

TABLED

Cherokee Council House
Cherokee, Qualla Boundary (NC)

Date: AUG 01 2019

ORDINANCE NO. 688 (2019)

WHEREAS, The Tribal Council has an interest in ensuring stability in the workforce that provides public services through the Tribe's budgeted Divisions, Departments and Programs; and

WHEREAS, the Tribal Council has an interest in ensuring the continuity and stability of tribal organizational structures; and

WHEREAS, Chapter 96 of the Tribal Code should be amended to provide for such public service stability and continuity and shall be known as the Tribal Workforce and Services Protection Act.

NOW THEREFORE, BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians in annual council assembled, at which a quorum is present that the Cherokee Code shall be amended to read as follows:

Chapter 96 - TRIBAL EMPLOYEES

Article I.

Sec. 96-1. - Reserved.

Sec. 96-2. - Code of ethics.

The following code of ethics shall apply to all employees of the Eastern Band of Cherokee Indians:

- (a) *Policy on employee conduct.* The maintenance of unusually high standards of honesty, integrity, impartiality and conduct by Tribal employees is essential to ensure the proper performance of Tribal business and the maintenance of confidence by citizens in the Tribe. Legal requirements are essentially concerned with official conduct, i.e., the behavior of the employees in the course of or in relation to their official duties. Employees of the Tribe are expected to act with courtesy, consideration and promptness in dealing with or serving the public. Personal and private conduct of an employee (as opposed to official conduct) that reflects adversely upon the dignity and prestige of the Tribe is also a matter of concern. All employees are expected to cultivate those personal qualities which characterize a good Tribal servant: loyalty to the Eastern Band of Cherokee Indians, a deep sense of responsibility for the public trust, and a standard of personal deportment, which will be a credit to the individual.
- (b) *Subordination to authority.* An employee is required to carry out the announced policies and programs of the Tribe. While policies related to their work are under consideration employees are expected to express their opinions and points of view, but once a decision has been

rendered by those in authority, employees will be expected unreservedly to assure the success of programs, which it is their responsibility to effectuate. If employees fail to carry out any lawful regulation, order or policy or deliberately refuse to obey the proper requests of their superiors, they are subject to appropriate disciplinary action.

- (c) *Employee responsibility.* It is the responsibility of employees to familiarize themselves and to comply with the regulations in this part. Employees are expected to consult with their supervisors concerning the applicability of the regulations. On specific matters and for guidance on questions of conflict of interest they will receive authoritative advice and guidance from the Executive Committee.
- (d) *Outside work and interest policy.* Outside work is permitted to the extent that it does not prevent an employee from devoting their primary interests, talents and energies to the accomplishment of their work for the Tribe or tend to create a conflict between the private interests of an employee and their official responsibilities. The employee's outside employment shall not discredit the Tribe.
- (e) *Definitions.*
 - (1) *Outside work* shall mean all gainful employment other than the performance of official duties. It includes but is not limited to self-employment, working for another employer, the management or operation of a private business for profit, including personally owned businesses, partnerships, corporations and other business entities.
 - (2) A situation which may involve a *conflict of interest* is one which a Tribal employee's private interest, usually of an economic nature, conflicts or raises a reasonable question of conflict with their public duties and responsibilities. The potential conflict is of concern whether it is real or only apparent.
- (f) *Habitual use of intoxicants.* An employee who habitually uses intoxicants to excess is subject to removal.
- (g) *Misconduct.* Any criminal, infamous, dishonest, immoral or notoriously disgraceful conduct on the part of a Tribal employee shall be cause for their removal from the service of the Eastern Band of Cherokee Indians.

(Res. No. 435, 5-21-1971)

Sec. 96-3. - Employee holding elective office.

Any Tribal employee shall be eligible to seek and hold elective office subject to the following conditions:

- (a) An employee shall not serve on any committee with direct supervision or responsibilities over the program, division or enterprise in which they are employed.
- (b) An employee shall not be compensated by both the Tribal Council or any committee for the same period of time they are compensated by the Tribe for their employment.
- (c) An employee shall not perform in more than one Tribal job at the same time.
- (d) The provisions of this section shall not apply to any person employed by the Cherokee Police Department.

(Res. No. 73, 12-20-1971)

Sec. 96-4. - Definitions.

