

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 Employment, 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.

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.

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 convicted of a crime that raises doubt as to the suitability of the applicant to assume the responsibilities of the position;
- 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

See also Cherokee Code Chapter 95, Article VI for disqualification criteria for child sensitive positions.

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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 who 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~~ and 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 of Article 5, nor under Articles 13 or 14.

Sec. 5.04. Probationary period.

- A. Individuals selected for regular positions shall, (unless terminated sooner), serve a probationary period for 90 calendar days. Individuals shall complete the Talent Management Program (TMP) within their probationary period. Upon completion of the 90 day period, 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 90th 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 90th 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.~~ result in corrective action for the appropriate supervisor.

- 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. Terminations that occur within or during the probationary period are not subject to the Step four procedure outlined in Article 10 and shall be implemented in written letter format. Probationary employees have no appeals process for terminations.
- F. Employees who have completed an initial probationary period and are subsequently transferred, promoted or demoted shall not be subject to another probationary period. ~~performance probationary period for the new position.~~ ~~However, a~~ All benefits earned, including those contained in Articles 13 and 14 shall be retained in these cases.

Sec. 5.05. Minimum time on job.

Employees shall remain in a position for at least 90 days before they are eligible to apply for another position except for temporary employees.

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, program merger, 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).

The 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.

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 Works 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 or have any leave carried over 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 status as long as the break in service does not exceed one year.

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, ~~in consultation with the Program Manager.~~

- (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 any-corrective action taken 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, supervisor, coordinator, 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, OJT, Welfare to Work, 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.

C. *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 ~~performance improvement plan~~ reprimand, and the Deputy Officer determines that demotion will resolve the performance issues.
- (4) When the employee requests and is granted a demotion.

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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 not subject to

appeal and the procedures outlined in Article 14 do not apply.

- 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. Employment records, including all corrective actions shall remain in an employees file at the Employment Office and such records shall be made a permanent file. It shall also be the responsibility of the- Employment Office conduct another criminal history check if an employee is - being hired after a lapse in service.

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.]

Sec. 6.01. Pay status.

A regular employee is in pay status when:

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

Sec. 6.02. Overtime and other pay issues.

A. *Overtime.* Although EBCI, as a tribal entity, is not bound by the requirements of the Fair Labor Standards Act (FLSA), it follows the overtime and minimum wage provisions certain provisions of the Act, and in some cases offers more generous provisions. The EBCI does not recognize compensatory time 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 Fair Labor Standards Act and its regulations, the employee shall be deemed to be non-exempt. Overtime pay shall be paid to non-exempt EBCI employees at the rate of 1.5 times the regular hourly rate of pay for time actually worked over 40 hours during that employee's regularly assigned seven-day period. All leave hours may not be used in calculating overtime. Under general circumstances, overtime must have prior approval of the appropriate supervisor. If the employee works on a holiday and receives premium holiday pay as specified in subsection 7.00(D), then no additional overtime premium shall be allowed for hours worked on the holiday.

(2) *Non-covered employees.* Non-covered employees shall not receive overtime. These include such employees as elected officials, their personal staff members (political appointees), policy-making appointees, and legal advisors. Every non-covered employee's personnel file shall contain a written determination that the employee is not covered by the FLSA, signed by the Employment Office Manager.

(3) *Exempt employees.* Exempt employees shall not receive overtime. Every exempt employee's personnel file shall contain a written determination that the employee is exempt from the FLSA, signed by the Employment-Benefits

Office Manager. The Benefits Office shall make the exempt /non-exempt designation when the new job description is certified.

(4) Fire Protection, ~~EMS~~ and Law Enforcement employees. Non-exempt employees in fire protection and law enforcement are scheduled over a 28-day work period, and shall receive overtime compensation when their hours of work exceed the amount specified in applicable FLSA regulations for such employees. Fire Protection shall work 212 hours in the 28 day work period and Law Enforcement employees shall work 171 hours in the 28 day work period before overtime is compensated.

B. *Equal pay.* EBCI shall not discriminate on the basis of gender in the payment of equal wages for equal work. An employee of either gender in the same department will be paid equally for jobs requiring comparable education, skill, effort, and responsibility performed under similar working conditions. This does not prohibit salary differential due to any merit increment or seniority. The Executive Committee, Deputy Officers, and the appropriate supervisors are responsible for ensuring compliance with these pay provisions.

C. *Pay during a State of Emergency.* Essential employees who, because of an emergency, are required to work beyond their normally scheduled work times shall be compensated during these emergency situations at the rate of one and one half times their regular rate of pay regardless of whether the employee is exempt, non-exempt or non-covered. This subsection shall apply only when a formal State of Emergency has been declared by the Principal Chief.

D. *Seniority bonus.*

Beginning in FY2007 and every fiscal year thereafter, the Tribe shall pay regular full-time employees who have over 15 years of continuous service a cash bonus equal to one percent of their yearly wage, calculated in reference to their wage in the fiscal year in which they are eligible to receive the bonus. The bonus shall be in addition to any merit increase that the employee might otherwise receive. The bonus shall be a cash bonus and not added to the salary level. An otherwise eligible employee shall not receive the bonus if they do not work more than 1,000 hours in the fiscal year in which they are claiming eligibility, or in any fiscal year in which their employment is involuntarily terminated.

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E. *Minimum Wage.*

Beginning on October 1, 2007, and every fiscal year thereafter, the minimum wage for regular full-time employees shall be \$8.50 per hour. The Tribe shall review the adequacy of the minimum wage at the end of every third fiscal year following October 1, 2007.

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Sec. 6.03. Time records.

Every employee is responsible for accurately recording time worked. Time worked is all the time actually spent on the job performing assigned duties. All supervisors and managers shall keep records of hours worked and wages paid for each employee subject to the minimum wage and overtime pay requirements. Records must be preserved for at least three years.

Sec. 6.04. Pay.

- A. *Pay structure.* The pay structure approved from time to time by resolution of the Tribal Council covers all employees. The pay structure is reviewed periodically by EBCI to ensure that it remains competitive with local, regional and industry market pay. Increases in the pay ranges do not result in a general "across the board" increase. Employees will be rewarded based on their individual performance. The salary level is a numerical level assigned to each job that has been formally described and evaluated. This level reflects the job's evaluation and the dollar value currently being paid in the competitive labor market for positions in that level.
- B. *Establishing rate of pay for employees.* Each salary range is assigned a dollar range that includes a minimum, midpoint and maximum. Employees should not be paid below the pay level minimum.
1. Regular full-time employees' rate of pay upon initial hiring is based on the pay levels for that position taking into consideration the qualifications of the employee and how they meet the required knowledge, skills, abilities, and experience as described in the job description. Employees who are fully qualified and experienced in all aspects of the job should normally be paid at or near the pay level midpoint. The additional range above the midpoint to the maximum level of pay provides opportunity for the individuals pay growth and opportunity for pay differentiation based upon performance.
 2. Employees not considered "regular" employees (Sec. 5.03(C)) will be paid outside the formal pay scale program. The hourly rate paid will be based upon recognition of market requirements and may have no relationship to the pay for regular full time and regular part-time employees.
 3. Regular part-time employees will receive a prorated pay based on the hourly rate corresponding to the pay level of that position.
- C. *Salary Adjustments.*
1. *Equity Pay Adjustment.* A special pay adjustment may be made in certain instances as a means of recognizing and alleviating pay compression brought on by increases in starting pay for entry level positions. A manager recognizing the need for a special pay adjustment must submit a request with a recent performance review and supporting documentation to the ~~Employment Office~~ Executive Committee. Special pay adjustments should be given no more than once a year to any employee and may be given when pay ranges are adjusted and employee's pay must be adjusted to meet the new range minimum or when internal equity problems need to be addressed with corrective measures.
 2. *Transfer.* A position transfer does not warrant any type of promotional increase in pay. The former manager and the new manager will collaborate on the performance review and recommend an appropriate pay increase at the annual review.
 3. *Demotion.* If changing conditions or unsatisfactory performance requires

a demotion, a downward adjustment to the employees pay shall be made if necessary to meet the pay scale for the new position.

4. Promotion. Promotional adjustments are to be given at the time of the promotion. In determining the amount of promotional increase identify the level at which the employee is currently being paid and assume satisfactory performance. The increase should not normally take an employee beyond the pay range midpoint for the new position. The increase should be at least to the minimum range for the new position.
5. Merit Awards. Salary increases are based upon individual performance, as determined in the performance evaluation process. No increase will be awarded to any employee receiving an overall unacceptable performance evaluation. The annual Salary Increase Matrix shall be approved during the annual budget process by Tribal Council resolution. Special rules will apply to employees in the following situations:
 - a. Employed with the EBCI for more than 90 days and less than one year
 - b. Employee is within 90 day probationary period at fiscal year end
 - c. Employee has been employed with EBCI for one year in two different positions
 - d. Employee is over maximum salary for grade – may be eligible for cash award

See Merit Increase Procedures as adopted by Executive Order.

- D. *Acting Assignments.* An acting assignment of an employee to a higher level position for a minimum of one month shall qualify that employee to be paid at a higher rate provided for the temporarily assigned position. Periods of less than one month will not be compensated as an upgrade.
- E. To the extent that the policies and procedures attached to Resolution No. 896 (2003) are inconsistent with this Article, they are hereby rescinded.

ARTICLE 7. HOLIDAY AND LEAVE POLICY

Sec. 7.00. Holidays.

EBCI will grant holiday time off to employees on the following holidays:

- *New Year's Day* (January 1)
- *Martin Luther King, Jr. Day* (third Monday in January)
- *President's Day* (third Monday in February)
- *Easter* (Good Friday)
- *Memorial Day* (last Monday in May)
- *Independence Day* (July 4)
- *Labor Day* (first Monday in September)
- *Cherokee Heritage Day* (Wednesday of Fall Festival Week)
- *Veteran's Day* (November 11)
- *Thanksgiving* (fourth Thursday in November)
- *Tsali Day* (Friday after Thanksgiving)
- *Christmas* (December 25 and two additional days designated by the Principal Chief)

Any additional holidays require Tribal Council approval.

- A. *Holiday determination on weekends.* A recognized holiday that falls on a Saturday will be observed on the preceding Friday. A recognized holiday that falls on Sunday will be observed on the following Monday. Any departure from this schedule shall be at the discretion of the Principal Chief.
- B. *Regular holiday pay.* Regular full-time employees (including employees hired to fill regular positions who have not completed their probationary period) who are excused from work on a holiday shall be paid their regular rate of pay for that day. Regular part-time employees who are excused from work on a holiday shall be paid their regular rate of pay for their scheduled number of hours of work for that day (not to exceed 8 hours in a 24 hour period). Regular holiday pay will be used if a recognized holiday falls during an eligible employee's paid absence (e.g. annual or sick leave).
- C. *Rules for employees not scheduled to work on a holiday.* If a regular employee's (or an employee hired to fill a regular position who has not completed his/her probationary period) usual work hours do not fall on a holiday, the appropriate supervisor will designate other equivalent time off for the employee or will pay the employee for the appropriate number of additional hours of regular holiday pay for that pay period. Such employees shall not be entitled to premium holiday pay, and this

subsection shall not apply to employees who are eligible for premium holiday pay.

