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# **THE NAVAJO PREFERENCE IN EMPLOYMENT ACT**

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**(Amended August 1, 1985)  
(Amended October 25, 1990)  
(Amended January 1, 2015)**

**Office of Navajo Labor Relations  
The Navajo Nation  
Post Office Box 1943  
Window Rock, Arizona 86515  
Phone (928) 871-6800**

# **NAVAJO PREFERENCE IN EMPLOYMENT ACT**

## **AMENDED JANUARY 1, 2015**

### **SECTION 601. TITLE**

- A. This Act shall be cited as the Navajo Preference in Employment Act and is hereby codified as Title 15 Chapter 7 of the Navajo Nation Code.**

### **SECTION 602. PURPOSE**

- A. The purposes of the Navajo Preference in Employment Act are:**
- 1. To provide employment opportunities for the Navajo work force;**
  - 2. To provide training for the Navajo people;**
  - 3. To promote the economic development of the Navajo Nation;**
  - 4. To lessen the Navajo Nation's dependence upon off-reservation sources of employment, income, goods and services;**
  - 5. To foster the economic self-sufficiency of Navajo families;**
  - 6. To protect the health, safety, and welfare of Navajo workers; and**
  - 7. To foster cooperative efforts with employers to assure expanded employment opportunities for the Navajo work force.**
- B. It is the intention of the Navajo Nation Council that the provisions of this Act be construed and applied to accomplish the purposes set forth above.**

### **SECTION 603. DEFINITIONS**

- A. The term "Commission" shall mean the Navajo Nation Labor Commission.**
- B. The term "employment" shall include, but is not limited to, the recruitment, hiring, promotion, transfer, training, upgrading, reduction-in-force, retention, and recall of employees.**
- C. The term "employer" shall include all persons, firms, associations, corporations, and the Navajo Nation and all of its agencies and instrumentalities, who engage the services of any person for compensation, whether as employee, agent, or servant.**
- D. The term "Navajo" means any enrolled member of the Navajo Nation.**
- E. The term "ONLR" means the Office of Navajo Labor Relations.**

- F. The term “probable cause” shall mean a reasonable ground for belief in the existence of facts warranting the proceedings complained of.**
- G. The term “territorial jurisdiction” means the territorial jurisdiction of the Navajo Nation as defined in 7 N.N.C. § 254.**
- H. The term “counsel” or “legal counsel” shall mean: (a) a person who is an active member in good standing of the Navajo Nation Bar Association and duly authorized to practice law in the courts of the Navajo Nation; and (b) for the sole purpose of co-counseling in association with a person described in clause (a), an attorney duly authorized, currently licensed and in good standing to practice law in any State of the United States who has, pursuant to written request demonstrating the foregoing qualifications and good cause, obtained written approval of the Commission to appear and participate as co-counsel in a particular Commission proceeding.**
- I. The term “necessary qualifications” shall mean those job-related qualifications which are essential to the performance of the basic responsibilities designated for each employment position, including any essential qualifications concerning education, training and job-related experience, but excluding any qualifications relating to ability or aptitude to perform responsibilities in other employment positions. Demonstrated ability to perform essential and basic responsibilities shall be deemed satisfaction of necessary qualifications.**
- J. The term “qualifications” shall include the ability to speak and/or understand the Navajo language and familiarity with Navajo culture, customs, and traditions.**
- K. The term “person” shall include individuals; labor organizations; tribal, federal, state and local governments, their agencies, subdivisions, instrumentalities and enterprises; and private and public, profit and non-profit, entities of all kinds having recognized legal capacity or authority to act, whether organized as corporations, partnerships, associations, committees or in any other form.**
- L. The term “employee” means an individual employed by an employer.**
- M. The term “employment agency” means a person regularly undertaking, with or without compensation, to procure employees for an employer or to obtain for employees opportunities to work for an employer.**
- N. The term “labor organization” or “union” means an organization in which employees participate or by which employees are represented and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other**

**terms and conditions of employment, including a national or international labor organization and any subordinate conference, general committee, joint or system board, or joint council.**

- O. The term “petitioner” means a person who files a complaint seeking to initiate a Commission proceeding under the Act.**
- P. The term “respondent” means the person against whom a complaint is filed by a petitioner.**
- Q. The term “Act” means the Navajo Preference in Employment Act.**

#### **SECTION 604. NAVAJO EMPLOYMENT PREFERENCE**

- A. All employers doing business within the territorial jurisdiction [or near the boundaries] of the Navajo Nation, or engaged in any contract with the Navajo Nation shall:**
  - 1. Give preference in employment to Navajos. Preference in employment shall include specific Navajo affirmative action plans and timetables for all phases of employment to achieve the Navajo Nation goal of employing Navajos in all job classifications including supervisory and management positions.**
  - 2. Within 90 days after the later of: (a) the effective date of this § 604(A)(2); or (b) the date on which an employer commences business within the territorial jurisdiction of the Navajo Nation, the employer shall file with ONLR a written Navajo affirmative action plan which complies with this Section and other provisions of the Act. In any case where a labor organization represents employees of the employer, the plan shall be jointly filed by the employer and labor organization. Any such associated labor organization shall have obligations under this Section equivalent to those of the employer as to employees represented by such organization. Failure to file such a plan within the prescribed time limit, submission of a plan which does not comply with the requirements of the Act, or failing to implement or comply with the terms of a conforming plan shall constitute violation of the Act. In the event of a required joint plan by an employer and associated labor organization, only the non-complying party shall be deemed in violation of the Act, as long as the other party has demonstrated a willingness and commitment to comply with the Act.**
  - 3. Subject to the availability of adequate resources, ONLR shall provide reasonable guidance and assistance to employers and associated labor organizations in connection with the development and implementation of a Navajo affirmative action plan. Upon request, ONLR shall either approve or disapprove any plan, in whole or in part. In the event of approval thereof by ONLR, no Charge shall be filed hereunder with respect to alleged unlawful**

provisions or omissions in the plan, except upon 30 days prior written notice to the employer and any associated labor organization to enable voluntary correction of any stated deficiencies in such plan. No Charge shall be filed against an employer and any associated labor organization for submitting a non-conforming plan, except upon 30 days prior to notice by ONLR identifying deficiencies in the plan which require correction.

**B. Specific Requirements for Navajo Preference:**

- 1. All employers shall include and specify a Navajo employment preference policy statement in all job announcements and advertisements and employer policies covered by this Act.**
- 2. All employers shall post in a conspicuous place on its premises for its employees and applicants a Navajo preference policy notice prepared by ONLR.**
- 3. Any seniority system of an employer shall be subject to this Act and all other labor laws of the Navajo Nation. Such a seniority system shall not operate to defeat nor prevent the application of the Act; provided, however, that nothing in this Act shall be interpreted as invalidating an otherwise lawful and bona fide seniority system which is used as a selection or retention criterion with respect to any employment opportunity where the pool of applicants or candidates is exclusively composed of Navajos or non-Navajos.**
- 4. The Navajo Nation when contracting with the federal or state government or one of its entities shall include provisions for Navajo preference in all phases of employment as provided herein. When contracting with any federal agency, the term Indian preference may be substituted for Navajo preference for federal purposes; provided that any such voluntary substitution shall not be construed by the Navajo Nation that this Act is not fully applicable to the federal contract as a matter of law.**
- 5. All employers shall utilize Navajo Nation employment sources and job services for employee recruitment and referrals; provided, however, those employers do not have the foregoing obligations in the event a Navajo is selected for the employment opportunity who is a current employee of the employer.**
- 6. All employers shall advertise and announce all job vacancies in at least one newspaper and radio station serving the Navajo Nation; provided, however, that employers do not have the foregoing obligations in the event a Navajo is selected for the employment opportunity who is a current employee of the employer.**

- 7. All employers shall use non-discriminatory job qualifications and selection criteria in employment.**
- 8. All employers shall not penalize, discipline, discharge nor take any adverse action against any employee without just cause. A written notification to the employee citing such cause for any of the above actions is required in all cases. Provided, that this Subsection shall not apply to Division Directors, or to other employees and officials of the Navajo Nation who serve, pursuant to a specific provision of the Navajo Nation Code, at the pleasure of the Navajo Nation Council, the standing committees of the Navajo Nation Council, the President of the Navajo Nation, the Speaker of the Navajo Nation Council, the Chief Justice of the Navajo Nation, or those persons employed pursuant to 2 N.N.C. § 281(C) and 1009. This subsection shall not be used by a program director to challenge the withholding of his and her salary for failure to implement a corrective action plan of the Auditor General, as authorized by 12 N.N.C § 9(C), or for failure to fulfill a condition of appropriation, as authorized by 12 N.N.C § 820 (R) (2) and (3).**
- 9. All employers shall maintain a safe and clean working environment and provide employment conditions which are free of prejudice, intimidation and including sexual harassment. The employee alleging a violation of this subsection shall have the burden of proof to show that violation by a preponderance of the evidence. An employee may not file an action under the Domestic Abuse Protection Act, 9 N.N.C. § 1601, *et seq.*, to seek to restrain a supervisor or coworker for a dispute arising out of the employment relationship.**
- 10. Training shall be an integral part of the specific affirmative action plans or activities for Navajo preference in employment.**
- 11. An employer-sponsored cross-cultural program shall be an essential part of the affirmative action plans required under the Act. Such program shall primarily focus on the education of non-Navajo employees, including management and supervisory personnel, regarding the cultural and religious traditions or beliefs of Navajos and their relationship to the development of employment policies which accommodate such traditions and beliefs. The cross-cultural program shall be developed and implemented through a process which involves the substantial and continuing participation of an employer's Navajo employees, or representative Navajo employees.**
- 12. No fringe benefit plan addressing medical or other benefits, sick leave program or any other personnel policy of an employer, including policies jointly maintained by an employer and associated labor organization, shall discriminate against Navajos in terms or coverage as a result of Navajo cultural or religious traditions or beliefs. To the maximum extent feasible, all**

**of the foregoing policies shall accommodate and recognize in coverage such Navajo traditions and beliefs.**

- C. Irrespective of the qualifications of any non-Navajo applicant or candidate, any Navajo applicant or candidate who demonstrates the necessary qualifications for any employment position:**
- 1. Shall be selected by the employer in the case of hiring, promotion, transfer, upgrading, recall and other employment opportunities with respect to such positions; and**
  - 2. Shall be retained by the employer in the case of a reduction-in-force affecting such class of positions until all non-Navajos employed in the class of positions are laid-off, provided that any Navajo who is laid-off in compliance with this provision shall have the right to displace a non-Navajo in any other employment position for which the Navajo demonstrates necessary qualifications.**
  - 3. Among a pool of applicants or candidates who are solely Navajo and meet the necessary qualifications, the Navajo with the best qualifications shall be selected or retained, as the case may be.**
- D. All employers shall establish written necessary qualifications for each employment position in their work force, a copy of which shall be provided to applicants or candidates at the time they express an interest in such position.**

#### **SECTION 605. REPORTS**

**Except as otherwise provided herein, all employers doing business or engaged in any project or enterprise within the territorial jurisdiction of the Navajo Nation or pursuant to a contract with the Navajo Nation shall submit employment information and reports as required to ONLR. Such reports, in a form acceptable to ONLR, shall include all information necessary and appropriate to determine compliance with the provisions of this Act. All reports shall be filed with ONLR not later than 10 business days after the end of each calendar quarter, provided that ONLR shall have the right to require filing of reports on a weekly or monthly schedule with respect to part-time or full-time temporary employment.**

#### **SECTION 606. UNION AND EMPLOYMENT AGENCY ACTIVITIES/RIGHTS OF NAVAJO WORKERS**

- A. Subject to lawful provisions of applicable collective bargaining agreements, the basic rights of Navajo workers to organize, bargain collectively, strike, and peaceably picket to secure their legal rights, shall not be abridged in any way by any person. The right to strike and picket does not apply to employees of the Navajo Nation, its agencies, or enterprises.**

- B. It shall be unlawful for any labor organization, employer or employment agency to take any action, including action by contract, which directly or indirectly causes or attempts to cause the adoption or use of any employment practice, policy or decision which violates the Act.**

## **SECTION 607. NAVAJO PREVAILING WAGE**

- A. Definitions. For purpose of this Section, the following terms shall have the meanings indicated:**

- 1. The term “prevailing wage” shall mean the wage paid to a majority (more than fifty percent (50%)) of the employees in the classification on similar construction projects in the area during a period not to exceed 24 months prior to the effective date of the prevailing wage rate set hereunder; provided that in the event the same wage is not paid to a majority of the employees in the classification, “prevailing wage” shall mean the average of the wages paid, weighted by the total number of employees in the classification.**
- 2. The term “prevailing wage rate” shall mean the rate established by ONLR pursuant to this Section.**
- 3. The term “wage” shall mean the total of:**
  - a. The basic hourly rate; and**
  - b. The amount of: (a) contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan or program for the benefit of employees; and (b) costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to employees pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the employees affected. The types of fringe benefits contemplated hereunder include medical or hospital health care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeships or other similar programs; or other bona fide fringe benefits.**
- 4. The term “area” in determining the prevailing wage means the geographic area within the territorial jurisdiction of the Navajo Nation; provided that in the event of insufficient similar construction projects in the area during the period in question, “area” shall include the geographic boundaries of such contiguous municipal, county or state governments as ONLR may determine**



necessary to secure sufficient wage information on similar construction projects.

