

the safety of others. However, such identification does not relieve the employee from the prohibitions expressed in this article, and violation of those prohibitions shall be responded to as provided in this article. Employees seeking assistance should see their supervisor or other management in their department or the Employment Office.

- B. ~~*Employees requiring counseling and treatment.*~~ If an employee is required to undergo counseling or treatment for drug or alcohol abuse as a condition of employment after the employee has informed his or her supervisor of the employee's problem with alcohol or drug abuse, the employee must meet with the Employment Office manager or designee to discuss available counseling and treatment options and available coverage, if any, under the Tribal health care plans. The employee will be required to select a counselor or treatment program and comply with all conditions set forth by the Tribe and the chosen program. The employee must consent to have the program and/or the health care provider, provide updates to the Tribe regarding his/her compliance with the designated treatment. An employee undergoing counseling or treatment must enter a "re-entry agreement" acceptable to the Tribe, and comply with job performance standards, work rules and personnel policies while in counseling or treatment. Employees who refuse to meet with the Employment Office manager or designee, or who fail to abide by the counseling plan or treatment plan, or who fail to meet the requirements of this article will be terminated.
- C. ~~*Re-entry agreements after voluntary admission.*~~ Employees who re-enter the work force following suspension during which counseling or rehabilitation is required must agree to the re-entry agreement. This shall include:
1. ~~A release to work statement from the employee assistance program counselor;~~
 2. ~~A negative test for drugs or alcohol;~~
 3. ~~An agreement to frequent follow up testing for a period of at least two years with at least six tests performed during the first year of re-entry,~~
 4. ~~A statement of expected work-related behavior,~~
 5. ~~An agreement to follow specified after care requirements with the understanding that violation of the re-entry agreement is grounds for corrective action and possible termination.~~
- D. ~~*Second failure or refusal to undergo counseling.*~~ If an employee tests positive at the end of the suspension/counseling period, or if the employee refuses to undergo counseling, the employee will be terminated unless medical evidence is presented which would substantiate an extension of the counseling period. If the employee refuses to undergo such extended counseling, the employee will be terminated, and in addition to other restrictions on rehiring expressed in this article, may be rehired only upon proof of having undergone a certified drug rehabilitation program (as approved by the Tribe).
- E. ~~*Cost.*~~ Employees who have tested positive and as a consequence are required to undergo a series of follow-up tests, shall pay for the cost of these follow-up tests. The Tribe will pay for the cost of all other testing it orders. Counseling or treatment services provided by an approved agency under this policy may be covered in part or in whole by the terms of the Tribe's health care plan. Employees should check with the Benefits Office to determine the coverage under their specific health plan or refer to their health care benefits booklet.
- F. ~~*No guarantee or contract of employment.*~~ This policy does not constitute a guarantee or contract of employment, nor does this policy constitute any guarantee or contract of any kind which might affect or limit the Tribe's imposition of corrective action up to and including discharge or the process or manner by which any corrective action up to and including discharge may be imposed. Nothing in this policy means that employees may not be subject to corrective action or terminated at any time with or without cause or for any other reason, including but not limited to, lack of work, a restructuring, rule violations or other misconduct, poor performance, or excessive absenteeism. However, without waiving or limiting this disclaimer, it is the Tribe's sincere hope to afford employees with substance use or abuse problems at least one real opportunity at rehabilitation.

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 9.12. Consequences of prohibited conduct.~~

~~A. Pre-employment. See 9.05A.~~

~~B. Action upon suspicion. All employees who are reasonably suspected of violating any prohibition of this article shall be suspended with pay pending an investigation and verification of condition.~~

~~C. Action upon proof. Employees found to have violated any prohibition of this article shall be terminated; provided, however, that termination is not automatic where this Article provides for a period of suspension without pay to allow the Employment Office or other agency to review records or test results or to allow the employee to obtain a second drug test from the initial and original specimen at a different laboratory.~~

~~D. Second drug tests. If a second drug test is requested by the employee after an initial positive drug test, the Employment Office will arrange for the same test specimen to be submitted to an independent laboratory and tested a second time. The request for a second test must be in writing and received by the Employment Office within 48 hours of the employee's receipt of the initial positive test result. The second test shall be paid for by the employee prior to testing. The same test specimen shall be sent to a laboratory approved by the Employment Office and the Employment Office shall ensure that the laboratories maintain a clear chain of custody of the test specimen. The results of the second test shall be reviewed by the Employment Office. Such review shall be performed no later than 24 hours after the test results are received by the Employment Office.~~

