

The criteria used in determining the standards of appearance are:

- a. Safety and health of children and staff;
- b. Staff as role models for children and families;
- c. Public image of staff as a professional; and
- d. Staff morale through positive countenance.

Footwear that is comfortable, stable and safe when working around children must be worn. Sandals, slippers, mules and open-toe/open heeled slip-ons are not permitted when working in the classroom or outdoors with children. No pointed toes or spiked heels may be worn at any time.

Any jewelry, including bracelets, earrings with sharp edges that may cause personal harm or harm to others (e.g., scratching a child or rings that do not allow for complete hand washing) is not permitted).

C. COMPENSATION

1. Falsifying Records, Reports, Fraudulent Statements

The YMCA prohibits falsifying accounting records, time cards/electronic time sheets, reports, insurance claims, or any YMCA records. Completing another employee's time sheet or permitting another to use your name is prohibited.

2. Leaving Without Permission

Permission from your supervisor, or the supervisor on duty, is required before any YMCA staff person may leave the YMCA property for personal reasons.

3. Job Abandonment

Employees who neither appear for work nor call in to his/or her appropriate supervisor to explain his/her absence will be considered as voluntarily separating their employment after a period of three consecutive days. A final paycheck will be sent to the employee's home.

4. Loafing and Loitering

Employees are expected to work steadily each hour for which they are paid. Loafing, sleeping or loitering in the work area or in the rest rooms, or engaging in excessive visiting during working time is prohibited.

Intentional holding back, slowing down, hindering or limiting one's own production, or encouraging, coercing, inciting, or bribing others to do the same is prohibited.

No guests or visitors are permitted in the program without supervisor's authorization. Staff are not allowed to have visitors in the work place without prior approval. All guests must sign in to the center. This includes staff from one center visiting another center.

Children of staff are not allowed in the facility at any time while staff are working for any reason whether children are in care or not (passing through or pick up is ok).

D. YOUR RESPONSIBILITIES AS AN EMPLOYEE

1. Confidential Nature of Agency Affairs

Business affairs of the Agency should not be discussed with anyone outside the organization except when required in the normal course of business.

2. Conflict of Interest

YMCA Early Childhood Services expects employees to conduct business according to the highest ethical standards of conduct. Employees are expected to devote their best efforts to the interests of the organization. Early Childhood Services recognizes the rights of employees to engage in activities outside of their employment which are of a private nature and unrelated to our business. However, the employee must disclose any possible conflicts so that the organization may assess and prevent potential conflicts of interest from arising.

A potential or actual conflict of interest occurs whenever an employee is in a position to influence a decision or deliver services that may result in a personal gain for the employee or an immediate family member.

No staff or members of their immediate family may serve on the Policy Council. Policy Council members can have no perceived or potential conflict of interest with the Early Childhood Services Program. Policy Council members may act as occasional substitutes in an “on-call or temporary” capacity no more than 10 hours per week. A PC member must recuse him/herself from voting in a case of potential conflict, specifically regarding personnel and budget actions. PC members who are temporary staff may not sit on the personnel or budget committees to avoid any perception of conflict of interest.

3. Controversial Issues

While employees are free to exercise their full liberties as citizens, including the right to express their personal convictions on social, economic, religious, and political issues, they must refrain from giving the impression that views expressed and positions taken by them are those of either the Employer or their co-employees.

Employees, further, must not take actions compromising the YMCA's tax-exempt status.

4. Compliance With Instructions and Rules

Failure to follow YMCA instructions—verbal or written—including failure to report for work on time and at place assigned, and failure to comply with established work procedures, will result in disciplinary action.

Encouraging, coercing, inciting, bribing or otherwise inducing any employee to engage in act or behavior which violates YMCA rules and policies is prohibited.

5. Courtesy to Members

YMCA employees are expected to exemplify the YMCA core values of Caring, Responsibility, Respect and Honesty. YMCA staff are expected to be courteous to program participants, YMCA employees and the general public during working hours or while transacting YMCA business.

6. Fair Political Practices Commission

Employees, designated by the Agency Conflict of Interest Code, shall file a conflict of interest statement with the Director.

7. Insubordination

Refusing or failure to perform work assigned by a supervisor is prohibited and can result in termination.

Threats, intimidation of YMCA personnel in any form, or malicious statements concerning YMCA personnel shall be considered insubordination and are prohibited.

8. Malicious Gossip

The YMCA prohibits employees from making false, vicious, or malicious statements concerning any employee, the YMCA, or its services.

9. Multiple Violations

Violations of three (3) or more separate work rules and policies at different times, during a six (6) month period, may result in written disciplinary action or immediate discharge.

10. Prohibition Against Acceptance of Gifts and Gratuities

Employees shall not solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

11. Prohibition Against Partisan Political Activities

Persons employed in the Early Childhood Services Division are covered by the provisions of the HATCH ACT (1500 ET SEQ Title 5 U.S. Code). This act provides that a covered employee may not:

- a. Use his/her official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
- b. Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or
- c. Be a candidate for elective office; or
- d. Lobby.

Any questions concerning political activity and applicability should be directed to the Executive Director.

12. Reporting Injury

Employees are required to promptly report to their supervisor any injury to themselves, other staff member or a child. State law requires prompt notification of all work-related injuries.

Employees shall promptly report any damage to the property of others or the equipment or facilities of the YMCA. Failure to report any potential danger or hazard is prohibited.

13. Safety and Sanitation

Employees are required to comply with all safety and health standards and all rules, regulations, and orders issued pursuant to Federal and State safety and health laws, as well as all rules, regulations and requirements issued by the YMCA for the purpose of maintaining safe and sanitary conditions.

14. Solicitation

Solicitation of employees by other employees or external solicitors for purposes other than YMCA sponsored events is prohibited. Employees may not solicit or sell anything during working time. Solicitation, selling or distribution of literature is prohibited on the premises when such action adversely affects productivity or discipline.

15. Unauthorized Presence

An employee's presence on YMCA property at any time other than the shift to which the employee is assigned, or a reasonable period of time before or after such shift, is prohibited, unless specific permission is obtained from the facility management personnel or a building supervisor. This does not apply to times that the employee is exercising his or her YMCA membership. In those situations, however, the employee will observe the same rules as any other member.

16. Use of Private Cars

Following the clearance of a Motor Vehicle Authorization Report an employee may utilize his/her private car for Association business when specified in their job description. Prior to utilizing their private car it is the responsibility of such employees to carry sufficient public liability and property damage insurance at least equal to the requirements of the financial responsibility laws of the State of California. Actual mileage driven on each trip will be recorded on a monthly mileage charge form. Employees will be reimbursed at the rate paid by the association for all miles traveled in the conduct of Association business. Each employee authorized to use a private automobile for Association business shall submit to the Director proof of adequate insurance coverage.

E. CRIMINAL OFFENSES

1. Conviction of a Crime

Any employee pleading guilty to or convicted of a felony will be subject to discharge. An employee pleading guilty to or convicted of a misdemeanor may be subject to disciplinary actions up to and including termination.

2. Destruction to YMCA Property

- a. The commission of negligent, irresponsible or careless acts on YMCA property or while conducting YMCA business at any time which results in personal injury or damage to equipment, or other property damage, or that cause expenses to be incurred by the YMCA, is prohibited.
- b. Intentional harming, destruction or mutilating property of the YMCA, including buildings, tools, equipment, or supplies is prohibited.
- c. Littering the floor with tools, parts, waste paper or lunch wastes, or littering the YMCA grounds and the parking lots is prohibited.