5. The term “classifications” means all job positions in which persons are employed, exclusive of classifications with assigned duties which are primarily administrative, executive or clerical, and subject to satisfaction of the conditions prescribed in Sections 607(E)(7) and (8), exclusive of “apprentice” and “trainee” classifications as those terms are defined herein.
6. “Apprentice” means: (a) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with an Apprenticeship Agency administered by a State or Indian Tribe and recognized by the Bureau, or (b) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State or Tribal Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.
7. “Trainee” means a person: (a) registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration; or (b) employed and/or receiving on-the-job training under a public employment or work experience program which is approved and funded by the Navajo Nation.
8. The term “construction” shall mean all activity performed under a contract which relates to: (a) the building, development, rehabilitation, repair, alternation or installation of structures and improvements of all types, including without limitation buildings, bridges, dams, plants, highways, sewers, water mains, power lines and other structures; (b) drilling, blasting, excavating, clearing and landscaping, painting and decorating; (c) transporting materials and supplies to or from the site of any of the activities referred to in (a) or (b) by employees of the contractor or subcontractor; and (d) manufacturing or finishing materials, articles, supplies or equipment at the construction site of any of the foregoing activities by employees of the contractor or subcontractor.
9. The term “contract” shall mean the prime construction contract and all subcontracts of any tier thereunder entered into by parties engaged in commercial, business or governmental activities (whether or not such activities are conducted for profit).

**B. Establishment of Wage Rates.**

- 1. For all construction reasonably anticipated to occur in the area on a regular basis, ONLR shall establish a general prevailing wage rate for each classification within specified types of construction. ONLR shall define classifications and types of construction in accordance with guidelines generally recognized in the construction industry. In all cases where construction is contemplated for which prevailing wage rates have not been set, the contract letting entity shall submit to ONLR a written request for a project prevailing wage scale. Such request shall be submitted not less than 60 days prior to the scheduled date for bid solicitation and shall include detailed information on the anticipated construction classifications, nature of the project and completion plans. ONLR shall use its best efforts to provide a project prevailing wage scale for each classification involved in the project construction within 60 days after receipt of a request therefore.**
- 2. In settings prevailing wage rates, ONLR shall conduct such surveys and collect such data as it deems necessary and sufficient to arrive at a wage determination. Wage data may be collected from contractors, contractors' associations, labor organizations, public officials and other sources which reflect wage rates paid in classifications on types of construction in the area, including the names and addresses of contractors and subcontractors; the locations, approximate costs, dates and types of construction; the number of workers employed in each classification on the project; and the wage rates paid such workers. Wage rate data for the area may be provided, and considered in making wage determinations, in various forms including signed statements, collective bargaining agreements and prevailing wage rates established by federal authorities for federally-assisted construction projects.**
- 3. Any classification of workers not listed in a prevailing wage rate and which is to be used under a construction contract shall be classified in conformance with the prevailing wage determination issued and applicable to the project; provided that an additional classification and prevailing wage rate therefore will be established in the event each of the following criteria are satisfied:**

  - a. The work performed by the proposed classification is not performed by a classification within the existing prevailing wage scale;**
  - b. The proposed classification is utilized in the area by the construction industry; and**
  - c. The wage set for the proposed classification bear a reasonable relationship to the wage rates contained in the existing scale for other classifications.**

4. Subject to the prior written approval thereof by the Director of ONLR, a general prevailing wage rate shall be effective on the date notice of such rate is published in a newspaper in general circulation in the Navajo Nation. The notice shall contain the following information:
- (1) The fact a prevailing wage rate has been set and approved in writing by the Director of ONLR;
  - (2) The type of construction for which the rate was established;
  - (3) The effective date, described as the date of publication of the notice or other specified date;
  - (4) The address and telephone number of ONLR; and
  - (5) A statement that ONLR will provide a copy of the full wage determination on request, and respond to any reasonable questions regarding such determination or its application.
    - a. General prevailing wage rates shall continue in effect until such time as any modifications are adopted.
    - b. A prevailing wage rate for a particular project shall be effective on the date of issuance to the requesting party of a written wage determination approved by the Director of ONLR. The wage determination shall continue in effect for the duration of the project; provided that any such determination may be modified by ONLR in the event the period of time from the effective date of the determination to the date bids are solicited exceeds 180 days and the estimated date of completion of the project is more than one year after the effective date of the determination.
    - c. Project and general wage determinations may be modified from time to time, in whole or in part, to adjust rates in conformity with current conditions, subject to special conditions applicable to project determinations. Such modifications become effective upon the same terms and conditions which are applicable to original determinations.
    - d. **Fringe Benefits.** The fringe benefit amount of wages reflected in a prevailing wage rate shall be paid in cash to the employee, and shall not be deducted from such employee's wages, unless each of the following conditions is satisfied:
      - (1) The deductions is not contrary to applicable law;

- (2) A voluntary and informed written consent authorizing the deduction is obtained from the employee in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining or continuing employment;**
- (3) No profit or other benefit is obtained as a result of deduction, directly or indirectly, by the contractor, subcontractor or any person affiliated with them in the form of a commission, dividend or other consideration; and**
- (4) The deduction serves the convenience and interests of the employee.**

**C. No contract-letting entity, contractor or subcontractor shall proceed with a construction contract subject to this Section in the absence of a contractual requirement for payment of prevailing wages pursuant to a specified wage determination issued by ONLR. Violation of this obligation shall render the contract-letting entity, and the employer contractor or subcontractor, jointly and severally liable for the difference between wages actually paid and the prevailing wage rate, together with interest thereon (or if no prevailing wage rates have been set, such wage rates as may be issued by ONLR during the course, or after the completion, of the construction project).**

- 1. Failure by any employer, contractor or subcontractor to pay prevailing wages shall render such employer liable for the difference between the amount of wages actually paid and the prevailing rate, together with interest thereon.**
- 2. Any deduction of fringe benefits by an employer contractor or subcontractor in violation of § 607(C) shall render such employer liable for the amount of such deduction, together with interest thereon.**
- 3. Upon written request of ONLR, a contract-letting entity or contractor, as the case may be, shall withhold from any monies payable on account of work performed by an employer contractor or subcontractor under construction contract such sums as may be determined by ONLR as necessary to satisfy any liabilities of such contractor or subcontractor for unpaid prevailing wages or wrongful deduction of fringe benefits.**
- 4. If following a hearing under § 611, a contract-letting entity (other than the Navajo Nation), contractor or subcontractor is found to have willfully violated this Section the Commission may enter a debarment order disqualifying such party from receiving any contract, or subcontract thereunder, with the Navajo Nation for a period not to exceed three years.**

5. The liabilities described in this § 607(C) shall not foreclose the Commission from awarding such other relief or imposing such other civil penalties as may be appropriate following a hearing conducted under § 611.

**D. Exemptions. This Section shall not apply to:**

1. A contract associated with a construction activity which relates to the provision of architect, engineer, legal or consultant services, or, except as provided under § 607(A)(8)(d), the manufacturing or furnishing of materials or performance of services and maintenance work by persons not employed by a prime contractor or any of its subcontractors.
2. A construction contract relating to a project having a total cost of two thousand dollars (\$2,000) or less.
3. A construction contract which is let by a natural person who is an owner or person legally authorized to let such contract, for such person's personal, family or household purposes.
4. A construction contract to the extent the work thereunder is performed by employees of the owner, or employees of the person or entity legally authorized to let the prime contract.
5. A construction contract for a project receiving federal financial assistance to the extent the prevailing wage is set by federal authorities pursuant to the Davis-Bacon Act, 40 U.S.C., §§ 276a et seq., (as amended), or other federal law applicable to such project.
6. A construction contract to the extent such contract requires payment of wages pursuant to wage scale established under a collective bargaining agreement between any contractor or subcontractor and a labor organization.
7. With the exception of the provisions of § 607(C), an apprentice provided that the apprentice is paid not less than: (a) the basic hourly rate prescribed in the registered program for the apprentice's level of progress, expressed as a percentage of the applicable journeyman rate specified in the prevailing wage rate; and (b) the fringe benefit amount prescribed in the registered program or, if not specified, the fringe benefit amount set in the prevailing wage rate for the applicable journeyman classification. An apprentice who is not enrolled in a registered program (within the meaning of § 607(A)(6)), shall be paid wages in a amount not less than the level prescribed for the applicable journeyman classification specified in the prevailing wage rate.
8. With the exception of the provisions of § 607(C), a trainee provided that the trainee is paid not less than: (a) the basic hourly rate prescribed in the

approved program for the trainee's level of progress, expressed as a percentage of the applicable journeyman rate specified in the prevailing wage rate; and (b) the fringe benefit amount prescribed in the approved program or, if not specified and as to federally approved programs only, the fringe benefit amount set in the prevailing wage rate for the applicable journeyman classification. A trainee who is not enrolled in an approved program (within the meaning of § 607(A)(7)(8)), shall be paid wages in an amount not less than level prescribed for the applicable journeyman classification specified in the prevailing wage rate.

#### **SECTION 608. HEALTH AND SAFETY OF NAVAJO WORKERS**

Employers shall, with respect to business conducted within the territorial jurisdiction of the Navajo Nation, adopt and implement work practices which conform to occupational safety and health standards imposed by law.

#### **SECTION 609. CONTRACT COMPLIANCE**

- A. All transaction documents, including without limitation, leases, subleases, contracts, subcontracts, permits, and collective bargaining agreements between employers and labor organization (herein collectively "transaction documents"), which are entered into by or issued to any employer and which are to be performed with the territorial jurisdiction of the Navajo Nation shall contain a provision pursuant to which the employer and any other contracting party affirmatively agree to strictly abide by all requirements of this Act. With respect to any transaction document which does not contain the foregoing provision, the terms and provisions of this Act are incorporated therein as a matter of law and the requirements of the Act shall constitute affirmative contractual obligations of the contracting parties. In addition to the sanctions prescribed by the Act, violation of the Act shall also provide grounds for the Navajo Nation to invoke such remedies for breach as may be available under the transaction document or applicable law. To the extent of any inconsistency or conflict between a transaction document and the Act, the provision of the transaction document in question shall be legally invalid and unenforceable and the Act shall prevail and govern the subject of the inconsistency or conflict.**
- B. Every bid solicitation, request for proposals and associated notices and advertisements which relate to prospective contracts to be performed within the territorial jurisdiction of the Navajo Nation shall expressly provide that the contract shall be performed in strict compliance with this Act. With respect to any such solicitation, request, notice or advertisement which does not contain the foregoing provision, the terms provisions of this Act are incorporated therein as a matter of law.**

## **SECTION 610. MONITORING AND ENFORCEMENT**

- A. Responsible Agency.** Except as otherwise provided herein, compliance with the Act shall be monitored and enforced by ONLR.
- B. Charges.**
- 1. Charging Party.** Except as otherwise provided herein, any Navajo may file a charge (“Individual Charge”) claiming a violation of his or her rights under the Act. ONLR, on its own initiative, may file a charge (“ONLR Charge”) claiming a violation of rights under the Act held by identified Navajos or a class of Navajos, including a claim that respondent is engaging in a pattern of conduct or practice in violation of rights guaranteed by the Act. An Individual Charge and ONLR Charge are collectively referred to herein as a “Charge”.
  - 2. Form and Content.** A Charge shall be in writing, signed by the charging party (which shall be the Director of ONLR in the case of any ONLR Charge), and contain the following information:
    - a.** The name, address and any telephone number of the charging party;
    - b.** The name and address or business location of the respondent against whom the Charge is made;
    - c.** A clear and concise statement of the facts constituting the alleged violation of the Act, including the dates of each violation and other pertinent events and the names of individuals who committed, participated in or witnessed the acts complained of;
    - d.** With respect to a Charge alleging a pattern or practice in violation of the Act, the period of time during which such pattern or practice has existed and whether it continues on the date of the Charge;
    - e.** The specific harm sustained by the charging party in the case of an Individual Charge or the specific harm sustained by specified Navajos or a class of Navajos with respect to an ONLR Charge;
    - f.** A statement disclosing whether proceedings involving the alleged violation have been initiated before any court or administrative agency or within any grievance process maintained by the respondent, including the date of commencement, the court, agency or process and the status of the proceeding; and
    - g.** ONLR shall provide assistance to persons who wish to file Individual Charges. Notwithstanding the foregoing provisions, a Charge shall be

**deemed sufficient if it contains a reasonably precise identification of the charging party and respondent, and the action, pattern or practice which are alleged to violate the Act.**

