

TITLE 9. EMPLOYMENT AND LABOR

ARTICLE I

EMPLOYMENT RIGHTS

CHAPTER 1. GENERAL PROVISIONS 9-1-1
 Sec. 9-1101. Definitions. 9-1-1
 Sec. 9-1102. Sovereign Immunity. 9-1-2
 Sec. 5-1103. Severability. 9-1-2

CHAPTER 2. EMPLOYMENT PROTECTION 9-1-2
 Sec. 9-1201. Definitions. 9-1-2
 Sec. 9-1202. Applicability. 9-1-2
 Sec. 9-1203. Consent to Application. 9-1-3
 Sec. 9-1204. Employment Preference. 9-1-3
 Sec. 9-1205. Employment Relationship. 9-1-3
 Sec. 9-1206. Unlawful Employment Practices. 9-1-4
 Sec. 9-1207. Wrongful Termination. 9-1-4
 Sec. 9-1208. Constructive Termination. 9-1-5
 Sec. 9-1209. Jurisdiction of Tribal Court. 9-1-5
 Sec. 9-1210. Rules of the Tribal Court. 9-1-5

CHAPTER 3. REINSTATEMENT OF TRIBAL EMPLOYEES 9-1-5
 Sec. 9-1301. Definitions. 9-1-5
 Sec. 9-1302. Employment At-Will. 9-1-6
 Sec. 9-1303. Claim for Reinstatement. 9-1-6
 Sec. 9-1304. Constructive Termination. 9-1-7
 Sec. 9-1305. Jurisdiction of Tribal Court. 9-1-7
 Sec. 9-1306. Action for Reinstatement. 9-1-7
 Sec. 9-1307. Review of Claims. 9-1-8
 Sec. 9-1308. Exhaustion of Administrative Remedies. 9-1-8
 Sec. 9-1309. Decision of Tribal Court. 9-1-8
 Sec. 9-1310. Rules of the Tribal Court. 9-1-8

CHAPTER 4. FORFEITURE OF TRIBAL OFFICE 9-1-9
 Sec. 9-1401. Action to Compel Forfeiture of Office. 9-1-9
 Sec. 9-1402. Jurisdiction of Tribal Court. 9-1-9
 Sec. 9-1403. Limitation of Action. 9-1-9
 Sec. 9-1404. Procedure in Tribal Court. 9-1-9
 Sec. 9-1405. Decision of Tribal Court. 9-1-10
 Sec. 9-1406. Effect of Order. 9-1-10
 Sec. 9-1407. Rules of the Tribal Court. 9-1-10

ARTICLE II
WORKER BENEFITS

[RESERVED] 9-2-1

TITLE 9. EMPLOYMENT AND LABOR

ARTICLE I

EMPLOYMENT RIGHTS

[NOTE: Except as otherwise noted, the provisions of Article I, Title 9 were enacted on _____ by Ord. No. 2002-__, § __, adopted by Res. No. __-2002.]

CHAPTER 1. GENERAL PROVISIONS

Sec. 9-1101. Definitions.

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

- (a) “Officer of the Tribe” means:
 - (1) The Chairman, Vice-Chairman, Secretary, and Treasurer of the Tribal Council;
 - (2) Any other member of the Tribal Council;
 - (3) Any person elected or appointed to office for the Tribe or any of its commissions, boards, departments, agencies, or economic enterprises;
 - (4) Any law enforcement officer or peace officer of the Tribe;
 - (5) Any other commissioner, boardmember, director, agent, official, officer, or employee of the Tribe or any of its commissions, boards, departments, agencies, or economic enterprises;
 - (6) Any other agent, officer, official, or employee of the Tribe, whether elected, appointed or otherwise employed; and
 - (7) Any person participating as advisor, consultant or otherwise in performing a governmental function, except jurors or witnesses.
- (b) “Termination of employment” means discharge from employment, suspension from employment without pay, or other temporary or permanent separation of the employment relationship without the receipt of regular pay at the action of the employer.
- (c) “Tribal Court” means the Sac & Fox Tribe of the Mississippi in Iowa Tribal Court.
- (d) “Tribe” means the Sac & Fox Tribe of the Mississippi in Iowa and its commissions, boards, departments, agencies, and economic enterprises.

Sec. 9-1102. Sovereign Immunity.

Except for orders of reinstatement permitted under Chapter 3 of this Article, nothing in this Article shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, officials or employees.

Sec. 5-1103. Severability.

