

KICKAPOO TRADITIONAL TRIBE OF TEXAS

CHAPTER 23

LABOR & EMPLOYMENT RIGHTS CODE

TABLE OF CONTENTS

LABOR & EMPLOYMENT RIGHTS CODE

1. SUBCHAPTER 1: GENERAL PROVISIONS	Page 4-7
Section 23-101 Definitions (a-w)	Page 4-6
Section 23-103 Findings and Purpose	Page 6-7
Section 23-104 Effective Date	Page 7
Section 23-105 Severability	Page 7
2. SUBCHAPTER 2: KTTT TERRITORIAL JURISDICITON	Page 7-9
Section 23-201 Offenses	Page 7-8
Section 23-202 Employment	Page 8
Section 23-203 Territorial Jurisdiction – Employment Records	Page 8
Section 23-204 Consent to Authority and Jurisdiction	Page 8
Section 23-205 Banishment	Page 9
3. SUBCHAPTER 3: SOVEREIGN IMMUNITY	Page 9-11
Section 23-301	Page 9-10
Section 23-302 Findings Regarding Federal Laws Applicable to Indian Tribes	Page 10
Section 23-303 Preservation of Sovereign Immunity	Page 11
Section 23-304 Waiver of Sovereign Immunity	Page 11
4. SUBCHAPTER 4: PREFERENTIAL TREATMENT MANDATES	Page 11-14
Section 23-401 Tribal Employers	Page 11
Section 23-402 Covered Employers	Page 11
Section 23-403 Job Descriptions	Page 12
Section 23-404 Job Criteria	Page 12
Section 23-405 Preferential Treatment in Recruiting	Page 12
Section 23-406 Preferential Treatment in Hiring and Promotions	Page 12-13
Section 23-407 Preferential Treatment in Layoffs and Reductions in Force	Page 13
Section 23-408 Collective Bargaining	Page 13
Section 23-409 Religious Freedom	Page 13
Section 23-410 Discrimination by Tribal Employers and Covered Employers	Page 13
Section 23-411 Discrimination by Labor Organizations	Page 14
5. SUBCHAPTER 5: TRIBAL EMPLOYERS	Page 14-16
Section 23-501 Employment at Will	Page 14

Section 23-502	Common Employee Handbook	Page 15
Section 23-503	Condition Precedent to Submission of Complaint to Commission	Page 15
Section 23-504	Complaints to Human Resource Director	Page 15
Section 23-505	Deadlines for Complaints	Page 15-16
6. SUBCHAPTER 6: COVERED EMPLOYERS		Page 16-24
Section 23-601	Applicability	Page 16
Section 23-602	Eligibility to Work in U.S.	Page 16
Section 23-603	Compensation	Page 16-17
Section 23-604	Concerted Activity	Page 17
Section 23-605	Safe Workplace	Page 17
Section 23-606	Discrimination	Page 17-18
Section 23-607	Family and Medical Leave	Page 18-21
Section 23-608	Military Leave	Page 22-24
7. SUBCHAPTER 7: RIGHT TO WORK		Page 24-25
Section 23-701	Prohibited Conditions to Employment	Page 24
Section 23-702	Prohibited Conduct	Page 24
Section 23-703	Unlawful Contracts	Page 25
8. SUBCHAPTER 8: PARENTAL LEAVE		Page 25
9. SUBCHAPTER 9: TRIBAL EMPLOYMENT RIGHTS COMMISSION		Page 25-27
Section 23-901	Creation	Page 25
Section 23-902	Membership	Page 25
Section 23-903	Directors, Qualifications, Staff & Duties	Page 25-26
Section 23-904	Chairman	Page 26
Section 23-905	Quorum	Page 26
Section 23-906	Powers	Page 26
Section 23-904	Limitation of Powers	Page 26-27
Section 23-905	Assistance	Page 27
10. SUBCHAPTER 10: COMPLAINT PROCEDURES BEFORE TRIBAL EMPLOYMENT RIGHTS COMMISSION		Page 27-31
Section 23-1001	Complaint Requirements as to Covered Employer or Labor Organization	Page 27
Section 23-1001	Complaint Requirements as to Tribal Employer	Page 28
Section 23-1003	Immediate Dismissal and Notification	Page 28-29
Section 23-1004	Notice of Complaint	Page 29
Section 23-1005	Investigations	Page 29
Section 23-1006	Power to Require Testimony and Production of Records	Page 29-30
Section 23-1007	Bond	Page 30
Section 23-1008	Confidentiality	Page 30
Section 23-1009	Letter of Determination against Applicant or Employee	Page 30-31
Section 23-1010	Letter of Determination in Favor of Employee	Page 31

11. SUBCHAPTER 11: COMPLAINT APPEALS BEFORE THE TRIBAL COURT	Page 31-32
Section 23-1101 Appeal of Dismissal of Complaint	Page 31
Section 23-1102 Appeal of Determination Against Applicant or Employee	Page 31-32
12. SUBCHAPTER 12: POSTING OF NOTICES	Page 32
13. SUBCHAPTER 13: PROHIBITED CONDUCT	Page 32-33
Section 23-1301 Rights Provided by this Subchapter	Page 32-33
Section 23-1302 Proceedings in Commission or Tribal Court	Page 33
14. SUBCHAPTER 14: CIVIL LIABILITY	Page 33
15. SUBCHAPTER 15: CRIMINAL RESPONSIBILITY	Page 33-36
Section 23-1501 Preferential Treatment	Page 33-34
Section 23-1502 Compensation	Page 34
Section 23-1503 Complaints	Page 34
Section 23-1504 Obstruction of Investigations	Page 34-35
Section 23-1505 Punishment	Page 35

SUBCHAPTER 1: GENERAL PROVISIONS

Section 23-101

Title

This law shall be entitled the "Labor & Employment Rights Code." Section 23-102 Definitions

Terms contained in this Labor & Employment Rights Code shall be defined as follows:

(a) "Adverse Employment Action" means a (i) failure or refusal to hire, (ii) discharge or termination, whether actual or constructive, (iii) suspension, (iv) demotion, (v) forced or denied transfer, (vi) denial or reduction in wages or benefits, (vii) interference with any preferential treatment mandate in this Code, or (viii) any act which otherwise adversely impacts an employee's compensation, terms, conditions or privileges of employment.

(b) "Age" as used in this Code means 40 or more years of age.

(c) "Applicant" means an applicant for employment with a Tribal Employer or Covered Employer.

(d) "Code" or "LERC" shall mean this Labor & Employment Rights Code.

(e) "Commission" or "TERC" shall mean the Tribal Employment Rights Commission.

(f) "TERC Director" shall mean the director of Tribal Employment Rights Commission.

(g) "Covered Employer" means any person with two or more employees, which employs employees within KTTT Territorial Jurisdiction. The term "Covered Employer" is different from, and specifically excludes, any Tribal Employer.

(h) "Employee" means an employee of either a Tribal Employer or Covered Employer, and includes full-time, part-time, temporary, seasonal, leased and shared employees.

