



# SQUAXIN ISLAND TRIBE

## RESOLUTION NO. 15- cel

of the

### SQUAXIN ISLAND TRIBAL COUNCIL

**WHEREAS**, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

**WHEREAS**, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

**WHEREAS**, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

**WHEREAS**, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, employees of the various tribal business entities, and of protecting and managing the lands and treaty resources of the Tribe; and

**WHEREAS**, as a sovereign Indian Tribe, the Squaxin Island Tribe has inherent authority to govern labor and employment relations within its territorial jurisdiction; and

**WHEREAS**, the Squaxin Island Tribal Council finds that it would be in the best interests of the Tribe to adopt the attached Squaxin Island Tribe Labor and Employment Code.

**NOW THEREFORE BE IT RESOLVED**, that the Squaxin Island Tribal Council hereby adopts the Squaxin Island Tribe Labor and Employment Code, as set out in the attached materials, said Code to become effectively immediately.

**CERTIFICATION**

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 24<sup>th</sup> day of September, 2015, at which time a quorum was present and was passed by a vote of 6 for and 0 against, with 0 abstentions.

  
David Lopeman, Chairman

Attested by:   
Charlene Krise, Secretary

  
Arnold Cooper, Vice Chairman



**Title 12**

**LABOR AND EMPLOYMENT CODE**

Chapters:

**12.01 General Provisions**

**12.02 Unlawful Employment Discrimination**

**12.03 Family Medical Leave Protection**

**12.04 Uniformed Service Leave Protection**

**12.05 Employee Wages and Hours**

**12.06 No Consent to Jurisdiction under Federal Law**

**12.07 Enforcement Procedures for Alleged Violations of  
Chapters 12.02, 12.03, 12.04, and 12.05**

**12.08 Workplace Posters and Employee Training**

**12.09 Labor Organizations and Collective Bargaining**

**12.10 Severability**

## Chapter 12.01

### General Provisions

Sections:

**12.01.010 Title**

**12.01.020 Declaration and Policy**

**12.01.030 Purposes**

**12.01.040 Definitions**

**12.01.050 Persuasive Authority**

**12.01.060 Waiver of Sovereign Immunity**

#### 12.01.010 Title

This law shall be referred to as the Squaxin Island Tribe Labor and Employment Code.

#### 12.01.020 Declaration and Policy

As a sovereign Indian tribe, the Squaxin Island Tribe has inherent authority to govern labor and employment relations within its territorial jurisdiction. It is the public policy of the Squaxin Island Tribe to:

- A. Ensure that members of the Squaxin Island Tribe and other Indians gain and maintain employment opportunities within the Squaxin Island Tribe's jurisdiction;
- B. Prevent and remedy discrimination in employment on the basis of sex, pregnancy, race, color, national origin, religion, age, sexual orientation, uniformed service, disability, or labor organization affiliation;
- C. Establish rights and remedies pertaining to family medical leave and minimum wages and hours of work; and
- D. Establish the terms and conditions under which collective bargaining may occur within the Tribe's public sector.

#### 12.01.030 Purposes

The purpose of this Code is to:

- A. Establish laws reflecting the unique values of the Squaxin Island Tribe to regulate labor and employment relations within the Tribe's territorial jurisdiction;
- B. Develop such laws through the exercise of the Tribe's inherent sovereign authority, taking into account the best interests of the members of the Tribe and traditional values of fairness;
- C. Protect the sovereign authority of the Squaxin Island Tribe to govern labor and employment relations;

- D. Prevent and remedy discrimination in employment on the basis of sex, pregnancy, race, color, national origin, religion, age, sexual orientation, uniformed service, disability, or labor organization affiliation;
- E. Where specifically provided, allow employees within the jurisdiction of the Tribe to obtain remedies for violations of this Code; and
- F. Where specifically provided, allow employees within the jurisdiction of the Tribe to engage in collective bargaining with employers with the Tribe's public sector.

#### **12.01.040 Definitions**

As used in this Code, unless the context indicates otherwise, the following words have the following meanings:

- A. "Squaxin Island Tribe" or the "Tribe" means the Squaxin Island Tribe.
- B. "Bargaining Unit" means a unit of employees within an employer identified as an appropriate unit for representation under the procedures of this Chapter.
- C. "Business Agent" means any person regardless of title, duly authorized and employed by or engaged by a labor organization to represent it in organizing for purposes of collective bargaining, in negotiating on behalf of such labor organization and on behalf of any proposed or recognized collective bargaining unit or in adjusting grievances of members of a bargaining unit.
- D. "Clerk" means the Clerk of the Tribal Court.
- E. "Day" means business days, excluding Saturdays, Sundays and legal holidays observed by the Employer, provided that this definition shall have no effect when the phrase "calendar days" is used herein.
- F. "Confidential Employee" means any employee who assists and acts in a confidential capacity to persons who formulate, determine, and effectuate an employer's policies with regard to the formulation and implementation of labor or employment relations matters, and this term shall otherwise be construed consistently with similar terms under public sector labor relations laws.
- G. "Direct threat." For purposes of subparagraph 12.02.020(E)(1)(a) "direct threat" means a significant risk to the health or safety of employees or others that cannot be eliminated by reasonable accommodation.
- H. "Disability" means a physical or mental impairment of an individual which substantially limits one or more of such person's major life activities or the state of being regarded as having such an impairment.



1. “Physical or mental impairment” means (a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or (b) any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.
  2. “Major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
  3. “Being regarded as having an impairment” means having (i) a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation, (ii) a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (iii) having none of the impairments defined in Section 12.01.040(H)(1) but being treated by an employer as having such an impairment and as being substantially limited by such impairment in one or more major life activities.
- I. “Discriminate” means to segregate, separate, or treat differently, and, for purposes of Section 12.02.020(A) as it relates to an individual with a disability, “discriminate” means:
1. Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability of the applicant or employee;
  2. Excluding or otherwise denying equal jobs or benefits to a qualified individual because that individual is known to have a relationship or association with a person with a disability;
  3. Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer;
  4. Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if the denial is based on the need of the employer to make reasonable accommodation to the physical or mental impairments of the employee or applicant;
  5. Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test, or other selection criteria, as used by the employer, is shown to be job-related for the position in question and is consistent with business necessity; and

6. Failing to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude or any other factor of the applicant or employee that the test is designed to measure, rather than reflecting the impaired sensory, manual, or speaking skills of the employee or applicant (except when such skills are the factors that the test is designed to measure).
- J. “Election Official” means the Election Official appointed by the Tribal Council for the purpose of carrying out the duties of overseeing elections and such other duties enumerated in this Chapter or amendments hereto.
- K. “Employee” means an individual employed by an employer. “Employee” does not include (1) volunteers for employers, (2) independent contractors, or (3) appointed or elected public officials of the Tribe, including but not limited to, Tribal Council members and their staff and appointees, Tribal Court Judges, or any board, commission, or regulatory body of the Tribe, appointed by the Tribal Council or elected by the general tribal membership. For the purpose of Chapter 12.09, “Employee” does not include supervisory, managerial, or Confidential Employees, as herein defined, or any person employed by the Squaxin Island Gaming Commission or by any subdivision thereof.
- L. “Employee benefits.” For the purposes of Chapter 12.03, addressing family and medical leave protection, “employee benefits” means all benefits, other than salary and wages, to the extent provided by such employer.
- M. “Employer” means the Squaxin Island Tribe, any political subdivision, agency, or department of the Tribe, any enterprise, instrumentality, corporation, business association, or other entity owned by the Tribe that is deemed to have the sovereign immunity of the Tribe operating within the territorial jurisdiction of the Tribe and employing any number of individuals. Employment within any such employer is considered to be within the Tribe’s “public sector.”
- N. “Exclusive Bargaining Representative” or “Exclusive Representative” means a labor organization that is lawfully elected to be the exclusive bargaining representative of a Bargaining Unit within an employer.
- O. “Family medical leave.” For the purposes of Chapter 12.03, addressing family medical leave, “family medical leave” means a job-protected leave of absence from employment
1. Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee;
  2. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;
  3. Because of the placement of a son or daughter with the employee for adoption or foster care;



4. In order to care for an immediate family member who has a serious health condition.
- P. “Health care provider.” For the purposes of Chapter 12.03, addressing family medical leave, “health care provider” includes a medical or osteopathic doctor, psychologist, psychiatrist, or other health care provider recognized by the employer’s health insurance carrier.
- Q. “Immediate family member.” For the purposes of Chapter 12.03, addressing family medical leave protection, “immediate family member” means the employee’s spouse, mother, father, son, daughter, brother, sister, grandparent, grandchild, step-child, step-parent, in-laws, aunt, uncle, niece, nephew, and any member of the employee’s household where, due to the nature of the relationship, it is as though they were related and thus deemed “immediate family.”
- R. “Impasse” means the failure of an Employer and an Exclusive Representative to reach agreement in the course of negotiating a collective bargaining agreement.
- S. “Indian” means an enrolled member of a federally recognized Indian tribe.
- T. “Labor Organization” or “Union” means any organization of Employees organized for the purpose of bargaining over hours of employment, rates of pay, working conditions, grievances, or other terms or conditions of employment.
- U. “Lock Out” means any action by an Employer that prevents Employees from going to work for the purpose of coercing Employees to accept terms or conditions sought by an Employer in a negotiation with an Exclusive Bargaining Representative.
- V. “Management,” “Manager,” or “Managerial Employee” means any person who represents an Employer’s interest and who formulates and effectuates an Employer’s policies by expressing and making operative the Employer’s decisions.
- W. “Prohibited Practice” means a prohibited practice or activity as set forth in Section 12.09.080.
- X. “Qualified individual with a disability” means an individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position that the individual holds or desires. For the purposes of this Code, consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the job-related requirements and essential functions of the job.
- Y. “Reasonable accommodation” means: (i) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or (ii) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a disability who is qualified to perform the essential functions of that position; or (iii) modifications or adjustments that enable a covered entity’s employee with a disability to enjoy equal benefits and privileges of employment as are

enjoyed by its other similarly situated employees without disabilities. This provision should not be construed to mean that all such modifications or adjustments would be reasonable under the facts and circumstances of a particular situation. The specific facts and circumstances of each case must be considered in determining whether a particular accommodation is “reasonable.” Further, in order to determine the appropriate reasonable accommodation for a specific situation, it may be necessary for the covered entity to initiate an informal, interactive process with the individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. “Reasonable accommodation” shall not include making changes that would conflict with the application of the Tribe’s policies or laws providing employment preferences for members of the Tribe or other Indians. In addition, it is not a violation of this code to fail to provide a reasonable accommodation if the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.

- Z. “Serious health condition.” For the purposes of Chapter 12.03, addressing family medical leave protection, “serious health condition” means an illness, injury, impairment or physical or mental condition that involves:
  - 1. Inpatient care in a hospital, hospice or residential medical care facility; or
  - 2. Continuing treatment by a health care provider.
  
- AA. “Strike” means an Employee’s refusal, in concerted action with other Employees, to report for duty or to be willfully absent, in whole or in part, from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of employment. “Strike” shall also mean any form of picketing or boycotting of an Employer within territorial jurisdiction of the Tribe and any form of a secondary boycott against an Employer.
  
- BB. “Supervisory Employee” or “Supervisor” means any person who has authority, in the interest of an Employer, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, adjust grievances, or discipline other Employees through the exercise of independent judgment, or who has the authority to effectively recommend such action, providing that the authority is not of a merely routine or clerical nature, and this term shall otherwise be construed consistently with similar terms under public sector labor relations laws.
  
- CC. “Tribal Court.” The “Tribal Court” means the Squaxin Island Tribal Employment Court.
  
