

CHEROKEE COUNCIL HOUSE  
CHEROKEE, NORTH CAROLINADate: DEC 07 2017ORDINANCE NO. 61 (2017)

WHEREAS, Chapter 96 of the Cherokee Code, titled Tribal Employees, contains the Tribe's compiled personnel policies and procedures, also known as the Employee Handbook, which is published to employees as an appendix to Chapter 96; and

WHEREAS, the Employee Handbook was originally published as an appendix to Chapter 96 to make it easily accessible by employees at a time when other ways of publishing and distributing the handbook were not as reliable or as efficient; and

WHEREAS, the Employee Handbook was also originally published as an appendix to Chapter 96 because it was thought that by doing so the Tribe was providing enhanced security and protection for Tribal employees in their employment, including protections from arbitrary termination each time a new administration came into office; and

WHEREAS, publishing the Employee Handbook as an appendix in the Code is no longer necessary because the Tribe's Human Resources Department can now publish and maintain the handbook separately from the Code on the Tribe's website, which would allow for more efficient maintenance of the handbook; and

WHEREAS, protections for employees will be enhanced by adopted of an ordinance stating an employee bill of rights, which has been submitted as a companion ordinance to this ordinance; and

WHEREAS, publishing the Employee Handbook separately from the Cherokee Code will reduce confusion caused by the handbook's presence in the Code and will not change the fact that the handbook has been adopted as the governing policy of the Tribe.

NOW THEREFORE BE IT RESOLVED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that the policies and procedures governing Tribal employees, compiled in the Employee Handbook and currently published as an appendix to Cherokee Code Chapter 96, shall henceforth be published and made available by other means, including electronically on the Tribe's website, and shall not be published in the Cherokee Code.

BE IT FURTHER RESOLVED THAT the Employee Handbook shall retain the authority to govern the personnel policies and procedures to be applied to the EBCI employees through the authority of the Principal Chief, as currently expressed in Employee Handbook Sec. 2.00 and Sec. 2.01.

BE IT FURTHER RESOLVED THAT, to affect the changes described above Cherokee Code Chapter 96 shall be amended as follows:

Chapter 96 - TRIBAL EMPLOYEES

~~Sec. 96-1. Personnel policies.~~

~~The Eastern Band of Cherokee Indians hereby adopts the "Cherokee Indian Personnel Manual" to regulate the conduct and work of Tribal employees and establish personnel policies for the Tribe.~~

~~(Res. No. 24, 10-20-1975)~~

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—96-9:

- 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 Section 5.03(D).
- 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. *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)

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—96-9 shall be disciplined up to and including discharge.

(Ord. No. [362](#), 10-20-2016)



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—96-9 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(1) 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)

Sec. 96-9. - Rules.

The Office of Internal Audit may adopt rules needed to implement Sections 96-4—96-9 pursuant to the provisions in Cherokee Code Section 117-10.

(Ord. No. [362](#), 10-20-2016)

APPENDIX  
EASTERN BAND OF CHEROKEE INDIANS  
PERSONNEL MANUAL [11](#)

Welcome employees,

~~As you begin your employment with the Eastern Band of Cherokee Indians (EBCI), I would like to welcome you to our organization and invite you to read and become familiar with the contents of these Personnel Policies and Procedures. You will find it full of helpful and valuable information about the policies, procedures, and opportunities available to guide and assist you in performing to the best of your abilities and developing and realizing your potential as a valued employee. With your help, we are looking forward to continuing growth and prosperity as we find new and better ways to serve the members of the EBCI.~~

~~The policies, procedures, and programs outlined in this handbook are designed to serve as guidelines to keep you informed of relevant facts about your employment. They do not, in any way, waive the sovereign immunity of the Tribe. They are not intended to create any kind of contractual relationship. While the policies and procedures outlined in this document will provide answers to most of the general questions you might have about your job or the EBCI's programs and procedures, it cannot cover every situation that might arise. If you have questions about these guidelines or need further information about any subject, please consult with your supervisor or the EBCI Employment Office. We also welcome your suggestions for improvements either to policies or procedures covered in this handbook or in other job-related areas or subjects. Your ideas on ways to improve our operations and procedures are important to us, and, along with your effort and performance, are an ideal way to contribute to the EBCI's future growth and your own development.~~

~~Please read this handbook carefully and retain it for future use. Familiarize yourself with its contents as soon as possible, because it should answer many of your initial and ongoing questions about your employment with EBCI. We want you to be fully informed and to understand our policies and procedures completely.~~

~~Once again, I welcome you and wish you success as we face the numerous challenges, opportunities, and potential rewards ahead.~~

Sincerely,

Michell  
Principal Chief

Hicks,

## **PREFACE**

~~These Personnel Policies and Procedures are intended to state clearly the benefits and responsibilities of Eastern Band of Cherokee Indians (EBCI) employment. It is the resource to inform employees of policies and procedures and to promote standard practices among all personnel. The policies, procedures and programs outlined in this handbook are designed to serve as guidelines to keep you informed of relevant facts about your employment. They do not, in any way, waive the sovereign immunity of the Tribe. They are not intended to create any kind of contractual relationship.~~

~~Each employee is responsible for becoming familiar with and complying with these policies and regulations.~~

### **EBCI Management's Responsibility to Employees**

~~As an employee, you may expect from the EBCI:~~

- ~~• Fair and equitable treatment.~~
- ~~• Fair pay and benefits.~~
- ~~• Healthy and safe working conditions.~~
- ~~• Competent supervision.~~
- ~~• Opportunity for advancement based on work performance and vacancies.~~
- ~~• To be kept informed through two-way communication.~~

### **Employee's Responsibility to the EBCI:**

~~As your employer, the EBCI expects you:~~

- ~~• To work toward the goals of the EBCI in providing service to members and residents of Cherokee.~~
- ~~• To be loyal.~~
- ~~• To be fair, courteous, and cooperative in your relationship with the public and your fellow employees.~~
- ~~• To give the EBCI a fair return for the pay you receive.~~
- ~~• To practice good grooming habits and be prompt in reporting for work and scheduled assignments.~~
- ~~• To be economical and responsible in the use of supplies and equipment.~~
- ~~• To comply with all policies and procedures of the EBCI.~~
- ~~• To ensure office phones are answered and messages delivered and calls returned in a timely manner.~~

### **Footnotes:**

~~—(1)—~~

~~Editor's note — Ord. No. 154, approved May 3, 2012, amended the Code by repealing former App. to ch. 96, §§ 1.00, 1.01, 2.00—2.06, 3.00—3.36, 4.00—4.34, 5.00—5.08, 6.00—6.04, 7.00—7.11, 8.00—8.04, 9.00—9.13, 10.00—10.02, art. 11, §§ 12.00, 12.01, 13.00—13.05, 14.00—14.03, and 15.00—15.04; and~~



~~adding a new App. The former appendix pertained to similar subject matter, and derived from Ord. No. 771, approved July 22, 2005; and Ord. No. 970, approved October 13, 2005.~~

#### ~~ARTICLE 1. TITLE AND PURPOSE~~

##### ~~Sec. 1.00. Title.~~

~~These Personnel Policies and Procedures for the Eastern Band of Cherokee Indians (EBCI) have been adopted by Ordinance No. 154 (2012).~~

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

##### ~~Sec. 1.01. Purpose.~~

~~The purpose of these policies and procedures is to provide accurate information to all employees regarding the personnel policies and procedures (standards, benefits, procedures, and authority) that will be used by the EBCI.~~