- d. Employees are responsible for all YMCA property taken offsite after work hours. Supervisor approval is required for all YMCA property to be taken off the worksite. If YMCA property that is checked out by the employee is stolen or damaged due to employee negligence, the employee is responsible for replacing the item at fair market value.
3. Disorderly Conduct/Fighting
The YMCA prohibits disorderly conduct during working hours or on YMCA property. Examples of disorderly conduct include: "practical" jokes, threatening or intimidating others, arguing, fighting, horseplay, rowdiness, running, walking so fast as to endanger yourself or others, scuffling, throwing things at other employees.
4. Firearms, Explosives, Dangerous Weapons
Possessing or attempting to bring firearms, explosives or other dangerous weapons on YMCA property is absolutely prohibited and will result in immediate termination.

Pointing at or threatening any employee with a firearm or other dangerous weapon is absolutely prohibited and will result in immediate termination.
5. Stealing
Stealing or taking of property belonging to the YMCA, its employees, members, and volunteers is absolutely prohibited and will result in immediate discharge. Unauthorized possession of YMCA property, parts, tools, or program supplies, or attempting to remove same from YMCA property is considered stealing and will be treated as such.

F. WORKING WITH CHILDREN

1. Confidentiality
All staff must sign a confidentiality statement. Berkeley-Albany YMCA Early Childhood Services and State Preschool will comply with Federal, State and local laws by implementing a comprehensive confidentiality policy that ensures all staff, consultants and volunteers see and discuss information only when a need can be demonstrated in order for a job or volunteer duty to be performed accurately and completely.

All children's records, assessments, and plans are confidential. Except when necessary in the regular course of program administration, the discussion, transmission, or narration in any form of student and family information of a personal nature obtained in the regular course of employment is strictly forbidden.
2. Child Abuse Prevention
 - a. YMCA staff badges must be worn while working with children.

- b. For the protection of YMCA staff, volunteers, and program participants—at no time during a YMCA program may a staff person be alone with a single child where they cannot be observed by others. As staff supervise children, they should space themselves in a way that other staff can see them.
- c. Staff shall never leave a child unsupervised.
- d. Restroom supervision. Staff will supervise children at all times. Staff will keep children in their sight while children are using the restroom.
- e. Staff should conduct or supervise private activities in pairs -- including diapering, putting on bathing suits, taking showers, etc. When this is not feasible, staff should be positioned so that they are visible to others.
- f. Staff shall not abuse children including:
 - I. Physical abuse—striking, spanking, shaking, slapping;
 - II. Verbal abuse—humiliating, degrading, threatening;
 - III. Sexual abuse—inappropriate touching or verbal exchange;
 - IV. Mental abuse—shaming, withholding love, cruelty;
 - V. Neglect—withholding food, water, basic care, etc.

No type of abuse will be tolerated; and abusive behavior shall be cause for immediate dismissal.

- g. Staff must use positive techniques when guiding children's behavior, including redirection, positive reinforcement and encouragement rather than competition, comparison and criticism. Staff will have age appropriate expectations and set up guidelines and environments that minimize the need for discipline. Physical restraint is used only in pre-determined situations (necessary to protect the child or other children from harm). Physical restraint is only administered in a prescribed manner and must be documented in writing.
- h. Staff will conduct a health check of each child, each day, as they enter the program, noting any fever, bumps, bruises, burns, etc. Questions or comments will be addressed to the parent or child in a non-threatening way. Any questionable marks or responses will be documented.
- i. Staff shall respond to children with respect and consideration, and treat all children equally regardless of sex, race, religion, or culture.
- j. Staff will respect children's rights to not be touched in ways that make them feel uncomfortable, and their right to say no. Other than diapering, children are not to be touched on areas of their bodies that would be covered by a bathing suit.
- k. Staff will refrain from intimate displays of affection towards others in the presence of children, parents, and staff.
- l. Smoking or use of tobacco in the presence of children or parents during working hours is prohibited. Tobacco use that causes a reaction in a co-worker or child will be dealt with on a case by case basis.

- m. Profanity, inappropriate jokes, sharing intimate details of one's personal life, and any kind of harassment in the presence of children or parents is prohibited.
- n. Staff must be free of physical and psychological conditions that might adversely affect children's physical or mental health. If in doubt, an expert should be consulted.
- o. Staff will portray a positive role model for youth by maintaining an attitude of respect, loyalty, patience, courtesy, tact, and maturity.
- p. Staff may not be alone with children they meet in YMCA programs outside of the YMCA. This includes babysitting, sleepovers, and inviting children to your home. It is allowed when a waiver is signed.
- q. Staff are not to transport children in their own vehicles.
- r. Staff may not date program participants under 18 years of age.
- s. Under no circumstances should staff release children to anyone other than the authorized parent or guardian, or other adult authorized by the parent or guardian (written parent authorization must be on file with the YMCA).
- t. Staff are required to read and sign all policies related to identifying, documenting, and reporting child abuse and attend trainings on the subject, as instructed by a supervisor.
- u. Staff are subject to all laws and regulations governing licensed child care, federal Head Start/Early Head Start and California Department of Education funding.

SECTION 14. UNLAWFUL HARASSMENT

In accordance with State and Federal law, the Employer maintains a policy prohibiting sexual harassment and harassment due to age, disability, race, religious creed, color, national origin, sex, ancestry, marital status, sexual orientation, veteran status, or any other basis protected by local, state or federal law or ordinance or regulation. All harassment and retaliation based on the foregoing violates the policy.

The Employer shall provide each Employee a copy of its complete Unlawful Harassment Policy, and each Employee is required to comply with it fully. A copy will be provided to the Union. Employees who believe they are victims of unlawful harassment and/or retaliation, or who believe they have observed such should report it directly to the Human Resource Director, the President, or any manager.

A. PREVENTION AND OCCURRENCE

The Employer recognizes that workplace violence is a growing concern among employers and employees across the country. The Employer is committed to providing a safe, violence-free workplace and strictly prohibits Employees, clients, YMCA members, visitors, or anyone else on Employer premises or engaging in an Employer-related activity from behaving in a violent or threatening manner.

The Employer believes that prevention of workplace violence begins with recognition and awareness of potential early warning signs and has established procedures for responding to any situation that presents the possibility of violence.

Workplace violence includes:

1. Threats of any kind;
2. Threatening behavior such as intimidation of or attempts to instill fear in others;
3. Physically aggressive or violent behavior, such as fighting, use of weapons or other objects;
4. Other behavior that suggests a propensity toward violence, which can include belligerent speech, excessive arguing or swearing, sabotage, or threats of sabotage of company property, or a documented pattern of refusal to follow policies and procedures;
5. Defacing Employer property or causing physical damage to the facilities; or
6. Bringing weapon or firearms of any kind on the Employer's premises, in the Employer's parking lots, or while conducting business.

If you observe or become aware of any of the above-listed actions or behavior by an Employee, client, YMCA members, visitor, or anyone else, you should notify your supervisor or the Human Resource Director immediately.

Further, you should notify your supervisor if a potentially violent non-work-related situation exists that could result in violence in the workplace.

B. APPROPRIATE ACTION TO TAKE

All reports of workplace violence will be taken seriously and will be investigated promptly and thoroughly. In all circumstances, the Employer will inform the reporting individual of the results of the investigation. To the extent possible, the Employer will maintain the confidentiality of the reporting Employee. The Employer will not tolerate retaliation of any kind against any Employee who reports workplace violence.

