

**NOTTAWASEPPI HURON BAND OF THE
POTAWATOMI**

FAIR EMPLOYMENT PRACTICES CODE

**NOTTAWASEPPI HURON BAND OF THE POTAWATOMI
FAIR EMPLOYMENT PRACTICES CODE**

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ARTICLE I. TITLE; DECLARATION OF POLICY; PURPOSES.

SEC. 101. TITLE. THIS LAW SHALL BE REFERRED TO AS THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI FAIR EMPLOYMENT PRACTICES CODE.

SEC. 102. DECLARATION AND POLICY. AS A SOVEREIGN INDIAN TRIBE, THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI (THE BAND OR THE TRIBE) AS INHERENT AUTHORITY TO GOVERN EMPLOYMENT RELATIONS WITHIN ITS JURISDICTION. IT IS THE PUBLIC POLICY OF THE BAND TO:

- A. ENSURE THAT CITIZENS OF THE BAND AND OTHER NATIVE AMERICANS GAIN AND MAINTAIN EMPLOYMENT OPPORTUNITIES WITHIN THE BAND’S JURISDICTION;
- B. PREVENT AND REMEDY UNLAWFUL DISCRIMINATION IN EMPLOYMENT (OTHER THAN TO PROMOTE THE EMPLOYMENT OF CITIZENS OF THE BAND AND OTHER NATIVE AMERICANS) ON THE BASIS OF SEX, RACE, COLOR, NATIONAL ORIGIN, RELIGION, AGE, SEXUAL ORIENTATION, FAMILIAL STATUS, OR DISABILITY;
- C. PROMOTE THE BODE’WADMI TRADITIONS AND VALUES BY ENSURING THAT THE EMPLOYERS’ EMPLOYMENT PRACTICES AND DECISIONS REFLECT THE SEVEN (7) GRANDFATHER TEACHINGS AND THAT THE COMMUNITY OF EMPLOYEES WHO ARE INVITED IN, AND ACCEPT EMPLOYMENT WITHIN, OUR TRIBAL COMMUNITY INCORPORATE THOSE VALUES AS WELL;
AND

ENSURE THAT EMPLOYEES WITHIN THE JURISDICTION OF THE BAND WORK IN SAFE CONDITIONS, RECEIVE FAIR COMPENSATION, AND OTHERWISE HAVE FAIR TERMS AND CONDITIONS OF EMPLOYMENT CONSISTENT WITH THIS CODE AND OTHER APPLICABLE LAW.

SEC. 103. PURPOSES. THE PURPOSE OF THIS CODE IS TO:

- A. CARRY OUT THE POWERS OF SELF-GOVERNMENT IN A MANNER THAT PROMOTES AND PRESERVES OUR BODE’WADMI VALUES

AND TRADITIONS. IN FURTHERANCE OF THAT GOAL, THE BAND STRIVES TO BE GUIDED BY THE SEVEN (7) GRANDFATHER TEACHINGS IN ITS DELIBERATIONS AND DECISIONS. THE RIGHTS AND LIMITATIONS CONTAINED IN THIS CODE ARE INTENDED TO REFLECT THE VALUES IN THE SEVEN (7) GRANDFATHER TEACHINGS TO ENSURE THAT ALL EMPLOYERS AND EMPLOYEES OF THOSE EMPLOYERS WHO ARE WITHIN THE JURISDICTION OF THE BAND BE GUIDED BY THE SEVEN (7) GRANDFATHER TEACHINGS (NOEG MESHOMSENANEK KENOMAGEWENEN):

BWAKAWEN	WISDOM
DEBANAWEN	LOVE
KEJITWAWENINDOWEN	RESPECT
WEDASEWEN	BRAVERY
GWEKWADZEWEN	HONESTY
EDBESENDOWEN	HUMILITY
DEBWEWIN	TRUTH

- B. PREVENT AND REMEDY UNLAWFUL DISCRIMINATION IN EMPLOYMENT ON THE BASIS OF SEX, RACE, COLOR, NATIONAL ORIGIN, RELIGION, AGE, SEXUAL ORIENTATION, FAMILIAL STATUS, OR DISABILITY AND
- C. ESTABLISH STANDARDS FOR FAIR AND SAFE WORKING CONDITIONS CONSISTENT WITH THE STANDARDS PRESCRIBED IN THIS CODE.

SECTION 103 COMMENTARY

THE PROVISION OF INDIAN EMPLOYMENT PREFERENCES WITHIN INDIAN COUNTRY PURSUANT TO TRIBAL LAW DOES NOT CONSTITUTE UNLAWFUL EMPLOYMENT DISCRIMINATION UNDER THIS LAW. SEE SECTION 201(D)(DEFINITION OF “DISCRIMINATE”); SECTION 301 (UNLAWFUL DISCRIMINATION); SECTION 309 (NOT UNLAWFUL DISCRIMINATION). SUCH EMPLOYMENT PREFERENCES DO NOT CONSTITUTE RACE DISCRIMINATION. *SEE MORTON V. MANCARI*, 417 U.S. 535, 554 (1974). PREFERENCES PROVIDED TO TRIBAL MEMBERS OF THE BAND OVER OTHER INDIANS LIKEWISE WILL NOT CONSTITUTE UNLAWFUL DISCRIMINATION UNDER THIS CODE. *SEE* SUBSECTION

309(A). FEDERAL LAW PROHIBITS “NATIONAL ORIGIN DISCRIMINATION” BY EMPLOYERS THAT ARE NOT CONSIDERED INDIAN TRIBES. THUS, RESERVATION EMPLOYERS THAT ARE NOT PART OF TRIBAL GOVERNMENT COULD FACE SUCH CLAIMS IF THEY PROVIDE EMPLOYMENT PREFERENCES TO MEMBERS OF THE BAND OVER OTHER INDIANS. *SEE DAWAVENDEWA V. SALT RIVER PROJECT AGR. IMP.*, 154 F.3D 1117 (9TH CIR. 1998), *CERT. DENIED*, 528 U.S. 1098 (2000). *BUT SEE DAWAVENDEWA V. SALT RIVER PROJECT AGR. IMP.*, 276 F.3D 1150 (9TH CIR. 2002) (LAWSUIT BY HOPI CLAIMING NATIONAL ORIGIN DISCRIMINATION AGAINST NON-INDIAN EMPLOYER ON NAVAJO RESERVATION FOLLOWING NAVAJO TRIBAL MEMBER EMPLOYMENT PREFERENCE LAW SUBJECT TO DISMISSAL BECAUSE NAVAJO NATION IS INDISPENSABLE PARTY TO THE CASE AND CANNOT BE JOINED BECAUSE IT HAS SOVEREIGN IMMUNITY).

ARTICLE II. DEFINITIONS

SEC. 201. DEFINITIONS. AS USED IN THIS CODE, UNLESS THE CONTEXT INDICATES OTHERWISE, THE FOLLOWING WORDS HAVE THE FOLLOWING MEANINGS:

- A. *BAND.* THE “BAND” MEANS THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI.
- B. *DIRECT THREAT.* FOR PURPOSES OF SUBPARAGRAPH 302(D) “DIRECT THREAT” MEANS A SIGNIFICANT RISK TO THE HEALTH OR SAFETY OF OTHERS THAT CAN NOT BE ELIMINATED BY REASONABLE ACCOMMODATION.
- C. *DISABILITY.* “DISABILITY” MEANS A PHYSICAL OR MENTAL IMPAIRMENT OF AN INDIVIDUAL WHICH SUBSTANTIALLY LIMITS ONE OR MORE OF SUCH PERSON’S MAJOR LIFE ACTIVITIES, THE STATE OF HAVING A RECORD OF SUCH IMPAIRMENT, OR THE STATE OF BEING REGARDED AS HAVING SUCH IMPAIRMENT.
 - 1. “PHYSICAL OR MENTAL IMPAIRMENT” MEANS ANY PHYSIOLOGICAL DISORDER OR CONDITION, COSMETIC

DISFIGUREMENT, OR ANATOMICAL LOSS AFFECTING ONE OR MORE OF THE FOLLOWING BODY SYSTEMS: NEUROLOGICAL; MUSCULOSKELETAL; SPECIAL SENSE ORGANS; RESPIRATORY, GENITOURINARY; HEMIC AND LYMPHATIC; SKIN; AND ENDOCRINE; ANY MENTAL OR PSYCHOLOGICAL DISORDER, SUCH AS MENTAL RETARDATION, ORGANIC BRAIN SYNDROME, EMOTIONAL OR MENTAL ILLNESS, AND SPECIFIC LEARNING DISABILITIES; AND INCLUDES, BUT IS NOT LIMITED TO, SUCH DISEASES AND CONDITIONS AS ORTHOPEDIC, VISUAL, SPEECH, AND HEARING IMPAIRMENTS, CEREBRAL PALSY, EPILEPSY, MUSCULAR DYSTROPHY, MULTIPLE SCLEROSIS, CANCER, HEART DISEASE, DIABETES, MENTAL RETARDATION, EMOTIONAL ILLNESS, AND DRUG ADDICTION AND ALCOHOLISM.

2. "MAJOR LIFE ACTIVITIES" MEANS FUNCTIONS SUCH AS CARING FOR ONE'S SELF, PERFORMING MANUAL TASKS, WALKING, SEEING, HEARING, SPEAKING, BREATHING, LEARNING, AND WORKING.
3. "HAVING A RECORD OF SUCH IMPAIRMENT" MEANS HAVING A HISTORY OF, OR HAVING BEEN MISCLASSIFIED AS HAVING, A MENTAL OR PHYSICAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE MAJOR LIFE ACTIVITIES.
4. "BEING REGARDED AS HAVING AN IMPAIRMENT" MEANS HAVING (I) A PHYSICAL OR MENTAL IMPAIRMENT THAT DOES NOT SUBSTANTIALLY LIMIT MAJOR LIFE ACTIVITIES BUT IS TREATED BY AN EMPLOYER AS CONSTITUTING SUCH A LIMITATION, (II) A PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS MAJOR LIFE ACTIVITIES ONLY AS A RESULT OF THE ATTITUDES OF OTHERS TOWARD SUCH IMPAIRMENT; OR (III) HAVING NONE OF THE IMPAIRMENTS DEFINED IN PARAGRAPH 1 OF THIS SECTION BUT BEING TREATED BY AN EMPLOYER AS

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HAVING SUCH AN IMPAIRMENT AND AS BEING SUBSTANTIALLY LIMITED BY SUCH IMPAIRMENT IN ONE OR MORE MAJOR LIFE ACTIVITIES.

SUBSECTION 201(C) COMMENTARY

THIS TRACKS FEDERAL DISABILITY DISCRIMINATION LAW, WHICH PROTECTS INDIVIDUALS WHO ARE “REGARDED AS” DISABLED EVEN IF THEY ARE NOT TRULY DISABLED. EXAMPLES INCLUDE INDIVIDUALS WHO SUFFER FROM MORBID OBESITY OR FROM FACIAL OR SKIN DEFORMATIONS, WHICH DO NOT LIMIT THEIR “MAJOR LIFE ACTIVITIES,” BUT WHICH MAY BE PERCEIVED BY EMPLOYERS TO SO LIMIT THEIR ACTIVITIES.

“REASONABLE ACCOMMODATION”; “DIRECT THREAT”; AND “UNDUE HARDSHIP” ARE TERMS USED IN FEDERAL DISABILITY DISCRIMINATION LAW. THE DEFINITIONS HERE TRACK THE FEDERAL LAW DEFINITIONS. EEOC GUIDELINES PROVIDE USEFUL ADDITIONAL DESCRIPTIONS OF THESE TERMS.