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

#### ~~ARTICLE 2. AUTHORITY AND APPLICABILITY~~

##### ~~Sec. 2.00. Authority.~~

~~These Personnel Policies and Procedures as adopted by the Cherokee Tribal Council set forth the rules to be applied by the Principal Chief, the Executive Committee, the Deputy Officers, and the directors, managers and supervisors of the EBCI in employment matters.~~

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

##### ~~Sec. 2.01. Applicability.~~

~~These policies and procedures apply to all EBCI employees, except as otherwise specifically provided herein or in other applicable Tribal law.~~

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

##### ~~Sec. 2.02. Elected officials.~~

~~Elected officials shall not be subject to this manual. No member or committee of the Tribal Council shall have direct supervisory authority over any Tribal employee.~~

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

##### ~~Sec. 2.03. Political appointees.~~

~~Political appointees serve in positions appointed by the Principal Chief, Vice Chief, and Tribal Council. They serve at the discretion of the appointing official(s) and may be terminated at the discretion of such official(s).~~

~~Political appointees are not subject to Sections 5.00, 5.01, 5.04, 5.05, 5.06 and 5.07 of Article V, Article XIII and Article XIV.~~

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

~~Sec. 2.04. Other Tribal organizations.~~

~~Nothing herein contained shall be applicable to separately chartered organizations, which have legal authority to develop and adopt separate personnel policies. These separately chartered organizations include, but are not limited to, the Cherokee Boys Club, Inc., Tribal Bingo Enterprise, Tribal Gaming Commission, Vocational Opportunities of Cherokee, Cherokee Indian Hospital Authority, and the Tribal Casino Gaming Enterprise and Sequoyah National Golf Course.~~

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

~~Sec. 2.05. Supplemental personnel procedures.~~

~~Supplemental personnel procedures may be adopted by the Executive Committee for specific EBCI Departments provided they are consistent with these Personnel Policies and Procedures. If the supplemental policies are inconsistent, the Tribal personnel policy manual shall be the highest level of authority.~~

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

~~Sec. 2.06. Policy review and revision.~~

~~This policy will be reviewed and passed in Annual Council in a non-election year. The Personnel Policy Review Committee will consist of a representative from the Employment Office, Benefits Office, Legal Department and one representative from each division. The Employment Office representative shall act as the chairperson of the committee. The Personnel Policy Committee shall determine the procedure by which the policy is reviewed by management and employees. The Committee shall also specifically outline the time by which comments and proposed changes are due to the Tribal Council for approval. In addition to the biennial review, amendments to this policy may be made from time to time as deemed necessary and appropriate by the Executive Office and approved by Tribal Council.~~

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

~~ARTICLE 3. DEFINITIONS~~

~~Sec. 3.00. Appeals committee.~~

~~The final decision making body in the Corrective Action Appeal Procedure. The Appeals Committee will consist of five members at each appeal hearing (one Chairperson, two management representatives and two non-management representatives with each member representing a different Tribal division). All Appeals Committee members will vote in the Appeals hearing. The Appeals Committee will be selected from a pool of Tribal employees, consisting of both management and non-management employees.~~

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

~~Sec. 3.01. Appropriate supervisor.~~

~~An employee who has been assigned the role of supervisor for the purpose of supervising, authorizing, and managing the day-to-day operations of an EBCI program. This may include but is not limited to a deputy, manager or supervisor.~~



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

~~Sec. 3.02. — AWOL.~~

~~Absent without authorized leave.~~

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

~~Sec. 3.03. — Calendar days/work days/regular work day/regular work week.~~

~~Calendar days refer to all days including weekends and holidays; work days refer to the scheduled tour of duty.~~

~~Regular work day — the regular work day will begin at 7:45 a.m. and end at 4:30 p.m. which the Tribe considers a business day except for those programs that have operating schedules and shift times or rotating schedules.~~

~~Regular work week — the regular work week will begin at 12:01 a.m. on Saturday and ending at midnight (12:00 p.m.) the following Friday.~~

~~See Sec. 4.17 regarding flex schedules. A flex schedule allows an employee to work a schedule that suits his/her individual needs and allows him/her to complete work tasks.~~

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

~~Sec. 3.04. — Demotion.~~

~~A change in status resulting from assignment to a position of lower salary level.~~

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

~~Sec. 3.05. — Deputy Officer (or Deputy).~~

~~The person in charge of a Tribal division as outlined in the EBCI's organizational chart.~~

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

~~Sec. 3.06. — Difference pay.~~

~~The difference between fees/wages received for military duty and the regular rate of pay for the time period.~~

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

~~Sec. 3.07. — Discharge/termination.~~

~~Involuntary separation of employment.~~

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

~~Sec. 3.08. — Duty station.~~

~~Primary location or area of employee's work.~~

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

~~Sec. 3.09. EBCI (or Tribe).~~

~~Eastern Band of Cherokee Indians.~~

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

~~Sec. 3.10. Employee.~~

~~A person performing financially compensated duties for the EBCI on a non-contractual basis as defined by the Internal Revenue Code.~~

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

~~Sec. 3.11. Essential positions/emergency positions.~~

~~Positions in which work content is critical to the well being of the community in an emergency situation as declared by the Chief. Essential positions are necessary for continual operations. Emergency positions are those which must be available if called on during emergencies.~~

~~Essential positions: Public Safety Communications Center, Police, Natural Resources Enforcement, Fire, CDOT, EMS, Emergency Management and Tsali Care Center.~~

~~Emergency positions: Facility Management personnel, Housekeeping personnel, Housing Division, Community/Home Health, Tribal Construction, and HELP Program.~~

~~Any other positions as determined by the Executive Office.~~

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

~~Sec. 3.12. Executive Committee.~~

~~A committee composed of the Principal Chief and Vice-Chief.~~

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

~~Sec. 3.13. Exempt employee.~~

~~An employee whose employment position is exempt from overtime pay as defined under the Fair Labor Standards Act. (See §6.02)~~

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

~~Sec. 3.14. FICA.~~

~~Federal Insurance Contributions Act.~~

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



~~Sec. 3.15. TFML.~~

~~Tribal Family and Medical Leave Act.~~

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

~~Sec. 3.16. Immediate family.~~

~~Immediate family relationships are those such as between wife/husband, parent/child, sibling, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandparent/grandchild, step-parent/step-child/foster parent/foster child, and aunt/uncle/niece/nephew. For specific applications refer to 4.02 "Employment of relatives" and 4.03 "Conflicting employee relationships."~~

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

~~Sec. 3.17. Individual with disabilities.~~

~~Person with a disability is anyone who has a physical or mental impairment that substantially limits one or more of the person's major life activities, or has a record of such impairment, or is regarded as having such impairment.~~

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

~~Sec. 3.18. Involuntary separation.~~

~~Separation from EBCI employment because of curtailment of work, budget limitations, reorganization, or corrective action resulting in suspension or discharge.~~

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

~~Sec. 3.19. Lateral transfer.~~

~~Reassignment from one position to another position at an equal pay classification and similar job duties.~~

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

~~Sec. 3.20. Law enforcement.~~

~~Law enforcement refers to personnel who work within the Deputy Marshall Division, Alcohol Law Enforcement, Natural Resources Enforcement, and Public Safety Department and who hold a current Basic Law Enforcement Training Certificate and has arrest authority.~~

