HO-CHUNK NATION CODE (HCC)
TITLE 6 – PERSONNEL, EMPLOYMENT AND LABOR CODE
SECTION 5 – EMPLOYMENT RELATIONS ACT OF 2004

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This Act supersedes the Ho-Chunk Nation's Personnel Policies and Procedures Manual initially adopted on December 21, 1994 and last amended by Legislative Resolution 09/08/20I.

Chapter VII (Drug, Alcohol and Controlled Substance Policy) enacted by Legislative Resolution 10/16/01D and Amended and Restated by Legislative Resolution 06/21/16EE.

Chapter VIII (Worker's Compensation Plan) supersedes the Ho-Chunk Nation Worker's Compensation Plan dated October, 1998 and last Amended and Restated by Legislative Resolution 06/21/16EE.

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CHAPTER I
GENERAL PROVISIONS

1. **Authority**.

a. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(f) of the Constitution grants the Legislature the power to set salaries, terms and conditions of employment for all governmental personnel.

c. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct and imposing penalties upon all persons within the jurisdiction of the Nation.

d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

2. **Purpose**. This Act establishes uniform employment practices throughout the Ho-Chunk Nation in the utilization of human resources in the achievement of the desired goals and objectives of the Nation.

3. **Declaration of Policy**.

a. This Employment Relations Act is the official employment law of the Ho-Chunk Nation. It supersedes the Nation's Personnel Policies and Procedures Manual and all policies, rules, and regulations enacted by Legislative resolutions pertaining to the employment law of the Nation.

b. This Act is applicable to all employees of the Ho-Chunk Nation.

c. The provisions of this law are severable. If any provisions of this law are declared invalid or unconstitutional, that declaration shall not affect the provisions which remain, which shall remain in full force and effect.

4. **Responsibilities**.

a. Department of Personnel. The *Department of Personnel Establishment and Organization Act* (1 HCC § 10) delegates to the Executive Director of the Department of Personnel the functions and authority to implement, manage, enforce, and promulgate i.e. create, establish, publish, make known and carry out the policies within this Act.

b. Departments and Units.

(1) Each department, division, or unit of the Nation, with the prior approval and consultation of the Executive Director of the Department of Personnel, may develop, implement, and revise as necessary internal procedures, operating rules and policies pertaining to the unique operational requirements of the work unit for efficient and effective performance. Advance notice of internal unit procedures and rules shall be provided to employees and must be posted in public places to serve as notice to all employees.

(2) Internal unit procedures, rules and policies shall not conflict with this Act. Where conflicts may arise between internal rules and procedures, this Act will govern.

5. **Employment Clause**.

a. Equal Employment Opportunity. With the exception of Ho-Chunk and Native American Preference in Employment as set forth in paragraph (b), below, it will be a violation of this Act to discriminate based on an individual's sex, race, religion, national origin, pregnancy, age, marital status, sexual orientation, or disability.

b. Ho-Chunk Preference in Employment Clause. The Nation exercises Native American Preference in employment and shall exercise Ho-Chunk Preference in employment under limited circumstances, which furthers a legitimate governmental purpose, including the goal of employing Ho-Chunk members at a rate to meet or exceed a majority (50% plus 1) total employees.

(1) The Nation will exercise Ho-Chunk and Native American Preference in Employment, prioritized as follows:

(a) Enrolled Hocak Wazijaci member.

(b) Spouse or Parent of a dependent Hocak Wazijaci member.

(c) Enrolled Native American of a federally recognized tribe.

When the Ho-Chunk Nation is the Employer providing funding, it shall give preference in Equal Opportunities first to Ho-Chunk Members, then to Spouses or Parents of Ho-Chunk Members, and then to other Native Americans; provided, that the Tribal Member, Spouse or Parent of a Tribal Member, or Native American, as the case may be, meets the minimum necessary qualifications. If no candidate for an Employment Opportunity meets the Minimum Necessary Qualifications, then preference shall be given first to Ho-Chunk Members, then to Spouses or Parents of Ho-Chunk Members, and then

to other Native Americans, who are capable of being trained to the Minimum Necessary Qualifications of the position. Thereafter, the Employment Opportunity shall be open to any other candidate who meets the Minimum Necessary Qualifications of the position.

(2) Ho-Chunk Preference shall be used to recruit, interview, hire, train, recall, reassign, transfer, and lay off employees of the Nation. For hiring purposes, Ho-Chunk Preference shall be used for NPD funded positions and Native American Preference shall be used for all federally funded positions. This employment preference policy shall be construed to mean that an individual Ho-Chunk member who satisfies the minimum employment qualifications for a particular position will be afforded preference over all other individuals and that in situations where two (2) or more Ho-Chunk members are being considered for employment, that there is a distinction between qualification and preference. Thus, this policy's application is the determining factor when two (2) or more individuals have suitable job qualifications – the individual having preference standing shall be afforded the employment opportunity. However, in the event of a State of Emergency Declaration, there shall be an exception for the Ho-Chunk Nation Health Department or the Ho-Chunk Nation Department of Labor or override all recall provisions in this section and utilize such recalled employees to meet the needs of the Nation temporarily. The Department of Personnel is responsible for monitoring the Preference Policy. Disciplinary action will occur for supervisors who do not adhere to this policy. In the hiring process, the Personnel Department shall post all new, open job positions first within the Nation for enrolled Ho-Chunk members only, for a period of ten (10) business days; then the Personnel Department may post job announcements to the public.

(3) The Department of Personnel shall research and prepare a written response to all written inquiries of possible misapplication of the Ho-Chunk Preference Policy and Native American Preference. Potential job candidates shall submit a written inquiry to the Department of Personnel, regardless of whether such individual is an employee at the time of the application process. Such inquiry shall be made within fifteen (15) calendar days of the notice that the interview has been denied or that the candidate was not selected for the position. Should the Department of Personnel find a violation of preference policy, the Executive Director of Personnel may require additional interviews of all eligible candidates or may override the selected candidate.

(4) The Personnel Department shall provide training and orientation in the application of the Ho-Chunk Preference Policy to all employees who serve in a management or supervisory position. Before any interview is conducted for any job within the Nation, members of the interview panel will be provided similar training in the Ho-Chunk Preference Policy by the Personnel Department.

c. Veterans Preference. Veterans are given priority-hiring status over equally qualified individuals for NPD funded positions. To be eligible for preference, the veteran must not have a dishonorable discharge. Applicants claiming preference should supply a copy of the DD Form 214, (Certificate of Release or Discharge from Active Duty).

d. Hiring Policy. Applicants claiming preference shall supply the appropriate documentation with their application and up to the point of interview [i.e., tribal enrollment

verification, copy of the DD Form 214 (Certificate of Release or Discharge from Active Duty)].

e. Background Checks for Staff Employees. Staff Employees hired by the President of the nation, a Legislator, or a Judge of the Nation's Judicial Branch are privy, and have access, to information and resources which are entrusted to the care of those individuals who have gained the utmost respect and confidence of the membership of the Ho-Chunk Nation, by having been elected to perform the functions and duties of their respective offices, and are entrusted not to misuse such information. Any Staff Employee performing services for an elected official, who may have access to proprietary information of the Nation and the resources entrusted to such office, may be a threat to the well-being of the Nation if they have been involved in felonious conduct, or have a criminal background involving such conduct. Therefore, the Nation establishes a policy to require background checks of such employees as a condition of their employment, intended as an official protection of the Nation, to protect the Nation's assets and resources, and establish a minimum standard to deter unpardoned felons from performing services for the Nation.

Specifically, the President, a Legislator, or Judge of the Nation shall not hire an individual as a Staff Employee until the individual has first provided the necessary information and releases to complete a criminal background check, the results of which must be acceptable pursuant to the Staff Employee job description in order to maintain employment.

6. **Employee Rights**.

a. Access to Employee Information. All employees may review or request a copy of his/her personnel file by submitting a written request to the Department of Personnel.

b. Disclosure of Employee Records.

(1) The Nation shall not disclose, in replying to external inquiries, any personnel or related records or information on an applicant, employee, or former employee, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the records would be, subject to the *Ho-Chunk Nation Discovery Act.*

(2) Potential hiring supervisors and current supervisors may view employee files.

(3) Limitation on Access. Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of an administrative or judicial action or proceeding.

c. Safe Work Place. The Nation shall endeavor to provide all employees a safe and clean working environment. The Nation's *Occupational Safety and Health Program Act* (6 HCC § 8) shall apply.

d. Harassment.

(1) Harassment (both overt and subtle) is a form of employee misconduct that both demeans another person and undermines the integrity of the employment relationship by

creating an unreasonably intimidating, hostile, and objectively offensive working environment.

(2) No employee shall be subject to retaliation or retribution for reporting harassment. Retaliation or retribution is strictly prohibited.

e. Sexual Harassment.

(1) Purpose. The Ho-Chunk Nation has a policy of Zero Tolerance for sexual harassment. The purpose of the Ho-Chunk Nation sexual harassment policy is to:

(a) Prohibit sexual harassment in the workplace.

(b) Encourage employees who are victims or witnesses of sexual harassment to report such instances.

(c) Establish an administrative procedure for the reporting of instances of sexual harassment.

(2) Policy. Sexual harassment by or of supervisors, employees, or non-employees is strictly prohibited and will be investigated for possible violation of this policy and disciplinary action.

(a) No employee shall be subjected to unsolicited and/or unwelcome sexual overtures or conduct, either verbal or physical.

(b) Sexual harassment will be treated as misconduct with appropriate disciplinary sanctions, up to and including termination.

(c) No employee shall be subject to retaliation or retribution for reporting sexual harassment. Retaliation or retribution is strictly prohibited.

(d) The Department of Personnel, shall promulgate guidelines and procedures for reporting complaints.

(e) An employee who believes that he or she has been subjected to unwelcome sexual conduct or that there exists an objectively hostile work environment has a duty to report the situation. Such report shall be made directly to the Executive Director of Personnel or his/her designee and may be referred to the Attorney General.

(f) All reports, including both verbal and written, of sexual and other unlawful harassment will be promptly, actively, and confidentially submitted to the Department of Personnel, and referred to the Department of Justice.

(g) Supervisory personnel who receive any report of sexual harassment will be classified as mandatory reporters and shall be required to provide a written report

to the Executive Director of Personnel.

(3) Prohibited Conduct.

(a) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes prohibited sexual harassment when at least one of the following criteria is met.

1 Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.

2 Submission to or rejection of such conduct by an individual is used as the basis for an employment decision.

3 Such conduct has the purpose or effect of reasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

(b) Examples of prohibited conduct include, but are not limited to:

1 Unwelcome sexually suggestive comments or sounds.

2 Unwelcome sexual flirtation.

3 Unwelcome touching.

4 Unwelcome advances or propositions.

5 Unwelcome jokes of a sexual nature.

6 Unwelcome slurs and other verbal, graphic, or physical conduct relating to an individual's gender.

7 Any display of sexually explicit pictures, greeting cards, articles, books, magazines, photos, or cartoons.

(c) The authoring, forwarding, viewing, or sending of graphic nudity, obscene, or pornographic material and the use of obscenity or profanity is strictly prohibited by the Nation's *Computer Usage Act* (6 HCC § 4).

(4) Penalties.

(a) Where an investigation substantiates that an employee has committed an act of sexual harassment, that employee shall be subject to disciplinary action which may include, but is not limited to: warnings, reprimands, suspensions, being placed on a one-year probationary period, or termination, as a violation of the

Employee Relations Act (6 HCC § 5)

(b) Offending employees, including supervisors and non-supervisors, can be held liable for monetary damages (and may be required to pay for their own attorney) if an offended employee files a lawsuit.

(c) Allegations of sexual harassment must be made in good faith and not out of malice. Knowingly making a false or frivolous allegation of sexual harassment, whether in a formal or informal context, will be treated as a serious offense under this Act and shall be subject to disciplinary action which may include, but is not limited to: warnings, reprimands, suspensions, or termination, as a violation of *6 HCC § 5*.

(d) Directors/managers/supervisors are in key position to make an impact in terms of correcting inappropriate behavior in the work place and ensuring that a discrimination, hostile-free work place is maintained. Therefore, the law has placed a greater responsibility on key positions to act when they observe, or learn of a potential sexual harassment situation. When directors/managers/supervisors fail to promptly respond to, or report a sexual harassment matter, or fail to discipline an employee for sexual harassment, they shall be subject to disciplinary action which may include, but is not limited to: warnings, reprimands, suspensions, or termination, as a violation of *6 HCC § 5.*

(e) This Act strictly prohibits retaliation against anyone for engaging in the following actions: reporting discriminatory activity, registering a sexual harassment complaint, assisting in making or registering a discriminatory complaint, or cooperating in an investigation. Any employee who makes a complaint regarding behavior which: (1) the employee reasonably believes in good faith constitutes sexual harassment; (2) assists, testifies, or participates in any sexual harassment investigation or proceeding; or (3) who reasonably opposes such conduct in the work place, **will not be adversely affected in the terms and conditions of his/her employment, and will not be discriminated against or discharged for engaging in such activity.** Complaints of retaliation will be promptly investigated. **If retaliation is substantiated, appropriate disciplinary action will be taken, including placing the retaliatory employee(s) on a one- year probation.**

(f) While counseling is not considered a sanction, it may be offered or required in combination with sanctions. Where alcohol is involved in the sexual harassment, AODA counseling may be required.

f. Right to Work Provision

(1) No person shall be required, as a condition of employment or continuation of employment on tribal lands, 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; or

(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.

(2) Strike or picketing for illegal purpose. Any strike or picketing to force or induce an employer to make an agreement orally or in writing in violation of this part f. is illegal.

(3) Prohibition of threatened or actual interference with a person, his or her family or property to compel him to join labor organization, strike or leave employment. It is illegal for an employee, labor organization, or officer, agent or member thereof, by any threatened or actual interference with the person, his immediate family or his property, to compel or attempt

to compel such person to join a labor organization, to strike against his will or to leave his employment.

(4) Prohibition of Conspiracy to induce persons to refuse to work with persons not members of labor organization.

A combination or conspiracy by two or more persons to cause the discharge of any person or to cause him/her to be denied employment because he/she is not a member of a labor organization by inducing or attempting to induce any other person to refuse to work with such person, is illegal.

(5) Enforcement.

Any agreement by any employer which violates any act prohibited by the laws of the Nation shall be deemed to be null and void and of no force or effect. Any labor organization which seeks to include provisions contrary to the Nation's law in a labor agreement, and any employer who agrees to such provision, shall be subject to a civil penalty not to exceed $1,000.00 for each violation, in addition to any other damages, which may be awarded by the Nation's Tribal Court. The Nation and any employee shall have standing to bring an action in the Nation's Tribal Court to enforce the provisions of this part f., but nothing herein shall be construed as a waiver of the sovereign immunity of the Nation or its entities.

(6) Notwithstanding any other provision of law to the contrary, any person injured or threatened with injury by an act declared illegal by this part f. shall be entitled to injunctive, declaratory and monetary relief from the Nation's Tribal Court, including the Nation itself, provided that the Nation, its entities or officials and employees retain sovereign immunity from suit.

(7) Registration of Labor Organizations.

(a) Every labor organization operating within the jurisdiction of the Ho-Chunk Nation shall file a report with the Office of Attorney General for the Nation, on or before sixty (60) days after enactment of this part f. and thereafter on or before December 31 of each year. The report, which shall be filed by the president of the labor organization, shall contain the following information:

1 The name and address of the labor organization;

2 The names and addresses of the president, secretary, treasurer, and business agent of the labor organization;

3 The name and address of the national and/or international organization, if any, with which the labor organization is affiliated;

4 A copy of the collective bargaining agreement(s) between the labor organization and any employer within the jurisdiction of the Ho-Chunk Nation;

5 A copy of the current Constitution and By-Laws of the labor organization, as well as any amendments, i.e., the basic written rules governing the organization;

6 Detailed information regarding qualifications for, or restrictions on: membership; levying of assessments; participation in insurance or other benefit plans; authorization for disbursement of labor organization funds; audit of labor organization financial transactions; the calling of regular and special meetings; the selection of officers and stewards and any representatives to other bodies composed of labor organizations' representatives; a specific statement of the manner in which each current officer was elected, appointed, or otherwise selected; discipline or removal of officers or agents for breaches of their trust and a specific statement regarding any past disciplinary action of removal of officers or agents for breach of their trust; impositions of fines, suspensions and expulsions of members including the grounds for such action and any provisions made for notice, hearing, judgment on the evidence, and appeal procedures, along with a detailed statement regarding any imposition of fines, suspensions and expulsions of members including the grounds for such action and any provisions made for notice, hearing, judgment on the evidence, and appeal procedures, along with a detailed statement regarding any imposition of fines, suspensions and expulsions of members in the past calendar year; and

7 A copy of the Labor Organization's Annual Report, as reported to the U.S. Department of Labor.

(b) At the time the report is filed, the labor organization shall pay an annual fee of $200.00 to the Ho-Chunk Nation.

(c) The president of the labor organization shall file with the Office of Attorney General for the Ho-Chunk Nation a notice of any changes to the information required above within ten (10) days after the changes are made and provide any additional information requested by the Office of Attorney General.

(d) It shall be a violation of this subsection for any labor organization or any person acting on behalf of any labor organization to fail to register or to make any false statements on any reports required to be filed pursuant to this part f.

(8) Registration of business agents.

(a) No person shall act as a business agent of a labor organization within the jurisdiction of the Ho-Chunk Nation unless that person has received a license from the Nation's Legislature.

1 Any person who seeks such a license shall pay a license fee of $200.00, submit a statement signed by the president and the secretary of the labor organization which establishes the individual's authority to act as a business agent for the organization, and agree to undergo a background investigation.

2 No person shall be issued a license to act as a business agent within the jurisdiction of the Ho-Chunk Nation if that person has been convicted of a felony, has been convicted of a misdemeanor involving moral turpitude, is currently facing charges on a felony or on a misdemeanor involving moral turpitude or, based on the background investigation, is deemed by the Legislature to be of questionable moral character.

3 At any time after issuance of the license the Legislature receives reliable information that the licensee should be deprived of his or her license based on the factors stated above, then the Legislature may suspend or revoke the license. The license shall run for the calendar year for which it is issued unless sooner surrendered, suspended, or revoked.

4 All licenses shall expire at midnight on December 31 of each year but may be renewed by the Legislature on a form prescribed by the Legislature for that purpose and upon the payment of an annual renewal fee of $ 200.00. However, if any license has been surrendered, suspended or revoked during the year, then the applicant must go through the requirements set forth in subsection (a)(1) above.

(b) It shall be a violation of the part f. for any person to:

1 Act as a business agent for a labor organization without having obtained a valid license;

2 To act as a business agent of any labor organization without the

authority of the labor organization to do so;

3 To make any false statement on any reports required to be filed pursuant to this Article;

4 To make any false statement in an application for a business agent's license.

(9) Penalties. Any person who, directly or indirectly, violates any provision of this Article shall be subject to a fine not exceeding $1,000.00 for each violation or exclusion from the jurisdiction of the Ho-Chunk Nation, or both.

(10) Civil remedies. Any person injured as a result of any violation or threatened violation of the provisions of this part f. shall be entitled to injunctive, declaratory and monetary relief from the Nation's Tribal Court, including the Nation itself, provided that the Nation, its entities or officials and employees retain sovereign immunity from suit.

(11) Severability. The provisions of this part f. are hereby declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, then that declaration shall not affect the remaining provisions of this part.

(12) Sovereign immunity. Nothing in this Article shall be construed as waiving the sovereign powers or immunities of Ho-Chunk Nation or its agents, entities, instrumentalities, employees, or officials, nor shall anything in this part f. be construed as imposing any requirements of the National Labor Relations Act on the Tribe, its agents, entities, instrumentalities, employees, or officials.

(13) Definitions.

(a) "Business agent" means any person who acts or attempts to act for or on behalf of any labor organization in:

1 The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization;

2 Soliciting or receiving from any employer any right or privilege for employees.

(b) "Employer" means any person, firm, association, corporation and other business entity lawfully operating within the jurisdiction of the Ho-Chunk Nation.

(c) "Labor organization" means any organization of employees organized for the purpose of dealing with employers concerning hours of employment, rates of pay, working conditions, or grievances of any kind relating to employment and desiring to operate within the jurisdiction of the Ho-Chunk Nation. The Tribal

Employment Rights Commission is not considered to be a labor organization for

purposes of this Article.

(d) "Legislature" means the Ho-Chunk Nation Legislature, the governing body of the Nation.

(e) "Nation" means Ho-Chunk Nation, a federally recognized Indian tribe.

g. Whistleblower Protection. All employees have a duty to report to the Office of the Attorney General information which the employee reasonably believes is a violation of any law, rule, policy or regulation that pertains to the elimination of fraud, waste, abuse and unnecessary expenditures. Employees who make such disclosures serve the Nation's interests by assisting in the elimination of possible fraud, waste, abuse, and unnecessary expenditures. Employees making such disclosure(s) shall be protected from reprisals and shall not suffer adverse consequences as a result of prohibited personnel practices. Upon receipt of such an employee report or disclosure, the Office of the Attorney General (i.e., Department of Justice) shall issue a written acknowledgment of receipt to the complaining party. Once a review or investigation of the report is completed, to the point of final conclusion, the Office of the Attorney General will notify the complaining party and any other person(s) deemed necessary.

CHAPTER II
DEFINITIONS

7. **Definitions**. Whenever the following terms are used in this Act, they shall have the meanings indicated.

a. Abandonment. Absent without authorized leave for two (2) consecutive work days or three (3) work days in a twelve (12) month period.

b. Agency. Any external organization or unit engaged in business, providing services, information, or goods within the jurisdiction of the Ho-Chunk Nation.

c. Appointments.

(1) Acting Appointment. The temporary assignment of a person to a vacant position in the absence of the employee who normally fills such position. Persons appointed to acting assignments must possess the minimum qualifications for that position. Such persons shall have limited responsibilities and authority of the position unless directed otherwise by the appointing authority.

