

WAGANAKISING ODAWAK STATUTE 2008-009
FAIR EMPLOYMENT STATUTE

SECTION I. PURPOSE AND TITLE

The Little Traverse Bay Bands of Odawa Indians, in preserving tribal heritage while adapting to the present world, has established the Tribal Government Administration, and other commercial enterprises, including the Odawa Casino Resort and other ancillary enterprises to generate governmental services and revenues to promote health, education, Anishinaabe culture, safety and welfare of the Tribe and Tribal Citizens. Each employee of the Tribal Governmental Administration and the Odawa Casino Resort and ancillary enterprises is an intrinsic part of the Tribe's future and its success for future generations. Based on traditional cultural values, Little Traverse Bay Bands of Odawa Indians creates this Statute to ensure fair employment rights and the exercise and enforcement of such rights.

SECTION II. DEFINITIONS

1. *“Employee, Individual Contributor, or Team Member”* means an individual employed by the Little Traverse Bay Bands of Odawa Indians including Tribal Government Administration, commercial entities and the Odawa Casino Resort and ancillary enterprises and activities beginning on the first day of work and after the employment process and issuance of a temporary gaming license. The first ninety (90) days and up to a maximum of one-hundred and eighty (180) days of employment shall be considered an “Introductory Period.” Independent contractors are excluded.
2. *“Employer”* means all departments and agencies of the Tribal Government Administration and commercial entities of the Little Traverse Bay Bands of Odawa Indians, including the Odawa Casino Resort and ancillary enterprises and activities.
3. *“Indian Gaming Regulatory Act”* means 25 U.S.C. §§ 2701-2721.
4. *“Management”* means any individual employed by the Tribal Government Administration, commercial entities, including the Odawa Casino Resort and ancillary

enterprises and activities who has the authority, acting in the interest of Tribe, to cause another employee to be hired, transferred, suspended, laid off, recalled, promoted, discharged, assigned, rewarded or disciplined, either by taking such action or by recommending it to a superior; or who has the authority and responsibility to direct other employees. The exercise of this authority is not of a merely routine or clerical nature, but requires the exercise of independent judgment.

5. “*Odawa Casino Resort*” means the gaming enterprise, including related hotel and restaurant services and ancillary enterprises and activities, of the Tribe located at on near 1966 South US Hwy 31, Petoskey, Michigan, wherein the Tribe operates Class II and Class III gaming to generate governmental revenue for the Tribe pursuant to the Indian Gaming Regulatory Act.

6. “*Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians*” means “*areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat.621.*” Little Traverse Bay Bands Constitution, Article V(A)(1)(a).

7. “*Tribal Government Administration*” the operations and employees of the Tribal Government that provides for inherent self-governing authority as a federally recognized Indian tribe through its governmental activities expressly recognized or supported by Congress, including, but not limited to (1) the provision of health, housing, education, and other governmental services and programs to its members; (2) and the exercise and operation of its administrative, regulatory, and police power authorities within its territorial jurisdiction.

8. “*Tribe*” means the Little Traverse Bay Bands of Odawa Indians.

SECTION III. FAIR EMPLOYMENT RIGHTS TRIBUNAL

1. The Tribal Council hereby creates the Fair Employment Rights Tribunal (FERT) and its membership shall consist of three (3) members and such alternates as necessary, nominated by the Executive and appointed for a set term by Tribal Council motion and majority vote at a regularly scheduled Tribal Council meeting.

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2. The Tribal Council shall establish a reasonable hourly rate and cost reimbursement schedule to compensate the Fair Employment Rights Tribunal Members, (FERTM).
3. FERTM shall serve as independent contractors for the Tribe and shall not be under any direct supervisory authority by the Tribal Council, Executive or Tribal Judiciary.
4. The FERT shall have the jurisdiction to hear charges of violations of rights afforded by this Statute within the confines of Tribal employment for employees of the Little Traverse Bay Bands of Odawa Indians including violations by third-party vendors.
5. The FERT shall not have jurisdiction over limitation of employment based on economic necessity, such as lessening of hours of work, demotions and/or re-organization or restructuring, provided that business decisions are fair and equitable criteria including:
 - a. Equal treatment – Team Members shall be considered for layoff without regard for sex, race, color, age, religion, national origin, sexual orientation, disability, or veteran status.
 - b. Introductory Period – In cases of restructuring or reduction in force, employees who are in their initial 90 day introductory status and are in the job classification(s) identified within the department specified for reduction in force shall be terminated. They will have no recall rights.
 - c. Skills and Abilities – a Team Member who does not possess the necessary skills and abilities required to perform the duties for the continued operation of the department shall be selected as an affected employee.
 - d. Performance – the average of the overall ratings on the three most recent written performance appraisals within the department submitted to the Human Resources Department, as well as other performance-related documents on department file shall be considered in selecting impacted employees.
 - e. Length of Service with the Company – the employee’s length of continuous service to the Company shall be considered in selecting impacted employees. The employee(s) with the longest length of service shall be affected last after consideration of the above items.