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

~~Sec. 3.21. Legally mandated benefits.~~

~~Benefits mandated by applicable law such as FICA and Worker's Compensation.~~

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

~~Sec. 3.22. LWOP.~~

~~Leave without pay.~~

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

~~Sec. 3.23. Non-covered employees.~~

~~Employees who are generally not covered by the Fair Labor Standards Act. These employees include such employees as elected officials, their personal staffs (political appointees), policy-making appointees, and legal advisors.~~

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

~~Sec. 3.24. Non-exempt employee.~~

~~An employee who is subject to the minimum wage and overtime provisions as defined under the Federal Fair Labor Standards Act, (See §6.02)~~

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

~~Sec. 3.25. Non-public information.~~

~~Information of a confidential nature (i.e., personnel files, drug/alcohol test results, client files, protected health information, salaries, contract and bid information, specified financial data, customer accounts and any other specified information as determined by EBCI management).~~

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

~~Sec. 3.26. Pay status/non-pay status.~~

~~In pay status the employee earns pay; in non-pay status the employee does not earn pay. Eligibility for benefits depends upon the provisions of the various plan documents and the applicable plan procedures.~~

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

~~Sec. 3.27. Position.~~

~~The group of duties and responsibilities performed for financial compensation by an employee per the employee's job description.~~

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

~~Sec. 3.28. Program.~~

~~A formally prescribed activity or service established to perform a specific function.~~

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



~~Sec. 3.29. Promotion.~~

~~A change in status resulting from assignment to a position of higher salary grade.~~

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

~~Sec. 3.30. Public information.~~

~~Information designated or approved for dissemination by the Principal Chief.~~

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

~~Sec. 3.31. Rolling calendar.~~

~~Twelve (12) consecutive months without regard to the actual calendar year.~~

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

~~Sec. 3.32. Time worked.~~

~~The time when the employer oversees the employee's actions, including times the employee is required to be on duty or at a prescribed place.~~

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

~~Sec. 3.33. Tour of duty.~~

~~The period of required work hours including all breaks.~~

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

~~Sec. 3.34. Tribal Council.~~

~~Elected legislative branch of the EBCI.~~

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

~~Sec. 3.35. Voluntary separation.~~

~~Separation from EBCI employment for reasons of resignation, retirement, or abandonment.~~

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

~~Sec. 3.36. Word interpretation.~~

~~For the purpose of this appendix, certain words shall be interpreted as follows:~~

- ~~• Tribe shall mean the Eastern Band of Cherokee Indians;~~
- ~~• May is permissive;~~

~~• Shall and will are mandatory.~~

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

~~Sec. 3.37. Seniority.~~

~~EBCI seniority is the continuous full-time service an employee has worked in any capacity for the EBCI since the last date of hire.~~

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

#### ~~ARTICLE 4. GENERAL EMPLOYMENT POLICY~~

~~Sec. 4.00. Employment preference and equal employment opportunity.~~

~~Employment decisions at EBCI will be based on merit, qualifications, ability and seniority as defined in certain policies. All employment with EBCI shall be conditioned upon a positive background check. EBCI has fundamental interests in providing employment opportunities, professional development, and financial support for its enrolled members and their families, and in fostering self-governance of the Tribe by enrolled members. It is the policy of the EBCI to give preference in all initial hiring decisions within the Tribe to enrolled members of the Eastern Band of Cherokee Indians who meet the minimum requirements. (See Section 5.07 for rules regarding promotions). If two enrolled members of the Eastern Band of Cherokee Indians meet the minimum requirements and are of equal qualification, preference will be given to the enrolled member who is also an honorably discharged veteran. Enrolled members' spouses and/or parents of EBCI-enrolled minor children (i.e., under 18 years old) who meet the minimum requirements will be given a second level of preference. Enrolled members of other federally recognized Tribes will be given a third level preference, if they meet the minimum requirements. First descendants of EBCI enrolled members shall be given a fourth level preference. In the case of employment with the Head Start and Early Head Start Programs, a fifth preference will be given to any qualified current or former parents of Head Start or Early Head Start students. To the extent these preferences are different from other provisions of Tribal law; these preferences shall prevail as to employment by the Tribe. After considering these preferences, it is the policy of the EBCI to foster, maintain, and promote equal employment opportunities. (Note: the above preferences are subject to the individual having positive reference checks and/or background checks and a positive employment history.)~~

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

~~Sec. 4.01. Access to personnel files.~~

~~Personnel files are the property of EBCI and maintained by EBCI personnel department, and the information they contain is restricted and confidential. Only authorized supervisors and management personnel as determined by the Employment Office will be allowed to review information; they will be required to sign for the file.~~

~~Employees and former employees may examine their personnel file by making a request to an employee of the EBCI Employment Office. A time convenient to both employee and staff will be set during regular office hours for the employee or an authorized agent (i.e., attorney or other agent who has been given written authorization from the employee) or physician to examine the file. This review will take place in the EBCI Employment Office.~~

~~An employee who objects to material in his or her file on grounds that it is inaccurate or misleading may place in the file a statement relating to the material; or, the employee may seek to have the material removed from the file. The decision about removal of material from a personnel file shall be in the~~



~~discretion of the Employment Office Manager with the written concurrence of the appropriate Deputy Officer.~~

~~Employees and former employees may obtain a copy of their personnel file by signing a release form or by presenting a court order.~~

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

#### ~~Sec. 4.02. Employment of relatives.~~

~~The term "immediate family" is defined in section 3.16 and shall be understood to refer to a degree of closeness of relationship that might create a problem within the working unit.~~

~~Two members of a single immediate family shall not be employed by the EBCI when such employment will result in one member providing direct supervision of the other. In cases where a conflict or the potential of conflict arises, even if there is no direct supervisory relationship, the parties may be separated by reassignment or other arrangements. If the immediate family relationship is established after employment, the employee is required to immediately report the change of circumstances related to the appropriate supervisor.~~

~~The appropriate Deputy Officer, with the approval of the Principal Chief will resolve the conflict or potential conflict within 30 calendar days.~~

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

#### ~~Sec. 4.03. Conflicting employee relationships.~~

~~In cases where an employee is not covered as defined in section 3.16 but where circumstances create a close relationship (e.g. live in companion, cousins raised as siblings) between the employees, section 4.02 shall apply.~~

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

#### ~~Sec. 4.04. Elected officials and EBCI employment.~~

~~The EBCI shall adhere to the Cherokee Election Ordinance as it relates to Tribal employees holding elective offices.~~

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

#### ~~Sec. 4.05. Age limitations.~~

~~No individual shall be barred from EBCI employment because of age if an individual is otherwise qualified. The Tribe may set forth a maximum age for a specific position if these requirements are based on occupational qualifications essential to maintaining safe and efficient departmental operations.~~

~~The minimum age at which individuals may be employed is eighteen (18) years of age. Exceptions to this minimum age requirement include temporary, summer youth, or other specific project employment. In addition, certain positions may require a higher age requirement.~~

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

#### ~~Sec. 4.06. Employment of persons with disabilities.~~

~~The EBCI supports and encourages employment of persons with disabilities. The person must meet the necessary requirements to perform the essential functions of the position. The EBCI will make every reasonable effort to remove physical and attitudinal barriers that prevent the employment of persons with disabilities.~~

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

~~Sec. 4.07. Subversive activity.~~

~~No employee shall advocate or become a member of any organization that advocates the unlawful disruption of the constitutional form of government of the EBCI, or of any organization that seeks by force or violence to deny other persons their rights under the Constitution of the United States.~~