(i) "Native American" means an enrolled member of a federally recognized Indian tribe other than KTTT.

(j) "KTTT" means the Kickapoo Traditional Tribe of Texas, a federally recognized Indian tribe.

(l) "KTTT Member" means a KTTT tribal member.

(m) "KTTT Reservation" means that area of land reserved for KTTT under federal law as a permanent KTTT homeland, which the federal government holds title in trust for KTTT.

(n) "KTTT Territorial Jurisdiction" means the KTTT Reservation and KTTT Tribal Land.

(o) "KTTT Tribal Employer" means KTTT and every entity organized under Tribal Law which is wholly owned by KTTT. "KTTT Tribal Employer" specifically includes the Kickapoo Lucky Eagle Casino, LLC, Kickapoo Empire LLC, and Kickapoo Convenience Store, LLC.

(p) "Kickapoo" means an enrolled member of KTTT, KTO, KTK.

(q) "KTTT Tribal Land" means that area of land held in fee by KTTT which is not part of the KTTT Reservation.

(r) "Labor Organization" means (i) an organization, (ii) agency, (iii) union, or (iv) employee representation committee that exists, in whole or in part, to assist employees in negotiating with employers concerning grievances, labor disputes, wages, rates of pay, or other terms or conditions of employment.

(s) "Offense" is an act committed or omitted in violation of Tribal Law forbidding or commanding it, and to which criminal punishments attach upon conviction.

(t) "Person" means one or more individuals, Labor Organizations, partnerships, corporations, joint ventures, associations, agency, trusts or any other natural or artificial organization. The term "person" is intended to be as broad an encompassing as possible to ensure this Code's coverage as to all employment within KTTT Territorial Jurisdiction, and the term shall be so interpreted by the Commission and the Tribal Court.

(u) "Qualified Native American" means a Native American who, with or without reasonable accommodation, meets the minimum qualifications for, and can perform the essential functions of the employment position that the Indian holds or desires. A Tribal Employer or Covered Employer may adopt reasonable promotion policies which reward employees who perform at higher levels of performance. Under these circumstances, a "Qualified Native American" means a Native American who, with or without reasonable accommodation, meets the higher performance requirements set out in the promotion criteria of the personnel policy.

(v) "Qualified KTTT Member" means a KTTT Member who, with or without reasonable accommodation, meets the minimum qualifications for, and can perform the essential functions of the employment position that the KTTT Member holds or desires. A Tribal Employer or Covered Employer may adopt reasonable promotion policies which reward employees who perform at higher levels of performance. Under these circumstances, a "Qualified KTTT Member" means a KTTT Member who, with or without reasonable accommodation, meets the higher performance requirements set out in the promotion criteria of the personnel policy.

(w) "School" means any (i) public school, (ii) private church school, church of religious charter, or nonpublic school that regularly provides a course of grade school (pre-k-12) instruction, (iii) preschool, and (v) child care facility.

(x) "Human Resources" means the Senior H.R. Director or Human Resource.

(y) "Tribal Council" means the KTTT Tribal Council.

(z) "Tribal Court" means the KTTT Tribal Court.

(i) "Tribal Jail" means the KTTT Tribal Jail.

(ii) "Tribal Law" means the KTTT Constitution and the KTTT Tribal Code.

(iii) "Tribal Leave" means leave from work approved by the Tribal Council for KTTT religious or cultural activities.

Section 23-103

Findings and Purpose

(a) Findings

(1) KTTT is a federally recognized tribe. 25 U.S.C. §1300b-11

(2) Federally recognized Indian tribes "remain a separate people with the power of regulating their internal and social relations, ... making their own substantive law in internal matters, ... and ...[enforcing] that law in their own forums[.]" *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-56 (1978).

(3) A federally recognized tribe has the "general authority, as sovereign, to control economic activity within its jurisdiction." *See Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 141-44 (1982).

(4) Federally recognized Indian tribes also retain the inherent sovereign power to "exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe..." *See Montana v. U.S.*, 450 U.S. 544, 564-65 (1981).

(5) A federally recognized Indian tribe "may regulate ...the activities of non- members who enter into consensual relationships with the tribe or its members through ... contracts ..." *See Montana v. U.S.*, 450 U.S. 544, 564-65 (1981).

(6) A federally recognized Indian tribe retains "the power to exclude non- Indians from Indian lands." *See Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 141-44 (1982).

(7) The KTTT Reservation is an "Indian reservation" within the meaning of Section 703(i) of Title VII which provides: "Nothing *in* this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation." 42 U.S.C. §2000e--2(i).

(b) Purposes

This Labor and Employment Rights Code is enacted:

- (1) In conjunction with KTIT's sovereign authority to control economic activity within KTTT Territorial Jurisdiction to the benefit of KTTT and KTTT Members;
- (2) In conjunction with KTTT's sovereign authority as to internal matters to define the rights and obligations of employees of Tribal Employers regardless of the location of such employments;
- (3) In conjunction with KTTT's sovereign authority over KTIT Territorial Jurisdiction to define the rights and obligations of KTTT Member and Non-Members regarding employment by Covered Employers and Tribal Employers located in or on KTIT Territorial Jurisdiction; and
- (4) To provide preferential employment opportunities and benefits to Qualified KTTT Members and Qualified Native Americans in employment by Tribal Employers and Covered Employers.

Section 23-104

Effective Date

This Code shall take effect immediately upon approval of the Tribal Council.

Section 23-105

Severability

If any provision of this Code, an amendment made by this Code, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional or preempted by federal law, the remainder of this Code, the amendments made by this Code, and the application of such provisions to any person or circumstance shall not be affected thereby.

SUBCHAPTER 2: KTTT TERRITORIAL JURISDICTION

Section 23-201

Offenses

An Offense is committed under this Code by a person's own conduct or the conduct of another for whom he is criminally responsible if:

- (a) The conduct or a result that it is an element of the conduct occurs inside KTIT Territorial Jurisdiction;
- (b) The conduct outside KTTT Territorial Jurisdiction constitutes an attempt to

commit an Offense inside KTTT Territorial Jurisdiction; or

- (c) The conduct outside KTTT Territorial Jurisdiction constitutes a conspiracy to commit an Offense in KTTT Territorial Jurisdiction, and an act in furtherance of the conspiracy occurs inside KTTT Territorial Jurisdiction.

Section 23-202 Employment

This Code governs services by an Employee performed inside KTTT Territorial Jurisdiction and services outside KTTT Territorial Jurisdiction if:

- (a) The services are performed for a Tribal Employer;
- (b) The services are directed or controlled from KTTT Territorial Jurisdiction; or
- (c) The services are ancillary to services primarily provided by the employee inside

KTTT Territorial Jurisdiction.

Section 23-203 Employment Records

KTTT does not recognize the jurisdiction of any court or agency outside KTTT Territorial Jurisdiction to subpoena employment records maintained on or in KTTT Territorial Jurisdiction. Only the Commission, the Tribal Court and the Tribal Council have the subpoena power to compel the production of employment records maintained on or in KTTT Territorial Jurisdiction.