The following definitions shall apply to sections 96-4 to 96-11:

- (a) *Adverse employment action* shall mean showing a retaliatory action that has a detrimental and substantial effect on the terms, conditions, or privileges of a covered employee's employment, or required the covered employee to work in a discriminatorily hostile or abusive work environment. A change that is merely contrary to a covered employee's interest or liking is insufficient.
- (b) *Covered employees* shall mean, with respect to any personnel action, any Tribal and Tribal Entity employees as defined in the Personnel Policies and Procedures for the Eastern Band of Cherokee Indians, Section 5.03, but does not include political appointments as defined in subsection (d), below.
- (c) *Disclosure* shall mean a formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the disclosure reasonably believes that the disclosure evidences:
 - (1) Any violation of any law, rule, or regulation; or
 - (2) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- (d) *Political appointees* shall mean persons appointed by the Principal Chief, Vice Chief and Tribal Council, and specifically includes the top administrator of any division within the organizational structure of the Tribe's executive branch of government commonly called the Secretary of a division for which the appointing authority hires and terminates under his/her/its sole discretion and also includes other appointments made by the Chief, Vice Chief and Council under other legal authority, but does not include temporary or interim appointments.
- (e) *Retaliatory action* shall mean any adverse employment action including but not limited to: discharge, suspension, demotion, retaliatory relocation (transfer).

(Ord. No. 362, 10-20-2016; Ord. No. 63, 2-14-2018)

Sec. 96-5. - Discrimination prohibited.

- A. No person shall take or fail to take, or threaten to take or fail to take, a personnel action with respect to any covered employee or applicant for employment because of:
 - 1. Any disclosure of information by an employee or applicant which the employee or applicant reasonably [believes] evidences:
 - a. Any violation of any law, rule, or regulation; or
 - b. Gross mismanagement, a gross waste of funds an abuse of authority, or a substantial and specific danger to public health or safety.
 - 2. Any disclosure to the Office of Internal Audit, Cherokee Code Section 117-100 through 117-112, of which the employee or applicant reasonably believes evidences:
 - a. Any violation (other than a violation of this section) of any law, rule, or regulation; or
 - b. Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
 - 3. Complies with a properly issued and served subpoena issued by the Tribal Council in accordance with Cherokee Code Section 117-17.
- B. This section shall not be construed to authorize the withholding of information from the Tribal Council or the taking of any personnel action against an employee who discloses information to Tribal Council.

(Ord. No. 362, 10-20-2016)

Sec. 96-6. - Complaint; investigation; conciliation.

- A. Any covered employee who believes that he or she has been subject to prohibited discrimination found in Cherokee Code Section 96-5 may file a complaint with the Office of Internal Audit within 180 calendar days of the alleged discrimination. The Office of Internal Audit shall investigate the complaint in accordance with Cherokee Code Section 117-103 and their adopted policies and procedures according to Cherokee Code Section 117-110.
- B. If the Office of Internal Audit is named in the complaint, then the Department of Justice shall investigate.
- C. Any reports regarding discrimination are confidential and not subject to disclosure.
- D. To establish discrimination, a covered employee must demonstrate by a preponderance of the evidence that the covered employee's engagement in protected activity is a substantial motivating factor for the adverse employment action. The supervisor or manager may rebut this claim if he or she demonstrates by a preponderance of the evidence that he or she would have taken the same employment action regardless of the covered employee's participation in protected activity.

(Ord. No. 362, 10-20-2016)

Sec. 96-7. - Discipline.

Any manager, supervisor, or employee of the Tribe or Tribal Entity who knowingly engages in conduct prohibited by Sections 96-4 through 96-11 shall be disciplined up to and including discharge.

(Ord. No. 362, 10-20-2016; Ord. No. 63, 2-14-2018)

Sec. 96-8. - Civil penalties.

- (a) Any covered employee who reasonably believes that he or she has been the subject of discrimination in violation of Sections 96-4 through 96-11 may bring a civil action against the Tribe or the Tribal Entity's officer or employee who committed the violation.
- (b) The Eastern Band of Cherokee Indians is a sovereign nation, immune from suit but limitedly waives sovereign immunity for Cherokee Code Section 96-8(a) when the suit is brought in the Cherokee Court.
- (c) The civil penalty for such violation shall not exceed \$5,000.00.
- (d) Such action must be filed no later than one year after the date the covered employee files a complaint with the Office of Internal Audit.

(Ord. No. 362, 10-20-2016; Ord. No. 63, 2-14-2018)

Sec. 96-9. - Rules.