D. *DISCRIMINATE.* “DISCRIMINATE” MEANS TO SEGREGATE, SEPARATE, OR TREAT DIFFERENTLY TO AN EMPLOYEE’S DETRIMENT, AND, FOR PURPOSES OF SECTION 302 AS IT RELATES TO AN INDIVIDUAL WITH A DISABILITY, “DISCRIMINATE” MEANS:

1. LIMITING, SEGREGATING OR CLASSIFYING A JOB APPLICANT OR EMPLOYEE IN A WAY THAT ADVERSELY AFFECTS THE OPPORTUNITIES OR STATUS OF THE APPLICANT OR EMPLOYEE BECAUSE OF THE DISABILITY OF THE APPLICANT OR EMPLOYEE;
2. EXCLUDING OR OTHERWISE DENYING EQUAL JOBS OR BENEFITS TO A QUALIFIED INDIVIDUAL BECAUSE OF THE KNOWN DISABILITY OF AN INDIVIDUAL WITH WHOM THE QUALIFIED INDIVIDUAL IS KNOWN TO HAVE A RELATIONSHIP OR ASSOCIATION;

3. NOT MAKING REASONABLE ACCOMMODATIONS TO THE KNOWN PHYSICAL OR MENTAL LIMITATIONS OF AN OTHERWISE QUALIFIED INDIVIDUAL WITH A DISABILITY WHO IS AN APPLICANT OR EMPLOYEE UNLESS THE EMPLOYER CAN DEMONSTRATE THAT THE ACCOMMODATION WOULD IMPOSE AN UNDUE HARDSHIP ON THE OPERATION OF THE BUSINESS OF THE EMPLOYER;
4. DENYING EMPLOYMENT OPPORTUNITIES TO A JOB APPLICANT OR EMPLOYEE WHO IS AN OTHERWISE QUALIFIED INDIVIDUAL WITH A DISABILITY, IF THE DENIAL IS BASED ON THE NEED OF THE EMPLOYER TO MAKE REASONABLE ACCOMMODATION TO THE PHYSICAL OR MENTAL IMPAIRMENTS OF THE EMPLOYEE OR APPLICANT;
5. USING QUALIFICATION STANDARDS, EMPLOYMENT TESTS OR OTHER SELECTION CRITERIA THAT SCREEN OUT OR TEND TO SCREEN OUT AN INDIVIDUAL WITH A DISABILITY OR A CLASS OF INDIVIDUALS WITH DISABILITIES UNLESS THE STANDARD, TEST OR OTHER SELECTION CRITERIA, AS USED BY THE EMPLOYER, IS SHOWN TO BE JOB-RELATED FOR THE POSITION IN QUESTION AND IS CONSISTENT WITH BUSINESS NECESSITY; AND
6. FAILING TO SELECT AND ADMINISTER TESTS CONCERNING EMPLOYMENT IN THE MOST EFFECTIVE MANNER TO ENSURE THAT, WHEN THE TEST IS ADMINISTERED TO A JOB APPLICANT OR EMPLOYEE WHO HAS A DISABILITY THAT IMPAIRS SENSORY, MANUAL OR SPEAKING SKILLS, THE TEST RESULTS ACCURATELY REFLECT THE SKILLS, APTITUDE OR ANY OTHER FACTOR OF THE APPLICANT OR EMPLOYEE THAT THE TEST IS DESIGNED TO MEASURE, RATHER THAN REFLECTING THE IMPAIRED SENSORY, MANUAL OR SPEAKING SKILLS OF THE EMPLOYEE OR APPLICANT

(EXCEPT WHEN SUCH SKILLS ARE THE FACTORS THAT THE TEST IS DESIGNED TO MEASURE).

“DISCRIMINATE” SHALL NOT MEAN TREATING INDIANS DIFFERENTLY THAN NON-INDIANS OR BAND MEMBERS DIFFERENTLY THAN OTHER NATIVE AMERICANS IN ORDER TO PROMOTE EMPLOYMENT PREFERENCES FOR MEMBERS OF THE BAND OR OTHER NATIVE AMERICANS.

- E. *EMPLOYEE.* “EMPLOYEE” MEANS AN INDIVIDUAL EMPLOYED BY AN EMPLOYER. “EMPLOYEE” DOES NOT INCLUDE ANY INDIVIDUAL EMPLOYED BY THAT INDIVIDUAL’S PARENTS, SPOUSE OR CHILD.
- F. *EMPLOYEE BENEFITS.* FOR THE PURPOSES OF ARTICLE VI, ADDRESSING FAMILY AND MEDICAL LEAVE PROTECTION, “EMPLOYEE BENEFITS” MEANS ALL BENEFITS, OTHER THAN SALARY AND WAGES, PROVIDED OR MADE AVAILABLE TO EMPLOYEES BY AN EMPLOYER AND INCLUDES GROUP LIFE INSURANCE, HEALTH INSURANCE, DISABILITY INSURANCE AND PENSIONS, REGARDLESS OF WHETHER BENEFITS ARE PROVIDED BY A POLICY OR PRACTICE OF AN EMPLOYER.
- G. *EMPLOYER.* “EMPLOYER” MEANS ANY TYPE OF ORGANIZATION, INCLUDING TRIBAL OR FOREIGN CORPORATIONS AND PARTNERSHIPS; THE BAND; ANY POLITICAL SUBDIVISION, AGENCY, OR DEPARTMENT OF THE BAND; AND ANY ENTERPRISE OF THE BAND DOING BUSINESS ON LANDS WITHIN THE JURISDICTION OF THE BAND AND EMPLOYING ANY NUMBER OF EMPLOYEES; AND ANY SUPERVISOR OR AGENT ACTING ON BEHALF OF ANY OF THE FOREGOING ORGANIZATIONS.
- H. *FAMILIAL STATUS* MEANS 1 OR MORE PERSONS UNDER THE AGE OF 18 RESIDING WITH A PARENT OR OTHER PERSON HAVING CUSTODY OF THE INDIVIDUAL(S) OR RESIDING WITH THE DESIGNEE OF THE PARENT OR OTHER PERSON HAVING OR SECURING CUSTODY, WITH THE WRITTEN PERMISSION OF THE PARENT OR OTHER PERSON. FOR PURPOSES OF THIS

DEFINITION, "PARENT" INCLUDES A PERSON WHO IS PREGNANT.

I. *FAMILY MEDICAL LEAVE.* FOR THE PURPOSES OF ARTICLE VI, ADDRESSING FAMILY MEDICAL LEAVE PROTECTION, "FAMILY MEDICAL LEAVE" MEANS LEAVE REQUESTED BY AN EMPLOYEE FOR:

1. SERIOUS HEALTH CONDITION OF THE EMPLOYEE;
2. THE BIRTH OF THE EMPLOYEE'S CHILD;
3. THE PLACEMENT OF A CHILD 16 YEARS OF AGE OR LESS WITH THE EMPLOYEE IN CONNECTION WITH THE ADOPTION OF THE CHILD BY THE EMPLOYEE;
4. A CHILD, PARENT OR SPOUSE WITH A SERIOUS HEALTH CONDITION;
5. THE DONATION OF AN ORGAN OF THE EMPLOYEE FOR A HUMAN ORGAN TRANSPLANT;
6. A SPOUSE, SON, DAUGHTER, PARENT OR NEXT OF KIN OF A PERSON WHO IS A CURRENT MEMBER OF THE ARMED FORCES WHO IS UNDERGOING MEDICAL TREATMENT, RECUPERATION, OR THERAPY, IS OTHERWISE IN OUTPATIENT STATUS, OR IS OTHERWISE ON THE TEMPORARY DISABILITY LIST, FOR A SERIOUS INJURY OR ILLNESS WHICH WAS INCURRED IN THE LINE OF DUTY ON ACTIVE DUTY; OR
7. A QUALIFYING EXIGENCY ARISING OUT OF THE FACT THAT THE EMPLOYEE'S SPOUSE, SON, DAUGHTER, OR PARENT IS ON ACTIVE DUTY, OR HAS BEEN NOTIFIED OF AN IMPENDING CALL OR ORDER TO ACTIVE DUTY, IN SUPPORT OF A CONTINGENCY OPERATION.

J. *HEALTH CARE PROVIDER.* FOR THE PURPOSES OF ARTICLE VI, ADDRESSING FAMILY MEDICAL LEAVE PROTECTION, "HEALTH CARE PROVIDER" MEANS A DOCTOR OF MEDICINE OR

OSTEOPATHY WHO IS LICENSED TO PRACTICE MEDICINE OR SURGERY IN THE STATE OF MICHIGAN.

K. *INDIAN*. “INDIAN” MEANS AN ENROLLED MEMBER OF A FEDERALLY RECOGNIZED INDIAN BAND.

L. *NATIVE AMERICAN*. “NATIVE AMERICAN” MEANS AN ENROLLED MEMBER OF A FEDERALLY RECOGNIZED INDIAN BAND.

M. *PUBLIC BODY*. “PUBLIC BODY” MEANS ALL OF THE FOLLOWING:

1. AN OFFICER, AGENCY, DEPARTMENT, INSTRUMENTALITY, DIVISION, COMMISSION, COUNCIL, AUTHORITY OR OTHER BODY OF THE BAND;
2. A LAW ENFORCEMENT AGENCY OR ANY MEMBER OR EMPLOYEE OF A LAW ENFORCEMENT AGENCY; AND
3. THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI TRIBAL COURT AND ANY MEMBER OR EMPLOYEE OF THE BAND’S JUDICIARY.

N. *QUALIFIED INDIVIDUAL WITH A DISABILITY*. “QUALIFIED INDIVIDUAL WITH A DISABILITY” MEANS AN INDIVIDUAL WITH A DISABILITY WHO, WITH OR WITHOUT REASONABLE ACCOMMODATION, CAN PERFORM THE ESSENTIAL FUNCTIONS OF THE EMPLOYMENT POSITION THAT THE INDIVIDUAL HOLDS OR DESIRES. FOR THE PURPOSES OF THIS CODE, CONSIDERATION SHALL BE GIVEN TO THE EMPLOYER’S JUDGMENT AS TO WHAT FUNCTIONS OF A JOB ARE ESSENTIAL, AND IF AN EMPLOYER HAS PREPARED A WRITTEN DESCRIPTION BEFORE ADVERTISING OR INTERVIEWING APPLICANTS FOR THE JOB, THIS DESCRIPTION SHALL BE CONSIDERED EVIDENCE OF THE ESSENTIAL FUNCTIONS OF THE JOB.

O. *REASONABLE ACCOMMODATION*. THE TERM “REASONABLE ACCOMMODATION” MAY INCLUDE MAKING EXISTING FACILITIES USED BY EMPLOYEES READILY ACCESSIBLE TO AND USABLE BY INDIVIDUALS WITH DISABILITIES.

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P. *SERIOUS HEALTH CONDITION.* FOR THE PURPOSES OF ARTICLE VI, ADDRESSING FAMILY MEDICAL LEAVE PROTECTION, “SERIOUS HEALTH CONDITION” MEANS AN ILLNESS, INJURY, IMPAIRMENT OR PHYSICAL OR MENTAL CONDITION THAT INVOLVES:

1. INPATIENT CARE IN A HOSPITAL, HOSPICE OR RESIDENTIAL MEDICAL CARE FACILITY; OR
2. CONTINUING TREATMENT OF A CHRONIC SERIOUS HEALTH CONDITION BY A HEALTH CARE PROVIDER.

IT IS INTENDED THAT THE TERM “SERIOUS HEALTH CONDITION”, AS USED IN THIS CODE, HAVE THE SAME MEANING AS IS ASCRIBED TO THAT TERM IN THE U.S. DEPARTMENT OF LABOR REGULATIONS PUBLISHED AT 60 FED. REG. 67934 (NOVEMBER 17, 2008)(CODIFIED AT 25 C.F.R. PART 825 ET SEQ.).

Q. *SEXUAL ORIENTATION*” MEANS HAVING, OR BEING PERCEIVED TO HAVE, AN ORIENTATION FOR HETEROSEXUALITY, HOMOSEXUALITY, OR BISEXUALITY.

R. *STATE AVERAGE WEEKLY WAGE (SAWW).* THE AVERAGE WEEKLY WAGE FOR EMPLOYEES IN THE STATE OF MICHIGAN FOR EACH CALENDAR YEAR, WHICH IS DETERMINED IN ACCORDANCE WITH THE MICHIGAN EMPLOYMENT SECURITY ACT (ACT 1 OF 1936) AND AS DESCRIBED IN THE STATE AVERAGE WEEKLY WAGE CHART PUBLISHED BY THE MICHIGAN WORKERS COMPENSATION AGENCY, OR ANY SUCCESSOR AGENCY.

S. *TRIBAL COURT.* THE “TRIBAL COURT” MEANS THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI TRIBAL COURT.

T. *UNDUE HARDSHIP.*

1. IN GENERAL. THE TERM “UNDUE HARDSHIP” MEANS AN ACTION REQUIRING SIGNIFICANT DIFFICULTY OR EXPENSE, WHEN CONSIDERED IN LIGHT OF THE

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FACTORS SET FORTH IN PARAGRAPH (2) OF THIS SECTION.