~~If the second drug test is positive, the employee shall be terminated retroactive to the date of suspension. If the second test is negative and review establishes that the second test result is valid, the employee shall not be terminated and may return to employment and upon such return the Tribe shall reimburse the employee for the income he or she did not receive while suspended and for the cost of the second test.~~

~~E. An employee shall be terminated if they are issued a citation by law enforcement or if they lose a license or credentials if the citation or loss means the employee cannot perform their duties.~~

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 9.13. Restrictions on rehire.~~

~~An employee terminated for violation of this article will not be eligible for rehire until the employee meets the requirements of Section 13.05.~~

~~(Ord. No. 154, 5-3-2012)~~

~~ARTICLE 10. ANTI-HARASSMENT POLICY~~

~~Sec. 10.00. General anti-harassment and workplace violence policy.~~

~~Harassment is a form of misconduct that undermines the integrity of the employment relationship. All employees have the right to work in an environment free from all forms of discrimination and conduct which can be considered harassing, coercive, or disruptive, including sexual harassment. Harassment based upon sex (with or without sexual conduct), race, color, religion, national origin, age, physical or mental disability, veteran's status, marital status, and sexual orientation are strictly prohibited. Retaliation for opposing such conduct and/or participating in the statutory complaint process is prohibited. Such harassment will not be tolerated by EBCI. This prohibition applies to everyone in the workplace, including elected officials, deputy officers, managers, supervisors, co-workers, non-employee visitors and vendors.~~

~~Employees should report any harassing behavior to the appropriate supervisor or the Employment Office. This includes harassing behavior where an employee witnesses another employee being harassed. A supervisor or manager who witnesses harassment within the department has a duty to report it to the Employment Office and/or report to the next level of management as well as take appropriate action to stop the harassment. The employee is not required to report the behavior or incident to the offending person, if that person is the supervisor or manager. The employee can report this behavior directly to the Employment Office. Employees should not fear retaliation because it will neither be practiced nor tolerated. EBCI will investigate the claim and, if true, take appropriate action to ensure such activity ceases.~~

~~Any employee who engages in the types of harassing conduct described in this Policy will be disciplined, up to and including termination. If the Employment Office determines through its investigation of a harassment complaint that the complaint was intentionally fabricated, the complainant may be subject to disciplinary action, up to and including, termination.~~

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 10.01. Definitions.~~

- ~~A. Harassment can be conduct that disturbs or interferes with an employee's ability to perform his/her job duties and/or treating an employee differently for any of the reasons set forth above.~~
- ~~B. Sexual harassment is any unwelcome or unwanted sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature where:~~
 - ~~1. Submission to the conduct is made either an explicit or implicit condition of employment; or rejection of the request is used as a basis for an employment decision affecting the harassed employee; or,~~
 - ~~2. The conduct, including conduct engaged in by customers, vendors and other non-employees, substantially interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment which includes but is not limited to the use of sexual epithets or references to physical characteristics. Expressly forbidden are unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Harassment may include, but is not limited to, slurs, epithets, threats, derogatory comments, unwelcome jokes, unwanted touching, teasing, playing sexual suggestive music, verbal or physical behavior that may be offensive the distribution (whether in writing or electronically) or display of pictures or other materials that may be offensive, or other conduct such as lying, gossiping, degradation of others, and anything that would reasonably be perceived as creating a hostile or abusive work environment. Allegations of harassment may also ultimately arise out of intimate relationships between certain employees, or the hostile or abusive actions of an employee against a customer, vendor, or contractor.~~

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 10.02. Procedures; guidelines.~~

- ~~A. Each manager and supervisor is responsible for communicating this policy and informing employees of the procedures for reporting any instance of prohibited harassment,~~
- ~~B. No employee at any level will retaliate against anyone either for reporting any instance of harassment or for providing information related to a harassment complaint.~~
- ~~C. Guidelines for responding to and reporting conduct considered to be harassing are described below. The purpose of these guidelines is to help the appropriate supervisor conduct a thorough and impartial investigation of these types of allegations. The person who is the object of harassment is not required to follow these guidelines. If a person feels uncomfortable following these guidelines,~~

he/she always has the option of reporting incidents of harassment directly to the Employment Office. If a person registers a complaint regarding harassment and requests to remain anonymous, an investigation will be conducted and the request to remain anonymous will be honored, to the degree feasible under the circumstances, but anonymity cannot be guaranteed. However, the person who registers the complaint needs to understand that failing to openly participate in the investigation may hinder the process of resolving all allegations.