- 3. Place of Filing. Individual Charges may be filed in any ONLR office. An ONLR Charge shall be filed in ONLR's administrative office in Window Rock.**
- 4. Date of Filing. Receipt of each Individual Charge shall be acknowledged by the dated signature of an ONLR employee which shall be deemed the date on which the Individual Charge is filed. The date on which an ONLR Charge is signed by the ONLR Director shall be deemed the date of filing for such Charge.**
- 5. Amendment. A Charge may be amended by filing, in the office where the Charge was first submitted, a written instrument which sets forth the amendment and any portions of the original Charge revised thereby. To the extent the information reflected in the amendment arose out of the subject matter of the original Charge, the amendment shall relate back and be deemed filed as of the filing date of such Charge. Any portion of the amendment which does not qualify for relation back treatment shall constitute a new Charge.**
- 6. Time Limitation. A Charge shall be filed within one year after accrual of the claim which constitutes the alleged violation of the Act. The date of accrual of a claim shall be the earlier of:**
  - a. The date on which the charging party had actual knowledge of the claim, or**
  - b. Taking into account the circumstances of the charging party, the date on which the charging party should reasonably have been expected to know of the existence of the claim; provided, however, that a Charge relating to a continuing, or pattern or practice, violation of the Act shall be filed within one year after the later of:**
    - (1) The date of termination of such violation, pattern or practice; or**
    - (2) The date of accrual of the claim to which the Charge relates. Failure to file a Charge within the time limitations prescribed herein shall bar proceedings on the related claim before the Commission or in any Court of the Navajo Nation; provided, however, that nothing herein shall be interpreted as foreclosing proceedings before any Navajo Court or administrative body (other than the Commission) on any claim which also arises**



**under applicable common, statutory or other law independent of this Act.**

- 7. Notice of Respondent.** Within 20 days after a Charge is filed, ONLR shall serve a copy thereof on respondent; provided, however, that if in ONLR's judgment service of a copy of the Charge would impede its enforcement functions under the Act, ONLR may in lieu of a copy serve on respondent a notice of the Charge which contains the date, place and summary of relevant facts relating to the alleged violation, together with the identity of the charging party unless withheld for the reason stated above. Service of any amendment to the Charge shall be accomplished within 20 days after the amendment is filed. Failure of ONLR to serve a copy of a Charge or notice thereof within the prescribed time period shall not be a ground for dismissal of the Charge or any subsequent proceedings thereon.
- 8. Withdrawal of Charge.**
  - a.** ONLR may, in its discretion, withdraw any ONLR Charge upon written notice thereof to respondent and each person identified in the Charge whose rights under the Act were alleged to have been violated. Any person receiving notice of withdrawal or any other person who asserts a violation of his or her rights as a result of the violation alleged in the withdrawn ONLR Charge may file any Individual Charge which, if filed within 90 days after the issuance date of ONLR's withdrawal notice, shall relate back to the filing date of the ONLR Charge.
  - b.** Any charging party may, in his or her discretion, withdraw an Individual Charge by filing a written notice of withdrawal with the ONLR office where the Charge was submitted, with a copy thereof filed with the ONLR administrative office in Window Rock. ONLR shall, within 20 days after receiving the notice, transmit a copy to the respondent. Within 90 days after receipt of the withdrawal notice, ONLR may file an ONLR Charge relating in whole or part to the violations alleged in the withdrawn Individual Charge. Any filing of an ONLR Charge within the prescribed time period shall relate back to the filing date of the withdrawn Charge.
- 9. Overlapping Charges.** Nothing herein shall be construed as prohibiting the filing of any combination of Individual Charges and an ONLR Charge which, in whole or part, contain common allegations of violations of the Act.
- 10. Informants.** Irrespective of whether a person is otherwise eligible to file an Individual Charge, any such person or any organization may in lieu of filing a Charge submit to ONLR written or verbal information concerning alleged violations of the Act and may further request ONLR to file an ONLR Charge

thereon. In addition to other limitations on disclosure provided in § 610(M), and in the absence of the written consent of the informant, neither the identity of the informant nor any information provided by such informant shall be disclosed to the respondent, agents or legal counsel for the respondent, or the public, either voluntarily by ONLR or pursuant to any discovery or other request for, or order relating to, such information during the course of any judicial or non-judicial proceeding, including a proceeding before the Commission or any subsequent appeal or challenge to a Commission or appellate decision; provided, however, that in the event the informant is called as a witness by ONLR at a Commission proceeding involving the information provided by the informant:

- a. The informant's name may be disclosed, but his or her status as an informant shall remain privileged and confidential and shall not be disclosable through witness examination or otherwise, and
- b. With the exception of the witness status as any informer, information provided by the informant is disclosable in accordance with the procedures outlined under § 610(M).

**C. Investigation of Charges.**

1. ONLR shall conduct such investigation of a Charge as it deems necessary to determine whether there is probable cause to believe the Act has been violated.
2. Subpoenas.
  - a. The Director of ONLR shall have the authority to sign and issue a subpoena compelling the disclosure by any person evidence relevant to a Charge, including a subpoena ordering, under oath as may be appropriate:
    - (1) The attendance and testimony of witnesses;
    - (2) Responses to written interrogatories;
    - (3) The production of evidence, including without limitation books, records, correspondence or other documents (or lists or summaries thereof) in the subpoenaed person's possession, custody or control or which are lawfully obtainable by such person; and
    - (4) Access to evidence for the purposes of examination and copying. Neither an individual charging party nor a respondent shall have a right to demand issuance of a

**subpoena prior to the initiation of any proceedings on the Charge before the Commission, in which event subpoenas are issuable only pursuant to the procedures governing such proceedings.**

- b. Service of the subpoena shall be effected by one of the methods prescribed in § 610(O). A subpoena directed to a natural person shall be served either on the person at his or her residence or office address or, in the case of personal delivery, at such residence or office either on the person subpoenaed or on anyone at least 18 years of age (and in the case of office service, a person who is also an employee of such office). Service of a subpoena directed to any other person shall be addressed or delivered to either the statutory agent (if any) of such person or any employee occupying a managerial or supervisory position at any office of the person maintained within or outside the territorial jurisdiction of the Navajo Nation. Personal service may be performed by a natural person at least 18 years of age, including an employee of ONLR.**
- c. The subpoena shall set a date, time and place for the attendance of a witness or production of or access to evidence, as the case may be, provided that the date for compliance shall be not less than 30 days after the date on which service of the subpoena was affected.**
- d. Any person served with a subpoena intending not to fully comply therewith shall, within five business days after service, serve on the Director of ONLR a petition requesting the modification or revocation of the subpoena and identifying with particularity each portion of the subpoena which is challenged and the reasons therefore. To the extent any portion of the subpoena is not challenged, the unchallenged parts shall be complied with in accordance with the terms of the subpoena as issued. The ONLR Director shall issue and serve on petitioner a decision and reasons therefore within eight business days following receipt of the petition, and any failure to serve a decision within such period shall be deemed a denial of the petition. In the event the Director's decision reaffirms any part of the subpoena challenged in the petition, the Director may extend the date for compliance with such portion for a period not to exceed 10 business days. Any petitioner dissatisfied with the decision of the ONLR Director shall either:**
  - (1) Comply with the subpoena (with any modifications thereto reflected in the Director's decision); or**
  - (2) Within five business days following receipt of the Director's decision or the date such decision was due, file a petition with**

the Commission (with a copy concurrently served on the ONLR Director) seeking modification or revocation of the subpoena and stating with particularity therein each portion of the subpoena challenged and the reasons therefore. A copy of the ONLR Director's decision, if any, shall be attached to the petition.

- e. In the event a person fails to comply with a served subpoena, ONLR may petition the Commission for enforcement of the subpoena. For purpose of awarding any relief to petitioner, the Commission may issue any order appropriate and authorized in a case where it is established that a Commission order has been violated. A copy of the petition shall be concurrently served on the non-complying person.
- f. Beginning on the first day of non-compliance with a subpoena served on a respondent, or any employee or agent of respondent, until the date of full compliance therewith, there shall be a tolling of all periods of limitation set forth in this Section.

**D. Dismissal of Charges.**

- 1. **Individual Charges.** ONLR shall dismiss an Individual Charge upon reaching any one or more of the following determinations:
  - a. The Individual Charge, on its face or following an ONLR investigation, fails to demonstrate that probable cause exists to believe a violation of the Act has occurred;
  - b. The Individual Charge was not filed within the time limits prescribed by § 610(B)(6);
  - c. The charging party has failed to reasonably cooperate in the investigation of, or attempt to settle, the Individual Charge;
  - d. The charging party has refused, within 30 days of receipt, to accept a settlement offer agreed to by respondent and approved by ONLR, which accords substantially full relief for the harm sustained by such party; or
  - e. The Charge has been settled pursuant to § 610(G).
- 2. **ONLR Charges.** ONLR shall dismiss an ONLR Charge upon determining that:
  - a. No probable cause exists to believe a violation of the Act has occurred;

- b. The Charge was not filed within the time limits prescribed by § 610(B)(6); or
    - c. The Charge had been settled pursuant to § 610(G).
  3. **Partial Dismissal.** In the event a portion of a Charge is dismissible on one or more of the foregoing grounds, only such portion of the Charge shall be dismissed and the remainder retained by ONLR for final disposition.
  4. **Notice.** Written notice of dismissal, stating the grounds therefore, shall be served on respondent and the individual charging party in the case of an Individual Charge or, in the case of any ONLR Charge, on the respondent and any person known to ONLR who claims to be aggrieved by the violations alleged in such Charge. Such notice shall be accompanied by a right to sue authorization pursuant to § 610(H).
- E. **Probable Cause Determination.** Following its investigation of a Charge and in the absence of a settlement or dismissal required under § 610(D), ONLR shall issue written notice of its determination that probable cause exists to believe a violation of the Act has occurred or is occurring. Such notice shall identify each violation of the Act for which probable cause has been found, and copies thereof shall be promptly sent to the respondent, the charging party in the case of an Individual Charge, and, in the case of an ONLR Charge, each person identified by ONLR whose rights are believed to have been violated. Any probable cause determination shall be based on, and limited to, the evidence obtained by ONLR and shall not be deemed a judgment by ONLR on the merits of allegations not addressed in the determination.
- F. **Conciliation.** If, following its investigation of a Charge, ONLR determines there is probable cause to believe the Act has been or is being violated, ONLR shall make a good faith effort to secure compliance and appropriate relief by informal means through conference, conciliation and persuasion. In the event there is a failure to resolve the matter informally as to any allegations in an Individual Charge for which probable cause has been determined, ONLR shall either issue the notice prescribed in § 610(H) or initiate a Commission proceeding under § 610(I) concerning unresolved allegations. A successful resolution of any such allegation shall be committed to writing in the form required under § 610(G). Nothing herein shall be construed as prohibiting ONLR from initiating or participating in efforts to informally resolve a Charge prior to issuance of probable cause determination.
- G. **Settlement.**
1. Settlement agreements shall be committed to writing and executed by respondent, the individual charging party if any and, in the case of any Charge, by the Director of ONLR. Refusal of an individual charging party to execute a settlement agreement subjects the Individual Charge to dismissal under the conditions set forth in § 610(D)(1)(d). Settlement agreements may

also be signed by those aggrieved persons identified as having a claim with respect to an ONLR Charge.

2. Settlement agreements hereunder shall be enforceable among the parties thereto in accordance with the terms of the agreement. Any member of a class of persons affected by the settlement who is not a signatory to the agreement shall have the right to initiate proceedings before the Commission pursuant to the procedure in § 610(H)(2)(a)(3).
3. Each settlement agreement shall provide for the dismissal of the Charge to the extent the violations alleged therein are resolved under the agreement.
4. Any breach of a settlement agreement by respondent shall present grounds for filing a Charge under this Section. A charging party asserting a claim for breach may either seek:
  - a. Enforcement of that portion of the settlement agreement alleged to have been breached; or
  - b. In the case of a material breach as to any or all terms, partial or total rescission of the agreement, as the case may be, and such other further relief as may have been available in the absence of settlement. A Charge asserting a breach of a settlement agreement with respect to any original allegation in the Charge covered by such agreement shall, for purposes of all time limitations in this Section, be deemed to arise on the accrual date of the breach.

#### **H. Individual Right to Sue.**

##### **1. Individual Charges.**

- a. Prior to the expiration of 180 days following the date an Individual Charge was filed, ONLR, by notice to the individual charging party, shall authorize such individual to initiate a proceeding before the Commission in accordance with the procedures prescribed in § 610(J), if:
  - (1) The Individual Charge had been dismissed by ONLR pursuant to § 610(D)(1);
  - (2) ONLR has issued a probable cause determination under § 610(E), there has been a failure of conciliation contemplated by § 610(F), and ONLR has determined not to initiate a Commission proceeding on behalf of the individual charging party; or

- (3) Notwithstanding the absence of a probable cause determination or conclusion of conciliation efforts, ONLR certifies it will be unable to complete one or both of these steps within 180 days after the date on which the Individual Charge was filed.
- b. After the expiration of 180 days following the date an Individual Charge was filed, the individual charging party shall have the right to initiate a proceeding before the Commission irrespective of whether ONLR has issued a notice of right to sue, made a probable cause determination, or commenced or concluded conciliation efforts.
2. **ONLR Charges.**
- a. Prior to the expiration of 180 days following the date an ONLR Charge was filed, ONLR, by notice to any person known to it who claims to be aggrieved by the allegations presented in such Charge, shall authorize such person to initiate a proceeding before the Commission in accordance with the procedures prescribed in § 610(J), if:
- (1) The ONLR Charge has been dismissed by ONLR pursuant to § 610(D)(2);
- (2) ONLR has issued a probable cause determination under § 610(E), there has been a failure of conciliation contemplated by § 610(F), and ONLR has determined not to initiate a Commission proceeding on the Charge;
- (3) ONLR has entered into a settlement agreement under § 610(G) to which such aggrieved person is not a party; or
- (4) Notwithstanding the absence of a probable cause determination or conclusion of conciliation efforts, ONLR certifies it will be unable to complete one or both of these steps within 180 days after the date on which the ONLR Charge was filed.
- b. After the expiration of 180 days following the date an ONLR Charge was filed and prior to the date on which ONLR commences a Commission proceeding, any person claiming to be aggrieved by the allegations presented in such Charge shall have the right to initiate a proceeding before the Commission irrespective of whether ONLR has issued a notice of right to sue, made a probable cause determination or commenced or concluded conciliation efforts.