- D. *Premium holiday pay.* If a regular non-exempt employee is required to work on a holiday, the employee shall earn pay at a rate of 2.5 times their usual pay rate for all hours worked on that date. In addition, eight, ten, or twelve hours of pay shall be shown in the pay column of the employees timesheet. This amount is determined by the length of the employee's shift. Eight hour shift workers shall receive eight hours of additional pay, ten hour shift workers shall receive ten, and twelve and twenty- four hour shift workers shall receive twelve hours of additional pay. Up to eight hours of the additional pay shall be shown in the holiday pay column. Any additional pay shall be shown in the column for other/over 80 pay.

~~For pay purposes, the holiday begins at 0001 hours on the designated holiday and continues until 2400 hours. If the employee works any time during the 24-hour period, s/he will be paid holiday pay, only for the time worked. (No additional adjustment will be made for overtime work on holidays).~~

Sec. 7.01. Annual leave.

Annual leave is time off in pay status for personal use such as vacations and personal business. (Note: any extended leave or any combination of leave--i.e, use of accrued annual leave, or use of accrued annual leave plus accrued sick leave, etc may affect eligibility for insurance benefits in accordance with applicable plan documents and procedures. Appropriate supervisors must notify the Benefits Office whenever an employee is out on leave in excess of 40 hours. Also note that when applicable, family/medical leave, as provided in section 7.08, will run concurrently with any accrued annual or sick leave taken and the family/medical certification rules will apply, even when using paid leave.)

- A. *Authorization and documentation.* Appropriate supervisors shall authorize annual leave; annual leave may be denied if employee's absence interferes with departmental operations. Employees should request annual leave at least three days in advance. In the case of emergencies or special circumstances, less notice may be required at the discretion of the supervisor. (Note: Special rules exist for family/medical leave as provided in Section 7.08. Also, although probationary employees are allowed to accrue annual leave, use of such leave is contingent upon their successful completion of the probationary period. Failure on the part of the probationary employee to successfully complete the probationary period will result in a forfeiture of the leave.)

Annual leave shall be earned, calculated, and documented on a biweekly basis by the finance office as part of each employee's payroll record. An employee's accrual rate will be based on the time in continuous service which has elapsed since the employee's date of hire. Earlier service with the tribe or a related tribal entity shall not be counted in determining the employee's years of service for purposes of calculating the employee's annual leave accrual rate. (Exception: See Section 5.06)

- B. *Regular full-time employees (and probationary employees).* Annual leave is accrued at the following rates per pay period based on hours paid:

Length of Continued Employment	Annual Leave Earned
0 yr. to completion of 3 yrs.	4 hours
4 yrs. to completion of 14 yrs.	6.75 hours
15 yrs. or more	8 hours

Honorably discharged veterans shall accrue annual leave at an increased rate per pay period as follows:

0 yr. to completion of 3 yrs.	6 hours
4 yrs. to completion of 14 yrs.	8 hours
15 yrs. or more	10 hours

- C. *Regular part-time employees (and probationary employees).* A regular part-time employee shall earn annual leave on a pro-rated basis per pay period.

Examples:

30 hrs. worked for employees with 0--3 yrs. Employment	3 hours
30 hrs. worked for employees 4-14 yrs. employment	4.5 hours
30 hrs. worked for employees with more than 15 yrs. Employment	6 hours

- D. *Minimum annual leave.* Annual leave must be taken in 15 minute increments.
- E. *Transfer of annual leave.* An employee being transferred from one program to another may choose to:
- Transfer accrued annual leave; or
 - Receive a lump sum distribution of accrued annual leave upon approval of the appropriate supervisor and appropriate Deputy.
 - Annual leave may not be transferred between employees.
- F. *Carryover of annual leave.* Annual leave may be carried over from year to year up to a maximum of 480 hours at the end of each calendar year.
- G. *Other uses of annual leave:*

1. Annual leave may be used in lieu of sick leave after all sick leave is exhausted. (Note: In no event shall amounts paid to an employee through this leave policy in conjunction with the Tribe's disability insurance--i.e., where 100 percent of the premiums for such insurance is paid by the Tribe--exceed the amount that would be paid out normally during regular work weeks to the affected employee.)

2. When an employee receives compensation from an outside source for services rendered during tour of duty, (e.g. jury duty; service on boards, task forces providing Tribal technical consulting assistance, or

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committees) the employee may choose:

1. To take annual leave or leave without pay and keep the compensation; or
2. Receive their regular pay and remit the compensation to the Finance Office to be credited to the appropriate program.

H. *Annual leave at separation.* An employee shall be paid in a lump sum for accumulated annual leave (including special annual leave, if any) when the employee terminates or is discharged from employment. If an employee separates before the end of the year, they shall receive the lump sum amount of accumulated annual leave. This amount may exceed 480 hours. (Note: this does not apply to employees who have not successfully completed their probationary period. Termination or resignation by such employee prior to successful completion of the 90 day period shall result in a forfeiture of the annual leave accrued.) Payment of this amount will not be paid until all administrative appeals have been exhausted.

Sec. 7.02. Sick leave.

Sick leave is a privilege granted by the EBCI which provides an employee a paid absence from work for reason of personal illness, injury or disability. (Note: Employees who have been hired to fill regular positions but have not successfully completed their probationary period shall accrue sick leave but shall not be allowed to use this leave until they have successfully completed their probationary period.) It is a benefit provided by the tribe to protect an employee's income while sick. Sick leave shall not be used indiscriminately and in no event shall amounts paid to the employee through this sick leave policy in conjunction with the Tribe's disability insurance (i.e., where 100 percent of the premiums for such insurance is paid by the Tribe) exceed the amount that would be paid out normally during regular work weeks to the affected employee.

Frequent claiming of benefits under this rule will constitute grounds for the assumption by the tribe that the physical condition of the employee is below the standard necessary for the proper performance of duties. Likewise, evidence of abuse of this benefit will constitute grounds for corrective action

(Note: any extended leave or any combination of leave--i.e., use of accrued sick leave or accrued annual leave, etc.-- may affect eligibility for insurance benefits. Appropriate supervisors shall notify the Benefits Office whenever an employee is out on leave in excess of one week. Also note that when applicable, family/medical leave, as provided in section 7.08, will run concurrently with any accrued annual or sick leave taken and the FMLA/TFML certification rules shall apply).

A. Authorization, verification, and documentation.

- *Authorization:* Requests for sick leave shall be made by the employee to the appropriate supervisor on a daily basis except when an extended illness has received prior approval.
- Sick leave may be granted for:
 - 1. Illness or injury which prevents an employee from performing their usual duties;

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2. Visiting a physician, dentist, or other health professional for an employee's treatment, diagnosis, and/or screening; or
3. Legal quarantine due to a contagious disease in the employee's immediate family.
4. To provide care for certain members of the employee's family. (This includes taking a family member to the doctor, dentist, or other health professional.) This is to include spouse, parent, parent-in-law, grandparent, child, grandchild, or guardian relationship.

Verification. Three or more days of consecutive absence due to illness or suspected abuse of sick leave in any amount must be verified by a statement from a medical provider before sick leave shall be granted. (See certification rules which apply to family/medical leave provided in section 7.08. The family/medical leave certification rules will apply even when the family/medical leave is run concurrently with paid leave, such as sick or annual leave).

- The appropriate supervisor may also require a statement from a medical provider or other acceptable proof of illness in other instances.
- *Documentation:* Sick leave shall be earned, calculated, and documented on a biweekly basis by the finance office as part of each employee's payroll record.

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- B. *Regular full-time employees (and probationary employees).* A regular full-time employee shall earn sick leave at the rate of 4 hours per pay period for a total of 13 days per year based on hours paid.
- C. *Regular part-time employees (and probationary employees).* A regular part-time employee shall earn sick leave on a pro-rated basis per pay period based on hours paid.

Examples:

30 hrs. worked	3 hours
20 hrs. worked	2 hours

- D. *Transfer of sick leave.* An employee transferred from one program to another or one position to another transfers accrued sick leave. Sick leave is not transferable to another type of leave. ~~or Employees can transfer up to 80 hours of sick leave to another person during a rolling calendar year if the transferor has a balance of at least 160 hours of sick leave before the transfer. An employee may only receive a total of 80 hours of sick leave from other employees during a rolling calendar year.~~
- E. *Minimum sick leave.* Sick leave will be charged in 15-minute increments.
- F. *Advanced sick leave.* Advanced sick leave of up to five days may be granted in the discretion of the appropriate supervisor and must be fully repaid before another request for advancement may be considered.

Sec. 7.03. Bereavement leave.

~~At the discretion of the appropriate supervisor, a~~ An employee may be granted up to three days time off in pay status in case of death in the employee's immediate family as defined in Section 3.16 or for an employee who suffers the loss of a child as a result of a miscarriage or tubal pregnancy (medical documentation required). The supervisor shall ~~also have discretion to grant funeral leave so that an employee may attend the funeral of a close family member not listed in Section 3.16~~ In extenuating circumstances the employee's supervisor may request on behalf of the employee that the Deputy Officer approve additional time off in pay status. Funeral leave is not earned or automatic and shall be taken only when approved.

Sec. 7.04. Education leave.

Education leave is time off in pay status for employees to upgrade their knowledge and skills in relation to their jobs.

A. *Authorization and limitations.*

Eligibility. Regular full-time and regular part-time employees may be granted education leave with pay to participate in approved educational programs scheduled during the employee's tour of duty. Instruction must be related to the employee's job, e.g. refresher courses, technological training, business and professional enhancement.

Procedure. The employee shall submit a letter of request to the appropriate supervisor stating the content and schedule of the course. The appropriate supervisor shall submit the request to the Deputy Officer along with a recommendation for awarding or denying leave. This recommendation shall describe the course's relationship to the employee's job and the impact of the employee's absence on the department's services. Final approval shall be made by the Deputy Officer.

B. *Maximum leave.* Education leave may not exceed actual time for classroom instruction and a reasonable amount of time for travel between the institution and the employee's duty station. Education leave will not be given for time spent with a study group. No more than one class per semester or quarter may be taken in pay status. However, more than one class may be taken with approval but employees must take annual leave, LWOP, or be willing to adjust schedules to make up time for the additional classes.

C. *Release of information.* Employees granted education leave must sign releases authorizing the appropriate supervisor to:

- Randomly review course attendance with the course instructor; and
- Request grades, transcripts, or other verification of course completion.

Sec. 7.05. Civil leave.