D. ~~Managers and supervisors are required to immediately take a preliminary written statement from the employee alleging harassment, including the nature of the conduct and when it occurred. If the manager or supervisor personally observes the conduct, he/she should document the observations in writing and respond to allegations of harassment in the case of any of the following situations:~~

- ~~1. An employee believes he/she is being harassed and brought it to the manager's attention;~~
- ~~2. The manager or supervisor has observed the behavior; or~~
- ~~3. If the behavior was brought to the manager or supervisor's attention by another employee source.~~

E. ~~Take the information to the Employment Office, which will initiate a prompt and complete investigation regarding the conduct. The investigation will include obtaining detailed statements from the complainant, the alleged harasser, witnesses and any other persons who may have relevant information. The Attorney General's Office may be contacted by the Employment Office for assistance with the matter. The Employment Office may also contract with an outside investigator to expedite more complex investigations. General Guidelines during an investigation are as follows:~~

- ~~1. All persons who are questioned and/or involved in the investigation will be informed that any employee has a right to make a complaint; that they should not discuss the investigation; and that retaliation of any form; including but not limited to negative comments about the complainant, will result in discipline up to and including discharge.~~
- ~~2. The manager of the department may be asked to participate in the investigation, unless they are being accused of improper conduct. This is a priority matter and the full and immediate cooperation of the manager is expected.~~
- ~~3. After the investigation is completed, should the evidence support a conclusion that prohibited conduct took place, the appropriate supervisor and Employment Office Manager will determine the appropriate action to be taken.~~
 - ~~a. To ensure the harassment ceases;~~
 - ~~b. To correct the effects on the employee; and~~
 - ~~c. To ensure that the harassment does not reoccur, depending on the nature and severity of the conduct, Corrective actions may include but are not limited to:~~
 - ~~• A written warning that all improper conduct must cease immediately, and that further conduct of a similar nature will result in immediate discharge;~~
 - ~~• A written warning and transfer of the harasser to another shift; the complainant should not be subject to having his/her schedule changed;~~
 - ~~• Remedial training and counseling; and/or~~
 - ~~• Termination.~~

F. ~~Non-employees will be notified by appropriate Tribal personnel that all improper conduct must cease immediately and that such conduct, or further conduct of a similar nature, will result in removal from the property and/or the discontinuation of a vendor relationship.~~

G. ~~Whether or not the investigation discloses prohibited conduct, the accused harasser will be informed that retaliation against the complainant will result in disciplinary action up to and including termination.~~

~~H. The Employment Office will notify all parties involved in writing concerning the results of the investigation. If it has been determined that conduct prohibited by this article occurred, the complainant will be informed of the action taken. The complainant also will be requested to notify their supervisor or Employment Office immediately if any additional conduct of a similar nature occurs.~~

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 10.03. Workplace violence policy.~~

~~The EBCI is committed to providing its employees with a work environment that is safe, secure, and free of threats, intimidation, harassment, and violence. The Tribe recognizes that workplace violence is a growing problem that should be addressed by all employers and therefore adopts this policy for workplace violence. Consistent with this policy, threats or acts of physical violence, including intimidation, harassment, stalking, social networking, electronic devices and/or coercion which involve or affect Tribal employees or which occur on Tribal property will not be tolerated.~~

~~(Ord. No. 154, 5-3-2012)~~

~~ARTICLE 11. TRAVEL POLICY~~

~~Refer to the Travel Policy contained in the Fiscal Management Policy produced by the Budget & Finance Department and adopted by Executive Order.~~

~~(Ord. No. 154, 5-3-2012)~~

~~ARTICLE 12. COBRA (INSURANCE BENEFITS CONTINUANCE)~~

~~Sec. 12.00. Purpose.~~

~~The Federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) gives employees and their beneficiaries the opportunity to continue health dental and vision insurance coverage under the EBCI's Health Plan when a "qualifying event" would normally result in the loss of eligibility.~~

~~Some common qualifying events are resignation, termination of employment, death of an employee a reduction in an employee's hours, extended leave of absence, an employee's divorce or legal separation, employee becomes entitled to Medicare, or a dependent child no longer meets eligibility requirements.~~