2. FACTORS TO BE CONSIDERED. IN DETERMINING WHETHER AN ACCOMMODATION WOULD IMPOSE AN UNDUE HARDSHIP ON AN EMPLOYER, FACTORS TO BE CONSIDERED INCLUDE —
 - (a) THE NATURE AND COST OF THE ACCOMMODATION NEEDED UNDER THIS CODE;
 - (b) THE OVERALL FINANCIAL RESOURCES OF THE FACILITY OR FACILITIES INVOLVED IN THE PROVISION OF THE REASONABLE ACCOMMODATION; THE NUMBER OF PERSONS EMPLOYED AT SUCH FACILITY; THE EFFECT ON EXPENSES AND RESOURCES, OR THE IMPACT OTHERWISE OF SUCH ACCOMMODATION UPON THE OPERATION OF THE FACILITY;
 - (c) THE OVERALL FINANCIAL RESOURCES OF THE EMPLOYER; THE OVERALL SIZE OF THE BUSINESS OF THE EMPLOYER WITH RESPECT TO THE NUMBER OF ITS EMPLOYEES; THE NUMBER, TYPE, AND LOCATION OF ITS FACILITIES; AND
 - (d) THE TYPE OF OPERATION OR OPERATIONS OF THE EMPLOYER, INCLUDING THE COMPOSITION, STRUCTURE, AND FUNCTIONS OF ITS WORKFORCE; THE GEOGRAPHIC SEPARATENESS, ADMINISTRATIVE, OR FISCAL RELATIONSHIP OF THE FACILITY OR FACILITIES IN QUESTION TO THE EMPLOYER.
3. FOR PURPOSES OF DETERMINING IF AN ACTION CONSTITUTES AN “UNDUE HARDSHIP”, AN EMPLOYER SHALL NOT BE REQUIRED TO PROVIDE A HANDICAPPED EMPLOYEE WITH “EQUIPMENT OR DEVICES” TO ENABLE HIM/HER TO PERFORM A JOB IF THE COST TO THE

EMPLOYER FOR EACH HANDICAPPED EMPLOYEE WOULD EXCEED:

- (a) 1.5 TIMES THE SAWW, IF THE EMPLOYER HAS MORE THAN 4 BUT FEWER THAN 25 EMPLOYEES;
OR
- (b) 3 TIMES THE SAWW, IF THE EMPLOYER HAS 25 OR MORE EMPLOYEES.

4. FOR PURPOSES OF DETERMINING IF AN ACTION CONSTITUTES AN “UNDUE HARDSHIP”, AN EMPLOYER SHALL NOT BE REQUIRED TO PROVIDE A HANDICAPPED EMPLOYEE WITH ANY OTHER ACCOMMODATION TO ENABLE HIM/HER TO PERFORM THE JOB IF THE COST TO THE EMPLOYER FOR EACH HANDICAPPED EMPLOYEE WOULD EXCEED:

- (a) 5 TIMES THE SAWW, IF THE EMPLOYER HAS MORE THAN 4 BUT FEWER THAN 20 EMPLOYEES;
- (b) 10 TIMES THE SAWW, IF THE EMPLOYER HAS FEWER THAN 50 EMPLOYEES; OR
- (c) 15 TIMES THE SAWW, IF THE EMPLOYER HAS 50 OR MORE EMPLOYEES.

ARTICLE III. UNLAWFUL DISCRIMINATION.

SEC. 301. UNLAWFUL EMPLOYMENT DISCRIMINATION PROHIBITED; GENERAL RULE. EXCEPT WHEN BASED ON A BONA FIDE OCCUPATIONAL QUALIFICATION OR IN FURTHERANCE OF THE PROVISION OF EMPLOYMENT PREFERENCES PROVIDED TO CITIZENS OF THE BAND AND OTHER QUALIFIED CLASSES OF PERSONS UNDER THE INDIAN EMPLOYMENT PREFERENCE IN EMPLOYMENT CODE OR PURSUANT POLICIES OR ACTIONS GIVING PREFERENCES TO INDIANS UNDER 42 U.S.C. § 2000-2(i), IT SHALL BE UNLAWFUL EMPLOYMENT DISCRIMINATION, IN VIOLATION OF THIS CODE:

- A. FOR AN EMPLOYER TO DISCHARGE AN EMPLOYEE OR DISCRIMINATE WITH RESPECT TO ANY DECISION TO HIRE, GRANT TENURE, PROMOTE, TRANSFER, ESTABLISH

COMPENSATION, TERMS, CONDITIONS OR PRIVILEGES OF EMPLOYMENT OR ANY OTHER MATTER DIRECTLY OR INDIRECTLY RELATED TO EMPLOYMENT WHICH HAS A DETRIMENTAL EFFECT ON AN INDIVIDUAL OR GROUP OF INDIVIDUALS BECAUSE OF THEIR SEX, RACE, COLOR, NATIONAL ORIGIN, RELIGION, AGE, FAMILIAL STATUS, SEXUAL ORIENTATION, OR DISABILITY;

B. FOR AN EMPLOYER IN RECRUITING OF INDIVIDUALS FOR EMPLOYMENT OR IN HIRING THEM, TO UTILIZE ANY EMPLOYMENT AGENCY THAT THE EMPLOYER KNOWS OR HAS REASONABLE CAUSE TO KNOW DISCRIMINATES AGAINST INDIVIDUALS BECAUSE OF THEIR SEX, RACE, COLOR, NATIONAL ORIGIN, RELIGION, AGE, FAMILIAL STATUS, SEXUAL ORIENTATION, OR DISABILITY.; OR

C. FOR AN EMPLOYER TO DISCRIMINATE IN ANY MANNER AGAINST INDIVIDUALS BECAUSE THEY HAVE OPPOSED A PRACTICE THAT WOULD BE A VIOLATION OF THIS CODE OR BECAUSE THEY HAVE MADE A CHARGE, REPORTED, TESTIFIED OR ASSISTED IN ANY INVESTIGATION, PROCEEDING OR HEARING UNDER THIS CODE.

D. TYPES OF DISCRIMINATION. “UNLAWFUL EMPLOYMENT DISCRIMINATION,” AS THAT TERM IS USED IN THIS SECTION:

1. OVERT DISCRIMINATION: AN INTENTIONAL, PURPOSEFUL ACT OF DISCRIMINATION, SUCH AS DIRECT EPITHETS AIMED AT AN INDIVIDUAL BECAUSE OF SEX, RACE, COLOR, NATIONAL ORIGIN, RELIGION, AGE, FAMILIAL STATUS, SEXUAL ORIENTATION, OR DISABILITY, RESULTING IN ADVERSE EMPLOYMENT ACTION.

2. HARASSMENT (INCLUDING SEXUAL HARASSMENT):

(a) UNWELCOME SEXUAL ADVANCES, REQUESTS FOR SEXUAL FAVORS, AND OTHER VERBAL OR PHYSICAL CONDUCT OF A SEXUAL NATURE AS WELL AS UNWELCOME COMMENTS, JOKES, ACTS

AND OTHER VERBAL OR PHYSICAL CONDUCT RELATED TO RACE, COLOR, NATIONAL ORIGIN, RELIGION, AGE, FAMILIAL STATUS, SEXUAL ORIENTATION, OR DISABILITY CONSTITUTE UNLAWFUL WORKPLACE HARASSMENT WHEN:

- (i) SUBMISSION TO SUCH CONDUCT IS MADE EITHER EXPLICITLY OR IMPLICITLY A TERM OR CONDITION OF AN INDIVIDUAL'S EMPLOYMENT;
- (ii) SUBMISSION TO OR REJECTION OF SUCH CONDUCT BY AN INDIVIDUAL IS USED AS THE BASIS FOR EMPLOYMENT DECISIONS AFFECTING SUCH INDIVIDUAL; OR
- (iii) SUCH CONDUCT HAS THE PURPOSE OR EFFECT OF SUBSTANTIALLY INTERFERING WITH AN INDIVIDUAL'S WORK PERFORMANCE OR CREATING AN INTIMIDATING, HOSTILE, OR OFFENSIVE WORKING ENVIRONMENT.

<p>SUBSECTION 301D.2. COMMENTARY</p>
<p>UNDER FEDERAL EMPLOYMENT DISCRIMINATION LAW, "UNWELCOMENESS" IS MEASURED BY THE REASONABLE PERSON STANDARD. FEDERAL EMPLOYMENT DISCRIMINATION ALSO PROTECTS AGAINST "SAME SEX" SEXUAL HARASSMENT, UNWELCOME SEXUAL CONDUCT DIRECTED AGAINST A MALE FROM ANOTHER MALE OR AGAINST A FEMALE FROM ANOTHER FEMALE.</p>
<p>CONSISTENT WITH BODE'WADMI TRADITIONS AND VALUES, THIS CODE IS SPECIFICALLY INTENDED TO PROHIBIT UNLAWFUL EMPLOYMENT DISCRIMINATION BY EMPLOYEES WHO RECEIVE EMPLOYMENT PREFERENCES UNDER THE BAND'S INDIAN PREFERENCE IN EMPLOYMENT CODE AGAINST APPLICANTS FOR EMPLOYMENT OR OTHER EMPLOYEES NOT ENTITLED TO SUCH EMPLOYMENT</p>

PREFERENCES. SIMILARLY, THIS CODE PROHIBITS EMPLOYERS FROM TOLERATING ACTS OF UNLAWFUL EMPLOYMENT DISCRIMINATION BY EMPLOYEES WHO RECEIVE EMPLOYMENT PREFERENCES UNDER THE BAND'S INDIAN PREFERENCE IN EMPLOYMENT CODE.

(b) AN EMPLOYER IS RESPONSIBLE FOR ITS ACTS AND THOSE OF ITS SUPERVISORY EMPLOYEES AND AGENTS WITH RESPECT TO THE TYPES OF HARASSMENT DESCRIBED IN SUBPARAGRAPH 301(C)(1). WHEN THE SUPERVISOR'S OR AGENT'S HARASSMENT CULMINATES IN A SUBSTANTIAL NEGATIVE EMPLOYMENT ACTION, SUCH AS, BUT NOT LIMITED TO, DISCHARGE, DEMOTION, OR UNDESIRABLE REASSIGNMENT, LIABILITY ATTACHES TO THE EMPLOYER REGARDLESS OF WHETHER THE EMPLOYER KNEW OR SHOULD HAVE KNOWN OF THE HARASSMENT, AND REGARDLESS OF WHETHER THE SPECIFIC ACTS COMPLAINED OF WERE AUTHORIZED OR EVEN FORBIDDEN BY THE EMPLOYER. WHEN THE SUPERVISOR'S HARASSMENT DOES NOT CULMINATE IN A TANGIBLE EMPLOYMENT ACTION, THE EMPLOYER MAY RAISE AN AFFIRMATIVE DEFENSE TO LIABILITY OR DAMAGES BY PROVING BY A PREPONDERANCE OF THE EVIDENCE:

- (i) THAT THE EMPLOYER EXERCISED REASONABLE CARE TO PREVENT AND CORRECT PROMPTLY TO THE HARASSING BEHAVIOR, AND
- (ii) THAT THE EMPLOYEE UNREASONABLY FAILED TO TAKE ADVANTAGE OF ANY PREVENTIVE OR CORRECTIVE OPPORTUNITIES PROVIDED BY THE

EMPLOYER OR TO AVOID HARM OTHERWISE.

(c) WITH RESPECT TO PERSONS OTHER THAN AN EMPLOYER'S SUPERVISORS OR AGENTS AS DESCRIBED IN SUBPARAGRAPH 301(C)(2), AN EMPLOYER IS RESPONSIBLE FOR ACTS OF WORKPLACE HARASSMENT WHERE THE EMPLOYER, OR ITS SUPERVISORY EMPLOYEES, KNOWS OR SHOULD HAVE KNOWN OF THE CONDUCT. AN EMPLOYER MAY REBUT APPARENT LIABILITY FOR SUCH ACTS BY SHOWING THAT IT TOOK IMMEDIATE AND APPROPRIATE CORRECTIVE ACTION.

3. UNEQUAL OR DISPARATE TREATMENT: TREATING PERSONS IN A DIFFERENT AND LESS FAVORABLE MANNER THAN OTHER SIMILARLY SITUATED INDIVIDUALS ON ACCOUNT OF RACE OR COLOR, SEX, DISABILITY, RELIGION, AGE, FAMILIAL STATUS, SEXUAL ORIENTATION, ANCESTRY OR NATIONAL ORIGIN, OR ANY PREVIOUS ACTIONS THAT ARE PROTECTED UNDER SECTION 305.