(2) Interim Appointment. Interim appointments apply to Department Executive Directors. See *Confirmation Process of Executive Directors of the Ho-Chunk Nation Act* (2 HCC § 9).

d. Bridge Service Credit. The linking or connecting of a recalled or rehired employee where regular status was held for purposes of considering seniority, pay, and vacation accrual rates.

e. Calendar Day. A twenty-four (24) hour period beginning at midnight and ending at midnight.

f. Class. A group of positions sufficiently similar in respects to the duties and responsibilities may be used with clarity to designate each position allocation to the class; common requirements such as to education, experience, knowledge, ability and other qualifications exist for all incumbents; common tests of fitness may be used to choose qualified employees; and the same schedule of compensation can be made to apply with equity under the same or substantially the same employment conditions.

g. Classification Plan. A listing of job titles and descriptions in regular service.

h. Cohabit or Cohabitant. Two individuals living together, who are financially and intimately associated in a committed relationship, but not legally married.

i. Comparable Wage. A wage that is within fifteen percent (15%) of the current wage, exclusive of tips, or previous wage, unless otherwise authorized in writing by the Executive Director of Personnel. An employee placed into a position with a Comparable Wage must meet the qualifications for the position.

j. Compensation. The payment made to employees in consideration of the number of hours worked in accordance with payment schedules or a contract, including pay for overtime and other forms of payment in connection with the performance of job assignments. Total compensation refers to that amount of pay plus employment related benefits received by employees, including contributions to the employee's medical and dental programs, retirement, sick and annual leave, bonuses, incentives and other similar benefits.

k. Continuous Employment. Employment without interruption, without regard to authorized vacation, military leave, or other paid leaves, unpaid Family Medical Leave, and maternity leave of absence.

l. Dates.

(1) Annual Review Date. The date one (1) year from the Original Date of Hire and each subsequent year of continuous employment. The Annual Review Date is subject to change based on a change of employment status.

(2) Original Date of Hire. The initial date of hire to a regular position.

m. Demotion. A change in employment status resulting in movement from one position to another that has lower qualifications and/or lesser job responsibilities and assigned a lower pay range.

n. Dual Position. An additional temporary position assigned to an employee on an as needed basis.

o. Due Process. An employee shall be afforded the meaningful opportunity to provide an explanation prior to a suspension or termination, except in the case of Sexual Harassment (Chapter I § 6.e.) where Due Process is not mandatory.

p. Emergency. Emergencies, as defined in the Occupational Safety and Health Program Act -Emergency Preparedness and Disaster Planning (6 HCC § 8-9), include fire, medical/public health, severe weather, explosion, bomb threat, utility outage, hazardous material release, natural disaster, and terrorism.

q. Emergency Declaration. When called by the Legislature or President, provides an exigent circumstance and allows for the flexibility of policies and application for continued operations of the Nation. Declaring a State of Emergency allows the Nation to coordinate and implement plans aimed at protecting people and property during an emergency/disaster.

r. Employee. Any individual employed by the Ho-Chunk Nation, regardless of the source of the funds by which the employee is paid. The term "employee" shall include any person elected or appointed. The Nation further classifies its employees as follows:

(1) At-Will Employee. An employee who is subject to termination with or without cause or notice. The employee also has the right to leave at any time for any or no reason or notice. The At-Will Employee classification will be noted on the employee's job description.

(2) Contract Employee. An employee who has entered into a contractual employment agreement with the Ho-Chunk Nation. All such contracts shall conform with all Resolutions and/or laws passed by the Legislature with respect to the contracting process.

(3) Department of Labor Program Employee. An employee who is a Native American and is assigned a trainee position and is assigned as a trainee to gain experience at either an entry or advanced level position.

(4) Elder Community Worker Program Employee. A Ho-Chunk Nation enrolled member employee who is at least age 62 and who is hired to work at a maximum of twenty (20) hours a week.

(5) Elected Official. An employee who obtains and maintains employment by virtue of an election pursuant to the Ho-Chunk Nation Constitution.

(6) Exempt Employee. An employee classified by the Nation as exempt is salaried. Such employees are those occupying executive, administrative, professional positions, appointed, and elected officials. Weekly salary is computed using the position's annual fixed salary. Such employees may be required to maintain a contract for employment with the Ho-Chunk Nation, if required by a legislative enactment.

(7) Full-time Employee. An employee who regularly works a minimum of thirty (30) hours per week on a continuous basis following a probationary period.

(8) Limited Term Employee (LTE). An employee holding a job of limited or specified duration. Limited Term Employees are not regular employees eligible to use the Administrative Review Procedure to file formal grievances, except in matters pertaining to

prohibited discrimination or harassment. Limitation of LTE status is four hundred and eighty (480) hours per fiscal year, unless a one-time one hundred and sixty (160) hour extension is approved by the Executive Director and the Director, Department of Personnel or his or her designee.

(9) Nonexempt Employee. An employee covered by overtime. Such employees are entitled to overtime pay for work required to be performed in excess of forty (40) hours per workweek. (See Chapter III, paragraph 15g, for restrictions on payment of overtime.)

(10) Part-time Employee. An employee who regularly works at least twenty (20) but less than thirty (30) hours per week on a continuous basis. Part-time employees shall not hold supervisory positions.

(11) Quarter-time Employee. An employee who regularly works less than twenty (20) hours per week on a continual basis. Quarter-time employees shall not hold supervisory positions.

(12) Regular Employee. An employee hired through the interview process, excepting appointed and elective positions.

(13) Seasonal Employee. An employee whose work is normally less than one (1) year but longer than six (6) months, and who is expected to return on an annual basis.

(14) Staff Employee. An employee who is hired by the President of the Nation, a Legislator of the Nation, or a Judge of the Nation's Judiciary, but excludes Executive Directors.

s. Employer. Employer as used in this Act means any person who hires or employs any other person to perform work or services and pays for such services or work by means of wages or a salary.

t. Enterprise. Entities of the Ho-Chunk Nation that provide for-profit goods and services.

u. Examination. The process of measuring and evaluating the relative ability and fitness of applicants by job related testing procedures, which may include a medical examination performed by a qualified health care provider.

v. Executive Director. The head of a specific Department of the Executive Branch.

w. Fit for Duty. The process of measuring and evaluating the relative ability and fitness of employees by job-related testing procedures, which may include a medical examination performed by a qualified health care provider designated by and at the expense of the Nation.

x. Flex Classification. A position classification where a new hire may be employed at a higher base pay rate, not to exceed thirty percent (30%) of the base rate, than stated for that position based on qualifications that exceed the minimum job requirements. Whereas, for a "No-Flex" position, the employee is hired at the starting base pay rate.

y. Good Standing. An employee, who provides two (2) weeks written notice of intent to resign and does not have any punitive or administrative action pending prior to the resignation, resigns in Good Standing.

z. Grievance. A claim of an alleged violation, misinterpretation, or inequitable application of Ho-Chunk Nation employment law, or employment policies and procedures, which the employee believes has a direct adverse effect on the grieving employee.

aa. Immediate Family. Individuals who are related as a (biological, foster, adopted, and step)parent, grandparent, sibling, child, spouse or cohabitant.

bb. In-laws. Individuals who are related by means of a marriage, to include: the biological parent of one's spouse, the biological siblings of one's spouse, the biological spouse of one's sibling, or domestic partner in-laws.

aa. Indian Tribe. A Native American Indian tribe, band, nation or other organized group or community recognized as such by the United States Government.

bb. Lateral Transfer. A change in employee status from one position to another position having the same or substantially similar duties and pay range.

cc. Leave Without Pay. Voluntary request by an employee for leave not exceeding forty (40) consecutive hours without pay, where such employee has been employed in their job position for twelve (12) consecutive months.

dd. Merit Increase. Advancement of eligible employee's current pay from one salary step to a higher salary step within the same salary range based on satisfactory demonstration of individual efficiency and performance.

ee. Minimum Wage. Minimum wage means the prevailing minimum wage as determined from time to time by the Ho-Chunk Legislature or the federal government.

ff. Misconduct. A deliberate and substantial disregard of the employer's interests or violation of the law or established standards of behavior.

gg. Modified Duty Assignment. The assignment of an employee, who has been injured on or off the job (except in connection with off-duty employment) and has been medically released to perform limited employment tasks, to a job in which the employee can perform tasks based on physical restrictions for a designated period of time.

hh. Native American or Indian. An enrolled member of the Ho-Chunk Nation or an enrolled Indian of a federally recognized Indian tribe.

ii. Negligence. An employee's failure to exercise safe and ordinary care in carrying out, applying, or complying with this Employment Relations Act or other laws of the Nation. An employee is not using ordinary care, and is therefore negligent, if the employee does something that a reasonable person knew or should have known was contrary to Tribal law or fails to do

something that a reasonable person knew or should have known to be in compliance with Tribal law.

jj. Nepotism. Acts of favoritism by a supervisor directed to, or over, relatives in employment or other services. See paragraph 17i, Chapter III for Employment of Relatives.

kk. Non-Enterprise. Administrative entities of the Ho-Chunk Nation providing goods and services without a goal to make a profit.

ll. Off-Duty Employment. The simultaneous holding of a job (second job) outside of the Nation by an employee.

mm. Paraprofessionals. Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually requires less formal training and/or experience normally required for professional or technical status, and which may require certification and continuing education.

nn. Pay Rates.

(1) Base Rate. The beginning pay for a job as stated on the job description (not to be confused with pay range).

(2) Prorate. The proportional calculation of equivalency to the whole or full amount; an equivalent level of benefit credits over a given period.

oo. Performance Evaluation. A formal system to evaluate performance factors related to an employee's job duties, responsibilities and related employment characteristics on a regular and systematic basis by supervisory personnel.

pp. Person. A natural person, Indian or non-Indian, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

qq. Probationary Period.

(1) Initial Hire Probationary Period. A period of ninety (90) days in which a new hire or a rehired employee serves under close supervision and a performance evaluation is completed, assessing the skills and abilities of the employee.

(2) Performance Probationary Period. A period of ninety (90) days in which an employee, who is promoted, demoted, laterally transferred, recalled to a different position, or a rehired employee with Bridge Service Credit, serves under close supervision and a performance evaluation is completed, assessing the skills and abilities of the employee.

rr. Professionals. Occupations which require specialized knowledge and licensing, which is usually acquired through college training or through work, experience and other training which provides comparable knowledge. A current list of positions classified as such will be maintained and regularly updated by the Executive Director of Personnel.

ss. Promotion. A change in employment status from one position to another position that requires higher minimum qualifications, is assigned more complex duties and responsibilities, and is assigned a higher pay grade.

tt. Reclassification. The modification of job title and/or duties due to material difference between the existing job description and the actual job duties required to perform functions of a position.

uu. Recruitment. The process of finding and hiring the best-qualified candidate, from within or outside the Ho-Chunk Nation for vacant employment positions.

vv. Retaliation. The act of seeking revenge upon another or making threats.

ww. Second Job. The simultaneous holding of two (2) part-time jobs within the Nation.

xx. Seniority. The length of continuous service to the Nation, including applicable bridge service credit.

yy. Separation.

(1) Layoff. Separation in good standing from employment for non-disciplinary reasons including, but not limited to, lack of funds or work, abolishment of position, reorganization, or the reduction or elimination of services.

(2) Resignation. Voluntary separation from employment.

(3) Termination. Involuntary separation from employment.

zz. Status Change Form. The mandatory form used to record any change in employment status.

aaa. Separation.

(1) Furlough or Layoff. Separation in good standing from employment for non-disciplinary reasons including, but not limited to, lack of funds or work, abolishment of position, reorganization, or the reduction or elimination of services.

(a) Furlough. A separation in good standing from employment for non-disciplinary reasons, where the facts and circumstances allow for the employee to be provided a specific recall date.

(b) Temporary Layoff. A separation in good standing from employment for non-disciplinary reasons, where the facts and circumstances indicate that the employee will return to their position within six (6) months or return to their position within twelve (12) months during a state of emergency, A temporary layoff can begin as a furlough, but turn into a temporary layoff when the facts and circumstances change to where the employer no longer believes they will be able to bring the employee back on their specific recall date.

(c) Permanent Layoff. A separation in good standing from employment for non-disciplinary reasons, where the facts and circumstances do not allow for a furlough or temporary layoff. A permanent layoff can begin as a furlough or temporary layoff, but turn into a permanent layoff when the facts and circumstances change to where the employer no longer believes they would be able to recall the employee to their position within six (6) months, recall the employee within twelve (12) months during a state of emergency, or be able to bring the employee back to their specific recall date.

bbb. Sexual Harassment. Defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature; when, for example, when submission to such conduct is made, either explicitly or implicitly, or as a condition of an individual's employment; submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or such conduct has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile or offensive working environment.

ccc. Suspension. The temporary removal of an employee from service, without pay, for disciplinary or investigative reasons and for a specified period of time not to exceed ten (10) regularly scheduled workdays.

ddd. Temporary Reassignment. A short term placement in a different position of employment not to exceed ninety (90) calendar days.

eee. Transfer. A change in position that may be a demotion, or promotion. With the exception of a lateral transfer, an employee will be given a new annual review date based on the effective date of the transfer. All employee's transferring will be placed on a ninety (90) day performance probation.

fff. Unpaid Leave of Absence. Voluntary request for leave without pay, which exceeds forty (40) consecutive hours.

CHAPTER III
EMPLOYMENT POLICIES

8. **Position Classification and Allocation**.

a. Position Classification. The Nation shall maintain a job description on each separate class of employment. The continuation of the class of employment is contingent upon funding authorization.

b. Vacancies.

(1) Position vacancies will be filled based on job description standards after

notification of the vacancy to the Personnel Department.

(2) The Ho-Chunk Nation makes it a policy that:

(a) All positions shall be posted upon vacancy within five (5) business days, unless the position is filled from the Recall List.

(b) Continuous Posting. Positions which are difficult to fill or have a high turnover rate may be posted until filled, but for no longer than three (3) consecutive months. Revenue-generating positions subject to high turnover will be continuously posted to maintain a pool of immediately available applicants.

(c) All interview panels for Nation jobs shall consist of at least two-thirds (2/3rds) Ho-Chunk members.

(d) Position applications shall be screened by the hiring supervisor, who will report to the Department of Personnel those applicants to be interviewed.

9. **Discretionary Transfer.** On occasion, management and/or an employee may decide it is in the best interest of the Nation to initiate a transfer based on extenuating circumstances. Such a transfer shall be done pursuant to the transfer policy of the Nation and Ho-Chunk Preference shall be applied in all discretionary transfers.

10. **Position Reclassification.**

a. Reclassification requests may be initiated by employees or supervisory personnel. All such requests must be substantiated in writing with such specific detail given to those duties and responsibilities being performed continuously for six (6) months that are different in scope from those contained in the applicable job description.

b. Reclassification of a position shall not be intentionally used for the purpose of discrimination, personal gain, discipline, or retaliation.

11. **Probationary Period**.

a. Initial Probationary Period. New hire and rehired employees without Bridge Service Credit rights shall serve an Initial Probationary Period of ninety (90) days. During an Initial Probationary Period, an employee is not eligible for annual leave, sick leave, and other benefits paid for or sponsored by the Nation, unless otherwise specified. An exception to this restriction is the use of Hoocąk Woošgą Leave by enrolled Ho-Chunk employees. The probationary employee may not grieve, except in matters pertaining to prohibited discrimination or harassment.

b. Performance Probationary Period. Employees promoted, demoted, laterally transferred into a different position, rehired or recalled into the same position, must serve a Performance Probationary Period of ninety (90) days; provided, however, that Ho-Chunk Nation employees who are recalled after a lay off, initiated pursuant to an Emergency Declaration under Chapter IX of this Act, shall be exempted from serving a Performance Probationary Period.

c. No probationary employees shall be promoted, demoted, transferred, assigned additional duties, placed into a dual position, or temporarily reassigned during a probationary period unless agreed upon by the Executive Director(s) of the employee and the Executive Director of Personnel.

d. Employee Performance Evaluation. At the completion of an Initial or Performance Probationary Period, an employee shall receive an Employee Performance Evaluation without a merit pay increase. See Section 14, this Chapter.

e. New employees who have completed the ninety (90) day Initial Probationary Period are eligible for all benefits enjoyed as a regular employee, unless prohibited by law.

12. **Employee Separation Policy**.

a. Termination. An employee's involuntary separation from employment, which ends the employment relationship between the employer and employee.

b. Resignation. An employee voluntarily wishing to leave employment with the Ho-Chunk Nation in good standing must file a written resignation or give a verbal notice to their immediate supervisor at least two (2) weeks prior to the effective date. A verbal resignation will be accepted as a resignation and shall be documented by the supervisor.

c. Layoff.

(1) An employee may be subject to layoff for reasons including, but not limited to: lack of funds or work, elimination of position, or reorganization.

(2) Whenever it becomes necessary to reduce the work force through layoffs, the Nation will endeavor to provide affected employees with at least ten (10) working days.

The Nation may provide two (2) weeks' severance pay in lieu of ten working days prior to notice of layoff.

(3) Employees shall be afforded the opportunity to apply for a voluntary layoff, when a layoff plan is being instituted.

(4) When a layoff is to be implemented, the Executive Director will prepare a layoff plan, consistent with forms used by the Personnel Department. The plan will identify the number of positions by classification and identify incumbents to be laid off through the consideration of both ability and/or seniority in the position.

(5) A written justification shall be submitted with the layoff plan explaining which positions within the department are affected by a layoff and how this is in the best interest of the Nation.

(6) The Department Director shall notify the Executive Director of Personnel of the intended action at least fifteen (15) calendar days before the effective date and provide a statement whether or not the employee gave satisfactory service.

(7) Should a layoff affect fifty (50) or more employees, the Department Director shall notify the Executive Director of Personnel of the intended action at least forty-five (45) calendar days before the effective date and provide a statement whether or not the employees gave satisfactory service; provided, that in the event employee layoffs must take place pursuant to an Emergency Declaration pursuant to Chapter IX, the Executive Director of Personnel will be provided ten (10) calendar days notice of the intended action.

13. **Recall Policy**.

a. The names of employees who are laid off, or continue employment in a lower position, will be placed on a Recall List for the position held at the time of layoff. The Recall List will be maintained for a period of six (6) months from the effective date of the layoff. This period may be extended to twelve (12) months when a state of emergency has been declared. In the event that Ho-Chunk Nation tribal member employee layoffs occur pursuant to an Emergency Declaration under Chapter IX of the Employment Relations Act, all Ho-Chunk Nation tribal member employees who have been laid off shall be recalled, based upon a timeline determined by the Executive Director of Personnel and consistent with operational need.

b. When a vacancy occurs in a position on the recall list, persons appearing on the list will be offered employment in inverse order of their layoff dates (earliest to most recent), prior to considering other persons for employment.

c. An employee that is recalled to the same position within six (6) months will be eligible for Bridge Service Credit rights and shall be assigned a new Annual Review Date.

d. Notwithstanding any provision of the Nation's Insurance Plan, employees that are recalled from layoff implemented during a state of emergency will be provided up to twelve (12) months to pay any necessary employment insurance premiums that may have been deferred during layoff. Such employees may also elect to utilize their accrued annual leave to pay any necessary employment insurance premiums that may have been deferred during layoff.

14. **Rehire Policy**.

a. Resignation in Good Standing.

(1) Former employees of the Nation who resigned in good standing and are rehired within one (1) year into the same position in the same department will be assigned the same rate of pay and are eligible for Bridge Service Credit. A new Annual Review Date shall be established.

(2) Former employees who are rehired into any other position within one (1) year will be eligible for Bridge Service Credit, with the exception that they will be assigned a pay rate in the same manner as a new hire. A new Annual Review Date shall be established and the employee must complete a ninety (90) day Probationary Period without possibility of a merit pay increase.

(3) For the purposes of this section, employees whose employment ends as a result of the completion of elected or appointed term, and are rehired within one (1) year will be eligible for Bridge Service Credit. A new Annual Review Date shall be established and the employee must complete a ninety (90) day Probationary Period without possibility of a merit pay increase.

(4) Employees of organizations established by the Ho-Chunk Nation Legislature and/or who receive employee benefits through the Nation by virtue of their employment with the organization, and who subsequently begin full-time employment with the Nation without a break in service between the two organizations shall also be eligible for Bridge Service Credit.

b. Terminated employees or employees who resigned without good standing shall be treated as a new hire and shall not be eligible for Bridge Service Credit.

15. **Compensation and Payroll Practices**.

a. Minimum Wages. No employee shall be paid less than the federal minimum wage, unless permitted by federal program funding.

b. Salary/Wage.

(1) Nonexempt employees will be paid at an hourly rate, for purposes of payroll accounting.

(2) Elected officials, appointed officials, and exempt employees shall be paid a fixed salary.

c. No Compensation for Unauthorized Leave. Unauthorized leave or unexcused absence will not be compensated in any form.

d. Salary and Wage Merit Adjustments. The Nation may periodically revise pay rates or ranges resulting from studies of prevailing wages and other influential considerations. The Executive Director, Department of Personnel shall promulgate a standardized schedule to determine benchmarks for merit wage increases.

(1) To be eligible for merit increases, nonexempt employees must not have any categorical rating of "unacceptable" on their Annual Performance Evaluation.

(2) The percentage of a merit increase will be determined in accordance with the Nation's classification and compensation plan and the availability of funding.

(3) An employee who has not received a scheduled Annual Performance Evaluation may be eligible to receive a merit increase. See paragraph 16.b(2).

e. Compensation upon Position Reclassification. If a position is reclassified to a class having the same pay rate as the previous class, and if the employee meets the requirements of the reclassified position, the employee's pay rate and Annual Review Date shall not change, otherwise:

(1) If the position is reclassified to a class with a higher pay rate than the previous class and if employee meets the requirements of the reclassified position, then the employee's pay rate shall change to equal the base rate of the new position. If his or her current rate of pay is higher than the reclassified position's rate of pay then his or her rate will remain the same. In either case, the employee's Annual Review Date will not change.

(2) If the position is reclassified to a lower pay rate class, and if the employee is retained to occupy the reclassified position, the employee's pay rate and Annual Review Date shall be unchanged. If the employee's pay rate in the former position is greater than the maximum rate established for the lower position, the employee's pay rate will be frozen until such time as the rate or range of the reclassified position reaches the employee's frozen rate.

f. Transfer of Benefits. Regular employees upon transfer or reclassification shall carry over their annual and sick leave, unless prohibited by law or federal/state program guidelines.

g. Overtime Compensation. See paragraph 7p (9) for employees eligible for overtime compensation.

(1) All overtime must be pre-approved by the supervisor. Overtime may be paid only within appropriated funding levels consistent with the *Budget and Appropriations Process Act* (2 HCC § 4).

(2) Overtime compensation for a given pay period will not be paid if the employee has any paid (not including holiday leave pay) or unpaid leave during that pay period. An employee is limited to a maximum of forty (40) hours of paid compensation during a workweek in which an employee has taken any paid (not including holiday leave pay) or unpaid leave. This section shall be administered pursuant to paragraph 7p.