- DD. “Undue hardship.”
  - 1. In general. The term “undue hardship” means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subsection 12.01.040(DD)(2).
  - 2. Factors to be considered. In determining whether an accommodation would impose an undue hardship on an employer, factors to be considered include:



- (a) The nature and cost of the accommodation needed under this Code;
  - (b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
  - (c) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees, the number, type, and location of its facilities; and
  - (d) The type of operation or operations of the employer, including the composition, structure, and functions of its workforce, the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.
3. Harm to Public Revenue. Given the importance of employers' revenues to support governmental services of the Tribe, accommodations are only required if they do not create an undue financial impact on the employer, accounting for the net revenues that are used to support tribal government.
- EE. "Uniformed Service" means being a member of, having applied to, performing, having performed, or having an obligation to perform service in a "uniformed service" as defined in 38 U.S.C. § 4303(16) and any amendments thereto (including the Armed Forces, the Army National Guard, and the Air National Guard).
- FF. "Union Licensing Authority" means the agency or commission authorized by the Tribal Council to administer the licensing of labor organizations under section 12.09.030.
- GG. "Volunteer" means an individual who does not expect to receive compensation and who receives no compensation or who is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteers, provided that such services are not the same type of services which the individual is otherwise employed to perform.

### **12.01.050 Persuasive Authority**

Decisions of the Tribal Courts and federal courts construing laws similar to the provisions of this Code may be considered persuasive authority for the construction of the provisions of this Code.

### **12.01.060 Waiver of Sovereign Immunity**

The Squaxin Island Tribe hereby waives the sovereign immunity of the Tribe and employers imbued with the sovereign immunity of the Tribe solely for the purposes of the issuance of process, actions, and remedies provided by this Code. This is a limited waiver of sovereign immunity, and shall not be construed as a consent to suit in any court other than the Tribal Court or for the enforcement of any remedies other than those remedies expressly provided by this Code.

## Chapter 12.02

### UNLAWFUL EMPLOYMENT DISCRIMINATION

Sections:

**12.02.010 Unlawful Discrimination: General Rule**

**12.02.020 Disability Discrimination**

**12.02.030 Pregnancy Discrimination**

**12.02.040 Retaliation Discrimination**

**12.02.050 Proof of Unlawful Discrimination**

**12.02.60 Not Unlawful Discrimination**

#### **12.02.010 Unlawful Discrimination: General Rule**

Except when based on a bona fide occupational qualification or in furtherance of the provision of employment preferences to members of the Squaxin Island Tribe or other Indians pursuant to the law, rules, or policies of the Squaxin Island Tribe or pursuant to policies or actions giving preferences to Indians under 42 U.S.C. § 2000-2(i), it shall be unlawful employment discrimination, in violation of this Code

- A. For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of sex, pregnancy, race, color, national origin, religion, age, sexual orientation, uniformed service, disability, or union affiliation, or because of those reasons, to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment; or, in recruiting of individuals for employment or in hiring them, to utilize any employment agency that the employer knows or has reasonable cause to know discriminates against individuals because of their sex, pregnancy, race, color, national origin, religion, age, sexual orientation, uniformed service, disability, or union affiliation; or
- B. For an employer to discriminate in any manner against employees because they have opposed a practice that would be a violation of this Code or because they have made a charge, testified or assisted in any investigation, proceeding or hearing under this Code.
- C. “Unlawful employment discrimination,” includes:
  1. Overt Discrimination: an intentional, purposeful act of discrimination, such as direct epithets aimed at an individual because of sex, pregnancy, race, color, national origin, religion, age, sexual orientation, uniformed service, or disability, resulting in adverse employment action.
  2. Harassment (including Sexual Harassment):
    - (a) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature as well as unwelcome comments, jokes, acts and other verbal or physical conduct related to sex, pregnancy, race, color,



national origin, religion, age, sexual orientation, uniformed service, disability, or union affiliation constitute unlawful workplace harassment when:

- i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
  - ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  - iii. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- (b) An employer is responsible for its acts and those of its supervisory employees with respect to the types of harassment described in subsection 12.02.010(C)(2)(a), subject to an affirmative defense to liability or damages by proving by a preponderance of the evidence:
- i. That the employer exercised reasonable care to prevent or promptly correct the harassing behavior, and
  - ii. That the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.
- (c) With respect to persons other than an employer's supervisors as described in subsection 12.02.010(C)(2)(b), an employer is responsible for acts of workplace harassment only where the employer, or its supervisory employees, knows or should have known of the conduct. An employer may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action;
3. Unequal or Disparate Treatment: treating persons in a different and less favorable manner than other similarly situated individuals on account of sex, pregnancy, race, color, national origin, religion, age, sexual orientation, uniformed service, disability, or union affiliation;
4. Disparate Impact: conduct which, although applied equally to all, has an adverse effect on persons because of their sex, pregnancy, race, color, national origin, religion, age, sexual orientation, uniformed service, or disability as compared to the effect on other persons. Disparate impact is not a basis for discrimination on the basis of union affiliation.

#### **12.02.020 Disability Discrimination**

- A. General Rule. An employer may not discriminate against a qualified individual with a disability, as defined in section 12.01.040(H) because of that disability in regard to terms,

conditions, and privileges of employment such as job application procedures, the hiring, advancement or discharge of employees, employee compensation, or job training. Except as permitted by subsection (B), an employer may not use medical examinations or inquiries to determine (i) whether a job applicant or employee is an individual with a disability or (ii) the nature or severity of a disability; provided however, that an employer may always inquire into the ability of an individual to perform job-related functions.

B. Medical Examinations and Inquiries.

1. Job Applicants. An employer may ask a job applicant about the applicant's ability to perform job-related functions with or without reasonable accommodations and to describe or demonstrate such performance. An employer may not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.
2. Prospective Employees. An employer may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination if:
  - (a) All entering employees are subjected to such an examination regardless of disability;
  - (b) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that
    - (i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
    - (ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
    - (iii) Government officials investigating compliance with this chapter shall be provided relevant information on request; and
  - (c) The results of such examination are used only in accordance with this subchapter.
3. Current Employees. A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity. An employer may make inquiries into the ability of an employee to perform job-related functions.



- C. Confidentiality of Medical Information. All information obtained regarding the medical condition or history of an individual must be (i) collected and maintained on separate forms and in separate medical files, (ii) treated as a confidential medical record, and (iii) used only in accordance with this Code, except that:
1. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the individual and necessary accommodations;
  2. First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
  3. Tribal government officials investigating compliance with this Code shall be provided relevant information on request.
- D. Drug Use and Alcohol.
1. Medical Tests. For purposes of subsection 12.02.020(B) of this section, a test to determine the illegal use of drugs or abuse of alcohol may not be considered a medical examination.
  2. Rules of Construction.
    - (a) The term “qualified individual with a disability” as used in section 12.02.020(A) shall not include any employee or applicant who is currently engaging in the illegal use of drugs or the improper use of prescription drugs, when the employer acts on the basis of such use.
    - (b) Nothing in subsection (a) of this section shall be construed to exclude as a qualified individual with a disability an individual who
      - i. Has successfully completed a supervised drug or alcohol rehabilitation program and is no longer engaging in the illegal use of drugs or abuse of alcohol, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
      - ii. Is participating in a supervised rehabilitation program and is no longer engaging in such use; or
      - iii. Is erroneously regarded as engaging in such use, but is not engaging in such use.
  3. It shall not be a violation of this Code for an employer to adopt or administer reasonable policies or procedures, including but not limited to drug or alcohol testing, designed to ensure that an individual described in subsections 12.02.020(D)(2)(b)(i) or (ii) is no longer engaging in the illegal use of drugs or improper use of prescription drugs. Nor shall it be a violation of this Code for an employer to discipline an employee for a drug policy violation occurring before an employee asserts that the

employee is in need of accommodation to undergo treatment for alcohol or drug abuse.

4. Authority of Employers. An employer may:
  - (a) Prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees at all times;
  - (b) Require that employees may not be under the influence of alcohol or be engaging in or under the influence of illegal use of drugs at the workplace;
  - (c) Require that employees behave in conformance with the requirements established under the federal Drug-free Workplace Act of 1988, 41 U.S.C. § 701 et seq.;
  - (d) Hold an employee who engages in the use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which that entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of the employee, provided that an employer shall make reasonable accommodation to an alcoholic or drug user who is seeking treatment or has successfully completed treatment and is a qualified individual with a disability; and
  - (e) Adopt written policies or procedures that allow for the use of pre-employment, random, reasonable suspicion, post-accident, and follow-up testing that does not violate the protections set forth in this Chapter or under the provisions of the Indian Civil Rights Act.

E. Defenses.

1. General provisions. Qualification standards, tests or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to a qualified individual with a disability, as defined in section 12.01.040(H) will not constitute discrimination under this section if shown to be job-related and consistent with business necessity.
  - (a) Qualification standards defined. For the purposes of this section, the term “qualification standards” may include a requirement that an individual does not pose a direct threat to the health or safety of individuals in the workplace.
2. Disability. This Code does not prohibit an employer from discharging or refusing to hire an individual with a disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an individual with disability, if the individual, because of the disability, is unable to perform the essential functions of the employment position that the individual holds or desires, or unable to perform the essential functions of such position in a manner that would not endanger the health or safety of the individual or others, or is unable to be at, remain at or go to or from the place where the duties of employment are to be performed.



### **12.02.030 Pregnancy Discrimination**

- A. Pregnant women who are able to work. It shall be unlawful employment discrimination in violation of this Code, except where based on a bona fide occupational qualification, for an employer to treat a pregnant woman who is able to work in a different manner from other persons who are able to work.
- B. Pregnant women who are not able to work. It shall also be unlawful employment discrimination in violation of this Code, except where based on a bona fide occupational qualification, for an employer to treat a pregnant woman who is not able to work because of a disability or illness resulting from pregnancy, or from medical conditions which result from pregnancy, in a different manner from other employees who are not able to work because of other disabilities or illnesses.
- C. Employer not responsible for additional benefits. Nothing in this subsection may be construed to mean that an employer is required to provide sick leave, a leave of absence, medical benefits or other benefits to a woman because of pregnancy or other medical conditions that result from pregnancy, if the employer does not also provide sick leaves, leaves of absence, medical benefits or other benefits for the employer's other employees and is not otherwise required to provide those leaves or benefits under tribal law or applicable federal law.

### **12.02.040 Retaliation Discrimination**

No employer shall discriminate against any employee or applicant because of action taken by such employee or applicant to lawfully exercise rights provided by Chapters 12.02, 12.03, 12.04, and 12.05, including opposing a practice that would constitute a violation of said Chapters; filing a good faith complaint under Chapter 12.07; stating an intent to file a good faith complaint under Chapter 12.07; or supporting employees who are involved in the complaint process under Chapter 12.07.

### **12.02.050 Proof of Unlawful Discrimination**

Unlawful employment discrimination exists if a complainant shows that the complainant's sex, pregnancy, race, color, national origin, religion, age, sexual orientation, uniformed service, disability, or union affiliation even if not the sole factor, was nonetheless a substantial factor motivating the employer's action. If the complainant would not have been rejected, discharged or otherwise treated differently, but for membership in the protected class, the existence of other reasonable grounds for the employer's action, with the exception of the promotion of tribal member or Indian employment preference, does not relieve the employer from liability.

### **12.02.060 Not Unlawful Employment Discrimination**

- A. Indian Preference. Nothing in this Code may be construed to prohibit any action to provide employment preferences to members of the Squaxin Island Tribe or other Indians pursuant to



the laws, rules or policies of the Squaxin Island Tribe or any employment policy or action that is permitted under 42 U.S.C. § 2000e-2(i).