- f. Employees on Approved Leave of Absence – an employee on any approved leave of absence during an impacted period may be affected in accordance with the above considerations.
6. The FERT shall not have jurisdiction over disciplinary actions that deprive a person of employment through involuntary termination or demotion for cause.

SECTION IV. FAIR EMPLOYMENT RIGHTS REPRESENTATIVES

1. Fair Employment Rights Office (FERO) is an independent administrative agency representing interests of the Waganakising Odawak, a sovereign, self-governing people who follow the Anishinaabe Traditions, Heritage and Cultural values.
2. The FERO shall hire Fair Employment Rights Representative(s), (FERR) to investigate complaints of violations of this Statute within the statutory jurisdiction.
3. Employees must follow any administrative chain of command prior to addressing their complaint with the FERR. Before an employee may file a charge of violation, he or she must first exhaust any administrative remedy available through policies and/or procedures including employee handbooks. The FERO is not a remedy of first resort.
4. To begin the process, a charge of violation of this Statute may be filed by any person who believes that he or she has been subject to an unlawful employment rights violation and may file a charge of violation under oath with the FERO, that sets forth the facts of alleged violation, provided that such a charge must be filed with the FERO not more than 180 days after the alleged act of unlawful employment violation. Charges for violation that involve a disciplinary action resulting in an involuntary termination or demotion for cause must be filed within 30 business days of the disciplinary action.
5. During an investigation of charges of violation, the FERR represents neither the complainant nor the responding party, but instead represents the best interest of maintaining the cultural values of the Little Traverse Bay Bands of Odawa Indians as set out in this Statute.

6. The FERR shall answer questions regarding possible charges of violation, provide advice regarding the filing of a charge of violation and may offer other alternatives, as appropriate to address the complainants concerns.
7. The FERR shall have subpoena powers to investigate a charge of violation of this Statute.
8. Every employee enjoys the right to be free from retaliation against an individual for filing a charge of violation, participating in an investigation, or opposing violating practices;
9. Any charge of violation may be resolved through mediation as recommended by the FERR. Mediation is a form of alternative dispute resolution offered by the FERRO as an option of resolving the charge of violation. The FERRO will provide an informal process in which the opposing parties may negotiate a voluntary resolution of their dispute with the assistance of a FERR, who is not handling the investigation.
10. The decision to mediate a charge of violation shall be completely voluntary and must be agreed upon by both parties. Upon agreement to mediation, the FERR will cease any investigation and allow a reasonable time for mediation to take place. Upon completion of the mediation where it results in either a settlement or withdrawal of the charge of violation, no further action shall take place by the FERR. Settlement is voluntary and only occurs when both the complainant and respondent reach a settlement that both parties are willing to sign. If the charge of violation is not resolved, then the FERR will continue with investigation of the charge of violation.
11. The Mediator shall not make any decision as to the outcome of the charge of violation, but only serve as a mediator to facilitate discussion in an attempt to resolve the charge of violation
12. Both complainant and respondent may have representation at the mediation, including but not limited to an attorney. FERR in the position of mediators do not act as an advocate or offer legal advise to any party.
13. Each participant of the mediation shall sign a statement of confidentiality which includes the following:

- a. Parties understand that mediation is voluntary and that they can withdraw from the mediation at any time. Mediators control the process. Mediators make sure everyone has an equal chance to speak and make suggestions.
 - b. Parties understand that the mediator has no power to decide who wins or loses the case and that the mediator is going to try to help parties reach their own resolution of the complaint.
 - c. Parties understand that the mediator is not going to act as an advocate or offer legal advice.
 - d. Parties understand that they may have an attorney or representative assist them in mediation.
 - e. Parties agree that the purpose of mediation is to settle the complaint.
 - f. Parties agree not to subpoena the Mediator or any observer to testify about what was said in mediation and the mediator agrees not to willingly testify or report anything said or done in mediation unless one of the participants makes a genuine threat of physical harm or commits physical harm.
 - g. Parties understand that any documents prepared for or during mediation are for settlement purposes only and may not be subpoenaed for, or used in, an administrative hearing or trial unless otherwise discoverable.
 - h. Parties understand that participants are not bound by anything said or done in mediation unless and until there is a written agreement to do so.
 - i. Parties understand that they may reach a confidential agreement that may or may not be submitted to FERO. If an agreement is kept confidential from FERO, the complainant must sign a withdrawal form to close the complaint.
 - j. Mediation settlements are no-fault settlements. When a written agreement is reached in mediation, neither party admits any fault or violation of the law.
14. FERR investigations shall start with submitting a copy of the charge of violation to the employer that contains allegations of the charge.
15. The FERR shall compile any information obtained from the investigation into a report that contains the following within seventy (70) days from the filing of the initial charge of violation:

1. Substance of complaint, including the name of the filing employee and the allegations of discrimination.
2. Persons interviewed.
3. An initial determination of whether there is reasonable cause to believe that a violation of this Statute has occurred.

16. If the Report finds reasonable cause to believe that an unlawful employment action in violation of this Statute has occurred, and mediation has not been effective, then the FERR shall submit the charge of violation to the Fair Employment Rights Tribunal on behalf of the Complainant.

17. Both complainant and respondent may have representation at the Tribunal, including but not limited to an attorney.

SECTION V. Remedies before Fair Employment Rights Tribunal

1. Any charge of violation must be filed with the FERT within one-hundred and eighty (180) days of the alleged violation.

2. Both complainant and respondent may have representation at the Tribunal, including but not limited to an attorney.

3. In any action filed under this Statute, the Tribunal may grant the remedies set forth herein.

a. *Equitable Remedies.* If the Tribunal finds that unlawful employment rights violation occurred, its judgment must specify an appropriate remedy or remedies for that violation. The remedies may include, but are not limited to:

- 1) An order to cease and desist from the unlawful practices specified in the order;
- 2) An order to employ or reinstate the employee, with or without back pay or reasonable front pay if reinstatement is unfeasible;

b. *Damages.* If the Tribunal finds blatant unlawful employment rights violations, the tribunal may additionally award compensatory, punitive damages or fines as provided in this subparagraph.

- 1) A complainant may recover compensatory damages against an employer for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.
- 2) A complainant may recover punitive damages against an employer if the complainant demonstrates that the employer engaged in an unlawful employment rights violation with malice or with reckless indifference to the rights of an aggrieved individual protected by this Statute.

c. The total sum of compensatory, punitive damages and/or fines may not exceed \$50,000, excluding the amount for actual loss of wages.

d. When a discriminatory practice involves the provision of a reasonable accommodation, damages may not be awarded when the employer demonstrates good faith efforts, in consultation with the person with the disability who has informed the employer that accommodation is needed, to identify and make a reasonable accommodation that would provide that individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

e. The Tribunal may award reasonable attorney fees and costs in its discretion to the prevailing party.

SECTION VI. UNLAWFUL EMPLOYMENT DISCRIMINATION AND SEXUAL HARASSMENT

1. Recognizing the traditional Odawak value of equality, mutual respect and respect for differences, persons employed or seeking employment with the Tribe enjoy the right not to be unlawfully discriminated against based on religion, race, color, national origin, ethnicity, age, sex, height, weight, familial status, marital status, disability, perceived disability, sexual orientation, arrest or detention records, or other disposition in which a conviction did not result; Waganakising Odawak Statute Fair Employment Statute 2008-009

in the areas of hiring and firing; compensation, assignment, or classification of employees; transfer, promotion, layoff, or recall; job advertisements; recruitment; testing; use of company facilities; training and apprenticeship programs; fringe benefits; pay, retirement plans, and disability leave; or other terms and conditions of employment.

2. Employees enjoy the right to be free from harassment on the basis of religion, race, color, national origin, ethnicity, age, sex, height, weight, familial status, marital status, disability, perceived disability or sexual orientation;

3. Employees have the right to have decision made by Tribe to be free from stereotypes or assumptions about their abilities, traits, or performance of individuals based on certain religion, race, color, national origin, ethnicity, age, sex, height, weight, familial status, marital status, disability, perceived disability or sexual orientation;

4. An employee shall not be denied employment opportunities because of marriage to, or association or participation with, an individual of a particular religion, race, color, national origin, ethnicity, age, sex, an individual with a disability or perceived disability or sexual orientation.

