

TITLE 9. EMPLOYMENT AND LABOR

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TITLE 9. EMPLOYMENT AND LABOR**ARTICLE I****EMPLOYMENT RIGHTS**

[NOTE: Except as otherwise noted, the provisions of Article I, Title 9 were enacted on May 9, 2007 by Res. No. 7-2007.]

CHAPTER 1. GENERAL PROVISIONS**Sec. 9-1101. Definitions.**

Unless the context requires otherwise, as used in this Article:

(a) “Officer of the Tribe” means:

(1) The Chairman, Vice-Chairman, Secretary, and Treasurer of the Tribal Council;

(2) Any other member of the Tribal Council;

(3) Any person elected or appointed to office for the Tribe or any of its commissions, boards, departments, agencies, or economic enterprises;

(4) Any law enforcement officer or peace officer of the Tribe;

(5) Any other commissioner, board member, director, agent, official, officer, or employee of the Tribe or any of its commissions, boards, departments, agencies, or economic enterprises;

(6) Any other agent, officer, official, or employee of the Tribe, whether elected, appointed or otherwise employed; and

(7) Any person participating as advisor, consultant or otherwise in performing a governmental function, except jurors, witnesses, and Tribal legal counsel.

(b) “Termination of employment” means discharge from employment.

(c) “Tribal Court” means the Sac & Fox Tribe of the Mississippi in Iowa Tribal Court.

(d) “Tribe” means the Sac & Fox Tribe of the Mississippi in Iowa and its commissions, boards, departments, agencies, and economic enterprises.

Sec. 9-1102. Sovereign Immunity.

Nothing in this Article shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, officials or employees. Notwithstanding the foregoing, certain individuals may file certain claims against the Tribe, pursuant to the provisions of Chapter 3 of this Article.

Sec. 9-1103. Severability.

If any chapter, section or provision of this Article or amendment made by this Article is held invalid by a court of competent jurisdiction, the remaining articles, chapters, sections or provisions of this Article and amendments made by this Article shall continue in full force and effect.

CHAPTER 2. OUTSIDE EMPLOYERS; EMPLOYMENT PROTECTION**Sec. 9-1201. Definitions.**

The Definitions of this section apply only to this Chapter, which governs outside employers. Unless the context requires otherwise, as used in this Chapter:

(a) “Employee” means any individual employed at will by an employer to perform services on the Settlement, and any person who performs services for an employer under a contract of employment either made on the Settlement or to be performed wholly or partly on the Settlement, except for employees and officers of the Tribe.

(b) “Employer” means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual or the receiver, trustee, or successor of any of such persons employing any person, but does not include the Tribe.

(c) “Indian” means a person who is an enrolled member of any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the programs and services provided by the United States to Indians because of their status as Indians or any lineal descendent of a member of the Meskwaki Tribe.

Sec. 9-1202. Applicability.

(a) Except as otherwise provided in the laws of the Tribe and any limitations, restrictions or exceptions imposed by or under the authority of the Constitution or laws of the United States, this Chapter shall apply to:

- (1) All employment which occurs wholly or partly on the Settlement;
- (2) All employees performing employment services wholly or partly on the Settlement; and

(3) All employers employing employees wholly or partly on the Settlement whether the employer is located on or off the Settlement, including contractors of the Tribe performing services or providing goods on the Settlement.

(b) This Chapter shall not apply to the Tribe, employees of the Tribe, or officers of the Tribe.

(c) This Chapter shall not apply to employers whose employees are present on the Settlement only for short periods of time, and only for limited purposes, such as the delivery of goods or mail, or vendors to the tribe or Tribe's Enterprises.

Sec. 9-1203. Consent to Application.

(a) Any employer who contracts with the Tribe to perform any services on the Settlement shall be deemed to have agreed to be subject to and comply with the provisions of this Chapter as a condition of such contract and the provisions of this Chapter shall be deemed to be a part and condition of any written contract or other agreement with the Tribe which provides for or includes, explicitly or implicitly, the employment of employees to perform services wholly or partly on the Settlement as though the provisions of this Chapter were set forth in their entirety in the terms of such contract or other agreement.