~~An employee or qualified beneficiary has the responsibility to inform the Tribal Employee Benefits Office within 60 days of any "qualifying event." The employee or beneficiary pays the full cost of the coverage of the group rates plus an administration fee and has the right to continue coverage for 18 months and in certain circumstances for a period up to 36 months.~~

~~Each eligible employee is provided with a written notice describing rights granted under COBRA which contains important information about the employee's rights and obligations. If an employee has questions about COBRA rights or continuation of coverage, contact the Tribal Employee Benefits Office.~~

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 12.01. Procedure.~~

~~Under COBRA, an employee or qualified beneficiary has the responsibility to inform the Benefits Office within sixty (60) days of any "qualifying event" including but not limited to divorce or legal separation, or that a dependent child is no longer eligible for coverage as defined in the Plan.~~

~~When notified of a "qualifying event," the Benefits Office will contact the employee or family member of the right to choose continuation coverage and provide information related to time frame of such coverage.~~

~~(Ord. No. 154, 5-3-2012)~~

~~ARTICLE 13. CORRECTIVE ACTION PROCEDURE~~

~~Sec. 13.00. Policy.~~

~~At the EBCI, employees are engaged in a group effort of service to the public; therefore, the job always comes first. There must be close cooperation between employees and management. If an employee has a complaint regarding a work assignment, it should be discussed with the supervisor. Unless a clear safety hazard exists or the employee feels she or he is asked to participate in an illegal or immoral act in performance of their duties, employees are expected to follow instructions and do the work assigned.~~

~~Employees are expected to maintain a high standard of conduct and to avoid any action which could reflect adversely on the EBCI or which would jeopardize the employee's effectiveness in dealing with peers, supervisors, and/or the public. Because there may be instances of employee violation of standard rules of conduct or not meeting necessary performance standards, it is therefore necessary to have a procedure designed to correct problems. This policy is to be administered in a fair, impartial and consistent manner.~~

~~Note—Suspension with pay is not part of the Corrective Action Procedure. See section 4.30 for reference.~~

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 13.01. Guide to seriousness of violations.~~

~~It is impossible to list all violations of rules and policies and the recommended corrective action. Some cases of gross or serious misconduct could result in immediate termination depending upon circumstances. Listed below are some serious violations.~~

- ~~• Physical or verbal mistreatment or coercion of an employee or the public.~~
- ~~• Theft, dishonesty, fraud, embezzlement or misuse of EBCI, Tribal, or Federal funds.~~
- ~~• Fighting with or verbal abuse of anyone in the workplace.~~
- ~~• Insubordination.~~
- ~~• Falsifying records.~~
- ~~• Intoxication or possession of alcohol or drugs.~~
- ~~• Absence from work for two consecutive days without notice to or permission from supervisor.~~
- ~~• Divulging confidential EBCI information.~~
- ~~• Willful destruction of EBCI property.~~
- ~~• Entering an unauthorized area.~~
- ~~• Leaving work without permission.~~

- ~~Sexual, racial or any other form of harassment.~~

~~Other, less serious violations or misconduct will subject the employee to the corrective action procedure as follows. Steps 1, 2 and 3 may be eliminated depending upon the seriousness of the violation. The Employment Office is available for consultation and to help ensure consistent application of this policy.~~

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 13.02. Corrective Action Procedure.~~

~~The Corrective Action Procedure is intended to be progressive in nature and is the responsibility of the supervisor to administer in a fair and consistent manner. However, depending upon the seriousness of the violation, some of the steps outlined below may be eliminated. In deciding what action to take, supervisors may consult with the Employment Office and should also consider the following:~~

- ~~the nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain or was frequently repeated;~~
- ~~the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;~~
- ~~the employee's past disciplinary record;~~
- ~~the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability; and~~
- ~~the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties.~~

~~When an employee's behavior is not in conformance with established rules and policies or work performance does not meet standard requirements, the supervisor is expected to take immediate and appropriate action as outlined.~~

~~Before implementing disciplinary actions, supervisors will investigate and justify in writing the action to be taken, including documentation of specific reasons for the action and anything relevant which supports the charge. Supervisors must make sure proper forms, supplied by the Employment Office, are used to document the corrective action taken. The employee shall be given at least 24 hours to respond, in writing, to any charges.~~

~~In addition, the supervisor shall, in appropriate cases, consider making a mandatory referral to the Employee Assistance Program. The Employment Office shall be consulted after a decision to make such a referral.~~