Civil leave is time off in pay status for employees to fulfill certain civic responsibilities. ~~When compensation is awarded for civil duty, an employee may use~~

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annual leave or LWOP instead of civil leave (see Section 7.09).

- A. *Jury duty.* An employee is entitled to civil leave with pay when required to perform jury duty. Leave is limited to the exact length of jury duty plus adequate travel time. Any compensation for jury duty does not have to be reported to the Tribe.
- B. *Court attendance.*
- *Official duties.* No leave is required when an employee attends court as part of official EBCI duties.
 - *General duties.* When an employee is subpoenaed or directed by proper authority to appear as a witness, the employee shall be granted civil leave. Any fees received shall be remitted to the finance office.
 - *Non-related duties.* When an employee is scheduled for court on any personal matter, the employee must take annual leave or LWOP.

Sec. 7.06. Worker's compensation.

All EBCI employees are covered by worker's compensation following an accident on the job or contraction of an occupational disease. Worker's compensation is time off in pay status and will be run concurrently with family/medical leave provided under Section 7.08.

- *Procedure.* An employee should notify the appropriate supervisor immediately but at least within 24 hours of the accident or diagnosis. It is the responsibility of the department manager to forward the completed designated mandatory reports to the Tribal Risk Analyst in the Finance Department as well as the Employment Office. This should be done the same day the accident is reported to management. Employees who qualify for worker's compensation may be allowed to use annual leave or sick leave. In the event an employee takes annual or sick leave and is later compensated through a worker's compensation claim, the employee shall reimburse EBCI in an amount equal to the amount received through worker's compensation and the employee's leave record shall be adjusted accordingly. The Risk Analyst shall monitor and keep record of leave adjustments. This is to insure that the employee does not receive an amount that exceeds 100 percent of his/her normal pay. Also, employees who qualify for worker's compensation ~~must~~ shall maintain contact with their supervisor/manager at least once per week and after every doctor's appointment to provide the supervisor/manager with status reports. Workmen's Compensation training shall be mandatory on a yearly basis for all tribal programs in the amount determined by the Safety Committee.

Sec. 7.07. Military leave.

- A. Military leave is a leave of absence without pay for military or reserve duty granted to full-time regular and part-time regular employees. Individuals who leave to perform military service shall, upon their deployment, if the absence is

expected to last more than 31 days, be paid for any accumulated vacation leave. Supervisors must notify the Employment and Benefit Offices as soon as it is learned that an employee will be taking a military leave of absence. Military service means the performance of duty on a voluntary or involuntary basis in the Uniformed Services under competent authority, including active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and the time necessary for a person to be absent from employment for an examination to determine fitness of the person to perform any of these duties. "Uniformed Services" means the U.S. Armed Services (including the Coast Guard), the Army National Guard and the Air National Guard (when engaged in active duty for training, inactive duty training, or full-time National Guard duty), and the commissioned corps of the Public Health Service. If you are called to active military duty or to Reserve or National Guard training, or if you volunteer for the same, you should notify your supervisor and submit copies of your military orders to him or her as soon as is practicable. Although your position may be filled during your absence, you will be eligible for reinstatement after your military duty is completed (and any unused leave will be reinstated) if you have

1. Notified your employer that you are going on military leave;
2. Left the military under honorable conditions; and
3. Returned to your job within the following time periods:
 - (i) An employee whose period of military service was less than 31 days, or the leave was for the purpose of examination to determine fitness for duty, must report to the employer no later than the first full regularly scheduled work period on the first full calendar day after that period of service ends. This deadline may be extended to eight hours more if needed to travel safely from the place of service to the person's home or place of employment;
 - (ii) An employee whose period of service lasted from 31 to 180 days must notify the program manager and the Employment and Benefits Offices within 14 days of the completion of service, or by the next first full calendar day if a prior submission was impossible or unreasonable through no fault of the employee.
 - (iii) An employee whose period of service was greater than 180 days must notify the program manager and the HR Department within 90 days of completion of uniformed service.
 - (iv) The preceding deadlines may be extended for employees who are hospitalized or who are convalescing from medical conditions when their service concluded. The employee loses the right to reemployment if the recovery period exceeds two years.

The EBCI may deny reemployment to any employee whose position was abolished or was eliminated as part of a reduction in force. Also, when more than

one employee is entitled to reinstatement to the same job, the employee who first went on leave has priority. Persons who have filled open positions during an employee's military leave of absence will be considered a "regular employee" for purposes of benefits, but will be terminated upon the returning employee's reinstatement and will have no appeal rights under Article XIV when replaced by the returning employee, but will be eligible for reinstatement pursuant to Section 5.07.

- B. *Continuation of Coverage – Health Plan.* Employees on military leave shall have the right to elect continuation of coverage. The maximum length of the continuation of coverage is:
1. the lesser of 18 months, beginning on the day that the Uniformed Services begins; or
 2. a period beginning on the day that the Uniformed Service leave commences and ending on the day after the employee fails to return to or reapply for employment within the time allowed by applicable law.

Premium payments for coverage are the same as COBRA's 102%, except that, whenever the military leave is less than 31 days, the employee is not required to pay more than he or she would have been required to pay if the employee had not been on leave. An employee who is qualified for reemployment under the provisions of the Uniformed Services Employment and Re-employment Rights Act (USERRA) will be eligible for reinstatement of coverage under the Plan upon re-employment. Upon re-employment and reinstatement of coverage no new exclusion or waiting period will be imposed in connection with the reinstatement of such coverage if an exclusion or waiting period would normally have been imposed. However, an exclusion or waiting period may be imposed where it has been determined by the Secretary of Veteran's Affairs that an illness or injury has been incurred in, or aggravated during, performance of service in the uniformed services

- C. *Short Term Military Leave.* Employees who are required to undertake short periods of active duty training (not to exceed 15 calendar days per year) shall be granted time off.
- *Difference pay.* Short term military leave is with difference pay. If the employee's military pay is equal to or greater than his regular salary rate, the employee will be granted leave without pay.
 - *Procedures.*
 - *Eligibility.* Regular full- and part-time employees, including probationary employees, who are members of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, or the Coast Guard Reserve shall be entitled to military leave for mandatory annual active duty training (summer encampment), maneuvers, or training school.
 - Short term Military leave shall not be granted when participation is voluntary or not a fulfillment of a reserve obligation. Weekly drill

instruction or target practice, special drill instruction, duties resulting from corrective action, or other special non-recurring activities shall not be acceptable.

- Exception: Difference pay may be granted, in some circumstances, at the discretion of the Executive Committee, when the employee is performing voluntary emergency or special duty assignments.
- If the employee is not eligible for short term military leave, annual leave or leave without pay will be charged.
- *Maximum short term military leave.* A maximum of 15 calendar days in one calendar year may be charged to military leave.
- *Emergency or special duty assignments.* Members of the Army or Air National Guard ordered to active duty under the authority of the Commander-in-Chief, the Governor, or members receiving special assignments in connection with summer encampment, when ordered by the Adjutant General, or members of the Civil Air Patrol performing emergency assignments for the state, shall be entitled to military leave with difference pay. In such cases, the maximum amount of time military leave may be given shall be ten working days per year. Short term military leave shall be granted only for those days the employee is ordered to be on duty.
- *Administrative responsibility.* It shall be the responsibility of the appropriate supervisor to determine that the employee has met all the requirements set forth above and to require the employee to submit a copy of orders to report for duty.

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Sec. 7.08. Tribal Family and Medical Leave (TFML).

Although EBCI, as a tribal entity, is not bound by the requirements of the federal Family and Medical Leave Act (FMLA), it follows Title I, Sections 101-105 ~~certain provisions of the Act and any amendments thereto.~~ by offering. In general, TFML offers up to 12 weeks of leave in any rolling calendar year for the following reasons:

- Birth, adoption, or foster care of a child;
- Care for a child, spouse or parent with a serious health condition; or
- Care for the employee's own serious health condition.

EBCI also allows care of the employee's spouse, child, parent, or next of kin (nearest blood relative) who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces, provided that such injury or illness may render the spouse, child, parent, or next of kin medically unfit to perform duties of his/her office, grade, rank or rating. An employee qualifying under this section is entitled to leave for up to 26 weeks during a single 12 month period.

TFMLA is time off in pay status with or without pay, depending upon whether the employee has exhausted all other accrued leave.

- A. *Eligibility.* Regular full-time and part-time employees who have been employed by EBCI for 12 months and who have worked at least 1,250 hours during the 12-month period immediately preceding the

commencement of the leave are eligible for FMLA- TFML leave.

- B. Procedure and documentation. Employees must provide their supervisors with 30 calendar days notice for predictable situations. In other situations where advanced notice cannot be given the employee must first contact their supervisor, then the Benefits Office, of their need to apply for TFML. An employee should consult with the Benefits Office regarding possible qualification for short-term disability along with TFML. Workmen's Compensation also runs concurrently with TFML as referenced in Section 7.06.

The appropriate supervisor must authorize and document in writing the leave agreement between the EBCI and the employee. Both parties must sign this agreement. The supervisor must maintain a copy of the agreement, provide a copy of the agreement to the employee and provide a copy of the agreement to the Benefits Office. Both the supervisor and employee shall be responsible for notifying the Benefits Office of when the employee returns to work.

The agreement shall include documentation (these documents should be originals, not faxed or emailed copies, with all information clearly filled out, including contact information for physicians, etc.) of, at minimum, the following information:

- Doctor's certification of the "serious health condition";
- Appropriate medical facts;
- Date of onset;
- Probable duration of leave and/or schedule for reduced or intermittent leave;
- Planned treatment;
- Need for the employee to provide care if leave is to care for another;
- Monitoring requirements;
- Reason for leave;
- Types of leave and benefits used to date, e.g., sick leave, annual leave, worker's compensation;
- Exact dates of projected FMLA- TFML leave;
- Employee address and phone number during leave by date;
- Health care provider name, address, phone number; and
- Consequences for not returning to work by the specified date.

If applicable, the following information shall also be documented:

- Procedures for collection of contributions to benefit plans; and

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- Calendar for intermittent or reduced schedule leave.

Additional opinions. EBCI may require additional medical opinions at EBCI expense.

C. *Restrictions.*

- *Use requirements.* Accrued sick leave and annual leave must run concurrently with any ~~FLMA~~ TFML leave granted. Short-term disability can be prorated and used along with sick and annual leave.
- *Spousal leave.* Spouses are each entitled to 12 weeks of leave if the leave is required by the illness of one spouse or child. Leave may be restricted to a combined total of 12 weeks, if the leave is due to birth, adoption of a child, or care of a sick parent.
- *Employee limitations.* The employee is prohibited from collecting unemployment insurance while on leave.

D. Training.

It shall be the responsibility of all program managers to train each supervisor on the provisions and application process of the TFMLA. The Benefits Office shall assist any employee, manager or supervisor with relevant information about the TFMLA.

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§Sec. 7.09. Leave without pay (LWOP).

