

CHEROKEE COUNCIL HOUSE  
CHEROKEE, NORTH CAROLINADate: DEC 07 2017ORDINANCE NO. 103 (2017)

- WHEREAS, the EBCI recognizes that employee rights and protections are vital to the success of the Tribe and the surrounding community; and
- WHEREAS, Chapter 96 of the Cherokee Code, titled Tribal Employees, should be amended to include an employee Bill of Rights to better express certain rights and protections for Tribal employees; and
- WHEREAS, the purpose of codifying an employee Bill of Rights is to demonstrate the Tribe's commitment to providing a safe and positive work environment for its employees; and
- WHEREAS, employment with the tribal government is a public service and the public deserves stability and predictability in the administration of the public services performed by Tribal employees and supported with Tribal funding; and
- WHEREAS, every new administration should be required to meet certain standards and respect Tribal policies and procedures promoting security in employment and to provide continuity in the provision of public services.

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that C.C. §§ 96-4, 96-7, 96-8 and 96-9 shall be amended as provided below, and two new sections shall be added to Chapter 96, identified as C.C. §§ 96-10 and 96-11, to express an Employee Bill of Rights and to express in Tribal ordinance further protections for Tribal employees.

*C.C. Sections 96-4, 96-7, 96-8 and 96-11 are amended to read as follows:*

Sec. 96-4. - Definitions.

The following definitions shall apply to sections 96-4—~~96-9~~ 96-11:

- A. *Adverse employment action* shall mean showing a retaliatory action that has a detrimental and substantial effect on the terms, conditions, or privileges of a covered employee's employment, or required the covered employee to work in a discriminatorily hostile or abusive work environment. A change that is merely contrary to a covered employee's interest or liking is insufficient.

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

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~~ 96-11 shall be disciplined up to and including discharge.

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 ~~96-5—96-9~~ 96-4 – 96-11 may bring a civil action against the Tribe or the Tribal Entity's officer or employee who committed the violation.
- B. The Eastern Band of Cherokee Indians is a sovereign nation, immune from suit but limitedly waives sovereign immunity for Cherokee Code Section 96-8(~~4~~A) when the suit is brought in the Cherokee Court.
- C. The civil penalty for such violation shall not exceed \$5,000.00.
- D. Such action must be filed no later than one year after the date the covered employee files a complaint with the Office of Internal Audit.



Sec. 96-9. - Rules.

The Office of Internal Audit may adopt rules needed to implement Sections 96-4—~~96-9~~ 96-11 pursuant to the provisions in Cherokee Code Section 117-10.

*The following new sections 96-10 and 96-11 are added to read as follows:*

Sec. 96-10. Employee bill of rights.

1. All employees should be treated with honesty and respect.
2. All employees have the right to regular and constructive communication from their supervisor and the EBCI.
3. All employees have the right to a fair wage.
4. All full-time employees have the right to health care benefits.
5. All employees should have a workplace free of harassment.
6. Employees should have a workplace consisting of good working conditions where safety is paramount and the employees have the resources to perform their job duties.
7. Employees have the right to receive the training expected for their position.
8. Employees have the right to learn through ongoing training and education so that employees can perform at a higher level.
9. Employees have the right to know the EBCI'S expectations of the employee and the employee's progress toward those expectations.
10. Employees have a right to a grievance process if there are problems and issues on the job.
11. Employees have the right to recognition and praise for a job well done.
12. Employees have the right to have a balance between work and life outside work.

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

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

BE IT FINALLY ORDAINED 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*