~~All counseling, reprimands, and terminations will be done in private. Counseling and reprimands will be done in a professional manner with the purpose of correcting the problem.~~

~~Employee reactions are to be noted on the Corrective Action Form and employees are asked to sign that they have been informed of the contents. This signature does not signify agreement or disagreement with the action taken. Should the employee refuse to sign, this should be noted and another individual (preferably another supervisor) shall be called in to witness that the information was covered with the employee.~~

~~The seriousness and frequency of the violation will be considered in deciding upon the form of action. (Implementation of corrective action may be delayed, depending upon the circumstances and the amount of time needed by the supervisor to investigate alleged violations. In general, the final corrective action should be administered as soon as is practically possible, however, when action is being taken for a series of cumulative events, the action should be taken as soon as possible after the last event.)~~

~~Corrective action may begin with any of the following steps:~~

- ~~Step One: Written Counseling.~~ A written counseling should be issued for minor or initial violation of rules or performance problems. This is not a warning but is to instruct, inform or clarify. Documentation of this will be kept by the Employment Office in the employee's personnel file.
- ~~Step Two: Written Reprimands.~~ A written reprimand is appropriate for the first occurrence of a more serious violation. The Employee is to be informed in writing that the receipt of a second reprimand within the current 12-month period for any violation or performance problem may result in an involuntary termination or a suspension without pay, depending upon the seriousness of the problem. A copy of the reprimand will be kept by the Employment Office in the employee's personnel file.
- ~~Step Three: Suspension Without Pay.~~ Suspension without pay is issued for repeated or serious violations where a reprimand is not sufficient to correct behavior. Suspensions for employees may range from one to five days. The Employee is to be informed that another violation within the current 12-month period will likely result in termination of employment. A copy of the suspension will be kept by the Employment Office in the employee's personnel file. When the employee returns to work following suspension, a reentry conference is to be held by the supervisor. The date of the re-entry conference should be documented by the supervisor and sent to the Employment Office. The purpose is to clear the air, review the facts leading up to the decision to suspend as well as future expectations and consequences of further violations. The Employment Office may be involved upon request.
- ~~Step Four: Involuntary Termination.~~ Employees guilty of at least three repeated violations (for the same or any combination of reasons), or who engage in gross misconduct requiring immediate termination, are subject to involuntary termination. All terminations are to be recommended by all appropriate supervisors in the line of authority and approved by the Deputy. The Employment Manager or designee as well as the Legal Division may monitor the process prior to termination to ensure correct and consistent application of policy.

Appeal Procedure: Any eligible employee who feels that unfair treatment has been administered under the corrective action procedure may seek relief by way of the Appeal Procedure.

(Ord. No. 154, 5-3-2012)

~~Sec. 13.03. Schedule of offenses and range of consequences.~~

Note: This schedule is to serve only as a guide in determining proper corrective action.

~~A. Schedule I Offenses include:~~

- ~~Unexcused tardiness.~~
- ~~Conducting personal business while on duty.~~
- ~~Failure to request leave according to established procedures.~~
- ~~Unauthorized canvassing, soliciting, or peddling on premises.~~
- ~~Political activity on work hours or using Tribal resources.~~
- ~~Gross negligence or careless performance of job duties.~~
- ~~Refusal to carry out reasonable work-related instructions of a supervisor.~~

~~Consequences for Schedule I Offenses range from written counseling to termination.~~

~~B. Schedule II Offenses include:~~

- ~~Unauthorized absence (AWOL)~~
- ~~Failure to report traffic citations if required to operate an EBCI vehicle in the performance of duties.~~

- ~~Disrespectful conduct: Use of abusive, insulting or obscene language, or gestures, or malicious gossip.~~
- ~~Gambling in violation of Section 4.26.~~
- ~~Violation of any internal or departmental supplemental policies.~~
- ~~Unauthorized possession of, use of, or damage to EBCI, or the property of others.~~
- ~~Deliberate destruction, damage, waste or misuse of EBCI property, data, or equipment or property of other employees, or of members of the public, in any manner at any time, or the commission of acts likely to cause destruction, damage or waste.~~
- ~~Failure to observe precautions for personal safety, posted rules, signs, written or oral safety instructions.~~
- ~~Failure to comply with any EBCI policy or code of conduct.~~
- ~~Knowingly concealing or failing to disclose defective work.~~

Consequences for Schedule II Offenses range from written reprimand to Termination.