Sec. 9-1204. Indian Preference.

(a) Because it is the public policy of the Tribe to provide opportunities for employment for its enrolled and non-enrolled members and other Indians as a means of enhancing the quality of life of Native Americans, and to overcome centuries during which Indian people lacked meaningful economic and employment opportunities, and because the Tribe frequently receives federal funds for projects on its lands, and because federal law promotes the advancement and employment of Indian people, all employers shall give preference in employment, training, and advancement opportunities to Indians whenever possible. Enrolled Meskwaki candidates for employment, training, and advancement opportunities will be considered before other Indian candidates who will be considered before non-Indian candidates.

(b) All employers shall maintain such records as are necessary to indicate compliance with this Section.

(c) All employers contracting with the Tribe to provide goods or services on its lands, or who will be hiring employees to provide such goods or services on the Settlement, shall use all reasonable means to employ no less than 15 percent (15%) Indians and must advertise in the Meskwaki Nation Times. Employers with more than 15 employees must advertise in the Meskwaki Nation Times and in newspapers with general circulation in Iowa and one of the following states: Minnesota, North Dakota, South Dakota, Nebraska or Kansas. The advertisement must state that Indian Preference applies in all job opportunities. All employers contracting to provide good or services to the Tribe on its lands shall maintain records documenting the percentage of Indian

employees, and shall report to the Tribe the percentage of Indian employees on a form provided by the Tribe.

(d) Indian Preference also applies in the event of a reduction in workforce. Non-Indian employees will be considered before Indian employees from other tribes, who will be considered before descendants of Enrolled members, and who will be considered before Enrolled Meskwaki employees.

(e) Any employer who fails to comply with this Section may have such employer's right or privilege to employ on the Settlement or conduct business on the Settlement or with the Tribe terminated in whole or in part.

Sec. 9-1205. Employment At Will.

The public policy of the Tribe is that the employment relationship is at will in nature, meaning that it is severable at the pleasure of either the employee or the employer at any time, for any reason, and with or without prior notice. This public policy shall apply to all employment relationships to which this Chapter applies, unless both the employee and the employer have signed a written contract to the contrary setting forth that the employment relationship shall remain in effect for a specified duration of time or otherwise expressly restricting the right of either party to terminate the employment relationship. Both the employee and the employer must sign this written contract, or this written contract must be set forth in an employment handbook or manual or any similar document distributed to the employee, if that document expresses the intent that it is a contract of employment, or this written contract must be set forth in writing signed by the party to be bound to the restrictions upon termination.

Sec. 9-1206. Unlawful Employment Practices.

(a) No employer may demand or receive, either directly or indirectly, a fee, commission, or gratuity of any kind as the price or condition of employment of an employee or as the price or condition of continuance in employment.

(b) No employer may knowingly compel or in any manner seek to coerce any employee of such employer or other person to purchase goods or supplies from any particular person as a condition, explicitly or implicitly, of employment or continued employment.

(c) No one under the age of sixteen may work more than three (3) hours on a school day, more than eighteen (18) hours total in a school week, more than eight (8) hours on a non-school day, or more than forty (40) hours total in a non-school week. No one under the age of sixteen may work before 7:00 a.m. or after 7:00 p.m., except from June 1st through Labor Day, when the evening hour is extended to 9:00 p.m. No employer shall fail to comply with the limitations of this subsection.

(d) No employee paid on an hourly basis shall work more than forty (40) hours in any given seven-day period unless the employee receives overtime pay or other compensation at the rate

of one and one-half (1 1/2) times his normal hourly rate. No employer shall fail to compensate employees paid on an hourly basis for their overtime.

(e) No employer shall fail to maintain the following records with regard to all employees paid on an hourly basis:

- (1) personal information, including employee's name, home address, occupation, gender, and birth date if under 19 years of age;
- (2) hour and day when workweek begins;
- (3) total hours worked each workday and each workweek;
- (4) total daily or weekly straight-time earnings;
- (5) regular hourly pay rate for any week when overtime is worked;
- (6) total overtime pay for the workweek;
- (7) deductions from or additions to wages;
- (8) total wages paid each pay period; and
- (9) date of payment and pay period covered.