The Office of Internal Audit may adopt rules needed to implement Sections 96-4 to 96-11 pursuant to the provisions in Cherokee Code Section 117-10.

(Ord. No. 362, 10-20-2016; Ord. No. 63, 2-14-2018)

Sec. 96-10. - Employee bill of rights.

- (a) All employees should be treated with honesty and respect.

- (b) All employees have the right to regular and constructive communication from their supervisor and the EBCI.
- (c) All employees have the right to a fair wage.
- (d) All full-time employees have the right to health care benefits.
- (e) All employees should have a workplace free of harassment.
- (f) Employees should have a workplace consisting of good working conditions where safety is paramount and the employees have the resources to perform their job duties.
- (g) Employees have the right to receive the training expected for their position.
- (h) Employees have the right to learn through ongoing training and education so that employees can perform at a higher level.
- (i) Employees have the right to know the EBCI'S expectations of the employee and the employee's progress toward those expectations.
- (j) Employees have a right to a grievance process if there are problems and issues on the job.
- (k) Employees have the right to recognition and praise for a job well done.
- (l) Employees have the right to have a balance between work and life outside work.

(Ord. No. 63, 2-14-2018)

Sec. 96-11. - Stability and protection of employees.

All changes to the personnel policy must be reviewed by the Attorney General's Office and Director of Human Resources.

All employees of the tribal government, and specifically excluding political appointees as defined in C.C. Section 96-4 above, shall be protected by the corrective action or disciplinary procedures set out in the Tribe's personnel policy and procedures manual and may not be terminated, transferred or demoted when a new administration takes office except in as provided for in the policies and procedures.

(Ord. No. 63, 2-14-2018)

Sec. 96-12. - Initial employment.

- (a) The initial employment shall be extended by the Human Resources Secretary, or their designee, to the individual selected by the Division Secretary if the selection is consistent with existing policies and criteria established for the job, except where the initial employment authority is specifically delegated.
- (b) The Division Secretary and the program director or manager shall also approve the proposed pay rate before the initial employment is made to an applicant.
- (c) The Division Secretary and the program director or manager shall not offer or approve employment if selection was made contrary to the Personnel Policies or the Cherokee Code.

(Ord. No. 432, 2-26-2019)

Article II. Tribal Workforce and Services Protection Act

Sec. 96-13. Policy.

It is the policy of the Eastern Band of Cherokee Indians to value a stable workforce so that programs serving the needs of the public and also the Tribal Government's needs are thoughtfully managed through both an organizational structure that promotes efficiencies and expertise within Divisions, Departments and Programs and also through the functions that individual employment positions are designed to offer as public service.

Sec. 96-14. Reduction in Force.

(a) A reduction in force is the elimination of a budgeted employee line item within the approved budget.

(b) A reduction in force may be requested by the Principal Chief on a case by case basis when a vacant position exists.

(c) A reduction in force that would result in the unemployment of any employee, or a substantial change to an employee's current functions, responsibilities and pay grade may only be requested by the Principal Chief when such elimination or substantial change in the functions and pay for which an existing employee line item represents is accompanied by a written plan justifying why such an employee position is no longer needed and accompanied by a plan to re-assign and accommodate the affected employee in an open position with similar pay grade within the Executive Branch if another position is vacant.

(d) An organizational change may be requested by the Principal Chief and must require a written representation of the current structure in the form of an organizational chart and must reflect how a reorganization of the existing structure would be reflected in a proposed organizational chart. The Principal Chief must justify the reasoning for changing the public service structure through established Divisions, Departments and Programs and must highlight the employee line items and the job functions the employee line items represent so that the Tribal Council may be fully informed in making decisions about reductions in force caused by organizational changes.

(e) Nothing shall prevent the Tribal Council from carrying out its responsibilities and ultimate authority with regard to approving the budgets that fund the services provided through and administered by the Executive Branch.

(f) All effected employees under plans submitted under (c) or (d) shall have individual notice provided to them at least 14 days in advance of the plan's submission to Tribal Council.

BE IT FURTHER ORDAINED that this ordinance shall be effective upon ratification by the Principal Chief and that all prior ordinances and resolutions that are inconsistent with this ordinance are rescinded.

*Submitted by: Office of the Attorney General; Boyd Owle, Birdtown Council Representative;
and Richard G. Sneed, Principal Chief*