3. **Content of Notice.** A notice of right to sue shall include the following information:
  - a. **Authorization to the individual charging party or aggrieved person to initiate a proceeding before the Commission pursuant to and within the time limits prescribed by § 610(J);**
  - b. **A summary of the procedures applicable to the institution of such proceeding, or a copy of the Act containing such procedures;**
  - c. **A copy of the Charge; and**
  - d. **A copy of any written determination of ONLR with respect to such Charge.**
4. **ONLR Assistance.** Authorization to commence Commission proceedings hereunder shall not prevent ONLR from assisting any individual charging party or aggrieved person in connection with Commission proceedings or other efforts to remedy the alleged violations of the Act.

**I. ONLR Right to Sue.**

1. **Individual Charges.** ONLR shall have the right to initiate proceedings before the Commission based on the allegations of an Individual Charge with respect to which ONLR has issued a probable cause determination under § 610(E) and there has been a failure of conciliation contemplated by § 610(F). ONLR shall have such right notwithstanding that the individual charging party has concurrent right to sue hereunder which has not been exercised. ONLR's right to sue shall continue until such time as the individual charging party commences a Commission proceeding and, in that case, shall be revived in the event the proceeding is dismissed or concluded for reasons unrelated to the merits. Initiation of Commission proceedings by ONLR shall terminate the right to sue of an individual charging party, subject to revival of such right in the event the proceeding is dismissed or concluded for reasons unrelated to the merits. Nothing herein shall be construed as foreclosing ONLR from exercising its right to intervene in a Commission proceeding under § 610(L).
2. **ONLR Charges.** ONLR shall have the right to initiate proceedings before the Commission based on the allegations of an ONLR Charge with respect to which ONLR has issued a probable determination under § 610(E) and there been a failure of conciliation contemplated by § 610(F). ONLR shall have such right notwithstanding that a person claiming to be aggrieved as a result of the allegations in the ONLR Charge has a concurrent right to sue hereunder which has not been exercised. In the event an aggrieved person first initiates a Commission proceeding in an authorized manner, ONLR's



right to sue shall only expire as to such person and shall revive in the event that aggrieved person's proceeding is dismissed or concluded for reasons unrelated to the merits. Nothing herein shall be construed as foreclosing ONLR from exercising its right to intervene in a Commission proceeding under § 610(L).

**J. Initiate of Commission Proceedings. Proceedings before the Commission shall be initiated upon the filing of a written complaint by a petitioner with the Commission.**

**1. Complaints shall satisfy each of the following conditions:**

- a. The petitioner is authorized to file the Complaint under the terms and condition prescribed by this Section;**
- b. The underlying Charge was filed within the time limits prescribed in § 610(B)(6); and**
- c. The complaint was filed within 360 days following the date on which the underlying Charge was filed.**

**2. Upon motion of respondent and a showing that any one or more of the foregoing conditions has not been satisfied, the Commission shall dismiss the complaint; provided, however, that no complaint shall be dismissed under (b) above as to any allegation of a pattern of conduct or practice in violation of the Act to the extent such pattern or practice continued to persist during the time limit prescribed in § 610(B)(6); and provided further that, in the absence of dismissal or conclusion of Commission proceedings on the merits, nothing herein shall be construed as prohibiting the refiling of a Charge alleging the same or comparable pattern or practice violations of the Act which continued to persist during the time limits prescribed in § 610(B)(6) for re-filing such Charge.**

**K. Preliminary Relief. Prior to the initiation of Commission proceedings on a Charge and notwithstanding the failure to satisfy any precondition to such proceedings, either ONLR, an individual charging party or aggrieved person may, upon notice to respondent, petition the Commission for appropriate temporary or preliminary relief in the form of an injunction or other equitable remedy on the ground that prompt action is necessary to carry out the purposes of the Act, including the preservation and protection of rights thereunder. Nothing herein shall be construed as foreclosing a petition which seeks comparable relief subsequent to the commencement of Commission proceedings.**

**L. Intervention in Commission Proceedings. Within three business days after the date on which any complaint, or petition pursuant to § 610(K), is filed with the Commission, other than a complaint or petition filed by ONLR, the Commission shall cause copies thereof to be sent to the ONLR Director and the Attorney General**

of the Navajo Nation. ONLR shall have an unconditional right to intervene in the Commission proceeding initiated by such complaint or petition upon the timely application by motion accompanied by a pleading setting forth the claims for which intervention is sought.

**M. Confidentiality.**

- 1. Conciliation.** In the absence of written consent of the persons concerned, statements or offers of settlement made, documents provided or conduct by participants in conciliation efforts under § 610(F) shall not be admissible in any Commission or other proceeding relating to the Charge which is that subject of conciliation, to prove liability for or invalidity of the Charge or the amount or nature of relief therefore; provided, however, that nothing herein shall be construed as requiring the exclusion of such evidence merely because it was presented in the court of conciliation if:
  - a.** The evidence is otherwise discoverable; or
  - b.** The evidence is offered for another purpose, including without limitation, proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.
- 2. Charge, Records and Information.**
  - a.** Prior to the institution of Commission proceedings thereon, and in the absence of the written consent of the persons concerned, ONLR shall not disclose as a matter of public information any Charge, response thereto, any statements or other information obtained in the course of its investigation of the Charge, except that nothing herein shall prevent earlier disclosure of such information by ONLR in its discretion:
    - (1)** To charging parties or their attorneys, respondents or their attorneys, witnesses or other interested persons where the disclosure is deemed by ONLR to be necessary for securing a resolution of the Charge, including appropriate relief therefore; or
    - (2)** To employees or representatives of the Navajo Nation or employees or representatives of federal, state or local authorities who have a government interest in the subject matter of the Charge; or
    - (3)** To persons for the purpose of publishing data derived from such information in a form which does not reveal the identity

**of charging parties, aggrieved persons, respondents or persons supplying the information.**

**b. Except as otherwise provided herein, any person to whom a permissible disclosure is made hereunder shall be bound to maintain the confidentiality of such information from further disclosure and shall use the information solely for the purpose for which it was disclosed.**

**3. Privilege Information. Neither ONLR, charging parties, aggrieved persons, respondents, witnesses or persons supplying information in connection with a Charge shall be compelled, either before or after commencement of Commission proceedings, to disclose any information which represents the opinions or conclusions formed by ONLR during the course of its investigation of a Charge, or any information which is protected by the attorney-client privilege, the informer's privilege referred to in § 610(B)(10), or any other absolute or limited privilege recognized under the laws of the Navajo Nation. To the extent justice requires, the Commission may, balancing the rights of parties and affected persons, prohibit or limit the disclosure of any other information for good cause shown, including a showing that disclosure would impede enforcement of the Act, jeopardize rights guaranteed thereunder, or cause annoyance, embarrassment, oppression, or undue burden or expense to parties or affected persons.**

**N. Non-retaliation. It shall be unlawful for any employer, labor organization, joint labor-management committee involved in apprenticeship or other matters relating to employment, employment agency or other person to, directly or indirectly, take or attempt to induce another person to take, any action adversely affecting:**

- 1. The terms and conditions of any person's employment or opportunities associated with such employment;**
- 2. An applicant's opportunity for employment;**
- 3. The membership of any employee or applicant for employment in a labor organization; or**
- 4. Any other right, benefit, privilege or opportunity unrelated to employment, because such person has opposed an employment practice subject to this Act or has made a charge, testified, or assisted or participated in any matter in an investigation, proceeding or hearing under the Act.**

**O. Service of Documents. Service of any notice, determination or other document required to be transmitted under this Section shall be accomplished by personal delivery or certified mail, return receipt requested.**

## **SECTION 611. HEARING**

- A. The Commission shall schedule a hearing within 60 days of the filing of a written complaint by a petitioner with the Commission. The hearing shall be held at a location designated by the Commission.**
- 1. Notice. The Commission shall issue a notice of hearing. The time and place of the hearing shall be clearly described in the notice. The notice shall also set forth in clear and simple terms the nature of the alleged violations and shall state that: (a) the violations may be contested at a hearing before the Commission; and (b) any party may appear by counsel and cross-examine adverse witnesses.**
  - 2. Upon application by a party to the Commission or on the Commissions' own motion, the Commission may issue subpoenas compelling the disclosure by any person evidence relevant to the complaint, including a subpoena ordering, under oath as may be appropriate:**
    - a. The attendance and testimony of witnesses;**
    - b. Responses to written interrogatories;**
    - c. The production of evidence; and**
    - d. Access to evidence for the purpose of examination and copying.**
  - 3. The Commission is authorized to administer oaths and compel attendance of any person at a hearing and to compel production of any documents.**
  - 4. In the event a party does not make an appearance on the day set for hearing or fails to comply with the rules of procedure set forth by the Commission for the conduct of hearings, the Commission is authorized to enter a default determination against the non-appearing and/or non-complying party.**
- B. Burden of proof. In any hearing, the employee alleging violation shall have the burden of proof to show violation by preponderance of the evidence.**
- C. Hearing. The Commission shall conduct the hearing in a fair and orderly manner and extend to all parties the right to be heard.**
- 1. The Commission shall not be bound by any formal rules of evidence.**
  - 2. The respondent shall have the opportunity to answer the complaint and the parties shall have the right to legal counsel, to present witnesses, and to cross-examine adverse witnesses.**

3. The Commission shall issue its decision by a majority vote of a quorum present which shall be signed by the Chairperson of the Commission.
4. Copies of the decision shall be sent to all parties of record in the proceeding by certified mail, return receipt.
5. The proceeding shall be recorded. Any party may request a transcript of the proceeding at their own expense.
6. The decision of the Commission shall be final with a right of appeal only on questions of law to the Navajo Nation Supreme Court.

## **SECTION 612. REMEDIES AND SANCTIONS**

- A. If, following notice and hearing, the Commission finds that respondent has violated the Act, the Commission shall:
  1. Issue one or more remedial orders, including without limitation, directed hiring, reinstatement, displacement of non-Navajo employees, back-pay, front-pay, injunctive relief, mandated corrective action to cure the violation within a reasonable period of time and/or upon a finding of intentional violation, imposition of civil fines; provided that liability for back-pay or other forms compensatory damages shall not accrue from a date more than two years prior to the date of filing of the Charge which is the basis for the complaint.
  2. In the case of an individual suit initiated pursuant to § 610(H) award costs and attorneys' fees if the respondent's position was not substantially justified.
  3. Refer matters involving respondent contracts, agreements, leases and permits to the Navajo Nation Attorney General for appropriate action.
- B. In the absence of a showing of good cause thereof, if any party to a proceeding under this Act fails to comply with a subpoena or order issued by the Commission, the Commission may impose such actions as are just, including without limitation any one or more of the following:
  1. In the case of non-compliance with a subpoena of documents or witnesses:
    - a. An order that the matters for which the subpoena was issued or any other designated facts shall be deemed established for the purposes of the proceeding and in accordance with the claim of the party obtaining the order;

- b. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or
    - c. An order striking pleadings or parts thereof, or staying further proceedings until the subpoena is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.
  - 2. In the case of non-compliance by a party or non-party with a Commission subpoena of documents or witnesses or with any other order of the Commission:
    - a. An order holding the disobedient person in contempt of the Commission and imposing appropriate sanctions therefore, including a civil fine; or
    - b. An order directing the disobedient person to pay the reasonable costs and/or attorneys' fees caused by the non-compliance.
- C. The person or party in whose favor a Commission's decision providing for remedial action is entered shall have the right to seek legal and/or equitable relief in the District Courts of the Navajo Nation to enforce the remedial action; provided that the Commission itself shall have the right to seek legal and/or equitable relief in the District Courts of the Navajo Nation to enforce civil fines or sanctions imposed by the Commission against a person or party. In both instances that Attorney General of the Navajo Nation shall have an unconditional right to intervene on behalf of the Navajo Nation.

