

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: OCT 24 2022

ORDINANCE NO.: 434 (2022)

An ordinance to amend C.C. § 95-13(b) governing Indian preference in hiring, to delete promotions and to require in-house advertisement and hiring before external advertisement and hiring.

WHEREAS, Tribal Council is authorized and empowered to adopt laws and regulations for the general government of the Tribe, including the regulation of hiring practices by the Tribal government and Tribal entities; and

WHEREAS, the Tribe applies Indian preference in initial hiring and has expressed the preference in C.C. § 95-13(b); and

WHEREAS, currently, C.C. § 95-13(b) applies Indian preference to promotions, but also allows for promoting non-Indians based on merit; and

WHEREAS, this language that allows the Tribe and covered employers to promote non-Indians based on merit is inconsistent with Indian preference; and

WHEREAS, this inconsistency is best resolved by amending C.C. § 95-13(b) by striking the language regarding promotion and adding language requiring the Tribe and covered employers to use a process for advertising positions internally (in-house) before advertising for candidates externally; and

WHEREAS, a process for advertising and hiring internally before advertising and hiring externally gives persons who are already employees the opportunity for upward mobility, subject to Indian preference.

NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians, in council assembled, at which a quorum is present, that C.C. § 95-13(b) is amended to read as follows:

Sec. 95-13. Indian preference in employment.

(a) All covered employers for all employment occurring within the Reservation shall give preference to qualified Indians with the first preference to local Indians in all initial hiring and training. Local Indians shall also receive preferential protection from layoffs.

(b) Preference shall be given to local Indians who meet the minimum qualifications for a particular job, regardless of any higher qualifications that non-Indians may have. Spouses of local Indians who meet the minimum qualifications for a particular job shall be entitled to a second preference. ~~(Covered employers may adopt promotion policies which reward~~

~~employees who perform at higher levels of performance and such employers will not be bound to promote qualified Indians who meet only the minimum requirements of the job if these employees do not also meet the higher performance requirements set out in the promotion criteria of the covered employers' personnel policy. However, once the higher promotion criteria is met, preference will be given to the Indian meeting that promotion criteria.)~~ This chapter shall not be construed to prevent ~~or~~ a covered employer from selecting the most qualified Indian applicant, or from selecting a non-Indian if no qualified Indian applies for the job. Covered employers shall advertise positions in-house for not less than seven (7) calendar days before advertising externally.

- (c) No covered employer shall discriminate against any employee on the basis of gender, age, disability, or religion.
- (d) For purposes of hiring, a covered employer who:
- (1) Utilizes the hiring hall or skills bank established by the Commission,
 - (2) Notifies at least three Indians of the opportunity to apply for the job (unless fewer are listed for the available job), and
 - (3) Complies with subsections (b) and (c) of this section, shall be considered in compliance with this preference law.
- (e) All covered employers shall comply with the rules, regulations, guidelines, and orders of the Tribal Employment Rights Commission which set forth the specific obligations of employers in regard to Indian preference.
- (f) The requirements of this law shall not apply to any direct employment by federal, state or other governments or their subdivisions. It shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments.
- (g) This law shall apply to the Tribe, except that Sections 95-23, 95-24, and 95-25 shall not. Any complaint against the Tribe for violation of this law shall be filed with the Director prior to a hearing and appeal under any applicable personnel policies and procedures of the Tribe and shall not be heard by the Commission. Nothing in this law shall be construed as a waiver of the Tribe's sovereign immunity.
- (h) For purposes of initial hiring by the Tribe or a program funded by the Tribe, of persons subject to the Tribe's Personnel Policies and Procedures, if a local Indian meeting the minimum qualifications applies for a job, no other person shall be hired without a written justification satisfactory to the Office of Human Resources. Tribal entities that are not subject to the Tribe's Personnel Policies and Procedures shall adopt a similar process.

BE IT FINALLY ORDAINED, that all ordinances and resolutions inconsistent with this ordinance are rescinded, and this ordinance shall become effective upon ratification by the Principal Chief.

1 *Submitted by Alan B. Ensley, Vice-Chief.*