4. DISPARATE IMPACT: CONDUCT WHICH, ALTHOUGH APPLIED EQUALLY TO ALL, HAS AN ADVERSE EFFECT ON PERSONS BECAUSE OF THEIR RACE OR COLOR, SEX, DISABILITY, RELIGION, AGE, FAMILIAL STATUS, SEXUAL ORIENTATION, ANCESTRY OR NATIONAL ORIGIN AS COMPARED TO THE EFFECT ON OTHER PERSONS.

SEC. 302. UNLAWFUL DISCRIMINATION AGAINST QUALIFIED INDIVIDUAL WITH A DISABILITY; MEDICAL SCREENING; ILLEGAL USE OF DRUGS AND ALCOHOL.

A. GENERAL RULE. AN EMPLOYER SHALL NOT DISCRIMINATE AGAINST A QUALIFIED INDIVIDUAL WITH A DISABILITY BECAUSE OF THE DISABILITY OF THE INDIVIDUAL IN REGARD TO JOB APPLICATION PROCEDURES, THE HIRING,

ADVANCEMENT OR DISCHARGE OF EMPLOYEES, EMPLOYEE COMPENSATION, JOB TRAINING AND OTHER TERMS, CONDITIONS AND PRIVILEGES OF EMPLOYMENT.

B. MEDICAL EXAMINATIONS AND INQUIRIES. THE PROHIBITION AGAINST DISCRIMINATION REFERRED TO IN PARAGRAPH 302(A) OF THIS SECTION SHALL INCLUDE MEDICAL EXAMINATIONS AND INQUIRIES.

1. PRE-EMPLOYMENT.

(a) PROHIBITED EXAMINATION OR INQUIRY. EXCEPT AS PROVIDED IN SUBPARAGRAPH (B), AN EMPLOYER SHALL NOT CONDUCT A MEDICAL EXAMINATION OR MAKE INQUIRIES OF A JOB APPLICANT AS TO WHETHER SUCH APPLICANT IS AN INDIVIDUAL WITH A DISABILITY OR AS TO THE NATURE OR SEVERITY OF SUCH DISABILITY.

(b) ACCEPTABLE INQUIRY. AN EMPLOYER MAY MAKE PRE-EMPLOYMENT INQUIRIES INTO THE ABILITY OF AN APPLICANT TO PERFORM THE ESSENTIAL JOB-RELATED FUNCTIONS AND WHETHER A REASONABLE ACCOMMODATION BY THE EMPLOYER WILL PERMIT THE APPLICANT TO PERFORM THE ESSENTIAL JOB-RELATED FUNCTIONS.

2. EMPLOYMENT ENTRANCE EXAMINATION. AN EMPLOYER MAY REQUIRE A MEDICAL EXAMINATION AFTER AN OFFER OF EMPLOYMENT HAS BEEN MADE TO A JOB APPLICANT AND PRIOR TO THE COMMENCEMENT OF THE EMPLOYMENT DUTIES OF SUCH APPLICANT, AND MAY CONDITION AN OFFER OF EMPLOYMENT ON THE RESULTS OF SUCH EXAMINATION, IF –

(a) ALL ENTERING EMPLOYEES ARE SUBJECTED TO SUCH AN EXAMINATION REGARDLESS OF DISABILITY;

- (b) INFORMATION OBTAINED REGARDING THE MEDICAL CONDITION OR HISTORY OF THE APPLICANT IS COLLECTED AND MAINTAINED ON SEPARATE FORMS AND IN SEPARATE MEDICAL FILES AND IS TREATED AS A CONFIDENTIAL MEDICAL RECORD, EXCEPT THAT—
 - (i) SUPERVISORS AND MANAGERS MAY BE INFORMED REGARDING NECESSARY RESTRICTIONS ON THE WORK OR DUTIES OF THE EMPLOYEE AND NECESSARY ACCOMMODATIONS;
 - (ii) FIRST AID AND SAFETY PERSONNEL MAY BE INFORMED, WHEN APPROPRIATE, IF THE DISABILITY MIGHT REQUIRE EMERGENCY TREATMENT; AND
 - (iii) TRIBAL GOVERNMENT OFFICIALS INVESTIGATING COMPLIANCE WITH THIS CODE SHALL BE PROVIDED RELEVANT INFORMATION ON REQUEST; AND
- (c) THE RESULTS OF SUCH EXAMINATION ARE USED ONLY IN ACCORDANCE WITH THIS CODE.

3. EXAMINATION AND INQUIRY DURING EMPLOYMENT.

- (a) PROHIBITED EXAMINATIONS AND INQUIRIES. AN EMPLOYER SHALL NOT REQUIRE A MEDICAL EXAMINATION AND SHALL NOT MAKE INQUIRIES OF AN EMPLOYEE AS TO WHETHER SUCH EMPLOYEE IS AN INDIVIDUAL WITH A DISABILITY OR AS TO THE NATURE OR SEVERITY OF THE DISABILITY, UNLESS SUCH EXAMINATION OR INQUIRY IS SHOWN TO BE JOB-RELATED AND CONSISTENT WITH BUSINESS NECESSITY.
- (b) ACCEPTABLE EXAMINATIONS AND INQUIRIES. AN EMPLOYER MAY CONDUCT VOLUNTARY

MEDICAL EXAMINATIONS, INCLUDING VOLUNTARY MEDICAL HISTORIES, WHICH ARE PART OF AN EMPLOYEE HEALTH PROGRAM AVAILABLE TO EMPLOYEES AT THAT WORK SITE. AN EMPLOYER MAY MAKE INQUIRIES INTO THE ABILITY OF AN EMPLOYEE TO PERFORM ESSENTIAL JOB-RELATED FUNCTIONS.

- (c) REQUIREMENT. INFORMATION OBTAINED UNDER SUBPARAGRAPH (B) REGARDING THE MEDICAL CONDITION OR HISTORY OF ANY EMPLOYEE ARE SUBJECT TO THE REQUIREMENTS OF SUBPARAGRAPHS (B) AND (C) OF PARAGRAPH 302(B)(2).

C. DRUG USE AND ALCOHOL.

1. MEDICAL TESTS. A TEST TO DETERMINE THE ILLEGAL USE OF PRESCRIPTION DRUGS OR OTHER ILLEGAL DRUGS BY AN EMPLOYEE OR APPLICANT DOES NOT CONSTITUTE A PRE-EMPLOYMENT MEDICAL EXAMINATION FOR PURPOSES OF SUBSECTION 302(B) OF THIS SECTION.
2. QUALIFIED INDIVIDUAL WITH A DISABILITY. FOR PURPOSES OF THIS CODE, THE TERM “QUALIFIED INDIVIDUAL WITH A DISABILITY” SHALL NOT INCLUDE ANY EMPLOYEE OR APPLICANT WHO IS CURRENTLY ENGAGING IN THE ILLEGAL USE OF DRUGS, WHEN THE EMPLOYER ACTS ON THE BASIS OF SUCH USE.
3. RULES OF CONSTRUCTION. NOTHING IN SUBPARAGRAPH 302(C)(2) SHALL BE CONSTRUED TO EXCLUDE AS A QUALIFIED INDIVIDUAL WITH A DISABILITY AN INDIVIDUAL WHO:
 - (a) HAS SUCCESSFULLY COMPLETED A SUPERVISED DRUG REHABILITATION PROGRAM AND IS NO LONGER ENGAGING IN THE ILLEGAL USE OF DRUGS, OR HAS OTHERWISE BEEN

REHABILITATED SUCCESSFULLY AND IS NO LONGER ENGAGING IN SUCH USE;

(b) IS PARTICIPATING IN A SUPERVISED REHABILITATION PROGRAM AND IS NO LONGER ENGAGING IN SUCH USE; OR

(c) IS ERRONEOUSLY REGARDED AS ENGAGING IN SUCH USE, BUT IS NOT ENGAGING IN SUCH USE;

4. IT SHALL NOT BE A VIOLATION OF THIS CODE FOR AN EMPLOYER TO ADOPT OR ADMINISTER REASONABLE POLICIES OR PROCEDURES, INCLUDING BUT NOT LIMITED TO DRUG TESTING, DESIGNED TO ENSURE THAT AN INDIVIDUAL DESCRIBED IN SUBPARAGRAPHS 302(C)(3)(A) OR (B) IS NO LONGER ENGAGING IN THE ILLEGAL USE OF DRUGS.

5. AUTHORITY OF EMPLOYERS. AN EMPLOYER MAY:

(a) PROHIBIT THE ILLEGAL USE OF PRESCRIPTION DRUGS AND OTHER ILLEGAL DRUGS AND THE USE OF ALCOHOL AT THE WORKPLACE OR WORKPLACE FUNCTIONS BY ALL EMPLOYEES;

(b) REQUIRE THAT EMPLOYEES MAY NOT BE UNDER THE INFLUENCE OF ALCOHOL OR BE ENGAGING IN THE ILLEGAL USE OF DRUGS AT THE WORKPLACE;

(c) REQUIRE THAT EMPLOYEES BEHAVE IN CONFORMANCE WITH THE REQUIREMENTS ESTABLISHED UNDER THE FEDERAL DRUG-FREE WORKPLACE ACT OF 1988, 41 U.S.C. § 701 ET SEQ.; AND

(d) HOLD AN EMPLOYEE WHO ENGAGES IN THE ILLEGAL USE OF DRUGS OR WHO IS AN ALCOHOLIC TO THE SAME QUALIFICATION STANDARDS FOR EMPLOYMENT OR JOB PERFORMANCE AND BEHAVIOR TO WHICH THAT

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ENTITY HOLDS OTHER EMPLOYEES, EVEN IF ANY UNSATISFACTORY PERFORMANCE OR BEHAVIOR IS RELATED TO THE DRUG USE OR ALCOHOLISM OF THE EMPLOYEE, PROVIDED THAT AN EMPLOYER SHALL MAKE REASONABLE ACCOMMODATION TO AN ALCOHOLIC OR DRUG USER WHO IS SEEKING TREATMENT OR HAS SUCCESSFULLY COMPLETED TREATMENT.

SECTION 302(C) COMMENTARY

EMPLOYER DRUG TESTING POLICIES AND RELATED POLICIES ADDRESSING CONSEQUENCES FOR POSITIVE TEST RESULTS MUST BE CONSISTENT WITH THESE PROVISIONS, PROVIDING FOR “REASONABLE ACCOMMODATION” IF AN EMPLOYEE WHO HAS A SUBSTANCE ABUSE PROBLEM IS SEEKING TREATMENT.

D. DEFENSES.

1. GENERAL PROVISIONS. IT IS A DEFENSE TO A CHARGE OF DISCRIMINATION UNDER SECTION 302 IF AN ALLEGED APPLICATION OF QUALIFICATION STANDARDS, TESTS OR SELECTION CRITERIA THAT SCREEN OUT OR TEND TO SCREEN OUT OR OTHERWISE DENY A JOB OR BENEFIT TO AN INDIVIDUAL WITH A DISABILITY IS SHOWN TO BE JOB-RELATED AND CONSISTENT WITH BUSINESS NECESSITY, AND SUCH PERFORMANCE CANNOT BE ACCOMPLISHED BY REASONABLE ACCOMMODATION.

(a) QUALIFICATION STANDARDS DEFINED. FOR THE PURPOSES OF THIS SECTION, THE TERM “QUALIFICATION STANDARDS” MAY INCLUDE A REQUIREMENT THAT AN INDIVIDUAL DOES NOT POSE A DIRECT THREAT TO THE HEALTH OR SAFETY OF OTHER INDIVIDUALS IN THE WORKPLACE.

2. **DISABILITY.** THIS CODE DOES NOT PROHIBIT AN EMPLOYER FROM DISCHARGING OR REFUSING TO HIRE AN INDIVIDUAL WITH A DISABILITY, OR SUBJECT AN EMPLOYER TO ANY LEGAL LIABILITY RESULTING FROM THE REFUSAL TO EMPLOY OR THE DISCHARGE OF AN INDIVIDUAL WITH DISABILITY, IF THE INDIVIDUAL, BECAUSE OF THE DISABILITY, IS UNABLE TO PERFORM THE ESSENTIAL JOB-RELATED DUTIES OR TO PERFORM THE ESSENTIAL JOB-RELATED DUTIES IN A MANNER THAT WOULD NOT ENDANGER THE HEALTH OR SAFETY OF THE INDIVIDUAL OR OTHERS OR IS UNABLE TO BE AT, REMAIN AT OR GO TO OR FROM THE PLACE WHERE THE ESSENTIAL JOB-RELATED DUTIES OF EMPLOYMENT ARE TO BE PERFORMED.