If the Employer determines that workplace violence has occurred, the Employer will take appropriate corrective action and will impose discipline on offending Employees in accordance with the Discipline and Discharge Section of this Agreement. If the violent behavior is that of a non-Employee the Employer will take appropriate corrective action in an attempt to ensure that such behavior is alleviated.

SECTION 16. CHILD ABUSE REPORTING

Upon hire, all Employees will receive a copy of the child abuse prevention policy. The California Penal Code, Section 11166.5 states that if persons in certain child-contacting professions suspect a child, 18 years or younger, has received physical injuries or injury which appear to have been inflicted upon him or her by other than accidental means by any person, or that he or she has been sexually abused, such fact will be reported by the observer by telephone immediately and in writing within thirty-six (36) hours to Child Protective Services (CPS) or the police department in the city of the incident.

If an Employee suspects or has knowledge of child abuse based upon behaviors, physical symptoms or signs, the Employee is required by law to report this immediately to Child Protective Services. Employees are also to report any suspicion of child abuse immediately by sending an "Unusual Incident Report" to Community Care Licensing, as required, with a copy to their direct supervisor. If the direct supervisor is not on duty, the Employee will follow the chain of command up to the next available manager.

In cases where Employees are accused of child abuse the individual will be suspended with pay pending investigation.

SECTION 17. SUBSTANCE FREE WORKPLACE

The Employer prohibits the unlawful manufacture, distribution, dispensation, possession, use or being under the influence of a controlled substance and/or alcohol during working hours on the Employers' property or worksites. Employees must notify the Employer of any criminal drug statute conviction no later than five (5) days after such conviction.

Smoking is prohibited within 20 feet of all doorways or vents.

SECTION 18. COMPUTER USAGE

The Employer provides and maintains the following forms of electronic data: voice-mail, internal and external e-mail, computer software and Internet access. These systems are intended for work-related purposes only.

Every Employee has a responsibility to maintain and enhance the Employer's public image, and to use all forms of electronic data in an effective, ethical business-related and lawful manner. In no case may any electronic data be used as solicitation for personal business purposes, religious or political causes.

A. COMPUTER SOFTWARE

Employees are strictly prohibited from making and using additional copies of any licensed software that has been purchased by the Employer. This includes copying the software for

use on other Association machines. Copyright laws require the purchase of separate copies of licensed software for each workstation or network, where applicable.

The only exceptions are:

The Information Systems Manager will keep a single copy for back up purposes only. You may make a permanent transfer of the software to another workstation with the approval of the Information Systems Manager.

To ensure proper licensing and to prevent viruses, all software acquisition, whether purchased or downloaded from the Internet, should be coordinated with the Information Systems Manager. Additionally, you may not bring a copy of software from home or another place of business and place the software on a workstation. Questions about the use of software should be directed to your Information Systems Manager.

B. USE OF DATA

All data stored on computer disks, hard drives and CDs purchased by the Employer is the property of the Employer and may not be used for personal reasons. Confidentiality of all data must be strictly maintained and access is restricted to authorized Employees only, who must use their assigned user identification and password.

C. PROPERTY OWNERSHIP

All Association-provided personal computers, including the Internet and e-mail systems and all software and data on these computers, are the sole property of the Employer. Passwords assigned to each workstation are also the property of the Employer and must be shared with the Information Systems Manager and Executive Director upon designation.

The Employer reserves the right to: monitor, access, copy, retrieve and/or read any message and to disclose any message to persons other than the intended recipient, including but not limited to, law enforcement or other third parties if necessary. A message includes any message, file, or other electronic data created, uploaded, downloaded, sent, received or stored on any Employer owned electronic data system.

No Employee should assume any message is private. Deleted messages continue to be backed up on agency servers and it may be possible to recreate the information without your consent or knowledge. Therefore, it is recommended that highly confidential or sensitive information not be communicated by any means of electronic data.

The Employer may conduct unannounced audits of any workstation to ensure it does not violate any license, contractual agreement, Association policy or any federal, state, county or local law or ordinance. The Employer reserves the right to limit, restrict or extend personal computer privileges and information contained therein.

D. MESSAGE CONTENT

The Employer prohibits use of computers, e-mail and voice mail in ways that are disruptive, offensive to others or harmful to morale. All messages should have content that is consistent with the Association core values of caring, respect, honesty and responsibility.

Examples of messages that are offensive include, but are not limited to, sexual comments or images, racial slurs, or other comments or images that would offend someone on the basis of his or her race, color, sex, religion, national origin, sexual orientation, age, disability or any other basis prohibited by law.

SECTION 19. TELEPHONE AND CELLPHONE USAGE

Telephone courtesy is a necessity for incoming and outgoing calls. YMCA phones must be kept free for business calls. Except for emergencies, personal phone calls are not permitted during working hours.

When necessity requires that an Employee make a personal long distance call, the call should be monitored for time and charges and paid for by the Employee.

The use of pagers and cellular phones is allowed during break and lunch periods. No cell phones are to be used when staff are with children.

Cellular phones and/or pagers required and paid for by the Employer must be kept in operating condition and available during the time and hours of employment.

SECTION 20. DISCIPLINE AND DISCHARGE

A. Managers shall utilize the following progressive discipline/counseling steps when it is determined that the unacceptable performance or conduct can be corrected. These steps are not required in cases of misconduct, including but not limited to the matters set forth in paragraph B of this Section.

Disqualification of Employees from working for the Early Childhood Services program pursuant to federal, state or local law does not constitute discipline or discharge within the scope of this Agreement.

Step 1: Verbal Counseling: The supervisor or manager meets with the Employee to discuss the observed performance and goals for immediate improvement.

Step 2: Written Warning: If after the verbal counseling session the observed performance does not improve, further action should be taken. The supervisor or manager should document the continuing performance problem and meet with the Employee. During the meeting the following factors should be addressed:

- a. State the acceptable performance expectations;
- b. Provide specific examples of performance deficiencies;
- c. State specific time frame for improvement;
- d. State that disciplinary action up to and including termination may be taken if there is no improvement; and

e. Inform the employee that the continuing deficiency will be documented.

Step 3: Suspension, Termination and/or Demotion: All disciplinary notices, except oral warnings, shall be given to the Employee in writing. If the Employer keeps a written record of an oral warning, the Employee shall receive a copy of such record.

The Employee shall be provided with a space to indicate receipt of the document but not necessarily agreement with its content. All records of such disciplinary nature will be maintained in the Employee's personnel file.

The Employee has a right to Union representation at all levels of the discipline process.

B. The Employer may discharge an Employee who commits any of the following offenses without first warning or suspending the Employee:

1. Consuming alcohol or other controlled substances during working hours, being under the influence of such substances during working hours, or bringing such substances onto Employer's premises;
2. Calling an unauthorized strike or walkout or other job action;
3. Theft or dishonesty;
4. Insubordination;
5. Threatening, intimidating or fighting fellow employees or guests on the Employer's premises;
6. Documented falsification of records (including time-cards);
7. Completing time card of another Employee without proper authorization;
8. Carrying firearms or other dangerous weapons at the Employer's premises;
9. Willful destruction of property belonging to the Employer or its business invitees or other Employees;
10. Wrongful appropriation and misuse of Employer's property and funds;
11. Sleeping on the job;
12. Smoking in prohibited areas of Employer's premises;
13. Any form of child abuse, including hitting, grabbing or yelling at children;
14. Failure to supervise children in a manner that causes a violation of Early Childhood Services Performance Standards or Community Care Licensing regulations.

