

**NOTTAWASEPPI HURON BAND OF THE POTAWATOMI INDIANS  
INDIAN PREFERENCE IN EMPLOYMENT CODE**

**ARTICLE I. GENERAL PROVISIONS.**

**SEC. 101. TITLE**

THE TITLE OF THIS CODE SHALL BE THE NHBPI INDIAN PREFERENCE IN EMPLOYMENT CODE.

**SEC. 102. PURPOSE.** THE PURPOSE OF THIS CODE IS TO:

- A. SET FORTH THE POLICY AND REQUIREMENTS FOR APPLICATION OF INDIAN PREFERENCE TO EMPLOYMENT ACTIVITIES OF THE TRIBE.
- B. PROMOTE THE ECONOMIC WELFARE AND SELF-SUFFICIENCY OF THE TRIBE, ITS CITIZENS AND SPOUSES AND/OR PARENTS OF CITIZENS BY PROVIDING THOSE PERSONS WITH OPPORTUNITIES FOR EMPLOYMENT, TRAINING AND PROMOTION WITH THE TRIBE CONSISTENT WITH THE BUSINESS NEEDS OF THE TRIBE AND ITS POLITICAL SUBDIVISIONS.
- C. PROVIDE A LEGAL BASIS TO ENCOURAGE OR REQUIRE COMPLIANCE WITH THE POLICIES AND REQUIREMENTS OF THIS CODE BY OTHER EMPLOYERS OPERATING ON OR NEAR THE TRIBE'S RESERVATION.

**SEC. 103. SEVERABILITY.**

IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION, OR PART OF THIS CODE SHALL, FOR ANY REASON BE ADJUDICATED BY ANY COURT OF COMPETENT JURISDICTION, TO BE INVALID OR UNCONSTITUTIONAL, SUCH JUDGMENT SHALL NOT AFFECT, IMPAIR, OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO THE CLAUSE, SENTENCE, PARAGRAPH, SECTION, OR PART THEREOF DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN RENDERED.

**ARTICLE II. DEFINITIONS.**

**SEC. 201. DEFINITIONS.** AS USED IN THIS CODE THE FOLLOWING WORDS WILL HAVE THESE MEANINGS:

- A. *EMPLOYMENT*- AN OFFER TO BE EMPLOYED BY THE TRIBE ON A FULL OR PART TIME BASIS WHETHER OR NOT A CONTRACT FOR EMPLOYMENT IS UTILIZED.
- B. *ENROLLED CITIZEN*- AN INDIVIDUAL WHO IS A DULY ENROLLED CITIZEN OF

THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI.

- C. HUMAN RESOURCE DEPARTMENT* – MEANS THE DEPARTMENT WITH RESPONSIBILITY FOR MANAGING THE HUMAN RESOURCE FUNCTIONS WITHIN THE TRIBAL GOVERNMENT OR ANY POLITICAL SUBDIVISION OR INSTRUMENTALITY OF THE TRIBE WITH AUTHORITY TO HIRE EMPLOYEES.
- D. NATIVE AMERICAN* – MEANS A PERSON WHO IS AN ENROLLED CITIZEN OF A FEDERALLY-RECOGNIZED INDIAN TRIBE, A CANADIAN INDIAN TRIBE OR FIRST NATION, OR IS ENROLLED WITH ANY NON-FEDERALLY RECOGNIZED INDIAN TRIBE THAT IS RECOGNIZED BY RESOLUTION ADOPTED BY THE TRIBAL COUNCIL.
- E. PARENT* – MEANS A PERSON WHO IS THE BIOLOGICAL OR ADOPTIVE PARENT OF MINOR CHILD(REN) WHO IS(ARE) ENROLLED CITIZENS OF THE TRIBE WHO EITHER: (1) RESIDES IN THE SAME HOUSEHOLD AS HIS/HER MINOR CHILD(REN); OR (2) FINANCIALLY SUPPORTS THE HIS/HER MINOR CHILD(REN).
- F. PROMOTION*- MEANS A JOB POSITION WHICH IS HIGHER IN RESPONSIBILITY WITHIN THE ORGANIZATION CHART FOR THE TRIBE OR ANY OF ITS POLITICAL SUBDIVISIONS OR INSTRUMENTALITIES, OR WHICH WOULD NATURALLY BE RECOGNIZED AS AN ADVANCEMENT FROM A CURRENT EMPLOYMENT POSITION.
- G. QUALIFIED APPLICANT OR QUALIFIED EMPLOYEE* – MEANS A PERSON WHO MEETS THE MINIMUM REQUIRED QUALIFICATIONS FOR AN EMPLOYMENT POSITION IN TERMS OF EXPERIENCE, BACKGROUND, ABILITIES AND/OR EDUCATION.
- H. RESERVATION*- MEANS THE PINE CREEK RESERVATION AND ALL OTHER LANDS HELD IN TRUST FOR THE TRIBE.
- I. SPOUSE* – MEANS THE LEGALLY MARRIED SPOUSE OF AN ENROLLED CITIZEN OF THE TRIBE.
- J. TRIBE*- MEANS THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI INDIANS AND ITS POLITICAL SUBDIVISIONS AND INSTRUMENTALITIES.