Section 23-204 Consent to Authority and Jurisdiction

As a condition to working in and on KTTT Territorial Jurisdiction, every Employee consents to the authority and jurisdiction of the Commission and Tribal Court. As a condition to employing employees in and on KTTT Territorial Jurisdiction, every Tribal Employer and Covered Employer consents to the authority and jurisdiction of the Commission and Tribal Court.

Section 23-205

Banishment

Notwithstanding any other provision of this Code, an individual who is not a KTTT Member may, upon approval by a recorded vote by the Tribal Council, be banished from KTTT Territorial Jurisdiction, with or without cause.

SUBCHAPTER 3: SOVEREIGN IMMUNITY

Section 23-301

Findings Regarding Federal and Texas Employment Laws KTTT makes the following findings as to federal, state, and local employment laws:

- (a) As an "Indian tribe," KTTT is excluded entirely from coverage under Title VII of the Civil Rights Act of 1964 ("Title VII"). 42 U.S.C. §2000e(b).
- (b) As an "Indian tribe," KTTT is excluded entirely from coverage under the Genetic Information Nondiscrimination Act of 2008. 42 U.S.C. §2000ff.
- (c) As an "Indian tribe," KTTT is excluded entirely from coverage under the Americans with Disabilities Act. 42 U.S.C. §12111.
- (d) There is federal jurisprudence to support the conclusion that, as "a federally recognized Indian tribe," KTTT (i) is excluded entirely from coverage under the Age Discrimination in Employment Act, 29 U.S.C. §621, *et seq.*, see *EEOC v. Fond du Lac Heavy Equip. & Constr. Co., Inc.*, 986 F.2d 246, 25-51 (8th Cir. 1993), and (ii) has sovereign immunity to claims under the Act regarding internal employment matters. *See Garcia v. Akwasasne Hous. Auth.*, 268 F.3d 76, 86 (2nd Cir. 2001).
- (e) There is federal jurisprudence to support the conclusion that, as "a federally recognized Indian tribe", KTTT (i) is excluded entirely from coverage under the Civil Rights Act of 1866, 42 U.S.C. §1981, and (ii) has sovereign immunity from claims under the Act regarding internal employment matters. *See Taylor v. Alabama Intertribal Council IV J.T.P.A.*, 261 F.3d 1032, 1035-36 (11th Cir. 2001).
- (f) There is federal jurisprudence to support the conclusion that, as "a federally recognized Indian tribe", KTTT has sovereign immunity from claims under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, regarding internal employment matters. *See Lobo v. Miccosukee Tribe Indians of Florida*, 279 Fed.Appx. 926, 927 (11th Cir. 2008).

- (g) There is federal jurisprudence to support the conclusion that, as "a federally recognized Indian tribe," KTTT has sovereign immunity from claims under the Family & Medical Leave Act, 29 U.S.C. §2601, et seq., regarding internal employment matters. *See Chayoon v. Chao*, 355 F.3d 141 (2nd Cir. 2004).
- (h) There is federal jurisprudence to support the conclusion that, "as a federally recognized Indian tribe," KTTT has sovereign immunity from inspections under the Occupational Safety & Health Act, regarding internal employment matters. *See Donovan v. Navajo Forest Products, Indus.*, 692 F.2d 709,710 (10th Cir. 1982).
- (i) To the full extent authorized under federal law, KTTT maintains that, "as a federally recognized Indian tribe," it has sovereign immunity from investigations or claims under other federal employment laws not specifically identified here.
- (j) There is authority to support the conclusion that, as "a federally recognized Indian tribe," KTTT has sovereign immunity from claims under state and local labor and employment laws. *See* FELIX S. COHEN, COHEN'S HANDBOOK OF FEDERAL INDIAN LAW (1982 ed.) at 259 (State civil laws are "generally not applicable to Indian affairs within the territory of an Indian Tribe, absent the consent of Congress").

Section 23-302

Findings Regarding Federal Laws Applicable to Indian Tribes

Notwithstanding Section 23-301, KTIT acknowledges the obligations placed upon Tribal Employers and Covered Employers (as applicable) under the following laws:

- (a) The Indian Self-Determination and Education Assistance Act, 25 U.S.C. §450e(b), requires that preference be given to Indians in employment, training and subcontracting under certain categories of contracts.
- (b) The Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. §3201, et seq., which may require that an Employee be denied employment or continued employment in a position which regularly works with Indian children if the Employee is convicted of any felony, or two or more misdemeanor offenses, under federal, state or Tribal Law involving crimes of violence, sexual assault, molestation, exploitation, contact or prostitution, crimes against persons, or offenses committed against children.

Section 23-303

Preservation of Sovereign immunity

To the extent KTTT or a Tribal Employer has sovereign immunity under federal, state and local employment laws, including without limitation the laws referenced in Section 23-301 of this Code, nothing contained in this Code shall be construed as waiving such sovereign immunity. All inherent sovereign rights of KTTT and each Tribal Employer are hereby expressly reserved.

Section 23-304

Waiver of Sovereign Immunity

No employee of KTTT or any Tribal Employer has the right or authority to waive sovereign immunity, if any, under any federal, state or local employment law, or consent to investigation or suit under federal, state or local employment law. Neither waiver of sovereign immunity nor consent to investigation or suit under federal, state or local employment law can be accomplished absent a recorded vote approving such action by the Tribal Council.

SUBCHAPTER 4: PREFERENTIAL TREATMENT MANDATES

Section 23-401

Tribal Employers

- (a) KTTT Tribal Employers shall give preference to available and Qualified KTTT Members in all phases of employment, including recruitment, hiring, promotion, transfers, training, pay, benefits, retention, reinstatement, and other terms and conditions of employment.
- (b) Except as to available and Qualified KTTT Members, Tribal Employers shall give preference to available and Qualified Native Americans in hiring, promotions, transfers, retention, and reinstatement.

Section 23-402

Covered Employers

- (a) Covered Employers shall give preference to available and Qualified KTTT Members in hiring, promotions, transfers, retention, and reinstatement.
- (b) Except as to available and Qualified KTTT Members, Covered Employers shall give preference to available and Qualified Native Americans in hiring, promotions, transfers, retention, and reinstatement.

Section 23-403**Job Descriptions**

For every position of employment with a Tribal Employer or Covered Employer that has an applicable written job description, reference shall be made therein to the preferential treatment mandates for Qualified KTTT Members and Qualified Indians.

Section 23-404**Job Criteria**

It shall be unlawful for a Tribal Employer or Covered Employer to adopt or use any job criterion or qualification for a position of employment which (a) has an adverse impact upon the employment opportunities of Qualified KTIT Members or Qualified Indians, and (b) is not shown by the Tribal Employer or Covered Employer to have a demonstrable relationship to the requirements of the position.

Section 23-405**Preferential Treatment in Recruiting**

Prior to filling any open position of employment, a Tribal Employer or Covered Employer shall first post such a position for a period of ten (10) days in media readily accessible to KTTT Members and Native Americans.