5. All employees have the right to be paid the same as other employees who perform substantially equal work in the same establishment with same skill, effort, responsibility and working conditions other than differentials that are permitted based on seniority, merit, quantity or quality of production, or any other factor other than sex or gender.

6. Employees enjoy the right to be free from unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. In particular if the offense is directly linked to an individual's terms of employment or forms the basis for employment decisions affecting the individual.

7. Employees enjoy the right to work free from interference of sexual propositions, pornography, vulgar language, sexual touching, degrading comments, or embarrassing questions or jokes.

SECTION VII. INDIAN PREFERENCE IN HIRING, PROMOTION AND TRAINING

In the exercise of its inherent self-governing authority over its Citizens and territory, the Tribe ensures that Citizens of the Tribe and other Federally Recognized Tribal Citizens be given priorities for employment and retention of employment over non-Citizens of the Tribe. The provision of such employment preferences for Tribal Citizens promotes the public health and welfare of the Tribe by allowing the benefits of economic development within the territorial jurisdiction of the Tribe to be realized by Citizens of the Tribe and other Federally Recognized Tribal Citizens. Employees shall have all rights provided by *Indian Preference in Tribal Employment Statute*, WOS 2002-04, and any successor law and the *Indian Preference in Tribal Employment Statute* shall supersede any rights provided by this Statute.

SECTION VIII. NOT UNLAWFUL EMPLOYMENT DISCRIMINATION

1. The use of Indian Preference as defined in this Statute shall not be construed to prohibit any action to provide employment preferences to Tribal Citizens or members of the other Federally Recognized Indian Tribes as permitted under federal law 42 U.S.C. 2000e-2(i).
2. Limitations on the employment of minors shall not be construed as discrimination if complying with Tribal and/or federal laws relating to employment of minors.
3. Limitations on assignments of individuals with an infectious or communicable disease is governed by the following:
 - a. In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is published by the United States Secretary of Health and Human Services and which can not be eliminated by reasonable accommodation.

SECTION IX. DOMESTIC LEAVE AND MILITARY LEAVE

1. An eligible employee enjoys the right to take unpaid leave for the following:
 - a. care for employee's child after birth or placement for adoption or foster care;
 - b. to care for the employee's spouse, son or daughter or parent who has serious health condition;
 - c. for a serious health condition that makes the employee unable to perform the occupational functions of the employee's job;
 - d. compulsory military duty or a spouse or parent of a person called to military service lasting longer than thirty (30) days.
2. Upon return from domestic leave or compulsory military duty or any period of active duty in the National Guard or other military reserve units, an employee may not be discharged or subjected to adverse employment action for taking such leave.
3. Upon return from domestic leave or compulsory military duty or any period of active duty in the National Guard or other military reserve units, an employee shall be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
4. Eligibility criteria, procedures and guidelines in the Employee Handbook shall apply but shall not diminish the rights provided by this Statute.

SECTION X. EMPLOYMENT LEAVE FOR VICTIMS OF VIOLENCE

1. An employee who is a victim of domestic abuse, sexual assault, stalking, or other domestic violence-related crimes may take up to thirty (30) days of unpaid leave to seek a restraining order, obtain medical care or counseling, locate safe housing or find or make secure housing arrangements, or seek legal assistance and prepare for or attend court-related proceedings.

2. Upon return from leave, an employee may not be discharged or subjected to adverse employment action for taking such leave.
3. Upon return from leave, an employee shall be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

SECTION XI. EMPLOYEE WAGES AND HOURS

1. Employees shall be paid an hourly wage of not less than the minimum wage established by federal law pursuant to federal Fair Labor Standards Act of 1938, Title 29 of the United States Code, sections 201 *et seq.*, as amended and regulations concerning the FLSA by the U.S. Department of Labor (FLSA). Such wage may be changed by vote of the Tribal Council. Provided that, tipped employees shall utilize the aggregate of hourly rate and tips to identify wage rate.
2. Employee shall not be employed for a workweek longer than forty (40) hours unless such employee receives compensation for the employee's employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which the employee is employed.
3. This provision does not apply to Exempt employees that are employed in a bona fide executive, administrative, or professional capacity, or any other exemption category outlined in the FLSA.
4. For the purposes of interpreting and enforcing this section only, the Tribunal may look to the FLSA and regulations there under as well as relevant case law for guidance, provided however that nothing in this Statute shall be construed as an adoption by the Tribe of the FLSA, nor a waiver of sovereign immunity from suit for any claims or process under the FLSA.