(3) Overtime will be available to all non-exempt employees and offered based on employee seniority.

h. Employer Required Educational/Meeting Activities. Employee attendance at seminars, lectures, conferences, business-related meetings, and training programs at the direction of a supervisor will be considered hours worked and compensable.

i. Travel Time. Travel time in connection with approved travel will be considered compensable hours worked for employees. Employees will be compensated for actual hours worked, less usual meal and commute time.

(1) One day travel out of town or as part of the day's work activities will be counted as hours worked, excluding the employee's usual meal period and normal travel time to and from the employee's residence and work location where the day's travel starts and/or ends at the

employee's residence.

(2) For overnight travel out of town, a nonexempt employee will be paid a minimum of eight (8) hours for each twenty-four (24) hour period the employee is in travel status. Any work, including travel, that an employee is required to perform while traveling, other than on a normally scheduled workday, will be counted as hours worked.

j. Employee Service on Ho-Chunk Boards/Commissions/Committees. Employees may serve on boards, commissions, and committees. Dual compensation is prohibited, unless:

(1) An employee elects to receive his or her regular pay while serving on the board, commission, or committee during normally scheduled work hours; or

(2) The employee elects to receive a stipend. The employee then must be on annual leave or unpaid leave status.

k. Compensation upon Employment Separation. Final compensation shall be inclusive, up to the hour and date of separation of hours worked and all forms of accrued but unused time deemed compensable, except as in (4) below during a layoff that is intended to be temporary in nature. Deductions will be made against compensation such as any mandatory or voluntary deductions, including legally authorized offset against pay.

(1) Separated employees will receive their final paychecks on the day paychecks are normally distributed.

(2) In the event of an employee's death, the employee's beneficiary as shown in personnel records shall be entitled to receive the employee's final paycheck, except where the beneficiary is a minor, in which case the Nation may hold the employee's final paycheck until a legal recipient can be identified by the Nation.

(3) Any property issued to the employee by the Nation must be returned before or at the time the final paycheck is provided. Otherwise, the Nation will withhold the final paycheck and other reimbursements until the property is returned or replaced.

(a) In the event of a furlough or layoff that is meant to be temporary in nature, the employee may retain property issued to the employee at the discretion of their supervisor.

(4) Accrued annual leave shall not be paid out during the pendency of a furlough or temporary layoff. If and/or when a layoff becomes permanent, accrued annual leave shall be paid out to the employee.

(5) Annual and sick leave shall not accrue during the pendency of a furlough or temporary layoff. If and/or when an employee is recalled to their position within six (6) months, recalled within twelve (12) months during a state of emergency, or brought back on their specific recall date, the employee’s annual or sick leave will resume at the accrual rate at the time the furlough or layoff began.

l. Severance Pay.

(1) A supervisor may request to provide two (2) week severance pay, in lieu of retaining the services of an employee for the two (2) week period upon receipt of advance notice of resignation or the Nation may provide two (2) week's severance pay in lieu of a two (2) week dismissal notice, provided that:

(a) The employee is not on probation,

(b) The employee leaves in good standing,

(c) The supervisory determination is that it is in the best interest of the Nation for the separation of employment to take place immediately.

(d) The Executive Director of Personnel pre-authorizes the Payroll Office to disburse.

(2) Limitation on Severance Pay. Employees who are terminated as a result of misconduct for violation of the law or work rules, or while on probation, are not eligible to receive severance pay.

16. **Performance Evaluations**.

a. The Executive Director of Personnel shall promulgate the process and procedures for Performance Evaluations to ensure regular reports are made as to the competence, efficiency, adaptation, conduct, merit, and other job related performance conditions of the Nation's employees.

(1) An employee on Maternity Leave, Family Medical Leave, or an Unpaid Leave of Absence will have their performance evaluation extended by the number of days the employee was on leave.

b. Annual Performance Evaluation.

(1) Supervisors shall be responsible for the completion of an annual evaluation up to ten (10) days prior to the employee's Annual Review Date.

(2) An employee who has not received an annual evaluation within thirty (30) days after his or her scheduled Annual Review Date may be eligible to receive a merit pay increase in a range of 0% to 4%, not to surpass the maximum rate of his or her pay range, if the following criteria have been met:

(a) The employee has had no disciplinary action placed in his or her personnel file since the previous evaluation date.

(b) The employee's previous evaluation met the criteria for a merit increase.

If the employee has not received an evaluation since working with the Nation, assuming the employment has been continuous, it will automatically be assumed that the employee has met the evaluation criteria to receive a merit increase.

(c) The employee is not currently on a temporary reassignment, any type of leave of absence, layoff or other event that would affect the employee's Annual Review Date.

(d) The Nation has not imposed any temporary across-the-board payroll restrictions that would suspend merit increases for all employees.

(3) If the above criteria are met, the necessary documentation will be generated, signed and processed by the Department of Personnel granting the employee a pay increase effective the date that the employee's Annual Review Date was due.

c. Failure to Complete Performance Evaluations. Any supervisor who fails to prepare and provide the employee with an evaluation within thirty (30) calendar days after the scheduled anniversary date shall have his/her personnel file duly noted of this infraction by the Personnel Department. Upon the second and each subsequent infraction, the supervisor shall be subject to disciplinary action through his/her immediate supervisor, and will be denied a merit increase at the supervisor's next evaluation for failure to complete required job tasks.

17. **Other Workplace Policies**.

a. Second Job.

(1) Employees may hold a second part-time job within the Nation, provided that the total hours worked by the employee does not exceed the permissible forty (40) hours per week or the equivalent of a full-time position. The holding of a second job within or while employed by the government is subject to the following restrictions.

(a) The second job must not adversely affect the employee's primary part-time job performance and responsibilities.

(b) Notice to the supervisor of the second job must be provided in writing before the employee commences work at the second job.

(2) An employee who holds two (2) or more part/quarter-time positions for the Nation, for which the combined total of both positions is at least thirty (30) hours per week, shall be considered a full-time employee of the Nation. In this event, the Department of Personnel will duly note the employee's employment record to indicate full-time employment status.

b. Dual Position. An employee may be temporarily assigned by his or her supervisor to a position that constitutes a temporary work assignment or dual position. See paragraph 7n.

c. Confidential Information.

(1) Confidential information obtained as a result of employment shall not be used by an employee for any private interest, or personal gain.

(2) Employment-related records and information are confidential and proprietary documents of the Nation.

(3) No confidential document or information shall be divulged to any person who does not possess the legal or operational right to know.

(4) All employees, including elected and appointed officials, shall be required to sign a Confidentiality Agreement as a condition of employment.

(5) Use or disclosure of confidential information may result in civil or criminal penalties, or employee discipline, up to and including termination.

d. Operators Permit. Consistent with the Fleet Ordinance of the Nation, certain job positions require employees to have the use of an insured, privately owned automobile and to hold a valid driver's license. An occupational license is considered a valid form of a driver's license.

(1) Failure to produce or maintain proof of insurance or a valid driver's license may bar the potential employee from employment.

(2) An employee who is required to drive and loses his or her driver's license or automobile insurance may be terminated for failure to meet the condition of employment.

e. Publicity/News Release. No employee shall use his or her position to present himself or herself as a representative of the Nation, or communicate with the news media on behalf of the Ho-Chunk Nation unless authorized or directed in writing by the Ho-Chunk Nation, Office of the President, or the Legislature.

f. Unlawful Conduct in Labor Controversies. It shall be unlawful for anyone to picket, or induce others to picket Ho-Chunk Nation properties, employees, supply or delivery vehicles, or customers of anyone engaged in business with the Ho-Chunk Nation or to interfere with the person's business, or interfere with any person or persons desiring to transact or transacting business with the person when a labor dispute exists.

g. Medical Release as a Condition to Return to Work. Employees are not allowed to return to work after a disability absence of more than five (5) workdays, or where any absence is caused by a contagious condition of a threatening nature to others, without the written medical release of a qualified physician. The Nation reserves the right to have such employees examined by a paid physician of the Nation.

h. Abuse of Disability Provision(s). Employees who are found to have abused or fraudulently used temporary disability provisions will be subject to disciplinary action up to, and including, termination.

i. Employment of Relatives. Nepotism is strictly prohibited.

(1) No employee may hold a job over which a member of his/her immediate family or an in-law exercises direct supervisory authority.

(2) Any report of a violation of the nepotism provision, mandates that the supervisor and Executive Director of the Department of Personnel must cure the violation within seven (7) calendar days or obtain the resignation of or terminate the person(s) violating the nepotism law.

j. No Solicitation, No Distribution Policy. The following policy shall be posted at the Nation's Class II and Class III Enterprises:

NOTICE TO NON-EMPLOYEES

The solicitation of memberships or pledges, collection of funds, circulation of petitions, distribution of any printed materials, trespass, and any other similar types of activities by non-employees, on behalf of any organization, group, society, or individual, is not permitted on the Nation's property, facilities, or lands where Class II or Class III gaming is conducted, unless a written permit is given by the appropriate official of the Ho-Chunk Nation.

k. Fit for Duty. A supervisor who personally observes or receives documented information that an employee may be unfit for duty will validate the information or observations.

(1) Actions that may trigger the need to evaluate an employee's fitness for duty include, but are not limited to, problems with dexterity, coordination, memory, alertness, vision, speech, inappropriate interactions with coworkers or supervisors, inappropriate reactions to criticism, or suicidal or threatening statements.

(2) The supervisor will present the information or observations to the employee at the earliest possible time in order to validate them; and will allow the employee to explain his/her actions, or to correct any mistakes of fact contained in the description of those actions. The supervisor will then determine whether the employee should leave the workplace immediately for safety reasons.

(3) The supervisor may determine that the employee should undergo a fit for duty evaluation, at the Nation's expense, generally by the same provider who conducts the Nation's medical prescreening.

(4) If the Supervisor determines after such evaluation that the employee is unfit for duty, the employee has fully utilized or does not qualify for FML, and/or the condition is for an indefinite period of time, the Supervisor shall take appropriate action to remedy the situation.

(5) In situations where an employee is unable to perform his/her duties, the employee will be released from employment with the Nation in good standing.

(a) When a state of emergency has been declared, the Executive Director shall exercise discretion in implementing the fit for duty process to maintain continuity of operation.

l. Chain of Command. The chain of command is the line of authority and responsibility along which instructions are passed within the employee's branch of government and between different departments (as set forth in the organizational chart). Instructions are provided down the chain of command, from a higher-level supervisor, such as a director, to lower-ranked personnel who either carry out the instructions personally or pass them down the chain as appropriate, until it is received by those expected to carry it out.

In general, supervisors give instructions only to those directly below them in the chain of command and receive instructions only from those directly above them. If someone bypasses his/her immediate supervisor by going to a next level supervisor above his immediate supervisor in the chain of command, he/she may be disciplined for not observing the chain of command. This section does not prohibit any supervisor in the chain of command from communicating directly with any subordinate employees.

Each department/supervisor is responsible for identifying a written chain of command to its employees. This may be done in written form to the employees or posted in a common area.

m. Personal Appearance. Employees are expected to be dressed in a clean, modest manner consistent with the nature of work performed. It is also an expectation that employees observe good habits of grooming and personal hygiene at all times, and to avoid any personal practice or preference that may prove offensive.

n. Breastfeeding employees. The Ho-Chunk Nation provides a supportive environment to enable breastfeeding employees to express their milk during work hours. This includes a lactation support program administered by the Ho-Chunk Nation Maternal Child Health Program, within the Community Health Nursing Program. This policy shall be communicated to all current employees, and during employee orientation.

CHAPTER IV
EMPLOYEE BENEFITS

18. **General**. The Nation reserves the right to determine any discretionary benefits based upon the Nation's capacity to fund benefits.

a. Mandatory Benefits. The mandatory benefits offered by the Nation will apply to regular employees, whether exempt or nonexempt status, unless otherwise provided in a particular benefit plan or employment agreement/contract.

(1) Social Security. Social Security benefits are automatically deducted from an employee's payroll check.

(2) Worker's Compensation.

(3) Unemployment Insurance. Employees may be eligible for unemployment benefits upon separation of employment with the Nation.

b. Discretionary Benefits.

(1) Benefit Plans.

(a) Group Health-Care Plans. The Nation makes available health-care plans for eligible employees and their dependents. Benefits consist of routine medical care, hospitalization, medical prescriptions, vision, and dental plans.

(b) Short-term and long-term disability insurance plans.

(c) Life insurance plans.

(d) A 401(k) Plan for retirement benefits.

(2) Enrollment.

(a) Employees shall complete enrollment forms at the time of orientation.

(b) Enrollment becomes effective under the rules of the Nation's service provider plan document.

(c) Health-care benefit coverage under the plan of the Nation terminates (at midnight on the last day of employment.)

c. Proration and Cost Sharing of Benefits.

(1) Leave benefits for part-time employees shall be earned at fifty percent (50%) of the benefits of full-time employees.

(2) Leave benefits for quarter-time employees shall be earned at twenty five percent (25%) of benefits of full-time employees.

(3) The Nation has a salary reduction plan for payment of health benefits, which are separately described in the health benefits handbook and available from the Department of Personnel.

d. Contract Employee. Benefits for a contract employee shall be as specified in the contract between the employee and the Ho-Chunk Nation.

e. Limited Term Employee (LTE). A LTE is not eligible for annual leave, sick leave, and other benefits paid for or sponsored by the Nation, unless otherwise specified herein.

f. Restitution. If the existence of fraud by any person resulting in benefits to which he/she was not entitled, has been found by any court of competent jurisdiction, such person shall be liable to repay such amount to the Ho-Chunk Nation or to have such sum deducted from any future benefits payable to him or her under said laws.

19. **Ho-Chunk Nation Holidays**.

a. All employees are eligible to observe the following recognized holidays.

Holiday	Date Observed
New Year's Day	January 1
Good Friday	Varies each year
Easter	Varies each year
Memorial Day	Last Monday in May Corporal
Mitchell Red Cloud Jr. Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Hocak Day	Day after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

b. Weekend Holidays. For employees who regularly work Monday-Friday, if a holiday falls on a Saturday, the holiday will be observed on the Friday before the Saturday. If the holiday falls on a Sunday, the holiday will be observed the following Monday. If the Christmas Holiday falls on a Friday and Saturday, the holiday shall be observed with a full day on Thursday and Friday. Should the Christmas Holiday fall on a Sunday and Monday, the holiday shall be observed with full day on Friday and Monday.

c. Holiday Pay.

(1) Nonexempt employees will be paid double pay on the holidays for hours worked. If a person does not work, he or she will receive holiday pay at his or her regular rate.

(2) Exempt employees will be paid their regular salary on the holidays whether or not they work.

(3) For an employee whose normal schedule is to have the holiday off, the employee must work the regularly scheduled workday preceding and the regularly scheduled workday following the holiday, unless the absence is approved by the supervisor or the employee is on a paid time off status. Employees who call in during this period of time may be required to provide documentation from a medical provider in order to receive holiday pay.

20. **Annual and Sick Leave**.

a. Annual Leave. Eligible employees accrue annual leave for each week of service in which the employee is actively employed and in a paid status.

(1) Full-time employees will accrue paid annual leave credits as follows:

Service Length	Weekly Credit Hours	Approximate Annual Accrued
New Employee - End of 3rd year	.0462	96
Start of 4th year - End of 8th year	.0692	144
Start of 9th year - End of 14th year	.0923	192
Start of 15th year -	.1154	240

(2) Any hours over one-hundred sixty (160) will be paid to the employee at the end of the fiscal year provided that the employee has used sixty (60) hours of annual leave during that fiscal year.

(3) Selection of leave dates is subject to approval of the employee's supervisor based on operational need.

(4) Regular employees will retain leave upon transfer or promotion with the exception of staff/programs that are federally or state funded.

(5) Accrued annual leave shall not be paid out during the pendency of a furlough or temporary layoff. If and/or when a layoff becomes permanent, accrued annual leave shall be paid out to the employee.

b. Sick Leave.

(1) Sick leave is a privilege of paid time away from work where such absence is necessary because an employee is incapacitated by sickness, temporary disability, injury, or for medical, dental or optical examination or treatment; or where, by reason of exposure to a contagious disease would jeopardize the health of others.

(a) Full-time employees shall accrue paid sick leave at a rate of .92 hours per week.

(b) No sick leave may be taken in advance of being earned.

(c) Illnesses extending beyond accrued sick leave may be charged as annual leave.

(d) Accrued sick leave time, which has not been used by the employee, will, upon separation in good standing, be applied to continued health insurance coverage.

(e) Sick leave may also be taken for illness in the employee's immediate family.

(f) Regular employees will retain all sick leave upon transfer or promotion with the exception of staff/programs that are federally or state funded.

(g) Eligible employees must promptly notify their supervisors whenever the use of sick leave becomes necessary.

(h) A supervisor may require an employee to produce evidence (attending physician or medical provider's statement, death certificate, employee's affidavit, etc.) to substantiate the reason for or length of sick leave exceeding three (3) regularly scheduled work days.

(1) During an Emergency Declaration, supervisors are encouraged to be flexible and lenient with the application of this section.

(i) Should an employee receive disability insurance payments, the employee may only use that number of annual hours that, together with such insurance payments, would not represent more than normal pay.

(j) Employees will not be allowed to receive pay in excess of forty (40) total hours per week in which an employee is compensated for any form of leave is taken during that pay period.

(2) Conversion of Sick Leave to Extended Medical Benefits.

(a) Accrued sick leave may be used, upon qualification, to extend health, dental, vision and prescription insurance beyond the date of an employee's separation by using the employee's remaining sick leave hours multiplied by the employee's base rate of pay. When multiplied, this amount is the "dollars" that an employee may use to extend his or her coverage if they qualify.

(b) Qualifications.

1 An employee who resigns qualifies if:

a Covered under insurance on the last day of employment; and

b Resigned in good standing (see paragraph 12b); and

c Has enough "dollars" to pay for a minimum of one (1) full month of employer and employee premiums for the plan the employee was covered under (i.e., Single Non-Tribal, Family Non-Tribal, Single Tribal, or Family Tribal) on the last day of employment.

2 An employee who is permanently laid off qualifies if:

a Covered under insurance on the last day of employment; and

b Was permanently laid off; and

c Has enough "dollars" to pay for a minimum of one (1) full month of employer and employee premiums for the plan the employee was covered under (i.e., Single Non-Tribal, Family Non-Tribal, Single Tribal, or Family Tribal) on the last day of employment.

3 Spouses/Cohabitants and dependents of deceased employees may qualify, providing that the deceased employee on the date of his or her death:

a Was employed by the Nation; and

b Had family coverage in effect; and

c Had enough "dollars" to pay for a minimum of one (1) full month of employer and employee premiums for the dependent(s).

(c) If an employee qualifies for sick leave conversion, the Insurance Division will mail a letter to the employee's last known mailing address stating how many hours of sick leave the employee had remaining and the end date of the extended medical benefits.

c. Transfer of Leave Time. Employees may transfer leave hours to another employee who is eligible to use accrued leave hours. This policy does not apply to an employee who has given notice of resignation or an employee being separated because of lay-off or termination. The hours transferred will be calculated at the hourly rate of the employee donating the hours and converted into leave hours based on the wage of the employee receiving.

(1) To be eligible to receive these hours an employee must meet the following criteria:

(a) Have forty (40) or less hours of accrued leave hours.

(b) Not receiving any other type of pay (i.e., Short Term Disability, Worker's Compensation, etc.).

(2) To be eligible to transfer hours, the donating employee must meet the following criteria:

(a) Execute a voluntary option of consent with signature and a specific amount of hours donated/transferred.

(b) Maintain a minimum balance of twenty-four (24) hours in his or her respective donating leave account.

(3) This policy is strictly voluntary and no employee shall be required to transfer accrued leave time.

(4) In the event that an employee decides to transfer his/her accrued leave time, such leave time shall not be recovered and the employee will be eligible to utilize only hours that he/she has remaining and thereafter accumulates.

(5) Any leave transferred that violates this policy shall result in the transferred leave being revoked from the receiving employee.

d. Emergency Declaration: Transfer of Leave Time. In the event a state of emergency has been declared, employees may transfer leave hours to another employee who is eligible to use accrued leave hours. The hours transferred will be calculated at the hourly rate of the employee donating the hours and converted into leave hours based on the wage of the employee receiving.

(1) To be eligible to receive these hours an employee must meet the following criteria:

(a) Not receiving any other type of pay (i.e., Short Term Disability, Worker's Compensation, etc.).

(2) To be eligible to transfer hours, the donating employee must meet the following criteria:

(a) Execute a voluntary option of consent with signature and a specific amount of hours donated/transferred. An email will be accepted in place of a physical signature.

(b) Maintain a minimum balance of twenty-four (24) hours in his or her respective donating leave account.

(3) This policy is strictly voluntary and no employee shall be required to transfer accrued leave time.

(4) In the event that an employee decides to transfer his/her accrued leave time, such leave time shall not be recovered and the employee will be eligible to utilize only hours that he/she has remaining and thereafter accumulates.

(5) Any leave transferred that violates this policy shall result in the transferred leave being revoked from the receiving employee.

21. **Funeral Leave**.

a. All employees, regardless of employment status, are eligible for funeral leave.

b. Funeral leave will be granted to employees for leave with pay for a maximum not to exceed four (4) regularly scheduled workdays (32 hours) following the death in the immediate family, which for the purposes of Funeral leave includes: individuals who are related as a biological, foster, adopted or step parent, grandparent, sibling, child, spouse, cohabitant, in-law, grandchildren and great grandchildren.

c. Funeral leave will be granted to employees for leave with pay for a maximum not to exceed two regularly scheduled (2) days (total 16 hours) immediately following the death of an extended family member, including aunts, uncles, nieces, nephews, and first cousins.

d. For attendance at funerals of community members, an employee may use other earned or accrued leave if requested and approved by the employee's immediate supervisor.

e. The employee shall advise his or her supervisor of the duration of his or her absence.

f. The employee shall advise his or her supervisor if he or she intend on using accrued Annual Leave or leave without pay in conjunction with the paid Funeral Leave.

g. Enrolled Hoocąk Members. See paragraph 23d(1) for funeral leave under the Hoocąk Woošgą Leave Policy.

h. The Ho-Chunk people honor their warriors. Paid funeral leave will be granted to Ho-Chunk legion and auxiliary members who are asked to honor Ho-Chunk veterans with military rites.