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

CHAPTER 2. EMPLOYMENT PROTECTION**Sec. 9-1201. Definitions.**

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

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

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

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

Sec. 9-1202. Applicability.

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

(1) All employment which occurs wholly or partly on the Settlement;

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

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

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

Sec. 9-1203. Consent to Application.

(a) Any employer who employs employees on the Settlement or to perform employment services on the Settlement shall be deemed to have consented to the applicability of this Chapter to such employer and all of such employer's employees performing employment services wholly or partly on the Settlement and the privilege of employing employees to perform employment services wholly or partly on the Settlement shall be deemed conditioned upon the consent to the applicability of and continued compliance with the provisions of this Chapter.

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

Sec. 9-1204. Employment Preference.

(a) All employers shall give preference in employment to Indians who can perform the work required regardless of age, sex, religion, or tribal affiliation for training and employment opportunities.

(b) All employers shall, to the extent feasible, give training and employment preferences and opportunities to Indians regardless of age, sex, religion, or tribal affiliation who are not fully qualified to perform the work required.

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

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

Sec. 9-1205. Employment Relationship.

The public policy of the Tribe is that the employment relationship is contractual in nature, but the employment relationship is severable at the pleasure of either the employee or the employer unless both the employee and the employer have signed a written contract to the contrary setting forth that the employment relationship shall remain in effect for a specified duration of time or otherwise expressly restricting the right of either party to terminate the employment relationship. Both the employee and the employer must sign this written contract, or this written contract must be set forth in the employment handbook or manual or any similar document distributed to the employee, if that document expresses the intent that it is a contract of employment, or this written contract must be set forth in a writing signed by the party to be bound to the restrictions upon termination.

Sec. 9-1206. Unlawful Employment Practices.

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

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

Sec. 9-1207. Wrongful Termination.

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

(a) The employer has terminated the employment relationship of an employee in breach of an employment contract, as set forth in Section 9-1205 of this Chapter in which case the remedies for the breach are limited to the remedies for a breach of contract;

(b) The employer has terminated the employment relationship of an employee in violation of the laws of the Tribe. If a specific law of the Tribe provides a remedy to an employee for a violation of the law, the remedies provided in the law are the exclusive remedies for such violation. If the statute does not provide a remedy to an employee for the violation of the statute, the employee shall have the right to bring a claim for wrongful termination in violation of this Chapter.

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

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

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

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

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

(3) The exercise of rights under the laws of the Tribe governing workers' compensation;

(4) Service on a jury;

(5) The exercise of voting rights;

- (6) Service in the national guard or armed forces of the United States;
- (7) The exercise of the right to be free from the extortion of fees or gratuities as a condition of employment as prohibited by Section 9-1206 of this Chapter; or
- (8) The exercise of the right to be free from coercion to purchase goods or supplies from any particular person as a condition of employment as prohibited by Section 9-1206 of this Chapter.

Sec. 9-1208. Constructive Termination.

In any action under the laws of the Tribe, including this Chapter, a person may only establish that he has been terminated constructively by:

- (a) Evidence of objectively difficult or unpleasant working conditions to the extent that a reasonable employee would feel compelled to resign;
- (b) Showing that the employer was given at least thirty days notice by the employee that the employee intends to resign because of working conditions; and
- (c) The employer failed to respond in any manner to the employee's concerns.

Sec. 9-1209. Jurisdiction of Tribal Court.

- (a) The Trial Court of the Tribal Court shall have subject matter jurisdiction over any claim of wrongful termination or other claim of a violation of this Chapter.
- (b) The Tribal Court shall hear a claim of wrongful termination or other claim of a violation of this Chapter as it hears other matters generally. Except where provided otherwise in this Chapter, the laws of the Tribe governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any claim of wrongful termination or other claim of a violation of this Chapter.

Sec. 9-1210. Rules of the Tribal Court.

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

CHAPTER 3. REINSTATEMENT OF TRIBAL EMPLOYEES

Sec. 9-1301. Definitions.

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

Sec. 9-1302. Employment At-Will.

The employment relationship of every employee of the Tribe is severable at the pleasure of either the employee or the Tribe unless the laws of the Tribe expressly provide that the employment shall remain in effect for a specified duration of time or otherwise expressly restrict the right of either party to terminate the employment relationship.

Sec. 9-1303. Claim for Reinstatement.