**CHAPTER 3. IMPLEMENTATION OF INDIAN PREFERENCE IN EMPLOYMENT.**

**SEC. 301. INDIAN PREFERENCE IN EMPLOYMENT - GENERAL.** THE TRIBAL COUNCIL HAS IDENTIFIED THAT EMPLOYMENT OPPORTUNITIES OFFERED BY THE TRIBE ARE FOR THE BENEFIT OF TRIBAL CITIZENS, THEIR FAMILIES AND OTHER NATIVE AMERICANS WHO MEET THE MINIMUM REQUIRED QUALIFICATIONS FOR EMPLOYMENT POSITIONS. TO THE GREATEST EXTENT POSSIBLE, ALL HIRING AND PROMOTIONS WITHIN THE TRIBE SHALL INCLUDE PREFERENCE CRITERIA WHICH CREATE EMPLOYMENT OPPORTUNITIES AND

PATHS FOR PROMOTIONS AND LEARNING TO INCREASE MANAGEMENT OPPORTUNITIES FOR QUALIFIED APPLICANTS AND/OR QUALIFIED EMPLOYEES WHO ARE TRIBAL CITIZENS, PARENTS OR SPOUSES OF TRIBAL CITIZENS, AND OTHER NATIVE AMERICANS. THE EMPLOYMENT PREFERENCES REQUIRED BY THIS CODE SHALL NOT BE CONSTRUED TO AFFORD EMPLOYEES ANY PREFERENCE IN THE ADMINISTRATION OF DISCIPLINARY PROCEDURES, PERFORMANCE EVALUATIONS OR TO PROHIBIT SUPERVISORS FROM PROVIDING APPROPRIATE DIRECTION AND/OR COACHING TO EMPLOYEES REGARDING THE PERFORMANCE OF TASKS WITHIN THE SCOPE OF THE EMPLOYEE'S POSITION.

**SEC. 302. PREFERENCES GRANTED.** EXCEPT AS PROVIDED IN SECTION 301.D., THE FOLLOWING ORDER OF PREFERENCES SHALL BE APPLIED BY THE HUMAN RESOURCE DEPARTMENT WHEN MAKING EMPLOYMENT DECISIONS.

- A. ENROLLED CITIZENS OF THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI;
- B. PARENTS OR SPOUSES OF CITIZENS OF THE TRIBE; OR
- C. OTHER NATIVE AMERICANS.

**SEC. 303. APPLICATION OF CODE.**

- A. THIS CODE SETS FORTH THE TRIBE'S POLICY AND REQUIREMENTS FOR THE APPLICATION OF PREFERENCE IN HIRING, PROMOTIONS AND TRAINING THROUGHOUT THE TRIBE. THE APPLICATION OF THIS CODE SHALL BE MANDATORY FOR THE TRIBE AND ITS SUBDIVISIONS AND MAY BE UTILIZED BY BUSINESSES LOCATED ON OR NEAR THE TRIBE'S RESERVATION AS AUTHORIZED UNDER 42 U.S.C. s. 2000E.
- B. THE HUMAN RESOURCE DEPARTMENT SHALL REQUIRE APPLICANTS FOR EMPLOYMENT OR PROMOTION TO PROVIDE DOCUMENTATION SUFFICIENT TO VERIFY THAT THE APPLICANT IS AN "ENROLLED CITIZEN", "PARENT", "SPOUSE" OR "NATIVE AMERICAN" ENTITLED TO INDIAN PREFERENCE UNDER THIS CODE.
- C. EXCEPT FOR THE PREFERENCE STATED IN SECTIONS 301 AND 302, EMPLOYMENT, PROMOTION AND TRAINING OPPORTUNITIES WITHIN THE TRIBE AND ITS SUBDIVISIONS AND INSTRUMENTALITIES SHALL BE OFFERED TO QUALIFIED PERSONS WITHOUT REGARD TO RACE, RELIGION, COLOR, ANCESTRY, GENDER, SEXUAL ORIENTATION, AGE OR NATIONAL ORIGIN.