22. **Cultural Leave**. Enrolled members of the Ho-Chunk Nation may request time off to attend cultural and traditional events.

a. The time off for Cultural Leave will be leave without pay, unless the employee requests annual leave.

b. The employee must submit a Leave Application form for time off at least fourteen (14) days in advance.

c. The supervisor shall comply with this policy to accommodate requests for time off in compliance with this policy. Additional staffing and training necessary to support all Cultural Leave requests shall be made available in the event that multiple requests from the same work area may be accommodated "without causing disruption" of the business enterprises.

d. If an employee who schedules time off for a cultural event abuses and violates this policy by not attending the cultural event, then the employee shall not be eligible to request time off for a period of ninety (90) days. For a second similar violation of this policy, the employee shall not be eligible to request time off for a period of one hundred and eighty (180) days.

23. **Hoocąk Woošgą Leave Policy**.

a. General. The Leave Policy provides the ability for enrolled Ho-Chunk Member employees to observe their beliefs, culture, and traditions during their scheduled work hours. This may come in the form of a planned or unplanned defined gathering.

b. Eligibility.

(1) Only enrolled Ho-Chunk Tribal member employees are eligible for paid Hoocąk Woošgą Leave either as a host (sponsor), participant or worker at a defined gathering as described in paragraph d, below. Hoocąk Woošgą Leave may be taken by Ho-Chunk employees during their Initial Probationary Period.

(2) Spouses. Non-Ho-Chunk spouses of enrolled Ho-Chunk employees granted Hoocąk Woošgą Leave are also eligible for this leave if they are a participant worker.

(3) Nebraska Winnebago. Based on the familial relationships, shared religion and ceremonies between the Ho-Chunk and the Nebraska Winnebago, the Traditional Court has made an exception to allow for a enrolled Nebraska Winnebago employees of the Ho-Chunk Nation to apply for Annual Leave or Leave without Pay for the gatherings defined below.

(4) Enrolled Ho-Chunk member employees shall be eligible for paid Hoocąk Woošgą Leave to attend defined gatherings in this Act that are hosted by the Nebraska Winnebago.

(5) Leave. An enrolled Ho-Chunk member employee who has attended a religious ceremony or gathering defined under paragraph d, below, can claim paid leave only for the days that the gathering actually occurs. An enrolled Ho-Chunk member who has attended a religious ceremony or gathering can claim unpaid leave for one (1) day following an all-night ceremony or gathering, or has the option to use annual or sick leave. See paragraph d (2), below, for an exception for the Medicine Dance.

c. Process. In order to receive paid Hoocąk Woošgą Leave, eligible employees shall:

(1) Submit to their supervisor a signed Hoocąk Woošgą form notification when it becomes necessary to participate in a defined gathering. In the event written notice cannot be submitted at that time, the employee shall notify the supervisor verbally or by telephone. The notification will include the reason for taking Hoocąk Woošgą Leave and the duration of the absence.

(2) An employee's name must appear on the official Hoocąk Woošgą Sign-in Work Form (daily, if the defined gathering is longer than one day) to verify that the employee was present and did participate in the defined gathering. All employees using Hoocąk Woošgą Leave must sign-in on the Work Form to be eligible for paid leave. The Hoocąk Woošgą sign-in Work Form will be provided to the Personnel Department for the calculation of hours when timesheets are due.

(3) The Clan Leaders or Ceremonial Leaders will be consulted to verify all sign-in participants, if necessary.

(4) Should a participant be signed-in who did not actually participate in the defined gathering, the work pay for that day will be deducted from the employee's pay the following week.

(5) If an employee schedules time off to attend a defined gathering abuses and violates this policy by not attending the gathering, then the employee shall not be eligible to request Hoocąk Woošgą Leave for a period of ninety (90) days. For a second similar violation of this policy, the employee shall not be eligible to request Hoocąk Woošgą Leave for a period of one hundred and eighty (180) days.

d. Defined Gatherings.

(1) Funerals. The Traditional and Native American Church Funerals customarily require four (4) days of leave since there are four (4) days and four (4) nights of continuous mourning, ending with an all-night ceremony for the grieving family on the last night. Various clans are involved in a funeral, including a need for warriors, or veterans, throughout the sacred funeral burial process. All enrolled Ho-Chunk member employees who are required to work at a funeral, including warriors if needed, pursuant to clan obligations, shall receive Hoocąk Woošgą Leave pay for those days that are regularly scheduled work days only. The Native American Church leader (officiator) of the funeral and four named helpers shall be allowed forty (40) hours of paid Hoocąk Woošgą leave time, as an exception to paragraph e(1), below.

(2) Medicine Dance. The Ho-Chunk people are divided into five (5) respective groups in the Medicine Lodge. The Medicine Dance consists of eight (8) days at one time consecutively from Sunday to the following Monday. Part of the Medicine Lodge includes a Medicine Feast, which takes an additional two (2) days for a Memorial Meeting. All enrolled employees of the Nation required to work at a Medicine Dance pursuant to their clan obligations shall receive Hoocąk Woošgą Leave for those days that are regularly scheduled workdays only.

The only exception being that an eligible employee who has been in attendance the entire weekend may take off the following Monday with paid Woošgą leave.

(3) Feast Lodge. The customary time is three (3) to five (5) days in accordance with the Ho-Chunk clan way of life. This includes Tribal member employees who are leaving or returning from the Armed Forces. All enrolled employees of the Nation who are required to work at the Feast Lodge pursuant to their clan obligations shall receive Hoocąk Woošgą Leave for those days that are regularly scheduled work days only.

(a) Spring Feast is a ceremony giving thanks for the passing of winter, usually held after the planting of crops.

(b) Summer Feast is a ceremony held after all leaves are out and the grasses are up.

(c) Fall Feast is a ceremony held during or after the harvesting of crops.

(d) Winter Feast is a principal ceremony held after the first snow, giving thanks to the night spirits for a good year of harvesting and tuning, with feast songs connected to success in war, developed by individual clans.

(e) Departing and Returning Warrior Feast is given by a clan for one of its practitioners who is a member of the United States Armed Forces and who has received orders to go oversees into a war zone or orders which involve risking their life. This feast is to prepare and protect the practitioner through battle and danger. A feast is usually held immediately after that practitioner returns from a war zone. Additionally, this may mean the Bear Clan, also called the Soldiers' Clan, periodically celebrating the Soldier's Dance.

(f) Other feasts may include the return of the Thunder Spirits in the spring. If someone is ill, a feast may be given, which could happen at any time of the year, or when a young hunter kills their first deer, usually in the fall. All enrolled employees of the Nation who are required to work at the Feast Lodge pursuant to their clan obligations shall receive Hoocąk Woošgą Leave for those days that are regularly scheduled work days only.

(4) Native American Church. The customary time for Native American Church ceremonies is two (2) days. All enrolled employees of the Nation who are required to work at Native American Church ceremonies pursuant to their obligations shall receive Hoocąk Woošgą Leave for those days that are regularly scheduled work days only.

(a) Devotions. These prayer services may be in the afternoon or during the evening. All enrolled Tribal member employees of the Nation who are required to work at Native American Church ceremonies pursuant to their obligations shall receive Hoocąk Woošgą leave for those hours that are part of a regularly scheduled work day only.

(b) A Native American Church member elected as an officer at a duly called meeting, and who is required to attend chapter, state, regional or national meetings will be afforded Hoocąk Woošga leave. If the officer has exhausted the allowed Hoocąk Woošgą leave hours and additional leave hours are necessary, the Traditional Court will consider the request on a case-by-case basis at its discretion.

(5) Scalp Dance. This ceremony is fairly rare and the customary time for a Scalp Dance requires five (5) days. Most often these days are split into two (2) days and two (2) nights, requiring two (2) separate three (3) day leave periods. All enrolled employees of the Nation who are required to work at a Scalp Dance pursuant to their clan obligations shall receive Hoocąk Woošgą Leave for those days that are regularly scheduled workdays only.

(6) Doctoring. Most Indian Medicine Men and Medicine Women require four (4) days and nights of continuous doctoring, so the customary time is four (4) days of leave. All enrolled employees of the Nation who are required to work at a Doctoring Ceremony pursuant to their clan obligations shall receive Hoocąk Woošga Leave for those days that are regularly scheduled work days only.

(7) Ghost Meal. All enrolled Ho-Chunk employees of the Nation who are required to work at a Ghost Meal pursuant to their clan obligations shall receive Hoocąk Woošgą Leave for those days that are regularly scheduled workdays only.

e. Limitations.

(1) The maximum amount of paid Hoocąk Woošga Leave is ten percent (10%) of the employee's total hours during each fiscal year period.

(2) If an enrolled Ho-Chunk employee has exhausted the allowed Hoocąk Woošgą leave hours and additional leave hours are necessary, the Traditional Court will consider the request on a case-by-case basis at its discretion.

(3) Extension of a leave of absence must be secured with a written note from any member of the Traditional Court. For example, when there are consecutive funerals and certain clans must serve as workers for both funerals, the worker must obtain a new leave approval.

(4) Abuse of this Policy may result in denials from the Traditional Court and ultimately, the Executive Director of Personnel.

(5) This Policy shall not include any paid leave for enrolled Ho-Chunk member employees to attend pow-wows, including any events held at pow-wows.

f. Authority. The Traditional Court shall make a determination on matters in which the Executive Director of Personnel is unable to make a determination on executing paid Hoocąk Woošgą Leave applications.

24. **Jury Duty and Witness Leave**.

a. Jury Duty. Employees are to notify their supervisors promptly upon receipt of a jury summons and subsequent notice of selection to serve as a juror. An employee selected to provide this community service will receive his or her regular rate of pay for normal hours worked, up to a maximum of ten (10) workdays, provided the employee submits evidence of the summons and selection notice. Employees will be allowed to retain any mileage and other compensation paid by the court.

b. Witness Duty. Employees will be paid their regular hours for the time required to provide testimony in work related litigation or court proceedings. Employees are to notify their supervisor immediately upon receipt of a job related subpoena.

25. **Military Leave**.

a. An employee who enters active duty in a branch of the U.S. Armed Forces or is a member of the Reserve Components of the U.S. Armed Forces who attends annual training, active duty for training, or is called to active duty will be granted military leave.

b. To be entitled to military leave an employee must present official orders requiring attendance for a period of training or other active duty as a member of the Armed Forces.

c. An employee may opt not to use military and, instead, use accrued annual leave.

d. Military leave is further classified as paid supplemental military leave, unpaid military leave, or unpaid military leave of absence.

(1) Paid Supplemental Military Leave.

(a) Paid supplemental military leave is that amount of pay necessary, when added to the military base pay received for that day, to bring the employee to his or her full wage/salary level for that day. The supplemental leave paid to the employee shall be the difference between the base rate of military pay to the employee for that day (exclusive of other allowances paid by the military) and the employee's full wage/salary level for that day.

(b) Fifteen (15) days of paid supplemental military leave will be granted annually to an employee who is member of a Reserve Component or who enlists for active service.

(c) For Reserve Component members this leave may be used for Annual Training, Active Duty for Training and other active duty (called to active duty or mobilized) verified by published military orders. Inactive Duty Training (i.e., weekend training) as a member of the National Guard or Reserve does not qualify for paid supplemental military leave.

(d) A day of paid supplemental military may only be used for a regular scheduled work day. The use of the fifteen (15) days is not limited to a single period, but may be used incrementally as long as the employee presents official military orders.

(2) Unpaid Military Leave. Unpaid military leave applies only to those employees who are eligible for paid supplemental military and decline to take either annual leave or paid supplemental military leave. It may only be used for fifteen (15) days or less. (As an example, this leave would apply to an employee who's military pay exceeds his or her wage/salary.)

(3) Unpaid Military Leave of Absence. Unpaid military leave of absence will be granted to an employee for extended periods (beyond 15 days) of active duty supported by published official military orders. The following periods of active duty qualify for unpaid military leave of absence:

(a) An employee who is inducted into or enlists in an Active Component of the Armed Forces of the United States.

(b) An employee who is a member of the Reserve Components attending any of the following duty:

1 Initial Entry Training (i.e., basic training).

2 Active Duty for Training (i.e., military schooling).

3 Called to federal active duty by the President of the United States during a national emergency (i.e., mobilized).

4 Called to state active duty by the Governor during a state emergency.

e. Employees returning to work are entitled to the same seniority, status, and pay they would have received had they not entered military service. Employees returning from military service may not be terminated from re-employment except for cause during their first year of re-employment.

26. **Educational Leave**.

a. Employees may request leave with pay for no more than thirty-two (32) hours per month for Ho-Chunk members, and twenty-four (24) hours per month for non-tribal members, to attend educational courses/classes.

b. Requests for educational leave shall be made in writing at least thirty (30) days before the class/course starting date. The requested leave must not be disruptive to the employee work schedule.

c. Professional Continuing Education Credits. All professional staff are responsible to meet mandated Professional Continuing Education Credits.

d. Enrolled Ho-Chunk member employees shall be allowed to use Educational Leave to attend Hoocąk language classes.

e. Supervisors shall not deny Educational Leave to enrolled Ho-Chunk members who follow the procedures for requesting such leave.

27. **Administrative Leave**. Administrative leave status or normal work curtailment may be granted to employees by the Office of the President, Vice President, Chief Justice or Office of General Council designee. Administrative Leave may be used for inclement weather conditions, hazardous working conditions, voting purposes, blood drives and other exceptional circumstances, including declarations of a state of emergency. Administrative Leave is considered unpaid leave unless otherwise specified in the Executive Order, Legislative Order, or Judicial Order.

28. **Medical Leave**.

a. Maternity/Paternity Leave. The Ho-Chunk Nation will provide maternity/paternity leave for employees when specific conditions are met.

(1) One hundred and twenty (120) hours of paid Maternity Leave for the maternal birthing parent employee.

(2) Additional unpaid Maternity Leave for the female/birthing parent employee can be provided when conditions of employment are met.

(a) When the pregnancy pre-exists employment with the Nation, the employee may receive up to thirty (30) calendar days of leave without pay.

(b) Otherwise, Family Medical Leave can apply if the pregnancy occurred during her employment with the Nation subject to qualification under Family Medical Leave.

(3) Up to forty (40) hours of paid Paternity Leave for the paternal parent employee shall be provided.

(4) Additional unpaid Paternity Leave for the paternal parent employee can be provided when conditions of employment are met.

(a) When the pregnancy pre-exists his employment with the Nation, he can receive up to seven (7) calendar days leave without pay.

(b) Otherwise, Family Medical Leave can apply if the pregnancy occurred during his employment with the Nation, subject to qualification under Family Medical Leave.

b. Family Medical Leave. The Ho-Chunk Nation will provide up to twelve (12) weeks of unpaid, job-protected leave referred to as Family Medical Leave (FML) for "eligible" employees to attend to certain family medical matters. All FML requests must be approved by the Department of Personnel.

(1) To be eligible for FML, the employee must have worked for the Nation for at least twelve (12) months and have worked at least one thousand two hundred and fifty (1,250) hours during that twelve (12) month period unless the employee is a United States Veteran, then the employee must have worked at least six (6) months and six hundred and twenty-five (625) hours during that six (6) month period.

(2) When an employee does not meet the eligibility criteria noted above, the FML pending window can close sooner than the usual fifteen (15) day pending period.

(3) If an employee and/or supervisor fails to notify the Department of Personnel that an employee is past FML pending stage and has not been approved for FML use, may result in disciplinary action, including termination.

(4) Leave Schedule.

(a) FML permits the employee to take either full-time off or intermittent leave. Upon request for FML, schedule of time off must be stated, or otherwise, the employee will be reported as using full-time FML.

(b) An employee may change his or her FML schedule when medical improvements occur; provided that the Department of Personnel is notified prior to the schedule change.

(c) An Intermittent/Reduced Schedule is permitted when such schedule does not unduly disrupt the Nation's operations and when either of the following circumstances occur.

1 When medically necessary to care for a seriously ill family member with a foreseeable medical treatment schedule is established for the employee.

2 When an employee with a serious medical condition is medically released by the supervising health care provider to work a reduced schedule. In such cases, the Nation may transfer the employee temporarily to an alternative job with equivalent pay and benefits that better accommodate the employee's recurring periods of leave.

3 To care for a newborn or newly placed adopted or foster care child, as approved by the employer.

(5) An employee who fails to keep the Department of Personnel and his or her supervisor current on his or her medical status while on FML may be denied possible extensions of any leave time.

(6) Upon return to work from a serious health condition, an employee must submit an attending physician's return to work certification prior to returning to work.

(7) An employee who fails to report promptly for work at the expiration of FML will be handled in one of following two ways, with the exception of an employee with a Worker's Compensation claim:

(a) If unable to return, an employee has the option to submit a written resignation. Should the employee do so, they will be considered to have left the Nation in good standing.

(b) If an employee is unable to return for work at the expiration of FML and does not submit a written resignation, it shall be considered an involuntary resignation and paperwork will be processed reflecting such.

(8) The FML shall run concurrent with Short Term Disability, annual leave, sick leave, Maternity/Paternity Leave, Worker's Compensation and/or an unpaid Leave of Absence.

(9) Leave Entitlements.

(a) Such leave entitlements shall not include ailments that do not constitute "serious health conditions" as described in paragraph (e), below. This includes, but is not limited to, general work related stress, common colds, earaches, the flu, headaches other than migraines, upset stomach, minor ulcers, routine dental, orthodontic or periodontal problems.

(b) Leave entitlements do include the following reasons: the birth of a child, and to care for the newborn child; placement of a child for adoption or foster care, and care for the newly placed child; care for an immediate family member (spouse, child, or parent-but not a parent-in-law) with a serious health condition; and when the employee is unable to work because of a serious health condition.

(c) Eligible employees with a spouse, son, daughter, or parent on active duty or called to active duty status in the National Guard or Reserves in support of a contingency operation may use their twelve (12) week leave entitlement to address certain qualifying emergencies. Qualifying emergencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

(d) Eligible employees are eligible to take up to twenty-six (26) weeks of leave to care for a covered service member during a single twelve (12) month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retire list.

(e) Serious Health Conditions.

1 Serious health condition means an illness, injury, impairment, or physical or mental condition and involves: any period of incapacity or treatment connected with inpatient care (i.e., overnight stay) in a hospital, hospice, or residential medical care facility; a period of incapacity requiring absence of more than three (3) calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; any period of incapacity due to pregnancy, or for prenatal care; any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy); a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases); or any absences to receive multiple treatments (including any period of recovery) by, or on the referral of, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis).

2 A regimen of continuing treatment under this provision that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for the purpose of Family Medical Leave.

(10) Maintenance of Health Benefits. The Nation shall maintain group health insurance coverage, including family coverage for an employee on the Nation's FML. During the leave, the Nation will pay both the employer's and employee's health premium, all other deductions will continue if payment is received from the Nation. The maintenance of the health benefits stops if and when an employee informs the Nation of intentions not to return to work at the end of the leave period, or if the employee fails to return to work when the leave entitlement is exhausted.

29. **Unpaid Leave of Absence**. An employee with more than twelve (12) months of continuous full time service (or ninety (90) days, in the event an Emergency Declaration has been executed) may be eligible for an Unpaid Leave of Absence for a period not to exceed three (3) months. All requests must be submitted in writing to the supervisor. The supervisor shall

provide a written recommendation to the Department of Personnel, which shall make a final determination.

a. An Unpaid Leave of Absence may be granted for the following reasons:

(1) Continued illness or personal reasons, which extend in time beyond available annual, sick, or FML. During an Unpaid Leave of Absence for medical reasons, health benefits will continue for up to ninety (90) days.

(2) Advanced training, higher education, or research, which will increase employability and job skills that are in the best interests of the Ho-Chunk Nation. Employees will be responsible for maintaining or discontinuing any employment related discretionary insurance benefits with the Nation.

b. Upon expiration of the Unpaid Leave of Absence, the employee shall be reinstated in the position held at the time this leave was granted. An employee who fails to promptly report to work at the expiration of such leave will be considered to have voluntarily resigned.

c. Upon return to work for a medical reason, an employee must submit an attending physician's return to work certification prior to returning to work.

d. Under no circumstances will Departments be allowed to announce the position and hire a probationary employee; as if they were an official vacancy.

30. **Employee Assistance Program (EAP)**. The Employee Assistance Program is to assist employees with personal problems and supervisors in need of assistance in dealing with employee personal issues. The EAP is available to all employees of the Ho-Chunk Nation and their family members.

CHAPTER V
WORK RULES AND
EMPLOYEE CONDUCT, DISCIPLINE, AND
ADMINISTRATIVE REVIEW

31. **General Hours of Work and Attendance**.

a. Due to the varying nature of Tribal business and service needs, no single work schedule can be established for all employees. Executive Directors, upon consultation with supervisory personnel and with approval of the appropriate Administrator, will determine operational days and hours of work, or the modification thereof. General working times for Administration and Programs are Monday-Friday, 8:00 a.m. to 4:30 p.m., unless altered by Legislative or Executive Order. Working times for Gaming and Non-Gaming Enterprises will be established individually upon operational needs.

b. Work schedules will be established for each employee by supervisory personnel who may change schedules based on the needs and requirements of the department. Supervisory personnel may also require an employee to work an unscheduled day which shall be treated as

modified work schedule.

c. Attendance.

(1) Employees are required to report to their designated work locations at the prescribed time and manner work is to commence. Tardiness, unexcused absence or failure to report as required may result in disciplinary action.

(2) In the event an employee cannot report to work as scheduled, the employee must notify supervisory personnel at least one (1) hour prior for enterprise employees and within fifteen (15) minutes after the scheduled work shift for non-enterprise employees.

(3) In all cases of an employee's absence or tardiness, the employee shall provide supervisory personnel with a valid reason for the absence and, if applicable, the probable duration of absence.

d. Excessive Absenteeism. Excessive absenteeism which renders an employee unavailable for work will be evaluated on a case-by-case basis to determine the merits of disciplinary action or termination.

e. Abandonment of Employment. An employee who is absent from his or her assigned work location without authorized leave for two (2) consecutive work days or three (3) work days in a six (6) month period shall be considered absent without authorized leave, and as having abandoned his or her employment. The employee may be terminated, unless the employee can provide the Nation with acceptable and verifiable evidence of extenuating circumstances justifying the absence(s). During an Emergency Declaration, supervisors are encouraged to be flexible and lenient with the application of this section.