Section 23-406**Preferential Treatment in Hiring and Promotions**

For any open position of employment, a Tribal Employer or Covered Employer shall hire or promote a Qualified KTTT Member if available. A Tribal Employer or Covered Employer shall not refuse to hire or promote an available Qualified KTIT Member on the basis that another candidate, who is not a KTTT Member, is more qualified for the position.

Except where a Qualified KTTT Member is available, as to any open position of employment, a Tribal Employer shall hire or promote a Qualified Indian if available. A Tribal Employer shall not refuse to hire or promote an available Qualified Native American on the basis that another candidate, who is not a Native American, is more qualified for the position.

Section 23-407**Preferential Treatment in Layoffs and Reductions in Force**

In a layoff or reduction in force which requires a retention selection decision between a Qualified KTTT Member and an employee who is not a KTTT Member, a Tribal Employer or Covered Employer shall retain the Qualified KTTT Member. A Tribal Employer or Covered Employer shall not refuse to retain a Qualified KTTT Member on the basis that another candidate, who is not a KTIT

Member, is more qualified for the position.

In a layoff or reduction in force which requires a retention selection decision between a Qualified Native American and an employee who is not a Native American, a Tribal Employer or Covered Employers shall retain the Qualified Native American. A Tribal Employer or Covered Employer shall not refuse to retain a Qualified Native American on the basis that another candidate, who is not an Native American, is more qualified for the position.

Section 23-408

Collective Bargaining

Modification of the preferential treatment mandates set forth in this Code to the detriment of Qualified KTTT Members and Qualified Native American is not a permissible subject of collective bargaining as to employment with a Tribal Employer or Covered Employer. It is unlawful for a Labor Organization to seek to enforce, and for a Tribal Employer or Covered Employer, to enforce any provision in a collective bargaining agreement which is contrary or restrictive as to the preferential treatment mandates in this Code.

Section 23-409

Religious Freedom

Tribal Employers, Covered Employers and Labor Organizations shall make reasonable accommodations to the religious beliefs of employees who are Kickapoo or Native American. This duty of reasonable accommodation includes granting Tribal Leave for KTTT Members, Kickapoos and other Native Americans.

Section 23-410

Discrimination by Tribal Employers and Covered Employers

It shall be unlawful for a Tribal Employer or Covered Employer to:

- (a) Discriminate against any Qualified KTTT Member or Qualified Native American because such Qualified KTTT Member or Qualified Native American has been provided preferential treatment under this Code;
- (b) Fail or refuse to hire or to discharge any Qualified KTTT Member or Qualified Native American, or otherwise discriminate against any Qualified KTTT Member or Qualified Native American with respect to the compensation, terms, conditions or

privileges of employment of the employee, because such individual is a KTTT Member or Native American; or

- (c) Limit, segregate, or classify employees of the Tribal Employer or Covered Employer in any way which deprive or tend to deprive any Qualified KTTT Member or Qualified Native American of employment opportunities or otherwise adversely affect the individual's status as an employee, because such individual is a KTTT member or Native American.

Section 23-411

Discrimination by Labor Organizations

It shall be unlawful for a Labor Organization to:

- (a) Exclude or expel from its membership, or otherwise discriminate against any individual because such individual is a KTTT Member or Native American;
- (b) To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual is a KTTT Member or Native American; or
- (c) To cause or attempt to cause a Tribal Employer or Covered Employer to discriminate against an individual in violation of this Subchapter.

SUBCHAPTER 5: TRIBALEMPLOYERS

Section 23-501

Employment at Will

Absent a collective bargaining agreement or a written employment agreement approved by a recorded vote of the Tribal Council, all employment with Tribal Employers is "at will", which means that both the employee and the Tribal Employer have the contractual right to terminate the employment relationship at any time, with or without cause, with or without notice.

Section 23-502**Common Employee Handbook**

Tribal Employers shall distribute to all Employees a common KTTT Employee Handbook which shall be approved and periodically updated by recorded votes of the Tribal Council. This section shall not prevent any Tribal Employer from adopting policies and procedures which do not conflict with the policies set forth in the KTTT Employee Handbook.

Section 23-503**Condition Precedent to Submission of Complaint to Commission**

Before an employee of a Tribal Employer submits a complaint to the Commission under Subchapter **Section 23-906** of this Code, the employee must first submit the complaint to the employee's supervisor or the Director of Human Resources. Only by pursuing this first step can an employee of a Tribal Employer generally file a complaint with the Commission.

Section 23-504**Complaints to Human Resources Director**

The Tribal HR Director has the power and authority to receive and remedy a complaint by an applicant or employee of any Tribal Employer:

- (a) Alleging one or more violations of this Code;
- (b) Alleging one or more violations of rights protected by the KTTT Employee Handbook; or
- (c) Appealing an Adverse Employment Action by a Tribal Employer.

Section 23-505**Deadlines for Complaints**

To be considered by the Human Resources Director, a complaint by an employee of a Tribal Employer must be submitted within the deadlines for submitting complaints to the Commission, which are:

- (a) Thirty (30) days after the act or omission of the Tribal Employer which is the subject of the complaint; or

- (b) If the complaint is an appeal of an Adverse Employment Action by a Tribal Employer, fourteen (14) days after the Adverse Employment Action being appealed.

SUBCHAPTER 6: COVERED EMPLOYERS

Section 23-601

Applicability

This Subchapter applies only to Covered Employers.

Section 23-602

Eligibility to Work in U.S.

Covered Employers shall not knowingly hire or employ any individual who is not legally eligible to work in the United States. Covered Employers must verify the employment eligibility of all workers through an employment verification process which culminates in the completion of the 1-9 Employment Eligibility Verification Form, published by the Department of Homeland Security, U.S. Citizenship and Immigration Services.

Section 23-603

Compensation

- (a) Covered Employers shall pay employees for hours worked at a rate not less than \$7.25 per hour.
- (b) Except as to any employee employed in a bona fide executive, administrative, professional capacity, in the capacity of an outside sales employee, or as a computer analyst, computer programmer software engineer or similarly skilled worker, no Covered Employer shall employ any employee for a workweek longer than 40 hours unless the employee receives compensation for such employment at a rate not less than one and one-half times the regular rate at which the employee is employed.
- (c) Covered Employers shall pay all wages due their employees on paydays designated in advance by the Covered Employer which shall be at least once during each calendar month. These wages shall be paid (i) in U.S. currency, (ii) by a written instrument issued by or on behalf of the Covered Employer that is negotiable on demand at full face value for U.S. currency, or (iii) by the electronic transfer of funds. A Covered Employer may not withhold or divert any part of an employee's wages unless it is (i) ordered to do so by a court of competent jurisdiction, (ii) authorized to do so by federal law, or (iii) has written authorization from the employee to deduct part of the

wages for a lawful purpose.

- (d) Notwithstanding any language of this Section to the contrary, commission and bonus payments may be made in accordance with the timetable of a written agreement between the employee and Covered Employer.