D. PURSUANT TO SECTION 101(K) OF THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT (NAHASDA) REAUTHORIZATION OF 2008, THE PREFERENCES GRANTED UNDER THIS CODE SHALL, WITH RESPECT TO ANY EMPLOYMENT OR TRAINING OPPORTUNITIES PROVIDED OR CREATED IN THE COURSE OF THE TRIBE'S ADMINISTRATION OF NAHASDA GRANTS, ONLY EXTEND TO ENROLLED CITIZENS OF THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI AND OTHER INDIANS AS DEFINED BY 24 C.F.R. SECTION 1000.48.

**SEC. 304. JOB DESCRIPTIONS.** ALL JOB DESCRIPTIONS FOR EMPLOYMENT POSITIONS WITH THE TRIBE SHALL CONTAIN SEPARATE SECTIONS FOR MINIMUM REQUIRED QUALIFICATIONS AND GENERAL OR PREFERRED QUALIFICATIONS.

- A. MINIMUM REQUIRED QUALIFICATIONS ARE THOSE WHICH ARE NECESSARY TO THE POSITION AS BASIC QUALIFICATIONS, FOR EXAMPLE – SPECIFIC SKILLS, DEGREES, GAMING LICENSE, PROFESSIONAL LICENSING OR DRIVERS' LICENSE.
- B. GENERAL OR PREFERRED QUALIFICATIONS ARE THOSE WHICH ARE BENEFICIAL TO THE EMPLOYMENT POSITION BUT CAN BE OBTAINED EITHER ON-THE-JOB OR WITHIN A REASONABLE PERIOD AFTER EMPLOYMENT AS IDENTIFIED BY THE HUMAN RESOURCE DIRECTOR OR SUPERVISOR. A REASONABLE TIME PERIOD SHALL BE DEFINED BY THE HUMAN RESOURCE DIRECTOR OR SUPERVISOR PRIOR TO POSTING THE JOB DESCRIPTION.

#### **ARTICLE IV. PROCEDURES FOR CLAIMS ALLEGING VIOLATIONS OF THIS CODE.**

**SEC.401. EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRED.** NO CLAIM OR ACTION SHALL BE BROUGHT IN THE TRIBAL COURT BY ANY APPLICANT OR EMPLOYEE WHICH ALLEGES A VIOLATION OF THE RIGHTS UNDER THIS CODE UNTIL ANY ADMINISTRATIVE REMEDIES, INCLUDING THE EMPLOYER'S INTERNAL GRIEVANCE PROCEDURES, AS ARE AVAILABLE ARE EXHAUSTED.

**SEC.402. ACTIONS FILED BY COMPLAINANTS.**

- A. WITHIN THE TIME LIMITED PRESCRIBED IN SECTION 403, A PERSON WHO BELIEVES HE/SHE HAS BEEN DENIED EMPLOYMENT, PROMOTION OR OTHERWISE BEEN SUBJECT TO A VIOLATION OF THE EMPLOYMENT

PREFERENCES GRANTED IN SECTIONS 301-303 OF THIS CODE MAY, AFTER EXHAUSTING HIS/HER ADMINISTRATIVE REMEDIES, FILE A CIVIL ACTION IN THE TRIBAL COURT AGAINST THE EMPLOYER OR OTHER PERSONS WHO VIOLATED THE REQUIREMENTS OF THIS CODE.

- B. THE TRIBAL COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY ACTION ARISING UNDER THIS CODE.
- C. THE ACTION SHALL BE COMMENCED BY THE FILING OF A COMPLAINT DESCRIBING THE FACTS CONSTITUTING A VIOLATION OF AN EMPLOYER'S OBLIGATION TO PROVIDE INDIAN PREFERENCE IN EMPLOYMENT AS REQUIRED BY SECTIONS 301-303 OF THIS CODE. THE PARTY FILING THE COMPLAINT SHALL BRIEFLY DESCRIBE ANY ADMINISTRATIVE REMEDIES AVAILABLE TO THE PARTY PRIOR TO FILING OF THE COMPLAINT AND THE PARTY FILING SHALL ATTACH A COPY OF THE FINAL DECISION FROM ANY ADMINISTRATIVE REVIEW TO THE COMPLAINT. THE PARTY FILING THE COMPLAINT SHALL HAVE THE BURDEN OF DEMONSTRATING THROUGH A PREPONDERANCE OF THE EVIDENCE THAT HE/SHE WAS DENIED PREFERENCE UNDER THIS CODE. TO THE EXTENT THE EMPLOYER'S ACTIONS INVOLVE SUBJECTIVE EVALUATION OF AN EMPLOYEE'S QUALIFICATIONS, A PERSON FILING A COMPLAINT SHALL HAVE THE BURDEN OF DEMONSTRATING THAT THE EMPLOYER'S DETERMINATION WAS CLEARLY ERRONEOUS.
- D. THE TRIBAL COURT MAY PRESCRIBE THE FORM TO BE USED FOR FILING A COMPLAINT ALLEGING VIOLATIONS OF THIS CODE.