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

~~Sec. 4.08. Political activity.~~

~~No employee shall:~~

- ~~• Use official authority or influence to interfere with or affect the results of an election or nomination;~~
- ~~• Solicit or discourage political activity of anyone who has business within the employee's program;~~
- ~~• Directly or indirectly coerce contributions from subordinates in support of a political party or candidate;~~
- ~~• Engage in political activity while on tour of duty;~~
- ~~• Use EBCI funds, supplies, equipment, or property in any political activity; or~~
- ~~• Use influence for political gain.~~

~~Employees who are working in federally funded programs may engage in limited political activities as outlined in the Hatch Act Reform Amendments of 1993, 5 U.S.C. 7321—7326 (copy on file at Employment Office Library). All employees subject to the Hatch Act shall thoroughly familiarize themselves with the limitations set forth in the law.~~

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

~~Sec. 4.09. Maintenance of personnel files.~~

~~An official personnel file on each employee shall be maintained in the Employment Office. The following information may be included in the personnel file: signed receipt for the personnel policies and procedures, employee benefits information, school transcripts, diplomas, employee appraisals, reference letters, records regarding other employees, reports from former employers or investigative agencies, records of employment related investigations involving the employee, documents prepared in conjunction with any grievance, records of any corrective actions, licensure, competency, certifications, and any other materials required for accreditation, and the information they contain is restricted and confidential. Documents that may raise privacy concerns for the employee or for the provider of the document, including medical records, negative reference letters, and investigative reports with individually identifiable information, shall be maintained in a file that is separate from the personnel file.~~

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

~~Sec. 4.10. Personal data changes.~~



~~Each employee is responsible for keeping personal information accurate by promptly notifying the Employment Office of changes in personal data, such as:~~

- ~~• Personal mailing addresses (including forwarding addresses).~~
- ~~• Telephone numbers.~~
- ~~• Name changes (for example, following a marriage/divorce, with corrected Social Security card).~~
- ~~• Divorce or legal separation.~~
- ~~• Number and names of dependents.~~
- ~~• Individuals to be contacted in the event of an emergency.~~
- ~~• Educational accomplishments.~~
- ~~• Status reports.~~

~~The employee should first notify their supervisor of the personal information changes and the supervisor shall complete a conversion sheet to be submitted to the Employment Office.~~

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

~~Sec. 4.11. Employment applications.~~

~~The EBCI will accept applications only from citizens of the United States of America or from those with appropriate immigration authorization. Any misrepresentations, falsifications, or material omissions in employment applications, resumes, Employment Security Commission referrals, information, or data may result in exclusion of the individual from further consideration for employment or in termination of employment; in addition, any adverse reference checks, negative employment history, negative information in a background investigation, positive drug test, or revoked or suspended license may affect an individual's eligibility for employment.~~

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

~~Sec. 4.12. Pay advances.~~

~~No pay advances on unearned wages shall be provided.~~

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

~~Sec. 4.13. Use of phone, mail, and office systems.~~

~~The personal use of Tribal telephones (including cell phones) for long distance and excessive use of local calls, as well as the use of mail services (e.g. postage meter, postage stamps), fax machines, and Tribal accounts are not permitted except where permitted by Executive Order, formally approved by the appropriate supervisor, or allowed by established Tribal policy. Tribal employees should not have any expectation of privacy in their use of Tribal computers, phones, etc., and the Tribe reserves the right to monitor such usage from time to time or as needed to prevent abuse. Employees shall be required to reimburse EBCI for any charges resulting from personal use of any of these systems immediately and may be subject to corrective action. Any supervisor, program manager, or deputy who has knowledge of such prohibited use and fails to take immediate corrective measures shall be subject to corrective action and/or an adverse performance evaluation.~~

~~Telephone, mechanical or electronic eavesdropping or recording is prohibited, unless required for law enforcement purposes.~~



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

~~Sec. 4.14. Tribal/Personal Cellular Phone Usage Policy.~~

~~The Tribal Cellular Phone Usage Policy included in the Fiscal Management Policy shall be recognized as the official policy for cellular phone usage. Use of personal cell phones, including texting, is prohibited except during designated breaks and lunch time.~~

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

~~Sec. 4.15. Internet, E-Mail, and Tribal Information System Usage.~~

~~The Internet, E-mail, and Tribal Information System Usage Policy included in the Information Technology Policies shall be recognized as the official policy for Internet, e-mail and Tribal information system usage.~~

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

~~Sec. 4.16. Use of equipment and vehicles.~~

~~Each program manager shall have the responsibility of maintaining accurate and current inventory of all EBCI property assigned to that department as well as a monitoring system (for example, a vehicle mileage log book) to ensure proper use of Tribal property. The manager shall be responsible for making sure that Tribal property is not abused or mistreated in any way.~~

~~At no time shall employees use EBCI property, including vehicles, for personal use or gain. In addition, while driving or seated as a passenger in a vehicle, employees are required to use seatbelts and to ensure that all others in the vehicle are using seat belts. At no time should employees allow unauthorized individuals to be a passenger in a Tribal vehicle unless expressed permission is granted by the appropriate supervisor or manager. (An "unauthorized" individual includes a person who is not employed by the Tribal program or whose presence in the vehicle is not needed to accomplish the program's mission.) Refer to the Tribal Fleet Policy for additional guidance on vehicles and maintenance.~~

~~When using EBCI property, employees will exercise care, perform required maintenance, and follow all operating instructions, applicable Federal, Tribal, or State safety standards, and guidelines. Any citations received by an employee while driving a Tribal vehicle should be reported to the appropriate supervisor immediately.~~

~~Employees are responsible for the proper care and maintenance of all Tribal property, materials or written information issued to them, in their possession, or under their control. Employees must return all EBCI property, materials and written information to their supervisor immediately upon completion of tasks, upon termination of employment, upon promotion or transfer to other Tribal employment, or otherwise upon any supervisor's request. Documents prepared or received during an employee's tour of duty, and materials obtained from training opportunities paid for by EBCI, are among the items defined as "EBCI property", and shall remain housed at the program or department where promulgated or received. Upon written request to and permission from the supervisor, copies or replicas of non-confidential, non-sensitive EBCI property (such as documents or training materials) may be retained by the employee, but not in a manner that leaves the program or department where they were promulgated or received, deprived of the property. Violation of this section is a type of offense for those who continue in Tribal employment. Subject to applicable federal regulations, EBCI may withhold from the employee's pay the cost or replacement costs of any items that are not returned as required. EBCI may also take appropriate legal action to recover or protect Tribal property.~~

~~Personal or other unauthorized use of EBCI property shall subject the employee to corrective action and/or an unfavorable performance evaluation. Any supervisor, manager, director or Deputy Officer who~~



~~has knowledge of such personal use by an employee and who fails to take corrective action against such employee shall also be subject to corrective action and/or an unfavorable performance evaluation.~~

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

~~Sec. 4.17. Attendance and punctuality.~~

~~EBCI employees will be reliable and punctual in reporting to their work stations. The standard tour of duty is five days, 40 hours, Monday through Friday. The standard workday will begin at 7:45 a.m. and continue until 4:30 p.m. (specific Tribal departments, including but not limited to the Police, Fire and EMS Departments, maintain alternative tours of duty.) The appropriate supervisor or manager may authorize an alternate schedule, known as a flex schedule, for an employee or group of employees, so long as that action does not conflict with program needs.~~

~~The lunch break will be 45 minutes and will be arranged to suit program needs. Morning and afternoon work breaks of 15 minutes each shall be scheduled by the appropriate supervisor according to work demands.~~