(f) No employer shall discriminate in any way against any employee or applicant for employment on the basis of gender, race, age, religion, ethnicity, national origin, political affiliation, and/or physical or mental disability. No employer shall retaliate against an employee for making a claim of discrimination. This subsection shall not be construed to prevent the application of Indian preference to decisions regarding employment matters.

(g) No employer shall engage in the sexual harassment of any employee or applicant for employment. No employer shall permit any employee to engage in the sexual harassment of other individuals in the workplace. No employer shall retaliate against an employee making a claim of sexual harassment.

(h) Any employer who fails to comply with this Section may have such employer's right or privilege to employ employees on the Settlement or conduct business on the Settlement or with the Tribe terminated in whole or in part.

Sec. 9-1207. Claims for Failure to Observe Indian Preference Requirements

An employee has a claim against an employer for any failure to observe the Indian preference requirements of Section 9-1204. Such claims may include without limitation claims for failure to hire, failure to grant training opportunities, and failure to promote in violation of Section 9-1204.

Sec. 9-1208. Sec. 9-1207. Wrongful Termination.

An employee has a claim for wrongful termination against an employer for termination of employment only if one or more of the following circumstances have occurred:

(a) The employer has terminated the employment relationship of an employee in violation of the laws of the Tribe other than those set forth in Section 9-1206 of this Chapter. If a specific law of the Tribe provides a remedy to an employee for a violation of the law, the remedies provided in the law are the exclusive remedies for such violation. If the law does not provide a remedy to an employee for the violation of the law, the employee shall have the right to bring a claim for wrongful termination in violation of this Chapter;

(b) The employer has terminated the employment relationship of an employee in violation of Tribal law regarding Indian employment preference, as set forth in Section 9-1204 of this Chapter; or

(c) The employer has terminated the employment relationship of an employee in retaliation for any of the following:

(1) The exercise of the right to be free from the effects of unlawful employment practices, as prohibited by Section 9-1206 of this Chapter;

(2) The refusal by the employee to commit an act or omission that would violate the laws of the Tribe;

(3) The disclosure by the employee in a reasonable manner that the employee has information or a reasonable belief that the employer, or an employee of the employer, has violated, is violating or will violate the laws of the Tribe, when disclosure is made to either:

(i) The employer or a representative of the employer who the employee reasonably believes is in a managerial or supervisory position and has the authority to investigate the information provided by the employee and to take action to prevent further violations of the laws of the Tribe; or

(ii) An officer of the Tribe or regulatory agency of the Tribe charged with the responsibility of enforcing laws of the Tribe;

(4) Service on a jury or as a witness in a legal proceeding pursuant to a legally effective subpoena issued by a court having jurisdiction over the proceeding;

- (5) The exercise of voting rights; or
- (6) Service in the National Guard or armed forces of the United States.

Sec. 9-1209. Limitation of Actions

(a) When an employee has a claim under this Chapter, the employee shall file his claim with the Trial Court within ten (10) days after the claim arises, *provided* that such 10 days shall not begin to run prior to such employee exhausting any and all remedies, as required by Section 9-1210 of this Chapter.

(b) Any claim which is not filed within ten (10) days after the cause of action accrues is barred and no action may be maintained thereon.

Sec. 9-1210. Exhaustion of Remedies.

(a) No employee may bring and the Tribal Court shall not hear any claim under this Chapter unless there is no remedy available to the employee in any other jurisdiction.

(b) In no circumstance may an employee bring or the Tribal Court hear any claim under this Chapter unless and until the employee has exhausted any and all remedies governing employment grievances in any employment handbook, manual, union contract, or other similar employer policy governing employment grievances or disputes and utilized or attempted to utilize each step available to the employee in such employment grievance policy or procedure.

Sec. 9-1211. Remedies Selection.

In the event an employee has already adjudicated a claim, or the facts underlying the claim, in a forum other than the Tribal Court, including but not limited to the Iowa Civil Rights Commission, the Equal Employment Opportunity Commission, and arbitration, the Tribal Court shall, in lieu of an original action, grant such prior decision full faith and credit, provided that it meets the standards established by the Tribe or the Tribal Court for such recognition.