LWOP is time off in pay status without pay and must be approved in advance by the appropriate supervisor. Any LWOP granted over 40 hours must be reported to the Benefits Office by the supervisor. All other types of leave, including leave granted under the ~~FMLA~~ TFML, must be exhausted prior to approval of LWOP. Exception: When the employee receives compensation from an outside source for services rendered during tour of duty. (see Section 7.05). LWOP shall be used in ~~45-minute~~ 8 hour increments as required by FLSA. Note: any leave or any combination of leave taken in excess of 12 weeks in any calendar year ~~will~~ may affect eligibility for insurance benefits.

Managers must review each request on a case by case basis to determine whether business will allow the employee's position to be vacant for the amount of requested time for the leave. LWOP may be granted for issues such as medical situations where the employee has not been with EBCI for a full year.

Employees with at least 6 months continuous employment may request and be granted, at the Manager's discretion, up to 30 days leave without pay to attend to personal matters. At the end of the 30 days leave, an employee may request an extension. The manager, again based on business needs, may approve the extension. Extensions may be granted for additional 30-day increments up to 90 days leave in a 12-month period. The initial leave request must have an anticipated return date to be considered. Extension requests must be made 7 days prior to the anticipated return date.

Employees on LWOP for 30 days or more will not be guaranteed their same position, shift or station.

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Sec. 7.10. Administrative leave.

Administrative leave is time off in pay status granted to employees on duty at the discretion of the Principal Chief. Employees on annual or sick leave are not allowed to claim administrative leave. (Note, in the event administrative leave is granted to individuals working alternative shifts such as night shift, the Principal Chief shall advise affected managers whether or not administrative leave will be granted to those individuals working shifts outside the usual 7:45 a.m. – 4:30 p.m. tour of duty.)

In the event the Principal Chief delays the opening of Tribal offices due to inclement weather and declares tribal employees to be on a Schedule B, these employees shall report to work at 9:15 a.m. An employee who does not report 9:15 a.m. shall use annual leave for the absence from work.

Nonexempt employees who are required by management to work during time periods when other employees have been granted administrative leave shall, in lieu of being granted leave, be paid time and one half for hours worked during the administrative leave period. Examples of administrative leave may include but are not limited to:

- Power outages;
- Environmental emergencies; and
- Administrative holidays.

Sec. 7.11. Authorized leave of absence.

Authorized leave of absence is time off in non-pay status for a specified length of time; leave is granted with permission of the ~~appropriate supervisor~~ manager –with approval of the appropriate Deputy Officer.

ARTICLE 8. CODE OF ETHICAL CONDUCT

Sec. 8.00. Purpose.

Employment with the Eastern Band of Cherokee Indians carries with it a special obligation of trust that imposes responsibility to conserve and protect public resources, funds and materials. All EBCI employees are expected to conduct themselves with integrity, impartiality, and professional conduct that will reflect favorably upon themselves and the EBCI. In addition to this section, EBCI employees shall comply with all ethical standards adopted by the Tribal Council or otherwise applicable to the EBCI.

Sec. 8.01. Confidentiality.

Employees shall not disclose confidential information obtained by reason of their employment with EBCI, nor use such information for their economic benefit or the economic benefit of any other person. Some departments may require an additional confidentiality agreement to be signed by an employee as a condition of employment. See section 2.05.

Sec. 8.02. Subordination to authority.

Employees shall adhere to established policy. Suggestions and ideas for policy change may be made by employees at any time. This is normally done with their supervisor but can be to any member of EBCI management. Periodic policy reviews will also be held during which employee input will be invited and considered.

Sec. 8.03. Conflicts of interest.

An actual or potential conflict of interest occurs when an employee is in a position to influence a decision that may result in personal gain for the employee or for an immediate family member.

Personal gain is defined as occurring when an employee or a member of the employee's immediate family receives any kickback, bribe, gift, or special consideration as a result of, or in order to influence, any EBCI transaction.

When an employee is approached by others to use influence, or believes that personal relationships, interests, or business will bias the employee's influence or decisions on EBCI purchases, transactions, leasing arrangements, or other transactions, the employee is required to disclose this information to the appropriate supervisor immediately.

A tribal employee shall not participate in the selection or award of employment, a contract or other thing of value if a conflict of interest, real or perceived, would be involved. Such a conflict would arise when a Tribal employee, a member of his/her immediate family or a close business associate would directly benefit from the award. This does not preclude a tribal employee from approving a contract in which a conflict may appear to be present provided that the tribal employee was not involved in the selection of the contractor, the contract was sought and awarded in an arms-length negotiation in the normal course of business (by an authorized employee without a real or perceived conflict) or it was the result of competitive bidding or competitive price

quotes, and it was awarded pursuant to the Tribe's Fiscal Management Policies. See also Chapter 117-45, 46 and 47 of the Cherokee Code.

Sec. 8.04. Outside work or interests.

- A. *Boards, task forces or committees.* Employees must obtain approval from the appropriate supervisor and the appropriate Deputy Officer prior representing the EBCI at any function or speaking engagement, and prior to serving on any board, task force, or committee. (see section 7.05(B) regarding leave/compensation from outside sources).

Prior to giving approval the appropriate supervisor and the employee will assess the following questions:

- A. Is it during work hours, how often and how long?
- B. Is it related in such a way as to cause conflict of interest?
- C. Is the employee acting or could be assumed to be acting in an official capacity or as a representative of the Tribe or EBCI?

The EBCI encourages employees to become involved in worthwhile volunteer activities, however, such involvement should be cleared through the appropriate supervisor if the activities occur during the work day or have the potential for interfering with the employee's work duties.

- B. *Outside employment.* Employees may hold outside jobs as long as they meet the performance standards of their EBCI position, place priority on EBCI responsibilities, and are able to meet EBCI's scheduling demands. Such employment must avoid the appearance that the employee is acting on behalf of the EBCI. Notice of outside employment shall be given to the appropriate supervisor.

The employee's outside employment shall not reflect discredit on the EBCI or constitute a conflict of interest.

ARTICLE 9. DRUG AND ALCOHOL POLICY

Sec. 9.00. Purpose.

The purpose of this policy is to protect EBCI employees and the public from the risks posed by the abuse of alcohol and drugs. It also serves as a statement of EBCI intolerance for substance abuse for the EBCI community and work force. Eradication of the problems associated with substance abuse will begin with EBCI employees. This policy is separate from the Corrective Action policy of the EBCI and sections 13 and 14 of the personnel policy do not apply.

This policy shall comply with the Drug Free Workplace Act of 1988, 41 U.S.C. 701, et seq. In situations where any contract or grant requires stricter policies, EBCI will comply with such policies. EBCI accepts set standards for the collecting and testing of specimens and the reporting of certain drug-related offenses.

The following summary is designed to describe how EBCI intends to approach situations involving drug or alcohol use or abuse. However, drug or alcohol problems may differ from case to case, and every situation will be assessed based on the specific circumstances presented. This summary does not restrict EBCI's right to address any situation as it deems appropriate, nor does it limit or affect EBCI's work rules and job requirements.

Sec. 9.01. Goals.

The specific goals of the EBCI Drug and Alcohol Policy are to:

- * Educate employees about the dangers and problems associated with substance abuse;
- * Facilitate the prevention of substance abuse;
- * Identify any employee who may be engaging in substance abuse and identify the substance(s);
- * Provide opportunities for counseling and treatment or any employee abusing drugs and/or alcohol;
- * Protect the public and coworkers from those employees abusing drugs and/or alcohol;
- * Develop a drug free workplace and community;
- * Make provision for employees undergoing treatment to continue to work or to return to work as soon as possible consistent with their prescribed treatment program.

Sec. 9.02. Applicability.

The policy applies to all current and future EBCI employees. This policy applies to off-site lunch breaks, break periods, or other times after which an employee is scheduled to return to work. Visitors, vendors, and contractors are governed by this policy while on EBCI premises and will not be allowed to conduct EBCI business if found

Comment [HS1]: Present law indicates that pre-employment drug testing is constitutional because there is a choice. The law indicates that some types of employees CAN be randomly drug tested without suspicion if those employees perform certain "safety sensitive" positions. Examples include public transportation drivers, heavy equipment operators, narcotics investigators etc.

to be in violation of this policy.

Sec. 9.03. Prohibited conduct.

- A. *Manufacture, trafficking, possession, and use of prohibited substances.* Employees are prohibited from engaging in the manufacture, distribution, dispensing, possession, or use of prohibited substances on EBCI property, in EBCI vehicles, or while on EBCI business. Additionally, law enforcement shall be notified, as appropriate, when criminal activity is suspected.
- B. *Failing to submit to testing.* Drug and alcohol testing is a condition of employment. Applicants for Tribal employment who refuse to submit to drug testing are not eligible for employment. Tribal employees who refuse to submit to drug and alcohol tests authorized in this policy shall be terminated. Refusal can include an inability to provide a sufficient specimen or sample without a valid medical explanation, as well as verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test.
- C. *Providing false information.* Any employee who is suspected of providing false information in connection with a test, or who is suspected of falsifying test results through tampering, contamination, alteration, or substitution will be required to undergo an observed collection. Verification that the employee has provided false information or has falsified test results will result in the employee's termination.

Sec. 9.04. Definitions.

- A. *"Positive test"* means a drug test that indicates that the person has a quantifiable presence of a prohibited substance in the body or an alcohol ~~is a~~ test that indicates any amount of alcohol in at least two breath tests performed within 30~~15-20~~ minutes of each other.
- B. *"Prohibited substance"* means:
- Any alcoholic beverage.
 - Any prescription drug not being used for legal purposes.
 - All drugs classified as controlled substances by the North Carolina Controlled Substances Act, G.S. 90-86 et seq. and controlled substances in Schedule I through V of the Controlled Substances Act, 21 U.S.C. 812.
- C. *"Under the influence"* means the employee is affected in any detectable manner by the presence of alcohol or prohibited substances in his or her body, or has tested positive for alcohol or a prohibited substance. Symptoms include, but are not limited to, obvious impairment of physical or mental ability, such as slurred speech, difficulty in maintaining balance and/or odor of alcohol on the breath.

Sec. 9.05. Drug and alcohol testing.

Drug and alcohol testing is a condition of employment. All applicants and employees must submit to drug and alcohol testing.

A. *Applicants.* All applicants will be provided a summary of the drug testing policy. Applicants who have received conditional offers of employment with the Tribe must submit to testing for evidence of improper drug use and/or, where indicated, to test for the presence of alcohol. If the tests are positive, the applicant will be refused employment and may not reapply for at least 60 days.

B. *Employees.* All employees are subject to random, unannounced testing using a valid method that ensures that each employee will have an equal chance of being selected each time random testings are made. Random testing will be conducted throughout the year. The Employment Office shall hand deliver a list of the names of the employees to be tested to the appropriate Deputy or his/her designee on the morning of the random testing. Once the list is received and acknowledged by signature, it shall be the Deputy's responsibility to notify the employees to report for testing. If a random list of names to be tested is not received and acknowledged by signature of the Deputy or his/her designee, a failure of employees to report for random testing shall not be a violation of the Drug Policy. In addition, all employees will be tested at least one time per year.