~~NOTE: Compensatory time (comp time) and flex time are not allowed.~~

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

~~Sec. 4.18. Personal appearance.~~

~~Dress, grooming, and personal cleanliness standards contribute to the professional image presented to customers, visitors, and colleagues.~~

~~While conducting EBCI business, employees are expected to present a clean, neat and professional business-like appearance. They should dress according to the requirements of their positions as determined by the appropriate supervisor or safety officer. The wearing of facial/body piercings, including but not limited to eyebrows, nose, lip and tongue, is prohibited during the tour of duty. This prohibition does not include ear piercings which will be at the discretion of the individual program.~~

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

~~Sec. 4.19. Confidentiality of personnel file; other confidential employee information.~~

~~A. Requests for employee information.~~

~~Conditions for release. All employee files are confidential and disclosure shall be limited to appropriate Tribal staff, such as supervisors, managers, directors, Deputies, the Executive Committee, members of the Employee Appeals Committee, hiring officials and other appropriate officials from other Tribal entities, the Employment and Benefits Office, and Legal Department. However, in the event an employee may be in a potentially dangerous situation, the supervisor shall disclose certain confidential information in order to protect the employee. In addition, information may be disclosed as follows:~~

~~Verification of employee information. In response to an outside party's written request (with authorized release) for verification of employee information, EBCI will only verify the following information:~~

- ~~• Dates of employment;~~
- ~~• Employee's position or job title; and~~
- ~~• Length of service.~~

~~Information needed in civil or grievance proceedings.~~ EBCI reserves the right to disclose employee information in defense of any personnel-related complaints.

~~Medical emergencies.~~ EBCI will disclose employee information if necessary to respond to an apparent medical emergency.

~~Disclosure authorized by an employee.~~ Any disclosures beyond those described above will require the employee's written consent.

~~B. Contractors.~~ Any contracting firm that performs personnel-related services, such as payroll processing or benefits administration, will have access to employee information needed to perform these services. All contractors will be required to maintain the confidentiality of this information.

~~C. Information disclosure required by law.~~ The EBCI will furnish employee information whenever legally required to do so, including:

- ~~• To comply with a legally valid administrative summons or judicial order, such as a subpoena or search warrant;~~
- ~~• To respond to a government audit or investigation;~~
- ~~• To comply with federal, state or local laws or regulations; and~~
- ~~• To respond to law enforcement agency's request for an employee's home addresses and dates of work attendance.~~

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

#### ~~Sec. 4.20. Disclosure of non-public information.~~

~~Non-public information is confidential (see Section 3.24 for definition of non-public information). An employee may not disclose or utilize non-public information for any reason. If the employee believes it is in the public interest to use such non-public information, that employee shall request permission from the appropriate supervisor. Permission to disclose the non-public information must be given in writing.~~

~~Should an employee be contacted by the press or any outside agency requesting nonpublic information, the request shall be given to that person's supervisor, who will forward it through levels of authority with final approval to be made by the Principal Chief. Nothing in this paragraph shall be read to allow disclosure of confidential patient information in violation of the EBCI Privacy Policy.~~

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

#### ~~Sec. 4.21. Reserved.~~

#### ~~Sec. 4.22. Confidentiality of health plan and patient records.~~

~~All employees must comply strictly with the EBCI Privacy Policy and other applicable privacy policies as established pursuant to HIPAA or the Privacy Act. An employee's failure to be familiar with such policies or inadvertent release of confidential information through spoken, written, or any other means shall be grounds for corrective action. Intentional violations of the EBCI Privacy Policy or other applicable policies shall be grounds for termination. Questions about applicability of the Privacy Policy should be referred to the appropriate privacy officer. A copy of the EBCI HIPAA Privacy Policy shall be made available to the employees by the Benefits Office.~~

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



~~Sec. 4.23. Safeguarding public funds.~~

~~All employees whose duties concern the fiscal responsibility of public funds shall have knowledge of and observe all applicable legal requirements and restrictions, as well as proper accounting/finance policies and procedures. Any employee found to have violated Tribal policy/procedures, or to have misused, misrepresented, or failed in a fiduciary responsibility shall be subject to corrective action, as well as possible criminal prosecution.~~

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

~~Sec. 4.24. Safety and health regulations.~~

~~All employees will observe all rules, signs, and instructions relating to personal safety, security, and health regulations. Photo ID badges may be required by some programs.~~

~~EBCI will comply with the Biohazardous Waste Law that limits occupational exposure to blood and other potentially infectious materials. Infectious materials include blood and all other body fluids (such as urine, feces, saliva, etc.). Copies of the Biohazardous Waste Law may be obtained from the Employment Library.~~

~~Employees of Tribal Divisions that have adopted supplemental policies regarding employee health regulations will also be subject to those policies.~~

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

~~Sec. 4.25. No smoking/tobacco use.~~

~~Smoking in Tribal buildings and vehicles is prohibited at all times. This includes smokeless tobacco. Any designated smoking areas outside must be positioned away from the main entrances of the building and away from public view.~~

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

~~Sec. 4.26. Canvassing, gambling pools, soliciting, or selling.~~

~~Employees are prohibited from canvassing, gambling (including, but not limited to conducting game boards, tip boards, etc.), soliciting, selling or other activities for personal gain, while on tour of duty.~~

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

~~Sec. 4.27. Accepting notary fees.~~

~~An employee who is also a notary public may not charge or receive fees for performing notarial acts in connection with their official tour of duty. Acceptance of fees does not apply to notarial acts performed while not on duty.~~

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

~~Sec. 4.28. Visitors in the work place.~~

~~In order to maintain efficiency and safety in the workplace, visitors are not allowed except during designated breaks and lunch periods. Children may be allowed during emergency situations at the discretion of the appropriate supervisor.~~

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

#### ~~Sec. 4.29. Procedures at separation of employment.~~

~~Upon separation of employment from the EBCI, all EBCI property in the employee's possession shall be turned over to the appropriate supervisor. This includes but is not limited to, keys, tools/equipment, vehicles, and personal codes for voice mail, computers, etc. An exit interview is to be conducted by the Employment Office.~~

~~Supervisors shall arrange for an exit interview between the Tribal Employment Office and the separating employee; supervisors shall submit to the Tribal Employment Office a conversion sheet no later than the employee's last day of work or within two work days after termination of employment. The Tribal Employment Office will then notify the Benefits Office so that the Benefits Office can arrange to meet with the employee at the same time.~~

~~At this exit interview, the employee will meet with both the Benefits Office and the Employment Office. The Benefits Office will provide the employee information regarding Tribal benefits and the Employment Office will ensure that the departing employee has surrendered all Tribal property, (including, but not limited to passwords, codes, keys, equipment, documents, etc.) and will ensure that the employee has reconciled any outstanding travel records. Once the Employment Office and Benefits Offices have met with the employee and determined that there are no outstanding issues regarding such things as the return of property or the reconciliation of travel records, the Employment Office will notify the Payroll Office that the employee's final check may be released.~~

~~If, due to extenuating circumstances, the departing employee is not able to appear for an exit interview prior to his/her last day of work, the supervisor should ensure, by coordinating with the Payroll, Employment, and Benefits Offices, that this exit interview is conducted prior to the release of the employee's last paycheck. In such a case, the employee will be required to report to the Finance Office to pick up his/her last check and the Finance Office will coordinate with the Employment and Benefits Offices to make sure the exit interview has been finalized and no outstanding issues exist. Final checks will not be directly deposited in the employee's bank account nor will they be mailed to the employee when outstanding issues exist regarding unreturned Tribal property or un-reconciled travel records.~~