Sec. 9-1212. Jurisdiction of Tribal Court.

The Trial Court of the Tribal Court shall have subject matter jurisdiction over claims of wrongful termination and other claims as stated in this Chapter.

Sec. 9-1213. Review of Claims

(a) Except as provided otherwise in this Section, if an employee desires to bring a claim and the employee is permitted to bring the claim in Tribal Court under this Chapter, the employee may initiate a proceeding before the Tribal Court in the same manner as other proceedings are initiated before the Tribal Court.

(b) The Tribal Court's review of claims under this Chapter shall be limited to claims arising under sections 9-1207 and 9-1208, and permitted under Section 9-1210.

(c) Except as provided otherwise in this Section, the Tribal Court shall hear a claim of wrongful termination or other claim of a violation of this Chapter as it hears other matters generally. Except where provided otherwise in this Chapter, the laws of the Tribe governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any claim of wrongful termination or other claim of a violation of this Chapter.

Sec. 9-1214. Decision of Tribal Court.

(a) After hearing a claim under this Chapter, the Tribal Court may determine all issues properly before it and enter judgment as it enters judgment in other proceedings.

(b) The Tribal Court's decision must be issued within thirty (30) days of hearing the claim.

Sec. 9-1215. Rules of the Tribal Court.

The Tribal Court may make rules of pleading, practice, and procedure supplementary to but not inconsistent with the provisions of this Chapter, and may amend such rules, as it makes and amends other rules in accordance with the laws of the Tribe, for the purpose of making this Chapter effective for the convenient administration of justice, and simplifying procedure so far as it affects review of agency actions.

CHAPTER 3. TRIBAL EMPLOYEES; CLAIMS FOR ADVERSE EMPLOYMENT ACTIONS

Sec. 9-1301. Definitions.

Unless the context requires otherwise, as used in this Chapter, "employee" means an employee of the Tribe and includes an officer of the Tribe.

Sec. 9-1302. Applicability.

This Chapter shall apply to all employment with the Tribe and with any Tribal entity.

Sec. 9-1303. Indian Preference.

(a) All Tribal employers shall give preference in employment, training, and advancement opportunities to Indians whenever possible. Enrolled Meskwaki candidates for employment, training, and advancement opportunities will be considered before descendants of enrolled members, who will be considered before Indian candidates from other tribes, and Indian candidates from other tribes will be considered before non-Indian candidates.

(b) All Tribal employers shall maintain such records as are necessary to indicate compliance with this Section.

Sec. 9-1304. Employment At Will.

The public policy of the Tribe is that the employment relationship is at will in nature, meaning that it is severable at the pleasure of either the employee or the Tribal employer at any time, for any reason, and with or without prior notice, unless the laws of the Tribe, a written contract executed by the Tribal Council, the Tribe's employment policies, or other similar document defining the conditions of employment expressly provide that the employment shall remain in effect for a specified duration of time or otherwise expressly restrict the right of either party to terminate the employment relationship.

Sec. 9-1305. Discrimination and Harassment Prohibited.

No Tribal employer shall discriminate against or harass any employee or applicant for employment on the basis of gender, race, age, religion, ethnicity, national origin, political affiliation, physical disability, or mental disability. No Tribal employer shall permit any employee to engage in the harassment of others in the workplace on any of the above-listed basis. No Tribal employer shall retaliate against an employee for making a claim of discrimination or harassment. Sexual harassment shall be considered a form of harassment prohibited under this subsection. This subsection shall not be construed to prevent the application of Indian preference to decisions regarding employment matters. All Tribal Employers will establish a policy and procedure for handling complaints to be approved by Tribal Operations.

Sec. 9-1306. Claims for Adverse Employment Actions

Notwithstanding any other provision of the laws of the Tribe, an employee of the Tribe or rejected applicant for employment with the Tribe who has been the subject of an adverse employment action may bring a claim in Tribal Court if one or more of the following circumstances have occurred:

(a) The Tribe has taken an adverse employment action against the employee or rejected applicant in violation of the Indian preference requirements of section 9-1303; or

(b) The Tribe has taken an adverse employment action against the employee or rejected applicant in violation of the section 9-1306 prohibition on discrimination and harassment.