SECTION 302 COMMENTARY ON DETAILS OF DISABILITY DISCRIMINATION

DISABILITY DISCRIMINATION LAW REQUIRES MUCH DETAIL BECAUSE IT IS IMPORTANT TO CAREFULLY DEFINE “DISABILITY” AND TO ACCOUNT FOR WHETHER OF EMPLOYERS CAN “REASONABLY ACCOMMODATE” DISABILITIES IN THE WORKPLACE. EMPLOYERS CANNOT BE REQUIRED TO ACCOMMODATE PERSONS WITH DISABILITIES IF TO DO SO WOULD IMPOSE “UNDUE HARDSHIPS” ON THE EMPLOYER. AS A RESULT, THE DEFINITION OF DISABILITY DISCRIMINATION IS SECTION 302 IS NECESSARILY LENGTHY.

SEC. 303. UNLAWFUL EMPLOYMENT DISCRIMINATION ON THE BASIS OF PREGNANCY.

- A. **SEX DEFINED.** FOR THE PURPOSE OF THIS CODE, THE WORD “SEX” INCLUDES PREGNANCY AND MEDICAL CONDITIONS WHICH RESULT FROM PREGNANCY.
- B. **PREGNANT WOMEN WHO ARE ABLE TO WORK.** IT SHALL BE UNLAWFUL EMPLOYMENT DISCRIMINATION IN VIOLATION OF THIS CODE, EXCEPT WHERE BASED ON A BONA FIDE OCCUPATIONAL QUALIFICATION, FOR AN EMPLOYER TO TREAT

A PREGNANT WOMAN WHO IS ABLE TO WORK IN A DIFFERENT MANNER FROM OTHER PERSONS WHO ARE ABLE TO WORK.

C. PREGNANT WOMEN WHO ARE NOT ABLE TO WORK. IT SHALL ALSO BE UNLAWFUL EMPLOYMENT DISCRIMINATION IN VIOLATION OF THIS CODE, EXCEPT WHERE BASED ON A BONA FIDE OCCUPATIONAL QUALIFICATION, FOR AN EMPLOYER TO TREAT A PREGNANT WOMAN WHO IS NOT ABLE TO WORK BECAUSE OF A DISABILITY OR ILLNESS RESULTING FROM PREGNANCY, OR FROM MEDICAL CONDITIONS WHICH RESULT FROM PREGNANCY, IN A DIFFERENT MANNER FROM OTHER EMPLOYEES WHO ARE NOT ABLE TO WORK BECAUSE OF OTHER DISABILITIES OR ILLNESSES.

D. EMPLOYER NOT RESPONSIBLE FOR ADDITIONAL BENEFITS. NOTHING IN THIS SUBSECTION MAY BE CONSTRUED TO MEAN THAT AN EMPLOYER IS REQUIRED TO PROVIDE SICK LEAVE, A LEAVE OF ABSENCE, MEDICAL BENEFITS OR OTHER BENEFITS TO A WOMAN BECAUSE OF PREGNANCY OR OTHER MEDICAL CONDITIONS THAT RESULT FROM PREGNANCY, IF THE EMPLOYER DOES NOT ALSO PROVIDE SICK LEAVES, LEAVES OF ABSENCE, MEDICAL BENEFITS OR OTHER BENEFITS FOR THE EMPLOYER'S OTHER EMPLOYEES AND IS NOT OTHERWISE REQUIRED TO PROVIDE THOSE LEAVES OR BENEFITS UNDER TRIBAL LAW OR APPLICABLE FEDERAL LAW.

SEC. 304. UNLAWFUL AGE DISCRIMINATION BY IMPOSING A MANDATORY RETIREMENT AGE. IT SHALL BE UNLAWFUL EMPLOYMENT DISCRIMINATION FOR ANY EMPLOYER TO REQUIRE OR PERMIT, AS A CONDITION OF EMPLOYMENT, ANY EMPLOYEE TO RETIRE AT OR BEFORE A SPECIFIED AGE OR AFTER COMPLETION OF A SPECIFIED NUMBER OF YEARS OF SERVICE. THIS SUBSECTION SHALL NOT BE CONSTRUED TO AFFECT OR LIMIT ANY POWER OR DUTY RELATING TO PENSION OR RETIREMENT PLANS WHICH THE UNITED STATES GOVERNMENT RESERVES TO ITSELF.

**SEC. 305. UNLAWFUL EMPLOYMENT DISCRIMINATION AGAINST
“WHISTLEBLOWERS.”**

A. GENERAL RULE. NO EMPLOYER MAY DISCHARGE, THREATEN OR OTHERWISE DISCRIMINATE AGAINST AN EMPLOYEE REGARDING THE EMPLOYEE’S COMPENSATION, TERMS, CONDITIONS, LOCATION OR PRIVILEGES OF EMPLOYMENT AS A REPRISAL BECAUSE:

1. SUBJECT TO THE REQUIREMENTS OF SECTION 305(B), THE EMPLOYEE, ACTING IN GOOD FAITH, OR A PERSON ACTING ON BEHALF OF THE EMPLOYEE, HAS PREVIOUSLY REPORTED IN WRITING TO A PUBLIC BODY WITH REGULATORY AUTHORITY OVER THE EMPLOYER, WHAT THE EMPLOYEE HAS REASONABLE CAUSE TO BELIEVE IS A VIOLATION OF A LAW OR REGULATION ADOPTED BY THE BAND, INCLUDING SECTION 902 OF THIS CODE;
2. SUBJECT TO THE REQUIREMENTS OF SECTION 305(B), THE EMPLOYEE, ACTING IN GOOD FAITH, OR A PERSON ACTING ON BEHALF OF THE EMPLOYEE, HAS PREVIOUSLY REPORTED IN WRITING TO A PUBLIC BODY WITH REGULATORY AUTHORITY OVER THE EMPLOYER, WHAT THE EMPLOYEE HAS REASONABLE CAUSE TO BELIEVE IS A CONDITION OR PRACTICE THAT WOULD PUT AT RISK THE HEALTH OR SAFETY OF THAT EMPLOYEE OR ANY OTHER INDIVIDUAL. THE PROTECTION FROM DISCRIMINATION PROVIDED IN THIS SECTION SPECIFICALLY INCLUDES SCHOOL PERSONNEL WHO REPORT SAFETY CONCERNS TO SCHOOL OFFICIALS WITH REGARD TO A VIOLENT OR DISRUPTIVE STUDENT;
3. THE EMPLOYEE IS REQUESTED TO PARTICIPATE, OR DOES PARTICIPATE, IN AN INVESTIGATION, HEARING OR INQUIRY HELD BY A PUBLIC BODY, OR IN A COURT ACTION; OR

4. THE EMPLOYEE ACTING IN GOOD FAITH, HAS PREVIOUSLY REFUSED TO CARRY OUT A DIRECTIVE GIVEN TO THE EMPLOYEE BY PERSON IN A SUPERVISORY POSITION AND:
 - a. THE EMPLOYEE INFORMED THE SUPERVISOR GIVING THE DIRECTIVE THAT THE DIRECTIVE WOULD RESULT IN A VIOLATION OF LAW OR REGULATION; OR
 - b. THE EMPLOYEE BELIEVES WOULD EXPOSE THE EMPLOYEE OR ANY INDIVIDUAL TO A CONDITION THAT WOULD RESULT IN SERIOUS INJURY OR DEATH, AFTER HAVING SOUGHT AND BEEN UNABLE TO OBTAIN A CORRECTION OF THE DANGEROUS CONDITION FROM THE EMPLOYER.

SECTION 305.A. COMMENTARY ON PROHIBITED CONDUCT

THIS SECTION IS SPECIFICALLY INTENDED TO REQUIRE MORE SPECIFIC PROOF OF UNLAWFUL DISCRIMINATION BEYOND THAT REQUIRED UNDER SECTION 307, BY REQUIRING AN EMPLOYEE SEEKING PROTECTION UNDER THIS SECTION TO DEMONSTRATE THAT THERE IS A NEXUS BETWEEN A PROTECTED DISCLOSURE AND THE EMPLOYER'S DISCRIMINATORY EMPLOYMENT ACTION. THIS STANDARD REQUIRES THE EMPLOYEE TO ESTABLISH THAT THE ADVERSE EMPLOYMENT ACTION WAS THE RESULT OF AN IMPROPER OR RETALIATORY MOTIVE ON THE PART OF THE EMPLOYER ARISING OUT OF THE EMPLOYEE'S PROTECTED DISCLOSURE.

SECTION 305.A. 4. COMMENTARY

THIS SECTION IS SPECIFICALLY INTENDED TO PROTECT EMPLOYEES WHO REFUSE TO CARRY OUT DIRECTIVES THAT THE EMPLOYEE REASONABLY, AND IN GOOD FAITH, BELIEVES WILL CAUSE HIM/HER OR THE EMPLOYER TO VIOLATE APPLICABLE LAWS, INCLUDING LIMITATIONS ON THE EMPLOYEE'S LICENSE OR ETHICAL RULES

GOVERNING THE EMPLOYEE. FOR PURPOSES OF THIS SECTION, A “SUPERVISORY” PERSON CAN INCLUDE AN INDIVIDUAL WITH ACTUAL OR PERCEIVED AUTHORITY TO DIRECT THE ACTIONS OF THE EMPLOYEE (EVEN IF SUCH PERSONS DO NOT, IN FACT, HAVE THAT AUTHORITY), SUCH AS AN INDIVIDUAL MEMBER OF THE TRIBAL COUNCIL OR MEMBER OF A BOARD OR COMMISSION.

B. INITIAL REPORT TO EMPLOYER REQUIRED; EXCEPTION. SECTION 305(A) DOES NOT APPLY TO AN EMPLOYEE WHO HAS REPORTED OR CAUSED TO BE REPORTED A VIOLATION, OR UNSAFE CONDITION OR PRACTICE TO A PUBLIC BODY, UNLESS THE EMPLOYEE HAS FIRST BROUGHT THE ALLEGED VIOLATION, CONDITION OR PRACTICE TO THE ATTENTION OF A PERSON HAVING SUPERVISORY AUTHORITY WITH THE EMPLOYER AND HAS ALLOWED THE EMPLOYER A REASONABLE OPPORTUNITY TO CORRECT THAT VIOLATION, CONDITION OR PRACTICE. THE INITIAL REPORT SUBMITTED BY THE EMPLOYEE MUST BE IN WRITING AND THE EMPLOYER IS RESPONSIBLE FOR MAINTAINING A RECORD OF ALL REPORTS ALLEGING VIOLATIONS OR UNSAFE PRACTICES OR CONDITIONS.

SEC. 306. UNLAWFUL EMPLOYMENT DISCRIMINATION AGAINST RETALIATION. NO EMPLOYER SHALL DISCHARGE OR OTHERWISE DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT BECAUSE OF ANY ACTION TAKEN BY SUCH EMPLOYEE OR APPLICANT TO EXERCISE HIS/HER RIGHTS UNDER THIS CODE OR BECAUSE THEY PROVIDED ASSISTANCE IN THE ENFORCEMENT OF THIS CODE.

SUCH ACTION OR ASSISTANCE INCLUDES, BUT IS NOT LIMITED TO: FILING A COMPLAINT, STATING AN INTENT TO FILE A COMPLAINT, SUPPORTING EMPLOYEES WHO ARE INVOLVED IN THE COMPLAINT PROCESS, COOPERATING WITH PERSONS INVESTIGATING ALLEGED VIOLATIONS OF THIS CODE, AND EDUCATING OTHERS CONCERNING THE COVERAGE OR APPLICATION OF THIS CODE.

SEC. 307. PROOF OF UNLAWFUL DISCRIMINATION. UNLAWFUL EMPLOYMENT DISCRIMINATION EXISTS IF A COMPLAINANT SHOWS THAT HIS OR HER RACE, COLOR, SEX, DISABILITY, RELIGION, AGE, FAMILIAL STATUS, SEXUAL ORIENTATION, ANCESTRY OR NATIONAL ORIGIN, EVEN IF NOT THE SOLE FACTOR,

WAS NONETHELESS A SUBSTANTIAL FACTOR MOTIVATING THE EMPLOYER'S ACTION. IF THE COMPLAINANT DEMONSTRATES THAT HE/SHE WOULD NOT HAVE BEEN REJECTED, DISCHARGED OR OTHERWISE TREATED DIFFERENTLY, BUT FOR MEMBERSHIP IN THE PROTECTED CLASS, THE EXISTENCE OF OTHER REASONABLE GROUNDS FOR THE EMPLOYER'S ACTION DOES NOT RELIEVE THE EMPLOYER FROM LIABILITY.