Section 23-604

Concerted Activity

Employees of Covered Employers shall have the right to self-organization, to form, join, or assist Labor Organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities.

Section 23-605

Safe Workplace

Each Covered Employer shall provide its employees employment and a place of employment which is free from recognized hazards that are causing or likely to cause death or serious physical harm.

Section 23-606

Discrimination

With the exceptions of the preferential treatment mandates for Qualified KITf Members and Qualified Native Americans, it is unlawful for a Covered Employer:

- (a) to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to the compensation, terms, conditions or privileges of employment, because of such individual's race, color, national origin, citizenship, ancestry, religion, gender, (including pregnancy), sexual orientation, marital status, age, disability, genetic information, political views or military service;
- (b) to limit, segregate, or classify employees in any way which deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of such individual's color, national origin, citizenship, ancestry, religion, gender, (including pregnancy), sexual orientation, marital status, age, disability, genetic information, political views or military service; and

- (c) to discharge or otherwise discriminate against an employee (i) for reporting a work-related injury or illness, or (ii) who, with no reasonable alternative, refuses in good faith to expose himself to a hazard that is likely to cause death or serious physical harm to himself or another employee.

Section 23-607

Family & Medical Leave

Subject to the following conditions set forth below, employees of Covered Employers with fifty (50) or more employees within seventy-five (75) miles of KTTT Territorial Jurisdiction may be entitled to Family & Medical Leave.

(a) Basic Leave Entitlement

Eligible employees are entitled to up to 12 weeks of unpaid, job protected leave in a twelve-month period for the following reasons:

- (1) The birth of a child and to care for the newborn child within one year of birth;
- (2) The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- (3) To care for the employee's spouse, son, daughter or parent (but not in-law) who has a serious health condition; or
- (4) For a serious health condition that makes the employee unable to perform the essential functions of the employee's job.

When both spouses are employed by the employer, they are together entitled to a combined total of 12 workweeks of Family & Medical Leave within the designated 12-month period for the birth, adoption or foster care placement of a child with the employees, for aftercare of the newborn or newly placed child, and to care for a parent (but not in-law) with a serious condition. Each spouse may be entitled to additional Family & Medical Leave for other qualifying reasons (i.e., the difference between the leave taken individually for any of the above reasons and 12 workweeks, but not more than a total of 12 workweeks per person).

(b) Military Family Leave Entitlements

- (1) Eligible employees whose spouse, son, daughter or parent is on military active duty or call to military active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment

reintegration briefings.

- (2) Eligible employees may also take up to 26 weeks of leave to care for a military service member during a single 12-month period. A military service member is: (i) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (ii) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes Family & Medical Leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

(c) Benefits and Protections

- (1) During Family & Medical Leave, a Covered Employer must maintain the employee's health coverage under any group health plan on the same terms as if the employee had continued leave.
- (2) Upon return from Family & Medical Leave, an employee must generally be restored to the employee's original or equivalent position with equivalent pay, benefits, and other employment terms.
- (3) Before an employee returns to work from Family & Medical Leave for his/her own serious health condition, the employee may be required to submit a fitness for duty certification from the employee's health care provider, with respect to the condition for which the leave was taken, stating the employee is able to resume work. A return to work may be delayed or denied if the appropriate documentation is not provided in a timely manner.
- (4) An employee is entitled to reinstatement following Family & Medical Leave only if the employee would have continued to be employed had such leave not been taken. Thus, an employee is not entitled to reinstatement if, because of a layoff, reduction in force or other reason (i.e., misconduct during leave), the employee would not be employed at the time job restoration is sought.
- (5) A Covered Employer may lawfully deny reinstatement to a salaried, eligible employee who is among the highest paid 10 percent of its employees if such denial is necessary to prevent substantial and grievous economic injury to the Covered Employer's operations.

(d) Eligibility Requirements

Employees are eligible for Family & Medical Leave if they have worked for a Covered Employer for at least 12 months and have 1,250 hours of service in the previous 12 months.

(e) Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

(f) Use of Leave

An eligible employee does not need to use Family & Medical Leave in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

(g) Substitution of Paid Leave for Unpaid Leave

An eligible employee may choose or a Covered Employer may require use of accrued paid leave while taking Family & Medical Leave. In order to use paid leave for Family & Medical Leave, an eligible employee must comply with the Covered Employer's normal paid leave policies.

(h) Employee Responsibilities

- (1) Eligible employees must provide 30-days advance notice of the need to take Family & Medical Leave when the need is foreseeable. When 30-days notice is not possible, the employee must provide notice as soon as practicable.
- (2) Employees must provide sufficient information for a Covered Employer to determine if the leave may qualify for Family & Medical Leave protection and the anticipated timing and duration of the leave.

- (i) When leave is taken to care for a family member, the requisite documentation may include proof of a family relationship (e.g., birth certificate or court document);
- (ii) The requisite documentation may include a medical certification from a health care provider of the serious health condition of the employee or family member of the employee; and
- (iii) If a Covered Employer has reason to doubt the employee's initial medical certification, the Covered Employer may (A) with the employee's permission, have a designated health care provider contact the employee's health care provider in an effort to clarify or authenticate the initial medical certification; and/or (B) require the employee to obtain a second opinion by an independent Covered Employer-designated provider at the Covered Employer's expense. If the initial and second medical certifications differ, the Covered Employer may, at its expense, require the employee to obtain a third, final and binding certification from a jointly selected health care provider.
- (3) As part of any request for Family & Medical Leave, an employee also must inform the Covered Employer if the requested leave is for a reason for which Family & Medical Leave was previously taken or certified.
- (4) During Family and Medical Leave, an employee may be required to provide recertification supporting the need for leave.
- (5) No Employee shall retain secondary employment while on Family & Medical Leave.

(j) Employer Responsibilities

- (1) Covered Employers must inform employees requesting leave whether they are eligible for Family & Medical Leave. If they are, the notice must specify any additional information required as well as the employee's rights and responsibilities. If they are ineligible, the Covered Employer must provide a reason for the ineligibility.
- (2) Covered Employers must inform employees if leave will be designated as Family & Medical Leave and the amount of leave counted against the employee's leave entitlement. If the Covered Employer determines that the leave is not protected Family & Medical Leave, it shall so notify the employee.

Section 23-608
Military Leave

Employees of Covered Employers must be granted an unpaid leave of absence for military service, training or related obligations.

(a) Military Service

An employee is eligible for Military Leave if the employee is a member of the following services: (1) United States Army and its reserves; (2) United States Navy and its reserves; (3) United States Air Force and its reserves; (4) United States Marines and its reserves; (5) United States Coast Guard and its reserves; (6) National Guard; (7) Public Health Service; or (8) Texas State Guard.

(b) Reason for Leave

Military Leave must be provided for the following reasons: (1) voluntary and involuntary active duty; (2) active duty for training; (3) initial active duty for training; (4) inactive duty training; (5) full-time National Guard duty; and (6) examinations to determine fitness for military duty.