- B. Infectious and Communicable Diseases. Assignment of individuals with an infectious or communicable disease is governed by the following:
1. In any case in which an individual has an infectious or communicable disease, which poses a significant risk to the health or safety of the employee or others in the workplace, an employer may refuse to assign or continue to assign the individual to perform work, unless the risk can be eliminated by reasonable accommodation.
  2. Nothing in this Code may be construed to preempt, modify or amend any tribal law applicable to food handling that is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the United States Secretary of Health and Human Services.

## CHAPTER 12.03

### FAMILY MEDICAL LEAVE PROTECTION

Sections:

**12.03.010 Family Medical Leave Requirement**

**12.03.020 Employee Benefits Protection**

**12.03.030 Effect on Existing Employee Benefits**

**12.04.040 Federal Law Adopted As The Law of the Tribe**

**12.03.050 Prohibited Acts**

#### **12.03.010 Family Medical Leave Requirement**

- A. Eligible employees are generally entitled to up to 12 work weeks of unpaid family medical leave in the 12-month period designated by the employer. An eligible employee is an employee of a covered employer who: (1) has been employed by the employer for at least 12 months, and (2) has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave), and (3) is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite.
- B. The following conditions apply to family medical leave granted under this section:
1. The employee must give at least 30 days' written notice of the intended date upon which family medical leave will commence and terminate, unless prevented by medical emergency from giving that notice; or as soon as practicable under the circumstances if 30 days' notice is not possible
  2. The employer may require medical certification from a health care provider or other documentation to support the need for leave.
- C. Family medical leave granted under this section is unpaid leave unless the employee is otherwise eligible for paid leave under employer policies, disability insurance, or workers' compensation. If an employer provides paid family medical leave for fewer than 12 work weeks, the additional weeks of leave necessary to attain the total of 12 weeks required may be unpaid. An eligible employee may elect, or an employer may require the employee, to utilize accrued paid vacation leave, personal leave, sick leave, or family leave concurrently with leave provided under this section.

#### **12.03.020 Employee Benefits Protection**

- A. Restoration. Any employee who exercises the right to family medical leave under this section, upon expiration of the leave, is entitled to be restored by the employer to the position held by the employee when the leave commenced or to an equivalent position with equivalent employee benefits, pay and other terms and conditions of employment, provided that an

employee who would not be entitled to continue employment absent his or her taking of family medical leave is not entitled to such restoration.

- B. Maintenance of Employee Benefits. During any family medical leave taken under this Chapter the employer shall maintain health insurance coverage for the duration of such leave at the level and under the conditions that coverage would have been provided if the employee had continued in employment.
- C. Exceptions. An employee has no greater right to restored employment or to other benefits or conditions of employment under this section than if the employee had been continuously employed during the FMLA period. The Employer has the burden to show that the employee would not otherwise have been employed or entitled to the benefits at the time reinstatement is requested in order to deny same.
  - 1. For example, if an employee is laid off during the course of taking FMLA leave as a result of a reduction in force and employment is terminated, the employer's responsibility to continue FMLA leave, maintain group health plan benefits and restore the employee, cease at the time the employee is laid off, unless the employer has a legally binding continuing obligation to the employee.
  - 2. If an employee was hired for a specific term or only to perform work on a specific project, the employer has no obligation to restore the employee if the employment term or project is over and the employer would not otherwise have continued to employ the employee.
  - 3. If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition or an injury or illness also covered by workers' compensation, the employee has no right to restoration to another position under the FMLA.
- D. Certification. As a condition of restoration to employment, the employer may require the employee to provide health care provider certification that the employee is able to resume work and safely perform the functions of his/her job. Nothing in this Chapter shall be construed to prohibit an employer from requiring an employee on leave to report periodically to the employer on the status and intention of the employee to return to work.

#### **12.03.030 Effect on Existing Employee Benefits**

- A. Benefit accrual. The taking of family medical leave under this section shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.
- B. Limitations. Nothing in this Chapter shall be construed to entitle any restored employee to the accrual of any seniority or employment benefits during any period of leave or any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.



#### **12.03.040 Federal Law Adopted as the Law of the Tribe**

Subject to the express retention of tribal sovereignty stated in Chapter 12.06, the Tribe hereby adopts the provisions of the Federal Family Medical Leave Act (“FMLA”) as the law of the Tribe, provided that insofar as there is any conflict between the terms of this Chapter, other provisions of this Code, or other provisions of the Squaxin Island Tribal Code and the FMLA, the law of the Tribe shall control.

#### **12.03.050 Prohibited Acts**

- A. Unlawful interference or denial of rights. An employer may not interfere with, restrain or deny the lawful exercise of or the attempt to exercise any right provided by this Chapter.
- B. Unlawful discrimination against exercise of rights. An employer may not discriminate against any employee for lawfully exercising any right provided by this Chapter.
- C. Unlawful discrimination against opposition. An employer may not discriminate against any employee for lawfully opposing any practice made unlawful by this Chapter.

## CHAPTER 12.04

### UNIFORMED SERVICE LEAVE PROTECTION

Sections:

#### **12.04.010 Purposes and Incorporation of Federal Standards**

#### **12.04.020 Prohibited Acts**

#### **12.04.010 Purposes and Incorporation of Federal Standards**

- A. Purpose. The Squaxin Island Tribe enacts this Chapter in order to assure that persons who are serving the Nation's uniformed services retain their employment positions and benefits as employees of employers covered by this Code.
- B. Incorporation by Reference. The following sections of the Uniformed Services Employment and Reemployment Rights Act and any amendments thereto ("USERRA") are adopted as the law of the Squaxin Island Tribe and apply to all employers within the jurisdiction of the Squaxin Island Tribe except to the extent such provisions contradict the Squaxin Island Tribal Code: 38 U.S.C. §§ 4311 (prohibition against discrimination), 4312 (reemployment rights), 4313 (reemployment positions), 4316 (rights, benefits, and obligations of persons absent), 4317 (health plans), 4318 (pension benefit plans). In the event of any conflict between these provisions of USERRA and the Squaxin Island Tribal Code, the law of the Tribe shall control.

#### **12.04.020 Prohibited Acts**

- A. Unlawful interference or denial of rights. An employer may not interfere with, restrain or deny the exercise of or the attempt to exercise any right provided by subsection 12.04.010(B).
- B. Unlawful discrimination against exercise of rights. An employer may not discriminate against an employee for exercising any right provided by subsection 12.04.010(B).
- C. Unlawful discrimination against opposition. An employer may not discriminate against an employee for opposing any practice made unlawful by subsection 12.04.010(B).



## CHAPTER 12.05

### EMPLOYEE WAGES AND HOURS

Sections:

**12.05.010 Minimum Wage**

**12.05.020 Maximum Hours**

**12.05.030 Exemptions**

**12.05.040 Federal Law Adopted As The Law of the Tribe**

#### **12.05.010 Minimum Wage**

Employees shall be paid an hourly wage of not less than the minimum wage established by federal law pursuant to federal Fair Labor Standards Act of 1938, 29 U.S.C. §§201 seq., as amended (“FLSA”) and regulations concerning the FLSA by the U.S. Department of Labor. Such wage may be changed by vote of the Tribal Council, *provided that* such wage does not cause wages to be paid to employees below wages that would be required were the employees covered by the FLSA.

#### **12.05.020 Maximum Hours**

Except as otherwise provided herein or under the FLSA as referenced in Section 12.05.030, no employer shall employ any of its employees for a workweek longer than forty (40) hours unless such employee receives compensation for hours worked in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which the employee is employed. In determining whether or not an employee has been employed for a work week longer than forty (40) hours, only hours actually worked by the employee are considered; hours paid but not worked (e.g. vacation and sick time) are not counted.

#### **12.05.030 Exemptions**

The provisions in sections 12.05.010 and 12.05.020 shall not apply with respect to any employee employed in a bona fide executive, administrative, or professional capacity and who meets the requirements of Section 13(a)(1) of the FLSA and applicable regulations, or any other exemption category outlined in the FLSA and regulations concerning the FLSA by the U.S. Department of Labor.

#### **12.05.040 Federal Law Adopted as the Law of the Tribe**

Subject to the express retention of tribal sovereignty stated in Chapter 12.06, the Tribe hereby adopts the provisions of the FLSA as the law of the Tribe, provided that insofar as there is any conflict between the terms of this Chapter, other provisions of this Code, or other provisions of the Squaxin Island Tribal Code and the FLSA, the law of the Tribe shall control.

## CHAPTER 12.06

### NO CONSENT TO JURISDICTION UNDER FEDERAL LAW

#### 12.06.010

In adopting this Labor and Employment Code, the Squaxin Island Tribe is exercising its inherent sovereign authority. By tracking federal law standards or incorporating federal law by reference in Chapters 12.03, 12.04, and 12.05, the Tribe does not waive its sovereign immunity (or that of any entities imbued with sovereign immunity) for any claims or process under the FMLA, USERRA, the FLSA, or any other federal law; nor does the Tribe consent to the applicability of the FMLA, USERRA, the FLSA, or any other federal law to employers under this Code.

## CHAPTER 12.07

### ENFORCEMENT PROCEDURES FOR ALLEGED VIOLATIONS OF CHAPTERS 12.02, 12.03, 12.04, AND 12.05

Sections:

**12.07.010 Complaint, Filing Deadline, and Referral to Hearing Committee**

**12.07.020 Mediation Requirement**

**12.07.030 Hearing Committee; Duties; Training**

**12.07.040 Administrative Law Judge**

**12.07.050 Hearing Procedure**

#### **12.07.010 Complaint, Filing Deadline, and Referral to Hearing Committee**

- A. Any person who believes that he or she has been subjected to unlawful employment discrimination under Chapter 12.02, unlawful violation of family medical leave protection under Chapter 12.03, unlawful violation of uniformed service leave protection under Chapter 12.04, or unlawful denial of minimum wages or overtime pay under Chapter 12.05 may invoke the procedures of this Chapter by filing a complaint under oath with the Clerk of the Tribal Court on a form provided by the clerk, setting forth the facts of alleged violation, *provided that* such complaint must be filed with the Clerk not more than 180 days after the alleged unlawful act.
- B. The Clerk shall examine the complaint allegations to determine whether the employee has filed his or her complaint within the above-referenced 180 day filing deadline. If the complaint fails to comply with that deadline, the Clerk shall enter an order dismissing the complaint. There shall be a right to appeal such dismissals to the Squaxin Island Tribal Employment Court within 30 days of dismissal by the Clerk. In any such appeal, the Court may take evidence on whether the employee had excusable neglect for failing to meet the 180 day filing deadline, and if finding excusable neglect, the Court may allow the claims to proceed, *provided that* no claim shall proceed against any employer under this Chapter if an initial complaint is not filed with the Clerk within two years of the last date of alleged wrongful conduct.
- C. If the complaint meets the 180 day filing deadline, the Clerk shall send a copy of the complaint to the members of the Hearing Committee described in section 12.07.030 and to the employer named in the complaint.

#### **12.07.020 Mediation Requirement**

Within 30 days of the filing of a complaint under this section, the complainant and the Human Resources Director of the employer that is the subject of the complaint shall meet and attempt to mediate a resolution of the complaint. They may retain an outside mediator to assist them, and if they do, the complainant and the employer shall share the costs of retaining the mediator. No particular form of mediation is required; it may be formal or informal. Mediation under this section shall not delay the commencement of Hearing by the



Hearing Committee under section 12.07.030. The Human Resources Director shall notify the Hearing Committee upon completion of mediation.