SECTION XII. WORKERS COMPENSATION

1. “Workers Compensation” is insurance, provided at no cost to an employee, which can provide medical, lost-wages for a job-related injury or illness.
2. “Work-related injury or illness” means an injury or illness sustained as a direct result of employment.
3. Persons employed by Tribe shall be provided a comprehensive Worker’s Compensation insurance program at no cost.
4. Eligibility criteria, procedures and guidelines in the Employee Handbook shall apply.

SECTION XIII. FREEDOM TO WORK WITHOUT JOINING A UNION AND RIGHT TO WORK

1. “*Labor organization, labor association, or labor union*” means any organization of employees organized for the purpose of bargaining over hours of employment, rates of pay, working conditions, grievances, or other terms or conditions of employment.
2. Persons employed by Tribe enjoy the right to work and are free from joining a union as a condition of employment or continuation of employment nor shall any corporation, individual or association of any kind enter into any agreement, written or oral, which excludes any person from employment or continuation of employment because of non-membership in a labor organization.
3. Additionally, persons employed by the Tribe as a matter of rights, are free from any of the following:
 - a. become or remain a member of a labor organization;
 - b. pay dues, fees, assessments or other charges of any kind or amount to a labor organization;
 - c. pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessments or other charges regularly required of members of a labor organization without the signed written authorization of such deductions;

- d. be recommended, approved, referred or cleared through a labor organization.
- e. restraints and coercion by any labor organization.
- f. any deduction from wages, earnings or compensation without written consent.

SECTION XIV. ENFORCEMENT

Any employee or third-party vendor who violates, or seeks to violate, the provisions of this Statute shall be subject to a civil action brought before the Tribunal and may be subjected to such remedies as the Tribunal deems imposed including a fine. Any Employer shall have the right to suspend or terminate the employment of any employee found to be in violation of this Statute.

SECTION XV. EXHAUSTION OF REMEDIES

1. An employee must pursue their administrative claim with diligence and in good faith with the forum provided by this Statute.
2. An employee may not cut short the administrative process prior to its final disposition, for upon abandonment a complainant fails to exhaust administrative relief and may not thereafter seek redress from the courts.

SECTION XVI. JUDICIAL REVIEW

1. Little Traverse Bay Bands of Odawa Indians Tribal Court shall have exclusive jurisdictions of appeals for the Employees seeking an appeal for violations of procedural due process rights brought under this Statute.
2. The Tribal Court shall only review for consideration whether an employee's procedural due process rights were violated or blatant error that would result in a manifestation of injustice and may not consider any other claims of violation.

3. “Procedural due process rights” means the right to adequate notice, a meaningful opportunity to be heard, and the right to representation at the employee’s option and expense.

SECTION XVII. SAVING CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

SECTION XVIII. EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval which ever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

Certification

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on June 8, 2008 at which a quorum was present, by a vote of 5 in favor, 1 opposed, 0 abstentions, and 3 absent as recorded by this roll call:

| | In Favor | Opposed | Abstained | Absent |
|----------------------|------------|------------|-----------|------------|
| Fred Harrington, Jr. | _____ | X _____ | _____ | _____ |
| Melvin L. Kiogima | X _____ | _____ | _____ | _____ |
| Dexter McNamara | X _____ | _____ | _____ | _____ |
| Marvin Mulholland | X _____ | _____ | _____ | _____ |
| Shirley Oldman | _____ | _____ | _____ | X _____ |
| Alice Yellowbank | _____ | _____ | _____ | X _____ |
| Gerald V. Chingwa | _____ | _____ | _____ | X _____ |
| Regina Gasco Bentley | X _____ | _____ | _____ | _____ |
| Beatrice A. Law | X _____ | _____ | _____ | _____ |

Date: _____

Beatrice Law, Legislative Leader

Date: _____

Regina Gasco Bentley, Secretary

Received by the Executive Office on _____ by _____

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: _____

Frank Ettawageshik, Tribal Chairperson