32. **Employee Conduct**.

a. Employees are responsible and accountable for adhering to all Tribal laws, policies, rules, directives, and procedures enacted and established by the Nation or appropriate Executive Staff.

b. Employees who engage in, or are associated with illegal, or inimical conduct, the nature which adversely affects the Ho-Chunk Nation, or their ability to carry out their employment responsibilities, will be subject to disciplinary action, including termination

c. Information about the Ho-Chunk Nation, its customers, clients, suppliers, or employees shall not be disclosed or divulged to anyone other than persons who have a right to know, or are authorized to receive such information.

d. The Nation reserves the right to deny services and entry onto the Nation's property to members of the public, visitors, and employees who are physically and/or verbally abusive or disruptive of services and operations. The Nation additionally reserves the right to deny entry onto Tribal properties or access to services to all employees and/or members of the public who may be under the influence of alcohol, controlled substances, and/or illegal drugs. During an Emergency

Declaration, the Nation may reserve the right to deny entry onto Tribal properties or access to services to all employees and/or members of the public in the interest of safety.

e. Unacceptable Conduct. The following employee acts, activities, or behavior that are unacceptable conduct.

(1) Improper or unauthorized use of paid or unpaid leave.

(2) Being absent without authorized leave or repeated unauthorized late arrival or early departure from work.

(3) Willful or negligent violation of this Act, Ho-Chunk law, unit operating rules, or related directives.

(4) Refusal to accept reasonable and proper assignments or failure to carry out a direct order from a superior, except where the order is illegal or the employee's safety may reasonably be jeopardized by the order.

(5) Soliciting or accepting gifts or compensation in exchange for influence, contracts, access to information, people or facilities.

(6) Engaging in a conflict of interest activity.

(7) Conduct that discredits the employee or the Nation, or willful misrepresentation of the Nation. An employee may not present himself or herself as a representative of the Nation, or communicate with the news media on behalf of the Ho-Chunk Nation unless authorized or directed in writing by the Ho-Chunk Nation or its delegated representative(s).

(8) Conviction of a crime, including convictions based on a plea of *nolo contendere* or of a misdemeanor involving moral turpitude, the nature of which reflects the possibility of serious consequences related to the continued assignment or employment of the employee.

(9) Knowingly falsifying, removing, or the destruction of information related to employment, payroll, or work-related records or reports.

(10) Soliciting outside work for personal gain during business hours; engaging in off-duty employment for any business under contract with the Ho-Chunk Nation; participating in any off-duty employment that adversely affects the employee's performance of work for the Nation; and engaging in unauthorized off-duty employment.

(11) Conduct that interferes with the management of Tribal operations.

(12) Violation of or neglecting safety rules, or contributing to hazardous conditions.

(13) Discourteous treatment of the public or other employees, including harassing, coercing, threatening, or intimidating others (see Workplace Violence Prevention Act, 6

HCC § 8-17).

(14) Unauthorized removal, negligent, or improper use of any Tribal property, equipment, or funds or that of its clients, customers, or agents. This includes the private use, use that creates an unreasonable risk of damage to property, and embezzlement or conversion for personal use of Tribal funds or property.

(15) Physical altercations or creating a disturbance among fellow employees that would result in an adverse effect on morale, productivity, and/or the maintenance of proper discipline, i.e. wrestling, rough housing, and horse play.

(16) Participating in a strike, work stoppage, slowdown, sickout, or other job action.

(17) Making false, malicious, or unfounded statements against co-workers, supervisors, subordinates, government officials, or the Ho-Chunk Nation, which tend to damage the reputation or undermine the authority of the Ho-Chunk Nation.

(18) Conducting personal business during work time.

(19) Inefficiency, incompetency, or negligence in the performance of duties, including failure to perform assigned tasks or training, or failure to discharge duties in a prompt, competent, and reasonable manner.

(20) Refusal or inability to improve job performance in accordance with written or verbal direction after a reasonable period, which is specified in writing.

(21) Employees may not engage in coercion, nor be subject to coercive tactics that constitute a deprivation of legally protected rights.

(22) Offering or accepting political rewards as consideration for the political support of any party or candidate for public or Tribal office. Upon proof of such reward, disciplinary action will be taken, which may result in termination or removal.

(23) Driving under the influence of alcohol or drugs while on duty or the suspension of driver's license where job duties require driving.

(24) Bringing infants or other dependents to work for the purposes of providing them care and supervision, except in the following circumstances:

(a) To accommodate a mother's right to breast-feed an infant during her break periods, provided that a minimum amount of disruption in office functions occur.

(b) To accommodate an employee who works at any of the Nation’s facilities where day care, recreation, or other supervision is provided for infants or dependent children, provided that the employee’s work is not disrupted.

(c) In all cases, an employee must request approval of his or her supervisor in order to bring a child to his or her workplace under the above circumstances.

(25) Use of office telephones for personal purposes. Personal calls shall be kept to a minimum and long distance calls shall be reimbursed.

(26) Participating in, planning, or assisting in any illegal or unlawful activity, which affects the day-to-day operations of the Ho-Chunk Nation.

(27) Unauthorized release of confidential information or official records.

(28) Misuse of authority or position for personal gain.

(29) Any other actions considered inappropriate, or detrimental to employee working environment.

(30) Taking employee personnel matters to any public forum.

(31) Use of social media during regularly scheduled work hours for non-work related matters.

33. **Employee Discipline**.

a. Depending on the nature of the circumstances of an incident, discipline will normally be progressive and should bear a reasonable relationship to the violation. Based on the severity of the employee conduct, progressive discipline may not be applicable. Supervisors imposing discipline shall afford Due Process to the employee prior to suspending or terminating any employee, except in the case of sexual harassment where supervisors may afford Due Process (see Chapter I, Section 6.e.(4)(a)). Types of discipline include:

b. Progressive discipline may include a verbal warning, written warning, suspension, or termination. Depending on the nature of the circumstances and the severity of the violation(s), supervisory management may proceed to a higher level of discipline. Supervisory management may also utilize the verbal or written warning multiple times before proceeding to a higher level of discipline. Any discipline will be noted within the employee's personnel file.

(1) Suspension.

(a) Under no circumstances will a suspension exceed ten (10) working days.

(b) It may be necessary to restrict an employee immediately from performing duties at the work site. These circumstances usually involve potential danger to the employee, co-workers or the public, or the employee's inability to discharge assigned duties satisfactorily. In these situations, the following procedure is to be followed:

1 Once the employee is suspended, the supervisor taking the action

to suspend an employee will immediately notify the Executive Director and prepare a written statement of action taken and the reasons for such action.

2 The Executive Director of the Department in which the employee is employed, or the Executive Manager of the employee's facility, will prepare, together with the supervisor, the statement of charges and document any supporting evidence.

3 As soon as possible after the initial action, the Executive Director will prepare written notification to the affected employee.

(c) In no event will the use of paid time be allowed during a period of suspension without pay. Should a paid holiday occur during a period of suspension without pay, the suspension period shall be extended by the number of holidays occurring during the suspension period.

(d) All suspensions shall be unpaid. No employee may be disciplined by issuance of a suspension with pay.

(e) A suspended employee who has been vindicated of any wrongdoing shall be compensated for lost wages and benefits.

(2) Termination.

c. The supervisor shall notify the Department of Personnel of all disciplinary actions.

34. **Alternative Dispute Resolution**. In an effort to provide employees with a method to resolve conflict within the workplace, the Ho-Chunk Nation has elected to implement alternative dispute resolution prior to and, in some cases, in lieu of the grievance process. It is the policy of the Ho-Chunk Nation to afford all eligible employees who have been subject to discrimination and/or harassment, a means of having the circumstances of such action reviewed by an impartial and objective mediator. The Department of Personnel will take all reasonable steps to investigate all complaints. The Department will conduct mediations by facilitating discussions between parties requesting the assistance of the Department of Personnel in resolving their disputes in accordance with the Personnel Department's rules and procedures for mediation.

35. **Employment Conflict Review Process Generally**.

a. Employees may seek administrative and judicial review pursuant to the provisions of the Employment Conflict Review Process and Judicial Review sections (below) only for alleged discrimination, harassment, suspension, or termination. Initial Probationary or Limited Term Employees may not seek review on any matters, except alleged discrimination or harassment. Performance Evaluations may not be reviewed under the Employment Conflict Review Process or judicially.

b. Effective July 23, 2019, review of employment conflicts will be governed by the provisions of Sections 36 and 37 herein, which includes a complaint process for employees, followed by an option for Judicial Review.

c. Candidates for employment may file a hiring practice complaint with the Department of Personnel regarding the interview and selection process and may elect to file a complaint directly with the Personnel Department within fifteen (15) calendar days of the receipt of notice that the interview has been denied or that they were not selected for the position. The Executive Director of Personnel will investigate the matter and respond within fifteen (15) calendar days.

(1) During an Emergency Declaration, the Department of Personnel will allow for an electronic complaint submission and procedure, in lieu of in person meetings.

36. **Employment Conflict Review Process (Effective July 23, 2019)**

a. Policy. Employees who are eligible to file a complaint, pursuant to Section 35a, will have their complaint processed under the Employment Conflict Review Process.

b. The burden of proof for reviewable actions shall be:

(1) Discrimination and Harassment. The burden of proof shall be on the complainant to prove that the discrimination and/or harassment occurred. Further, the complainant must prove that enduring the offensive conduct becomes a condition of continued employment; or the conduct is so severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive, for which the supervisor has taken no action to remedy. For example, petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of being unlawful.

(2) Sexual Harassment. The burden of proof shall be on the complainant to prove that the sexual harassment occurred. Further, the complainant must prove that it results in an adverse employment decision for the complainant (meaning the victim is suspended, terminated, or demoted); or that it is so frequent or severe that it creates a hostile or offensive work environment, for which the supervisor has taken no action to remedy. For example, simple teasing, off-hand comments, or isolated incidents that are not very serious will not rise to the level of being unlawful.

(3) Suspension and Termination. The burden of proof shall be that the conduct the employee was terminated or suspended for was not a violation of the Employment Relations Act; that there was a mistake, in fact, that the disciplining supervisor knew or should have known; or that the disciplining supervisor did not provide adequate pre-deprivation Due Process.

c. Method of Proof. The complainant may seek to prove the employment action was unlawful through a variety of means, including, but not limited to: documentation, witness statements, recordings taken lawfully, and pictures.

d. Employment Conflict Complaint.

(1) Deadline. The complainant must file a written complaint with the Department of Personnel within five (5) calendar days of the disputed action.

(a) If a complainant who seeks to file a complaint does not meet their deadline, it shall serve as the basis for a denial of any additional complaint of that matter. Also, if a deadline falls on a weekend, the party who is seeking to file a document shall have the next weekday on which to file.

(2) Form. The Department of Personnel shall provide a complaint form, but other documentation may be used by the complainant. The complaint shall include, at a minimum, the name of complainant, name of supervisor, date of employment action being reviewed, a description of the employment action being reviewed, an explanation of why such employment action was unlawful, and an explicit request for relief.

e. Investigation.

(1) The Executive Director of Personnel, or authorized designee, may choose to have the complaint investigated.

(a) The Department of Personnel shall take all reasonable steps to investigate any incident which involved or resulted in discrimination, harassment, suspension, or termination.

(b) The Executive Director of Personnel, or authorized designee, may use the results of any investigation in deciding if settlement is appropriate.

(c) The Executive Director of Personnel, or authorized designee, may use the results of an investigation as evidence in an Employment Conflict Resolution Meeting, but they must provide a copy of the investigation to the complainant and the supervisor in advance.

f. Response to Complaint. The Executive Director of Personnel, or authorized designee, has fourteen (14) calendar days to respond to the complaint.

(1) In the event the complainant's direct supervisor is the Executive Director of Personnel, an authorized designee shall be utilized.

(a) Any intimidation, harassment, or retaliation directed at the authorized designee, for their role of administrative reviewer, when the Executive Director of Personnel's actions are being reviewed, shall be prohibited. Such actions are subject to Section 36j.

(2) The response may include a number of options:

(a) Informing the complainant that the Department of Personnel is investigating the matter further and will follow up after the investigation with a reversal of the supervisor's decision or with proceeding with Section 36f(2)(b) or 36f(2)(c) below;

(b) Offer to settle the matter through mutual agreement; or

(c) Set the matter for an Employment Conflict Resolution Meeting.

g. Notice for Employment Conflict Resolution Meeting.

(1) Notice of Employment Conflict Resolution Meeting. Notice shall include the date, time, and location of the Employment Conflict Resolution Meeting. The notice should set forth that the Meeting's purpose is for the Executive Director of Personnel, or authorized designee, to hear from the complainant and supervisor, be presented with methods of proof, and hear from witnesses.

(2) The notice must be served via certified mail, return receipt delivered. The complainant shall be provided ten (10) day notice of the Employment Conflict Resolution Meeting, unless the complainant waives timelines and/or certified mail notice in writing.

h. Employment Conflict Resolution Meeting.

(1) The Executive Director of Personnel, or authorized designee, presides over the meeting.

(a) The Executive Director of Personnel, or the authorized designee, shall be impartial.

(b) Another impartial designee shall be authorized in the event of a conflict of interest.

(2) Scheduling. If the complainant cannot meet at the designated date and time, the Executive Director of Personnel, or authorized designee, will make reasonable efforts to reschedule the meeting within an additional ten (10) days from the date provided in the original notice.

(3) Refusal to Meet. If the complainant refuses to meet with the Executive Director of Personnel, or authorized designee, that refusal shall serve as grounds for denial of the complaint, and as the basis for denying the refiling of such complaint.

(a) The denial decision shall made in writing and be mailed to the complainant's last known address certified mail, return receipt requested.

(b) A copy of any and all correspondence will be provided to the Department of Personnel.

(4) Meeting. The Employment Conflict Resolution Meeting is an opportunity for the Executive Director of Personnel, or authorized designee, to hear from the complainant and supervisor, review the presented evidence, elicit testimony, and ask questions in an effort to resolve the conflict.

i. Decision.

(1) The Employment Conflict Resolution Meeting Decision must be in writing and clearly titled as such.

(a) It must include a statement that the decision is deemed final for the purposes of judicial appeal under section 37. As such, the decision shall provide language regarding the judicial appeal process.

(2) The Executive Director of Personnel, or authorized designee, shall consider all that he/she heard, read, and viewed to make a determination on whether the complainant met his/her burden of proof and be awarded relief.

(3) Any relief awarded shall comply with the Nation's APPROPRIATIONS AND BUDGET PROCESS ACT, and shall not be greater than that authorized by the Legislature's Limited Waiver of Sovereign Immunity allowing Judicial Review of employee complaint under section 37.

(4) If the Executive Director of Personnel, or authorized designee, finds merit to a complaint, the final written decision will be forwarded to the proper supervisors and/or Executive Directors to take under advisement for requiring discipline or further training, as may be appropriate.

(5) The Employee Complaint Meeting decision shall be sent by certified mail, return receipt requested, within ten (10) days of the Employment Conflict Resolution Meeting.

j. The use of the Nation's complaint process for harassment, intimidation, or to make false claims is strictly prohibited.

(1) Penalty. Any person who violates this provision shall be subject to a civil penalty of up to $100.00 per occurrence. The Court shall assess the penalty after petition, notice, opportunity for hearing, and a determination that a violation has occurred. In addition, if the violation is committed by an employee of the Nation, the person shall be subject to appropriate disciplinary action as allowed in the Nation's employment laws.

37. **Judicial Review**

a. Limited Waiver of Sovereign Immunity. Pursuant to Article XII of the Constitution of the Ho-Chunk Nation, the Ho-Chunk Nation Legislature expressly waives the sovereign immunity of the Ho-Chunk Nation in the limited manner described in Section 37. This waiver shall be strictly construed with its terms adhered to.

b. There is no judicial review of employee evaluations or disciplinary actions that do not immediately result in suspension or termination.

c. Judicial review of employment conflict complaints involving suspension, termination, alleged discrimination or harassment can proceed to the Ho-Chunk Nation Trial Court under this limited waiver of sovereign immunity only after the applicable Employment Conflict Review

Process, under Section 36, has been fully exhausted. Such review will be initiated by filing a written *Complaint*. An employee may file a written *Complaint* with the Trial Court within thirty (30) calendar days from when the Employment Conflict Review Meeting Decision is issued.

d. Relief.

(1) This limited waiver of sovereign immunity allows the Trial Court to award monetary damages for actual wages established by the employee in an amount not to exceed $10,000.00, subject to applicable taxation.

(2) The Trial Court may grant equitable relief mandating that the Ho-Chunk Nation prospectively follow its own law, and as necessary to directly remedy past violations of the Nation's laws. Other equitable remedies shall only include:

(a) An order of the Court to the Executive Director of the Department of Personnel to reassign or reinstate the employee;

(b) The removal of negative references from the employee's personnel file;

(c) The award of bridge service credit; and

(d) The restoration of the employee's seniority.

(3) Notwithstanding the remedial powers noted above, the Court shall not grant any remedies that are inconsistent with the laws of the Ho-Chunk Nation. Nothing in this limited waiver or within this Act shall be construed to grant a party any legal remedies other than those included in this section.

e. Under this limited waiver of sovereign immunity, the Complainant must prove, by clear and convincing evidence one of the following:

(1) For Wrongful Suspension, that the conduct the employee was suspended for was not a violation of the Employment Relations Act; or that there was a mistake, in fact, that the disciplining supervisor knew or should have known.

(2) For Wrongful Termination, that the conduct the employee was terminated for was not a violation of the Employment Relations Act; that there was a mistake, in fact, that the disciplining supervisor knew or should have known; that the disciplining supervisor did not provide adequate pre-deprivation Due Process.

(3) For Discrimination and Harassment, that the discrimination and/or harassment occurred. Further, the complainant must prove that enduring the offensive conduct becomes a condition of continued employment; or the conduct is so severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive, for which the supervisor has taken no action to remedy. For example, petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of being unlawful.

(4) For Sexual Harassment, that the sexual harassment occurred. Further, the complainant must prove that the sexual harassment results in an adverse employment decision for the complainant (meaning the victim being suspended, terminated, or demoted); or that the sexual harassment is so frequent or severe that it creates a hostile or offensive work environment, for which the supervisor has taken no action to remedy. For example, simple teasing, off-hand comments, or isolated incidents that are not very serious will not rise to the level of being unlawful.

38. **Employee Rights**.

a. During Judicial Review, employees have the right to be represented by legal counsel or advocate at their own expense. During the Administrative Review Process, employees entitled to Due Process have the right to hear the charges, evidence and witnesses against him or her, and the right to answer such charges.

b. It is a violation of this Act for any employee or member of the Ho-Chunk Nation to interfere with, threaten, coerce, restrain, discharge or otherwise take action against any employee or other person because he or she has filed a complaint, gave or will give testimony, or otherwise appeared before a court of the Ho-Chunk Nation or any of Ho-Chunk committee, agency, or board in connection with a grievance or an appeal.

c. Retaliation or punishment of an employee seeking resolution of an employment grievance by using established or prescribed procedures is strictly prohibited.

CHAPTER VI
"Kiišak Waiš'ak"

39. **"Kiišak Waiš'ak"**

a. In accordance with the Constitutional authority granted to Legislature to protect and foster Ho-Chunk religious freedom, culture, language, and traditions, this Act in utilizing human resources, the establishment of uniform employment practices, the enforcement of the Equal Employment Opportunity Clause, Ho-Chunk Hiring Preference, Veteran Hiring Preference, as well as the Waksik Wosga Leave Policy, shall also include the traditional Ho-Chunk teaching of "Kiišak Waiš'ak," or giving respect to everyone, as it was determined by our Hocak forbearers.

b. It is the desired goal and objective of the Nation to promote a safe and thriving workplace that reflects the strength, professionalism, and traditional vitality of all Nation employees. Ho-Chunk culture promotes that everyone is owed respect, and that respect is also earned. Special attention should be given to elders, women, veterans, and infants.

c. As taught by our ancestors, "Kiišak Waiš'ak" requires individuals to act on this belief in their day-to-day lives. Nation employees pay tribute to "Kiišak Waiš'ak" when they are cognizant of the respect that is given to elders and veterans, and strive to remain courteous in their discourse and communications with them. Whenever possible, everyone, especially elders and veterans, should be able voice their opinions or concerns without interruption.

d. Each department, division, or unit of the Nation with the approval and consultation of the Executive Director of the Department of Personnel and a Representative from Traditional Court, and/or Cultural Resources and Heritage Preservation, may develop, implement, and revise as necessary internal procedures, operating rules and policies pertaining to raising employee awareness of "Kiišak Waiš'ak," and the special attention that is to be given to elders, veterans, and infants.

e. "Kiišak Waiš'ak," or giving respect to everyone, reinforces and sustains our Ho-Chunk traditional way of life for future generations. By enforcing "Kiišak Waiš'ak" in the workplace, and having special regard for elders, veterans, and infants, the Nation, through Legislature, is fulfilling its Constitutional promise to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

CHAPTER VII
DRUG, ALCOHOL AND CONTROLLED SUBSTANCE POLICY

40. **General**.

a. The Ho-Chunk Nation has a vital interest in maintaining a safe, healthy, and efficient working environment for its employees, contract service providers, and elected and appointed Officials, and each of these parties has the right to expect such working conditions are maintained. Being under the influence of drugs, controlled substances, or alcohol on the job poses a serious health and safety risk to the user, as well as other employees, contract service providers, and Officials of the Nation. The possession, use, or sale of an illegal drug or controlled substance in the workplace also poses unacceptable risk to a safe, healthy, and efficient work environment.

b. The Ho-Chunk Nation recognizes that its own well-being and future success as a Nation and an employer are dependent on the physical, mental, and emotional health of its employees. Accordingly, it is the right, obligation and intent of the Nation to maintain a safe and healthy work environment to protect its employees, property, equipment, operations, goodwill, and customers.

41. **Purpose.**

a. This Chapter promulgates and implements policy to maintain a Drug Free Work Place by establishing procedures for pre-employment screening, employee education and assistance, employee testing, and employee disciplinary action for the use, possession, or sale of illegal drugs, controlled substances, and alcohol, as well as for breach of employee confidentiality.

b. This Chapter also provides the Nation's Zero Tolerance Policy for drugs, controlled substances, and alcohol for elected and appointed Officials of the Ho-Chunk Nation.

42. **Policy**.

a. General. As a condition of employment, all employees, supervisors, contract service

providers, and elected and appointed Officials must abide by the terms of this policy and the procedures contained herein.

(1) Employees, contract service providers, and elected or appointed Officials are expected to report for work and remain at work in a condition, which enables them to perform their duties and tasks free from the effects of drugs or alcohol.

(2) The possession, use, sale, purchase, or distribution of illegal drugs or controlled substances, or being under the influence of alcohol on the Nation's premises or in the conduct of related work off-site is prohibited.

(3) It is the responsibility of all supervisors to enforce this Drug, Alcohol and Controlled Substance Policy. Failure to enforce this Policy may result in disciplinary action up to and including termination. Nothing in this Policy precludes supervisors from establishing work or safety rules, which apply to their particular department and specified functions.