### **SECTION 613. APPEAL AND STAY OF EXECUTION**

- A. Any party may appeal a decision of the Commission to the Navajo Nation Supreme Court by lodging a written notice of appeal, in the form prescribed by the Navajo Rules of Civil Appellate Procedure and within 10 days after receipt of the Commission's decision.
- B. In the absence of a stipulation by the parties approved by the Commission, a stay of execution of the decision from which the appeal is taken shall only be granted upon written application of the appellant to the Commission and an opportunity for response by appellee. The application for a stay shall be filed within the period prescribed for appeal in Subsection (A) hereof. No stay shall be issued unless the appellant presents a clear and convincing showing that each of the following requirements has been satisfied:
  - 1. Appellant is likely to prevail on the merits of the appeal;

- 2. Appellant will be irreparably harmed in the absence of a stay;**
- 3. Appellee and interested persons will not be substantially harmed by a stay;**
- 4. The public interest will be served by a stay; and**
- 5. An appeal bond or other security, in the amount and upon the terms prescribed by Subsection (C) below, has been filed with and approved by the Commission; provided that no appeal bond shall be required of ONLR, the Navajo Nation or any government agency or enterprise of the Navajo Nation.**

**C. The appeal bond shall be issued by a duly authorized and responsible surety which shall obligate itself to pay to appellee, or any other person in whose favor an award is made by the Commission decision, the amounts specified or described in the bond upon conclusion of the appeal and failure of appellant, following written demand by appellee, to satisfy the foregoing obligations.**

- 1. The amount or nature of liability assumed by the surety shall be specified in the bond and shall include:**
  - a. The total amount of all monetary awards made in the Commission decision, together with such interest thereon as may be prescribed in the Commission's decision;**
  - b. Costs of appeal and attorneys' fees incurred by appellee in defending the appeal and which may be awarded to appellee by the Navajo Nation Supreme Court;**
  - c. Damages sustained by appellee or other recipients of a Commission award for delay in satisfaction of the Commission decision caused by the appeal; and**
  - d. Such other amount or liability reasonably required to be secured to protect the interests of the appellee or other award recipients.**
- 2. The bond shall provide that the surety submits to the jurisdiction of the Commission and the Courts of the Navajo Nation, and irrevocably appoints the Commission as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served. The surety's liability may be enforced on motion of the appellee filed with the Commission, with copies thereof served on the surety and appellant.**
- 3. In lieu of posting an appeal bond, appellant may, with the approval of the Commission, post a cash bond and undertaking in the amount and upon the terms which are required above with respect to an appeal bond.**

4. No appeal bond or cash bond and undertaking, nor the liabilities of the surety or appellant thereunder, shall be exonerated or released until all amounts and liabilities prescribed therein have been fully paid and satisfied.
- D. Within three business days following the filing with the Navajo Nation Supreme Court of any appeal from a Commission proceeding, the Clerk of such Court shall, in all cases other than those in which ONLR is not either the appellant or appellee, cause copies of the notice of appeal and all other documents filed in connection therewith to be sent to the ONLR Director and the Attorney General of the Navajo Nation. ONLR shall have an unconditional right to intervene and participate as amicus in the appeal proceedings upon timely application therefore by motion lodged with the Navajo Nation Supreme Court. ONLR's right of participation shall be coextensive with that of the parties to the appeal, including the rights to file opening, answering and reply briefs, and the right to present oral argument to the Court.

#### **SECTION 614. GRIEVANCE PROCEDURE FOR NAVAJO NATION GOVERNMENT EMPLOYEES**

- A. Any employee of the Navajo Nation Executive or Legislative Branch or a non-Local Governance Act Certified Chapter, or applicant for employment with the Navajo Nation Executive or Legislative Branch or non-Local Act Certified Chapter, who alleges a violation of this Act shall file a grievance as provided by the Navajo Nation Personnel Policies Manuel. The hearing officer may award the employee or applicant any remedy authorized by Section 612(A) of this Act. Directed verdict shall be discouraged in favor of a hearing to hear evidence from all parties.
- B. Any employee of the Navajo Nation Judicial Branch or an applicant for employment with the Navajo Nation Judicial Branch who alleges a violation of the Act shall file a grievance as provided by the Navajo Nation Personnel Policies & Procedures. The hearing board may award the employee or applicant any remedy authorized by Section 612(A) of this Act.
- C. Except as otherwise provided in this Act, in any compliance review hearing, the employee alleging violation shall have the burden of proof to show violation by a preponderance of evidence. Directed verdict shall be discouraged in favor of a hearing to hear evidence from all parties.
- D. Any party to the grievance may appeal a final decision of the hearing officer or hearing board to the Navajo Nation Supreme Court within ten (10) calendar days of receipt of the decision. The employee or applicant shall file a notice of appeal with the Navajo Nation Supreme Court and the hearing officer or hearing board.



**E. Transcripts and record for appeals.**

- 1. If considered necessary, the party appealing a decision shall file a transcript of the proceeding with the Navajo Nation Supreme Court within thirty (30) calendar days from the filing of the notice of appeal.**
- 2. If a transcript is considered unnecessary, within ten (10) calendar days of the filing of the notice of appeal, the party appealing a decision shall give notice to the Navajo Nation Supreme Court and the appellee that the appellant will not file a transcript.**
- 3. If the appellant fails to file a transcript or notice that the appellant will not file a transcript within the required time, the Navajo Nation Supreme Court shall dismiss the appeal.**
- 4. The hearing officer of hearing board shall submit the record of the proceeding within ten (10) calendar days of filing of the notice of appeal. Failure of the hearing officer or hearing board to file the record within that time period shall not be grounds for dismissal of the appeal.**

**F. The Navajo Nation Supreme Court shall review and decide the appeal within thirty (30) days of the filing of the transcript of the notice that appellant will not file a transcript. If a decision within that time is not feasible, at the request of a party or by its own order, the Navajo Nation Supreme Court may extend that time up to sixty (60) days. The Navajo Nation Supreme Court shall create expedited rules of appellate procedure to decide the appeal within the required time period.**

**G. Remedies; enforcement of awards.**

- 1. If the employee or applicant prevails on his or her grievance, and the Navajo Nation program does not appeal the decision, the program and Navajo Nation Controller shall pay the monetary remedies awarded within thirty (30) calendar days of receipt of the final decision of the hearing officer or board.**
- 2. If the hearing officer or board directs reinstatement of the employee to his or her position or directs the hiring of the applicant for employment, and the Navajo Nation program does not appeal the decision, the program shall initiate the processing of all documentation necessary to reinstate the employee or hire the applicant within ten (10) calendar days of the decision.**
- 3. The filing of an appeal by the Navajo Nation program under subsection (C) shall automatically stay the payment of monetary remedies or the remedies of reinstatement or hire pending the decision by the Navajo Nation Supreme Court.**

However, any monetary remedy, such as back-pay, will continue to accrue until the decision is issued, unless otherwise ordered by the Supreme Court. If the employee of applicant prevails on appeal, the Navajo Nation program will fulfill the award within the time periods set out in Subsection (1) and (2), calculated from the date of receipt of the Navajo Nation Supreme Court's decision.

4. If the Navajo program fails to perform its obligations within the time periods in Subsection (1) through (3), the employee or applicant may file an action under Section 554 (G) of the Navajo Sovereign Immunity Act to enforce the award. If the employee or applicant prevails in that action, he or she may receive the original award of the hearing officer or board and any additional relief authorized by 1 N.N.C. § 554 (G) (1).

H. The remedies set forth in this Section are the exclusive remedies for employees of or applicants for employment with the Navajo Nation Executive, Legislative and Judicial Branches and non-Local Governance Certified Chapters for violations of the alleged violations of the Act by the Navajo Nation Executive, Legislative and Judicial Branches and non-local Governance Certified Chapters.

#### **SECTION 615. NON-NAVAJO SPOUSES**

A. When a non-Navajo is legally married to a Navajo, he or she shall be entitled to preference in employment under the Act. Proof of marriage by a valid marriage certificate shall be required. In addition, such non-Navajo spouses shall be required to have resided within the territorial jurisdiction of the Navajo Nation for a continuous one year period immediately preceding the application for Navajo preference consideration.

B. Upon meeting the above requirements, such consideration shall be limited to preference in employment where the spouse would normally be in a pool of non-Navajo workers. In this instance, Navajo preference would place the non-Navajo spouse in the applicant pool of Navajos for consideration. However, preference priority shall be given to all Navajo applicants who meet the necessary job qualifications within that pool.

C. Non-Navajo spouses having a right to secondary preference under this Section shall also have and enjoy all other employment rights granted to Navajos under the Act, it being understood that Navajos retain a priority right with respect to provisions of the Act concerning preferential treatment in employment opportunities.

#### **SECTION 616. POLYGRAPH TEST**

A. No person shall request or require any employee or prospective employee to submit to, or take a polygraph examination as a condition of obtaining employment or of continuing employment or discharge or discipline in any manner an employee for failing, refusing, or declining to submit to or take a polygraph examination.

- B. For purpose of this Section, “polygraph” means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test, or question individuals for the purpose of determining truthfulness. This provision shall not apply to federal or state government employees.**

#### **SECTION 617. RULES AND REGULATIONS**

**The Health, Education and Human Services Committee of the Navajo Nation Council is authorized to promulgate rules and regulations necessary for the enforcement and implementation of the provisions of this Act. The Commission is hereby delegated the authority to adopt and implement, on it own initiative and without any approval, rules of procedure and practice governing the conduct of proceedings under § 611 of the Act, provided that such rules are consistent with the provisions of the Act.**

#### **SECTION 618. PRIOR INCONSISTENT LAW REPEALED**

**All prior Navajo Nation laws, rules, regulations, and provisions of the Navajo Nation Code previously adopted which are inconsistent with this Act are hereby repealed.**

#### **SECTION 619. EFFECTIVE DATE AND AMENDMENT OF THE ACT**

- A. The effective date of this Act shall be 60 days after the passage of the Act by the Navajo Nation Council and shall remain in effect until amended or repealed by the Navajo Nation Council.**
- B. Any amendment or repeal of the Act shall only be effective upon approval of the Navajo Nation Council, and shall not be valid if it has the effect of amending, modifying, limiting, expanding or waiving the Act for the benefit or to the detriment of a particular person.**
- C. Any amendment to the Act, unless the amendment expressly states otherwise, shall be effective 60 days after the passage thereof by the Navajo Nation Council.**
- D. The time limits prescribed in § 610 relating to filing a Charge and subsequent proceedings thereon were added by amendment adopted by the Navajo Nation Council subsequent to the effective date of the original Act. Notwithstanding an actual accrual date for any alleged violation of the Act which is prior to the effective date of the amendment which added the time limits in § 610 hereof, such alleged violation shall be deemed to accrue on the effective date of the foregoing amendment for purposes of all time limits set forth in § 610.**

## **SECTION 620. SEVERABILITY OF THE ACT**

**If any provision of this Act or the application thereof to any person, association, entity or circumstances is held invalid, such invalidity shall not affect the remaining provisions or applications thereof.**

**RESOLUTION OF THE  
NAVAJO NATION COUNCIL**

**23<sup>RD</sup> NAVAJO NATION COUNCIL - THIRD YEAR, 2017**

**AN ACT**

**RELATING TO THE LAW AND ORDER, HEALTH, EDUCATION, AND HUMAN SERVICES, BUDGET AND FINANCE, NAABIK'İYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; AMENDING 12 N.N.C. § 810 AND § 820 OF THE APPROPRIATIONS ACT; AMENDING § 604 OF THE NAVAJO PREFERENCE IN EMPLOYMENT ACT**

**BE IT ENACTED:**

**Section One. Authority**

- A. The Law and Order Committee of the Navajo Nation Council is empowered to review and make recommendations to the Navajo Nation Council on proposed amendments to and enactments to the Navajo Nation Code. 12 N.N.C. § 601(B) (14).
- B. The Health, Education, and Human Services Committee is empowered to oversee over employment matters. 2 N.N.C. § 401(C) (6).
- C. The Budget and Finance Committee exercises oversight authority of budget and finance matters for the purposes of "recommend[ing] to the Navajo Nation Council the adoption of resolutions designed to strengthen the fiscal and financial position of the Navajo Nation and to promote the efficient use of the fiscal and financial resources of the Navajo Nation." 2 N.N.C. §300 (C) (3).
- D. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council. A proposed resolution that requires final action by the Navajo Nation Council shall be assigned the standing committee having authority over the subject matter at issue and the Naabik'iyáti' Committee. 2 N.N.C. §§ 164(A) (9) and 700(A).
- E. The Navajo Nation Council must review and approve enactments or amendments of positive law. 2 N.N.C. §§ 164(A).
- F. The Appropriations Act may be amended upon recommendation from the Budget and Finance Committee. 12 N.N.C. § 880.

- G. Approval of this resolution by the Budget and Finance Committee constitutes a recommendation for the purposes of section 880 of the Appropriations Act.

**Section Two. Findings.**

- A. A Task Force was created to discuss the use of Conditions of Appropriations in the Navajo Nation's Comprehensive Budget. The Condition of Appropriation Task Force (Task Force) is comprised of members of the Executive and Legislative Branch in accordance with the Budget and Finance Committee Resolution, BFAP-15-17.
- B. The Navajo Nation Council has the authority to issue Conditions of Appropriation as part of the Navajo Nation Comprehensive Budget. This authority is provided in the Appropriations Act at 12 N.N.C. § 810 (I).
- C. The Office of the President and Vice President presented recommendations to the Task Force for consideration. The objective of these recommendations was to make efficient use of the authority granted to the Navajo Nation Council in the Appropriations Act, while avoiding conflicts with the exercise of the President's line-item veto authority.
- D. The proposed amendments to the Appropriations Act (12 N.N.C. §800 et seq.) and the Navajo Preference in Employment Act (15 N.N.C. § 601 et seq.) are the results of additional input by Task Force members.
- E. The current version of the Navajo Preference in Employment Act (NPEA) provides Navajo Nation employees with the opportunity to file grievances under a general harassment provision. The unintended effect of this provision is that supervisors are perceived as harassing employees when providing feedback or task direction to employees. Additionally, employees have used the protections provided in the Domestic Abuse Protection Act (9 N.N.C. §1601 et seq.) to obtain restraining orders against supervisors where a dispute has arisen in the context of an employment relationship.
- F. The proposed amendments to the NPEA are needed in order to ensure program managers have the ability to require employees to perform the tasks necessary to fulfill and implement a Condition of Appropriation.