**SEC.403. STATUTE OF LIMITATIONS.** ANY COMPLAINTS ALLEGING A VIOLATION OF THIS CODE MUST BE FILED WITH THE TRIBAL COURT NOT MORE THAN THE LATER OF:

- A. THIRTY (30) DAYS AFTER EXHAUSTING ANY ADMINISTRATIVE REMEDIES; OR
- B. THREE (3) MONTHS AFTER THE ALLEGED ACT DENYING THE INDIVIDUAL OF HIS/HER RIGHTS UNDER THIS CODE.

**SEC.404. REMEDIES.** IN ANY ACTION FILED UNDER THIS CODE, THE TRIBAL COURT MAY GRANT THE REMEDIES SET FORTH HEREIN.

- A. **EQUITABLE REMEDIES.** IF THE COURT FINDS THAT AN EMPLOYER HAS VIOLATED THE REQUIREMENTS OF SECTIONS 301-303 OF THIS CODE, ITS JUDGMENT, DECISION OR ORDER MUST SPECIFY AN APPROPRIATE REMEDY OR

REMEDIES FOR THAT DISCRIMINATION. THE REMEDIES MAY INCLUDE, BUT ARE NOT LIMITED TO:

1. AN ORDER TO CEASE AND DESIST FROM THE UNLAWFUL PRACTICES SPECIFIED IN THE ORDER; OR
2. AN ORDER TO EMPLOY, REHIRE OR PROVIDE TRAINING OPPORTUNITIES TO A VICTIM OF A VIOLATION OF THIS CODE.

B. **MONETARY DAMAGES.** IN ADDITION TO THE EQUITABLE REMEDIES DESCRIBED IN SECTION 404A., IF THE COURT FINDS THAT A PERSON ENTITLED TO EMPLOYMENT PREFERENCE WAS DENIED EMPLOYMENT OR PROMOTION IN VIOLATION OF THIS CODE, THE COURT'S JUDGMENT, DECISION OR ORDER MAY ALSO INCLUDE AN AWARD FOR BACK PAY FOR ANY VICTIM OF A VIOLATION OF THIS CODE THE COURT HAS ORDERED TO BE EMPLOYED, OR REASONABLE FRONT PAY (NOT TO EXCEED A TOTAL RECOVERY OF 12 MONTHS PAY LOST AS A RESULT OF THE VIOLATION OF THIS CODE) IF EMPLOYMENT IS NOT IN THE BEST INTERESTS OF THE PARTIES. THE TRIBAL COUNCIL AND ITS MEMBERS, ACTING IN THEIR OFFICIAL CAPACITIES, SHALL NEVER BE PERSONALLY LIABLE FOR ANY MONETARY DAMAGES.

**SEC.405.ATTORNEYS' FEES AND COSTS.** IN ANY CIVIL ACTION UNDER THIS CODE, THE COURT, IN ITS DISCRETION, MAY ALLOW THE PREVAILING PARTY REASONABLE ATTORNEYS' FEES AND COSTS.

**SEC.406.WAIVER OF SOVEREIGN IMMUNITY.** SUBJECT TO THE EXPRESS LIMITATIONS ON REMEDIES OR DAMAGES PROVIDED IN SECTIONS 404 AND 405, THE SOVEREIGN IMMUNITY OF THE BAND IS HEREBY WAIVED FOR ANY ACTIONS ALLEGING VIOLATIONS OF SECTIONS 301-303 OF THIS CODE WHICH ARE BROUGHT PURSUANT TO THIS ARTICLE IV AND FOR ANY PROCESS, INCLUDING SUBPOENAS.

**SEC.407.ENFORCEMENT ACTIONS BY TRIBE.** NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT THE TRIBE, THROUGH THE OFFICE OF THE TRIBAL ATTORNEY OR INDIAN PREFERENCE COORDINATOR (IF ANY), FROM INITIATING LEGAL ACTION TO ENFORCE AN EMPLOYER'S OBLIGATIONS UNDER SECTIONS 304 AND ARTICLE V OF THIS CODE.