C. All discipline is subject to appeal in accordance with the provisions of the grievance procedure. The parties agree that investigations conducted by outside agencies shall not be sufficient evidence of a violation of this agreement.

SECTION 21. PERSONNEL FILES

There shall only be one official personnel file which is the property of the Employer and is not subject to public inspection. Every Employee shall have the right to inspect his/her personnel file, as provided by law, in the presence of an Employer representative at a mutually agreed

upon time. In addition, every Employee shall have the right, in the presence of an Employer representative to inspect any other pertinent documents which have been used to determine the Employee's qualifications for employment, promotion, additional compensation, termination or any other disciplinary action. An Employee may also sign a release form to allow a representative of the Union to inspect the Employee's file or such pertinent documents as listed above in the presence of an Employer representative at a mutually agreed upon time. An Employee or his/her authorized representative may obtain a copy of any document in the personnel file. A reasonable fee for each copy may be charged.

The Employee shall receive a written copy of any disciplinary notation and/or documentation prior to placement in the personnel file.

Non-official files will be kept in the Early Childhood Services office and kept by confidential employees. All confidentiality regulations will be adhered to respecting those files.

SECTION 22. HOURS OF WORK/OVERTIME

A. HOURS OF WORK

A normal work day is scheduled between the hours of 7:00 am to 7:00 pm. Work schedules are set by the manager of each work group, and are based on providing the appropriate level of service to the clients of the Agency.

Employees shall be provided a normal work schedule at the time of hire or as changes are made based on the needs of the program, and federal, state and local requirements.

Employee work schedules will be set based on the following criteria:

1. Needs of the children and families
2. Fund source policy
3. Programmatic needs
4. When possible, staff requests for time and schedule placement

Employees will be notified one pay period in advance of any schedule change unless emergency circumstances require otherwise.

B. BASIC WORK WEEK

The basic work week is Monday through Sunday.

Preparation of classrooms, curricula and related materials shall be accomplished during an Employee's regular scheduled workday unless specifically requested by program management.

Early Childhood Services programs may occasionally require attendance at evening and/or weekend events outside the normal working hours. Employer may allow Employees to rearrange their work schedule to accommodate these events without requiring Employees to work overtime.

C. BREAK & MEAL PERIODS

Employees shall be entitled to take one (1) ten (10) minute rest break for each four (4) hours of work performed by such Employee in a workday. Authorized rest period time taken shall be counted as time worked.

Lunch periods are uncompensated and should be taken away from the Employee's work station. Employees will be relieved of all work duties during the lunch period. Generally Employees will take a 30 minute lunch break. Employees may opt for a one hour lunch provided it is approved by their supervisor. Employees who are scheduled to work part-time, for six (6) hours or less during the day, will have the option to waive their meal period, but must have approval to do so from their Supervisor. The waiver must be signed and filed with the Human Resource Department. The Employee's manager will be responsible for approving any changes in the scheduled lunch period.

Employees will not be compensated for their meal breaks unless they are required to work during their breaks. For Employees that by nature of the work prevents them from being relieved of all duty, an "on duty" paid meal break is permitted.

D. OVER-TIME

Over-time work will be the exception, rather than normal practice. Over-time must be approved in advance by the supervisor. Employees will be compensated at a rate equal to one and one-half times their regular rate of pay for over-time hours worked in accordance with applicable state and federal laws and regulations.

E. RECORDING OF HOURS WORKED

Proper accounting of hours worked is the responsibility of each Employee. Time cards (and Electronic timesheets when implemented) must be recorded daily in each location. Employees must report their exact starting time; time off for lunch; time back from lunch; and the time the Employee stops work. Under California law and federal audit guidelines, the information given must accurately reflect the hours worked by an Employee. Inaccurate time records may ultimately result in serious disciplinary action.

When leaving the worksite for any non-work related reasons longer than a ten minute break you must clock out and then back in upon your return.

For all other time-off requests and usage, a Personnel Action Form (PAF) must be completed and turned in to your supervisor.

F. ACCOMMODATING REQUESTS FOR CHANGE IN WORKING HOURS

The Employer will make every reasonable effort to accommodate requests of Employees who want a change in working hours due to hardship and/or childcare needs while ensuring that the site staffing needs are met and the program is not adversely affected. Two weeks prior notice is required to process the request except in cases of unforeseen circumstances or emergencies.

G. PAYROLL PROCEDURES

The Employer will post the total number of accrued hours of vacation on each paycheck, each pay period.

An additional check or a replacement check will be issued as quickly as possible by the Association payroll department for any mistakes found in employee payroll checks. Should an error be found that is in the Employee's favor, arrangements will be made to pay back the employer over a period of not more than three (3) months.

SECTION 23. LAYOFF/REDUCTION IN WORK

The Employer, at its discretion, shall determine whether layoffs are necessary. Although not limited to the following, layoffs ordinarily shall be for change in program direction, lack of work and/or lack of funds, low enrollment and/or below-average attendance. If it is determined that layoffs are necessary, Employees will be laid-off or not called in to work within the affected program in the following order:

- 1st: Temporary Employees
- 2nd: On-Call Employees
- 3rd: Probationary Employees
- 4th: Regular Employees (full-time and part-time)

Regular Employees within the affected program will be laid-off from an affected classification in accordance with their Classification Seniority and their ability to perform the remaining work available (i.e., proper certification).

Laid off employees shall receive fourteen (14) days' notice (or pay in lieu) of the intended layoff. Laid off employees shall also be eligible for "separation pay" after two years of employment. This payment shall be made as follows:

Payment equal to one (1) week's pay for each continuous year up to ten (10) years of service beginning after the second year of service.

RECALL: Employees other than temporary, on-call or probationary Employees who are laid-off shall be placed on a recall list for a period of six (6) months. If there is a recall, Employees who are still on the recall list shall be recalled in the inverse order of their layoff, provided they are presently qualified to perform the work in the available job position to which they are recalled.

If an Employee is recalled to a position in a lower rated job classification, he/she shall have the right to return to the job classification he/she held prior to being laid-off if it subsequently becomes available. If an Employee is recalled to a lower rated job classification, the Employee shall have the right to refuse the recall and remain on the layoff list and be eligible for recall. The Employer shall not hire new Employees in bargaining unit positions as long as there are still Employees on the recall list who are presently qualified to perform the work in the affected job classification and are willing to be recalled to said classification; provided that, the Employer

may hire a temporary Employee to fill a position in the interim between an Employee's acceptance of recall and his/her actual return to work thereafter.

Employees who are eligible for recall shall be given fourteen (14) calendar days notice of recall, and notice of recall shall be sent to the Employee by certified or registered mail with a copy to the Union; provided that, the Employee must notify the Employer of his/her intention to return within three (3) business days after receiving notice of the recall. The Employer shall be deemed to have fulfilled its obligations by mailing the recall notice by registered mail, return receipt requested, to the mailing address provided by the Employee. It is the obligation and responsibility of the Employee to provide the Employer his/her latest mailing address.

SECTION 24. WAGES

- A. Salary ranges have been established for each classification and are listed in Appendix A-1 (Wage Plan).
- B. Employees currently paid above the salary range for their classification will remain at their current salary until they are either eligible for a step increase or a reclassification.
- C. In the subsequent years of this Agreement, all Employees may turn in additional education documentation to be reevaluated in the Wage Plan. Employees must turn in their information between August 15th and September 1st. The information will be reviewed and wage adjustments will be made with the effective date of September 1st of that year. Any submission after September 1st can be submitted for consideration the following year, but will not be retroactive unless the employee has been assigned to a different classification.
- D. The base salary scale will increase by the amount designated by the Federal or State funders for COLA's and applied to wages or benefits upon continued Federal and State funding.
- E. Employees who have increased their qualifications during the year and move into open higher level positions are eligible for salary increases based on the new position, as of the effective date.