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

(a) The Tribe has terminated the employment relationship of an employee in violation of the laws of the Tribe. If the law of the Tribe at issue provides a remedy to an employee for a violation of the law, the remedies provided to an employee for a violation of the law are the exclusive remedies for the violation of the law or the public policy set forth in or arising out of the law. All definitions and restrictions contained in the law also apply to any civil action based on a violation of the public policy arising out of the law. If the law does not provide a remedy to an employee for the violation of the law, the employee shall have the right to bring a claim for wrongful termination in violation of the public policy set forth in the law.

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

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

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

(i) The Tribe;

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

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

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

(4) Service on a jury;

(5) The exercise of voting rights;

(6) Service in the national guard or armed forces; or

(c) The Tribe has terminated the employment relationship of an employee who is an officer of the Tribe in violation of a law of the Tribe which expressly restricts the power of the Tribe to remove the officer from office, limits the circumstances under which the officer can be removed from office, or otherwise restricts the right of the Tribe to terminate the employment relationship.

Sec. 9-1304. Constructive Termination.

In any action for reinstatement under this Chapter, an employee of the Tribe may only establish that he has been terminated constructively by:

(a) Evidence of objectively difficult or unpleasant working conditions to the extent that a reasonable employee of the Tribe would feel compelled to resign;

(b) Showing that the Tribe was given at least thirty days notice by the employee that the employee intends to resign because of working conditions; and

(c) The Tribe failed to respond in any manner to the employee's concerns.

Sec. 9-1305. Jurisdiction of Tribal Court.

The Trial Court of the Sac & Fox Tribe of the Mississippi in Iowa Tribal Court shall have subject matter jurisdiction over any action for reinstatement brought in accordance with this Chapter.

Sec. 9-1306. Action for Reinstatement.

(a) When an employee has a claim for reinstatement under this Chapter, the employee shall file his claim with the Trial Court within one hundred eighty days after the claim arises *provided* that such one-hundred eighty days shall not begin to run prior to such employee exhausting any and all administrative remedies governing employment grievances in any employment handbook or manual or other similar policy governing employment grievances or disputes.

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

(c) For purposes of this Section, a claim for reinstatement arises on the date when the employee knows or reasonably should know he has been terminated and knows or reasonably should know the cause, source, act, event, instrumentality, or condition which led to such termination.

(d) The Tribal Court shall hear a claim for reinstatement as it hears other matters generally. Except where provided otherwise in this Chapter, the laws of the Tribe governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any claim for reinstatement under this Chapter.

Sec. 9-1307. Review of Claims.

(a) Except as otherwise provided herein, if an employee desires to bring a claim for reinstatement, the employee may initiate a proceeding before the Tribal Court in the same manner as other proceedings are initiated before the Trial Court.

(b) In addition to any other requirements of law or rule of the Tribal Court, a filing of a claim for reinstatement before the Tribal Court shall:

- (1) State that it is a claim for reinstatement;
- (2) Name the Tribe as the party against whom relief is sought;
- (3) Request only relief permitted in this Chapter; and
- (4) Request no monetary compensation or relief.

(c) The Tribal Court shall review claims for reinstatement which are subject to prior administrative hearings or appeal, including claims by an officer of the Tribe based on a violation of a law of the Tribe which expressly restricts the power of the Tribe to remove the officer from office, limits the circumstances under which the officer can be removed from office, or otherwise terminate the employment relationship, in accordance with the standards of Article IV of Title 2 of the Code.

Sec. 9-1308. Exhaustion of Administrative Remedies.

No employee may bring and the Tribal Court shall not hear any claim for reinstatement unless and until the employee has exhausted any and all administrative remedies governing employment grievances in any employment handbook or manual or other similar policy governing employment grievances or disputes and utilized or attempted to utilize each step available to the employee in such employment grievance policy or procedure.

Sec. 9-1309. Decision of Tribal Court.

After hearing a claim for reinstatement, the Tribal Court may determine all issues properly before it, including whether the employee was terminated in violation of this Chapter, and enter judgment as it enters judgement in other proceedings, subject to the following:

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

(b) The Tribal Court shall not have jurisdiction to award damages or monetary compensation in any form, including costs, against the Tribe.

Sec. 9-1310. Rules of the Tribal Court.

The Tribal Court may promulgate rules to implement this Chapter as it promulgates other rules in accordance with the laws of the Tribe.