**ARTICLE V. REPORTING AND CERTIFICATION OF COMPLIANCE.**

**SEC. 501. REPORTING.** THE HUMAN RESOURCE DEPARTMENT SHALL REPORT TO THE TRIBAL COUNCIL ON A MONTHLY BASIS REGARDING THE FOLLOWING INFORMATION.

- A. TOTAL NUMBER OF NON-EXEMPT EMPLOYEES AND THE BREAKDOWN OF NON-EXEMPT EMPLOYEES IN EACH INDIAN PREFERENCE CATEGORY.
- B. TOTAL NUMBER OF MANAGEMENT/EXEMPT EMPLOYEES AND THE BREAKDOWN OF MANAGEMENT/EXEMPT EMPLOYEES IN EACH INDIAN PREFERENCE CATEGORY.
- C. NEW HIRES IN MANAGEMENT/EXEMPT AND NON-EXEMPT POSITIONS FOR THE PRIOR MONTH AND THE BREAKDOWN OF EMPLOYEES IN EACH INDIAN PREFERENCE CATEGORY.
- D. FOR EACH INTERVIEW, THE NUMBER OF APPLICANTS AND THE BREAKDOWN OF APPLICANTS IN EACH INDIAN PREFERENCE CATEGORY, INCLUDING SEPARATION OF TOTAL APPLICANTS FOR EACH POSITION INTERVIEWED INTO THE SAME CATEGORIES.
- E. NOTES OR RECOMMENDATIONS IN REGARDS TO THE INFORMATION PROVIDED AND/OR AMENDMENTS SUGGESTED TO THE ORDINANCE.

**SEC. 502. CERTIFICATIONS.** THE HUMAN RESOURCE DEPARTMENT SHALL DEVELOP A CERTIFICATION TO BE PLACED WITH EACH INTERVIEW PACKET WHICH CERTIFIES, BY THE HUMAN RESOURCE DEPARTMENT PERSONNEL CONDUCTING THE POSTING, SCREENING AND INTERVIEW, THAT INDIAN PREFERENCE WAS APPLIED. TO MAXIMUM EXTENT PRACTICAL, THE HUMAN RESOURCE DEPARTMENT'S CERTIFICATION PROCESS SHALL ATTEMPT TO IDENTIFY THE FOLLOWING INFORMATION FOR EACH EMPLOYMENT POSITION FILLED:

- A. THE NUMBER OF APPLICANTS AND THE BREAKDOWN OF APPLICANTS FOR EACH NON-EXEMPT POSITION IN EACH INDIAN PREFERENCE CATEGORY.
- B. THE NUMBER OF APPLICANTS AND THE BREAKDOWN OF APPLICANTS FOR EACH MANAGEMENT/EXEMPT POSITION IN EACH INDIAN PREFERENCE CATEGORY.
- C. THE NUMBER OF APPLICANTS INTERVIEWED FOR EACH POSITION AND THE BREAKDOWN OF APPLICANTS IN EACH INDIAN PREFERENCE CATEGORY.
- D. THE APPLICANT THAT WAS OFFERED THE POSITION AND THE INDIAN

PREFERENCE CATEGORY, IF ANY, THAT APPLIES.

- E. IDENTIFIES THAT ANY PREFERENCE CANDIDATE WHO WAS NOT INTERVIEWED OR NOT OFFERED THE POSITION WAS NOTIFIED OF THE REQUIRED QUALIFICATION(S) HE/SHE WAS DETERMINED TO LACK AND PROVIDED WITH A CAREER DEVELOPMENT PLAN TO ASSIST HIM/HER OBTAIN THE NECESSARY QUALIFICATION(S) AND/OR REFERRAL OF THE PREFERENCE CANDIDATE TO APPLY FOR POSITIONS FOR WHICH HE/SHE QUALIFIES.

HISTORY: APPROVED: JANUARY 8, 2009 BY RESOLUTION No. 01-08-09-03; AMENDED: DECEMBER 17, 2009 BY RESOLUTION No. 12- 17-09-01 TO ADD NEW ARTICLE IV PRESCRIBING PROCEDURES FOR ENFORCEMENT AND REMEDIES; AMENDED: NOVEMBER 11, 2010 BY RESOLUTION No. 11-11-10-02 TO ADD NEW SECTION 303.D. MODIFYING APPLICATION OF THIS CODE IN CONNECTION WITH ADMINISTRATION OF NAHASDA GRANTS; SECTION 303.D. WAS AMENDED DECEMBER 2, 2010 TO LIMIT PREFERENCE TO ENROLLED NHBP CITIZENS AND MEMBERS OF OTHER FEDERALLY -RECOGNIZED INDIAN TRIBES.