C. *Safety sensitive positions.* All employees whose positions require them to perform safety sensitive duties, and/or require a commercial driver's license, may be subject to random drug testing at a higher incidence than other employees per the regulations of the Federal Transit Authority (FTA) (49 CFR Parts ~~653 and 654~~ 655), and per the regulations of the U.S. Department of Transportation (DOT) 49 CFR Part 40. In addition, penalties for positive drug tests may be more severe per the Tribe's Transit Services Drug and Alcohol Policy, effective January 1, 1999.

D. *After an accident.* A drug test shall be given within 32 hours and A an drug and/or alcohol test shall be given as soon as possible, but no later than eight hours, to any employee who contributes to a work-related injury that results in a reportable incident which:

- Requires professional medical treatment for the employee;
- Requires professional medical treatment for another person; and/or
- Causes damage to property exceeding \$500.

Failure of the employee to submit to the testing upon the request of the employer* (post accident) will result in termination.

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The Tribe follows North Carolina state law governing worker's compensation benefits. Pursuant to that law, worker's compensation benefits shall be denied to employees who are injured on the job and who test positive for prohibited substances in post-accident testing if the employee's impairment was the proximate cause of the injury.

E. *Upon reasonable suspicion.* Reasonable suspicion referrals for testing will be made on the basis of documented objective facts and circumstances. A written reasonable suspicion referral will be made by the appropriate supervisor or by the Deputy Marshall of the Cherokee Police Department ~~after approval by the Chief.~~ All supervisors will be trained to detect the signs and symptoms of drug and alcohol use. The referral must include the observations and/or evidence leading to the conclusion of reasonable suspicion of possible substance abuse. A written record of the reasonable

suspicion must be prepared and signed by the supervisor or Deputy Marshall within 24 hours of the observed behavior and/or evidence leading to the reasonable suspicion and must be received by the appropriate Deputy Officer before results of the drug test are known. Reasonable suspicion testing must be completed by the end of the workday that the possible violation was observed.

F. *Reasonable suspicion searches.* As part of the Tribe's ability to carry out the intent of this policy, the Tribe may search an employee's locker, desk, or other Tribal property when there is reasonable suspicion. The Tribe may ask law enforcement to conduct searches in the presence of witnesses and to document their findings. If the Tribe conducts searches without the assistance of law enforcement the search will be conducted by no less than two managers who will witness and document their findings.

G. *Employees on leave.* Employees on authorized leave or who are off duty when the random drug testing is performed will be required to report to the Employment Office immediately upon return to work to receive instructions on where to report for the drug test. If an employee's schedule falls outside of the Employment Office's regular hours the employee will be required to report to the Employment Office during regular hours immediately after notification of the random drug test. Failure to submit to testing on the day that the employee returns to work or during the regular hours immediately after notification will result in that employee's immediate termination.

H. *Confidentiality.* The Tribe and its contracting agents shall use reasonable precaution to ensure and maintain accuracy and confidentiality of the test results. A record of the chain of custody of the specimen will be documented in order to protect the identity of the employee and the integrity of the sample throughout the collection and testing process. Only persons authorized by the Executive Committee shall view the results of testing. The Employment Office shall ensure appropriate and applicable storage of these records.

Sec. 9.06. Under the influence at work.

If an employee reports to work displaying symptoms that they are under the influence of drugs or alcohol, and there's reasonable cause to believe they are under the influence of drugs or alcohol the following will occur:

- The supervisor will observe the employee's behavior.
- Upon the supervisor's conclusion that the employee is under the influence of an unknown substance the employee will be suspended with pay for the day until a drug test is conducted. ~~If an employee is under the influence of alcohol, the Cherokee Police Department or other Tribally designated agency contracted drug testing administrator will be summoned, or the supervisor and employee will go to the agency, which agency will then~~ to administer two Breathalyzer tests within ~~30~~ 15 minutes of each other.
- If the two Breathalyzer tests are positive tests, the employee will be suspended without pay pending further investigation. The documentation will be reviewed by the Human Resources Office. If there are no circumstances or evidence to mitigate the employee's behavior or positive test, the employee will be terminated.

- If the alcohol Breathalyzer tests are negative tests, the employee may be suspended without pay for the day and may be required to submit to a drug test if the supervisor suspects a drug test is necessary. Suspension ~~shall~~ may be maintained pending review of the drug test results.
- If drug use is suspected, the supervisor will contact the Employment Office at which time arrangements will be made for a drug screen.

Sec. 9.08. Legal medication.

Legal drugs are over-the-counter medications and drugs for which the individual has a medical prescription to treat specific medical conditions(s). The appropriate use of legal drugs is permitted. However, the use of any substance which carries a warning label indicating that mental functioning, motor skills, or judgment might be adversely affected must be reported to the appropriate supervisor before reporting to work under such medication. This is so that any resulting impairment will not be considered a violation of this policy and result in termination. However, the Tribe may prohibit an employee from working if taking such medication might create a safety risk in the workplace. Information obtained from such reports should be treated as a confidential medical report and should not be placed in the employee's personnel file. Steps will be taken to guarantee the security of this information. Supervisors may request that medical advice be sought by the employee before performing work-related duties.

Sec. 9.09. Notice of criminal drug/ or alcohol violation.

Employees must notify the appropriate supervisor of any criminal drug conviction or arrest immediately or as soon as reasonably possible after such conviction or charge but no later than 5 working days after such conviction or charge; this requirement also applies to any conviction or charge of laws governing the use of alcohol including, but not limited to, driving under the influence. An employee's failure to notify their supervisor of a violation within 5 working days shall result in their immediate termination.

Sec. 9.10. Education and training.

The Employment Office ~~will~~ shall ensure that all EBCI employees will receive at least 60 minutes annually of training on the consequences of prohibited drug/alcohol use. Managers and supervisors will receive an additional 60 minutes of training on the signs and symptoms of alcohol/drug misuse. Training shall be documented and updated on an annual basis. The Employment Office will be responsible for monitoring this policy.

Sec. 9.11. Voluntary admission of drug/alcohol use.

A. *Voluntary admission.* Any employee, at least three working days prior to the day of random testing, who voluntarily, and without reasonable suspicion of a supervisor, identifies themselves as having a problem with alcohol or drug abuse, shall be referred to the Employee Assistance Program. If the employee is unable to perform work duties, the employee may use accrued annual leave or be placed on leave without pay status until the employee can return to work. The employee shall not be subjected to corrective action for identifying themselves as having a problem with alcohol or drug abuse unless the employee's alcohol or drug abuse constitutes a direct threat to either property or the

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

B. *Employees requiring counseling and treatment.* If an employee is required to undergo counseling or treatment for drug or alcohol abuse as a condition of employment after the employee has informed his or her supervisor of the employee's problem with alcohol or drug abuse, the employee must meet with the Employment Office manager or designee to discuss available counseling and treatment options and available coverage, if any, under the Tribal health care plans. The employee will be required to select a counselor or treatment program and comply with all conditions set forth by the Tribe and the chosen program. The employee must consent to have the program and/or the health care provider, provide updates to the Tribe regarding his/her compliance with the designated treatment. An employee undergoing counseling or treatment must enter a "re-entry agreement" acceptable to the Tribe, and comply with job performance standards, work rules and personnel policies while in counseling or treatment. Employees who refuse to meet with the Employment Office manager or designee, or who fail to abide by the counseling plan or treatment plan, or who fail to meet the requirements of this article will be terminated.

C. *Re-entry agreements after voluntary admission.*

Employees who re-enter the work force following suspension during which counseling or rehabilitation is required must agree to the re-entry agreement. This shall include:

1. A release to work statement from the employee assistance program counselor;
2. A negative test for drugs or alcohol;
3. An agreement to frequent follow-up testing for a period of at least two years with at least six tests performed during the first year of re-entry,
4. A statement of expected work-related behavior,
5. An agreement to follow specified after-care requirements with the understanding that violation of the re-entry agreement is grounds for corrective action and possible termination.

D. *Second failure or refusal to undergo counseling.*

If an employee tests positive at the end of the suspension/counseling period, or if the employee refuses to undergo counseling, the employee will be terminated unless medical evidence is presented which would substantiate an extension of the counseling period. If the employee refuses to undergo such extended counseling, the employee will be terminated, and in addition to other restrictions on rehiring expressed in this article, may be rehired only upon proof of having undergone a certified drug rehabilitation program (as approved by the Tribe).

E. *Cost.*

Employees who have tested positive and as a consequence are required to undergo a series of follow-up tests, shall pay for the cost of these follow-up tests. The Tribe will pay for the cost of all other testing it orders. Counseling or treatment services

provided by an approved agency under this policy may be covered in part or in whole by the terms of the Tribe's health care plan. Employees should check with the Benefits Office to determine the coverage under their specific health plan or refer to their health care benefits booklet.

F. No guarantee or contract of employment.

This policy does not constitute a guarantee or contract of employment, nor does this policy constitute any guarantee or contract of any kind which might affect or limit the Tribe's imposition of corrective action up to and including discharge or the process or manner by which any corrective action up to and including discharge may be imposed. Nothing in this policy means that employees may not be subject to corrective action or terminated at any time with or without cause or for any other reason, including but not limited to, lack of work, a restructuring, rule violations or other misconduct, poor performance, or excessive absenteeism. However, without waiving or limiting this disclaimer, it is the Tribe's sincere hope to afford employees with substance use or abuse problems at least one real opportunity at rehabilitation.

Sec. 9.12. Consequences of prohibited conduct.

A. *Pre-employment* --See 9.05A.

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

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

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

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

E. An employee shall be terminated if they are issued a citation by law enforcement

or if they lose a license or credentials if the citation or loss means the employee cannot perform their duties.

Sec. 9.13 Restrictions on rehire.

An employee terminated for violation of this article will not be eligible ~~for rehire~~ to submit an employment application until the employee meets the requirements of Section 13.05. This section is not intended to create a binding contract. The E.B.C.I. reserves its right to refuse employment.

ARTICLE 10. ANTI-HARASSMENT AND WORKPLACE VIOLENCE POLICY

Sec. 10.00. General anti-harassment policy.

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

Employees should report any harassing behavior to the appropriate supervisor or the Employment Office. This includes harassing behavior where an employee witnesses another employee being harassed. A supervisor or manager who witnesses harassment within the department has a duty to report it to the Employment Office as well as take appropriate action to stop the harassment. Any supervisor or manager who has knowledge of such behavior yet takes no action to end the behavior will be subject to disciplinary action up to and including termination. The employee is not required to report the behavior or incident to the offending person, if that person is the supervisor or manager. The employee can report this behavior directly to the Employment Office. Employees should not fear retaliation because it will neither be practiced nor tolerated. EBCI will investigate the claim and, if true, take appropriate action to ensure such activity ceases.