### **12.07.030 Hearing Committee; Duties; Training**

A. Make Up of Committee; Training Requirement.

The Human Resources Directors of the Tribal Government, Island Enterprises, Inc., and Little Creek Casino Resort shall constitute a Hearing Committee for the purpose of performing a hearing on complaints filed with the Clerk under section 12.07.010, provided that:

1. The Human Resources Director of the employer that is the subject of the Complaint shall not serve,
2. The two Human Resources Directors of the other two employers who serve shall appoint a third individual to serve on the Hearing Committee, and that individual shall be a member of the Squaxin Island Tribe, and
3. No individual may serve on the Hearing Committee when the employee bringing the subject complaint is a member of the individual's immediate family or the complaint involves alleged misconduct by a member of the individual's immediate family. (For the purposes of this subsection member of the "immediate family" shall mean parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, or cousin).

B. The Human Resources Directors listed in 12.07.030(A) shall undergo annual trainings on the provisions of this Code, with special attention to the rights and remedies of employees under Chapters 12.02, 12.03, 12.04, and 12.05 and the procedures of this Chapter 12.07. Said trainings shall be conducted by persons with expertise in employment law and federal Indian law.

C. The Hearing Committee shall have the power to issue subpoenas to witness to command their appearance and/or to produce documents at its hearings, and the Tribal Court shall have authority to enforce such subpoenas upon application for enforcement by the Hearing Committee.

### **12.07.040 Hearing Procedure**

A. Scheduling of Hearing.

1. Upon referral of a complaint from the Clerk, the Hearing Committee shall convene a preliminary conference with the employee, who filed the complaint (with his or her representative, if any), and the representative (or representatives) of the employer, who have authority to address the allegations in the complaint, to schedule a hearing on the allegations in the complaint and the defenses of the employer. This preliminary conference may be by telephone conference call to suit the convenience of the parties and the Committee.

2. The parties may request that the Committee issue subpoenas to command the appearance of witnesses and/or the production of documents at the scheduled hearing, and the Tribal Court shall have jurisdiction to enforce such subpoenas.
- B. Hearing. The hearing before the Committee shall take place no later than 30 days after notice of completion of mediation under section 12.07.020 and shall be recorded in such manner that a complete and accurate transcript of the proceedings can be made. The Committee shall preside over the hearing and allow evidence to be admitted in accordance with the rules of evidence governing civil procedures in the Tribal Court.
- C. Findings of Fact and Conclusions of Law.
1. Within 10 days after the close of the hearing, the Committee shall issue written findings of fact and conclusions of law, which shall include a determination of whether a violation of Chapter 12.02, 12.03, 12.04, or 12.05 of this Code has occurred.
  2. If the Committee does not find such a violation, the Committee shall enter an order of dismissal.
  3. If the Committee finds such a violation, the Committee shall order a remedy in accordance with subsection D.
- D. Remedies. Upon finding of a violation of Chapter 12.02, 12.03, 12.04, or 12.05 of this Code, the Committee shall order an appropriate remedy (or remedies), which may include:
1. An order to cease and desist from the unlawful practice(s) specified in the order;
  2. Where an employee has been wrongfully separated from employment or not properly reinstated to an employment position
    - (a) An order to employ or reinstate the employee,
    - (b) An order to restore the employee's back pay and benefits,
    - (c) In a case where reinstatement would be an appropriate remedy, but it is not feasible, an order of a reasonable amount for front pay;
  3. For violations of Chapters 12.03, 12.04, or 12.05, an order restoring wages, overtime pay or benefits wrongfully withheld or not paid as well as remedies available to employees in similarly situated circumstances under the FMLA, the FLSA, or the USERRA;
  4. In the case of unlawful disability discrimination, an order to provide reasonable accommodations for an employee's disability; and
  5. In a case where the Committee is convinced, by a preponderance of evidence, that, as a result of an employer's violation of this Code, an employee has suffered emotional



or physical pain or injury, the Committee may also award damages to the employee not to exceed \$25,000.

- E. Failure to Appear; Default; Sanctions. If a party fails to appear for hearing before the Committee, the Committee may enter a decision against that party by default, including an order for a remedy, if warranted, under subsection D.
- F. Notice to Parties and Clerk. The Committee shall mail a copy of any notice or decision affecting a party to the last known address of the party and to the Clerk by first class U.S. mail on the date that the Committee issues such notice or decision. Any party may also request that the Committee provide such notices or decisions to the party by electronic mail.
- G. Finality of Committee Decision. If no appeal to the Tribal Court is filed within the time allowed, the decision of the Committee shall be binding and enforceable and not subject to review by any court, provided that the Committee's decision may be enforced in accordance with its terms by the Tribal Court.

#### **12.07.050 Appeal to Tribal Court**

- A. Tribal Court Review. The Tribal Court is empowered to hear appeals from any final decision of the Committee.
- B. Filing of Appeal. Appeals of final decisions of the Committee shall be filed with the Tribal Court, with a copy to the Committee, no later than thirty (30) days from date of such decision.
- C. Record on Appeal; Costs of Preparation. Upon receipt by the Committee of notice that an appeal has been filed with the Tribal Court, the Committee shall certify and transmit to the Clerk the record of proceedings before the Committee, including all documents, things, transcripts and other information, which formed the basis for the decision being appealed. It shall be the responsibility of the party filing the appeal to communicate with the Committee to establish and transfer the record of proceedings to the Clerk. The appealing party shall bear the costs of the preparation of the transcript of any hearing held before the Committee.
- D. Standard of Review. Appeals to the Tribal Court shall be limited to review of the record of the Committee's decision. The Tribal Court may modify, reverse, or remand a decision or ruling of the Committee only where such decision or ruling is without substantial basis in fact, is contrary to tribal policy or tribal law, or is clearly arbitrary or capricious.
- E. There shall be no further right of appeal.



## CHAPTER 12.08

### WORKPLACE POSTERS AND EMPLOYEE TRAINING

Sections:

**12.08.010 Posting of General Rights and Obligations**

**12.08.020 Posting of Sexual Harassment Prohibition**

**12.08.030 Education and Training**

#### **12.08.010 Posting of General Rights and Obligations**

Employers shall post in a prominent and accessible location in the workplace a poster summarizing the employee rights and employer obligations under Chapters 12.02, 12.03, 12.04, and 12.05 of this Code, including the complaint procedures provided in Chapter 12.07, in a form approved by, and made available through, the Squaxin Island Legal Department.

#### **12.08.020 Posting of Sexual Harassment Prohibition**

Employers shall separately post in a prominent and accessible location in the work place a poster providing, at a minimum, the following information: the illegality of sexual harassment; a description of sexual harassment, utilizing examples; the employer's internal complaint process available to employees; a statement that retaliation by an employer for reporting sexual harassment is unlawful; and a summary of the complaint procedure provided by Chapter 12.07 of this Code for employees who claim to have suffered sexual harassment.

#### **12.08.030 Education and Training**

Employers shall conduct an education and training program for all new employees within one year of commencement of employment that includes, at a minimum, the same information that is set forth in the poster requirements under this Chapter. Employers shall conduct additional training for supervisory and managerial employees within one year of commencement of employment that includes, at a minimum, the specific responsibilities of supervisory and managerial employees and methods that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints. Any and all training may be presented in a digital or video format.

**CHAPTER 12.09**

**LABOR ORGANIZATIONS AND COLLECTIVE BARGAINING**

**CHAPTER 12.09**

**LABOR ORGANIZATIONS AND COLLECTIVE BARGAINING**

**Sections:**

- 12.09.010 Purpose**
- 12.09.020 Findings**
- 12.09.030 Licensing of Labor Organizations and Business Agents**
- 12.09.040 Bargaining Unit Determinations and Union Election Procedures**
- 12.09.050 Procedures for Decertification of Bargaining Representatives**
- 12.09.060 Rights and Duties of Employers, Employees, and Labor Organizations**
- 12.09.070 Collective Bargaining; Exceptions**
- 12.09.080 Prohibited Practices**
- 12.09.090 Procedures for Resolving Prohibited Practice Claims**
- 12.09.100 Procedures for Resolving Collective Bargaining Impasses**
- 12.09.110 Tribal Employment Court Enforcement Authority**
- 12.09.120 Limited Waiver of Sovereign Immunity**
- 12.09.130 Interpretive Guidance**

**Section 12.09.010 Purpose.**

The purpose of this Chapter is to protect the health, welfare, and economic security of the Squaxin Island Tribe by regulating (a) the terms and conditions under which labor organizations may conduct business within the jurisdiction of the Tribe and (b) the terms and conditions under which collective bargaining may take place within the jurisdiction of the Tribe.

**Section 12.09.020 Findings.**

- A. The Squaxin Island Tribal Council finds that the Tribe has inherent sovereign authority to govern economic relations within its jurisdiction, including employment relations between the Tribe and its employees and Tribal Entities and their employees. The economic activities of the Tribe and Tribal Entities generate funds to support the Tribe's governmental services to its citizens and provide critical economic development opportunities for the Tribe and its citizens. Employment relations within the Tribe and Tribal Entities directly affect the health, welfare, and economic security of the Tribe and its citizens because such relations affect the generation and distribution of the Tribe's governmental resources and the economic development of the Tribe.
- B. Like the state and federal governments, the Tribe has a direct interest in regulating labor relations within governmental agencies and enterprises, known as "public sector labor



relations.” The labor relations laws of states and of the federal government often prohibit strikes to protect the public interest and provide for alternative procedures to resolve collective bargaining impasses. The Tribe finds that important lessons may be drawn from the state and federal public sector labor relations laws for the design of a law governing labor relations of the Employees Subject to this Code

**Section 12.09.030 Licensing of Labor Organizations and Business Agents; Qualifications; Fees; Term.**

- A. Findings and Purpose. Labor Organizations and their Business Agents doing business within territorial jurisdiction of the Tribe have the potential to affect the generation and distribution of the Tribe’s resources to support governmental services to tribal citizens and the allocation of economic development opportunities for tribal citizens. The purpose of this section is to set forth licensing requirements for labor organizations and their Business Agents doing business within territorial jurisdiction of the Tribe to ensure that such organizations and their Business Agents understand that they are subject to the jurisdiction of the Tribe and its laws and that such organizations and Business Agents are devoid of corrupt influences.
- B. Licenses required for Labor Organizations and Business Agents. No Labor Organization or any Business Agent shall engage in organizing Employees working for any Employer without a license issued by the Tribe’s Union Licensing Authority, which shall provide as follows:
1. The conduct of business within territorial jurisdiction of the Tribe is a privilege, subject to the consent and regulatory authority of the Tribe;
  2. The consent of the Tribe to allow such Labor Organization and its Business Agent (or agents) to conduct business within territorial jurisdiction of the Tribe is conditioned upon such Labor Organization’s agreement to be subject to the Laws of the Tribe and its regulatory authority;
  3. In consideration of the Tribe’s consent to allow such Labor Organization and its Business Agent (or agents) to conduct of business within territorial jurisdiction of the Tribe, such Labor Organization and its Business Agent (or agents) agree to (1) comply with all Laws of the Tribe, (2) submit to the jurisdiction of the Tribe, including its Union Licensing Authority and its Tribal Court, and (3) pay an annual business license fee as required by the Union Licensing Authority;
  4. Such Labor Organization and its Business Agent (or agents) agree that a license issued by the Tribe for conducting business within territorial jurisdiction of the Tribe may be revoked by the Union Licensing Authority at any time, after notice and opportunity to be heard, for any failure to comply with the Laws of the Tribe; and
  5. Such other requirements as the Union Licensing Authority may require by regulation.
- C. Licensing Requirements for Business Agents. No Person shall act as a Business Agent of a Labor Organization within territorial jurisdiction of the Tribe unless that Person meets all of the following conditions:



1. Qualifications; Limitations. A person seeking status as a licensed Business Agent of a Labor Organization shall submit to a background check by the Union Licensing Authority or its designee to determine whether the person's prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the effective regulation of gaming or other activities within the territorial jurisdiction of the Tribe or create or enhance the dangers of unfair or illegal practices, methods and activities in the conduct of gaming or other activities within territorial jurisdiction of the Tribe.
  2. No person shall be licensed as a Business Agent if that person poses such a threat or if the person has been convicted of or is currently facing charge of a crime involving dishonesty or moral turpitude.
  3. Authority; Fees. A person seeking licensure shall submit to the Union Licensing Authority a statement signed by the president and the secretary of the Labor Organization (or the equivalent, if the Labor Organization does not designate a president and secretary) that establishes the Person's authority to act as a Business Agent for the Labor Organization and shall pay a one-time, nonrefundable application fee as required by the Union Licensing Authority.
  4. Affirmative Duty to Report Charges or Convictions. At all times during a period of licensure, a Business Agent has an affirmative duty to report to the Union Licensing Authority any new criminal charges or convictions within the guidelines of subsection (C)(2) of this Section and material changes to other information provided to the Union Licensing Authority under subsection (C)(1) of this Section.
- D. Licensing Requirements for Labor Organizations. No Labor Organization shall organize employees within territorial jurisdiction of the Tribe, through a Business Agent or otherwise, without meeting the standards for a license as required by the Tribe's Union Licensing Authority.
- E. Issuance of Licenses. Upon making a determination that a Labor Organization and Business Agent has complied with the requirements of this Section, the Union Licensing Authority shall issue to the Labor Organization and Business Agent licenses to conduct business within the territorial jurisdiction of the Tribe consistent with subsection (B)(1).
- F. Term; Renewal; Aggregate Fee. Licenses shall run for the calendar year in which they are issued, expiring on December 31st, but may be renewed upon payment of the fee set forth in subsection (B)(3)(3), unless surrendered sooner, suspended or revoked. For Business Agents, background checks are required annually unless required sooner under the provisions of this Chapter or other applicable law. The annual license fee fixed by the Union Licensing Authority shall cover the licensing of any Labor Organization and its Business Agent (or agents).
- G. Violations. It shall be a violation of this Chapter, subject to an enforcement action in the Tribal Court pursuant to section 12.09.110, for:

1. Any Labor Organization to engage in organizing Employees without a license issued in accordance with this Section;
2. Any person to act as a Business Agent for a Labor Organization without having obtained or retained a valid Business Agent's license;
3. Any person to make any false statement in an application for a Labor Organization or Business Agent's license; or
4. Any person to fail to report new charges or convictions or other material information as provided in subsection (C)(4) of this Section.

**Section 12.09.040 Bargaining Unit Determinations; Union Election Procedures.**

- A. Purpose. The purpose of this section is to ensure that in any election for a Labor Organization at an Employer, there is respect for the rights of Employees to determine, free of intimidation and coercion, whether or not they choose to authorize a Labor Organization to be their Exclusive Bargaining Representative and to ensure fair procedures for the determination of appropriate Bargaining Units, for triggering an election, for election campaigns, and the holding of elections.
- B. Appropriate Bargaining Units.
  1. Generally. Employees must have a sufficient community of parallel interests to be an appropriate group for bargaining. Employees with similar job duties, skills, and positions; who are part of a functionally integrated work environment; or who have common supervision shall be considered to have parallel interests.
  2. Specific Employees. Certain Employees, given the specific nature of their work, such as public safety officials, serve in unique vocational roles and cannot be joined in an appropriate bargaining group with other Employees.
- C. Labor Organization Notice of Employee Support to Management; Agreement on Appropriateness of Bargaining Unit or Arbitration; Election Campaign Rules; Elections.
  1. Should a licensed Labor Organization claim that 30% or more of a unit of Employees supports Labor Organization representation, it shall so inform Management, in writing, and demonstrate to the Election Official that the following conditions are met:
    - (a) That the group the Labor Organization seeks to represent is an appropriate one under the principles set forth in subsection (B)(1)-(2);
    - (b) That there is reliable evidence of individual Employee support for Labor Organization representation; and



- (c) That the number of Employees expressing the desire to be represented by the Labor Organization within the proposed Bargaining Unit constitute 30% or more of the Employees in that unit.
    - i. For purpose of subsection (C)(1)(b), “reliable evidence” may be established by a printed document bearing the Employee’s original signature (and date of signature), containing a clear and conspicuous statement that, by signing, the Employee expresses a desire to be represented by the Union for the express purposes of collective bargaining.
    - ii. For the purpose of subsection (C)(1)(a), the appropriateness of the Bargaining Unit may be determined by agreement of Management and the Labor Organization or by decision of an Arbitrator pursuant to subsection (7).
2. Preliminary Conditions for Scheduling an Election by the Election Official. Upon receiving a written agreement of Management and a Labor Organization as to the appropriateness of the Bargaining Unit or a decision of an Arbitrator on the same, the Election Official shall promptly proceed to confirm whether the conditions of subsections (C)(1)(b) and (C)(1)(c) are met and, if they are, certify, in writing (by first class U.S. mail, electronic mail, or fax) to Management and the Labor Organization that the following conditions are met:
- (a) That there is reliable evidence of individual Employee support for Labor Organization representation; and
  - (b) That the number of Employees expressing the desire to be represented by the Labor Organization within the Bargaining Unit at issue constitute 30% or more of the Employees in that unit.
3. Scheduling the Election; Resolution of Eligible Employee Disputes; Notice of Rules.
- (a) Unless otherwise agreed to by Management and the Labor Organization, in the absence of an unresolved dispute over the composition of the Bargaining Unit, the Election Official shall schedule an election for eligible Employees in the Bargaining Unit no later than 2 months from the date that the Election Official issues confirmation under subsection (2).
  - (b) Within 5 Days of receipt of the Election Official’s announcement under subsection (2), Management shall prepare a list of all eligible Employees in the subject Bargaining Unit in alphabetical order, along with each Employee’s address and title, and provide a copy (via first class U.S. mail, electronically or via fax) to the Labor Organization. “Eligible Employees” shall include anyone hired and actually working as of the payroll period immediately preceding the Labor Organization’s 30% minimum showing of interest submitted to the Election Official. The Labor Organization shall immediately identify any disputes it may have with regard to the list (such as omissions, incorrect



inclusions), and the parties shall try to resolve differences through agreement. Disagreements shall be resolved by expedited arbitration provided for in subsection (i), and the Arbitrator shall have discretion to order the delay of the election as necessary to ensure that no Employee is disenfranchised. The Arbitrator may extend the eligibility hire date to ensure that no Employee is improperly enfranchised or disenfranchised.

- (c) Management shall provide the Labor Organization with timely updates of said list through to the date of the election to the extent there are any changes to the list.
- (d) Notice of meeting and ground rules. Within 10 Days after the scheduling of an election, Management shall:
  - i. Post and distribute notices to those Employees within the Bargaining Unit who are eligible to vote, setting forth information about the date, time, and place of the election, the purpose of the election, and the Employees' rights to be educated on the benefits and deficits of Labor Organization representation. These election notices shall be facially neutral and not espouse a position for or against Labor Organization representation and shall be in substantially the following form:

*“ANNOUNCEMENT OF UNION REPRESENTATION ELECTION*

*Under Tribal Law Employees have the right to organize and join a Union. The Laws of the Tribe recognize that, if at least thirty percent of the eligible workers in an appropriate Bargaining Unit reliably express interest in being represented by a Union, then eligible Employees in the unit shall have the right to participate in a secret ballot election to vote on whether they want Union representation. The outcome of the election will be determined by a simple majority.*

*The [name of Union] have met the thirty percent requirement in the [name of Employer] and [describe eligible Employees] will be eligible to vote in a secret ballot election scheduled for \_\_\_\_\_.*

*Employees who are eligible to vote will be receiving individual notices of their right to participate.*

*Whether to have Union representation or not is a question which should be studied carefully by Employees prior to voting.*

*The Tribal Council has appointed an independent Election Official to conduct a fair election, and [name of Employer] and any disputes that arise in with respect to the election may be resolved by an independent arbitration process.*

*Employees have the right to either support or reject Union representation without being subjected to any kind of harassment, intimidation or unwelcome solicitation. Employees cannot be punished or rewarded based on whether they are for or against having a Union.”*

- ii. Notify Bargaining Unit Employees via Employee bulletin board or other form of regular communication, meeting, or both of the rules governing election campaigns set forth in subsection (4). The communication shall not include any kind of campaigning or solicitation, but shall inform Employees as to the process, and rules against coercion, discrimination and harassment as set forth in subsection (4).
- iii. Seven (7) Days before the election, Management shall send notices to those Employees eligible to vote, setting forth information about the date, time, and place of the election, and the purpose of the election. This reminder notice shall also be posted on any Employee bulletin board or by other form of regular communication. Said election notices shall be facially neutral and not espouse a position for or against Labor Organization representation and shall be in substantially the same form as the notice set forth in subsection (3)(d)(i).

4. Election Rules Regarding Campaign, Communications, and Conduct.

- (a) Application of Prohibited Practice Provision. To preserve Employee freedom of choice, Management and the Labor Organization are prohibited from engaging in Prohibited Practices, as defined in section 12.09.080 that would undermine the validity of the bargaining agent election.
- (b) Misconduct by Employees.
  - i. Employee solicitation and discussions. The Employer may enforce its existing rules limiting solicitation and prohibit any unwelcome solicitation. The Employer may restrict Employees from discussing Labor Organization matters in public areas where the focus of Employees is customer service or any place where Employees are in direct contact with customers, clients, patrons, or other users of services provided by an Employer. When a Bargaining Unit at any gaming, entertainment, or recreation facility is at issue, said “public areas” shall include gaming areas, hotel lobbies, reception areas, restaurants, bars, as well as aisles and corridors in proximity to such places. The Employer shall not restrict Employees from discussing Labor Organization matters in non-public areas (such as Employee lunch or break rooms) as well as parking lots while on duty unless such discussions interfere with Employees’ work. The Employer shall not restrict Employees from discussing Labor Organization matters in



parking lots during off-duty time, such as breaks, meal times, and before and after work.

- ii. Unwelcome conversations and harassment. An Employee's request to one or more co-workers to desist from soliciting them or talking to them about the Labor Organization must be honored. Persistence by someone who ignores a clearly articulated request to stop talking about the Labor Organization may be subject to any disciplinary rules of the Employer governing harassment.
- iii. Intentionally misleading other Employees. Employees who recklessly or consciously disseminate inaccurate, misleading, or false information may be subject to discipline by the Employer for such behavior under any policies of the Employer. Subject to subsection (i), a pattern or recurrence of such behavior may constitute grounds for delaying a vote until remedial measures have been taken, or, if discovered after the balloting, such conduct may be grounds for setting aside the election results, depending upon an Arbitrator's findings regarding the impact of such conduct on a sufficient number of Employees eligible to vote in the election.