SECTION 25. BENEFITS

A. RETIREMENT PLAN

All full-time, and part-time Employees who have 1,000 hours of compensated employment in one (1) year, and attain age 21 are eligible to enroll in the YMCA Retirement Fund at the Employer contribution rate of 10% of the Employee's total earnings. Employees must work two (2) years of 1,000 hours in each separate year starting from their anniversary date (hire date). The employees are then enrolled and immediately vested. The YMCA of the Central Bay Area makes the contribution for all eligible employees every pay period.

All full-time and part-time Employees who have 1,000 hours of compensated employment in each of two (2) years, and obtain age 21 are eligible to enroll and will be fully vested immediately upon enrollment. The necessary two (2) years are not required to be consecutive.

B. YMCA FACILITY USAGE

Employees may continue to use the Employer's facilities according to current practice. Full-time Employees and their families are entitled to full use of the Berkeley-Albany YMCA facilities at no cost, except for the direct cost of program participation not included in facility usage.

Full-time and Part-time I Employees only are entitled to usage of participating Bay Area YMCA's at no cost, except for the direct cost of program participation not included in facility usage.

C. DIRECT DEPOSIT OF PAYCHECKS

Employees may continue to use the Employer's direct deposit of paycheck service according to current practice.

D. LONG-TERM DISABILITY INSURANCE

Full-time Employees with thirty (30) days of service are eligible to enroll in the Employer's Long-Term Disability Insurance plan according to current practice.

E. VISION CARE

Kaiser group health care plan provides vision coverage. In addition, the University of California at Berkeley School of Optometry (UCB) currently offers a vision care discount program for YMCA employees at no cost to the Employer. Employees are eligible to participate in the UCB discount program so long as it is available to YMCA employees, according to current practice.

F. TAX DEFERRED ANNUITY PLAN

The Employer currently provides a tax deferred 403(b) plan for employee-only contributions. Employees may enroll in this plan according to current practice.

G. LIFE INSURANCE PLAN

Full-time Employees with thirty (30) days of service are eligible to enroll in the Employer's Life Insurance plan according to current practice.

H. OTHER BENEFITS

Any other employee benefits as outlined in the Employee Handbook.

SECTION 26. HEALTH AND WELFARE BENEFITS

A. ELIGIBILITY FOR BENEFITS

1. All full-time Employees are eligible to enroll for benefits at the time of employment. Full participation is subject to meeting the requirements of specific benefit coverage. (Employee must be scheduled to work for thirty (30) hours or more per week. Employees are eligible for coverage on the first day of the month following thirty (30) days of continuous employment.)
2. Temporary and On-Call employees are not eligible for benefits.

B. MEDICAL RELATED BENEFITS

All Employees, who are not working in temporary positions and are working thirty (30) or more hours per week are eligible to participate in the medical group health care plan. A plan description will be distributed to all eligible Employees.

Eligible Employees may also enroll in the dental plan, or a comparable plan that is provided by the Employer. A plan description will be distributed to all eligible Employees.

The Association will pay the full cost of Employee-only coverage for the medical and dental plans. Dependent coverage may be purchased by the Employee for the medical and dental plans.

Dependent and Employee contributions for benefits will be processed through a premium benefit only IRS Section 125 pre-tax deferred plan.

Eligible Employees will have their medical related benefits paid during their period of active service. A pro-rated payroll withholding will be made during the active service period to cover medical related benefits during the inactive service period.

SECTION 27. HOLIDAYS

A. PAID HOLIDAYS FOR SCHOOL YEAR AND FULL YEAR EMPLOYEES

Holiday leave is paid leave for regular full/part-time Employees for the following holidays during the periods for which they are employed: Employees will receive compensated pay for the holiday based upon the average hours of work per day.

1. New Year's Day
2. Martin Luther King's Birthday
3. President's Day
4. Good Friday
5. Memorial Day
6. Independence Day
7. Labor Day
8. Veteran's Day
9. Thanksgiving
10. Friday following Thanksgiving
11. Christmas Eve
12. Christmas

Any holiday which falls on Saturday will be observed on Friday, any holiday which falls on Sunday will be observed the following Monday. In order to be eligible for holiday pay, the Employee shall have worked his/her scheduled work day immediately prior and immediately following the holiday, unless the employee was previously approved for time off. Employees shall not lose their Holiday pay for missing part or all of the day before or after the Holiday for time off with appropriate medical documentation. If an employee is out sick (all day or part of the day) twice within a six month period, the employee will not receive holiday pay after the first occurrence. The missed time before a holiday does not need to be consecutive.

If an Employee's hours are reduced after the Employee becomes eligible, they will continue to be eligible for the holiday benefit based upon the average number of hours worked per day.

In addition to the above listed holidays, School Year Employees receive holiday pay for additional non-work days during Winter and Spring Break, that are defined in the annual employee program calendar.

B. FLOATING HOLIDAYS

All Full-time, and Part-time Employees who have 1,000 hours of compensated employment within the twelve month period commencing on the date of employment or re-employment, or any anniversary thereof, are entitled to two (2) floating holidays with pay during the calendar year. A floating holiday is to be selected by the Employee with prior approval of the supervisor.

Compensation for the holiday will not exceed the rate of pay for the Employee's average scheduled work hours per day for the holiday.

At the time of separation from the Association, Employees will be paid for any unused Floating Holidays.

C. SCHEDULING OF TIME OFF

The Supervisor shall approve any scheduled time off to which an Employee is entitled.

SECTION 28. VACATION

A. VACATION LEAVE WITH PAY FOR FULL YEAR EMPLOYEES

All Full-time, and Part-time Employees who have 1,000 hours of compensated employment within the twelve month period commencing on the date of employment or re-employment, or any anniversary thereof, are entitled to vacation time for the purpose of rest, relaxation and recreation.

Full-time Employees begin to accrue vacation time as soon as they are hired, but it becomes available at the end of three months for full-time Employees. Years of service shall be based on the anniversary date of hire.

Years of Service	Accrual Rate	Accrual Maximum (FT/PT)
Up to 5 years of employment	3.33 hours/pay period	80/58
5 – 10 years of employment	5.00 hours/pay period	120/87
10 or more years of employment	6.66 hours/pay period	160/116

1. Beginning with the date of hire through the fourth year of eligibility, full-time and eligible part-time Employees will accrue vacation leave at the rate of .0385 times actual hours worked during a semi-monthly period. Full-time Employees may accrue up to a maximum of 80 hours per year. Part-time Employees may accrue up to a maximum of 58 hours per year.
2. Beginning with the fifth year of eligibility through the ninth year of eligibility, full-time and eligible part-time Employees will accrue vacation leave at the rate of .0577 times actual hours worked during a semi-monthly period. Full-time Employees may accrue up to a maximum of 120 hours per year. Part-time Employees may accrue up to a maximum of 87 hours per year.
3. Beginning with the tenth year of eligibility, full-time and eligible part-time Employees will accrue vacation leave at the rate of .0769 times actual hours worked during a semi-monthly period. Full-time Employees may accrue up to a maximum of 160 hours. Part-time Employees may accrue up to a maximum of 116 hours per year.