**Section Three. Amendments to Title 12**

The Navajo Nation amends the Navajo Nation Code 12 N.N.C. §§ 810 and 820, as follows:

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**NAVAJO NATION CODE ANNOTATED****TITLE 12. FISCAL MATTERS****CHAPTER 7. APPROPRIATIONS**

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**§ 810. Definitions**

I. "Condition of Appropriation" or Expenditure means a condition specific contingency, placed on an appropriation or expenditure by the Navajo Nation Council at the time the appropriation or expenditure is made, which requires performance of specific tasks by a program within a specific time period within the fiscal year. creating legal conditions precedent to the expenditure of funds. The condition may require that failure to perform the specific tasks within the time period set out by the Navajo Nation Council will result in restrictions on future expenditure of Appropriated funds or any other funds received by the Navajo Nation on which a condition of appropriation or expenditure is placed may not be lawfully expended the funds until the condition of appropriation or expenditure is met. It is the responsibility of the Controller to ensure that funds are expended in accordance with the conditions placed on the appropriation or expenditure.

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**§ 820. Overall budget policies****R. Condition of Appropriation.**

1. The Navajo Nation Council may include one or more Condition of Appropriation in a resolution approving the comprehensive budget.
2. A Condition of Appropriation will only be directed to the specific program having direct responsibility to fulfill the required task or tasks, and not to a general branch or division.

3. A condition may require a freeze on the expenditure of travel funds of the program, or a withholding of up to ten percent (10%) of the gross salary of the program director of the program tasked with fulfilling the condition, if the condition is not performed within a specified time period within the fiscal year. The restriction on expenditures will continue until the condition is fulfilled, as found by the Budget and Finance Committee pursuant to Subsection 5. A program director's salary cannot be withheld if his or her salary is already being withheld for failure of the program to fulfill another Condition of Appropriation, or for failure to implement a corrective action plan issued by the Auditor General pursuant to 12 N.N.C. § 9(C). The withholding of salary shall not apply to a program director hired after the Budget and Finance Committee has imposed salary withholding on the prior program director's salary unless, after consultation with the new program director, the Office of the Controller, and the Office of Management and Budget, and upon recommendation of the appropriate Council committee with oversight over the program, the Budget and Finance Committee, by resolution, votes to impose such withholding. The director may grieve that action by filing a complaint with the Office of Hearings and Appeals within ten (10) working days of the Budget and Finance Committee's action. The decision of the Office of Hearings and Appeals will be final, and there shall be no right of appeal to any court.
4. Prior to the approval of a Condition of Appropriation, the Navajo Nation Council shall consult with the director of the program required to fulfill the condition, as well as the Office of the Controller, and the Office of Management and Budget. The consultation shall include a discussion of the feasibility of the program fulfilling the Condition, including within the time period proposed by the Council, and any alternatives to the proposed Condition.
5. If a Condition of Appropriation is not fulfilled within the time period required, the Budget and Finance Committee, after consultation with the program director, the Office of the Controller, and the Office of Management and Budget, and upon the recommendation of the appropriate Council committee with oversight over the program, may, by resolution, vote to (1) implement the restriction on the program's expenditures authorized by Subsection 3, (2) extend the time period for the program to fulfill the condition, or (3) vacate the condition if it is infeasible for the program to fulfill. If the Budget and Finance Committee requires the withholding of



the program director's salary, the withholding shall be effective only after the Committee's action, and cannot be applied retroactively to withhold salary already earned by the program director.

6. If, pursuant to Subsection 3, the Budget and Finance Committee approves the withholding of the program director's salary, the director may grieve that action by filing a complaint with the Office of Hearings and Appeals within ten (10) working days of the Budget and Finance Committee's action. The decision of the Office of Hearings and Appeals will be final, and there shall be no right of appeal to any court.
7. If, after imposition of a restriction authorized by Subsection 3, the program believes it has fulfilled the Condition of Appropriation, it shall present evidence of fulfillment of the condition to the Budget and Finance Committee through presentation of a report. If, after consultation with the Office of the Controller and the Office of Management and Budget, the evidence provided shows fulfillment of the condition, the Budget and Finance Committee shall, by resolution, vote to declare the condition fulfilled, and lift the restriction. Any accrued amount of salary withheld from the program director will then be returned to the director. If the Budget and Finance Committee decides the condition is not fulfilled, it shall make such finding and, by resolution, vote to continue or lift the restriction. If the Budget and Finance Committee votes to continue any withholding of a program director's salary, the director may grieve that action by filing a complaint with the Office of Hearings and Appeals within ten (10) working days of the Budget and Finance Committee's action. The decision of the Office of Hearings and Appeals will be final, and there shall be no right of appeal to any court.
8. If, at the end of the fiscal year, the condition has not been met, any salary withheld from the program director shall be forfeited. There shall be no challenge to any forfeiture.

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#### **Section Four. Amendments to Title 15**

The Navajo Nation amends the Navajo Nation Code 15 N.N.C. § 604, as follows:

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NAVAJO NATION CODE ANNOTATED

TITLE 15. LABOR

CHAPTER 7. NAVAJO PREFERENCE IN EMPLOYMENT ACT

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§ 604 Navajo Employment Preference

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B. Specific requirements for Navajo preference:

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8. All employers shall not penalize, discipline, discharge nor take any adverse action against any Navajo employee without just cause. A written notification to the employee citing such cause for any of the above actions is required in all cases. Provided, that this Subsection shall not apply to Division Directors, or to other employees and officials of the Navajo Nation who serve, pursuant to a specific provision of the Navajo Nation Code, at the pleasure of the Navajo Nation Council, the standing committees of the Navajo Nation Council, the President of the Navajo Nation, the Speaker of the Navajo Nation Council, the Chief Justice of the Navajo Nation, or those persons employed pursuant to 2 N.N.C. §§ 281(C) and 1009. This subsection shall not be used by a program director to challenge the withholding of his or her salary for failure to implement a corrective action plan of the Auditor General, as authorized by 12 N.N.C. § 9(C), or for failure to fulfill a condition of appropriation, as authorized by 12 N.N.C. § 820(R)(2) and (3).
9. All employers shall maintain a safe and clean working environment and provide employment conditions which are free of prejudice, intimidation and including sexual harassment. The employee alleging a violation of this subsection shall have the burden of proof to show that violation by a preponderance of the evidence. An employee may not file an action under the Domestic Abuse Protection Act, 9 N.N.C. § 1601, et seq., to seek to restrain a supervisor or co-worker for a dispute arising out of the employment relationship.

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**Section Five. Codification**

The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

**Section Six. Saving Clause**

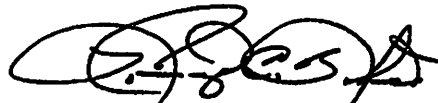
Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.

**Section Seven. Effective Date**

The provisions of the amendments to the Appropriations Act and the Navajo Preference in Employment Act are effective in accordance with 2 N.N.C. § 221(B).

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 13 in Favor and 03 Opposed, this 11<sup>th</sup> day of September, 2017.



LoRenzo C. Bates, Speaker  
Navajo Nation Council

9-21-17

Date

Motion: Honorable Leonard Tsosie  
Second: Honorable Seth A. Damon

**ACTION BY THE NAVAJO NATION PRESIDENT:**

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (c) (10), on this 1<sup>st</sup> day of October 2017.

  
\_\_\_\_\_  
Russell Begaye, President  
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (c) (11), on this \_\_\_\_\_ day of \_\_\_\_\_ 2017 for reason(s) expressed in the attached letter to the Speaker

\_\_\_\_\_  
Russell Begaye, President  
Navajo Nation

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL - Second Year, 2016

AN ACTION

RELATING TO LAW AND ORDER, HEALTH, EDUCATION AND HUMAN SERVICES,  
AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; AMENDING  
THE NAVAJO PREFERENCE IN EMPLOYMENT ACT AT 15 N.N.C. §§ 604, 611  
AND 614

BE IT ENACTED:

Section One. Findings

- A. The Navajo Nation empowered the Navajo Nation Law and Order Committee to review and recommend proposed Navajo Nation Code enactments and amendments. 2 N.N.C. § 601(B) (14) (2012); see also CJA-03-13.
- B. The Health, Education and Human Services Committee exercises oversight over employment matters. 2 N.N.C. § 401(C) (6) (2012).
- C. The Navajo Nation Council Speaker shall assign "[a] proposed resolution that requires final action by the Navajo Nation Council to...the Naabik'iyáti' Committee"; this resolution proposes a positive law amendment and requires the Navajo Nation Council's approval. 2 N.N.C. § 164 (A) (9) (2012) and 2 N.N.C. § 164 (A) (2012) see also CO-45-12.
- D. Currently, the general burden under the Navajo Preference in Employment Act ("NPEA") is on the employer to prove by a preponderance of the evidence that the law was not violated. 15 N.N.C. § 611(B). Preponderance of the evidence is defined as "just enough evidence to make it more likely than not that the fact the claimant seeks to prove is true." See <http://legal-dictionary.thefreedictionary.com>
- E. When an employee makes a grievance under 15 N.N.C. § 604(B) (9) specifically claiming harassment, the burden of proof is unclear.

- F. Under current Labor Commission rules, the employee alleging harassment has the burden to establish first that the employer harassed him or her. See Labor Commission Rules attached as Exhibit A.
- G. The proposed revision to 15 N.N.C. § 604(B)(9) would make it clear that in harassment cases the employee has the burden to establish the violation based on the unique nature of such a claim.
- H. The proposed revision to 15 N.N.C. § 611(B) would shift the burden of proof from the respondent to a burden of proof that both parties - petitioner and respondent - share equally.
- I. The proposed revision to 15 N.N.C. § 614 would apply the same shared burden of proof to cases filed by Navajo Nation Government Employees.

**Section Two. Amendments to Title 15 of the Navajo Nation Code**

The Navajo Nation hereby amends the Navajo Nation Code, Title 15, §§ 604, 611 and 614 as follows:

**TITLE 15. LABOR**

**CHAPTER 5. NAVAJO PREFERENCE IN EMPLOYMENT ACT**

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**§ 604. Navajo employment preference**

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**B. Specific requirements for Navajo preference:**

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9. All employers shall maintain a safe and clean working environment and provide employment conditions which are free of prejudice, intimidation and including sexual harassment. The employee alleging a violation of this subsection shall have the burden of proof to show that violation by a preponderance of the evidence.

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§ 611. Hearings

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B. Burden of proof. ~~In any compliance review, complain proceeding, investigation or hearing, the burden of proof shall be upon the respondent to show compliance with the provisions of this Act by a preponderance of the evidence.~~ In any hearing, the employee alleging violation shall have the burden of proof to show violation by a preponderance of evidence.

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§ 614. Grievance Procedure for Navajo Nation Government Employees

- A. An employee of the Navajo Nation Executive or Legislative Branch or a non-Local Governance Act Certified Chapter, or applicant for employment with the Navajo Nation Executive or Legislative Branch or non-Local Governance Act Certified Chapter, who alleges a violation of this Act shall file a grievance as provided by the Navajo Nation Personnel Policies Manual. The hearing officer may award the employee or applicant any remedy authorized by Section 612(A) of this Act. Directed verdict shall be discouraged in favor of a hearing to hear evidence from all parties.
- B. Any employee of the Navajo Nation Judicial Branch or an applicant for employment with the Navajo Nation Judicial Branch who alleges a violation of the Act shall file a grievance as provided by the Judicial Branch Employee Policies & Procedures. The hearing board may award the employee or applicant any remedy authorized by Section 612(A) of this Act.

- C. Except as otherwise provided in this Act, in any compliance review hearing, the employee alleging violation shall have the burden of proof to show violation by a preponderance of evidence. Directed verdict shall be discouraged in favor of a hearing to hear evidence from all parties.
- E- D. Any party to the grievance may appeal a final decision of the hearing officer or hearing board to the Navajo Nation Supreme Court within ten (10) calendar days of receipt of the decision. The employee or applicant shall file a notice of appeal with the Navajo Nation Supreme Court and the hearing officer or hearing board.

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### **Section Three. Effective Date**

The Navajo Nation Code amendment enacted herein shall be effective pursuant to 2 N.N.C. § 221(B).

### **Section Four. Codification**

The provisions of this Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

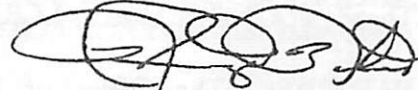
### **Section Five. Savings Clause**

Should any provisions of this ordinance be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions of this ordinance which are not determined invalid shall remain the law of the Navajo Nation.



## CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 15 in favor and 1 opposed, this 23<sup>rd</sup> day of March 2016.



LoRenzo Bates, Speaker  
Navajo Nation Council


4-1-16

Date

Motion: Honorable Jonathan L. Hale  
Second: Honorable Seth Damon

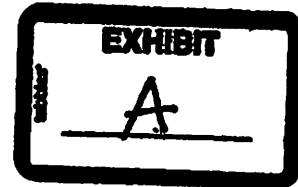
## ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this 6<sup>th</sup> day of April 2016.

  
Russell Begaye, President  
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this \_\_\_\_\_ day of \_\_\_\_\_ 2016 for the reason(s) expressed in the attached letter to the Speaker.