SEC. 308. ACTIONS NOT CONSTITUTING UNLAWFUL EMPLOYMENT DISCRIMINATION

- A. *NATIVE AMERICAN PREFERENCE.* NOTHING IN THIS CODE SHALL BE CONSTRUED TO PROHIBIT ANY ACTION TO PROVIDE EMPLOYMENT PREFERENCES TO CITIZENS OF THE BAND, SPOUSES/PARENTS OF BAND CITIZENS, OR OTHER NATIVE AMERICANS PURSUANT TO INDIAN PREFERENCE IN EMPLOYMENT CODE OR ANY EMPLOYMENT POLICY OR ACTION THAT IS PERMITTED UNDER 42 U.S.C. § 2000E-2(I).
- B. *AGE.* IT SHALL NOT BE UNLAWFUL EMPLOYMENT DISCRIMINATION TO DISCRIMINATE ON ACCOUNT OF AGE TO:
1. COMPLY WITH ANY TRIBAL LAW RELATING TO THE EMPLOYMENT OF MINORS;
 2. OBSERVE THE TERMS OF ANY BONA FIDE EMPLOYEE BENEFIT PLAN SUCH AS A RETIREMENT, PENSION OR INSURANCE PLAN THAT DOES NOT EVADE OR CIRCUMVENT THE PURPOSES OF THIS CODE.
- C. *INFECTIOUS AND COMMUNICABLE DISEASES.* ASSIGNMENT OF INDIVIDUALS WITH AN INFECTIOUS OR COMMUNICABLE DISEASE IS GOVERNED BY THE FOLLOWING.
1. IN ANY CASE IN WHICH AN INDIVIDUAL HAS AN INFECTIOUS OR COMMUNICABLE DISEASE, WHICH IS TRANSMITTED TO OTHERS THROUGH THE HANDLING OF FOOD AND IS INCLUDED ON THE LIST DEVELOPED BY THE UNITED STATES SECRETARY OF HEALTH AND HUMAN SERVICES UNDER THE FEDERAL AMERICANS WITH DISABILITIES ACT, TITLE I, SECTION 103(D)(1),

AN EMPLOYER MAY REFUSE TO ASSIGN OR CONTINUE TO ASSIGN THE INDIVIDUAL A JOB INVOLVING FOOD HANDLING, UNLESS THE RISK OF DISEASE TRANSMISSION CAN BE ELIMINATED BY REASONABLE ACCOMMODATION.

2. NOTHING IN THIS CODE MAY BE CONSTRUED TO PREEMPT, MODIFY OR AMEND ANY TRIBAL LAW APPLICABLE TO FOOD HANDLING THAT IS DESIGNED TO PROTECT THE PUBLIC HEALTH FROM INDIVIDUALS WHO POSE A SIGNIFICANT RISK TO THE HEALTH OR SAFETY OF OTHERS, WHICH CANNOT BE ELIMINATED BY REASONABLE ACCOMMODATION, PURSUANT TO THE LIST OF INFECTIOUS OR COMMUNICABLE DISEASES AND THE MODES OF TRANSMISSIBILITY PUBLISHED BY THE UNITED STATES SECRETARY OF HEALTH AND HUMAN SERVICES.

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 ALLEGING A VIOLATION OF THE RIGHTS UNDER THIS CODE UNTIL SUCH 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 HAS BEEN SUBJECT TO UNLAWFUL EMPLOYMENT DISCRIMINATION PROHIBITED BY THIS CODE MAY, AFTER EXHAUSTING HIS/HER ADMINISTRATIVE REMEDIES, FILE A CIVIL ACTION IN THE TRIBAL COURT AGAINST THE EMPLOYER OR OTHER PERSONS WHO COMMITTED THE UNLAWFUL DISCRIMINATION.
- 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 UNLAWFUL DISCRIMINATION. 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.
- D. THE TRIBAL COURT MAY PRESCRIBE THE FORM TO BE USED FOR FILING A COMPLAINT ALLEGING UNLAWFUL DISCRIMINATION.

SEC. 403. STATUTE OF LIMITATIONS. ANY COMPLAINTS ALLEGING UNLAWFUL DISCRIMINATION MUST BE FILED WITH THE TRIBAL COURT NOT MORE THAN THE LATER OF:

- A. SIXTY (60) DAYS AFTER EXHAUSTING ANY ADMINISTRATIVE REMEDIES; OR
- B. SIX (6) MONTHS AFTER THE ALLEGED ACT OF UNLAWFUL EMPLOYMENT DISCRIMINATION.

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 UNLAWFUL DISCRIMINATION OCCURRED, 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; AND
 - 2. AN ORDER TO EMPLOY OR REINSTATE A VICTIM OF UNLAWFUL EMPLOYMENT DISCRIMINATION.
- B. **MONETARY DAMAGES.** IN ADDITION TO THE EQUITABLE REMEDIES DESCRIBED IN SECTION 404A., IF THE COURT FINDS THAT UNLAWFUL DISCRIMINATION OCCURRED, THE COURT'S

JUDGMENT, DECISION OR ORDER MAY ALSO INCLUDE AN AWARD FOR BACK PAY FOR ANY VICTIM OF UNLAWFUL EMPLOYMENT DISCRIMINATION THE COURT HAS ORDERED TO BE EMPLOYED OR REINSTATED, OR REASONABLE FRONT PAY (NOT TO EXCEED A TOTAL RECOVERY OF 12 MONTH'S PAY) IF EMPLOYMENT OR REINSTATEMENT IS NOT IN THE BEST INTERESTS OF THE PARTIES. THE TRIBAL COUNCIL, ACTING IN THEIR OFFICIAL CAPACITY, SHALL NEVER BE PERSONALLY LIABLE FOR ANY MONETARY DAMAGES.

SUBSECTION 404 COMMENTARY

THE STANDARDS FOR ALLOWING DAMAGES IN EMPLOYMENT DISCRIMINATION CASES REQUIRE PUBLIC POLICY DECISIONS. AS THE COMMENTARY TO SUBSECTION 407 POINTS OUT, THERE IS CONTROVERSY IN THE FEDERAL COURTS ABOUT WHAT DAMAGES SHOULD BE ALLOWED, DEPENDING UPON THE NATURE OF THE DISCRIMINATORY ACTION. THERE IS UNIVERSAL AGREEMENT THAT PLAINTIFFS SHOULD RECOVER DAMAGES (AS DESCRIBE IN PARAGRAPH 404(B)) IF THEY ARE VICTIMS OF INTENTIONAL EMPLOYMENT DISCRIMINATION BASED ON SEX, RACE, COLOR, NATIONAL ORIGIN, RELIGION, OR DISABILITY. THERE IS MUCH DEBATE ABOUT THE STANDARDS OF PROOF FOR ESTABLISHING SUCH INTENTIONAL DISCRIMINATION. FOR INSTANCE, IF THE PROTECTED TRAIT (E.G. SEX, RACE, COLOR, NATIONAL ORIGIN) WAS JUST ONE FACTOR, BUT NOT THE "DETERMINING" FACTOR IN AN ADVERSE EMPLOYMENT DECISION, THEN IT CAN BE ARGUED THAT FULL DAMAGES SHOULD NOT BE PROVIDED TO THE EMPLOYEE. UNDER SECTION 407, DECISIONS FROM THE SUPREME COURT AND THE LOCAL FEDERAL APPELLATE COURT WILL PROVIDE GUIDANCE FOR RESOLVING THESE ISSUES UNLESS THE TRIBAL COUNCIL TAKE THEM ON AND MAKES THEM CLEAR IN THIS CODE.

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 BROUGHT PURSUANT TO ARTICLE IV OF THIS CODE AND FOR ANY PROCESS, INCLUDING SUBPOENAS.

SEC. 407. PERSUASIVE AUTHORITY. DECISIONS OF THE UNITED STATES SUPREME COURT AND THE COURT OF APPEALS FOR THE SIXTH CIRCUIT AND THE REGULATIONS AND GUIDELINES OF THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION SHALL BE PERSUASIVE AUTHORITY IN GUIDING THE CONSTRUCTION OF THE PROVISIONS OF THIS CODE TO THE EXTENT THAT THEY ARE SIMILAR TO FEDERAL ENACTMENTS ADDRESSING EMPLOYMENT DISCRIMINATION.

ARTICLE V. POLICY AND TRAINING REQUIREMENTS-ADDRESSING UNLAWFUL DISCRIMINATION AND SEXUAL HARASSMENT.

SEC. 501. EMPLOYER RESPONSIBILITIES. ALL EMPLOYERS WITHIN THE JURISDICTION OF THE BAND, INCLUDING THE BAND'S GOVERNMENT AND ENTERPRISES AND INSTRUMENTALITIES WHOLLY-OWNED BY THE BAND, SHALL ACT TO ENSURE A WORKPLACE FREE OF UNLAWFUL DISCRIMINATION PROHIBITED BY THIS CODE, INCLUDING SEXUAL HARASSMENT, BY IMPLEMENTING THE FOLLOWING MINIMUM REQUIREMENTS:

- A. *WORKPLACE POSTING.* AN EMPLOYER SHALL POST IN A PROMINENT AND ACCESSIBLE LOCATION IN THE WORKPLACE ONE OR MORE POSTERS PROVIDING, AT A MINIMUM, THE FOLLOWING INFORMATION: THE ILLEGALITY OF DISCRIMINATION PROHIBITED BY THIS CODE, INCLUDING SPECIFIC NOTICE OF THE ILLEGALITY OF SEXUAL HARASSMENT; A DESCRIPTION OF THE TYPES OF UNLAWFUL DISCRIMINATORY CONDUCT, INCLUDING A SPECIFIC DESCRIPTION OF SEXUAL HARASSMENT, UTILIZING EXAMPLES; THE COMPLAINT PROCESS AVAILABLE THROUGH THE INTERNAL GRIEVANCE PROCEDURES, INCLUDING A STATEMENT INFORMING EMPLOYEES OF THE REQUIREMENT FOR EXHAUSTION OF ANY INTERNAL GRIEVANCE PROCEDURES

BEFORE FILING SUIT; AND DIRECTIONS ON HOW TO CONTACT THE TRIBAL COURT ADMINISTRATOR TO FILE SUIT. THE TEXT OF THESE POSTERS MAY MEET, BUT MAY NOT EXCEED, EIGHTH-GRADE LITERACY STANDARDS.