CHAPTER 4. FORFEITURE OF TRIBAL OFFICE**Sec. 9-1401. Action to Compel Forfeiture of Office.**

(a) The Tribal Council may bring an action, or authorize the bringing of an action, in the name of the Tribe against an officer of the Tribe to compel such officer of the Tribe to forfeit his office if such officer of the Tribe has committed an act or omission which would constitute an offense requiring such officer of the Tribe to forfeit his office under Section 13-5508 of the Code or otherwise under the laws of the Tribe even if such officer of the Tribe has not been convicted of any such offense.

(b) The Tribal Council may bring an action, or authorize the bringing of an action, in the name of the Tribe to enforce any decision or determination by the Tribal Council that an officer be removed from office on the grounds that such officer committed an act or omission which constitutes of an offense requiring such officer of the Tribe to forfeit his office under Section 13-5508 of the Code or otherwise under the laws of the Tribe even if such officer of the Tribe has not been convicted of any such offense.

Sec. 9-1402. Jurisdiction of Tribal Court.

The Trial Court of the Sac & Fox Tribe of the Mississippi in Iowa Tribal Court shall have subject matter jurisdiction over any action compel forfeiture of office brought in accordance with this Chapter.

Sec. 9-1403. Limitation of Action.

(c) An action to compel forfeiture of office under this Chapter shall be brought within two years after the cause of action accrues and not afterward.

(d) For purposes of this section, a cause of action to compel forfeiture of office arises on the date when:

(1) The officer of the Tribe has pled guilty, no contest, nolo contendere, or forfeited bond upon a charge of, or been convicted of an offense requiring forfeiture of office under Section 13-5508 of the Code with no appeal pending and has not voluntarily forfeited his office;

(2) If the officer of the Tribe has not been charged with an offense requiring forfeiture of office under Section 13-5508 of the Code, the officer of the Tribe has committed the act or omission which gives rise to the requirement of forfeiture of office and has not voluntarily forfeited his office upon request or demand from the Tribal Council; or

(3) If the Tribal Council has removed the officer on the grounds such officer committed an act or omission which constitutes an offense requiring such officer of the Tribe to forfeit his office under Section 13-5508 of the Code or otherwise under the laws of the Tribe, the date of such removal.

Sec. 9-1404. Procedure in Tribal Court.

(a) In addition to any other requirements of law or rule of the Tribal Court, a filing of a claim to compel forfeiture of office before the Tribal Court shall:

(1) State that it is a claim to compel forfeiture of office;

- (2) Name the officer of the Tribe as the party against whom relief is sought;
- (3) Request only relief permitted in this Chapter.

(b) The Tribal Court shall hear a claim to compel forfeiture of office as it hears other matters generally. Except where provided otherwise in this Chapter, the laws of the Tribe governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any claim for reinstatement under this Chapter, except that where the action seeks to enforce a decision of the Tribal Council to remove an officer from office on the grounds that such officer committed an act or omission which constitutes an offense requiring such officer of the Tribe to forfeit his office under Section 13-5508 of the Code or otherwise under the laws of the Tribe, the Tribal Court shall review the decision of the Tribal Council pursuant to the standards applicable to review of agency decisions under Article 2 of Title IV of the Code.

Sec. 9-1405. Decision of Tribal Court.

(a) After hearing a claim to compel forfeiture of office, the Tribal Court may determine all issues properly before it, including whether the officer of the Tribe has committed an act requiring forfeiture of office under the laws of the Tribe, and enter judgment as it enters judgement in other proceedings except that, where the action seeks to enforce a decision of the Tribal Council to remove an officer from office on the grounds that such officer committed an act or omission which constitutes an offense requiring such officer of the Tribe to forfeit his office under Section 13-5508 of the Code or otherwise under the laws of the Tribe, the Tribal Court shall issue a judgment enforcing such decision or refusing to enforce such decision.

(b) An order of the Tribal Court issued pursuant to this Chapter may be enforced as other orders and judgments of the Tribal Court, including contempt.

Sec. 9-1406. Effect of Order.

Upon entry of a final order of the Tribal Court directing an officer of the Tribe to forfeit his office under this Chapter, the officer of the Tribe shall be deemed removed from office and shall have no authority as an officer of the Tribe and any decision, order, or other action of the officer of the Tribe made after the entry of such final order shall be null and void and of no effect.

Sec. 9-1407. Rules of the Tribal Court.

The Tribal Court may promulgate rules to implement this Chapter as it promulgates other rules in accordance with the laws of the Tribe.

TITLE 9. EMPLOYMENT AND LABOR

ARTICLE II

WORKER BENEFITS

[RESERVED]