


POLICY & PROCEDURE

TITLE: Non-Retaliation and Non-Intimidation Whistleblower Protection

REVISION DATE: 1/26/2022	EFFECTIVE DATE: 1/26/2022
CEO APPROVAL DATE: 6/22/2022	CEO SIGNATURE: 

BACKGROUND, PURPOSE & RATIONALE:

As per these laws, Birch is required to inform employees, Officers, Directors, interns, volunteers, independent contractors and agents of their right and responsibility (1) to participate in the process of detecting, and preventing fraud, waste and abuse, (2) as a mandated reporter to report any violation of any local, state or federal laws or regulations and/or Birch policies, procedures or practices and, (3) for detecting and preventing fraud, waste and abuse in accordance with the False Claims Act and Section 740 of the New York Labor Law, and will be informed of anti-retaliation/intimidation and whistleblower protections.

POLICY STATEMENT:

Birch, is prohibited from and will not take any retaliatory action against any current or former employee, Officer, Director, intern, volunteer, or independent contractor, or agent even if acting outside the scope of their job duties, because the employee, Officer, Director, intern, volunteer, or independent contractor or agent (1) discloses or threatens to disclose to a supervisor or a public body, any activity, policy or practice of Birch, including the Corporate Compliance Plan and Code of Conduct, that they reasonably believe is in violation of any local, state or federal law, rule or regulation regardless of subject matter and scope of job duties or poses a substantial and specific danger to the public health and safety; (2) provides information to, or testifies before any public body investigating any such activity, policy or practice; or (3) objects to or refuses to participate in any such activity, policy or practice.

The scope of retaliatory actions prohibited is any adverse action or threat to take adverse action that would adversely impact a current or former employee's current or future employment. This includes but is not limited to discharge, suspension or demotion, and reports or threats to contact US immigration authorities regarding an employee's immigration status or citizenship.

Birch maintains a zero tolerance policy for retaliation and intimidation. Upon completion of an investigation, any substantiated such actions will result in disciplinary action(s) up to and including termination of employment and/or contractual agreement(s).

PROCEDURES:

The Compliance Officer, reporting directly to the Chief Executive Officer and the Board of Directors, is responsible for the day-to-day operation of the Corporate Compliance Plan as well as providing employees, Officers, Directors, interns, volunteers, independent contractors and agents with training and education on compliance. This training includes the Birch Compliance Plan, the Birch Code of Conduct and Business Ethics, the Birch policy on anti-retaliation/intimidation and whistleblower protections. Birch management staff will be provided additional training on strategies to minimize the risk of any retaliation/intimidation and ways to best respond in the event they receive reports of possible violations.

The Compliance Plan contains:

- 1. Provisions for reporting of compliance issues.** An employee, Officer, Director intern, volunteer, independent contractor or agent of Birch Family Services who believes he/she has been the subject of intimidation or retaliatory personnel action shall report such alleged or suspected intimidation and/or retaliation to the Compliance Officer. There are several ways including telephone, email and text to report to and communicate with the Compliance Officer and/or other Birch Leadership. There two hotlines to anonymously report compliance issues.

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All employees, Officers, Directors, interns, volunteers, independent contractors and agents are encouraged to report violations, compliance issues and/or retaliation or intimidation to such Birch persons and/or hotlines. However, when there is an imminent and serious danger to public health or safety, employer notification is not required. An employee, Director, Officer, intern, volunteer, independent contractor or agent may report directly to a public body and not notify their supervisor, Compliance Officer or some other authority within Birch if they reasonably believe that the supervisor is already aware of and will not correct the illegal activity or violation, or if reporting the illegal activity or violation would result in (1) the destruction of evidence or concealment of the illegal activity or violation; (2) endangerment of a child; or (3) physical harm to the employee or any other person.

The Compliance Plan also contains disciplinary policies, including sanctions for failure to report compliance issues, for participating in non-compliant behavior, or facilitating or permitting non-compliant behavior.

During new employee orientation and annually thereafter, all employees, Officers, Directors, interns, volunteers and independent contractors will receive training on the Birch Family Services Corporate Compliance Plan including information on the Deficit Reduction Act (DRA), False Claims Act (FCA), Birch's zero tolerance policy for any retaliation or intimidation and whistleblower protections.