C. ~~Schedule III Offenses include:~~

- ~~Falsifying records and reports i.e. providing false and/or intentionally misleading information to EBCI, either orally or in writing, including application for employment, time sheets, pay records, legally required records, production reports, quality records, expense records, tests, medical records, or other data requested by or submitted to EBCI or on behalf of EBCI, as well as information or claims requested by or submitted to EBCI insurance plans or providers.~~
- ~~Conversion of EBCI funds for personal use.~~
- ~~Use of EBCI property or resources for improper purchase for personal gain.~~
- ~~Breach of confidentiality.~~
- ~~Violations of Article 8 Code of Conduct.~~
- ~~Violations of Article 10 Anti-harassment policy.~~
- ~~Threatening, intimidating, or coercing management, another employee, a member of the public, on EBCI property at any time, for any reason, or while on EBCI business.~~
- ~~Conviction on criminal charges not related to EBCI employment.~~
- ~~Abuse or neglect in any form.~~
- ~~Unprofessional conduct that reflects poorly on EBCI, dishonest, disgraceful conduct including the making of derogatory remarks reflecting on the EBCI.~~
- ~~Workplace violence such as threats, violence, stalking, or related incidents~~
- ~~Criminal conduct. Decisions regarding corrective action may be made based on discussions with the employee and evidence obtained during EBCI's investigation. The corrective action decision may be made regardless of the disposition of any criminal charges, which may have been brought.~~
- ~~Threatened or actual assault against another employee.~~
- ~~Failure to report arrests and/or charges resulting from the commitment of a felony or misdemeanor.~~
- ~~Deliberate misrepresentation, falsification, misstatement, or concealment of material or fact in connection with employment.~~
- ~~Unauthorized or improper use of equipment, materials, or facilities.~~

- ~~• Failure to honor debts or legal obligations owed to the Tribe or a Tribal entity.~~
- ~~• Insubordination: Disobedience or refusal to carry out any lawful order, regulation or policy, or refusal to obey supervisory authority.~~

~~Consequences for Schedule III Offenses range from written reprimand to termination.~~

~~D. Schedule IV Offenses include:~~

- ~~• Possession of unauthorized firearms or lethal weapons on the job or explosives during work time, including rest or meal periods, or on EBCI property.~~
- ~~• DWI citation while operating an EBCI vehicle.~~
- ~~• Violations of Article 9 Drug and Alcohol Policy.~~
- ~~• Illegal possession, selling, distributing, or manufacturing of alcohol or drugs.~~
- ~~• Gross negligence in performance of duties.~~

~~Consequences for Schedule IV Offenses: Termination.~~

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 13.04. Exit interview.~~

~~An exit interview may be conducted immediately following any termination for any reason, whether involuntary or voluntary (Retirement, Resignation, RIF, etc.) or as soon thereof as practical. This is to be done by the Employment Office or program management.~~

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 13.05. Eligibility for rehire.~~

~~An employee terminated from employment will not be eligible for rehire for 12 months after termination. In addition, an employee terminated for sexual harassment or violation of the drug policy shall not be eligible for rehire until the employee documents that he or she has attended and successfully completed a counseling program or the equivalent thereof.~~

~~(Ord. No. 154, 5-3-2012)~~

~~ARTICLE 14. CORRECTIVE ACTION APPEALS~~

~~Sec. 14.00. Appeal procedure.~~

~~In any organization, problems and differences of opinion occur between employees. EBCI recognizes this and is committed to providing an atmosphere where problems or questions about discipline can be heard in an objective manner without reprisal and solved in a fair and equitable way. The following procedures are to be used to assure due process by employees who want to appeal a corrective action taken against them. Note: Complaints regarding performance appraisals and other non-disciplinary matters are not subject to the following procedure. Problems involving concerns about non-disciplinary matters may be addressed through the open door policy described in section 4.34. These appeal procedures are available only to regular employees.~~

~~An employee must appeal his/her corrective action in writing to the Appeals Committee.~~

~~The written notice of appeal to the Appeals Committee must be submitted to the Employment Office within five working days after the employee receives the corrective action.~~

The notice of appeal shall include the following information:

- (1) ~~The basis for the appeal;~~
- (2) ~~The efforts made to resolve the matter;~~
- (3) ~~The issues to be heard by the Appeals Committee;~~
- (4) ~~The name of the employee's attorney or person named as the employee's representative;~~
- (5) ~~All persons or entities that may be called as witnesses;~~
- (6) ~~Copies of any agreements, contracts, or other documents that may affect the appeal decision;~~
~~and~~
- (7) ~~The results sought by the employee.~~