(4) Employees, contract service providers, and elected or appointed Officials suspected of being impaired by being under the influence of drugs or alcohol shall be escorted from the work site by the employee's supervisor or security personnel to a safe and secure area. The supervisor shall immediately document the incident and initiate Reasonable Suspicion Testing (see Section 45).

(5) Employee, contract service providers, and elected and appointed Officials rights shall not be violated. Any breach of confidentiality by an employee or supervisor will result in disciplinary action up to and including termination or removal.

b. Peyote. The use, possession, and/or transportation of peyote by Native American Church members in connection with the practice of the Native American Church (NAC) ceremony will not be considered to violate this Policy. The employee, contract service provider, or elected or appointed Official will not be subject to disciplinary action on the basis of such use, possession, or transportation in connection with the practice of the NAC.

c. Zero Tolerance Policy for Elected and Appointed Officials.

(1) Elected and appointed Officials of the Nation are to be held to the highest standards of compliance with the Nation's drug, alcohol, and controlled substance policies. See paragraph 4lm for a definition of "Official." Conduct of official duties by an elected or appointed Official while under the influence of drugs or when impaired by alcohol, as reasonably established by breath or blood alcohol and/or urinalysis testing shall not be tolerated and shall:

(a) Constitute malfeasance in office for purposes of Article IX, Sections 1 and 2 of the Constitution;

(b) Constitute good cause for removal under Article IX, Section 3 of the Constitution;

(c) Constitute good cause for removal under Section 805 of the Gaming Ordinance;

(d) Constitute good cause for removal of Election Board Members under paragraph 4d of the Election Ordinance (2 HCC § 6).

(e) Constitute malfeasance for the purposes of paragraph 5n of the Code of Ethics Act (2 HCC § 1); and

(f) Result in the immediate removal by the President of an Executive Director or other presidential appointed Officials from the position in which they serve if a violation of the Zero Tolerance Policy.

(2) Alcohol Related Misconduct associated with official duties by an Elected or Appointed Official shall be a violation of this Policy punishable by unpaid suspension for three (3) to ten (10) days or, if involving conduct of sufficient severity, by termination or removal as subject to the supervisor's discretion exercised in accordance with the Nation's Constitution and laws. During the Conduct of Official Duties, the stricter standards of paragraph (1), above, shall apply.

(3) Should there be a conflict in the application of the Zero Tolerance Policy and the Nation's other drug, alcohol, and controlled substance policies and procedures for elected and appointed Officials; the Zero Tolerance Policy shall prevail.

d. Legal Drugs.

(1) The use of, or being under the influence of, physician prescribed ("legal") drugs by an employee, contract service provider, or elected or appointed Official while in the workplace, or while on work related travel, is prohibited to the extent that such use or influence may, in the Nation's opinion, affect the safety of co-workers or members of the public, the employee's, contract service provider's, or elected or appointed official's job performance, or the safe and efficient operation of the Nation's facilities. Failure to report to management the use of prescription or legal drugs, which by their nature may impair the

employee's, contract service provider's, or elected or appointed Official's abilities to perform his/her duties, may result in disciplinary action by management up to and including termination or removal.

(2) If management has determined that the employee, contract service provider, or elected or appointed Official does not pose a threat to her or his own safety, the safety of co-workers, and that the employee's, contract service provider's, or elected or appointed Official's job performance is not significantly affected by the legal drug, the employee, contract service provider, or elected or appointed Official may continue to work, even though they may be under the influence of a legal drug.

(3) If management has determined that the employee, contract service provider, or elected or appointed Official does pose a threat to her or his own safety, the safety of co-workers, and that the employee's, contract service provider's, or elected or appointed

Official's job performance is significantly affected by the legal drug, the employee, contract service provider, or elected or appointed Official may be required to take a leave of absence, or comply with appropriate directive as determined by management.

(4) Any violation of this section will subject the employee, contract service provider, or elected or appointed Official to disciplinary action, up to and including termination or removal.

e. Illegal Drugs.

(1) The manufacture, possession, use, purchase, procurement, dispensation, or distribution of an illegal drug or illegal controlled substance or being under the influence of same, by any employee, contract service provider, or elected or appointed Official while in the workplace, on Nation premises, or in the conduct of related work off-site is prohibited. This will subject the employee, contract service provider, or elected or appointed Officials to disciplinary action up to and including termination or removal, and referral to law enforcement for prosecution.

(2) The use of another person's legally prescribed drugs is a violation of this Policy and shall constitute a positive drug test result due to the illegal procurement and use of controlled substances.

f. Alcohol.

(1) The consumption of alcohol or being under the influence of alcohol during working hours is prohibited and will subject the employee, contract service provider, or elected or appointed Official to disciplinary action, up to and including termination or removal. The purchase of alcohol, even if for later off-duty consumption, while being either an operator or a passenger in any Tribal owned or rented vehicles is likewise prohibited.

(2) The Nation will conduct testing for alcohol utilizing both breath alcohol and blood alcohol testing, especially where circumstances, accidents or other incidents in the workplace justify. A positive alcohol test shall be treated the same as a positive drug test

for the purposes of the disciplinary rules stated Section 52.

(3) The Nation shall designate a Certified Technician(s) who shall be responsible for administering breath alcohol testing utilizing an Alco Sensor IV RBT IV unit or another comparable or appropriate breath alcohol testing unit.

(4) A breath alcohol concentration equal to or greater than 0.02 is a positive result and the employee or contract service provider shall be subject to disciplinary action consistent with Section 52. The Supervisor, Compliance Division, or Security shall arrange for transportation of the employee or contract service provider to his/her residence.

(5) The Nation provides an Employee Assistance Program (EAP) and Alcohol and Other Drug Abuse (AODA) program, which provides help to employees who seek

assistance to help with problems. See Section 53.

43. **Definitions**.

a. "Alcohol Concentration" means either of the following:

(1) The number of grams of alcohol per 100 milliliters of a person's blood.

(2) The number of grams of alcohol per 210 liters of a person's breathe.

b. "Alcohol Related Misconduct" associated with official duties means a conviction for any alcohol related driving offense, physical altercation, or other serious wrongful conduct by an elected or appointed Official in which alcohol consumption is established by substantial and reliable evidence to be a contributing factor during travel, meal, and lodging time associated with meetings or other responsibilities regarding the conduct of official business for which the appointed or elected Official is eligible to receive per diem under this Act. For the purposes of this definition, "substantial and reliable evidence" shall mean a breath or blood alcohol test administered by a certified tester showing an alcohol concentration of over 0.01 or credible eyewitness testimony of two (2) or more persons of the consumption by the subject of four (4) or more alcoholic beverages during a period of not more than three (3) hours.

c. "Conduct of Official Duties" means the normally scheduled work duties of elected and appointed Officials whether during the regular workday or at other official meetings, including Area meetings. Conduct of Official Duties does not include informal occasions such as receptions, diners, and similar events at which no official business is transacted.

d. "Contract Service Provider" means a person who is providing services to the Nation pursuant to a Service Provider Agreement and who is treated for tax withholding purposes as though he or she is an employee of the Nation.

e. "Controlled Substance" means any controlled substance, dangerous drug(s) or intoxicating compound as defined under federal or state law and includes, but not limited to, narcotics, opiates, hallucinogens, stimulants, marijuana and so-called "designer drugs."

f. "EMIT" means Enzyme Multiplied Immuno Technique, which is an initial test that identifies which class of drug(s) is present, but not which specific drug(s).

g. "False Negative/Water Dilution" is a way of a possible false negative result that results when large amounts of fluids are ingested or water is added to the specimen after urination.

h. "GC/MS" means Gas Chromatography Mass Spectrometry, which is the confirmatory test that is done after an initial positive test is detected. It will identify that a drug(s) is present and identify which specific drug(s) was ingested, injected, or inhaled and at what concentration it is still present in the person's system.

i. "Illegal Drug" or "Illegal Controlled Substance" means any drug(s) or controlled substance(s), which is not legally obtainable, or has been legally obtained is being used in a manner

inconsistent with the prescribed dosage or by an individual other than the person the medication was originally intended. The so-called "Designer Drugs" are included in this category.

j. "Impaired" means an alcohol concentration established by properly administered breath alcohol and/or blood test to be equal to or in excess of 0.02.

k. "Legal Drug" means any prescribed drug(s), over-the-counter drug(s), or prescribed controlled substance(s), which has been legally obtained and is being used in the dosage prescribed according to the manufacturer's and/or physician's instructions.

l. "Official," for the purposes of the Nation's Zero Tolerance Policy, means any person who:

(1) Holds elective office or is a candidate for elective office; or

(2) Is an appointed professional and includes Judges, Department Executive Directors, Gaming Commissioners, and an appointed member of the President's staff.

m. "Reasonable Suspicion" means that level of suspicion established on the basis of particular facts and/or observation by an agent, fellow employee, or supervisor concerning employee behavior, comments, or significant changes in work product that would cause a reasonable and prudent person under the same or similar circumstances to believe that an employee has violated the Nation's drug policy.

n. "Reasonably Established" means that level of drug, alcohol, or controlled substance detected in a person that is determined by a breath or blood alcohol and/or urinalysis test.

o. "Under the Influence" means:

(1) With respect to any drug or controlled substance, that substance is present in a person in any detectable amount based on the results of medically validated testing.

(2) With respect to alcohol, the alcohol concentration of a person established by a properly administered breath alcohol and/or blood alcohol test is in excess of 0.08.

44. **Pre-Employment Screening and Testing**. The Ho-Chunk Nation will use pre-employment screening and testing practices to prevent the hiring of individuals who use illegal drugs or illegal controlled substances, or individuals whose use of legal drugs or legal controlled substances indicates a potential for impaired or unsafe work performance. These provisions apply to contract service providers as well as employees.

a. All applicants will be advised that the final candidates for any position, full or part-time, will be tested for drugs and controlled substances as a condition of employment. The applicant will be tested after an offer of employment is accepted and prior to beginning employment. Should an applicant test positive on a pre-employment test, the offer of employment will be rescinded and he or she will not be hired. Any applicant testing positive on a pre-employment test must meet the rehire requirements in section 54 of this policy.

b. Any applicant or final candidate who, after being advised that testing is a condition of employment, refuses testing for drugs and/or controlled substances, without a valid medical reason, will not be hired.

c. Any applicant admitting to current misuse of drugs and/or controlled substances will not be employed. The applicant will be asked to sign a statement or disclosure stating that they understand the reason for non-employment with the Nation.

d. All final candidates will be asked to complete a Drug Policy Checklist in which candidates agree to take a drug test as a condition of employment with the Nation. Furthermore, the candidates shall acknowledge that he or she understands the requirement as well as the potential consequences of all violations of the Nation's Drug, Alcohol and Controlled Substance Policy.

45. **Random Drug Testing**.

a. All employees of the Nation facilities shall be subject to random unannounced drug testing. Employees will be selected using a double blind computerized formula administered by an independent consulting firm. At a minimum, forty percent (40%) of all active employees shall be tested annually. Once notified, the employee will report directly for testing.

b. Compliance Division personnel shall, in most cases, arrive unannounced at the employee's work site to administer random drug and alcohol tests.

c. Any refusal or failure to comply with this testing, absent a valid medical reason, will result in termination of employment.

d. The Nation shall include contract service providers as part of the population randomly tested.

e. Elected or appointed Officials of the Nation shall be subject to initial and may be subject to random drug testing while serving in their official capacity under the Zero Tolerance Policy. An Initial Drug Test will be administered to a newly elected or appointed official within the first thirty (30) days (guideline) of employment. The initial drug test on occasion may be given after the first thirty (30) days where the Compliance Department work load and logistics capability do not make it practical to administer the test within the first thirty (30) days. Therefore, failure to administer the Initial Drug Test within thirty (30) days of hire shall not be deemed a waiver of the requirement for an Initial Drug Test for the newly elected or appointed official provider. Any refusal by such an appointed or elected Official to take the drug test shall be deemed in violation of paragraph 42c of this Chapter.

f. If the result of the employee's or contract service provider's drug test is positive it is considered a violation of this policy and the employee or contract provider will be subject to the provisions in section 49. See paragraph 42c for elected and appointed Officials subject to the Zero Tolerance Policy.

46. **Reasonable Suspicion Testing.**

a. The Nation may require testing of employees, contract service providers, or elected or appointed Officials suspected of being in violation of the Nation's drug and alcohol policy or where circumstances (i.e., accidents, workplace incidents, etc.) indicate that drug or alcohol use may be involved based on the Reasonable Suspicion standard. Strict procedures have been established (available through the Department of Justice Compliance Division) for determining under what circumstances such a test shall be requested. The procedure includes a number of review steps. An employee's, contract service providers, or elected or appointed Official's refusal to consent to testing shall result in termination or removal.

b. Any employee, contract service provider, or elected or appointed Official of the Nation that has direct knowledge or has reason to believe that another employee, contract service provider, or elected or appointed Official may be under the influence of alcohol and/or drugs shall report this to the Compliance Division and complete a Reasonable Suspicion Checklist. All information is confidential and will not be revealed without a Ho-Chunk Nation Trial Court Order.

c. The Director of Compliance or designee shall review the Reasonable Suspicion Checklist and either approve or deny a Reasonable Suspicion Test.

d. If the Reasonable Suspicion Test is approved, Compliance Division personnel shall arrive unannounced at the employee's or contract service provider's work site to administer the random test. Elected or appointed Officials of the Nation that are not employees of the Nation may be tested only when serving in their official capacity.

e. Should the Reasonable Suspicion involve alcohol, the employee, contract service provider, or elected or appointed Official will be administered a breath alcohol test in private by a Certified Technician. If this test is positive, a second confirmatory test shall be conducted as well as urinalysis testing.

f. Any refusal or failure to comply with Reasonable Suspicion Testing, absent a valid medical reason, will result in termination or removal.

g. If the result of the employee's or contract service provider's drug test is positive it is considered a violation of this policy and the employee or contract provider will be subject to the provisions in section 49. See paragraph 42c for elected and appointed Officials subject to the Zero Tolerance Policy.

h. In order to limit accident and liability exposure, managers will not allow employee's, contract service providers, or elected or appointed Officials who are unable to perform their assigned duties due to drug or alcohol related impairment to leave the work premises without an escort.

47. **Drug and Alcohol Testing for Employees Required to Possess a Commercial Driver's License (CDL).**

a. All employees and contract service providers that are required by job description to possess a commercial driver's license are subject to drug and alcohol testing.

b. If the test result of the employee's or contract service provider's drug test is positive, the employee or contract service provider will be terminated from employment with the Ho-Chunk Nation.

c. Any refusal or failure to comply with this test, absent a valid medical reason, will result in termination or removal.

48. **Off-Duty Involvement with Drugs, Alcohol, and Controlled Substances**. The Nation reserves the right to take disciplinary action, including termination or removal, for an employee's, contract service provider's, or elected or appointed Official's off-duty involvement with drugs, alcohol, or controlled substances. Off-duty involvement includes, but is not limited to, incidents where such involvement is, in the Nation's view, damaging to the Nation's reputation or business, and/or is inconsistent with the employee's, contract service provider's, or elected or appointed Official's duties or image, or when the off-duty behavior constitutes criminal behavior. This may include the review of criminal records for convictions with respect to drugs, alcohol, and controlled substances.

49. **Part-time, Summer, and Contract Personnel**. The provisions of this Policy are applicable to all part-time, summer, and contract personnel.

a. All part-time and summer personnel who could pose a potential for impaired or unsafe work performance shall be tested for drugs, alcohol, and/or controlled substances.

b. Contract vendors shall not provide contract employees who use illegal drugs or illegal controlled substances, or individuals who use legal drugs or legal controlled substances that could pose a potential for impaired or unsafe work performance.

50. **Youth Employees**. All youth employees will be subject to pre-employment testing, as well as random and reasonable suspicion testing after being hired. Youth employees who test positive on the pre-employment drug test will be retained as an employee on a conditional basis. As a condition of employment, youth employees testing positive will be placed on probation as outlined in section 52 of this policy. Additionally, youth employees will be required to attend AODA counseling. Youth employees who fail to adhere to the conditions of employment will be terminated. Any youth employee who tested positive on any previous pre-employment or initial test will not be eligible for employment should they test positive on any subsequent pre- employment test and must meet the requirements in section 54 of this policy to become eligible for rehire.

51. **Searches.**

a. The Nation reserves the right to conduct unannounced searches for illegal drugs or illegal controlled substances on the Nation's premises.

b. For purposes of the Zero Tolerance Policy, elected and appointed Officials who are not employees of the Nation may only be searched while serving in their official capacity.

c. The Department of Justice Compliance Division shall authorize all searches conducted on the Nation's premises. The Compliance Director or designee will coordinate with Department

of Justice personnel and local law enforcement officials as appropriate.

d. Reasonable search of employees and their personal property, including vehicles, may be conducted at any time in order to maintain a safe, healthy, and efficient working environment. If and when any offices of the Nation are not on the Nation's property, any searches conducted will be in accordance with state and federal law.

e. Employees, contract service providers, or elected or appointed Officials who refuse to cooperate during an authorized search will be subject to disciplinary action up to and including termination or removal.

f. Should any quantity of illegal drugs, alcohol, and/or controlled substances be found as a result of a proper search, Compliance Division and/or Department of Justice personnel shall locate and escort the employee, contract service provider, or elected or appointed Official to an area with restricted access to other persons. The individual will then be subject to a drug and/or alcohol test and may be subject to arrest.

52. **Disciplinary Action**.

a. Elected and Appointed Officials. See paragraph 42c for provisions for elected and appointed Officials under the Zero Tolerance Policy.

b. Current Employees and Contract Service Providers. If the result of the employee's or contract service provider's drug or alcohol test is positive, the individual will be placed on probation with the following sanctions:

(1) The length of the initial drug and/or alcohol probation will be one (1) year and one (1) day from the date the employee or contract service provider is served with the positive result notification. Employees or contract service providers testing positive after previously serving an initial drug and/or alcohol probation will be subject to a second drug and/or alcohol probationary period of eighteen (18) months and one (1) day from the date they are served notice of the violation. Employees or contract service providers testing positive after serving two (2) or more drug and/or alcohol probationary periods will be subject to a two (2) year and one (1) day drug and/or alcohol probation from the date notice of the violation is served. However, the employee or contract service will serve the remaining drug and/or alcohol probationary period upon being rehired should they be terminated or have any other break in service for any non-drug policy reason before completing any drug and/or alcohol probationary period.

(2) The employee or contract service provider shall be referred to the Ho-Chunk Nation AODA Program for an Alcohol and Drug Assessment and will be required to follow through with any recommendations that result from that assessment. Failure to follow through with the recommendations will be considered a second offense and the employee or contract service provider will be terminated.

(3) The employee or contract service provider will sign a wage assignment in the amount of three hundred and eighty one dollars ($381.00) for the initial drug and/or alcohol

probationary period. The employee or contract service provider serving a second drug and/or alcohol probation will sign a wage assignment in the amount of five hundred and seventy one dollars and fifty cents ($571.50). The employee or contract service provider serving three (3) or more drug and/or alcohol probationary periods will sign a wage assignment in the amount of seven hundred and sixty two dollars ($762.00). Refusal to pay the assessed fine shall result in termination of employment.

(4) The employee or contract service provider must sign a Condition of Employment Form allowing follow-up testing during a drug and/or alcohol probationary period. The employee or contract service provider will be subject to six (6) follow up tests during an initial drug and/or alcohol probation, nine (9) follow up tests during a second drug and/or alcohol probation, and twelve (12) follow up tests during a third or more drug and/or alcohol probation..

(5) The employee or contract service provider will be administered a series of follow up tests until a negative test result is achieved to ensure all drugs and/or alcohol are no longer in their system from his or her initial positive test. It is a violation of this policy and the employee or contract service provider will be terminated should he or she test positive during his or her drug and/or alcohol probation after a base line negative test was achieved. Once notified, if after six (6) weeks of follow up testing a negative result is not achieved, it will be considered a violation of this policy, as well as continued use, and the employee or contract service provider will be terminated. Once notified, it is also considered a violation of this policy should the result of a follow up test increase from the previous test and the employee or contract service provider will be terminated.

(6) Employees or contract service providers serving a drug and/or alcohol probation are also subject to Random drug testing and Reasonable Suspicion drug testing, as well as the above stated follow-up testing. Any delay in serving notification of violation is not intended to prevent the Nation from taking further actions should an individual test positive on a subsequent test before notification of a previous positive test result can be administered.

(7) After successfully completing a drug and/or alcohol probation period, the employee will be put back on a testing program as if he/she were a new hire.

c. Malicious Intent Reports. When a person habitually reports violations of this Policy by persons to whom they have malicious intent and such reports are false, the penalty for such false reports shall be a recurring fine of two-hundred dollars ($200.00).

53. **Employee Assistance Program (EAP) and Alcohol and Other Drug Abuse (AODA) Program.** The Nation maintains a Ho-Chunk Employee Assistance Program (EAP) and AODA Program which provides referral resources and assistance help to employees who may be experiencing a drug, alcohol, or controlled substance problem. The purpose and practices of this Drug Policy and the EAP and AODA are not in conflict but are distinctively separate in their applications.

a. It is the responsibility of the each employee to seek assistance from Employee Assistance Program (EAP) or AODA program before a drug or alcohol problem leads to disciplinary action. Once a violation of the Nation's Drug Policy occurs, subsequent use of EAP or AODA on a voluntary basis will not necessarily lessen disciplinary action.

b. It is the responsibility of supervisors to counsel an employee suspected of drug or alcohol problems to voluntarily seek assistance of EAP or an AODA program.

c. The employee's decision to voluntarily seek prior assistance from EAP or AODA will not be used as a basis for disciplinary action and will not be used against the employee in any disciplinary proceedings. On the other hand, using EAP or AODA will not be a defense to the imposition of disciplinary action where facts proving a violation of this policy are obtained outside of EAP or AODA.

54. **Rehiring Procedures for Drug Policy Violations**. Employees or contract service providers who are found to be in violation of this drug and alcohol policy and are terminated may be eligible for employment after the following is completed.

a. The time period between termination and re-hiring, contingent on rehabilitation, shall be no less than six (6) months.

b. The employee must furnish a discharge summary indicating successful completion of treatment from a certified AODA counseling facility to the Compliance Division Drug Enforcement Unit.

c. The Compliance Division Drug Enforcement Unit shall certify to the Nation's Department of Personnel the former employee's eligibility for employment.