- B. *EMPLOYEE NOTIFICATION.* EMPLOYERS ARE ENCOURAGED TO PROVIDE ALL EMPLOYEES WITH INDIVIDUAL WRITTEN NOTICE THAT INCLUDES, AT A MINIMUM, THE FOLLOWING INFORMATION: THE ILLEGALITY OF DISCRIMINATORY PRACTICES PROHIBITED BY THIS CODE, INCLUDING SEXUAL HARASSMENT; THE DEFINITION OF, AND DESCRIPTIONS OF, THE UNLAWFUL DISCRIMINATORY PRACTICES PROHIBITED BY THIS CODE, INCLUDING SEXUAL HARASSMENT, UTILIZING EXAMPLES; THE EMPLOYER'S INTERNAL COMPLAINT PROCESS AVAILABLE TO THE EMPLOYEE, INCLUDING A STATEMENT INFORMING EMPLOYEES OF THE REQUIREMENT FOR EXHAUSTION OF ANY INTERNAL GRIEVANCE PROCEDURES BEFORE FILING SUIT; THE LEGAL RECOURSE AND COMPLAINT PROCESS; DIRECTIONS ON HOW TO CONTACT THE TRIBAL COURT ADMINISTRATOR; AND THE PROTECTION AGAINST RETALIATION AS PROVIDED PURSUANT TO SECTION 305. THE NOTICE SHOULD BE DELIVERED IN A MANNER TO ENSURE NOTICE TO ALL EMPLOYEES WITHOUT EXCEPTION, SUCH AS INCLUDING THE NOTICE WITH AN EMPLOYEE'S PAY.
- C. *EDUCATION AND TRAINING.* EMPLOYERS ARE ALSO ENCOURAGED TO CONDUCT AN EDUCATION AND TRAINING PROGRAM FOR ALL NEW EMPLOYEES WITHIN ONE YEAR OF COMMENCEMENT OF EMPLOYMENT THAT INCLUDES, AT A MINIMUM, THE FOLLOWING INFORMATION: THE ILLEGALITY OF DISCRIMINATORY PRACTICES, INCLUDING SEXUAL HARASSMENT; THE DEFINITION OF, AND DESCRIPTION OF, PROHIBITED DISCRIMINATORY PRACTICES, INCLUDING SEXUAL HARASSMENT, UTILIZING EXAMPLES; THE EMPLOYER'S INTERNAL COMPLAINT PROCESS AVAILABLE TO THE EMPLOYEE, INCLUDING A STATEMENT INFORMING EMPLOYEES OF THE REQUIREMENT FOR EXHAUSTION OF ANY INTERNAL GRIEVANCE PROCEDURES BEFORE FILING SUIT; THE LEGAL

RECOURSE AND COMPLAINT PROCESS AVAILABLE THROUGH THE TRIBAL COURT; DIRECTIONS ON HOW TO CONTACT THE TRIBAL COURT ADMINISTRATOR; AND THE PROTECTION AGAINST RETALIATION AS PROVIDED UNDER SECTION 305. EMPLOYERS SHALL CONDUCT ADDITIONAL TRAINING FOR SUPERVISORY AND MANAGERIAL EMPLOYEES WITHIN ONE YEAR OF COMMENCEMENT OF EMPLOYMENT THAT INCLUDES, AT A MINIMUM, THE SPECIFIC RESPONSIBILITIES OF SUPERVISORY AND MANAGERIAL EMPLOYEES AND METHODS THAT THESE EMPLOYEES MUST TAKE TO ENSURE IMMEDIATE AND APPROPRIATE CORRECTIVE ACTION IN ADDRESSING UNLAWFUL DISCRIMINATION, INCLUDING SEXUAL HARASSMENT COMPLAINTS.

ARTICLE VI. FAMILY MEDICAL LEAVE

SEC. 601. FAMILY MEDICAL LEAVE PROTECTION. EVERY EMPLOYEE WHO HAS BEEN EMPLOYED BY THE SAME EMPLOYER FOR 12 CONSECUTIVE MONTHS, AND HAS WORKED AT LEAST 1,250 HOURS DURING THE PREVIOUS 12 MONTHS, IS ENTITLED TO UP TO 12 CONSECUTIVE WORK WEEKS OF FAMILY MEDICAL LEAVE IN A SINGLE 12 MONTH PERIOD. A QUALIFYING EMPLOYEE IS ENTITLED TO UP TO 26 WEEKS (COMBINED TOTAL WITH ANY OTHER FAMILY MEDICAL LEAVE) OF FAMILY MEDICAL LEAVE IN A SINGLE 12 MONTH PERIOD IF LEAVE IS REQUIRED TO PERMIT THE EMPLOYEE TO CARE FOR A SERVICE MEMBER AS DESCRIBED IN SECTION 201(I)(6). THE FOLLOWING CONDITIONS APPLY TO FAMILY MEDICAL LEAVE GRANTED UNDER THIS SECTION:

- A. THE EMPLOYEE MUST GIVE AT LEAST 30 DAYS' NOTICE OF THE INTENDED DATE UPON WHICH FAMILY MEDICAL LEAVE WILL COMMENCE AND TERMINATE, UNLESS PREVENTED BY MEDICAL EMERGENCY OR OTHER QUALIFYING EXIGENCY FROM GIVING THAT NOTICE;
- B. THE EMPLOYER MAY REQUIRE CERTIFICATION FROM A PHYSICIAN, OR DOCUMENTATION OR OTHER INFORMATION PERTAINING TO A REQUEST FOR QUALIFIED EXIGENCY LEAVE OR MILITARY CAREGIVER LEAVE, TO REASONABLY PERMIT

THE EMPLOYER TO VERIFY THE AMOUNT OF LEAVE REQUESTED BY THE EMPLOYEE. AN EMPLOYEE WHO IN GOOD FAITH RELIES ON TREATMENT BY PRAYER OR SPIRITUAL MEANS, IN ACCORDANCE WITH THE TENETS OF A RECOGNIZED RELIGIOUS OR SPIRITUAL PRACTICE, MAY SUBMIT CERTIFICATION FROM AN ACCREDITED OR RECOGNIZED PRACTITIONER OF THOSE HEALING METHODS IN LIEU OF CERTIFICATION FROM A PHYSICIAN; AND

- C. THE EMPLOYER AND EMPLOYEE MAY NEGOTIATE FOR MORE OR LESS LEAVE, BUT BOTH PARTIES MUST AGREE.

FAMILY MEDICAL LEAVE GRANTED UNDER THIS SECTION MAY CONSIST OF UNPAID LEAVE. IF AN EMPLOYER PROVIDES PAID FAMILY MEDICAL LEAVE FOR FEWER THAN 12 WEEKS, THE ADDITIONAL WEEKS OF LEAVE ADDED TO ATTAIN THE TOTAL OF 12 WEEKS REQUIRED MAY BE UNPAID.

SEC. 602. EMPLOYEE BENEFITS PROTECTION.

- A. RESTORATION. ANY EMPLOYEE WHO EXERCISES THE RIGHT TO FAMILY MEDICAL LEAVE UNDER THIS SECTION, UPON EXPIRATION OF THE LEAVE, IS ENTITLED TO BE RESTORED BY THE EMPLOYER TO THE POSITION HELD BY THE EMPLOYEE WHEN THE LEAVE COMMENCED OR TO A POSITION WITH EQUIVALENT SENIORITY STATUS, EMPLOYEE BENEFITS, PAY AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT. THIS SUBSECTION DOES NOT APPLY IF THE EMPLOYER PROVES THAT THE EMPLOYEE WAS NOT RESTORED AS PROVIDED IN THIS SUBSECTION BECAUSE OF CONDITIONS UNRELATED TO THE EMPLOYEE'S EXERCISE OF RIGHTS UNDER THIS SECTION.
- B. MAINTENANCE OF EMPLOYEE BENEFITS. DURING ANY FAMILY MEDICAL LEAVE TAKEN UNDER THIS SECTION, THE EMPLOYER SHALL MAKE IT POSSIBLE FOR EMPLOYEES TO CONTINUE THEIR EMPLOYEE BENEFITS AT THE EMPLOYEE'S EXPENSE. THE EMPLOYER AND EMPLOYEE MAY NEGOTIATE

FOR THE EMPLOYER TO MAINTAIN BENEFITS AT THE EMPLOYER'S EXPENSE FOR THE DURATION OF THE LEAVE.

SEC. 603. EFFECT ON EXISTING EMPLOYEE BENEFITS.

- A. BENEFIT ACCRUAL. THE TAKING OF FAMILY MEDICAL LEAVE UNDER THIS SECTION SHALL NOT RESULT IN THE LOSS OF ANY EMPLOYEE BENEFIT ACCRUED BEFORE THE DATE ON WHICH THE LEAVE COMMENCED.
- B. CONTRACT RIGHTS. NOTHING IN THIS SECTION MAY BE CONSTRUED TO AFFECT OR DIMINISH THE CONTRACT RIGHTS OR SENIORITY STATUS OF ANY OTHER EMPLOYEE OF ANY EMPLOYER COVERED BY THIS SECTION.

SEC. 604. PROHIBITED ACTS.

- A. UNLAWFUL INTERFERENCE OR DENIAL OF RIGHTS. THE EMPLOYER MAY NOT INTERFERE WITH, RESTRAIN OR DENY THE EXERCISE OF OR THE ATTEMPT TO EXERCISE ANY RIGHT PROVIDED BY THIS SECTION.
- B. UNLAWFUL DISCRIMINATION AGAINST EXERCISE OF RIGHTS. THE EMPLOYER MAY NOT DISCHARGE, FINE, SUSPEND, EXPEL, DISCIPLINE OR IN ANY OTHER MANNER DISCRIMINATE AGAINST ANY EMPLOYEE FOR EXERCISING ANY RIGHT PROVIDED BY THIS SECTION.
- C. UNLAWFUL DISCRIMINATION AGAINST OPPOSITION. THE EMPLOYER MAY NOT DISCHARGE, FINE, SUSPEND, EXPEL, DISCIPLINE OR IN ANY OTHER MANNER DISCRIMINATE AGAINST ANY EMPLOYEE FOR OPPOSING ANY PRACTICE MADE UNLAWFUL BY THIS SECTION.

SEC. 605. JUDICIAL ENFORCEMENT.

- A. A CIVIL ACTION MAY BE BROUGHT IN THE TRIBAL COURT BY AN EMPLOYEE AGAINST ANY EMPLOYER TO ENFORCE THIS SECTION. THE COURT MAY ENJOIN ANY ACT OR PRACTICE THAT VIOLATES OR MAY VIOLATE THIS SECTION AND MAY ORDER ANY OTHER EQUITABLE RELIEF THAT IS NECESSARY

AND APPROPRIATE TO REDRESS THE VIOLATION OR TO ENFORCE THE REQUIREMENTS OF THIS SECTION.

B. PROCEDURES FOR CLAIMS INVOLVING VIOLATIONS. CIVIL ACTIONS BROUGHT IN THE TRIBAL COURT BY PERSONS ALLEGING VIOLATIONS OF THIS ARTICLE SHALL BE SUBJECT TO THE PROCEDURES AND LIMITATIONS CONTAINED IN ARTICLE IV, SECTIONS 401-404(B) OF THIS CODE.

C. LIMITATION ON REMEDIES. THE TRIBAL COURT SHALL NOT HAVE THE AUTHORITY TO AWARD MONETARY DAMAGES FOR VIOLATIONS OF THIS ARTICLE EXCEPT TO THE EXTENT AUTHORIZED IN SECTION 404(B) OF THIS CODE.

SEC. 606. WAIVER OF SOVEREIGN IMMUNITY. THE SOVEREIGN IMMUNITY OF THE BAND IS HEREBY WAIVED FOR ANY CIVIL ACTIONS BROUGHT IN THE TRIBAL COURT PURSUANT TO SECTION 605, EXCEPT IMMUNITY SHALL NOT BE WAIVED IF THE CLAIMANT HAS FILED A CLAIM, ARISING OUT OF THE SAME CIRCUMSTANCES, IN ANY OTHER FORUM OTHER THAN THE TRIBAL COURT..

SECTION VII. EMPLOYMENT LEAVE FOR MEMBERS OF ARMED FORCES OR RESERVE COMPONENTS OF ARMED FORCES.
[RESERVED]

SECTION VIII. EMPLOYMENT LEAVE FOR VICTIMS OF VIOLENCE.

SEC. 801. REQUIRED LEAVE. AN EMPLOYER MUST GRANT REASONABLE AND NECESSARY LEAVE FROM WORK, WITH OR WITHOUT PAY, FOR AN EMPLOYEE TO:

- A. PREPARE FOR AND ATTEND COURT PROCEEDINGS;
- B. RECEIVE MEDICAL TREATMENT OR ATTEND TO MEDICAL TREATMENT FOR A VICTIM WHO IS THE EMPLOYEE'S DAUGHTER, SON, PARENT OR SPOUSE; OR
- C. OBTAIN NECESSARY SERVICES TO REMEDY A CRISIS CAUSED BY DOMESTIC VIOLENCE, SEXUAL ASSAULT OR STALKING.

THE LEAVE MUST BE NEEDED BECAUSE THE EMPLOYEE OR THE EMPLOYEE'S DAUGHTER, SON, PARENT OR SPOUSE IS A VICTIM OF VIOLENCE, ASSAULT, SEXUAL ASSAULTS UNDER TRIBAL, STATE, OR FEDERAL LAW, STALKING OR ANY ACT THAT WOULD SUPPORT AN ORDER FOR PROTECTION UNDER TRIBAL, STATE, OR FEDERAL LAW. AN EMPLOYER MAY NOT SANCTION AN EMPLOYEE OR DEPRIVE AN EMPLOYEE OF PAY OR BENEFITS FOR EXERCISING A RIGHT GRANTED BY THIS SECTION.