2. **A system to identify compliance risk areas.** Risk areas are identified during financial audits, chart reviews, upon notification, verbally, in writing or anonymously, during the course of an exit interview or during audits and inspections by regulatory agencies. All reports are thoroughly investigated by or under the direction of the Compliance Officer and findings reported to the Compliance Committee for further action and/or recommendations.
3. **A system for responding to compliance issues.** Upon receiving a report from any source as to suspected or actual violation of law, regulation, Birch policy or practice, or the Compliance Plan, the Compliance Officer or assigned investigator shall investigate and address such report promptly, thoroughly and objectively and may receive assistance from any internal or external resource as the Compliance Officer deems necessary or appropriate. All documents and relevant materials shall be confidential and shall not be kept in the personnel files of such individual.
 - a. The Compliance Officer (CO) may involve the CEO in designing such investigation and/or securing the resources necessary to conduct such investigation, if deemed appropriate by the Compliance Officer. In the event involvement of the CEO would create or exacerbate any potential or actual conflict of interest in judgment of the CO, the CO may instead seek the involvement of the Chairperson of the Board.
 - b. The CO and the CEO (unless the CEO is a subject of the investigation), shall promptly report to and advise the Audit Committee and full Board about any matter that, if founded, may require disclosure to any government agency.
 - c. The confidentiality and anonymity of any individual filing a report pursuant to the Compliance Plan shall be safeguarded to the maximum degree reasonably feasible subject to the obligations imposed by the Compliance Plan and/or current laws.
 - d. At the conclusion of such investigation, the CO shall render a determination in writing as to whether such reported violation has been substantiated or not. Such report shall also include the following information from the CO:

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- i. A statement of any steps required to remediate any consequences of any substantiated violation; and
 - ii. A recommendation as to any modifications to Birch Family Services' policies and/or procedures that should be made to prevent the recurrence of any substantiated violation.
 - e. The CO shall present such written determination to the CEO (or to the Chairperson of the Board if the CEO is a subject of the written determination).
 - f. The CO and the CEO (or Chairperson of the Board if the CEO is a subject of the investigation) shall determine whether any further disclosures are warranted, including, but not limited to, disclosures to government agencies.
4. **A policy of non-intimidation and non-retaliation for participation in the compliance program.** During orientation training, staff is informed of the Birch Family Services policy regarding non-intimidation and non-retaliation and information relevant to the Corporate Compliance Plan and Code of Conduct.

Consistent with the provisions of sections 740 and 741 of New York State Labor Law, it is Birch's policy that no employee, Officer, Director, intern, volunteer, independent contractor or agent shall intimidate or retaliate in any way against any individual acting in accordance with the Compliance Plan and who reports any action or suspected action taken by or within Birch, that they reasonably believe is illegal, fraudulent, to constitute improper quality of care or in violation of any adopted policy or practice of Birch Family Services, or in violation of any local, state or federal law or regulation, shall be subjected to any intimidation, harassment, discrimination or other retaliation or actions that would adversely impact the reporter's current or future employment.

Whistleblower protection shall not apply to an action or failure to act where the improper quality of care presents an imminent threat to public health or safety or to the health of a specific child or adult receiving services.

5. Relief

An employee, Officer, Director, intern, volunteer, independent contractor or agent of Birch Family Services who has been the subject of intimidation or a retaliatory personnel action may initiate such legal actions and proceedings and request such relief to the extent provided in sections 740 and 741 of the New York State Labor Law.

Birch Family Services Compliance Officer: Eileen Berg (212) 616-1802

Compliance Internal Hotline: (212) 616-1804

Anonymous and Confidential Compliance Hotline

Toll-free Telephone: (844) 450-0003 – English
 (800) 216-1288 – Spanish
 (855) 725-0002 – French

Website: www.lighthouse-services.com/birchfamilyservices

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E-mail: reports@lighthouse-services.com (must refer to Birch Family Services in report)

Fax: (215) 689-3885 (must refer to Birch Family Services in report)