Any employee who engages in the types of harassing conduct described in this Policy will be disciplined, up to and including termination.

Sec. 10.01. Definitions.

A. Harassment can be conduct that disturbs or interferes with an employee's ability to perform his/her job duties and/or treating an employee differently for any of the reasons set forth above.

B. Sexual harassment is any unwelcome or unwanted sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature where:

1. Submission to the conduct is made either an explicit or implicit condition of employment; or rejection of the request is used as a basis for an employment decision affecting the harassed employee; or,

~~2.~~ 2. The conduct, including conduct engaged in by customers, vendors and other non-employees, substantially interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment which includes but is not limited to the use of sexual epithets or references to physical characteristics. Expressly forbidden are unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Harassment may include, but is not limited to, slurs, epithets, threats, derogatory comments, unwelcome jokes, unwanted touching, teasing, playing

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sexually suggestive music, verbal or physical behavior that may be offensive, the distribution (whether in writing or electronically) or display of pictures or other materials that may be offensive, or other conduct such as lying, gossiping, degradation of others, and anything that would reasonably be perceived as creating a hostile or abusive work environment. Allegations of harassment may also ultimately arise out of intimate relationships between certain employees, or the hostile or abusive actions of an employee against a customer, vendor, or contractor.

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Sec. 10.02. Procedures; guidelines.

A. Each manager and supervisor is responsible for communicating this Policy and informing employees of the procedures for reporting any instance of prohibited harassment.

B. No employee at any level will retaliate against anyone either for reporting any instance of harassment or for providing information related to a harassment complaint.

C. Guidelines for responding to and reporting conduct considered to be harassing are described below. The purpose of these guidelines is to help the appropriate supervisor conduct a thorough and impartial investigation of these types of allegations. The person who is the object of harassment is not required to follow these guidelines. If a person feels uncomfortable following these guidelines, he/she always has the option of reporting incidents of harassment directly to the Employment Office. If a person registers a complaint regarding harassment and requests to remain anonymous, an investigation will be conducted and the request to remain anonymous will be honored, to the degree feasible under the circumstances, but anonymity cannot be guaranteed. However, the person who registers the complaint needs to understand that failing to openly participate in the investigation may hinder the process of resolving all allegations.

D. Managers and supervisors are required to respond to allegations of harassment in the case of any of the following situations:

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

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E. Managers or supervisors are to take prompt and/or corrective action upon receiving knowledge of any improper conduct as prescribed below:

- a.1. Immediately take a preliminary statement from the employee alleging harassment, including the nature of the conduct and when it occurred. If the manager or supervisor personally observes the conduct, he/she should document the observations in writing.

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2. Take the information to the Employment Office, which will initiate a prompt and complete investigation regarding the conduct. The investigation will include obtaining detailed statements from the complainant, the alleged harasser, witnesses and any other persons who may have relevant information. The Employment Office may also contract with an outside investigator to expedite more complex investigations. ~~Legal counsel may be contacted for assistance.~~ All persons who are questioned and/or involved in the investigation will be informed that any employee has a right to make a complaint; that they should not discuss the investigation; and that retaliation of any form; including but not limited to negative comments about the complainant, will result in discipline up to and including discharge.

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3.3. The manager of the department ~~will~~ may be asked to participate in the investigation, unless they are being accused of improper conduct. This is a priority matter and the full and immediate cooperation of the manager is expected.

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4.4. After the investigation is completed, should the evidence support a conclusion that prohibited conduct took place, the appropriate supervisor and Employment Office Manager will determine the appropriate action to be taken:

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- a. To ensure the harassment ceases;
- b. To correct the effects on the employee; and
- c. To ensure that the harassment does not reoccur, depending on the nature and severity of the conduct, ~~this may include~~ Corrective actions may include but are not limited to:
 - 1. A written warning that all improper conduct must cease immediately, and that further conduct of a similar nature will result in immediate discharge;
 - 2. A written warning and transfer of the harasser to another shift; the complainant should not be subject to having his/her schedule changed;
 - 3. Remedial training and counseling; and/or
 - 4. Termination.

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

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

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

Sec. 10.03 Workplace Violence Policy

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The Eastern Band of Cherokee Indians is committed to providing its employees with a work environment that is safe, secure, and free of threats, intimidation, harassment, and violence. The tribe recognizes that workplace violence is a growing problem that should be addressed by all employers and therefore adopts this policy for workplace violence. Consistent with this policy, threats or acts of physical violence, including intimidation, harassment, and/or coercion which involve or affect tribal employees or which occur on tribal property will not be tolerated.

A. Threats or Acts of Violence Defined

"Threats or acts of violence" include conduct against persons or property that is sufficiently severe, offensive, or intimidating to alter the conditions of tribal employment, or to create a hostile, abusive, or intimidating work environment for one or more tribal employees.

B. Definition of Workplace Violence

Prohibited workplace violence includes, but is not limited to, the following:

1. All acts or threats of violence occurring on tribal property, regardless of the relationship between the tribe and the individual involved in the incident.
2. All threats or acts of violence not occurring on tribal property, but involving someone who is a tribal employee or representative.
3. All threats or acts of violence not occurring on tribal property, but involving an employee of the tribe if the threats or acts of violence affect legitimate interests of the tribe.
4. Any threats or acts of violence resulting in the conviction of an employee or agent of the tribe, or an individual performing services on the tribe's behalf on a contract or temporary basis, under any criminal code provision relating to threats or acts of violence

C. Examples of Prohibited Conduct

1. Hitting or shoving an individual.
2. Threatening to harm an individual or his/her family, friends, associates, or their property.
3. The intentional destruction or threat of destruction of property owned, operated, or controlled by the tribe.
4. Making harassing or threatening telephone calls, or sending harassing or threatening letters or other forms of written or electronic communications.
5. Intimidating or attempting to coerce an employee to do wrongful acts, as defined by applicable law, administrative rule, policy, or work rule that would affect the business interests of the tribe.

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6. The willful, malicious and repeated following of another person, also known as "stalking" and making a credible threat with intent to place the other person in fear for his/her safety.
7. Making a suggestion or otherwise intimating an act to injure persons or property.
8. Unauthorized possession or inappropriate use of firearms, weapons, or other dangerous devices on tribal property.
9. Constant swearing at others.

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While some employees of the tribe may be required as a condition of employment to possess firearms, weapons, or other dangerous devices, or permitted to carry them as authorized by law, it is tribal policy that employees are to use them only in accordance with departmental operating procedures and all applicable tribal and federal laws.

D. Application of Prohibition

The tribe's prohibition against threats and acts of violence applies to all persons involved in tribal operations, including, but not limited to, tribal personnel, contract and temporary workers, and anyone else on the tribal property. Violations of this policy by any individual will be subject to legal action, as appropriate. Violation of this policy by a tribal employee will lead to disciplinary action up to and including termination, in accordance with the corrective action procedure in Section 13 of this policy manual.

E. Warning Signs, Symptoms, and Risk Factors

The following are examples of warning signs, symptoms, and risk factors which may indicate an employee's potential for workplace violence:

1. Dropping hints about a knowledge of firearms.
2. Making intimidating statements like: "You know what happened at the old post office."
3. Possessing reading material with themes of violence, revenge, and harassment.
4. Keeping records of other employees that he/she feels have violated tribal policy.
5. Physical signs of hard breathing, reddening of complexion, menacing stare, loudness, fast, profane speech.
6. Acting out verbally or physically.
7. Disgruntled employee or ex-employee who is bitter.
8. Being a loner or makes suicidal threats.
9. Having a romantic obsession with a co-worker who does not share that interest.
10. Domestic problems, unstable family.
11. Brooding, depressed, strange behavior, "time bomb ready to go off."
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F. Reporting

Each employee of the EBCI and every employee on tribal property shall report incidents of threats or acts of physical violence of which he or she is aware. In cases where the reporting individual is not a tribal employee, the report should be made to the Cherokee Indian Police Department.

In cases where the reporting individual is a tribal employee, the report should be made to the employee's immediate supervisor or a manager if the immediate supervisor

is not available. The supervisor shall notify the Employment Office of the report. An employee may file a report directly with the Employment Office if the supervisor or manager is the offending party. Any such incident shall promptly be investigated by the Employment Office and corrective action shall be taken in accordance with Section 13 of the tribal personnel policy. The Employment Office may also contract with an outside investigator to expedite more complex investigations. The E.B.C.I. will not retaliate against an employee for good faith reporting of instances of workplace violence.

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G. Crisis Management Responsibilities

In all situations, if violence appears to be imminent, employees should take precautions to assure their own safety and the safety of others. They should not place themselves in peril. If employees hear a commotion or disturbance near their workstation, they should not try and intercede. Employees should not try to handle a violent or potentially violent situation. This includes threats by employees, as well as threats by vendors, customers, or other members of the public.

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1. Dial 911 and seek assistance from the Cherokee Police Department
2. Secure their own safety and notify their supervisor if possible.
3. Evacuate the building in an orderly manner if necessary.

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ARTICLE 11. TRAVEL POLICY

Refer to the Travel Policy contained in the Fiscal Management Policy produced by the Budget & Finance Department and adopted by Executive Order. The Fiscal Management Policy shall be maintained by each program manager and made accessible to employees. Each program manager shall also be responsible for employees training and compliance for these policies.

**ARTICLE 12. COBRA (INSURANCE BENEFITS CONTINUANCE)
CONTINUATION COVERAGE RIGHTS TO GROUP HEALTH PLAN**

Sec. 12.00. Purpose.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires employers of 20 or more employees to offer employees and their dependents certain health insurance continuation rights if the employee is terminated, laid off, is on extended leave paid or unpaid other than FMLA, or the employee's hours reduced so the employee no longer meets the eligibility requirements for health insurance coverage. If any of these events occur, the employee or dependents can choose to continue health care coverage for 18 months at the employer's group premium rate plus 2 percent administration costs.

Certain other events, such as an employee's disability, death, divorce, or legal separation, triggers health insurance continuation rights on the part of the employee's dependents for a period up to 36 months.

Continuation coverage may be terminated by employer if:

- ☐ Employer no longer provides group health coverage to any employees;
 - ☐ The premium for employee/family member is not paid;
 - ☐ Employee/family member becomes entitled to Medicare; or
- It is determined under the Social Security Act that employee is no longer disabled.

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The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) gives employees and their beneficiaries the opportunity to continue health, dental and vision insurance coverage under the Eastern Band of Cherokee Indians Employee Health Plan when a "qualifying event" would normally result in the loss of eligibility.

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

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

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

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Sec. 12.04. Procedure.

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

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

ARTICLE 13. CORRECTIVE ACTION PROCEDURE

Sec. 13.00. Policy.