5. Elections.

- (a) Voting time and place. The secret ballot election should be arranged by the Election Official so that eligible Employees have ample time to participate. Due consideration shall be given to Employees' varied work schedules. Polling shall occur in a convenient place for Employees to vote.
- (b) No solicitation on election day. There shall be no "campaigning" on election day, provided, however, that Employees may be reminded to vote.
- (c) Role of Election Official. The Election Official shall manage the voting process and count the ballots.
- (d) Voter eligibility list. Management and the Labor Organization shall have an ongoing obligation throughout the 2 month pre-election interval to immediately raise and try to resolve, through agreement, questions about the eligibility of any voting Employee prior to the election. On the day of the vote, if Management or the Labor Organization believes an individual on the list is not eligible to vote, such individual's ballot shall be marked as "challenged" by the Election Official unless, the Election Official determines that the basis for the challenge was reasonably discernable prior to the time that the challenge is made. Anyone who is not on the list who attempts to vote shall automatically have their ballot marked as "challenged" by the Election Official.
- (e) Observers. Two non-supervisory Employees who are part of the bargaining group that is the subject of the election shall act as observers, on a volunteer



and unpaid basis, to help the Election Official conduct the secret ballot voting process. Management and the Labor Organization shall each select one observer per shift (the same observer may be assigned to one, two, or all three shifts). Such individuals should be familiar with the Employees eligible to vote to assure the proper distribution of ballots to only eligible participating Employees. There shall be no solicitation or campaigning of any kind by observers. For an election involving Employees at the Little Creek Casino Resort, observers shall have a current, official casino identification card, allowing them to be present within the casino.

- (f) Polling place and process. The Election Official shall ensure that the voting process is orderly, with limited talking in the balloting area; that managerial and supervisory personnel of the Employer not be permitted to be in or near polling places; that no Employee votes by absentee ballot; and that there is no loitering or mingling at the polling location before or after voting.
- (g) Ballots.
  - i. Form. Ballots shall be simple and plainly worded. Employees shall be told not to sign or mark ballots, but to check off their preference relative to Labor Organization representation with a “√” or an “x” in the designated box next to their choice, in substantially the following form:

*Do you want to be represented by the [name of Union] for purposes of collective bargaining? Please mark your choice in the appropriate box.*

YES                       NO
  - ii. Challenged ballots. A challenged ballot shall be placed in an envelope and sealed, with the Employee’s name written on the outside of the envelope, and then placed in the ballot box by the Election Official.
- (h) Counting the vote. After the final polling period ends, Management and the Labor Organization shall confer with the Election Official to determine if there are any challenged ballots and whether any of the challenged ballots can be resolved. Any challenged ballot which remains challenged shall be saved and set aside without being counted. The Election Official shall then proceed with counting the votes. The Election Official shall open the ballot box and mingle the votes. The Election Official shall open each individual ballot, read it aloud, and then place it into stacks of “Yes” and “No” ballots. After each ballot is opened and properly stacked, the Election Official shall count all properly marked ballots, keeping track of the tally. The election observers shall be present throughout this process. Representatives of the parties may also be present.

- (i) Procedure if challenged ballots could affect outcome. If the number of the challenged ballots could affect the outcome of the vote, the eligibility of all challenged ballots shall be determined through the Dispute Resolution procedures under subsection (k).
- (j) Official tally. Upon the completion of the tally, the Election Official shall deliver to Management and the Labor Organization an official tally, certified under oath, indicating the number of votes for each choice. Delivery may be made by hand, electronic mail, first class U.S. mail, or fax.
- (k) Objections; dispute resolution. Management and the Labor Organization shall have seven (7) days following the completion of voting to file any objection or claim of violation of the provisions of this section. Such notices shall set forth, in detail, the factual basis for the objection or claim and shall be delivered in writing to the Election Official with copies to the other party. Should the Election Official receive such a written objection or claim, the Election Official shall direct the parties to proceed to dispute resolution under subsection (7)(d). Said directive shall be sent to the Employer and the Labor Organization by U.S. first class mail, electronic mail, or fax.

6. Election Results.

- (a) If the Labor Organization achieves a simple majority in the election, Management and the Labor Organization shall proceed to engage in collective bargaining in accordance with this Chapter, provided that no election shall be considered valid unless it is by secret ballot vote of a majority of the Employees in a Bargaining Unit in accordance with the provisions of this section
- (b) If the Labor Organization fails to achieve a simple majority in the election, the results shall be treated as a choice for no Labor Organization representation for the subject Bargaining Unit for a period of twelve (12) months. During this twelve (12) month period, the Labor Organization shall not engage in solicitation or organizing relative to the subject Bargaining Unit. Any such solicitation or organizing may be subject to an action for injunctive relief by the employer in the Tribal Court.

7. Dispute Resolution.

- (a) Generally. Any alleged violation or dispute involving any aspect of this section, including but not limited to the inclusion or exclusion of particular Employees from the subject Bargaining Unit as well as violations of subsection (4) or subsection (5) may take the form of a written demand for arbitration, setting forth the facts alleged and the specific provision of this section at issue. If the parties are unable to resolve the dispute within 7 days of service of any such demand, they shall proceed to resolve their dispute before an Arbitrator, drawn from the National Academy of Arbitrators. If the parties are unable to



agree upon an Arbitrator, they shall so inform the Election Official, who shall then choose the Arbitrator from the National Academy of Arbitrators.

- (b) Disputes on whether the condition set forth in subsection (C)(1)(a) is met shall be resolved by the Arbitrator after such hearing as the Arbitrator deems necessary to resolve the dispute. The Arbitrator shall issue a decision in writing, setting forth the rationale for the decision. The Arbitrator's decision shall be final and binding on the parties.
- (c) Disputes arising under subsection (4) before scheduled vote; notice; good faith effort to resolve.
  - i. Should either Management or the Labor Organization become aware of perceived or potential violation prior to the election, they shall notify the other, in writing (via electronic mail or fax and via U.S. first class mail) of the charge and the basis for the charge. Management and the Labor Organization shall then make a good faith effort to resolve the alleged violation. This good faith effort shall include the parties providing unprivileged information relevant to the charge that is requested by the other party.
  - ii. If such good faith efforts do not result in resolution of the charge, the objecting party may provide a copy of the charge to the Arbitrator, simultaneously serving the other party, and ask the Arbitrator to immediately convene a conference call to discuss the charge and (i) in what manner it can promptly be resolved without disturbing the election timetable (such as mediation, expedited proceedings; hearing via conference call; written submission; in-person meeting or other mutually agreeable format) and (ii) whether the circumstances of the charge merit postponing the election until such time as the charge is resolved by the Arbitrator or whether the election should proceed with the Arbitrator authorized to issue the appropriate remedy after the election has been conducted. The determination of the Arbitrator, as to how the charge will be addressed and whether it will delay the election, shall be made within 24 hours of the conference, and shall be final and binding.
  - iii. Failure by a party to raise an allegation in a reasonably timely manner may be treated by the Election Official or an appointed Arbitrator as a waiver.
- (d) Disputes arising after vote; good faith resolution of disputes. Should either management or the labor organization assert an objection or claim under subsection (5)(k), the parties shall confer and attempt, in good faith, to resolve the objection or claim. Should the parties fail to resolve an alleged violation, the charging party may invoke Arbitration in accordance with subsection (7)(c)(ii) to resolve the party's claim.



- (e) Power and discretion of Arbitrator; written decisions; sanctions.
  - (1) The Arbitrator shall be empowered to impose such remedial measures as the Arbitrator deems would resolve any dispute or fully ameliorate the impact of any conduct in violation of this section, ordering remedies typically available under prevailing public sector labor relations law.
  - (2) Allegations shall be provable by a preponderance of the evidence, and the rules of evidence applicable to trials in the Tribal Court shall apply.
  - (3) The decision of the Arbitrator shall be in writing and issued as soon as possible following the close of a hearing, and, in any event, no more than 14 Days following such hearing.
  - (4) The Arbitrator's decision shall be final and binding on the Employer and the Labor Organization and subject to enforcement pursuant to Arbitration Code of the Tribe, Chapter 4.52.

**Section 12.09.050 Decertification Procedures.**

- A. Decertification Petition. An Employee, a licensed Business Agent of a Labor Organization or a registered Labor Organization may petition the Election Official to conduct an election for the decertification of a Labor Organization as the exclusive representative of Employees in a Bargaining Unit by filing a petition with the Election Official containing signatures (with dates) of thirty percent (30%) or more of the Employees in a Bargaining Unit stating that they no longer desire to be exclusively represented by that Labor Organization for the purposes of collective bargaining within the unit.
  - 1. Election Procedure. An election for decertification shall be governed by the same procedures for election as set forth in section 12.09.040. A Labor Organization will be decertified unless a majority (50% plus one) of the eligible votes cast are in favor of continued representation by the Labor Organization.
  - 2. Timing of Election Relative to Existing Collective Bargaining Agreement. When there is a collective bargaining agreement in effect, a petition for a decertification election shall be made to the Election Official no earlier than 120 Days and no later than 90 Days before the expiration of the collective bargaining agreement. If a collective bargaining agreement has expired and a successor agreement has not become effective, a decertification petition may be filed at any time.
  - 3. When, within the time period prescribed in subsection (c) of this section, a competing Labor Organization files a petition containing signatures of at least thirty percent (30%) of the Employees in a unit that can be considered an appropriate Bargaining

Unit, a representation election, rather than a decertification election, shall be conducted in accordance with procedures set forth in section 12.09.040.

4. When an exclusive representative has been certified but no collective bargaining agreement is in effect, the Election Official shall not accept a request for a decertification election earlier than 12 months subsequent to a Labor Organization's certification as the exclusive representative.

**Section 12.09.060 Employees, Employers, Labor Organizations; Rights and Duties.**

A. Employees; Freedom of Choice; Right to Work Without Union Membership or Dues Requirements.

1. Employees shall have the right to engage in self-organization, to form, join, or assist Labor Organizations, to bargain collectively through representatives of their own choosing for the purpose of collective bargaining or other mutual aid or protection, except as prohibited by this Chapter, and shall also have the right to refrain from any and all of such activities.
2. No Employee shall be required, as a condition of Employment within an Employer to: (A) resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a Labor Organization; (B) become or remain a member of a Labor Organization; (C) pay dues, fees, assessments or other charges of any kind or amount to a Labor Organization; (D) pay to any charity or other third party, in lieu of such payments any amount equivalent to or a pro-rata portion of dues, fees, assessments or other charges regularly required of members of a Labor Organization; or (E) be recommended, approved, referred or cleared through a Labor Organization by means of a hiring hall or similar process. Any such agreement shall be void and unenforceable.
3. Employer; Labor Organization; Freedom of Speech. The expression of any opinion, view, fact, or the presentation of any argument for or against a Labor Organization by an Employer or a Labor Organization, or the dissemination of information, whether in oral, written, graphic, electronic or visual form, shall not constitute a prohibited labor practice under any provisions of this Chapter or other Tribal law, provided that such expression contains no promise of benefit or threat of reprisal, and is not clearly false.
4. Labor Organization; Recognition by Employer. An Employer subject to this Chapter shall recognize a Labor Organization that has been certified by the Election Official as the exclusive representative of the majority of Employees in an appropriate Bargaining Unit.
5. Labor Organization; Exclusive Bargaining Representative; Duty to Negotiate. A Labor Organization that has been certified by the Election Official as the exclusive bargaining representative of Employees in an appropriate Bargaining Unit shall have the right and duty to act for, fairly represent, and negotiate agreements covering all



Employees in the unit without discrimination and without regard to their Labor Organization membership.

6. Employee; Right to Directly Present Grievance to Employer. An Employee represented by a Labor Organization may at any time present a grievance directly to an Employer, and the Employer may address the grievance directly with the Employee without the intervention of a Labor Organization, provided that the resolution of the grievance may not violate the provisions of a collective bargaining agreement then in effect. The Employer shall notify the appropriate Labor Organization of the grievance and its resolution.
7. Strikes by Employees Prohibited. Nothing in this Section shall constitute a grant of the right to Strike to Employees, and such Strikes are prohibited.