Sec. 9-1307. Claim for Reinstatement.

Notwithstanding any other provision of the laws of the Tribe, an employee is eligible to file a claim for reinstatement of employment with the Tribe following termination of employment only if one or more of the following circumstances have occurred:

(a) The Tribe has terminated the employment relationship of an employee in violation of the laws of the Tribe, including but not limited to the laws of the Tribe regarding Indian preference, discrimination, and harassment, as set forth in Sections 9-1303 and 9-1305 of this Chapter. If the law of the Tribe at issue provides a remedy to an employee for a violation of the law, then that remedy shall be the exclusive remedy for the violation of the law or the public policy set forth in or arising out of the law. All definitions and restrictions contained in the law also apply to any civil action based on a violation of the public policy arising out of the law. If the law does not provide a remedy to an employee for the violation of the law, the employee shall have the right to bring a claim for reinstatement, but may seek only those remedies permitted by this Chapter.

(b) The Tribe has terminated the employment relationship of an employee in breach of a written contract executed by the Tribal Council, the Tribe's employment policies, or other similar document defining the conditions of employment which expressly provides that the employment shall remain in effect for a specified duration of time or otherwise expressly restricts the right of either party to terminate the employment relationship. If the contract or similar document at issue provides a remedy to an employee for a breach of the contract or similar document, then that remedy shall be the exclusive remedy. If the law does not provide a remedy to an employee for the violation of the contract or similar document, the employee shall have the right to bring a claim for reinstatement, but may seek only those remedies permitted by this Chapter.

(c) The Tribe has terminated the employment relationship of an employee in retaliation for any of the following:

(1) The refusal by the employee to commit an act or omission that would violate the laws of the Tribe;

(2) The disclosure by the employee in a reasonable manner that the employee has information or a reasonable belief that another employee or an agency, department, board, commission, or economic enterprise of the Tribe has violated, is violating, or will violate the laws of the Tribe, when disclosure is made to:

(i) The Tribe;

(ii) The employer or a representative of the employer who has the authority to investigate the information provided by the employee and to take action to prevent further violations of the laws of the Tribe; or

(iii) An officer of the Tribe or regulatory body of the Tribe that has jurisdiction over the agency, department, board, commission, or economic enterprise of the Tribe that has violated, is violating, or will violate the laws the Tribe;

(3) The exercise of rights under the worker benefits laws of the Tribe;

- (4) Service on a jury or as a witness in a legal proceeding pursuant to a legally effective subpoena issued by a court having jurisdiction over the proceeding;
- (5) The exercise of voting rights; or
- (6) Service in the National Guard or armed forces.

Sec. 9-1308. Limitation of Actions.

- (a) When an employee has a claim for reinstatement under this Chapter, the employee shall file his claim with the Trial Court within ten (10) business days after the date of the decision of the Employee Appeal Committee.
- (b) Any claim for reinstatement which is not filed within ten (10) business days after the decision of the Employee Appeal Committee is barred and no action may be maintained thereon.
- (c) Failure to file an appeal with the Employee Appeal Committee bars any claim being filed with the Trial Court and no action may be maintained.

Sec. 9-1309. Exhaustion of Administrative Remedies

No employee may bring and the Tribal Court shall not hear any claim under this chapter unless and until the employee has exhausted any and all administrative remedies in any employment handbook or manual or other similar policy and utilized or attempted to utilize each step available to the employee.

Sec. 9-1310. Jurisdiction of Tribal Court.

The Trial Court of the Tribal Court shall have subject matter jurisdiction over any claim for reinstatement or other claim of a violation of this Chapter.

Sec. 9-1311. Review of Claims.