Whenever possible, Employees should request vacation leave at least 30 days in advance of when the time off is to be taken, so that work schedules can be established or adjusted. Vacation requests must be approved by the Employee's manager. In approving the requests, managers need to consider the work load during that time period. When ever possible, requests should be granted to the first person who requests time off for a particular time period. If situations arise where two Employees request the same time off, managers should grant the request based on seniority. Vacation requests shall not be unreasonably denied.

B. VACATION USE FOR FULL YEAR TEACHING STAFF

Twelve (12) month teaching staff will be required to use their accrued vacation hours during the Winter Recess, Spring Recess and Summer break periods. If an Employee's total of accrued hours does not cover the amount of hours of program closure, the Employee may request unpaid time off (Time off will be considered personal "leave without pay"). This request must be submitted 2 weeks prior, with written request and approval to provide proper processing to payroll.

Employees who have not used all accrued vacation by the end of the program year shall carry the vacation hours over to the next year. Employees who have reached their maximum earned vacation allowance will not accrue any more vacation allowance until their earned vacation allowance is reduced below their maximum allowance.

If an Employee's hours are reduced after the Employee becomes eligible, they will continue to be eligible for the vacation benefit prorated as described above. Vacation will be paid to Employees not to exceed eight (8) hours a day nor can it exceed the total of accrued vacation hours.

C. VACATION LEAVE FOR SCHOOL YEAR TEACHING STAFF

School year teaching staff do not accrue vacation. Refer to Holidays for School Year Employees.

D. ON CALL AND TEMPORARY EMPLOYEES

On call and temporary Employees are not entitled to vacation.

E. PAYMENT AT TERMINATION

At the termination of employment or retirement, the Employee is paid for earned and unused vacation time.

SECTION 29. TRAINING, EDUCATION AND CONFERENCES

A. MANDATORY TRAINING

If an Employee is directed to attend any job-related, or in-service training session as a condition of continued employment, such attendance shall be considered as time worked. The Employee shall be paid at the appropriate rate of pay.

B. COURSE REIMBURSEMENT

Unit members may make application for tuition reimbursement or release time to attend educational or training courses through outside educational institutions for the purpose of improving job skills in their current position, or to prepare them for other positions within the Early Childhood Services Program.

Requests for tuition reimbursement shall be submitted in the "Course Reimbursement Request Packet" through line management to the Executive Director. In order to minimize financial risk to the Employee and to permit review, approval or denial, the request shall be submitted in advance of registration, but no request shall be submitted later than thirty (30) calendar days after the start of the class. In addition, upon request, applicants shall submit all other necessary information that is required to be included in the packet. Only fully complete packets will be considered for reimbursement. Reimbursement will be made upon verification of completion of the course(s) with a grade of "C" or better.

Each request shall be evaluated on the relevancy of the training to the needs of the program, either as related to the applicant's present position, or other positions and jobs within the program.

Management shall evaluate each application and sufficiency of funding and approve or deny.

Tuition reimbursement up to 50% percent of actual tuition, books, and associated expenses not to exceed \$200.00 per year within budgetary limits, for approved applications (all funds are earmarked based on program needs and priorities determined by funding sources).

C. SCHOOL DURING WORK HOURS

Employees may be released from work, without pay, to take course(s) offered by an accredited educational institution if the following conditions are met:

1. Course is related to the work of the Employer;
2. Written permission is obtained in advance from the Supervisor and the Executive Director;
3. Complete the requirements of employment or requirements of advancement set forth by the Board of Directors, Policy Council, or other mandating agency;
4. The time off must be used for actual travel and attendance of the class; and
5. Copies of class schedules are to be provided to the supervisor.

Scheduling Priority

1. To maintain adequate classroom coverage;
2. To obtain qualification upgrading to fill program needs;
3. To meet qualifications, or changing qualifications, for the position held;
4. To obtain qualifications for promotion; and
5. To obtain general improvement after minimum qualifications are achieved.

D. IMPROVING EDUCATIONAL OPPORTUNITIES

In the continuing effort to provide educational and charitable family assistance to children, youth, adults and families in the service area, the Employer agrees to make every reasonable effort to provide alternative means of education and training. These alternatives may include but are not limited to, in-service training, on-line classes, district and community training, correspondence and video classes.

E. PROFESSIONAL CONFERENCES

An Employee may, with prior written consent of the Supervisor, Manager and Executive Director, attend professional conferences and training institutes. Expenses for these conferences may be paid by the Employer. Whenever possible, Employees from a wide range of classifications shall have the opportunity to attend conferences. Travel time to and from the conference is paid at the Employees regular wage rate (no overtime), if the travel time is during the Employees regular shift. Actual expenses for parking, meals, registration, lodging and transportation, including tolls, will be paid by the Employer as a cost to the contract.

Original receipts for expenditures must be attached to meeting expense forms. The following rules also apply:

1. Out of state travel may be subject to advance approval by the funding sources;
2. Reimbursement of the total cost of meals and lodging for any one day shall be limited to the amount approved by funding sources or agency policies;
3. A cash advance of up to 90% of estimated out-of-pocket meeting and conference expenses may be approved by the Director; and
4. Commercial Air Travel will be by the least expensive class available. Employees desiring to travel by automobile rather than commercial aircraft will not be reimbursed an amount greater than the equivalent least expensive air fare.

The cost of meals, not associated with travel, will not be reimbursed except when the meal is clearly required for the conduct of Early Childhood Services business, such as committee meetings, conference with consultants, oral boards, and evening meals incurred because of required work.

SECTION 30. SICK LEAVE

Full-time, and Part-time Employees who have 1,000 hours of compensated employment within the twelve month period commencing on the date of employment or re-employment, or any anniversary thereof, and who are absent due to personal illness or accident are entitled to a salary/wage allowance based on length of service at the time the incapacity begins. Medical documentation may be required.

Sick leave will be paid out as a replacement of hours that were scheduled to be worked.

Sick leave balances shall be itemized every payroll cycle and displayed on the Employee's pay stub.

Employees who have reached their maximum earned sick leave allowance will not accrue any more sick leave allowance until their earned sick leave allowance is reduced below their maximum allowance.

Periods of extended sick leave, or prolonged absence (30 consecutive calendar days or more) are not counted toward the earning of sick leave.

Employees are eligible and qualify for State Disability Insurance payments beginning on the eighth (8th) calendar day of absence.

When an Employee is receiving State Disability Insurance (SDI) payments or Worker Compensation payments, s/he may elect to use accrued sick leave to make up the difference between her/his regular rate of pay and the amount s/he are receiving from either of the above agencies. When accrued sick leave is exhausted, at the Employee's option integration may be done with accrued vacation.

Employees may use up to one-half of their yearly sick leave accrual for the purpose of attending to a child, parent or spouse who is ill. Leave for this purpose may not be taken until it has actually accrued.

- For purposes of sick leave use, a “child” is defined as a biological, foster, or adopted child, stepchild or a legal ward. A “child” also may be someone you have accepted the duties and responsibilities for raising, even if s/he is not your legal child (i.e. child of a domestic partner).
- A “parent” is your biological, foster or adoptive parent, stepparent, or legal guardian.
- A “spouse” is your legal spouse according to the laws or your domestic partner.

All conditions and restrictions placed on an Employee’s use of sick leave apply also to sick leave used for the care of a child, parent, or spouse.