**Section 12.09.070 Collective Bargaining; Exceptions.**

- A. Duty to Bargain Collectively. It is the duty of Employers and designated and duly certified exclusive representatives of Employees, through their bargaining agents (the “parties”), that are subject to this Chapter to meet at reasonable times and confer in good faith with respect to wages, hours, benefits, and other terms and conditions of employment, except for those matters that are excluded from collective bargaining under this Chapter or other tribal law, and to execute a contract incorporating any agreement reached, if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession or agree to a proposal that would contradict or violate tribal law.
- B. Exceptions; Tribal Gaming Regulatory Authority; Tribal Employment Preferences, Substance Abuse Testing, Management Prerogatives.
  1. Tribal Gaming Regulatory Authority. Nothing contained in this Chapter shall in any way diminish the authority of the Tribal Gaming Agency or any other authority, agency, commission or regulatory body established by the Tribe, to regulate the conduct of gaming within the Tribe’s Territory and safeguard the integrity of gaming, including the prevention of illegal activities or influences affecting gaming. Further, nothing in tribal law or this Chapter shall require an Employer to bargain collectively concerning governmental regulatory issues, including, but not limited to:
    - (a) The enforcement of all rules, whether in laws, rules, ordinances, policies or procedures, with respect to the Tribe’s gaming facilities , or the power to conduct investigations and hearings in respect thereto.
    - (b) Ensuring the physical safety of gaming operation patrons and Employees, and any other person while in the Tribe’s gaming facilities.
    - (c) Physically safeguarding assets transported to, within, and from the Tribe’s gaming facilities.



- (d) Preventing illegal activity from occurring within the Tribe's gaming facilities or gaming operations, including, but not limited to, the maintenance of Employee procedures and surveillance systems.
  - (e) Recording of any and all occurrences that deviate from normal operating policies and procedures, including the maintenance of a closed circuit surveillance system within the Tribe's gaming facilities.
  - (f) Consistent with industry practice and in accordance with tribal law, the establishment of Employee practices and procedures designed to permit detection of any irregularities, such as, but not limited to, cheating, theft, fraud, alcohol or drug use while on the premises, or other similar activities.
  - (g) The conduct of audits of the Tribe's gaming facilities.
  - (h) The specifications, rules, standards and procedures for each game. The number or types of games offered.
2. Any policies of an Employer or Laws of the Tribe, giving preferences to citizens of the Tribe or other Native Americans with respect to hiring, promotion, or retention of employment within an Employer shall not be subject to collective bargaining.
  3. Employers shall have the right to address the terms and conditions for testing Employees for alcohol and drug use, consistent with the Laws of the Tribe, and such policies shall not be subject to bargaining with any Labor Organization.
  4. Management decisions to hire, to layoff, to recall, or to reorganize duties shall not be mandatory subjects of bargaining, and in any negotiated agreement, the criteria negotiated by an Employer and an Exclusive Bargaining Representative to establish the order of layoff and recall may include, but may not be limited to, seniority.
  5. Duration of Collective Bargaining Agreements. Collective bargaining agreements entered into under this Chapter shall have a duration of no more than three (3) years.

**Section 12.09.080 Prohibited Practices; Employer; Labor Organization.**

- A. Employers; Prohibitions. Employers who are subject to this Chapter are prohibited from:
  1. Interfering with, restraining or coercing Employees (including use of a Lockout) in the exercise of their rights under Section 12.09.060.
  2. Dominating or interfering with the formation, existence or administration of, any Labor Organization licensed in accordance with the provisions of this Chapter.
  3. Discriminating in regard to hiring, discharging, compensation, benefits, demotion, disciplining, suspending, barring or laying off because of an Employee's exercise of rights under Section 12.09.060.

4. Refusing to bargain collectively in good faith with a Labor Organization that has been designated under this Chapter as the exclusive representative of Employees in an appropriate Bargaining Unit.
  5. Refusing to comply with the terms of a valid collective bargaining agreement that has been entered into between an Employer and the Exclusive Representative pursuant to this Chapter.
- B. Labor Organizations; Prohibitions. Labor Organizations and their agents that are subject to this Chapter are prohibited from:
1. Interfering with, restraining or coercing Employees in the exercise of their rights under this Chapter or any other provision of tribal law.
  2. Interfering with, restraining or coercing an Employee in his/her selection of an Exclusive Representative for purposes of collectively bargaining or the adjustment of grievances, or his/her election not to be represented.
  3. Discriminating against any Employee with regard to Labor Organization membership.
  4. Interfering with, dominating or coercing an Employer to recognize a particular Labor Organization as the representative of employees if another Labor Organization has been certified as the Exclusive Representative of Employees in an appropriate Bargaining Unit under the provisions of this Chapter.
  5. Refusing to bargain collectively in good faith with an Employer, if it has been designated as the Exclusive Representative of Employees in an appropriate Bargaining Unit under the provisions of this Chapter.
  6. Refusing to comply with the terms of a valid collective bargaining agreement that has been entered into between an Employer and the Exclusive Representative pursuant to this Chapter.
  7. Attempting to influence the outcome of any tribal election in any manner, including making donations to any candidate or party; provided, however, that this subsection does not apply to a tribal citizen Employee acting in his/her individual capacity.
  8. Causing, encouraging, instigating, or engaging in picketing, on territorial jurisdiction of the Tribe.
  9. Causing, encouraging, instigating, or engaging in a Strike or work slow-down of any kind.
  10. Breaching the duty of fair representation as provided in section 12.09.060(A)(5).



- C. Prohibited Practices Violations; Enforcement. A violation of any of the provisions of this Section by a covered party shall constitute a prohibited labor practice, subject to enforcement as follows:
1. Violations by Employers of subsections 12.09.080(A)(1)'s Lockout prohibition and 12.09.080(A)(5), breach of a collective bargaining agreement, are subject to actions in the Tribal Court pursuant to section 12.09.11
  2. Violations by Labor Organizations and their agents of subsections 12.09.080(B)(6), breach of a collective bargaining; 12.09.080(B)(7), attempting to influence tribal elections; 12.09.080(B)(8), picketing prohibition; 12.09.080(B)(9), Strike or work slow-down prohibition; and 12.09.080(B)(10), breach of duty of fair representation, are subject to actions in the Tribal Court pursuant to section 12.09.110.
  3. All other violations of this section are subject to resolution pursuant to Section 12.09.100, provided, however, that alleged violations of this section occurring in the context of an election campaign of an exclusive bargaining representative shall be resolved solely in accordance with section 12.09.040(7).

**Section 12.09.090 Procedures for Resolving Prohibited Practices Claims.**

- A. Generally. Claims of prohibited practices under section 12.09.080 may be brought by an Employer, an Employee, or a Labor Organization and shall be made, in writing, to the adverse party, setting forth the facts alleged and the specific provision of section 12.09.080 at issue. If the parties are unable to resolve the dispute within 7 Days of service of any such claim, and such dispute does not give rise to a direct action in the Tribal Court pursuant to section 12.09.080(C), the parties shall proceed to resolve their dispute before an Arbitrator, drawn from the National Academy of Arbitrators. If the parties are unable to agree upon an Arbitrator, they shall so inform the Election Official, who shall then choose the Arbitrator from the National Academy of Arbitrators.
- B. Arbitration.
1. The Arbitrator shall conduct a hearing at a location agreed to by the parties or, failing agreement, at a location chosen by the arbitrator that is convenient to the parties. The arbitrator may administer oaths, may issue subpoenas (under the same terms that subpoenas may issue from the Tribal Court), and may petition the Tribal Court to enforce any subpoena compelling the attendance of witnesses and the production of records, subject to such protection order any party may obtain from the Tribal Court to protect against the disclosure of confidential or privileged information.
  2. The selected Arbitrator shall apply the law of the Tribe to resolve the claim, but in the absence of such law, the Arbitrator shall apply persuasive authority governing public sector labor relations.
  3. The Arbitrator shall issue a decision in writing, setting forth the rationale for the decision, which shall be mailed to the parties, return receipt requested within 30 Days



of the completion of arbitration. Except as provided by subsection 12.09.090(C), the Arbitrator's decision shall be final and binding upon the parties and subject to enforcement pursuant to Arbitration Code of the Tribe, Chapter 4.52.

4. Unless otherwise agreed to by the parties, in cases where the Employer and the Exclusive Bargaining Representative are adversaries, if the Arbitrator's decision is in favor of the employer on every issue, the Exclusive Bargaining Representative shall pay the fee of the Arbitrator (and the Arbitrator's decision shall so provide), and if the Arbitrator's decision is in favor of the Exclusive Bargaining Representative on every issue, the Employer shall pay the fee of the Arbitrator (and the Arbitrator's decision shall so provide). Otherwise, the Arbitrator shall allocate the cost of the Arbitrator's services between the parties in accordance with the issues on which they have prevailed or not prevailed, and they shall pay their respective share of the Arbitrator's fee in accordance with the Arbitrator's decision.

C. Judicial Review.

1. A party who claims that the Arbitrator's decision is in violation of, or conflicts with, the Laws of the Tribe or is procured by corruption, fraud or other undue or illegal means, may, within 10 Days of receipt of the Arbitrator's decision, bring a petition for review of the Arbitrator's decision to the Tribal Court.
2. In any such review, the Court shall be limited to review for errors of law and the issuance of an order affirming the Arbitrator's decision or correcting it for legal error as is necessary to render it in compliance with the law of the Tribe.
3. Should the Court find that a party's petition for review is frivolous or imposed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees and costs incurred by the other party as a result of the petition.
4. The decision of the Tribal Court may be appealed to the Court of Appeals in accordance with the rules of procedure for ordinary appeals.

D. Time Limits. Prohibited practice claims, other than those giving rise to an action in the Tribal Court under subsection 12.09.080(C) must be made under subsection 12.09.090(A) no later than 90 calendar days after the alleged action constituting the alleged prohibited practice or be otherwise barred. Claims for breach of collective bargaining agreements under subsections 12.09.080(A)(5) or 12.09.080(B)(6) and for breach of duty of fair representation under 12.09.080(B)(10) must be filed in the Tribal Court within 180 calendar days of the alleged breach or be otherwise barred.

E. Charges of Discrimination by Employees. An Employee who believes he or she has been subjected to unlawful discrimination in violation of section 12.09.080(A)(3) or section 12.09.080(B)(3) shall have the right to adjudicate such a claim as a prohibited practice claim before an Arbitrator in accordance with the procedures, cost allocations, and time limitations set forth in subsections 12.09.090(A)-(C), provided that for claims under section

12.09.080(A)(3), a claim shall not proceed before an Arbitrator unless the Employee has first sought to resolve the claim by bringing it before (1) the Employer's human resources department and if there is no human resources department, the Tribe's Human Resources Department, (2) the Tribe's CEO, and (3) the Tribal Council (in that order), unless the discrimination claim involves any of those three entities in which case the claim need not be brought before such entity. Upon a finding by the Arbitrator that an Employee has been subjected to such unlawful discrimination, the Arbitrator may award such remedies as will make the Employee whole; provided, however, that the Arbitrator shall have no power to reinstate an Employee who is terminated for cause or to award damages. The Arbitrator's decision may be subject to judicial review in accordance with subsection 12.09.090(C).

- F. Privileged Information. In submitting to the procedures under this section, no Employer shall be required to disclose information that it deems confidential without a protective order issued by the Tribal Court or a confidentiality agreement entered into by the parties.