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

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

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

~~Sec. 13.04. Guide to seriousness of violations.~~

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

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

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

Sec. 13.012. Corrective action procedure.

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

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

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

Before implementing disciplinary actions, supervisors will investigate and justify in writing the action to be taken, including documentation of specific reasons for the action and anything relevant and evidence which supports the charge. Supervisors must make sure proper forms, supplied by the Employment Office, are used to document the corrective action taken. The Supervisor may use program funds to contract with an outside investigator to expedite more complex investigations.

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

All counseling, reprimands, and terminations will be done in private. Counseling and reprimands will be done in a professional manner with the purpose of correcting the problem, allowing the employee at least 24 hours to respond in writing to any charges, and helping the employee be a productive, effective employee of the EBCI.

Employee reactions are to be noted on the Corrective Action Form and employees are asked to sign that they have been informed of the contents. This signature does not signify agreement nor disagreement with the action taken. Should the employee refuse to sign, this should be noted and another individual (preferably another

supervisor) shall be called in to witness that the information was covered with the employee.

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

Corrective Action may begin with any of the following steps:

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

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Appeal Procedure: Any eligible employee who feels that unfair treatment has been administered under the corrective action procedure may seek relief by way of the Appeal Procedure. See section 14.

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

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

A. ~~Schedule I Offenses include: Types of offenses:~~

- Physical or verbal mistreatment or coercion of an employee or the public.
- Theft, dishonesty, fraud, embezzlement or misuse of EBCI, Tribal, or Federal-funds.
- Fighting with or verbal abuse of anyone in the workplace.
- Intoxication or possession of alcohol or drugs.
- Absence from work for two consecutive days without notice to or permission from supervisor.
- Divulging confidential EBCI information.
- Willful destruction of EBCI property.
- Entering an unauthorized area.
- Leaving work without permission.
- Sexual, racial or any other form of harassment.
- Failure to submit Conversion sheet timely and complete.
- Workplace violence such as threats, violence, stalking , or related incidents
- Unexcused tardiness.
- Conducting personal business while on duty.
- Failure to request leave according to established procedures.
- Unauthorized canvassing, soliciting, or peddling on premises.
- Political activity on work hours or using Tribal resources.
- Gross negligence or careless performance of job duties.
- Refusal to carry out reasonable work-related instructions of a supervisor.

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

B. ~~Schedule II Offenses include:~~

- Unauthorized absence (AWOL)
- Failure to report traffic citations if required to operate an EBCI vehicle in the performance of duties.
- Disrespectful conduct: Use of abusive, insulting or obscene language, or gestures, or malicious gossip.
- Gambling in violation of Section 4.26
- Violation of any internal or departmental supplemental policies.
- Unauthorized possession of, use of, or damage to EBCI, or the property of others.

- Deliberate destruction, damage, waste or misuse of EBCI property, data, or equipment or property of other employees, or of members of the public, in any manner at any time, or the commission of acts likely to cause destruction, damage or waste.

- Failure to observe precautions for personal safety, posted rules, signs, written or oral safety instructions.

- Failure to observe any EBCI policy or code of conduct.

- Knowingly concealing or failing to disclose defective work

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

C. Schedule III Offenses include:

- Falsifying records and reports i.e. providing false and/or intentionally misleading information to EBCI, either orally or in writing, including application for employment, time sheets, pay records, legally required records, production reports, quality records, expense records, tests, medical records, or other data requested by or submitted to EBCI or on behalf of EBCI, as well as information or claims requested by or submitted to EBCI insurance plans or providers.

- Conversion of EBCI funds for personal use.

- Use of EBCI property or resources for improper purchase for personal gain.

- Breach of confidentiality.

- Violations of Article 8 – Code of Conduct.

- Violations of Article 10 – Anti-harassment policy.

- Violations of Article 16- Fraud policy.

- Threatening, intimidating, or coercing management, another employee, a member of the public, on EBCI property at any time, for any reason, or while on EBCI business.

- Conviction ~~or~~ on criminal charges not related to E.B.C.I. employment.

- Abuse or neglect in any form.

- Unprofessional conduct that reflects poorly on EBCI, dishonest, disgraceful conduct including the making of derogatory remarks reflecting on the EBCI.

- Criminal conduct occurring in relation to employment with the E.B.C.I. This conduct includes the E.B.C.I. or an employee thereof as the victim of the criminal activity. (Decisions regarding corrective action may be made based on discussions with the employee and evidence obtained during EBCI's investigation. The corrective action decision may be made regardless of the disposition of any criminal charges, which may have been brought.)

- Threatened or actual assault against another employee.

- Failure to report arrests and/or charges resulting from the commitment of a felony or misdemeanor.

- Deliberate misrepresentation, falsification, misstatement, or concealment of material

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or fact in connection with employment.

- Unauthorized or improper use of equipment, materials, or facilities.
- Failure to honor debts or legal obligations owed to the Tribe or a tribal entity.
- Insubordination: Disobedience or refusal to carry out any lawful order regulation or policy, or refusal to obey supervisory authority.

~~• Gross negligence or careless performance of duties.~~

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

~~4. Schedule IV Offenses include:~~

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Consequences for the offenses named above can range from counseling to termination depending upon the facts and nature of the circumstances.

B. Continuation of offenses

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

Consequences for these offenses are for Schedule IV Offenses: Termination.

Sec. 13.04. Exit interview.

An exit interview ~~is to~~ shall be conducted immediately following any termination for any reason, whether involuntary or voluntary (Retirement, Resignation, RIF, etc.) or as soon thereof as practical. This is to be done by the Employment Office. See section 4.29.

Sec. 13.05. Eligibility for rehire.

An employee terminated from employment will not be eligible ~~for rehire~~ to submit an employment application for twelve (12) months after termination. In addition, an employee terminated for sexual harassment or violation of the drug policy shall not be eligible ~~for rehire~~ to submit an employment application until the employee documents that he or she has attended and successfully completed a counseling program or the equivalent thereof and that program has been approved as acceptable by the Deputy Health Officer and the appropriate counseling program within the Health and Medical Division. This section is not intended to create a binding contract. The E.B.C.I. reserves its right to refuse employment.

Comment [HS2]: this will likely create an employment contract. it can be put in the unpublished hiring procedures but not in the personnel manual.

ARTICLE 14. CORRECTIVE ACTION APPEALS

Sec. 14.00. Appeal procedure.

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

Step 1: An employee must appeal his/her corrective action in writing to the appropriate Deputy Officer within five working days after a final corrective action is taken. After the Deputy Officer has had a chance to review relevant facts and consult with all appropriate supervisors and other relevant parties, a written answer will be given to the employee and copies will be provided to the Employment Office. Unless additional time is needed to investigate or review the situation, the response will be given within five working days. The Deputy shall provide the employee with written notification on the fifth day if the response will require more than five working days to complete. A final response shall be issued by the Deputy within 10 days. If the original corrective action was taken by the Deputy Officer, then Step 1 is not required.

Step 2: If the employee is not satisfied with the final corrective decision by the Deputy Officer, a written notice of appeal to the Appeals Committee must be submitted to the Employment Office within five working days after the employee receives the final corrective action. ~~Deputy Officer's written decision.~~ The notice period will be strictly enforced.

The notice of appeal shall include the following information:

- (1) The basis for the appeal; of what the employee feels was unreasonable and unjust about the corrective action process;
- (2) Specify what was unfair about the efforts made to resolve the matter;
- (3) The issues to be heard by the Appeals Committee; The specific violations of due process by management or the specific failure by the Manager to adhere to policy;
- (4) The name of the employee's attorney or person named as the employee's representative;
- (5) All persons or entities that may be called as witnesses;
- (6) Copies of any agreements, contracts, or other documents that may affect the appeal decision; and
- (7) The results sought by the employee.

Appeals Committee: The appeals committee shall be made up of one EBCI

Comment [HS3]: Having an appeal on terminations of employment is contradictory to "at will" law. The Tribe needs to remove any appeals for terminations and consider having a dispute resolution process for corrective actions lesser than termination of employment.

management employee and two EBCI employees who are not in management. The Appeals Committee panel for any particular hearing shall be selected from a pool of ~~five~~ seven EBCI management employees and ~~ten~~ fourteen EBCI non-management employees shall be elected by their fellow employees after every two years revision of the Personnel Policy Manual. The Appeals Committee shall have a non-voting chairperson to direct and structure the proceedings, clarify the rules of Section 14.00, and maintain order. The chairperson serves a four year term and is appointed by the Attorney General from the pool of elected Management employees. The Appeals Committee pool shall receive four hours of appropriate training provided by the Employment Office.

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

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

The Appeals Committee will hear and review all aspects of the corrective action within twenty days of the appeal to the Appeals Committee but shall limit their review to a determination of whether the action by the Deputy Officer was reasonable and justified based on applicable policies and the circumstances. At the conclusion of the hearing the Committee may render their decision immediately or may take the matter under further advisement for no more than ten calendar days for consideration. They may affirm or, overturn or modify the corrective action, or refer the issue back to any of the preceding steps for further examination investigation. They may consult with other proper authorities or experts for advice. Under normal circumstances, a decision should be reached within ten working days and all parties will be sent a written reply. The Appeals Committee's decision is final and binding and may not be appealed to the Tribal Council or any other body. If the Appeals Committee upholds the termination of an employee, the Program Director shall immediately complete a termination conversion and submit it to the Employment Office upon the employee's receipt of the Appeals decision.

Sec. 14.01. Involvement of the Employment Office.

The Employment Office ~~is available for assistance beginning in Step 1 and may be called upon by both the employee and Management to assist with corrective action appeals. The Employment Office shall have a designated representative for the employee for consultation on policy appeals issues. A separate representative for the employer shall be designated by the Employment Office for assistance with appeals. It is also appropriate for Management to contact the Legal Division for consultation on policy these issues. The Employment Office should be consulted for advice to ensure that policies are followed and that potential legal liability is recognized and avoided. The designated representative for the employee may review appeal documents and written responses for an appeal but the representative does not assist the employee at the appeal hearing.~~ Appeal forms are kept and are available in each department as well as in the Employment Office.

Sec. 14.02. Involvement of the EBCI Legal Counsel.

Legal Counsel is available to management for consultation whenever any form of corrective action is taken by management. It is the responsibility of the employee to seek their own Legal Counsel in such matters. Legal Counsel should be consulted by Management in all situations that involve involuntary termination. ~~At the request of the Appeals Committee, Objective outside~~ Legal Counsel shall observe or participate in an appeal hearing and assist the committee in documenting its decision.

Sec. 14.03. Retention of documentation.

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

Comment [HS4]: Again, this is contrary to "at will" law.

ARTICLE 15. PERFORMANCE EVALUATIONS

Sec. 15.00. Policy.

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

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

Sec. 15.01. Objectives.

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

Sec. 15.02. Procedures.