~~In the event the appropriate supervisor has failed to arrange for an employee's exit interview, the Employment Manager will notify the appropriate Deputy so that corrective action can be taken.~~

~~NOTE: Employees must not discard information or files before leaving.~~

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

#### ~~Sec. 4.30. Suspension with pay.~~

~~In instances where serious problems are suspected and facts are obscure, an employee may be involuntarily placed on suspension with pay. This action can be used to determine facts, causes and seriousness of situations and determine appropriate solutions. The decision to suspend is made by the appropriate supervisor and the Deputy Officer. Suspension with pay may not exceed 30 calendar days, unless additional time is required to conduct an investigation and that additional time is approved by the Deputy Officer and the Principal Chief. Suspension with pay is neither a corrective action nor part of the corrective action procedure. Possible results can include such things as exoneration, simple revelations of facts and pertinent information. Finding of policy or standard practice violations or misconduct could subject employees to the corrective action procedure. Employees must leave telephone contact information with their supervisor in order to be available for questions or to participate in the investigation.~~



~~An employee must return to the workplace at any time during the suspension if requested by the supervisor.~~

~~It is the responsibility of the supervisor or manager to notify the Employment Office and the IT Department when anyone is suspended with pay.~~

~~Tribal property or access to Tribal property shall be confiscated or temporarily suspended by a supervisor or manager upon suspension with pay.~~

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

~~Sec. 4.31. Gifts and gratuities.~~

~~EBCI employees shall not solicit or accept anything of economic value as a gift, gratuity, or favor from any person, firm, or corporation, if it could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties, or if the gift was intended to serve as a reward for any official action on their part.~~

~~This shall not apply to such things as recognition of service awards, small promotional items of little monetary value etc. Holiday gift baskets received by program employees in connection with work shall be shared with all program employees. It is not intended to isolate employees from normal social practices such as gifts between friends, associates and relatives as appropriate for certain occasions.~~

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

~~Sec. 4.32. Promotional prizes/contests sponsored by Tribal programs.~~

~~In the event a Tribal program sponsors public prizes and/or contests for promotional purposes, the employees of such program (and the employees of other Tribal programs providing technical assistance with the event) as well as immediate family members and household members of such employees, are not eligible to participate, unless the prizes are random door prizes and the ability to influence the selection of the winner by the program employee is remote, if not impossible.~~

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

~~Sec. 4.33. Levels of organizational authority.~~

~~Organizational structure and levels of authority are established by order of the Principal Chief who shall approve, maintain and revise as necessary, an organizational chart for the Tribe and for each of its programs and divisions, subject to Tribal Council approval. Normal communications flow upward and downward through these organizational levels of authority, which unless unusual circumstances exist, employees are expected to follow.~~

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

~~Sec. 4.34. Open door policy.~~

~~The Tribe recognizes that a forum is needed to address problems that can arise. Therefore, EBCI has adopted an open door policy. In such cases, an employee is encouraged to bring such issues in writing first to the appropriate supervisor and if necessary up the supervisory level of authority as far as the Executive Committee if necessary to obtain a fair resolution to the problem.~~

~~First, an employee must submit his/her concern, grievance or issue in writing to the appropriate supervisor for consideration. The supervisor must reply, in writing, to the employee within five business~~



days from receipt of employee's written submission. If the employee is dissatisfied with the supervisor's response, the employee must forward his/her written submission to the next level of authority (manager) for further consideration. The manager must reply, in writing, to the employee within five business days from receipt of employee's written submission. If the employee remains dissatisfied, the employee must follow the above procedure and forward the written submission to the director level, then to the deputy level and lastly to the Executive Committee, which will have the final consideration and whose decision will be binding on the employee. While the Executive Offices maintain an open door policy available to all Tribal employees, employees must follow the above described procedures to afford their superiors an opportunity to address the Employee's concern, grievance or issue. Employees are also welcome to express, in writing, any employment policy-related concerns to the Tribal Employment Office. (NOTE: This section does not apply to a corrective action taken by a supervisor. In such a case, employees must follow the appeals procedures set forth in Article 14).

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

#### ARTICLE 5. ~~SELECTION, APPOINTMENT, AND SEPARATION~~

##### Sec. 5.00. ~~Selection.~~

Persons will be selected for employment on the basis of education; qualifications; certification; Indian employment preference eligibility; and work experience required for the position as defined in the position description (see section 4.00). Seniority, performance appraisals, etc. will be considered in this process (see section 3.34 and Article 15.00).

Unless filled by a promotion, demotion or transfer in compliance with this Article, all vacant positions, including existing and newly created positions, will be advertised and follow the normal process of hiring as outlined below. Other selection factors that may be taken into account with newly created positions are found under Sections 5.05 through 5.07.

The applicable Deputy Officer shall have the authority to approve the advertising of a position, provided that the position description has been evaluated and assigned a pay level by the Benefits and Compensation Office and the Tribal Council has approved adequate funding for the position. Positions will be advertised for ten (10) days in local publications. After completion of the interview and background review or investigation process, a recommendation to hire will be forwarded by the Deputy Officer and shall be approved by the Executive Committee. See Hiring Procedures as adopted by Executive Order.

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

##### Sec. 5.01. ~~Submission of applications.~~

All applicants for employment must submit an official EBCI application form to the Employment Office. The Employment Office staff shall investigate any statement contained in the application, determine completeness, and determine if the employee meets the minimum qualifications for the position based on the approved job description. Upon completion of this review, the Employment Office will forward the appropriate applications to the appropriate supervisor for interview, reference checks, and other employee selection activities. The Employment Office will have criminal history checks completed on all applicants forwarded to the supervisor and will attach copies of the findings to the application.

Driver's license requirements, with the recommendation of the manager, the Executive Committee will have the discretion to waive the driver license requirement.

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

##### Sec. 5.02. ~~Disqualification of applicants.~~



~~Reasons for disqualification of an applicant from employment consideration by the EBCI may include, but are not limited to, one or more of the following:~~

- ~~• Lacks the minimum qualifications established for the position;~~
- ~~• Is unable to perform the duties of the position as demonstrated through reference and other background reviews;~~
- ~~• Has been found guilty of, entered a guilty plea, entered a plea of nolo contendere or entered an Alford plea to a crime, misdemeanor or felony, that raises doubt or concern as to the suitability of the applicant to assume the responsibilities of the position, or is one of the offenses listed in Cherokee Code § 95-67 for applicants seeking positions involving routine involvement with children under the age of eighteen (18);~~
- ~~• Has made a false statement of material fact in the application;~~
- ~~• Has used or attempted to use bribery to secure an advantage in the appointment;~~
- ~~• Has failed to submit a completed application or has failed to meet the established time limits for submittal;~~
- ~~• Has refused to take a pre-employment drug test or failed to pass said test; or~~
- ~~• Has an adverse employment or other record or history, as determined by EBCI through a pre-employment background investigation.~~
- ~~• Has a conflict as outlined in Sections 4.02 or 4.03.~~

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

#### ~~Sec. 5.03. Employment and appointment.~~

~~These policies and procedures clarify the definitions of employment classifications so employees understand their employment status and benefit eligibility. All legally mandated benefits apply upon the first day of employment. All other benefits, such as leave and insurance, have established guidelines for eligibility. For benefits purposes, if there is a discrepancy between what is outlined below and what is contained in the plan documents, the provisions of the plan documents will control.~~