- (a) Except as otherwise provided herein, if an employee desires to bring a claim for reinstatement or other claim of a violation of this Chapter, the employee may initiate a discretionary review proceeding before the Tribal Court in the manner as set forth herein.
- (b) In addition to any other requirements of law or rule of the Tribal Court, a filing of a claim for reinstatement or other violation of this Chapter before the Tribal Court shall:
 - (1) State that it is a claim for reinstatement or other violation of this Chapter;
 - (2) Name the Tribal entity as the party against whom relief is sought;
 - (3) Request only relief permitted in this Chapter; and

(4) Request no monetary compensation or relief, other than that which would make the terminated employee or rejected applicant whole, such as back pay, insurance benefits, and other benefits.

(c) Upon receipt of an employee's claim under this Chapter, the Clerk of Court shall request from the Tribal employer any and all records of the adverse employment action and the administrative appeal thereof.

(d) Upon receipt of the records, the Tribal Court shall review the claim to determine whether the claimant has made a showing of a non-frivolous basis for the claim. Should the Tribal Court determine the claim fails to show a non-frivolous basis for the claim, the claim shall be immediately dismissed. Should the Tribal Court determine the claim alleges a non-frivolous ground, a certificate of appealability shall be issued, thereby allowing the appeal to proceed. A claim will be deemed non-frivolous only if a reasonable argument is presented that the decision reached through an administrative appeal process should be reversed based on the grounds set forth in Section 9-1311(f).

(e) The employee shall serve and file a brief and appendix within ten (10) days of the filing of a claim for reinstatement. The respondent employer shall serve and file a brief and appendix, if any, within ten (10) days after service of the brief of the terminated employee. The employee may serve and file a reply brief within five (5) days after service of the brief of the respondent employer. Oral argument, if any, must be held within ten (10) days after the time allowed for the filing of a reply brief has expired.

(f) The Tribal Court's review of a claim by an employee under this Chapter shall be limited to the record of the administrative appeal, and no additional evidence shall be considered, absent good cause shown.

(g) The Tribal Court shall grant deference to the decision reached through an administrative appeal process, and shall only reverse that decision in the following situations:

- (1) The decision was arbitrary and capricious;
- (2) The terminated employee was not afforded notice and a meaningful opportunity to be heard;
- (3) The decision is contrary to the laws or public policy of the Tribe; or
- (4) When rendering its decision, the administrative body hearing the claim abused its discretion.

(h) Except as provided otherwise in this section, the Tribal Court shall review a claim under this Chapter, including a claim by a rejected applicant, as it reviews other matters generally. Except where provided otherwise in this Chapter, the laws of the Tribe governing service of process

and all other matters relating to the conduct of Tribal Court proceedings shall apply to any claim for reinstatement under this Chapter.

Sec. 9-1312. Decision of Tribal Court.

(a) After hearing or reviewing a claim under this Chapter, the Tribal Court may determine all issues properly before it and enter judgment as it enters judgment in other proceedings, subject to the following:

(1) The Tribal Court may grant judgment or other relief, including relief in the form of reinstatement to the employee's position at the time of termination;

(2) The Tribal Court may, in appropriate circumstances, remand the case to the administrative decision-maker with instructions to remedy any identified defect in decision or procedures; and

(3) The Tribal Court shall not have jurisdiction to award damages or monetary compensation in any form, including costs, against the Tribe, except that the Tribal Court may award compensation and other relief which would make the employee or rejected applicant whole, such as back pay, insurance benefits, and other benefits.

(b) The Tribal Court's decision must be issued within thirty (30) days of oral argument or hearing.

(c) Personnel files, employee records and similar documents maintained by the employer shall be confidential and of the court, and the facts upon which the decisions are based shall be published by the court in the same manner as it publishes other decisions, and shall be a matter of public record.

Sec. 9-1313. Rules of the Tribal Court.

The Tribal Court may make rules of pleading, practice, and procedure supplementary to but not inconsistent with the provisions of this Chapter, and may amend such rules, as it makes and amends other rules in accordance with the laws of the Tribe, for the purpose of making this Chapter effective for the convenient administration of justice, and simplifying procedure so far as it affects review of agency actions.

TITLE 9. EMPLOYMENT AND LABOR

ARTICLE II

WORKER BENEFITS

[RESERVED]