(c) Continuation of Group Health Insurance

- (1) For a Military Leave of less than 30 days, an employee is entitled to continued group health insurance coverage under the same conditions as if the employee had continued work.
- (2) For a Military Leave in excess of 30 days, an employee may elect to continue group health insurance coverage for up to 18 months of Military Leave, but may be required to pay for the premium for the continuation coverage.

(d) Employee Notification Requirements

An employee who fails to obey certain notification requirements, is subject to being terminated or ineligible for reemployment following Military Leave:

- (1) Where reasonably possible, an employee must give advance notice he/she will be taking Military Leave to the KTIT Human Resources Department.
- (2) Upon return from Military Leave, an employee must provide notice of or submit an application reemployment in according with the following schedule:
 - (i) *Service of 30 days or Less:* The returning employee must report to

KTIT on the first full regularly scheduled work period on the first full calendar day following completion of the service, plus eight hours. If it is impossible or unreasonable for the returning employee to report within that period through no fault of his own, he/she must report as soon as possible. This reporting period also applies to a returning employee who is absent from work for an examination to determine his fitness for military service.

(ii) *Service of 31 to 180 Days:* The returning employee must apply for reemployment no later than 14 days after military service ends, or, if it is impossible or unreasonable for the returning employee to report within that period through no fault of his/her own, on the next calendar day on which it is possible.

(iii) *Service of More than 180 Days:* The returning employee must apply for reemployment within 90 days of the end of the military service.

(3) A returning employee whose military service was for more than 30 days must provide documentation within two weeks of his/her return (unless such documentation does not yet exist or is not readily available) showing the following:

(i) The application for reemployment is timely (i.e., submitted within the required time period);

(ii) The period of military service has not exceeded five years; and

(iii) The returning employee received an honorable or general discharge.

(e) Reemployment Following Military Leave

The type of position to which a returning employee will be reinstated depends on the period of service and on the returning employee's abilities at the time of reinstatement.

(1) *Service of 90 days or less.* The returning employee will be reemployed in the position he/she would have held if he/she had continued in employment without interruption for military service, as long as he/she is qualified for that position. If the returning employee would have been promoted if he/she had continued in employment but cannot be qualified for that new position after reasonable efforts by KTIT, he/she may be employed in the position he/she held when military service began.

(2) *Service of 91 days or more.* The returning employee will be reemployed in the position he/she would have held except for the interruption for military service, or in a position of like seniority, status, and pay, if qualified for that position. If the returning employee would have been promoted if he/she had continued in employment but cannot be qualified for either that new position or an equivalent

one despite KTIT's reasonable efforts, he/she will be reemployed in the position he/ she held when the period of service began or in a position of like seniority, status, and pay.

- (3) *Returning employees who cannot be qualified for the job.* If the returning employee cannot be qualified for the job he/she would have held or the position he/she formerly held after the employer's reasonable efforts, and his/her inability to qualify is not related to a service-incurred or aggravated disability, he/she will be reemployed in any position of lower status and pay for which he/she is qualified, but with full seniority.
- (4) A disabled returning employee whose disability was incurred or aggravated by military service and who cannot perform the job he/she would have held even after reasonable accommodation by a Covered Employer will be reemployed in: (1) any other position of equivalent seniority, status, and pay for which he/she is qualified or could become qualified through the Covered Employer's reasonable efforts; or (2) in the nearest approximation to an equivalent position consistent with the returning employee's circumstances.

SUBCHAPTER 7: RIGHT TO WORK

Section 23-701

Prohibited Conditions to Employment

No individual or entity may require an individual to, as a condition of employment or continued employment with a Tribal Employer or Covered Employer to:

- (a) become or remain a member of a Labor Organization;
- (b) pay dues, fees assessments, or other charges of any kind or amount to a Labor Organization; or
- (c) pay to a charity or third party any amount that is equivalent to or a pro rata part of dues, fees, assessments, or other charges required of members of a Labor Organization.

Section 23-702

Prohibited Conduct

It is unlawful for a Tribal Employer or Covered Employer to deny employment to an individual based upon failure to satisfy a condition which violates Section 23-701 of this Subchapter.

Section 23-703
Unlawful Contracts

A contract, agreement, understanding or practice, written or oral, expressed or implied between a Tribal Employer or Covered Employer and a Labor Organization that violates Section 23-701 of this Subchapter is unlawful and void.

SUBCHAPTER 8: PARENTAL LEAVE

Tribal Employers and Covered Employers shall grant four hours of leave with pay per calendar year to any employee who is a parent, guardian, or person standing in loco parentis of a school- aged child so that the employee may attend or otherwise be involved at that child's school. Any leave under this Subchapter, however is subject to the following conditions:

- (a) The leave will be at a mutually agreed upon time and date;
- (b) The employee may be required to provide a written request for leave at least 48 hours before the time requested for leave; and
- (c) The employee may be required to furnish written verification from the child's school that the employee attended or was otherwise involved at the school during the time of leave.

SUBCHAPTER 9: TRIBAL EMPLOYMENT RIGHTS COMMISSION

Section 23-901
Creation

There is hereby created a Commission to be known as the Tribal Employment Rights Commission, which shall be comprised of Five (5) members.

Section 23-902
Membership

Members of the Commission shall be appointed by the Tribal Council for a term of four years according to such terms of compensation, if any, as determined by the Tribal Council. At least three members of the Commission shall be a KTTT Member. Any individual chosen to fill a vacancy shall be appointed for the unexpired term only for the unexpired term of the member whom he shall succeed. Members of the Commission shall be reimbursed for expenses in accordance with the policies and procedures set forth in the KTTT Employee Handbook.

Director; Qualifications; Staff; Duties.

- (a) The Tribal Council shall have exclusive authority to appoint, direct, suspend or remove the Director of the Commission.

- (b) The Director shall have such administrative ability, education and training as the Tribal Council determines. He may be removed by the Tribal Council for cause.

Section 23-903

Chairman

The Tribal Council shall designate one member to serve as Director of the Commission.

Section 23-904

Quorum

A vacancy in the Commission shall not impair the rights of the remaining members to exercise all powers of the Commission and three members thereof shall constitute a quorum.

Section 23-905

Powers

The Commission shall have the power and authority to:

- (a) Receive, investigate, dismiss, and issue determinations as to any timely complaints filed as to a Covered Employer or Labor Organization alleging any violation of this Code;
- (b) Receive, investigate, dismiss and issue determinations as to any timely complaints filed as to a Tribal Employer, previously submitted to the employee's supervisor or the Tribal Administrator, (i) alleging any violation of this Code; (ii) alleging any violation of a right protected by the KTIT Employee Handbook, or (iii) appealing any Adverse Employment Action;
- (c) Receive, investigate, and issue determinations as to any employment matter referred to the Commission by the Tribal Council; and
- (d) Petition the Tribal Court for interim and permanent orders consistent with the aforementioned powers.