A. COMPUTATION

Sick leave is calculated on the basis of the eligible Employee's continuous employment with any YMCA. Sick leave is accrued from the date of hire and becomes available following three (3) months of employment. Employees adhere to the following schedule:

1. Beginning with the date of hire through the second year of eligibility, full-time and eligible part-time Employees will accrue sick leave at the rate of .0192 times actual hours worked during a semi-monthly period. Full-time Employees may accrue up to a maximum of 40 hours. Part-time Employees may accrue up to a maximum of 29 hours.
2. Beginning with the third year of eligibility through the fifth year of eligibility, full-time and eligible part-time Employees will accrue sick leave at the rate of .0385 times actual hours worked during a semi-monthly period. Full-time Employees may accrue up to a maximum of 80 hours. Part-time Employees may accrue up to a maximum of 58 hours.
3. Beginning with the sixth year of eligibility through the tenth year of eligibility, full-time and eligible part-time Employees will accrue sick leave at the rate of .0577 times actual hours worked during a semi-monthly period. Full-time Employees may accrue up to a maximum of 120 hours. Part-time Employees may accrue up to a maximum of 87 hours.
4. Beginning with the eleventh year of eligibility full-time and eligible part-time Employees will accrue sick leave at the rate of .0769 times actual hours worked during a semi-monthly period. Full-time Employees may accrue up to a maximum of 160 hours. Part-time Employees may accrue up to a maximum of 116 hours.

B. REDUCTION OF HOURS

If an Employee's hours are reduced after the Employee becomes eligible, s/he will continue to be eligible for the sick leave benefit prorated as described above.

C. TERMINATION

At the time of termination of Employment, an Employee shall have no claim for pay in lieu of unused sick days.

SECTION 31. LEAVES OF ABSENCE

The Employer may consider granting Employees different types of leaves during their employment. The following covers all leaves.

All leaves will be submitted for approval a minimum of 14 days prior to the request and approved by:

1. Immediate Supervisor & Executive Director; and
2. Human Resources Director.

Employees who are on a leave of absence should not accept employment with another Employer during the duration of the leave. The following specifies the different types of leaves and the applicable policies.

The maximum duration for leave of any type which includes: Non-work related disabilities, and leaves of absence are four (4) months. If an Employee is not able to return to work after this time period, employment with the Employer will be terminated.

During the unpaid leave the Employee will not accrue vacation. While on leave no holiday pay will be paid to the Employee. Upon return from the leave, the Employee's seniority date will be adjusted to reflect the deduction of the time for the unpaid leave.

The Employer will attempt to reinstate an Employee released for partial/restricted duty if the job assignment is available and if the Employee is able safely to perform the essential functions of the job without posing a significant risk of substantial harm to the health or safety of himself/herself or others.

A. TYPES OF LEAVE

1. Personal Leave:

Unpaid leaves for personal reasons, unrelated to reasons specified under the Family & Medical Leave policy, will be approved by the Human Resources Director and will be based on the needs of the business. Any Employee who has completed their introductory employment period can request a personal unpaid leave for a 20 day time period. Such a request must be made in writing and addressed to parties listed above. The written request must provide the duration of and the reason for the requested leave. Within ten (10) workdays of the written request being submitted, the Supervisor and Executive Director will either recommend the leave be granted and forward the request to the Human Resources Director, or deny the request.

In reviewing the leave request management will consider the following factors:

- needs of the business;
- reason for the requested leave;
- staffing needs during the time period of the leave; and

- the length of employment of the person requesting the leave.

An Employee on a personal unpaid leave may continue medical and dental benefits through COBRA. The Employee will pay the full cost of the insurance premium during this time period.

Any extension of the leave must be requested in writing at least 5 working days prior to the end of the leave. The Human Resources Director will immediately decide whether to grant an extension.

2. Bereavement Leave:

Employees who have suffered the loss of a member of their immediate family (i.e., parent/guardian, spouse or live-in partner, grandparent, child, step-child or child of live in partner, brother or sister, mother-in-law or father-in-law or parent of live in partner or any other relative living in the Employee's household, shall be allowed to take three (3) days of paid time off to attend the funeral. . Additionally, sick leave, vacation time, floating holiday or unpaid time off may be granted when an Employee needs to take more time, or to attend the funerals of other relatives who are not defined as immediate family members (see list above). Employees who believe that requests under this section have been wrongly denied shall have the right to appeal to the next level of supervision without negative consequences. Bereavement leave must be entered on the time sheet as "personal paid" time, or "personal unpaid" time, with an explanation entered in the comment section.

3. Compassionate Leave:

If an employee exhausts all of their accrued sick leave and accrued vacation days due to a catastrophic illness they may request from the Human Resources Director or Executive Director to institute the donation of accrued sick/vacation day policy. This will allow employees to anonymously donate their accrued sick or accrued vacation days to this employee. This is only applicable to the employee's catastrophic illness (not family members). Examples of catastrophic illness include but are not limited to:

- Incapacity due to a chronic, serious health condition for which treatment may not be effective such as Alzheimer's or the terminal stages of a disease; and/or
- Absences to receive multiple treatments by a health-care provider including recovery from the treatments, such as chemotherapy, radiation, physical therapy for severe arthritis, restorative surgery after an accident and kidney dialysis.

A maximum of six (6) days per request per person can be donated (no more than three (3) sick and three (3) vacation days). Such requests may be made by a co-worker, with the permission of the employee.

Once time is donated, the days are permanently donated to a "bank" for use by employees as determined by the Human Resources Director. The balance of the bank will be available upon request to one person.

4. Jury & Witness Duty Leave:

Employees who are summoned to serve as a juror must immediately provide a copy of the notice to their managers. If an Employee must report for jury duty and is selected as a juror, the Employer will provide up to two weeks of paid time, and then the remainder of the time will be unpaid. Employees are required to get written confirmation from the clerk of the court for each day which they must report for jury duty. During the time when court is not in session, Employees are expected to report to work. Employees must return to work upon early dismissal.

Employees who are subpoenaed to appear in court as a witness, will be granted the time off as unpaid personal time. Employees need to produce a copy of the subpoena and verification from the court when they are called as a witness.

5. Parental Leave for School Visits:

Requests for parental leave for school conferences/activities shall not be unreasonably denied.

6. Statutory Leaves:

The Employer shall administer Family and Medical Leave, Pregnancy Disability Leave and Military Leave in accordance with the requirements of California and federal law.

SECTION 32. HEALTH AND SAFETY

Safe Work Environment: The Employer shall provide a safe work environment for all staff. The employer will enforce safety rules that keep employees safe from all participants of the program including verbal and nonverbal threats and any other behavior that suggests a propensity toward violence, which can include belligerent speech, excessive arguing or swearing, sabotage, or threats of sabotage, or a documented pattern of refusal to follow policies and procedures. Staff shall address their concerns to their immediate supervisor. If the immediate supervisor does not respond within 5 working days in a way that is satisfactory to the employee, the employee is free to take their concerns to the next supervisory level without negative consequences.

SECTION 33. LABOR/ MANAGEMENT COMMITTEE

The Employer and the Union agree that mutual interests are advanced in a climate of respect, mutuality, and open communication. Therefore, the Parties hereto agree to establish a Joint Labor-Management Committee. The Committee shall not be obligated to meet more than every three (3) months during the normal school year to discuss mutual concerns about the following;

1. Injury prevention and workplace safety issues;
2. Program improvement; and
3. Promoting a healthy work environment.

This shall not either expressly or implicitly result in any obligation to reopen any of the terms of this Agreement or otherwise to bargain with respect to any subject.

Composition of the Committee shall be:

1. Two (2) from the Union; and
2. Two (2) from the Employer.

The meeting will have a rotational Chair to manage the meetings, and a Recording Secretary to document the minutes. The parties shall sign off on a written statement of mutually agreed upon outcomes from each meeting.