- ~~A. *Regular full-time employees.* Regular full-time employees are those hired to fill a regular position which requires them to work the equivalent of a full-time schedule of 40 hours per week on a regular basis that have completed the required probationary period, except for employees described in subsection C, below.~~

~~Regular full-time employees are entitled to accrue annual and sick leave subject to successful completion and documentation of a probationary period of 90 days (see section 5.04). In general, regular full-time employees may, upon completion of the applicable eligibility period, participate in the EBCI's health and welfare benefit package (such as health, dental, vision, disability and life insurance as well as the EBCI retirement plans (i.e., EBCI Retirement Plan and EBCI 401 (k) Plan), subject to the eligibility, service, and vesting requirements outlined in the plan documents. (See plan documents for specific list of excluded employees. For example, certain categories of employees, such as, but not limited to, employees participating in another defined benefit plan sponsored by or contributed to by the Tribe will not be eligible to participate in the EBCI's defined benefit Retirement Plan.)~~

- ~~B. *Regular part-time employees.* Regular part-time employees are those hired to fill a regular position which requires them to work a regular schedule of at least 20 but less than 40 hours per week who have completed the required probationary period, except for employees described in subsection C, below.~~

~~Regular part-time employees are eligible for leave on a pro-rated basis upon completion and documentation of a probationary period of 90 days (see sections 7.01 and 7.02); eligibility for~~



~~other benefits such as health, dental, vision, disability and life insurance, as well as service credit under the EBCI Retirement Plan are determined by the provisions of the applicable plan document(s) and may require employees to work a certain minimum number of hours per week or per year, in general, unless specifically excluded by the Plan Document, regular part-time employees are eligible to participate in the EBCI 401 (k) plan.~~

- ~~C. *Employees not considered "regular" employees.* Non-regular employees include temporary or interim employees (i.e., employees hired only for a specified time period to perform a specific job or task on behalf of the employer), student interns, seasonal employees (i.e., an employee who customarily works for the employer for not more than five months during a calendar year), and employees hired through certain training programs (except police trainees), including, but not limited to WIA, OJT, Native Employment Works, Welfare to Work, Summer Youth Program, etc.~~

~~Non-regular employees are not hired through the usual hiring procedures, but must pass a pre-employment drug test and be subject to random testing. Non-regular employees are generally not covered by Tribal benefit plans; have no rights under Sections 5.06 or 5.07; and are not eligible for promotion under Section 5.08. Non-regular employees are employees at will and have no rights under Articles 13 and 14. All legally mandated benefits (i.e. FICA, Worker's Compensation) are provided. Guidelines for leave, including holiday, personal, education, funeral, administrative, etc. are found in individual program guidelines and may be different from provisions found in Article 7 of this policy.~~

- ~~D. *Political appointments.* Political appointments are positions filled by appointees of the Principal Chief, Vice Chief and Tribal Council, of the EBCI. These appointees are considered regular full-time employees for the purpose of receiving benefits (upon completion of the applicable eligibility period) for the length of the incumbent's political term or until termination of employment. Political appointees have no rights under Sections 5.05, 5.06, 5.07 neither of Article 5, nor under Articles 13 or 14.~~

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

#### ~~Sec. 5.04. Probationary period.~~

- ~~A. Individuals selected for regular positions shall, (unless terminated sooner), serve a probationary period for 90 calendar days and complete the Talent Management Program (TMP). Upon completion of the 90-day period and the TMP, if the employee's performance appraisal meets the required standard of work, the employee will be given regular status.~~
- ~~B. Probationary periods may not be extended, unless, for emergency reasons, the new employee is authorized by his or her supervisor to take time off from work prior to the completion of 90 days, the accrual of the 90-day period will continue upon the employee's return to work, provided this extension is authorized by the Executive Committee and written notification is given to the employee and the Benefits Office no later than the ninetieth day of the original 90-day period.~~
- ~~C. During this 90-day period probationary employees have no rights under Sections 5.05, 5.06, or Articles 13 and 14; will be allowed to accrue annual and sick leave, but will not be allowed to use this leave during the 90-day period. Probationary employees are entitled to holidays and funeral leave. Eligibility for benefits will depend upon the eligibility period outlined in the applicable benefit plans.~~
- ~~D. A performance evaluation shall be conducted prior to the ninetieth day of the probationary period. When the employee successfully completes the 90-day probationary period the employee will be given regular status and the ability to receive benefits. At the completion of the 90-day probationary period, program managers must immediately present to the Employment and Benefit Offices a completed conversion sheet to notify these offices that the employee has completed the probationary period. Failure to do so could interfere with the employee's ability to receive benefits.~~



~~E. A probationary employee's service in the position may be terminated at any time during or at the end of the employee's probationary period. Termination may occur for any reason as determined by the appropriate supervisor and Deputy.~~

~~F. Employees who have completed an initial probationary period and are subsequently transferred, promoted or demoted shall be subject to a performance probationary period for the new position. However, all benefits earned, including those contained in Articles 13 and 14 shall be retained in these cases.~~

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

~~Sec. 5.05. Minimum time on job.~~

~~Regular full time employees shall remain in a position for at least 90 days before they are eligible to apply for another position.~~

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

~~Sec. 5.06. Involuntary separation.~~

~~As a result of work curtailment or budget limitations, or reorganization, the Executive Committee may recommend a reduction in work force resulting from the elimination of positions.~~

~~A. Procedure. The Executive Committee shall determine the number of employees to be separated and the job classifications to be affected. A plan to accomplish the reduction will be prepared, and affected employees will be given at least 14 days (and if possible 30 days) notice of the plan.~~

~~Prior to a reduction in force, or reorganization, efforts will be made to transfer regular employees to vacant positions at the assigned pay grade for that vacant position. If the assigned pay grade is not available (the same) for the vacant position, an increased pay grade for an employee that meets the job qualifications will not trigger the advertisement requirement in Section 5.08(B)(3).~~

~~Executive Committee will make every reasonable effort to retain affected regular employees. Reasonable notice shall be given based upon circumstances and assistance provided in obtaining unemployment compensation and other matters affecting employees.~~

~~In the event of a reduction in force:~~

- ~~1. Non-regular employees and then part time regular employees within the affected job classifications will be separated first.~~
- ~~2. Regular employees who are still in the probationary period within the job classification will be next separated.~~
- ~~3. Regular full-time employees within the job classification will be the last considered for separation.~~

~~When separating regular employees, efforts are to be made to do so using departmental seniority by job category. (When seniority is equal, Indian Preference will apply.) Exceptions to this may be necessary in order to maintain necessary certification, experience levels and the integrity of the department so as not to compromise its effectiveness. Exceptions are to be documented, reviewed by the Deputy Officer and the EBCI Employment Office Manager, and shall be made part of the total reduction in force plan that is subject to final approval by the Executive Committee.~~



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

~~Sec. 5.07. Reinstatement to duty.~~

~~Any regular employee terminated by involuntary separation as a result of reduction in work force, work curtailment or other re-organization or any employee employed through the WIA or Native Employment Work grant programs will receive preferential treatment if the same or a similar position for which the employee is qualified becomes available within 12 months of the employee's termination of employment and prior performance evaluations support reinstatement. Reinstatement is granted at the discretion of the Executive Committee and the usual hiring procedures will not apply except for background checks and drug testing. Any exceptions to the required qualifications of the employee shall be at the discretion of the Executive Committee. It shall be the responsibility of the Deputy of the Division to identify the employees subject to this section and notify the Employment Office with the names of the employees. Employees hired as a result of the WIA or Native Employment Work program shall not be entitled to leave status and will be subject to the 90-day probationary period.~~