Section 23-906

Limitation on Powers

The Commission shall only receive and dismiss a complaint

- (a) Which is not timely filed within the deadlines prescribed by this Code;
- (b) By an employee of a Tribal Employer which has not been previously submitted to the

employee's supervisor or the Tribal Administrator; or

- (c) Which alleges a right not protected by this Code or the KTTT Employee Handbook. The Commission has no power or authority to investigate criminal conduct in violation of Subchapter 15 of this Code.

Section 23-907

Assistance

The Commission may be assisted in the performance of any function under this Subchapter by

- (a) Legal counsel employed or contracted by KTTT;
- (b) Existing employees of Tribal Employers, as approved by the Human Resources Director; or
- (c) New employment positions, as approved by the Tribal Council.

Only Commission members, however, may issue dismissals and determinations.

SUBCHAPTER 10: COMPLAINT PROCEDURES BEFORE TRIBAL EMPLOYMENT RIGHTS COMMISSION

Section 23-1001

Complaint Requirements as to Covered Employer or Labor Organization

To be eligible for consideration by the Commission, a complaint as to a Covered Employer or Labor Organization must:

- (a) Be in writing;
- (b) Be filed within thirty (30) days of the act or omission of the Covered Employer or Labor Organization that is the subject of the complaint;
- (c) Provide the identity and current e-mail or mailing address of the applicant or employee making the complaint;
- (d) Provide the date, place and nature of the complaint; and
- (e) Provide the general factual basis for the complaint (A complainant need not marshal all of its evidence in providing this general factual basis).

Section 23-1002

Complaint Requirements as to Tribal Employer

To be eligible for consideration by the Commission, a complaint as to a Tribal Employer must:

- (a) Be in writing;
- (b) be filed within thirty (30) days of the act or omission that is the subject of the complaint, or if the complaint is an appeal of an Adverse Employment Action, within fourteen (14) days of the Adverse Employment Action being appealed;
- (c) Provide the identity and e-mail or mailing address of the applicant or employee making the complaint;
- (d) Provide the date, place and nature of the complaint;
- (e) Provide the general factual basis for the complaint (A complainant need not marshal all of its evidence in providing this general factual basis); and
- (f) Set forth the date, manner and outcome, if any, of the employee's submission of the complaint to the employee's supervisor or the Tribal Administrator.

Section 23-1003

Immediate Dismissal and Notification

Within ten (10) days of receipt of a complaint under Section 23-1001 or 23-1002, the Commission shall determine whether the complaint shall be dismissed. The Commission shall dismiss a complaint if

- (a) The complaint is untimely under Section 23-1001 or 23-1002 of this Subchapter;
- (b) The complaint relates to a person other than a Tribal Employer, Covered Employer, Labor Organization or an applicant or employer under the Code;
- (c) The Commission determines, upon review of the complaint as to a Covered Employer or Labor Organization, that it fails to allege a violation of this Code;
- (d) The Commission determines, upon review of the complaint as to a Tribal Employer, that it fails to allege (i) a violation of this Code, (2) a violation of rights protected by the KTIT Employee Handbook, or (iii) an Adverse Employment Action; or

(e)The Commission determines, upon review of the complaint as to a Tribal Employer, that it fails to set forth the date, manner and outcome, if any, of the employee's submission of the complaint to the employee's supervisor or the Tribal Administrator.

Written notice of dismissal shall be forwarded by the Commission, via e-mail or first class mail, to the employee and the Tribal Employer, Covered Employer or Labor Organization which is the subject of the complaint.

Section 23-1004

Notice of Complaint

If the complaint is not dismissed by the Commission, the Commission shall forward, via e-mail or first class mail, on or before fourteen (14) days of receipt, a copy of the complaint to the Tribal Employer, Covered Employer or Labor Organization which is the subject of the complaint.

Section 23-1005

Investigations

Investigations. If the complaint is not dismissed by the Commission the Director or any field compliance officer designated by the Director shall make such investigation as he or the Commission deems necessary to determine whether any covered employer has violated any provision of law or any rule or order. The Director or his delegate may enter, during business hours, the place of business or employment of any employer for the purpose of such investigations and may require the covered employer to submit such reports as he deems necessary to monitor compliance with the requirements of this law or any rule or order hereunder.

As part of the investigation, the Commission shall have the authority to:

- (a) Request a written statement of position from the Tribal Employer, Covered Employer or Labor Organization that is the subject of the complaint;
- (b) Request and conduct interviews of relevant witnesses;
- (c) Request and obtain declarations or affidavits of relevant witnesses; and
- (d) Request and review relevant files, records, reports, video and audio recordings, correspondence and other documents and electronically stored data.

The Commission shall make reasonable efforts to issue a determination within thirty (30) days of receipt of the complaint.

Section 23-1006

Power to Require Testimony and Production of Records

- (a) For the purpose of investigations or hearings which, in the opinion of the Director or the Commission, are necessary and proper for the enforcement of this law, a Commissioner, the Director, or any field compliance officer designated by

Tribal Court and the deadline for filing the appeal.

The Commission's letter of determination shall be the **final** determination of the Commission.

Section 23-1010

Letter of Determination in Favor of Employee

Where the Commission completes its investigation of a complaint and finds in favor of the Employee filing the complaint as to all or part of the issues set forth therein, the Commission shall issue, via e-mail or first class mail, a letter of determination as to all parties to the complaint indicating the following:

- (a) The specific finding of the Commission;
- (b) The Sections of this Code or the KTTT Employee Handbook relevant to the finding;
- (c) The reason for the finding;
- (e) A proposed remedy authorized under Subchapter 14 of this Code; and The right of the Tribal Employer, Covered Employer or Labor Organization to appeal the finding to the Tribal Court and the deadline for filing the appeal be set at twenty (20) business days.

The Commission's letter of determination shall be the final determination of the Commission.

SUBCHAPTER 11: CO:MPLAINT APPEALS BEFORE THE TRIBAL COURT

Section 23-1101

Appeal of Dismissal of Complaint

- (a) Within twenty (20) days after the date of a notice of dismissal of a complaint by the Commission, the affected applicant or employee may file a notice of appeal with the Tribal Court. If a notice of appeal is not timely filed with the Tribal Court, the notice of dismissal becomes a final disposition as to the complaint.
- (b) The Tribal Court may reinstate a complaint dismissed by the Commission only upon a finding that the Commission abused its discretion.

Section 23-1102

Appeal of Determination Against Applicant or Employee

Within twenty (20) days after the date of a letter of determination by the Commission against

the Director may administer oaths or affirmations, subpoena witnesses, take evidence, and require the production of books, papers, contracts, agreements or other documents, records or information which the Director or the Commission deems relevant or material to the inquiry.

- (b) Within five (5) days of receipt of a subpoena by the Commission, a person may file a petition in the Tribal Court seeking its revocation, modification or clarification. The Tribal Court shall have jurisdiction to hear the petition and grant or deny the petition, in whole or in part.
- (c) If a person and or entity does not comply with a subpoena duly served by the Commission and either (i) does not petition for its revocation, modification or clarification with the Tribal Court or (ii) has its petition to revoke the subpoena denied, in whole or in part, by the Tribal Court, the Commission may petition the Tribal Court to enforce the subpoena.