\_\_\_\_\_  
Russell Begaye, President  
Navajo Nation



**AMENDED RULES OF PROCEDURE FOR  
THE NAVAJO NATION LABOR COMMISSION**

1. **APPLICABILITY:** These rules shall apply to all proceedings before the Navajo Nation Labor Commission ("Commission") pursuant to the Navajo Preference in Employment Act ("NPEA") 15 N.N.C. §301 and §601 et. seq. These rules shall be cited as LCRP.
2. **PARTIES:** The Office of Navajo Labor Relations ("ONLR") or the individual party filing the complaint shall be is the Petitioner and the person alleged to have committed the violations of NPEA shall be is the Respondent. Petitioner shall be present at all stages of the proceedings. Respondent shall have a representative(s) present at all stages of the proceedings who has the authority to negotiate and approve a settlement agreement.
3. **INITIATION OF PROCEEDINGS:** ~~Commission P~~ proceedings before the Commission shall be initiated ~~when Petitioner upon the filings~~ of a written complaint by a Petitioner pursuant to 15 N.N.C. §610(J). A non-refundable filing fee of \$25.00 made payable to the Navajo Nation is required to initiate the processing of the complaint. The filing fee may be waived upon a written request to the Commission.
4. **REQUEST FOR PRELIMINARY INJUNCTION:** ~~Prior to filing a Charge with the ONLR, Petitioner must file an ONLR Charge prior to filing a Petition for Preliminary Injunction for~~ Petitioner, upon notice to the Respondent, may petition the Commission for preliminary relief pursuant to 15 N.N.C. §610(K). This petition shall meet the recognized requirements for an injunction. The moving party must show that he/she: (1) has a protectable interest; (2) has a high likelihood of success on the merits; (3) that irreparable injury, loss, or injury is likely to occur if the preliminary injunction is not issued; (4) that the threatened injury, loss or damage is substantial in nature; and (5) does not have an adequate remedy at law.

Petitioner shall serve the petition for preliminary injunction on the Respondent within 5 (five) days of filing the petition with the Commission.

A hearing shall be held within fifteen (15) business days of the filing of the petition for preliminary injunction.

**5. CONTENTS OF COMPLAINT:** The Complaint shall must be in writing, doubled spaced, and shall not exceed ten (10) pages, and The Complaint shall contain:

- (a) a statement that Petitioner is authorized to file the complaint under the terms and conditions prescribed in 15 N.N.C. §610(f)(1)(a)-(c);
- (b) a statement that Petitioner is: (1) ~~is~~ an enrolled member of the Navajo Nation; ~~or, (2) is legally married to an enrolled member of the Navajo Nation and meets the conditions prescribed in 15 N.N.C. §614 including a copy of a valid marriage certificate and proof that he/she has resided within the Navajo Nation continuously for one year, or, (3) he/she is eligible to file the complaint pursuant to Staff Relief vs. Polacca, 8 Nav. R. 49 (Nav. Sup. Ct. 2000).~~
- (c) Petitioner and Respondent's valid mailing address and telephone numbers. All mail sent to the parties at the address(es) provided shall be deemed served. If Respondent is a corporation, Petitioner shall provide the name and address of the corporation's registered agent to insure that Respondent receives notice of the filing of the Complaint.
- (d) the identification of the person(s) alleged to have violated the NPEA;
- (e) the date(s) on which the violations occurred, or where such acts are of a continuing nature, the period of time when the acts occurred;
- (f) a statement of the facts constituting the alleged violation(s);
- (g) all Section 604(B)(9) allegations of hostile work environment, harassment, humiliation, or intimidation shall be specifically plead and shall include specific name(s), date(s), place, and a brief description of the event(s);
- (h) the relief sought by Petitioner. ~~in accordance with the NPEA;~~
- (i) a copy of the Charge filed with ONLR shall ~~must~~ be attached to the complaint.

**6. FILING OF DOCUMENTS:** The complaint may be filed in person with at

the Commission office located off Morgan Boulevard, Training Center, Window Rock, Navajo Nation, Arizona or by certified mail, addressed to: Post Office Box 3450, Window Rock, Arizona 86515. All other documents may be sent by First Class mail to the address listed above. Only those documents consisting of ~~7~~ ten (10) pages or less may be filed by facsimile at (928) 871-7415. Parties will pay \$2.00 per page for each faxed document that exceeds ten (10) pages.

7. **NOTICE OF HEARING:** A hearing shall be scheduled within sixty (60) calendar days of filing the complaint, but a hearing need not be held within sixty (60) calendar days of the filing of the complaint. A notice of hearing, a copy of the complaint, and these rules will be sent by certified mail to the parties or counsel of record. Petitioner may personally serve the complaint on a Respondent Corporation to insure that proper notice has occurred.

NOTE: The Commission is only obligated to send a copy of the complaint and notice of hearing to the Respondent upon the initial filing of the complaint. If the notice by certified mail is not delivered to the Respondent for any reason, Petitioner will be responsible for effecting service on the Respondent.

8. **SERVICE; FILING OF OTHER PLEADINGS AND PAPERS:**

- (a) Except as otherwise required in these rules, every pleading, motion or other papers filed after the original complaint shall be served by the filer upon all the parties or counsel of record within three (3) business days of filing said documents with the Commission. All pleadings and every paper filed with the Commission shall contain a certificate of service showing the date and manner of service.
- (b) Additional Time After Service by Mail. Whenever a party is required to do some act or take some proceedings within a prescribed time after the service of a notice or other paper upon him and the notice or paper is served by mail, five (5) days shall be added to the prescribed time.
- (c) Proposed exhibits shall be filed with the Commission and served on the opposing party, no later than ten (10) business days prior to the initial hearing. Exhibits ~~shall not be filed by facsimile~~ will not be accepted. Petitioner's exhibits shall be marked in alphabetical order. Respondent's exhibits shall be marked in numerical order. Exhibits in

excess of ten (10) or more ~~shall~~ must be tabbed, indexed and put in a 3-ring binder. Acceptance of supplemental exhibits filed less than ten (10) business days prior to the hearing is discretionary. ~~The parties shall submit complete exhibits at the evidentiary hearing.~~

- (d) The parties shall file their list of witnesses along with their address, phone number, and e-mail address, no later than ten (10) business days prior to the hearing.
  - (e) The parties shall file one (1) original and eight (8) copies of the Complaint, all pleadings, exhibits, and written documents with the Commission. The parties, ~~however,~~ need only file one copy of subpoenas or proposed order(s).
  - (f) All motions, briefs, or memorandums must be answered within ten (10) calendar days after receipt by a party. Application of this rule may vary depending on whether a party is represented by counsel.
  - (g) The Commission may impose sanction(s) when a party fails to comply with any of the provisions prescribed by this rule.
9. **TIME:** In computing time under these rules, by order of the Commission, or as mandated by the NPEA, the date of the act, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a holiday, in which event, the period runs until the end of the next business day which is not a Saturday, Sunday or a holiday.
10. **CONTINUANCE OF HEARING DATE:** A hearing may be extended upon a written request showing good cause. The moving party shall indicate whether the opposing party has consented to the continuance and how much additional time is needed. A request for a continuance must be made ten (10) business days prior to the hearing date. Thereafter, no requests for continuances shall be considered, unless there is a showing of exigent or unforeseeable circumstances.
11. **ANSWER:** The Respondent shall file an written Answer to the complaint within twenty (20) calendar days after the receipt of the notice of hearing. ~~Failure to file a written Answer shall be deemed an admission of the allegations~~

~~contained in the complaint. The Answer shall be limited to three (3) pages.~~  
**NOTE:** A Respondent who files a motion to dismiss for lack of jurisdiction is not required to file an Answer until ten (10) days after the Commission rules on the motion to dismiss. An Answer must be filed within the prescribed time where a motion to dismiss is filed on any other grounds except for lack of subject matter jurisdiction.

12. **AMENDMENTS:** An amended complaint may be filed before an Answer is served on Petitioner. An amended Answer may be filed twenty (20) calendar days after the Answer has been served on Petitioner. Otherwise, a complaint or Answer may only be amended by leave of the Commission or by written consent of the adverse party. Leave to amend shall be freely given when justice requires. Respondent shall file an Answer to an amended complaint within 15 (fifteen) calendar days of being served with the amended complaint.

13. **DEFAULT JUDGMENT:** Upon Respondent's failure to file a timely Answer, the party entitled to a default determination shall: (1) file a motion for an entry of default showing that the opposing party is in default and attaching proof of service of the complaint; (2) give notice of the motion for entry of default to the party claimed to be in default by certified mail.

An entry of default shall not be made until ten (10) calendar days after the filing and receipt of the notification of motion for entry of default judgment by the opposing party who is allegedly in default. A default shall not be entered if the party claimed to be in default pleads or otherwise defends as provided by these rules prior to the expiration of the ten (10) calendar days from the filing and notification of the motion for entry of default. A judgment by default may be issued after an entry of default has been entered by the Commission.

This rule does not apply where the Navajo Nation or any public entity, officer, employee or agent of the Navajo Nation is the Respondent. See 1 N.N.C. §555(B). Exceptions may apply where the Navajo Nation fails to participate in proceedings or fails to honor orders of the Commission. *Loley v. Dep't. of Employment & Training*, 7 Nav. R. 406, 409 (Nav. Sup. Ct. 1999).

14. **SUBPOENAS:** All requests for subpoenas by a party, or on the initiative of the Commission shall be in writing. The Commission may issue a subpoena compelling the disclosure by any person evidence relevant to the complaint, including a subpoena ordering (a) the attendance and testimony of witnesses at

a deposition or hearing; (b) responses to written interrogatories; (c) the production of evidence including any relevant documents; and (d) access to evidence for the purpose of examination and copying. ~~NOTE:~~

A subpoena is not required to serve interrogatories. A notice certificate of service showing the date and manner of service of the interrogatories must be filed with the Commission before or at the time it interrogatories are served. Parties must respond to the requests for interrogatories within twenty (20) calendar days of receipt of the interrogatories. Interrogatories shall be limited to fifteen (15) questions including subparts.

Requests for subpoenas shall be filed no later than fifteen (15) business days prior to a scheduled hearing. The recipient shall have five (5) business days after receipt of the request to object to the subpoena. Upon receipt of the request and response to the subpoena, the Commission shall grant or deny the request for subpoena. The Commission has discretion to grant requests for subpoenas not made within this time period. All discovery must be completed no later than fifteen (15) days prior to the hearing.

The party requesting issuance of subpoenas shall arrange for service. A subpoena compelling the appearance of a witness for a hearing or deposition shall be served by a Navajo Police Officer or by any other person who is not a party and not less than 18 years of age, who shall execute a Return of Service. All other subpoenas may be served by certified mail. A subpoena served by ordinary first class mail shall be invalid. Parties are required to confer with each other prior to filing discovery objections or motions to compel discovery.

~~NOTE: Commission P proceedings before the Commission are intended to afford the parties a prompt, informal and inexpensive process for resolving employment disputes. As such, Commission Proceedings require lesser formalities than those required by both the Navajo Nation and federal discovery practice to foster the intent of the NPEA. Parties are strongly urged to refrain from engaging in extensive and costly discovery. Parties are strongly encouraged to initiate discovery as early as possible after an Answer has been filed to avoid delay.~~

## 15. CONDUCT OF HEARING:

- A. The Chairperson shall preside at the hearing at which a quorum of three (3) members of the Commission are present. The Vice-Chairperson shall serve in the absence of the Chairperson. In the absence of the Chairperson, and Vice-Chairperson, the Secretary shall preside at the hearing.
- B. Either party may file a written motion to disqualify a member of the Commission from hearing a case. The motion must be supported by an affidavit or by relevant, adequate evidence to show that actual bias exists.
- C. A Commissioner shall disclose that she/he has a past or present relationship to a party/ witness. If a party objects to that Commissioner's participation, the Commissioner shall consider whether she/he can remain fair and impartial despite the relationship. However, recusal shall not result in losing a quorum so as to deny a party access to a hearing.
- D. The Chairperson of the Commission shall regulate the course of the hearing, shall conduct the hearing in a fair and orderly manner and shall extend to all parties the right to be heard.
- E. Oaths shall be administered by the Clerk of the Commission.
- F. Use of a Navajo interpreter.
- (1) ~~A party that wishes to present his/her case in the Navajo language shall declare such intention in the original petition, or Answer. A written request will be considered if timely filed ten (10) days prior to the hearing.~~
- (2) A certified Navajo interpreter is preferred. The party requesting that his/her case be presented in the Navajo language a Navajo interpreter is shall be responsible for compensating the interpreter and providing notice to the opposing party that he/she intends to use an interpreter.
- G. Representation: Parties shall have the right to appear *pro se* or be represented by counsel who is a member in good standing with the Navajo Nation Bar Association ("NNBA"). Counsel shall file an entry



~~of appearance, which states that they are a member in good standing with the NNBA.~~ A non-resident attorney, who is a member in good standing with any state bar, may participate in one case per year before the Commission by filing. ~~The non-resident attorney(s) shall submit a~~ written request to appear and shall associate with a NNBA member.

If ~~A~~ Respondent is a corporation, it is required to be represented by counsel who is a member of the NNBA. *Perry v. Nav. Labor Commission et al.*, Utah Nav. Dev. Corp., No. SV-CV-50-05, slip op. (Nav. Sup. Ct. Aug. 7, 2007).