### **Section 12.09.100 Procedures for Resolving Collective Bargaining Impasses.**

- A. Agreement to Resolve Negotiation Impasse. As the first step in the performance of their duty to bargain, management and the exclusive bargaining representative shall endeavor to agree upon impasse procedures. Such procedures shall define the conditions under which an impasse exists. Any such agreement with respect to the resolution of impasse issues shall not conflict with the provisions of this section. Unless mutually agreed to by the parties, the impasse procedures of this section shall not be invoked during the pendency of any charge regarding the required scope of good faith bargaining under section 12.09.070.
- B. Mediation. Following the commencement of negotiations if management and the Exclusive Bargaining Representative reach an Impasse, and they do not otherwise agree to proceed directly to arbitration, they shall jointly retain a Mediator to assist them in resolving the Impasse issues. In the absence of an agreement on the Mediator, either party may request the Election Official to appoint a Mediator, and the Election Official's appointment of such Mediator shall be binding on the parties. Any Mediator so appointed by the Election Official shall be experienced in labor mediation, and shall be drawn from lists of such mediators maintained by the American Arbitration Association. It shall be the function of the Mediator to bring the parties together to effectuate a settlement of the dispute, but the Mediator may not compel the parties to agree. Any information disclosed by either party to the Mediator in the performance of his/her duties is privileged and shall be maintained in confidence by the Mediator.
- C. Arbitration. If the parties fail to resolve their disputes within 30 Days after the completion of mediation, they may mutually agree in writing to proceed to binding arbitration. Absent agreement, either party may request that the Impasse issues proceed to resolution by binding arbitration, and such request shall be served upon the other party, in writing, return receipt requested.
  - 1. Within 10 Days of the parties' written agreement or the receipt by one party of a request for binding arbitration, the parties shall jointly select an Arbitrator, drawn



from the National Academy of Arbitrators, who shall not be the same individual who served as the Mediator (if any). If the parties are unable to agree upon an Arbitrator, they shall so inform the Election Official, who shall then choose the Arbitrator from the National Academy of Arbitrators.

2. The submission of the Impasse items to the Arbitrator shall be limited to those issues upon which the parties have not reached agreement. Within 10 Days of the appointment of the Arbitrator, Management and the Exclusive Bargaining Representative shall each submit to the Arbitrator their respective recommendations for settling the dispute on each unresolved issue, and the draft collective bargaining agreement to the extent that agreement has been reached.
3. The Arbitrator shall conduct a hearing at a location agreed to by the parties or, failing agreement, at a location chosen by the Arbitrator that is convenient to the parties. The Arbitrator may administer oaths, may issue subpoenas (under the same terms that subpoenas may issue from the Tribal Court), and may petition the Tribal Court to enforce any subpoena compelling the attendance of witnesses and the production of records, subject to such protection order any party may obtain from the Tribal Court to protect against the disclosure of confidential or privileged information. The Arbitrator shall issue a decision on each issue remaining at Impasse not later than 30 Days from the close of hearing.
4. In issuing said decision, the Arbitrator shall redact any factual material deemed confidential pursuant to an agreement of the parties or pursuant to a protective order issued on behalf of a party.
5. The parties may continue to negotiate all offers until an agreement is reached or a decision is rendered by the Arbitrator.
6. The Arbitrator shall consider, in addition to any other relevant factors, the following factors insofar as they are readily discernable and not subject to privilege from disclosure:
  - (a) Any past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
  - (b) Comparison of wages, hours and conditions of employment of the involved Employees with those of other Employees doing comparable work in facilities of comparable size geographic location, and economic volume, giving consideration to factors peculiar to the area and the classifications involved.
7. Unless the parties agree otherwise, the Arbitrator shall select the most reasonable offer of the parties' respective final offers on each remaining Impasse items and provide a written summary of the selected provisions to each party, return receipt requested.
8. Said selections of the Arbitrator shall be binding upon the parties, provided, however, that, subject to subsection 12.09.100(H), provisions related to the Employer's



obligation to pay wages, salaries, bonuses, insurance premiums, pension or retirement contributions shall not be binding upon the parties.

- D. **Privileged Information.** In submitting to the procedures for Impasse resolution under this section, no Employer shall be required to disclose information that it deems confidential without a protective order issued by the Tribal Court or a confidentiality agreement entered into by the parties.
- E. **Costs of Impasse Resolution Proceedings.** Unless otherwise agreed to in writing, the Employer and the Exclusive Bargaining Representative shall share equally all fees and costs of mediation and arbitration provided for by this section.
- F. **Status of Terms and Conditions of Employment Pending Impasse Resolution.** At all times when an Impasse remains unresolved, the status quo regarding wages and working conditions shall remain in effect even if a prior collective bargaining agreement governing the Bargaining Unit has expired. In such event, the status quo or the terms of any prior collective bargaining agreement shall continue in force and effect, until a new agreement shall be executed; provided, however, that for the purposes of this paragraph, the status quo, or continuing terms, shall not include increases to wages, increases in Employer contributions to insurance, or increases in Employer contributions to pensions.
- G. **Tribal Court Review.**
1. A party who claims that a decision of the Arbitrator is in violation of, or conflicts with, the Laws of the Tribe or is procured by corruption, fraud or other undue or illegal means, may, within 10 Days of receipt of the Arbitrator's decision, bring a petition for review to the Tribal Court.
  2. In any such review, the Tribal Court shall be limited to review for errors of law and the issuance of an order affirming the Arbitrator's decision or correcting it for legal error as is necessary to render it in compliance with the Laws of the Tribe.
  3. Should the Court find that a party's petition for review is frivolous or imposed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees and costs incurred by the other party as a result of the petition.
- H. **Limited Review by Tribal Council of Economic Terms Recommended by the Arbitrator Upon Rejection by Employer.**
1. If an Employer rejects an Arbitrator's decision regarding the Employer's obligation to pay wages, salaries, bonuses, insurance, pension or retirement contributions, it shall so inform (1) the Exclusive Bargaining Representative and (2) the Tribal Council in writing, within ten (10) Days of receipt of the Arbitrator's decision. Thereafter, the Tribal Council shall schedule a closed session meeting at which the Employer shall appear and show cause for why it has rejected the Arbitrator's decision regarding wages, salaries, bonuses, insurance, pension or retirement contributions.
  2. In advance of the Tribal Council meeting, the Employer shall submit to the Tribal Council the decision of the Arbitrator, together with a written statement setting forth

the reasons for its rejection of the decision, and it shall, at the same time, mail a copy of said written statement to the Exclusive Bargaining Representative. In advance of the Tribal Council meeting, the Exclusive Bargaining Representative shall be given the opportunity to submit a written statement setting forth the reasons why the Arbitrator's decision is appropriate and, upon submission of such a written statement to the Tribal Council, the Exclusive Bargaining Representative shall mail a copy to the Employer.

3. At the scheduled meeting of the Tribal Council, both the Employer and the Exclusive Bargaining Representative shall have the opportunity to be heard.
4. The Tribal Council shall decide only whether (1) the Employer's final offer with respect to the Impasse over wages, salaries, bonuses, insurance, pension or retirement shall become part of the parties' collective bargaining agreement or (2) the Arbitrator's decision on any such Impasse issue shall become part of the parties' collective bargaining agreement.

#### **Section 12.09.110 Tribal Court Enforcement Authority.**

- A. **Strikes and Picketing: Civil Actions, Penalties, Decertification and Exclusion.** Any Employee, Labor Organization, or agent of any Labor Organization who violates, or seeks to violate, the prohibition against Strikes or picketing under this Chapter shall be subject to an action by the affected Employer for declaratory and injunctive relief before the Tribal Court. Any Labor Organization found by the Tribal Court to be in violation of the prohibition against Strikes or picketing shall be deemed decertified from representing any Employees and shall further be deemed not legally entitled to be present within t and subject to exclusion on a temporary or permanent basis under such terms as the Tribal Court may impose. Upon issuing any order finding such violation, the Tribal Court may award attorney fees and costs to the Employer, and the Employer shall have the right to suspend or terminate the employment of Employees found by the Tribal Court to have been instrumental in the violation.
- B. **Lock Outs: Civil Actions.** An Employee or Labor Organization shall have the right to seek declaratory and injunctive relief before the Tribal Court against Employers to enforce the prohibition against Lock Outs set forth in subsection 12.09.080(A)(1). Upon a finding by the Tribal Court that an Employer has violated subsection 12.08.080(A)(1), the Tribal Court may award such Employee or Labor Organization attorney fees and costs.
- C. **Unlawful Attempt to Influence Tribal Elections.** A Labor Organization that attempts to influence the outcome of tribal elections in violation of subsection 12.09.080(B)(7) shall be subject to an action before the Tribal Court by the Tribe, through legal counsel, for declaratory and injunctive relief. Any Labor Organization found by the Tribal Court to have violated subsection 12.09.090(B)(7) shall be deemed decertified from representing any Employees and shall further be deemed not legally entitled to be present within territorial jurisdiction of the Tribe and subject to exclusion on a temporary or permanent basis under such terms as the Tribal Court may impose.



- D. Licenses: Civil Actions, Penalties, Exclusions. Any Labor Organization or bargaining agent that (1) engages in activities that require a license under this Chapter without such a license, (2) violates the terms of a license issued in accordance with this Chapter, or (3) violates section 12.09.030(G) shall be subject to an action before the Tribal Court by the Tribe or its Union Licensing Authority, through legal counsel, for declaratory and injunctive relief. Any Labor Organization or bargaining agent found by the Tribal Court to have violated the licensing requirements of this Chapter or the terms of a license may be subject to a civil penalty, not to exceed \$5,000. Any Labor Organization or bargaining agent found by the Tribal Court to be in violation the licensing requirements of this Chapter or the terms of a license issued under this Chapter may be deemed not legally entitled to be present within territorial jurisdiction of the Tribe and subject to exclusion on a temporary or permanent basis under such terms as the Tribal Court may impose. Insofar as such Labor Organization has been certified as an Exclusive Bargaining Representative of an Employee Bargaining Unit, it may be deemed decertified as a result of such violation upon a finding by the Tribal Court that its actions constitute an egregious violation of the laws, policies, customs or values of the Tribe.
- E. Breach of Collective Bargaining Agreements. Claims for breach of a collective bargaining agreement entered into by an Employer and an Exclusive Bargaining Representative under this Chapter may be brought before the Tribal Court.
- F. Breach of Duty of Fair Representation. Claims for breach of the duty of fair representation provided by subsection 12.09.080(B)(10) may be brought before the Tribal Court.

**Section 12.09.120 Limited Waiver of Sovereign Immunity.**

For the purposes of this Chapter, the Tribe hereby waives the sovereign immunity of Employers solely for actions and remedies under sections 12.09.040(C)(7); 12.09.090; 12.09.100; 12.09.110(B); and 12.09.110(E) and for enforcement only in the Squaxin Island Tribal Court.

**Section 12.09.130 Interpretative Guidance.**

The provisions of this Chapter shall be construed consistently with the laws, policies, and customs, of the Tribe and, if not in conflict with the laws, policies, and customs of the Tribe, prevailing public sector labor relations laws of states. Section 12.01.050 (“Persuasive Authority”) shall apply to the interpretation of the provisions of this Chapter only if the issues addressed by Tribal Courts and federal courts involve laws governing labor organizations and collective bargaining in the public sector.

## **CHAPTER 12.10**

### **SEVERABILITY**

If any provision of this Code is invalidated, all valid provisions that are severable from the invalid provision shall remain in effect. If a provision of this Code is invalid in one or more of its applications, that provision remains in effect in all valid applications that are severable from the invalid applications.