Section 23-1097 Bond

If the Commission determines that there is a reasonable danger that a Covered Employer or Labor Organization will remove itself or its property from KTTT Territorial Jurisdiction during the investigation of a complaint under this Subchapter, the Commission pay petition the Tribal Court to order the Covered Employer or Labor Organization to post a bond in an amount sufficient to cover possible remedies to the employee.

Section 23-1008 Confidentiality

Neither a complaint, nor information obtained by the Commission during the investigation of a complaint, shall be made matters of public record by the Commission before the issuance of a determination regarding the complaint.

Section 23-1009

Letter of Determination against Applicant or Employee

Where the Commission completes its investigation of a complaint and finds against the applicant or employee as to all issues addressed therein, the Commission shall issue, via e-mail or First class mail, a letter of determination to all parties to the complaint indicating the following:

- (a) The specific finding of the Commission;
- (b) The Sections of this Code or the KTTT Employee Handbook relevant to the finding;
- (c) The reason for the finding; and
- (d) The right of the applicant or employee to appeal the finding to the

an applicant or employee, the affected applicant or employee may file a notice of appeal with the Tribal Court. If a notice of appeal is not timely filed with the Tribal Court, the letter of determination becomes a final disposition as to the complaint.

Section 23-1103

Appeal of Determination in Favor of Applicant or Employee

- (a) Within twenty (20) days after the date of a letter of determination by the Commission in favor of an applicant or employee, the affected Tribal Employer, Covered Employer or Labor Organization may file a notice of appeal with the Tribal Court. If a notice of appeal is not timely filed with the Tribal Court, the letter of determination becomes a final disposition as to the complaint.
- (b) In the event of an appeal of a letter of determination by the Commission, the Commission may petition the Tribal Court to order that the Tribal Employer, Covered Employer or Labor Organization post a supersedeas bond as security for any monetary remedies set forth in the letter of determination.
- (c) If a Tribal Employer, Covered Employer or Labor Organization does not comply with the remedies set forth in a letter of determination, but does not file a timely appeal with the Tribal Court, the Commission shall petition the Tribal Court to enforce the letter of determination.

Section 23-1104

Standard of Review of Determination by Commission

The Tribal Court reviews *de novo* a letter of determination by the Commission.

SUBCHAPTER 12: POSTING OF NOTICES

Every Tribal Employer and Covered Employer shall post and keep posted in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted, a notice approved by a recorded vote of the Tribal Council, explaining the rights and remedies set forth in this Code and KTTT sovereign immunity from federal, state and local employment laws.

SUBCHAPTER 13: PROHIBITED CONDUCT

Section 23-1301

Rights Provided by this Subchapter

It is unlawful for any Tribal Employer, Covered Employer or Labor Organization to:

- (a) Interfere with, restrain, or deny the exercise of or the attempt to exercise, by an

applicant or employee of any right under this Code;

- (b) Discriminate against any applicant or employee because such applicant or employee has exercised any right under this Code; or
- (c) Discriminate against any applicant or employee for opposing, or refusing to engage in, an Offense or employment decision or practice contrary to any right protected by this Code.

Section 23-1302

Proceedings in Commission or Tribal Court

It is unlawful for any Tribal Employer, Covered Employer or Labor Organization to:

- (a) Discriminate against an applicant or employee in any manner because the employee has filed a complaint or appeal under this Code; or
- (b) Discriminate against an applicant or employee in any manner because the applicant or employee has (i) given, is about to give or may give, any information in connection with any investigation or proceeding relating to any right provided under this Code or (ii) has testified, is about to testify or may testify, in any inquiry or proceeding relating to any right under this Code.

SUBCHAPTER 14: CIVIL LIABILITY

A Tribal Employer, Covered Employer or Labor Organization which violates any Subchapter of this Code shall be liable to any applicant or employee affected for:

- (a) Such equitable relief as may be appropriate, including employment, reinstatement, promotion, transfer or expungement of records;
- (b) Any wages, salary, employee benefits, or other compensation lost to the applicant or employee as a result of the violation;
- (c) Any money losses sustained by the applicant or employee as a result of the violation; or
- (d) Interest on the monetary relief referenced in this Subchapter.

SUBCHAPTER 15: CRIMINAL RESPONSIBILITY

Section 23-1501

Preferential Treatment

An applicant or employee commits an offense if the applicant or employee, in order to obtain preferential treatment under this Code, falsely represents to a Tribal Employer or Covered

Employer\be an Native American..xo

Section 23-1502

Compensation

A Covered Employer commits an offense if it

- (a) Intends to avoid payment of wages owed to an employee;
- (b) Intends to continue to employ the employee; and
- (c) Fails after demand to pay those wages.

Section 23-1503

Complaints

An applicant or employee commits an offense if the employee, as to any complaint filed with the Commission under this Code:

- (a) Makes a false statement or representation, knowing it to be false; or
- (b) Knowingly fails to disclose a material fact.

Section 23-1504

Obstruction of investigations

A person commits an offense as to any investigation by the Commission of a complaint filed under this Code, if the person, with the intent to obstruct, impede, influence, delay or prevent the receipt of information by the Commission or Tribal Court, konwingly:

- (a) Makes a false statement or representation regarding a material fact;
- (b) Fails to disclose a material fact;
- (c) Uses force, the threat of the use of force, deception, harassment, intimidation, extortion or bribery to induce another person to make a false statement or representation regarding a material fact to the Commission;
- (d) Uses force, the threat of the use of force, deception, harassment, intimidation, extortion or bribery to prevent the disclosure of material information by another person to the Commission;
- (e) Alters, destroys, mutilates or conceals, or attempts to alter, destroy, mutilate or conceal, material documents or electronically stored data;

(f) Uses force, the threat of the use of force, deception, harassment, intimidation, extortion or bribery to induce another person to alter, destroy, mutilate or conceal, or attempt to alter, destroy, mutilate or conceal, material documents or electronically stored data; or

(g) Conspires to commit an offense under this Section.

Section 23-1505

Punishment

An offense under this Subchapter shall be punishable, upon conviction, by a fine not to exceed One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the Tribal Jail not to exceed one (1) year, or both.

READ, PASSED, APPROVED AND ENACTED at a duly called Tribal Council meeting on this 1st day of **November, 2016** as shown by our signatures.

KTTT Tribal Council



Estavio Elizondo, Council Chairman

11-01-16
Date



David Valdez Sr., Council Secretary

11-01-16
Date



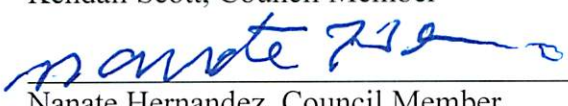
David Treviño, Council Treasurer

11-1-16
Date



Kendall Scott, Council Member

11-1-16
Date



Nanate Hernandez, Council Member

11-01-16
Date