- H. The Commission shall not be bound by any formal rules of evidence. The Chairperson may exclude evidence that is irrelevant, immaterial, or unduly repetitious.
- I. Each party may call, examine, and cross examine witnesses. The Commission may question any of the witnesses upon conclusion of their testimony. Either party may question those witnesses regarding only the issues raised by the Commission's inquiry.
- J. Each party shall have an opportunity to give an opening statement prior to the presentation of their case.
- K. Order of Proceedings: The Respondent has the burden of going forward with evidence that they did not violate the NPEA. After the Respondent has rested, the Petitioner may present evidence to support of his/her claim. EXCEPTION: The Petitioner has the initial burden of going forward with evidence that Respondent created a hostile work environment and/ or harassed, humiliated or intimidated Petitioner in violation of 15 N.N.C. §604(B)(9). The burden will then shift to the Respondent to show no violation of 15 N.N.C. §604(B)(9). The Petitioner may rebut the evidence presented by the Respondent.
- L. Each party may give closing arguments upon conclusion of presentation of the evidence.
- M. A party may move for a Directed Verdict at the close of the evidence offered by an opponent. A motion for directed verdict shall state specific grounds. The opponent shall have an opportunity to respond to the

motion.

**N. Motions for Summary Judgment are not allowed.**

**Q. The burden of proof shall be on the Respondent to show compliance with the provisions of the NPEA by a preponderance of the evidence.**

**P. In the event a party does not make an appearance on the day set for hearing, the Commission may enter a default determination against the non-appearing party.**

**Q. Witnesses shall be excluded from the hearing room prior to the presentation of their testimony.**

**R. All hearings shall be recorded. Any party may request a copy of the tapes a recording of the proceedings at their own expense.**

**S. A party may record the proceedings via any electronic audio recording device that does not interfere or obstruct the proceedings. A party may employ a court reporter upon notice to the opposing party. All transcripts generated from the foregoing are unofficial and may not be substituted as an official record of the Commission.**

**T. A damages remedies hearing may be held where the prevailing party shall have has the burden of proof to show that he/ she is entitled to the remedial relief requested. Opposing party will have an opportunity to respond to the remedial relief requested.**

**16. STIPULATION OF PARTIES: SETTLEMENT AGREEMENTS: All stipulations settlement agreements executed by the parties or counsel of record shall be submitted in writing as soon as practical. If a stipulated settlement agreement is made within five (5) calendar days prior to the hearing, the terms of the agreement shall be presented at the scheduled hearing, unless otherwise ordered by the Commission. All confidential settlement agreements must be filed with the Commission which will be sealed and will remain unavailable to the public.**

**17. DECISION: The decision shall be reduced to writing, signed by the Chairperson or designee. Copies of the decision shall be sent by certified mail**

to all parties of record.

18. **APPEAL:** The decision of the Commission shall be final with a right of appeal to the Navajo Nation Supreme Court. An appeal must be filed with the Navajo Nation Supreme Court within ten (10) calendar days after receipt of the decision.
19. **MODIFICATION:** The Commission reserves the right to modify these rules.
20. **EFFECTIVE DATE:** These Rules shall be in effect on and after \_\_\_\_\_, 5:00 P.M.

*Rules Of Procedures for Proceedings Before the Navajo Nation Labor Commission, adopted May 10, 1991. Amended January 30, 2001 by Res. NNLC-JAN-74-01. Amended October 09, 2001 by Res. NNLC- OCT-78-01. Amended October 9, 2001 by Res. NNLC-OCT-78-01. Amended October 12, 2005 by Res. NNLC-SUPT-03-05. Amended December 19, 2006 by Res. NNLC-DEC-01-06. Amended September 25, 2007 by Res. NNLC- SUPT-01-07. Amended December 3, 2009 by Res. NNLC-DEC-01-2009. Amended October 12, 2011 by Res. NNLC-OCT-01-2011. Amended June 28, 2012 by Res. NNLC-JUN-02-2012. Amended September 3, 2013 by Res. NNLC-SUPT-02-2013. Pending Amendment, , by Res. NNLC- - 2013.*

RCSE 102

NAVAJO NATION

Year 1  
Winter Session

3/23/2016  
01:42:30 PM

*Passed*  
**PAKED**  
*WMS*

Amend to Amend  
MOT Hall  
SEC Damon

Legs 0410-15 (as amended)  
Amending the Navajo Preference  
in Employment Act of 15 N N C  
Sections 604, 606 & 614

Yea : 15

Nay : 1

Not Voting : 6

Yea : 15

Begay NM  
BeGays N  
Bennett  
Daniels

Edred  
Jack  
Perry  
Pete

Phelps  
Shepherd  
Sim  
Smith

Tao  
Witherspoon  
Yazzie

Nay : 1

Crotty

Not Voting : 6

Bates  
Begay K

Begay M  
Brown

Chase  
Damon

Hale  
Tosco

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL - Fourth Year, 2014

AN ACT

RELATING TO LAW AND ORDER, HEALTH, EDUCATION AND HUMAN SERVICES, NAABIK'ÍYÁTI' AND NAVAJO NATION COUNCIL; AMENDING NAVAJO PREFERENCE IN EMPLOYMENT ACT AT 15 N.N.C. §§ 605, 610 AND 612; ENACTING NEW SECTION 614; AND REDESIGNATING SECTIONS 615 THROUGH 620

BE IT ENACTED:

**Section 1. Findings and Purposes**

A. Pursuant to 15 N.N.C. § 602, the purposes of the Navajo Preference in Employment Act include providing training and employment opportunities for Navajos and promoting economic development within the Navajo Nation.

B. It is necessary to amend the Navajo Preference in Employment Act generally for purposes of ensuring efficiency and economy.

**Section 2. Amending Navajo Preference in Employment Act**

The Navajo Nation hereby amends the Navajo Preference in Employment Act as follows:

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**§ 605. Reports**

Except as otherwise provided herein, All employers doing business or engaged in any project or enterprise within the territorial jurisdiction of the Navajo Nation or pursuant to a contract with the Navajo Nation shall submit employment information and reports as required to ONLR. Such reports, in a form acceptable to ONLR, shall include all information necessary and appropriate to determine compliance with the provisions of this Act. All reports shall be filed with ONLR not later than 10 business days after the end of each calendar quarter, provided that ONLR shall have the right to require filing of reports on a weekly or monthly schedule with respect to part-time or full-time temporary employment.

\*\*\*\*

**§ 610. Monitoring and enforcement**

A. Responsible Agency. Except as otherwise provided herein,  
compliance with the Act shall be monitored and enforced by ONLR.

B. Charges.

1. Charging Party. Except as otherwise provided herein,  
Any Navajo may file a charge ("Individual Charge") claiming  
a violation of his or her rights under the Act. ONLR, on  
its own initiative, may file a charge ("ONLR Charge")  
claiming a violation of rights under the Act held by  
identified Navajos or a class of Navajos, including a claim  
that respondent is engaging in a pattern of conduct or  
practice in violation of rights guaranteed by the Act. An  
Individual Charge and ONLR Charge are collectively referred  
to herein as a "Charge".

\*\*\*\*

J. Initiation of Commission Proceedings. Proceedings before the  
Commission shall be initiated upon the filing of a written  
complaint by a petitioner with the Commission.

1. Complaints shall satisfy each of the following  
conditions:

a. The petitioner is authorized to file the Complaint  
under the terms and conditions prescribed by this ~~Section~~ Act;

\*\*\*\*

**§ 612. Remedies and sanctions**

\*\*\*\*

C. The person or party in whose favor a Commission's decision  
providing for remedial action is entered shall have the right  
to seek legal and/or equitable relief in the District Courts of  
the Navajo Nation to enforce the remedial action; provided that  
the Commission itself shall have the right to seek legal and/or  
equitable relief in the District Courts of the Navajo Nation to  
enforce civil fines or sanctions imposed by the Commission  
against a person or party. In both instances the Attorney

General of the Navajo Nation shall have an unconditional right to intervene on behalf of the Navajo Nation. ~~Any attempted enforcement of a Commission order or decision directing payment of money by the Navajo Nation or any of its governmental entities shall, with respect to the extent of any liability be governed by the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 et seq., as amended.~~

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§ 614. Grievance Procedure For Navajo Nation Government Employees

A. Any employee of the Navajo Nation Executive or Legislative Branch or a non-Local Governance Act Certified Chapter, or applicant for employment with the Navajo Nation Executive or Legislative Branch or non-Local Governance Act Certified Chapter, who alleges a violation of this Act shall file a grievance as provided by the Navajo Nation Personnel Policies Manual. The hearing officer may award the employee or applicant any remedy authorized by Section 612(A) of this Act.

B. Any employee of the Navajo Nation Judicial Branch or an applicant for employment with the Navajo Nation Judicial Branch who alleges a violation of the Act shall file a grievance as provided by the Judicial Branch Employee Policies & Procedures. The hearing board may award the employee or applicant any remedy authorized by Section 612(A) of this Act.

C. Any party to the grievance may appeal a final decision of the hearing officer or hearing board to the Navajo Nation Supreme Court within ten (10) calendar days of receipt of the decision. The employee or applicant shall file a notice of appeal with the Navajo Nation Supreme Court and the hearing officer or hearing board.

D. Transcripts and record for appeals.

1. If considered necessary, the party appealing a decision shall file a transcript of the proceeding with the Navajo Nation Supreme Court within thirty (30) calendar days from the filing of the notice of appeal.

2. If a transcript is considered unnecessary, within ten (10) calendar days of the filing of the notice of appeal, the party appealing a decision shall give notice to the Navajo Nation Supreme Court and the appellee that the appellant will not file a transcript

3. If the appellant fails to file a transcript or notice that the appellant will not file a transcript within the required time, the Navajo Nation Supreme Court shall dismiss the appeal.

4. The hearing officer or hearing board shall submit the record of the proceeding within ten (10) calendar days of the filing of the notice of appeal. Failure of the hearing officer or hearing board to file the record within that time period shall not be grounds for dismissal of the appeal.

E. The Navajo Nation Supreme Court shall review and decide the appeal within thirty (30) days of the filing of the transcript or the notice that appellant will not file a transcript. If a decision within that time is not feasible, at the request of a party or by its own order, the Navajo Nation Supreme Court may extend that time up to sixty (60) days. The Navajo Nation Supreme Court shall create expedited rules of appellate procedure to decide the appeal within the required time period.

F. Remedies; enforcement of awards.

1. If the employee or applicant prevails on his or her grievance, and the Navajo Nation program does not appeal the decision, the program and Navajo Nation Controller shall pay the monetary remedies awarded within thirty (30) calendar days of receipt of the final decision of the hearing officer or board.

2. If the hearing officer or board directs reinstatement of the employee to his or her position or directs the hiring of the applicant for employment, and the Navajo Nation program does not appeal the decision, the program shall initiate the processing of all documentation necessary to reinstate the employee or hire the applicant within ten (10) calendar days of the decision.

3. The filing of an appeal by the Navajo Nation program under Subsection (C) shall automatically stay the payment of monetary remedies or the remedies of reinstatement or hire pending the decision by the Navajo Nation Supreme Court.



However, any monetary remedy, such as back-pay, will continue to accrue until the decision is issued, unless otherwise ordered by the Supreme Court. If the employee or applicant prevails on appeal, the Navajo Nation program will fulfill the award within the time periods set out in Subsections (1) and (2), calculated from the date of receipt of the Navajo Nation Supreme Court's decision.

4. If the Navajo Nation program fails to perform its obligations within the time periods in Subsections (1) through (3), the employee or applicant may file an action under Section 554(G) of the Navajo Sovereign Immunity Act to enforce the award. If the employee or applicant prevails in that action, he or she may receive the original award of the hearing officer or board and any additional relief authorized by 1 N.N.C. § 554(G) (1).

G. The remedies set forth in this Section are the exclusive remedies for employees of or applicants for employment with the Navajo Nation Executive, Legislative, and Judicial Branches and non-Local Governance Certified Chapters for violations of the Act. ONLR and the Commission shall have no jurisdiction over alleged violations of the Act by the Navajo Nation Executive, Legislative or Judicial Branch or non-Local Governance Certified Chapters.

**§ ~~614~~ 615 . Non-Navajo spouses**

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**§ ~~615~~ 616. Polygraph test**

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**§ ~~616~~ 617. Rules and regulations**

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**§ ~~617~~ 618. Prior inconsistent law repealed**

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**§ ~~618~~ 619. Effective date and amendment of the Act**

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**§ ~~619~~ 620. Severability of the Act**

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**Section 3. Effective date**

The amendments enacted herein shall be effective on January 1, 2015, pursuant to 2 N.N.C. §221.

**Section 4. Codification**

The provisions of these amendments which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

**Section 5. Savings Clause**

Should any provision of these amendments be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those provisions which are not determined invalid shall remain the law of the Nation.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 13 in favor and 0 opposed, this 23rd day of October 2014.



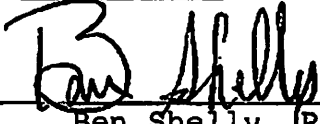
LoRenzo Bates, Pro Tem Speaker  
Navajo Nation Council

Nov. 7. 2014  
Date

Motion: Honorable Russell Begaye  
Second: Honorable Lorenzo Curley

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this \_\_\_\_\_ day of NOV 17 2014 2014.



Ben Shelly, President  
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), this \_\_\_\_\_ day of \_\_\_\_\_ 2014, for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President  
Navajo Nation