SECTION 34. SETTLING DISPUTES AND GRIEVANCES

When an Employee or group of Employees feel that they have been unfairly or improperly treated, or that the Agreement has been violated, they shall have the right to file a grievance against the Employer.

For cases where there is no backpay liability, the written grievance must be filed within thirty (30) working days of the occurrence of the incident(s) giving rise to the grievance, or within thirty (30) days of knowledge of the occurrence. For cases in which back pay liability is ongoing, the written grievance must be filed within ten (10) working days of the incident, or knowledge thereof.

All disputes between Employees and management relating to this Agreement shall be settled in the matter described below.

Step 1. Informal Conference. The Grievance will first be discussed by the aggrieved Employee and the supervisor with the Union Representative present. This informal conference shall take place within five (5) business days (M-F) of its request. Every reasonable effort shall be made to resolve the grievance at this step. The supervisor shall give an answer in writing to the aggrieved worker and the Union within five (5) business days (M-F) of the meeting.

Step 2. Written and Formal Conference. If a satisfactory settlement is not reached under Step 1, the Union may within five (5) business days (M-F) thereafter request a meeting with the Branch Executive and his/her agent. The grievance shall be put in writing and the grievant or grievants and the Union Steward and Union Representative shall attend. This formal conference shall be scheduled by agreement between the Employer and the Union, but the Union may require that this meeting be held no more than five (5) business days (M-F) after the written decision of the supervisor in Step 1 has been received by the Union. The decision of the Employer following this meeting shall be written by the Branch Executive or his/her agent and delivered to the affected Employees and the Union officials within five (5) business days (M-F) of the meeting.

Step 3. Written and Formal Conference. If a satisfactory settlement is not reached under Step 2, the Union may within five (5) business days (M-F) thereafter request a meeting with the President/CEO of the Berkeley-Albany YMCA and/or his/her agent the HR Director. The grievance shall be put in writing and the grievant or grievants and the Shop Steward or the Union Representative shall attend. This formal conference shall be scheduled by agreement between the Employer and the Union, but the Union may require that this meeting be held no more than five (5) business days (M-F) after the written decision of the Branch Executive in Step 2 has been received by the Union. The decision of the Employer following this meeting shall be written by the President/CEO or his/her agent and delivered to the affected Employees and the Union officials within five (5) business days (M-F) of the meeting.

Step 4 Adjustment Board and Arbitration. If satisfactory settlement is not reached under Step 3, the Union may request the convening of an adjustment board.

The Board of Adjustment shall consist of two (2) persons chosen by the Employer and two (2) persons chosen by the Union and these four (4) persons shall meet within ten (10) consecutive business days (M-F) of such notification or request for adjustment.

The Board of Adjustment shall review all the facts in the case before it, and its decision shall be by majority vote. Its decision shall be rendered in writing and a copy shall be furnished to the Employer and to the Union within five (5) business days (M-F).

In the event that any matter submitted to the Board of Adjustment cannot be settled within five (5) business days (M-F), time may be extended by mutual agreement with the parties hereto, or the issue in dispute may be submitted to an impartial arbitrator who shall be selected by the parties hereto from lists presented by the Employer and the Union. In the event arbitration is resorted to, then the cost of arbitration shall be borne equally by the Employer and the Union. The decision of the arbitrator so selected shall be in writing, a copy of which shall be furnished to the Employer and the Union, and shall be binding upon the Parties hereto. The arbitrator shall not have the power to enlarge, vary or alter the terms of this Agreement.

SECTION 35. NO STRIKE OR LOCKOUT

A. NO STRIKE

During the term of this Agreement or any extension thereof, neither the Union, its members or any Employee, directly or indirectly, will call, sanction or participate in any strike, stoppage of work, slowdown or any other interference or interruption of the work or function of the Employer, whether or not the cause thereof is subject to arbitration. If such action occurs, the Union shall make a reasonable effort (oral and/or written notices) to

terminate such action. Any employee engaged in such action shall not be entitled to any benefits that occur or accrue during that term and shall be subject to discipline or discharge at Employer's sole discretion.

B. NO LOCKOUT

During the term of this Agreement, or any extension thereof, the Employer will not commence or continue a lockout of its employees.

C. EXPEDITED ARBITRATION

In the event of an alleged violation of Section 33.A of this Agreement arising out of a matter not subject to resolution pursuant to the grievance and arbitration procedures set forth in Section 32 of this Agreement, the Employer may institute expedited arbitration proceedings regarding such alleged violation by delivering written or telegraphic notice thereof to the Union and to the American Arbitration Association. Immediately upon receipt of such written or telegraphic notice, the American Arbitration Association shall appoint an arbitrator to hear the matter. The arbitrator shall determine the time and place of the hearing, give telegraphic notice thereof, and hold the hearing within twenty-four (24) hours after his/her appointment. The fee and other expenses of the arbitrator in connection with this expedited arbitration proceeding shall be shared equally by the Employer and the Union. The failure of either party to attend the hearing, as scheduled and noticed by the arbitrator, without good cause, as determined by the arbitrator, or the failure of any nonparty witness to attend such hearing for any reason, shall not delay the hearing, and the arbitrator shall proceed to take evidence and issue an award and order as though such party or witness were present. The sole issue at the hearing shall be whether a violation of Section 33.A of this Agreement has occurred or is occurring, and the arbitrator shall not consider any matter justifying, explaining or mitigating such violation. If the arbitrator finds that a violation of Section 33.A of this Agreement is occurring or has occurred, he/she shall issue a cease and desist order with respect to such violation. The arbitrator's written opinion, award and order shall be issued within twenty-four (24) hours after the close of the hearing. Such award and order shall be final and binding on the Employer and the Union.

SECTION 36. SUBCONTRACTING

The Employer shall not subcontract work normally performed by bargaining unit members, except for special projects which cannot be staffed by Employees, emergency situations and when no On-Call Employees are available to perform the work.

SECTION 37. ZIPPER CLAUSE

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the Parties after the exercise of that right and opportunity, are set forth in this Agreement. Therefore, the Association and the Union, for the

duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter which the National Labor Relations Act imposes an obligation to bargain.

SECTION 38. SCOPE OF AGREEMENT

This Agreement shall be in effect from March 23, 2012 and shall be effective up to and including through March 23, 2015, unless at least ninety (90) days prior to March 23, 2015, either party gives written notice to the other of its desire to terminate or make changes in this Agreement.

Separability: If any term or provision of this Agreement is, at any time during the life of this Agreement, adjudged by a court or administrative body of competent jurisdiction to be in conflict with any law, such term or provision shall become invalid and unenforceable, but such invalidity or unenforceability shall not impair or affect any other term or provision of this Agreement.

Wage and Health Reopener:

1. The Employer and the Union agree to a Wage and Health reopener for each year of this Agreement to consider and mutually agree on any changes.
2. The parties agree to meet in November of each year of the length of the agreement to review health plan designs and options. Any changes shall be made by mutual agreement. Additionally, the parties will negotiate regarding medical contributions for the plan year, which begins in January.

IN WITNESS THEREOF, the parties hereto have set their hands and seals this _____ day of _____, 2012, in the City of Berkeley, State of California.

Berkeley-Albany Young Men's Christian
Association dba YMCA of the Central
Bay Area

By: _____

By: _____

By: _____

Date: _____

Service Employees' International Union,
Local 1021, AFL-CIO

By: _____

By: _____

By: _____

By: _____

By: _____

Date: _____