~~Appeals Committee: The Appeals Committee shall be made up of two EBCI management employees, two EBCI non-management employees and one Chairperson. No member of the Appeals Committee shall be from the same division as the appellant employee.~~

~~The Appeals Committee panel for any particular hearing shall be selected from a pool of EBCI management employees and EBCI non-management employees elected by their fellow employees every two years. The Chairperson is a voting member of the Appeals Committee and will direct and structure the proceedings, clarify the rules of Section 14.00, and maintain order. The Appeals Committee pool shall receive appropriate training provided by the Employment Office.~~

~~The members of the Appeals Committee in a particular case shall:~~

- ~~• Be comprised of five members;~~
- ~~• Work outside the appealing employee's division;~~
- ~~• Not have been previously involved with the issue being appealed;~~
- ~~• Not be related to, or have a close personal or professional relationship with any of the essential parties to the appeal; and~~
- ~~• Not otherwise have any conflict of interest that would interfere with their ability to be fair and impartial.~~

~~The Appeals Committee will hear and review all aspects of the corrective action within twenty (20) days of the appeal to the Appeals Committee but shall limit their review to a determination of whether the action was reasonable and justified based on applicable policies and the circumstances. At the conclusion of the hearing the Committee may render their decision immediately or may take the matter under further advisement for consideration for no more than ten (10) business days. They may affirm or overturn the corrective action. The Appeals Committee's decision is final and binding and may not be appealed to the Tribal Council or Executive Committee.~~

(Ord. No. 154, 5-3-2012)

~~Sec. 14.01. Involvement of the Employment Office.~~

~~The Employment Office is available for assistance beginning in Step 1 and may be called upon by both the employee and management. The Employment Office should be consulted for advice to ensure that policies are followed and that potential legal liability is recognized and avoided. Appeal forms are kept and are available in each department as well as in the Employment Office.~~

(Ord. No. 154, 5-3-2012)

~~Sec. 14.02. Involvement of the EBCI Legal Counsel.~~

~~Legal Counsel is available for consultation whenever any form of corrective action is taken by management. Legal Counsel should be consulted in all situations that involve involuntary termination. At the request of the Appeals Committee, Legal Counsel shall observe or participate in an appeal hearing and assist the committee in documenting its decision.~~

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 14.03. Retention of documentation.~~

~~All documentation of corrective action and the appeal will remain in the employee's permanent personnel file in the Employment Office. Whenever corrective action has been rescinded by the appropriate management official or by the Appeals Committee, all references to the corrective action shall be removed from the employee's personnel file.~~

~~(Ord. No. 154, 5-3-2012)~~

~~ARTICLE 15. PERFORMANCE EVALUATIONS~~

~~Sec. 15.00. Policy.~~

~~Evaluating employee performance is a continuous process and an integral part of the employer/employee relationship. EBCI believes, therefore, that each employee should be regularly informed regarding his/her performance on the job. To ensure that this appraisal is done as fairly and consistently as possible, EBCI will follow a system for periodically evaluating all employees. This process is to be monitored by the Employment Office for consistency and effectiveness.~~

~~The performance appraisal system provides a history of work progress of the individual employee with EBCI. It shall also be utilized as a method to determine eligibility for merit pay increases, promotion and as a basis for demoting or discharging an employee. The supervisor should use the performance appraisal system as a tool for counseling employees and as a communications tool for discussing work progress, problems, and opportunities.~~

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 15.01. Objectives.~~

- ~~1. To keep employees informed about areas of their job performance that needs improvement, to agree upon methods for accomplishing this improvement, and to establish goals or objectives for future progress.~~
- ~~2. To recognize and commend the areas of the employee's job performance that demonstrate merit.~~
- ~~3. To encourage supervisory personnel to follow closely the progress of their employees.~~
- ~~4. To improve communications between supervisors and employees.~~
- ~~5. To aid in decisions regarding promotions, transfers and discharges.~~

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 15.02. Procedures.~~

~~A. Probationary employees. All new employees will be informed about the expectations of their performance as it relates to job objectives and standards of performance during the probationary period. These employees will be evaluated at the end of 90 days to determine whether their skills~~

~~meet the expectations of the job and the culture of the Tribe. The department head shall be responsible for the department's completion of a formal evaluation of the employee's performance.~~