~~Any regular employee who is terminated by involuntary separation or who voluntarily separates from employment as a result of reduction in force or reorganization, or who voluntarily separates from employment, shall, upon rehire, be entitled to his/her prior seniority and leave accrual status as long as the break in service does not exceed one year.~~

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

~~Sec. 5.08. Other personnel actions.~~

~~A. Acting assignment. A regular employee may be temporarily assigned to a higher rated position to meet immediate program needs while a position is advertised. This assignment must have the written concurrence of the Deputy Officer and the Executive Committee. If the assignment exceeds 30 days, the individual may be eligible to receive the salary of the assigned position until the assignment is completed. Such assignments shall not exceed 180 days.~~

~~B. Promotion.~~

~~(1) A promotion is defined as a move from one position to one of a higher level of authority, responsibility and salary grade under the following circumstances:~~

~~(a) A higher graded position within the same division becomes available and a regular employee who meets the promotion criteria is placed in that position by the program manager in consultation with the director and Deputy.~~

~~(b) The duties and responsibilities assigned to a regular employee's current position have increased and an upgrade of that position is appropriate based on the proper position evaluation and budget procedures. The regular employee who is in that position and performing the functions may be promoted by the Program Manager, with the approval of the appropriate Deputy.~~

~~(Note: If the employee who is in the position does not meet the applicable promotion criteria, then management may advertise the position and the employee may be considered for selection if qualified for the upgraded position, even though the employee was not eligible for promotion.)~~

~~(c) A part-time regular employee position is changed to a full-time position. The regular employee who is currently in the part-time position may be promoted into the full-time position by the Program Manager, with the approval of the appropriate Deputy.~~

~~(2) When any of the situations listed above arise, the program manager, in consultation with the Deputy, may initiate the promotion of a regular employee. This action is purely discretionary on the part of management and an employee's ability to meet promotion criteria does not entitle~~



that employee to a promotion. In deciding whether to promote an employee into a position, the following criteria shall be considered:

- (a) ~~Job requirements:~~ Factors such as training and certifications required or desired of persons carrying out the responsibilities of the vacant position.
- (b) ~~Job compatibility:~~ Whether or not a person is suited for the job and responsibilities or environment associated with the position being sought. Issues such as health, public relations and communication skills, the ability to work in harmony with others, etc., are some examples to be considered.
- (c) ~~Organizational needs:~~ In all cases, the needs of the organization must be met. Every effort will be made to promote fairness and employee growth while considering the needs of the Tribe.
- (d) ~~Employee needs:~~ The Tribe recognizes the knowledge and expertise one can often acquire through years of experience and will take such factors into consideration in making decisions in matters of promotions. Although employees requesting promotions will be considered in order of seniority, seniority alone cannot guarantee promotion. The complexity and requirements of many EBCI positions must also be considered as outlined above.
- (e) ~~Minimum requirements:~~ In all cases, the employee will only be eligible for promotion if:
  - (i) ~~The employee is a regular employee and meets the minimum qualifications of the available position;~~
  - (ii) ~~The employee has not had more than one corrective action taken within one year while employed in their current position;~~
  - (iii) ~~The employee has received overall ratings in all performance evaluations of at least "meets expectations"; and~~
  - (iv) ~~In the case of a promotion under subsections (B) (1) (a) or (b) of this section, the employee has been employed in the current position for at least one year. This last requirement does not apply to promotions under subsection (B) (1) (c).~~
- (f) ~~Any determination that an employee meets the promotion requirements must be verified by the Employment Office prior to implementing the promotion.~~
- (g) ~~Once the promotion requirements as specified in this section are met, Indian Preference does apply.~~

- (3) ~~This promotion policy does not apply to openings for a position of manager, director, or Deputy Officer. These positions must first be advertised before being filled. Also, temporary/interim employees, seasonal employees, employees hired through Tribal Training programs (such as WIA, Native Employment Works, but not police trainees), student interns, and political appointees are not eligible for promotion. Employees who are eligible for a promotion due to a re-classification of their job description can be promoted without the advertisement of their position unless that position is re-classified as a manager, director, or deputy officer position.~~

~~G. Demotion. A demotion is defined as a move from one position to another that is assigned a lower level of authority, responsibility and salary grade. While it is not a common practice, the EBCI may find it appropriate to demote an employee as a result of unusual circumstances such as:~~

- (1) ~~When an employee becomes partially disabled, yet able to perform in a lower level position with less stringent physical demands that will not jeopardize employee or coworker safety.~~
- (2) ~~When a current position is reclassified due to a change in assigned duties and responsibilities.~~
- (3) ~~When the employee receives an unsatisfactory performance evaluation after receiving a written reprimand and the Deputy Officer determines that demotion will resolve the performance issues.~~
- (4) ~~When the employee requests and is granted a demotion.~~



~~Before a demotion may be implemented, the Employment Office must verify that an available position exists. No employee may be demoted without prior authorization from the Deputy Officer and the Executive Committee. Deputy Officers may be demoted by the Principal Chief. Demotions are subject to appeal.~~

~~D. *Transfer.* A transfer is defined as a move from one position to another, within or outside an employee's current division that is assigned the same or lower level of authority, responsibility and pay grade. Transfers may be voluntary or involuntary as long as the employee meets the minimum requirements of the position into which the employee is being transferred. All transfers must be supported by substantial justification will be subject to the approval of the relevant Deputy Officer and the Executive Committee. In the event of a reduction in force or reorganization, affected employees may be transferred into any vacant position for which they meet the minimum requirements at the pay grade for that vacant position. Transfers are not subject to appeal and the procedures outlined in Article 14 do not apply.~~

~~E. *Employment records and background checks.* All employment records pertaining to an employee, including corrective actions and criminal background checks, will be permanently retained in the employee's file at the Employment Office. Should an employee separate from the Tribe and then subsequently apply for reemployment, the Employment Office will complete a criminal history check of that employee for the separation period as part of the application process.~~

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

#### ~~ARTICLE 6. PAY AND AWARDS~~

##### ~~Sec. 6.00. Pay scales.~~

~~*Policy.* It is the policy of EBCI to administer pay in such a manner as to attract, motivate and retain the most highly qualified personnel available. EBCI will evaluate positions in a consistent manner and place them in an appropriate pay structure that is competitive within local community and region. The EBCI intends to compensate each employee on the basis of his or her performance and contribution to the accomplishment of EBCI's objectives and to provide incentives toward individual growth through a merit increase program. [Note: See Section 6.04 for pay increase policies and procedures.]~~

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

##### ~~Sec. 6.01. Pay status.~~

~~A regular employee is in pay status when:~~

- ~~• Working;~~
- ~~• On recognized holidays; or~~
- ~~• Using authorized leave.~~

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

##### ~~Sec. 6.02. Overtime and other pay issues.~~

~~A. *Overtime.* Overtime is paid on the regular payday for the pay period in which the overtime is worked. The EBCI does not allow compensatory time (comp time) or flex time to be granted in lieu of overtime compensation.~~

- ~~(1) *Non-exempt employees.* Unless an employee's personnel file contains a determination that the employee is exempt based on the criteria set forth in the FLSA and its regulations, the~~