SEC. 802. DEFINITIONS. FOR PURPOSES OF THIS SECTION, THE TERMS "DAUGHTER," "SON," "PARENT" AND "SPOUSE" HAVE THE SAME MEANINGS AS THOSE TERMS HAVE UNDER FEDERAL REGULATIONS ADOPTED PURSUANT TO 29 U.S.C. § 2654, AS IN EFFECT ON JANUARY 1, 2002. AN EMPLOYER MAY REQUIRE AN EMPLOYEE TO PROVIDE REASONABLE DOCUMENTATION OF THE FAMILY RELATIONSHIP, WHICH MAY INCLUDE A STATEMENT FROM THE EMPLOYEE, A BIRTH CERTIFICATE, A COURT DOCUMENT OR SIMILAR DOCUMENTS.

SEC. 803. EXCEPTIONS. SECTION 801 IS NOT VIOLATED IF:

- A. THE EMPLOYER WOULD SUSTAIN UNDUE HARDSHIP FROM THE EMPLOYEE'S ABSENCE;
- B. THE REQUEST FOR LEAVE IS NOT COMMUNICATED TO THE EMPLOYER WITHIN A REASONABLE TIME UNDER THE CIRCUMSTANCES; OR
- C. THE REQUESTED LEAVE IS IMPRACTICAL, UNREASONABLE OR UNNECESSARY BASED ON THE FACTS THEN MADE KNOWN TO THE EMPLOYER.

SEC. 804. CONFIDENTIALITY. INFORMATION AND RECORDS RECEIVED BY AN EMPLOYER IN CONNECTION WITH A REQUEST FOR LEAVE UNDER THIS SECTION SHALL BE KEPT CONFIDENTIAL.

SEC. 805. JUDICIAL ENFORCEMENT.

- A. A CIVIL ACTION MAY BE BROUGHT IN THE TRIBAL COURT BY AN EMPLOYEE AGAINST ANY EMPLOYER TO ENFORCE THIS SECTION. THE COURT MAY ENJOIN ANY ACT OR PRACTICE

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THAT VIOLATES THIS SECTION AND MAY ORDER ANY OTHER EQUITABLE RELIEF THAT IS NECESSARY AND APPROPRIATE TO REDRESS THE VIOLATION OR TO ENFORCE THE REQUIREMENTS OF THIS SECTION.

- B. PROCEDURE PROCEDURES FOR CLAIMS INVOLVING VIOLATIONS. CIVIL ACTIONS BROUGHT IN THE TRIBAL COURT BY PERSONS ALLEGING VIOLATIONS OF THIS ARTICLE SHALL BE SUBJECT TO THE PROCEDURES AND LIMITATIONS CONTAINED IN ARTICLE IV, SECTIONS 401-404(A) OF THIS CODE.
- C. LIMITATION ON REMEDIES. THE TRIBAL COURT SHALL NOT HAVE THE AUTHORITY TO AWARD MONETARY DAMAGES FOR VIOLATIONS OF THIS ARTICLE.

SEC. 806. WAIVER OF SOVEREIGN IMMUNITY. THE SOVEREIGN IMMUNITY OF THE BAND IS HEREBY WAIVED FOR ANY CIVIL ACTIONS BROUGHT IN THE TRIBAL COURT PURSUANT TO SUBSECTION 805.

ARTICLE IX. MISCELLANEOUS EMPLOYMENT LAWS

SEC. 901. EMPLOYEE WAGES AND HOURS

- A. MINIMUM WAGE. ANY EMPLOYEE WITHIN THE JURISDICTION OF THE BAND SHALL BE PAID AN HOURLY WAGE OF NOT LESS THAN THE MINIMUM WAGE AS THAT IS ESTABLISHED PURSUANT TO THE FAIR LABOR STANDARDS ACT OF 1938 (HEREAFTER THE "FLSA"), 29 U.S.C. SECTIONS 201 ET SEQ., AS AMENDED AND REGULATIONS IMPLEMENTING THE FLSA PROMULGATED BY THE U.S. DEPARTMENT OF LABOR. THE MINIMUM WAGE ESTABLISHED UNDER THIS PROVISION MAY BE CHANGED BY VOTE OF THE TRIBAL COUNCIL; PROVIDED THAT THE TRIBAL COUNCIL WILL NOT SET A MINIMUM WAGE THAT IS BELOW THAT ESTABLISHED UNDER THE FLSA.
- B. MAXIMUM HOURS. NO EMPLOYER SHALL EMPLOY ANY OF ITS EMPLOYEES FOR A WORKWEEK LONGER THAN FORTY (40) HOURS UNLESS SUCH EMPLOYEE RECEIVES COMPENSATION

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FOR THE EMPLOYEE'S EMPLOYMENT IN EXCESS OF THE HOURS ABOVE SPECIFIED AT A RATE NOT LESS THAN ONE AND ONE-HALF TIMES THE REGULAR RATE AT WHICH THE EMPLOYEE IS EMPLOYED. FOR PURPOSES OF THIS SECTION, A WORKWEEK IS A PERIOD OF 168 HOURS DURING 7 CONSECUTIVE 24-HOUR PERIODS. IT MAY BEGIN ON ANY DAY OF THE WEEK AND AT ANY HOUR OF THE DAY ESTABLISHED BY THE EMPLOYER.

- C. EXEMPTIONS. THE PROVISIONS IN SECTION 901.A. AND 901.B SHALL NOT APPLY WITH RESPECT TO ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY, ANY EXEMPTION DETERMINED BY THE TRIBE TO BE NECESSARY TO THE FURTHERANCE OF TRIBAL SOVEREIGNTY OR TREATY RESERVED RIGHTS, OR ANY OTHER EXEMPTION CATEGORY OUTLINED IN THE FEDERAL FLSA AND REGULATIONS CONCERNING THE FLSA PROMULGATED BY THE U.S. DEPARTMENT OF LABOR.
- D. PRIVATE RIGHT OF ACTION. ANY INDIVIDUAL AGGRIEVED UNDER THIS SECTION MAY SEEK RETROACTIVE PAYMENT OF UNPAID MINIMUM WAGES OR UNPAID OVERTIME COMPENSATION AGAINST AN EMPLOYER IN THE TRIBAL COURT.
- E. STATUTE OF LIMITATIONS. ANY ACTION TO SECURE UNPAID MINIMUM WAGES OR UNPAID OVERTIME COMPENSATION MUST BE COMMENCED WITHIN TWO YEARS AFTER THE DATE ON WHICH SUCH WAGES OR OVERTIME COMPENSATION SHOULD HAVE BEEN INCLUDED IN AN EMPLOYEE'S PAYCHECK.
- F. GUIDANCE. FOR THE PURPOSES OF INTERPRETING AND ENFORCING THIS SECTION ONLY, THE TRIBAL COURT MAY LOOK TO THE FLSA AND REGULATIONS THERE UNDER AS WELL AS RELEVANT CASE LAW FOR GUIDANCE, PROVIDED HOWEVER THAT NOTHING IN THIS SECTION 9 SHALL BE CONSTRUED AS AN ADOPTION BY THE BAND OF THE FLSA, NOR A WAIVER OF SOVEREIGN IMMUNITY FROM SUIT FOR ANY CLAIMS OR PROCESS UNDER THE FLSA.

G. WAIVER OF SOVEREIGN IMMUNITY. THE SOVEREIGN IMMUNITY OF THE BAND IS HEREBY WAIVED FOR ANY CIVIL ACTIONS BROUGHT IN THE TRIBAL COURT PURSUANT SECTION 901.D, EXCEPT IMMUNITY SHALL NOT BE WAIVED IF THE CLAIMANT HAS FILED A CLAIM, ARISING OUT OF THE SAME CIRCUMSTANCES, IN ANY OTHER FORUM OTHER THAN THE TRIBAL COURT.

H. COMMENTARY: THE LAST CLAUSE IN 901G IS NECESSARY TO ENSURE THAT A CLAIMANT DOES NOT RECOVER TWICE FOR THE SAME VIOLATION BASED ON A CLAIM IN TRIBAL COURT OR FEDERAL COURT.

SEC. 902. OCCUPATIONAL HEALTH AND SAFETY STANDARDS

A. ADOPTION OF FEDERAL STANDARDS. THE PROVISIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970, TITLE 29 OF THE UNITED STATES CODE, SECTIONS 651 *ET SEQ.*, AS AMENDED (OSHA), ARE ADOPTED AS THE LAW OF THE BAND AND APPLY TO ALL EMPLOYERS WITHIN THE JURISDICTION OF THE BAND, PROVIDED, HOWEVER, THAT THE BAND DOES NOT WAIVE ITS SOVEREIGN IMMUNITY FROM SUIT FOR ANY CLAIMS OR PROCESS IN ANY FEDERAL FORUM UNDER OSHA.

SECTION 902 COMMENTARY

THE BAND CAN AGREE TO ADOPT THE LAWS OF ANOTHER SOVEREIGN AS ITS OWN WITHOUT ESTABLISHING THAT IT IS SUBJECT TO SUIT IN THE COURTS OF THE OTHER SOVEREIGN. <i>R.J. WILLIAMS CO. V. FT. BELKNAP HOUSING AUTHORITY</i> , 719 F.2D 979, 982 (9 TH CIR. 1983). “THERE IS A DIFFERENCE BETWEEN THE RIGHT TO DEMAND COMPLIANCE WITH STATE LAWS AND THE MEANS AVAILABLE TO ENFORCE THEM.” <i>KIOWA BAND V. MANUFACTURING TECHS.</i> , 523 U.S. 751, 755 (1998).

B. DUTY TO REPORT UNSAFE WORKING CONDITION. EMPLOYEES SHALL BE REQUIRED TO REPORT ALL UNSAFE TOOLS, UNSAFE EQUIPMENT, HAZARDOUS CONDITIONS, OR PROCEDURES WHICH COME TO THEIR ATTENTION TO THE

ATTENTION OF A PERSON HAVING SUPERVISORY AUTHORITY WITH THE EMPLOYER AND TO ALLOW THE EMPLOYER A REASONABLE OPPORTUNITY TO CORRECT THAT VIOLATION, CONDITION OR PRACTICE THEIR SUPERVISORS AND/OR THE HUMAN RESOURCE DEPARTMENT AS SOON AS POSSIBLE. EMPLOYEES ARE ALSO RESPONSIBLE FOR REPORTING ALL WORKPLACE ACCIDENTS OR NEAR-ACCIDENTS WHICH OCCUR TO OR INVOLVE THEM IN THE PERFORMANCE OF ASSIGNED DUTIES.

B. JUDICIAL ENFORCEMENT.

1. A CIVIL ACTION MAY BE BROUGHT IN THE TRIBAL COURT BY AN EMPLOYEE AGAINST ANY EMPLOYER TO ENFORCE THIS SECTION. THE COURT MAY ENJOIN ANY ACT OR PRACTICE THAT VIOLATES OR MAY VIOLATE THIS SECTION AND MAY ORDER ANY OTHER EQUITABLE RELIEF THAT IS NECESSARY AND APPROPRIATE TO REDRESS THE VIOLATION OR TO ENFORCE THE REQUIREMENTS OF THIS SECTION.
2. PROCEDURE PROCEDURES FOR CLAIMS INVOLVING VIOLATIONS. CIVIL ACTIONS BROUGHT IN THE TRIBAL COURT BY PERSONS ALLEGING VIOLATIONS OF THIS ARTICLE SHALL BE SUBJECT TO THE PROCEDURES AND LIMITATIONS CONTAINED IN ARTICLE IV, SECTIONS 401-404(A) OF THIS CODE.
3. LIMITATION ON REMEDIES. THE TRIBAL COURT SHALL NOT HAVE THE AUTHORITY TO AWARD MONETARY DAMAGES FOR VIOLATIONS OF THIS SECTION; PROVIDED THAT NOTHING SHALL PROHIBIT THE TRIBE FROM IMPOSING CIVIL FINES THROUGH ANY ADMINISTRATIVE ENFORCEMENT MECHANISM THAT MIGHT BE CREATED UNDER TRIBAL LAW.

C. WAIVER OF SOVEREIGN IMMUNITY. THE SOVEREIGN IMMUNITY OF THE BAND IS HEREBY WAIVED FOR ANY CIVIL ACTIONS BROUGHT IN THE TRIBAL COURT PURSUANT SECTION 902.B, EXCEPT IMMUNITY SHALL NOT

BE WAIVED IF THE CLAIMANT HAS FILED A CLAIM, ARISING OUT OF THE SAME CIRCUMSTANCES, IN ANY OTHER FORUM OTHER THAN THE TRIBAL COURT.

ARTICLE IX. EMPLOYMENT OF MINORS. [RESERVED]

ARTICLE X. WORKERS COMPENSATION [RESERVED]

ARTICLE XI. UNEMPLOYMENT INSURANCE [RESERVED]