55. **Testing Procedures**.

a. The Initial Drug Test will test for at least the following substances:

Cannabinoids
Cocaine
Benzodiazepines
Opiates
Barbiturates
Amphetamines
Phencyclidine
Propoxyphene
Methadone
Methaqualone

b. False negative/water diluted tests will be re-tested only one (1) time. After the second "false negative" test the employee or contract service provider will pay for any subsequent testing until a determinative result can be obtained. There will be no more than a forty-eight (48) hour span between any tests given. After three (3) false negative tests without determinative results, the

employee or contract service provider will be placed on suspension without pay for up to two (2) weeks until a determinative test is completed. If no determinative test is completed within the two (2) weeks from date of the first test, the employee or contract service provider will be terminated.

c. If the employee or contract service provider is unable to produce an adequate specimen level in the time allotted, the Compliance Division personnel shall notify the employee or contract service provider that he or she is responsible to obtain and submit a medical report from a Licensed Medical Doctor citing a medical reason for the employee's or contract service provider's inability to produce a specimen. The employee or contract service provider must submit the report to the Drug Enforcement Unit within two (2) business days from the original date of collection.

d. If an invalid or adulterated result is received by the contracted laboratory, the result shall be considered a violation of this Policy and the employee or contract service shall be subject to disciplinary action consistent with Section 48 of this Policy.

e. All initial positive tests will be confirmed with a second testing procedure to eliminate false-positive results. The initial test will be performed by EMIT. The confirmation test will be GC/MS.

f. A chain of custody on all test samples will be utilized at all times.

g. Access to test results must be restricted to authorized personnel only. Test results will be secured in a locked container. Without written consent of the employee, information about the results of his/her tests shall not be released to anyone.

56. **Reporting Procedures for Drug Policy Violations**. When drug test results are received from the laboratory, the Compliance Director or his/her designee will report the drug policy violation to the employee or contract service provider.

a. Employees or contract service providers who have a positive Pre-employment Drug Test will be reported out using the following procedures.

(1) The Compliance Director or designee will coordinate with the individual to report the positive drug test results directly to the employee or contract service provider.

(2) The employee or contract service provider will be given a verbal and written drug test result.

b. Employees or contact service providers who have passed their pre-employment screening and testing, but have subsequently tested positive on a random or reasonable suspicion drug test, will be reported out using the following procedures.

(1) The Compliance Director or designee will coordinate with individual work schedules to report the positive drug test results directly to the employee or contract service provider.

(2) The employee or contract service provider will be given a verbal and written drug test result.

(3) The employee or contract service provider will sign a Condition of Employment Acknowledgement Form, which sets down the conditions the employee or contract service provider must comply with to retain employment.

(4) An explanation will be given to the employee or contract service provider that in order to monitor his or her compliance with the AODA program, he or she will need to sign a Consent for Release of Information Form.

(5) The Consent for Release of Information Form allows the Compliance Division to contact the AODA Office and schedule an appointment and to place that appointment on the referral form.

(6) If an employee or contract service provider completed an Alcohol and Other Drug Abuse (AODA) assessment and tests positive for a second time after the appropriate follow up testing outlined in section 53 and within his or her drug or alcohol probationary period, he or she will be terminated.

(7) If the employee or contract service provider tests positive after his or her drug or alcohol probationary period; it will be treated in accordance with section 53 and referral to the AODA program and the signing of the Condition of Employment Acknowledgement Form will be repeated.

(8) Copies of this documentation will be given to the employee or contract service provider, to the appropriate Executive Director and AODA. The Compliance Division will file the originals.

c. If an employee or contract service provider would like a copy of the drug test result, a request must be in written form, notarized, and submitted with self-addressed stamped envelope by mail to: Ho-Chunk Nation, Compliance Division, PO Box 667, Black River Falls, WI 54615.

d. Any breach of confidentiality with respect to reporting drug test results will result in disciplinary action up to including termination.

57. **Enforcement of the Zero Tolerance Policy for Elected and Appointed Officials**.

a. Presidential Enforcement. The President shall enforce the policies and procedures of the Zero Tolerance Policy for the following persons:

(1) Department Executive Directors.

(2) Appointed Presidential Staff Members.

b. Legislative Enforcement. The Legislature shall enforce the policies and procedures of the Zero Tolerance Policy for the following persons:

(1) Members of the Legislature.

(2) President. If the President is alleged to have violated the Zero Tolerance Policy, the Legislature shall afford the President the option to have a hearing to contest the alleged violation and confront witnesses to establish reasonable cause prior to submitting the matter to General Council.

(3) Chief Justice. If the Chief Justice is alleged to have violated the Zero Tolerance Policy, the Legislature shall afford the Chief Justice the option to have a hearing to contest the alleged violation and confront witnesses to establish reasonable cause prior to submitting the matter to General Council.

(4) Gaming Commissioners.

c. Judicial Enforcement.

(1) The Chief Justice shall enforce the Zero Tolerance Policy for the following persons:

(a) Members of the Trial Court.

(b) Members of the Supreme Court.

d. Termination or removals of elected or appointed Officials shall be effected in accordance with any notice, hearing, and procedural rules that may apply under the Constitution and laws of the Nation. Reasonable hearing rights may be afforded to any other Official at the discretion of the person or body charged with enforcement of this Policy if any issues of fact are presented that are material to the finding of violation of this Policy.

e. Nothing in the Zero Tolerance Policy precludes a Tribal member or employee from reporting alleged violations directly to the Ethics Review Board.

CHAPTER VIII
WORKER'S COMPENSATION PLAN

58. **Purpose and Scope.**

a. The purpose of this Worker's Compensation Plan (Plan) is to provide a system of compensation and medical benefits for the employees of the Nation who suffer Compensable Injuries in the employment of the Nation. Benefits under the Plan are the employee's exclusive remedy against the Nation.

b. All employees, as of the first day of employment with the Nation, are covered for Compensable Bodily Injuries whether the Accident and Bodily Injury occur on or off the Nation's lands. Benefits are limited as indicated in this Plan.

c. This Plan is a self-funded, self-insurance program of the Nation, a sovereign tribal government and is operated for the benefits of its employees.

d. Nothing is this Plan, including any assertion of right of privilege, shall waive, or be construed to work as a constructive waiver of the Nation's sovereign immunity from suit by any party.

59. **Definitions**. As used in this Plan, the following terms have the meaning indicated:

a. "Accidents" mean a specific occurrence, neither expected nor intended, which causes bodily injury to an employee and arises under circumstances constituting a Compensable Injury.

b. "Administrator" means the company with whom the Nation has contracted to act on behalf of the Nation in the administration of this Plan.

c. "Bodily Injury" or "Injury" means actual physical injury to the body that arises by accident under circumstances that constitute a Compensable Injury. Injuries due to a repetitive or cumulative trauma may be deemed compensable if the condition is established to be solely related to the employment with the Nation and if the employee has no history of a preexisting condition, as established by medical evidence.

d. "Commission" means the Ho-Chunk Nation Insurance Review Commission.

e. "Compensable" or "Compensable Injury" means a bodily injury of an employee caused by an accident when that injury arises out of risk of employment, the injury occurs during a period of employment, and while performing the duties of the employment in or on the premises of the Employer or whenever the Employer requires the employee to perform the employment activities.

f. "Compensation Rates" means sixty six and two thirds (66⅔) percent of the weekly wage as determined under paragraph o, below, subject to the maximum rate adopted by the state's Department of Workforce Development. A reduction of twenty five (25) percent of weekly wage will be enforced when safety equipment is required, but not used. Rate of pay determined at the time of injury will be used throughout the term of loss.

g. Dependents.

(1) "Dependent Child" means a natural or legally adopted unmarried child of the employee, including a posthumous child, under eighteen years of age, or under the age of twenty-two (22) if the child is regularly attending a high school, college, university, vocational, or technical school as a full-time employee.

(2) "Dependent Spouse" the lawful wife or husband of the employee, unless voluntary living apart from the employee at the time of the employee's injury or death. A dependent spouse does not include a "common law" spouse.

(3) "Other Dependents" means that stepchildren, grandchildren, nieces, and nephews may be considered dependent but only if actual dependency can be shown.

h. “Employee” means any person who performs labor services alone for the Nation for hire at an established wage or salary.

i. “Employer” means the Nation where it has obtained the labor services of a person for hire.

j. “Independent Medical Examination” means the medical examination and/or evaluation of the employee scheduled by the Nation or Administrator at the Nation’s expense for the purpose of obtaining medical information or opinion.

k. “Nation” means the Ho-Chunk Nation, also referred to as the Employer, or its designee. Unless otherwise provided herein, the Department of Personnel shall act for the Nation/Employer.

l. “Plan" means the Ho-Chunk Nation Worker's Compensation Plan.

m. “Primary Physician” means a Nation approved health care provider within seventyfive (75) miles of the employee’s home at the time of the injury and from whom the employee receives medical treatment for a Compensable Bodily Injury.

n. “Referral Physician” means a licensed medical doctor or chiropractor to whom the employee is referred by the Primary Physician for further specialized treatment with the approval of the Administrator or the Nation.

o. “Waiting Period” means the first three (3) scheduled days lost, for which no Worker’s Compensation benefits will be paid, counted from the first day of disability due to a Compensable Injury. If the disability continues beyond seven (7) calendar days, compensation is payable for scheduled days lost from the first day of disability. No annual or sick leave may be used for the first three (3) scheduled days lost. If the employee chooses to be paid annual or sick leave, it will be deducted from the loss time paid.

p. “Weekly Wage” means:

(1) For a full-time employee, it is the weekly salary or wage normally earned in a normal full-time week of employment by the Nation.

(2) If the hours worked are irregular or difficult to determine, the average daily wage is determined by totaling the earnings from employment by the Nation over the twenty six (26) calendar weeks prior to the injury and dividing the sum by the number of calendar weeks within the twenty-six (26) week period in which the employee had earnings from employment by the Nation to determine the average work week. The average workweek is then multiplied by the average daily wage to arrive at the Weekly Wage.

(3) In no case are overtime wages considered in determining the Weekly Wage.

(4) If an employee is employed in more than one capacity by the Nation, the earnings of the employee in each will be considered in determining Weekly Wage.

60. **Reporting Obligation**.

a. An employee must report any injury, no matter how slight, to his or her supervisor no later than the end of the employee's workday on the day of the accident causing the Bodily Injury. A Bodily Injury may be reported by another on behalf of the employee. Failure to report a job related injury no later than the end of the employee's workday shall result in the employee not being eligible for compensation and/or medical benefits under this Plan.

b. A supervisor, upon a report of an injury, shall immediately complete an Injury Report Form and forward the Report to the Department of Personnel within twenty-four (24) hours of the report of an injury.

c. A supervisor upon receiving a report or notice of an employee claim for compensation or benefits under this Plan shall immediately report the claim to the Department of Personnel. The Department shall then notify the Insurance Department.

d. No compensation or medical benefits will be paid if a Bodily Injury is not reported within ten (10) calendar days of the employee first receiving medical treatment for the Injury.

61. **Medical Benefits**. This Plan will pay the cost of all reasonable and necessary first aid, medical, surgical and hospital services incurred by the employee as direct result of a Compensable Bodily Injury subject to the following restrictions.

a. Once an employee has made a second visit to a physician, that physician is the employee's Primary Physician under the Plan. After this second visit, the employee may not change Primary Physician without the approval of the Administrator or the Nation. The Nation reserves the right to require care to be provided by a provider with whom the Nation has a preferred or discount arrangement.

b. This Plan will pay hospital and related charges only for services ordered by the Primary or Referral Physician.

c. This Plan will pay the reasonable and necessary medical costs and the cost of medicines and supplies and equipment of a therapeutic nature to treat the Bodily Injury only if ordered by the Primary or Referral Physician.

d. This Plan will pay surgical charges only if the surgery is done an emergency basis or if it has been previously approved by the Administrator or the Employer. The Administrator or the Employer may require a second opinion before approving any surgical procedure.

e. This Plan will reimburse the employee for the reasonable cost of mileage and other related expense necessarily incurred to obtain medical treatment other than the cost of childcare. The mileage reimbursement rate shall be that rate as established by the State of Wisconsin for worker's compensation purposes.

f. If the employee unreasonably fails to appear for a scheduled Independent Medical Examination, the responsibility of the Employer for payment under this Plan of medical expenses incurred after the scheduled date of that Examination ceases. Likewise, the Employer's responsibility for payment of all other benefits accruing under this Plan ceases immediately upon

that failure to appear.

g. The Administrator or the Nation may contract for the services of a rehabilitation consultant to assist the employee in rehabilitation and return to work efforts. If the employee fails to cooperate in rehabilitation efforts the responsibility of the Employer for payment of all benefits and medical expenses under this Plan will cease.

h. The employee must provide written authorization for present and past medical records when requested by the Administrator or the Nation. If the employee fails to provide authorization within twenty (20) days of a written request to do so, the responsibility of the Employer for payment of all benefits and medical expenses under this Plan will cease.

i. When the employee has reached his or her end of healing, payments for medical costs will cease.

62. **Return to Work**.

a. Positions with a Compensable Injury or illness will be held for up to three (3) months. At that time the position may be filled by a regular employee. An equivalent position with comparable wage/salary will be offered when the employee is released to return to work.

b. Light duty positions will be restricted up to three (3) months. At the completion of the three (3) months a revaluation will be conducted by the Administrator.

63. **Disability Benefits**.

a. Temporary Total Disability. Temporary Total Disability is that time, after the Waiting Period when, solely as a direct result of the Bodily Injury, the employee is totally disabled from performing for the Employer the employee's normal duties which the employee was engaged in at the time of the Bodily Injury, or of other light, restricted or modified work that the Employer offers.

(1) Total Disability must be evidenced by medical opinion based on examination and treatment rendered at the time of the claimed disability.

(2) The weekly benefits for Temporary Disability are limited to the applicable Compensation Rate under paragraphs 58f and 58p.

b. Temporary Partial Disability. Temporary Partial Disability is the loss of actual earnings suffered by an employee who has returned to light duty, restricted or modified work offered by the Employer solely because of the ongoing effects of the bodily injury and the employee's physical inability to return to employee's normal duties of Employment with the Nation which the employee engaged in at the time of the Bodily Injury.

(1) The weekly benefits for Temporary Partial Disability is sixty six and two thirds (66⅔) percent of the difference between the Weekly Wage at the time of the Bodily Injury as determined under paragraph 58p and the wage the employee is able to earn in the light duty, restricted or modified work that the Employer offers.

(2) Temporary Partial Disability benefits are limited to the maximum compensation rate under paragraph 58f.

c. Permanent Disability.

(1) This benefit is intended to compensate the injured employee for a permanent loss of or loss of use of a member suffered directly as a result of a Compensable Bodily Injury.

(2) Preexisting disabilities are not to be included when rating a Permanent Partial Disability. A rating of Permanent Partial Disability must represent only that loss resulting solely from the Compensable Bodily Injury.

(3) All ratings of Permanent Partial Disability shall be based on the Permanent Disability Schedule adopted by the Nation and published as Annex A to this Plan.

(4) In cases of Permanent Partial Disability due to injury to a member resulting in less than total loss of the member, not otherwise compensated in this Schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the Schedule for the total loss of the member which the extent of the injury to the member bears its total loss.

(5) Benefits paid for Permanent Partial Disability shall be computed at two-thirds of the average weekly earnings of the employee, up to the maximum weekly benefit established the state's Department of Workforce Development, and multiplied by the calculated proportion of the number of weeks specified in the Schedule.

(6) The amount payable to the employee shall be paid in one lump sum.

(7) Payment will be made as soon as reasonably possible after receipt of the rating by the Administrator, but no later than thirty (30) days after receipt unless the Administrator has scheduled an Independent Medical Examination.

d. Permanent Partial Disability benefits are neither payable concurrently with Temporary Total or Temporary Partial benefits, nor payable to the employee's dependents or heirs, regardless of the cause of death of the employee.

e. The Nation or Administrator will pay Temporary Total or Temporary Partial disability benefits on a weekly basis.

f. If an employee refuses light, restricted or modified work offered by the Employer or becomes voluntary unemployed, or is dismissed for violation of the Employment Relations Act all indemnity benefits will cease.

g. If a Bodily Injury results in disability that is partially due to congenital condition or a prior disease or injury, the benefits payable for the disability will be reduced by the proportion of the disability that is due to the preexisting disability.

h. If the employee unreasonably fails to appear for a scheduled Independent Medical Examination, the liability of the Employer for payment of disability benefits ceases. Likewise, the Employer's responsibility for payment of all other benefits accruing under this Plan ceases immediately upon the failure to appear.

i. Receipt by the employee of Social Security Retirement Benefits will be considered conclusive evidence of retirement and the liability of the Employer for payment of further disability benefits will cease.

j. When an employee has reached his or her end of healing, payment of loss of time will cease.

64. **Dependent Benefits**. In the event of the death of the employee due to a Compensable Injury, payment of all disability and medical benefits shall cease and a maximum of $139,800.00 will be payable to the Dependents of the deceased employee. Dependents will receive weekly payments equal to the indicated percentage of the Weekly Wage as determined under paragraph 58p. Weekly payments are subject to the maximum Compensation Rate under paragraph 58f, and will be paid as described as follows.

a. Dependent Spouse alone: 50 percent of Weekly Wage.

b. Dependent Spouse and one (1) or more Dependent Children: 66⅔ percent of Weekly Wage.

c. One Dependent Child but no Dependent Spouse: 40 percent of Weekly Wage.

d. Two or more Dependent Children but no Dependent Spouse: 60 percent of the Weekly Wage.

e. Other Dependents will receive benefits in the percentage that their provable dependency on the decedent bears to the maximum benefits available and the dependency of the other Dependents. Regardless of the number of Dependents, the maximum benefits will not exceed sixty six and two thirds (66⅔) percent of the Weekly Wage at the time of injury.

f. If a Dependent Spouse remarries, no further benefits shall be payable to that Spouse. If one or more children remain Dependent, benefits will continue to be paid for the benefit of the Child, or Children, pursuant to paragraphs c and d, above, until they cease to be Dependent.

g. Benefits payable to Dependents shall be paid to them or to any guardian or other responsible party as directed by the Nation for the use and benefit of the Dependents.

h. If a Dependent Child, upon reaching the age of which that Child would cease to be Dependent, is totally disabled due to a physical or mental impairment, benefits will continue to be paid under the appropriate provision above until the disability ends or the maximum is paid, whichever comes first.

i. The Nation or the Administrator will pay Dependency benefits on a weekly basis.

j. In cases where an employee's death results from Compensable Injury, the reasonable expense of burial, not to exceed $4,000.00, will be paid in addition to any other benefits payable under this section.

65. **Recurrence**. If, within one (1) year from the date on which an employee has returned to full-time, light, restricted or modified work, the employee, in course of employment by the Nation, suffers a Recurrence of the original Compensable Injury, the Recurrence will be considered a continuation of the earlier claim and injury and subject to the monetary and time limitations of the initial claim. A recurrence occurring in employment other than for present claims is not compensable under this Plan.

66. **Election of Remedies.**

a. If an employee's Compensable Bodily Injury or death is contributed to or caused by a party other than the employee or the Employer and the employee or Dependents could file a claim or lawsuit against the other party, the employee or Dependents may not present claims under this Plan and against the other party.

b. If the employee or Dependents elect to claim benefits under this Plan, the employee or Dependents must assign their cause of action against the other party to the Nation and cooperate with the Nation and the Administrator in pursuit of the action. Once assigned, the Nation shall bear all costs of collections. If the employee or Dependents fail to assign the cause of action or fail to cooperate in the pursuit of that action, all benefits under this Plan will cease and the employee or Dependents will be required to reimburse the Nation for any benefits paid to or on behalf of the employee or the Dependents under the Plan.

c. If the employee or Dependents elect to pursue a cause of action against the other party, no benefits will be payable under this Plan unless, within a one hundred and eighty (180) days of the injury, the employee or Dependents assign their claim to the Nation and agree to cooperate in the pursuit of the action. In that event, only benefits accruing or medical or collection expenses incurred after the date of the assignment will be paid under this Plan.

d. If an employee or Dependents have assigned a cause of action to the Nation under this

section and if the recovery from that cause of action exceeds the amount paid or payable to the employee or Dependents, any excess, after reimbursement to the Nation of the benefits paid or payable under this Plan and deduction of the costs of collection, will be paid over to the employee or Dependents.

67. **Administrator**. The Administrator will act on behalf of the Nation in receiving and processing Worker's Compensation claims under this Plan. The responsibility of the Administrator to make determinations and decisions will include, but not limited to, the following areas.

a. Based upon investigation and available medical information, the Administrator will make a determination of the responsibility of the Nation and will either accept or deny a claim. Within thirty (30) days of receipt of an Injury Report Form, the Administrator will advise the employee and the Nation of its determination.

b. The Administrator will determine the reasonableness and necessity of medical care and charges under Section 60 and will determine amounts payable under the Plan. The Administrator will also approve or disapprove any change of Primary Physician, Referral Physician, or surgical procedure.

c. Based on information supplied by the Employer and/or employee, the Administrator will determine the Compensation Rate payable for Temporary Total, Temporary Partial, Permanent Partial Disability, and for Dependency.

d. The Administrator will determine the length of time during which Temporary Total Disability or Temporary Partial Disability benefits are payable.

e. The Administrator will determine the eligibility of Dependents and the term of any Dependency Benefits payable.

f. In the event of the need to allocate Dependency Benefits between Dependents living in different households, the Administrator will make necessary allocation, based on the obligations, legal or otherwise of the decedent.

g. If an employee claim is subject to the limitations of Section 66, the Administrator will advise the employee and Employer of the effect of this limitation in writing.

h. The Administrator will, on the behalf of the Nation, vigorously pursue any cause of action assigned to the Nation under Section 67.