~~During the review and feedback sessions, the supervisor will notify the employee of any areas of responsibility that may be unacceptable or deficient. After being notified of deficiencies the employee must demonstrate that they can meet the minimum standard of performance. If the employee does not demonstrate improvements in the unacceptable areas, the employee shall be subject to disciplinary action up to and including dismissal.~~

~~B. Regular employees.~~

- ~~• Evaluation period. The evaluation period is the term of the fiscal year. Annual evaluations for performance must be completed by March 31st of each year. Immediate supervisors are also encouraged to conduct a semi-formal review of each employee's performance during the month of August of each year.~~
- ~~• Supervisors are responsible for maintaining current job descriptions/performance objectives and keeping employees up to date on these as well as any changes.~~
- ~~• Supervisors will complete the job objective, standard of performance, and weights for each job at the beginning of the review period. Employees are to be included to the extent possible in the formulation of goals and standards upon which they will be evaluated.~~
- ~~• During the course of the review period, the supervisor will give feedback to the employee regarding his or her performance, if situations arise that adversely affect the employee's ability to complete or perform a task that is beyond the employee's control, the supervisor will allow for and document any modifications that will be made during the review period;~~
- ~~• At the end of the review period, the supervisor should complete the rating form, sign it, and hold a conference with the employee to discuss the evaluation in detail. Commendation is to be made for areas of performance that exceeds expectation. Specific action plans are agreed to where improvement is warranted. When either of these ratings are given, the supervisor should explain the reasoning in the spaces provided on the evaluation form.~~
- ~~• Employees being evaluated will be asked to sign the appraisal form. This signature indicates that the information has been communicated and does not necessarily indicate agreement. If the employee refuses to sign the document the refusal will be noted. Employees who disagree with their appraisal may attach a written rebuttal to the appraisal. Once this is done, the appraisal must be returned to the Deputy Officer for further review.~~

~~C. Forms. Forms to be used for performance evaluations are to be standardized throughout EBCI by the Employment Office, with approval by the Principal Chief.~~

~~(Ord. No. 154, 5-3-2012)~~

~~ARTICLE 16. REPORTS AND INVESTIGATIONS OF SUSPECTED VIOLATIONS~~

~~Sec. 16.00. Policy.~~

~~Tribal employees are obligated, without fear of retaliation, to report violations of these personnel policies including the code of conduct as well as all other applicable laws, rules and regulations involving employees, appointees, elected officials, consultants, vendors, contractors, or other outside agencies. Employees are also encouraged to report any workplace concern.~~

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 16.01. Reporting.~~

~~Employees may report suspected violations or workplace concerns internally to appropriate personnel through verbal or written communication. The EBCI also maintains a Hotline (1-800-455-9014) which is available to employees to make such reports. The Hotline is operated by an independent third party and can be accessed 24 hours, seven days a week. Reports through the Hotline may be made without giving a name but must be made in good faith and sufficient information provided so that a reasonable inquiry can be conducted. If an employee chooses to disclose his/her identity, it will be kept confidential to every extent possible.~~

~~For suspected fraudulent activity, the EBCI Fraud Policy approved by the Audit Committee shall be followed. The EBCI Fraud Policy will be made available to all employees. If there is any question as to whether an action constitutes fraud, employees shall contact the Director of Internal Audit for guidance.~~

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 16.02. Investigations.~~

~~Each report received shall be given careful consideration to determine, based on information provided, if an investigation is warranted. Reports made through the Hotline will be reviewed and forwarded to the appropriate office or agency for this determination. Depending on the nature of each report made, an investigation may be initiated by: Employment Office, Office of the Attorney General, Office of Internal Audit, Cherokee Indian Police Department or an external agency.~~

~~If an investigation is initiated, those with investigative authority shall carry out investigations in accordance with all applicable laws and established procedures. One or more of the above may be involved to conduct a thorough investigation and to exert the highest authority and access rights. Results of all investigations shall be reported and distributed as appropriate.~~

~~(Ord. No. 154, 5-3-2012)~~

~~Sec. 16.03. Duty to cooperate.~~

~~All employees shall have a duty to cooperate with and to provide full and prompt assistance during an investigation. Failure to cooperate may result in disciplinary action.~~

BE IT FINALLY RESOLVED that all ordinances that are inconsistent with this ordinance are rescinded, and that this ordinance shall become effective when ratified by the Principal Chief.

Submitted by Chief Richard Sneed, Principal Chief