68. **Appeals**. The Ho-Chunk Nation will establish an Insurance Review Commission to hear any issues and make any necessary final determination relative to Compensability of Bodily Injury, medical care or charges, extent of Disability, Dependency, or other issues that may arise under this Plan.

a. The Commission will consider evidence, hear witnesses and receive exhibits in keeping with its goal of making a just final determination.

b. The Commission shall not consider any information that has not been provided to the Nation's Insurance Department at least fifteen (15) days prior to the Commission has scheduled a Hearing.

c. The Commission will weigh the evidence, testimony of witnesses and exhibits and will make its decision on the basis of the preponderance of evidence and credibility of the evidence and witnesses.

d. The burden of proof in any hearing before the Commission will be on the employee or Dependents.

e. The employee or Dependents may have legal representation at any hearing before the Commission. The cost of representation will be borne by the employee or Dependents.

f. Any employee or Dependent who disagrees with the determination made by the Administrator may request in writing a hearing before the Commission. The Appeal of Insurance Denial Form must be signed, witnessed and returned within thirty (30) days of the date on the denial.

g. The matter will be scheduled for a hearing before the full Commission within ninety (90) days of receipt of the request for a hearing from the employee or Dependents. The employee or Dependents may request an extension of up to ninety (90) days, which must be granted by the Commission.

h. Any decision of the Commission must have the concurrence of a majority of the Commission members to have a legal effect. All decisions of the Commission are final.

i. A Commission decision must be issued in writing and copies must be mailed to all interested parties. The decision need not recite nor review the evidence or testimony nor need compare the merits of the evidence or testimony of the opposing parties. The decision need only set out the final determination of the Commission on all issues before it.

j. The Department of Personnel shall maintain a file of all Commission decisions.

Workers Compensation Annex A – Permanent Disability Schedule

Disability	Benefits
Loss of arm at shoulder	500 weeks
Loss of arm at elbow	450 weeks
Loss of hand	400 weeks
Loss of palm where the thumb remains	325 weeks
Loss of thumb and the metacarpal bone thereof	160 weeks
Loss of thumb at the proximal joint	120 weeks
Loss of thumb at the distal joint	50 weeks
Loss of all fingers on one hand at their proximal joints	225 weeks
Loss of index finger and the metacarpal bone thereof	60 weeks
Loss of index finger at the proximal joint	50 weeks
Loss of index finger at the second joint	30 weeks
Loss of index finger at the distal joint	12 weeks
Loss of middle finger and the metacarpal bone thereof	45 weeks
Loss of middle finger at the proximal joint	35 weeks
Loss of middle finger at the second joint	20 weeks
Loss of middle finger at the distal joint	8 weeks
Loss of ring finger and the metacarpal bone thereof	26 weeks
Loss of ring finger at the proximal joint	20 weeks
Loss of ring finger at the second joint	15 weeks
Loss of ring finger at the distal joint	6 weeks
Loss of little finger and the metacarpal bone thereof	28 weeks

Loss of little finger at the proximal joint	22 weeks
Loss of little finger at the second joint	16 weeks
Loss of little finger at the distal joint	6 weeks
Loss of leg at hip	500 weeks
Loss of leg at the knee	425 weeks
Loss of foot at ankle	250 weeks
Loss of great toe with the metatarsal bone thereof	84 weeks
Loss of great toe at the proximal joint	25 weeks
Loss of great toe at the distal joint	12 weeks
Loss of second toe with the metatarsal bone thereof	25 weeks
Loss of second toe at the proximal joint	8 weeks
Loss of second toe at the second joint	6 weeks
Loss of second toe at the distal joint	4 weeks
Loss of third, fourth or little toe with the metatarsal thereof	20 weeks
Loss of third, fourth or little tow at the proximal joint	6 weeks
Loss of third, fourth or little toe at the second or distal joints	4 weeks
Loss of an eye by enucleation or evisceration	275 weeks

Disability	Benefits
Total impairment of one eye for industrial use	250 weeks
Total deafness from accident or sudden trauma	330 weeks
Total deafness of one ear from accident or sudden trauma	55 weeks

For permanent partial disability not covered by the above schedule, the total number of weeks of indemnity shall be one-thousand (1,000) weeks and shall be payable at the rate sixty six and two thirds (66⅔) percent of the average weekly earnings of the employee up to a maximum of $158.00, the earnings to be determined under paragraph 59p of the Plan.

CHAPTER IX
EMERGENCY DECLARATION

69. **Emergency Policy**. In an emergency situation, it may become necessary to temporarily change an employee's job duties, work assignments, the location in which the duties are performed, or it may become necessary to temporarily close worksites. The various departments and governmental branches will use their discretion, using reasonably prudent decision-making, to determine what work each employee will perform during the emergency period.

70. **Essential Duties/Services**. Departments or governmental branches may suspend services and work duties that are not deemed essential with approval or at the direction of the President, Vice President, Office of the General Council, or Judiciary.
    a. Reassignment of Position. Employees may be temporarily reassigned to other positions as needed to ensure the continuation of essential duties/services.
    b. Reassignment of Job Duties. Employees may be temporarily reassigned work duties that are not normally performed by them or described by their job descriptions to ensure the continuation of essential duties/services.

c. While there is a declared State of Emergency, employees may be recalled from layoff to fill needed positions different than their position before layoff. This temporary recall/assignment may last until the end of the State of Emergency. During this time, if the position they were laid off from needs to be filled, it shall only be filled on a Limited Term Employee basis until the employee's need for the temporary recall/assignment has ended or the end of the State of Emergency, whichever comes first. Once the State of Emergency has ended or the need for the temporary recall has ended, the employee shall be transferred back to the position they were laid off from.

71. **Alternative Work Arrangements**. Alternative work arrangements may be created in order to maintain governmental and business operations during a declared State of Emergency. Departments and governmental branches should use reasonable discretion during the consideration and determination as to whether flexible work schedules or telecommuting/teleworking are appropriate.

a. Teleworking.

(1) Teleworking is a work arrangement that allows a Nation employee to conduct all or some work away from the official worksite during all or a portion of the Nation's establishment work hours on a regular basis.

a) Potential teleworkers should be identified by the departments and governmental branches to make the necessary technological arrangements.

b) The departments and governmental branches should consider a broader use of "teleworking" during states of emergency than they would under normal operations or other types of emergencies.

c) The departments and governmental branches should determine the essential functions that may be accomplished remotely and whether the person performing these functions needs access to all systems and applications or only email and/or voice communications.

d) Departments and governmental branches should identify employees in positions that provide essential functions and determine their ability to telework and their current technical capacities (i.e. whether they already have remote access). As part of their Continuity of Operations Plan, departments and governmental branches should provide remote access before a potential emergency to employees who perform essential functions and require access to systems and applications.

e) Flexible work schedules are another consideration for those authorized to telework. These schedules may reduce peak demands on information technology systems.

f) Employees authorized for telework may be allowed to engage in limited dependent child care or elder care during an emergency, if providing care does not impact the ability of the employee to accomplish assigned tasks.

g) Departments and governmental branches may consider having a laptop computer pre-loaded with remote access. Employees who do not already have the necessary equipment to telework may check out laptops on an emergency basis. Equipment is limited and employees should not expect to be provided a laptop.

(2) When feasible, employees will initiate a telework arrangement by submitting a written Telework Agreement form to their immediate supervisor. In other instances, telework arrangements may be requested, communicated, assigned and/or processed via email or telephone.

(3) The Department of Personnel shall establish further policies and procedures to guide the use of alternative work arrangements.

b. Flexible work schedules.

(1) Flexible work schedules would be schedules that deviate from the normal 8:00 a.m. to 4:30 p.m. workday.

(2) Departments and governmental branches should review their normal business hours and work schedules to determine if they can be modified in a manner that best promotes social distancing, business continuity, or other emergency response goals during an emergency.

(3) Agencies will identify essential functions and non-essential functions that may be staffed with personnel on flexible work schedules.

(4) If feasible, supervisors should first ask for employees to volunteer to work hours other than their normal schedule. If certain work schedules cannot be staffed in this manner, supervisors may direct staff to work the schedules necessary.

(5) Supervisors may change regular work schedules subject to a 24-hour notice, when possible, upon the proclamation of an emergency. If less than a 24-hour notice is necessary, supervisors may make such changes.

72. **Continuity of Supervisory Coverage.**

a. During a period in which a State of Emergency has been declared, it is conceivable that supervisory staff may not be able to fulfill the duties of their positions.

(1) It is imperative that departmental and governmental branch Continuity of Operation Plans (COOP) include designated persons to assume certain decision-making responsibilities in the absence of employees in supervisory roles.

(2) In order to adequately prepare for the potential absence of supervisors, departments and governmental branches should designate a multiple number of employees who could fill in.

(3) These employees would need to be properly cross-trained to effectively assume the additional responsibilities of a supervisory role.

73. **Reporting to Work.**

a. Each COOP must include expectations for reporting to work when a State of Emergency has been declared. When emergency conditions exist that impact operations, including but not limited to inclement weather, every effort will be made to keep impacted Nation offices or buildings open and operating as normal.

(1) Employees may be required to report to work in their regular department or governmental branch or be reassigned to perform work in other areas based on the needs of the Nation and in accordance with the departmental or governmental branch COOPs.

(2) Employees unable to report to work as scheduled will be required to utilize appropriate leave.

(3) Employees may be required to not report to work.

(a) Where the health and safety of citizens would be placed at risk, or conditions or events prevent the normal operation or services of the Nation, it may become necessary to close offices and buildings.

(b) During a declared state of emergency, the President, Vice President, Chief Judge, or Office of General Council Advocate may order some or all of the offices and other work stations closed for specified periods of time or may order such other deviations in office hours or the standard basis of employment as may be necessitated by weather conditions, energy shortages or emergency situations. The declaration of a state of emergency or order may specify how any time off or other deviation occasioned by the declaration or order may be covered for Nation employees.

74. **Reporting Absence from Work.**

a. Employees who are unable to report to work as scheduled are responsible for notifying the department or governmental branch of the absence.

(1) It is possible that traditional methods of communication may not be readily available due to interruption of services.

(2) Departments and governmental branches should consider and implement alternative methods (e.g. text messaging, email) for employees to provide notification of absences.

(3) In preparation for an emergency response event, employees should receive advance communication of modifications made to call-in procedure, with such included in the department or governmental branch's COOP.

75. **Treatment of Absences Due to Closing of Nation Offices and Emergency Situations.**

a. Unless directed otherwise by the President or Legislature in the form of a declaration or order, absences of employees will be treated as follows:

(1) Employee Requests to be Excused.

a) Employees may request or be allowed to be excused from work when they believe that weather conditions or emergency situations make it unsafe to get to or remain at work.

b) The supervisor or Executive Director may charge any such approved absence to the appropriate paid leave type designated by the employee or require the employee to make up the lost time. The employee may be given the additional option of taking leave without pay at the discretion of the supervisor or Executive Director.

(2) When Employees are Ordered to Leave or Not Report

a) Employees may be ordered to leave or not report to work because the President, Legislature, Office of General Council, or Judiciary has determined that conditions exist which are detrimental to the health and safety of employees.

b) When employees are ordered to leave or not report, they will have the following options, subject to the restrictions contained in the ERA:

1 Using accrued annual leave or sick leave;

2 Taking leave without pay; or

3 Making up the lost time at a time to be scheduled by the supervisor or Executive Director.

76. **Shortfalls in Tribal Revenue**. Shortfalls in tribal revenue may result in funding deficits that make it necessary for a program area to temporarily reduce the regular hours of employment or temporarily place employees on leave without pay. All affected positions shall be identified and appropriate reductions in pay shall be implemented for all affected employees. Departments and governmental branches shall coordinate with the Department of Personnel, as necessary. The declaration of a state of emergency may designate the Department of Personnel to administer the implementation of such furloughs.

Legislative History:

Employment Relations Act

10.16.01	Chapter VI (Drug, Alcohol and Controlled Substance Policy) enacted by Legislative Resolution 10/16/01D.
10.23.02	Chapter VI (Drug, Alcohol and Controlled Substance Policy) amended and restated by Legislative Resolution 10/23/02B.
02.05.04	Administration Committee refers draft Employment Relations Act to full Legislature.
02.17.04	Legislature places Employment Relations Act out for 45-Day Public Review.
08.31.04	Legislature and the Executive Director of the Department of Personnel review submitted comments at off-site meeting.
11.02.04	Legislature tables Employment Relations Act for a final review at an off-site meeting.
11.15.04	Legislature and the Executive Director of the Department of Personnel review final draft at off-site meeting.
12.09.04	Legislature enacts the Employment Relations Act as 6 HCC § 5 by Legislative Resolution 9/9/04A.
05.04.05	Amended and Restated by Legislative Resolution 5/4/05A amending paragraphs 5b, 5c, and 8b.
06.10.05	Amended and Restated for technical correction. Legislative 5/4/05A did not amend paragraph 12b.
07.05.05	Amended and Restated by Legislative Resolution 7/5/05E amending paragraphs 9a, 20a, and 21 b(1). Allows employees to take Waksik Wosga Leave during the Initial Probationary Period and that Cultural Leave is leave without pay unless the employee requests annual leave.
06.07.06	Amended and Restated by Legislative Resolution amending paragraphs 34 b(1) and 34 b(2) changing the composition of the Grievance Review Board.
06.07.06	Amended and Restated by Legislative Resolution 6/7/06D deleting paragraph 6g(2) and incorporating paragraph 6g(1) into paragraph 6g.
04.18.07	Amended by Legislative Resolution 4/18/07 B & C.
10.02.07	Amended by Legislative Resolution 10/02/07A changing the definition of employee.
02.19.08	Amended by Legislative Resolution 2-19-08A addressing decision by Ho-Chunk Nation Supreme Court in *Janet Funmaker v. Executive Director(s) of Personnel (SU 07-05)* by placing limit on monetary awards that Grievance Review Board can provide to employees.
07.05.12	Legislature passes Resolution 07-05-12B placing proposed amendments out for forty-five comment.
08.20.13	Legislature adopts Resolution 08-20-13J adding Ho-Chunk Preference by Quick Passage.
04.22.14	Amendments showing proposed staff descriptions are placed out for forty-five day comment by Resolution 04-22-14I. Proposed amendments to the Right to Work Law are placed out for forty-five day comment by Resolution 04-22-14J.
04.21.15	Amendments regarding the Hoocak Woošga Leave Policy are adopted by Resolution 04-21-15P.
06.23.15	Proposed amendments regarding the Worker's Compensation Plan are placed out for forty-five day comment by Resolution 06-23-15GG.
06.21.16	Amendments adopted by Resolution 06-21-16EE, to Chapters I through V, and adding language regarding Kiišak Waiš'ak. A Legislative History of the amendments are included in an annotated Employment Relations Act on file with the Legislature and Tribal Records Department.
08.23.16	Legislature adopts Resolution 08-23-16I amending by Quick Passage Ch. IV Employee Benefits Sec. 20 Annual and Sick Leave clarifying accrual rate of annual and sick leave

and Sec. 21 Funeral Benefits clarifying "immediate family".

01.03.17 Quick Passage Amendment regarding eligibility for Family Medical Leave for Veterans by Resolution 01-03-17G.

01.19.17 Legislature adopts Resolution 01-19-17B amending via Quick Passage Ch. V, Sections 35 through 39 to reflect the discontinuation of the Grievance Review Board.

03.24.17 Legislature places the ERA out for forty-five (45) day public comment via Legislative Resolution 03.21.17B to include proposed additional language regarding the penalties for sexual harassment.

05.23.17 Legislature amends the ERA via Legislative Resolution 05.23.17H incorporating language placed out for public comment on 03.24.17.

07.23.19 Legislature amends the ERA via Legislative Resolution 07.23.19I by adding a severability clause, removing the tiered Administrative Review Process, establishing a new Employment Conflict Review Process, and addressing the standard for judicial review of employment conflicts.

03.17.20 Legislature amends the ERA adding language to address the Nation's employment processes and operations during a declared state of emergency.

04.07.20 Quick Passage Amendment regarding Ho-Chunk Preference by Resolution 04-07-20H.

04.15.20 Quick Passage Amendment regarding separation to include language on furlough, temporary and permanent layoff by Resolution 04-15-20B.

04.28.20 Quick Passage Amendment regarding recall during Emergency Declaration by Resolution 04-28-20A.

05.27.20 Quick Passage Amendment regarding payment for insurance premiums during layoff by Resolution 05-27-20B.

06.09.20 Quick Passage Amendment regarding Probationary Period during Emergency Declaration by Resolution 06-09-20C.

07.21.20 Quick Passage Amendment regarding recall from layoff to fill needed positions by Resolution 07.21.20B.

07.21.20 Quick Passage Amendment regarding annual leave to pay insurance premiums that were deferred during layoff by Resolution 07.21.20G.

09.08.20 Quick Passage Amendment regarding Background Checks for Staff Employees by Resolution 09.08.20H.

09.08.20 Quick Passage Amendment regarding Discretionary Transfers by Resolution 09.08.20I.

<u>Personnel Policies and Procedures Manual:</u>

08.20.88 Garnishment of Employee Wages; Wisconsin Winnebago Business Committee Resolution 8/20/88B.

12.21.94 Responsibility for Employee Training; Legislative Resolution 12-21-94D.

12.21.94 Legislature Adopts Ho-Chunk Nation's Personnel Policies and Procedures Manual.

01.04.95 Legislature enacts Drug and Controlled Substance Policy and Procedures.

02.07.96 Weather Conditions; Education, Employment, (et al) Committee Approval.

02.13.96 Resignations and Reemployment; Legislative Resolution 2/13/96C.

03.26.96 Trial Court Review; Legislative Resolution 3/26/96A.

06.19.96 Approval of Job Descriptions; Legislative Resolution 6/19/96E.

02.25.97 Ho-Chunk Preference; Legislative Resolution 02/25/97A.

05.27.97 Wages Upon Transfer; Legislative Motion dated 5/27/97.

06.10.97 Ho-Chunk Preference; Legislative Motion dated 6/10/97.

02.17.98 Cultural Even Time Off; Legislative Resolution 02/17/98A.

02.10.98 Equivalent Annual Leave Credit; Legislative Resolution 02/10/98D.

02.10.98 Funeral Leave; Legislative Resolution 02/10/98E.

03.31.98 Layoffs; Legislative Resolution 3/31/98B.

04.28.98 Family Medical Leave; Legislative Resolution 4/28/98A.
06.09.98 Amendment to Chapter 12 (Employee Conduct, Discipline and Administrative Review) for the Administrative Review Process; Legislative Resolution 6-9-98A

06.10.98 Ho-Chunk Preference; Legislative Motion dated 6/10/98.
06.16.98 Funeral Leave; Legislative Resolution 6-16-98C.
60.16.98 Religious Leave; Legislative Resolution 6-16-98D.
10.28.98 Cap on 4% Merit Increase; Legislative Resolution 10/20/98C.
12.15.98 Compensation upon Promotion/Demotion and Transfer/Reclassification; Legislative Resolution 12/15/98A.
12.29.98 Unclassified/Appointed Employees; Legislative Resolution 12-29-98C.
01.26.99 Transfer of Annual/Sick Leave Policy; Legislative Resolution 1/26/99B.
03.17.99 Promotion, Demotion, and Transfer Policy; Legislative Resolution 3/17/99A.
03.23.99 Lateral Transfer Policy; Legislative Resolution 3/23/99G.
04.27.99 Right to Deny Services; Legislative Resolution 4/27/99E.
04.27.99 Conflicts with Internal Controls; Legislative Resolution 4/27/99D.
05.11.99 Training During Probationary Period; Legislative Resolution 5-11-99B.
08.10.99 Comparable Wage; Legislative Resolution 8-10-99C.
10.14.99 Use of Sick Leave for Family Medical Leave; Legislative Resolution 10/14/99C.
10.19.99 Cultural Leave; Legislative Resolution 10-19-99D.
11.30.99 Bridge Service Credit; Legislative Resolution 11/30/99A.
01.18.00 Forty Hour Maximum on Paid Leave or Holiday Pay; Legislative Resolution 1/18/00D.
04.04.00 Waksik Wosga Leave Policy; Legislative Resolution 4/04/00B rescinding Legislative Resolution 6-16-98D.
04.04.00 Defined Events; Legislative Resolution 4-4-00B.
02.13.01 40 Hour Maximum Policy; Resolution 2/13/01A.
02.27.01 Waksik Wosga Leave; Resolution 2/27/01A.
03.06.01 Automatic Merit Increase; Resolution 3/6/01G.
03.07.01 Automatic Merit Increase; Resolution 3/7/01O.
03.21.01 Supervision of Children; Resolution 3/21/01D.
05.22.01 Election Voting Leave; Resolution 5/22/01I.
06.05.01 Youth Leadership Conference; 6/5/01E.
06.26.01 Maternity Leave; Resolution 6/26/01A.
08.09.01 Two or More Part-time Positions equal Full-time Status; Resolution 8/9/01B.
09.18.01 Funeral Leave; Resolution 9/18/01E.
10.16.01 Military Leave; Resolution 10/16/01B.
06.05.02 Equal Employment Opportunity amendment; Resolution 6/5/02B.
09.04.02 Reporting Work Injuries, Chapter 8, amended by Legislative Resolution 9/04/02C.

<u>Drug, Alcohol and Controlled Substances:</u>

01.04.95 Legislature enacts Drug and Controlled Substance Policy.
10.16.01 Legislature amends Drug and Controlled Substance Policy by enacting the Drug, Alcohol and Controlled Substance Policy as Chapter VI to the draft Employment Relations Act (6 HCC § 5) by Legislative Resolution 10/16/01D.
10.11.02 Corrects the numbering of paragraph 15. Testing Procedures (renumbered from 17 to 15).
10.23.02 Amended and restated by Legislative Resolution 10/23/02B.

10.19.04 Restated with enactment of the Employment Relations Act (6 HCC § 5) by Legislative Resolution 12/9/04A.
03.03.09 Proposed Amendments to drug policy by Compliance Director, Joe Buse, presented to Administration Committee. Administration Committee passes motion to refer to the Legislature to place out for forty-five day public comment.

04.07.09 Legislature passes Resolution to place out for forty-five day public comment, which will end as of May 25, 2009.

06.01.09 Legislature holds off-site to review comments received during forty-five day public comment. Legislators recommend that the policy for the Nation should be that there should be a pre-employment drug test and if the test comes back positive it shall result in the potential employee not being offered employment with the Nation. In addition, any potential employee whose pre-employment testing comes back positive shall then be subject to Section 51 if he or she seeks employment with the Nation in the future.

09.09.09 Resolution 09-09-09 L passes adopting proposed amendments to Drug policy.

08.08.11 Legislature adopts Resolution 08-08-11 B to amend Ch. VI Drug, Alcohol and Controlled Substance Policy, deleting "Methaqualone" and adding "Oxycodone".

03.18.14 Proposed amendments regarding the Nation's Worker's Compensation Policy are placed out for forty-five day comment by Resolution 03-18-14F. Amendments regarding the Drug, Alcohol and Controlled Substance Policy are also put out for forty-five day comment by Resolution 03-15-14G.

06.21.16 Amendments regarding the Nation's Drug Policy, Workers Compensation Plan and the Hoocak Woošga Leave Policy are adopted by Resolution 06-21-16EE.