A. *Probationary employees.*

All new employees will be informed about the expectations of their performance as it relates to job objectives and standards of performance during the probationary period. These employees will be evaluated at the end of 90 days to determine whether their skills meet the expectations of the job and the culture of the Tribe. The department head shall be responsible for the department's completion of a formal evaluation of the employee's performance.

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

B. *Regular employees.*

- Evaluation period. The evaluation period is the term of the fiscal year. Annual evaluations for performance must be completed by ~~September~~ April 15th of each year. Immediate supervisors are also encouraged to conduct a semi-formal review of each employee's performance during the month of April of each year.
- Supervisors are responsible for maintaining current job descriptions/performance objectives and keeping employees up to date on these as well as any changes.
- Supervisors will complete the job objective, standard of performance, and weights for each job at the beginning of the review period. Employees are to be included to the extent possible in the formulation of goals and standards upon which they will be evaluated.
- During the course of the review period, the supervisor will give feedback to the employee regarding his or her performance. If situations arise that adversely affect the employee's ability to complete or perform a task that is beyond the employee's control, the supervisor will allow for and document any modifications that will be made during the review period.
- At the end of the review period, the supervisor should complete the rating form, sign it, and hold a conference with the employee to discuss the evaluation in detail. Commendation is to be made for areas of performance that exceeds expectation. Specific action plans are agreed to where improvement is warranted. When either of these ratings are given, the supervisor should explain the reasoning in the spaces provided on the evaluation form.
- Employees being evaluated will be asked to sign the appraisal form. This signature indicates that the information has been communicated and does not necessarily indicate agreement. If the employee refuses to sign the document the refusal will be noted. Employees who disagree with their appraisal may attach a written rebuttal to the appraisal. Once this is done, the appraisal must be returned to the Deputy Officer for further review.

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

Sec. 15.03. Approvals.

All evaluations require the review and approval of the next level of management prior to being communicated to the employee. The Employment Office may be used for counsel and to help ensure consistency when needed.

Sec. 15.04. Employee feedback survey.

Once per year, the Principal Chief and Deputy Officers will seek employee input on the performance of their supervisors through a written survey or other means. Deputy Officers will be evaluated by all supervisors and employees within their division. Supervisors will be evaluated by the employees they supervise.

ARTICLE 16 FRAUD POLICY

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SECTION 16.01 BACKGROUND

According to *Management Antifraud Programs and Controls*, released in 2002 as an exhibit to Statement on Auditing Standards No. 99 *Consideration of Fraud in a Financial Statement Audit*, an organization must take three fundamental actions to mitigate fraud:

- Create a culture of honesty and high ethics,
- Evaluate antifraud processes and controls, and
- Develop an appropriate oversight process

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The Eastern Band of Cherokee Indians' (EBCI) fraud policy is hereby established to facilitate the Tribe's fraud mitigation activities and fraud prevention program. It is the intent of EBCI to promote consistent organizational behavior by providing guidelines and assigning responsibility for the development of controls and conduct of investigations. It is Tribal management's responsibility, (i.e., Tribal Council, the Executive Committee, and Deputy Management), to create a culture of honesty and high ethics and to communicate clearly and consistently acceptable behavior and expectations for each employee. Tribal management shall also be proactive, instead of reactive, in reducing fraud opportunities through:

- Identification and measurement of fraud risks, including financial reporting risk, operational risk, and compliance risk by internal as well as external sources,
- Taking action to mitigate identified risks, and
- Implementation and monitoring appropriate preventative and detective internal controls and other deterrent measures.

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SECTION 16.02 SCOPE OF POLICY

This policy applies to any fraud, or suspected fraud, involving employees as well as appointees, elected officials, consultants, vendors, contractors, outside agencies doing business with employees of such agencies, and/or any other parties with a business relationship with EBCI and its associated tribal entities. Any investigative activity required will be conducted without regard to the suspected wrongdoer's length of service, position/title, or relationship to EBCI.

SECTION 16.03 DEFINITION OF FRAUD

- "an instance or act of trickery or deceit especially when involving misrepresentation; an intentional misrepresentation, concealment, or nondisclosure for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right." *Webster's Dictionary*
- "occupational fraud and abuse; the use of one's occupation for personal enrichment through deliberate misuse or misapplication of the employing organization's resources or assets." *Association of Certified Fraud Examiners*

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SECTION 16.04 POLICY

Management is responsible for the detection and prevention of fraud, misappropriations, and other inappropriate or unethical conduct. Each member of the management team will be familiar with the types of improprieties that might occur within his or her area of responsibility, and be alert for any indication of irregularity. The EBCI will institute a zero tolerance approach to fraudulent activity as evidenced by the implementation of this policy, the investigation of all reported suspected fraudulent activity, and the disciplinary measures taken. Any fraud that is detected or suspected must be reported immediately to the Director of Internal Audit, who coordinates all investigations with the Attorney General's Office and other affected areas, both internal and external, as deemed appropriate.

SECTION 16.05 ACTIONS CONSTITUTING FRAUD

The terms defalcation, misappropriation, and other fiscal wrongdoings refer to, but are not limited to:

- Any dishonest or fraudulent act
 - Deceptive business practices
 - Extortion
 - Bribery
 - Kickbacks
 - Blackmail
 - Embezzlement
 - False pretenses
 - Securing execution of documents by deception
 - Tampering with records
-
- Forgery or alteration of any document or account belonging to EBCI
 - Forgery or alteration of a check, bank draft, or any other financial document
 - Misappropriation and/or misuse of tribal funds, securities, supplies, or other assets
 - Impropriety in the handling or reporting of money or financial transactions
 - Profiteering as a result of insider knowledge of EBCI activities
 - Disclosing confidential and proprietary information to outside parties
 - Disclosing to other persons securities activities engaged in or contemplated by EBCI
 - Accepting or seeking anything of material value from contractors, vendors, or persons providing services/materials to EBCI. Exception: Gifts less than \$50 in value.
 - Destruction, removal or inappropriate use of records, furniture, fixtures, and/or equipment
 - Any similar or related inappropriate and unethical conduct, including violations of the EBCI Code of Ethical Conduct

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SECTION 16.06 OTHER INAPPROPRIATE CONDUCT

Suspected improprieties concerning an employee's moral, ethical, or behavioral conduct, as defined by of the EBCI Personnel Policies and Procedures generally and Article 8 Code of Ethical Conduct of said Policies and Procedures specifically, should be resolved by departmental management and/or the Employment Office.

If there is any question as to whether an action constitutes fraud, contact the Director of Internal Audit for guidance.

SECTION 16.07 INVESTIGATIONS UNIT

The Investigations Unit is responsible for coordinating potential and actual fraud examinations. It is composed of the Director of Internal Audit and his/her staff. The Director of Internal Audit as is deemed necessary shall contact the Attorney General's Office, the Prosecutor's Office, the Cherokee Police Department and/or external consultants to assist in an investigation.

SECTION 16.08 INVESTIGATION RESPONSIBILITIES

The Office of Internal Audit has the primary responsibility for the investigation of all suspected fraudulent acts as defined in this policy. If the investigation substantiates that fraudulent activities have occurred, the Director of Internal Audit will timely prepare a written report of the results of the investigation, indicating the findings and corresponding corrective action recommendations to appropriate designated personnel, including the Audit Committee, per the Office of Internal Audit's Report Issuance Policies and Procedures.

Decisions to prosecute or refer the examination results to the appropriate law enforcement and/or regulatory agencies for independent investigation will be made in conjunction with the Attorney General's Office and senior management, as will final decisions on disposition of the case and recoveries of any tribal monies or property.

SECTION 16.09 CONFIDENTIALITY

The Office of Internal Audit treats all information received confidentially. Any employee who suspects dishonest or fraudulent activity will notify the Director of Internal Audit or a member of the Internal Audit staff, their immediate supervisor, or call the Fraud Hotline at 1-800-455-9014 immediately, and should not attempt to personally conduct investigations or interviews/interrogations related to any suspected fraudulent act (refer to **Article XII REPORTING PROCEDURE** in this policy). Investigation results will not be disclosed or discussed with anyone other than those who have a legitimate need to know. This is important in order to avoid damaging the reputations of persons suspected but subsequently found innocent of wrongful conduct and to protect EBCI from potential civil liability.

SECTION 16.10 AUTHORIZATION FOR INVESTIGATING SUSPECTED FRAUD

Members of the Investigation Unit and designates will have (1) free and unrestricted access to all Tribal records and premises, whether owned or rented AND (2) the authority to examine, copy, and/or remove all or any portion of the contents of files, desks, cabinets, and other storage facilities on the premises without prior knowledge or consent of any individual who may use or have custody of any such items or facilities when it is within the scope of their investigation, and as further set forth in Cherokee Code Section 117-112.

SECTION 16.11 REPORTING PROCEDURES

Great care must be taken in the investigation of suspected improprieties or wrongdoings so as to avoid mistaken accusations or alerting suspected individuals that an investigation is under way.

An employee who discovers or suspects fraudulent activity will contact the Director of Internal Audit or a member of the Internal Audit staff, their immediate supervisor, or call the Fraud Hotline at 1-800-455-9014 immediately. The employee or other complainant may remain anonymous. All inquiries concerning the activity under investigation from the suspected individual, his or her attorney or representative, or any other inquirer should be directed to the Investigations Unit or the Attorney General's Office. No information concerning the status of an investigation will be given out. The proper response to any inquiries is: "I am not at liberty to discuss this matter." *Under no circumstances* should any reference be made to "the allegation," "the crime," "the fraud," "the forgery," "the misappropriation," or any other specific reference.

The reporting individual should be informed of the following:

- Do not contact the suspected individual in an effort to determine facts or demand restitution.
- Do not discuss the case, facts, suspicions, or allegations with *anyone* unless specifically asked to do so by the Attorney General's Office or the Director of Internal Audit.

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SECTION 16.12 DISCIPLINARY ACTION/TERMINATION

Corrective action with regard to employee involvement in fraudulent activity and lack of supervisory oversight providing the necessary opportunity for such fraudulent activity will be the responsibility of senior management.

SECTION 16.13 TRAINING

A crucial component to the implementation of this policy is robust training and awareness of this policy and what constitutes fraudulent activity. As recommended by *Management Antifraud Programs and Controls*, released in 2002 as an exhibit to Statement on Auditing Standards No. 99 *Consideration of Fraud in a Financial Statement Audit*, new employees shall be informed during the New Employee Orientation about the EBCI's values, its Code of Ethical Conduct, and the EBCI Fraud Policy. This training shall explicitly cover expectations of all employees of the Fraud Policy, specifically including:

- Each employees' duty to communicate fraud issues.
- The types of issues, including actual or suspected fraud, to be communicated along with specific examples, and
- The appropriate procedure to communicate these issues.

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Additionally, training on this policy shall be conducted for all current employees of EBCI and its associated entities, with annual refresher training thereafter to be documented by employee management within the employee personnel file.

SECTION 16.14 ADMINISTRATION

The Audit Committee is responsible for the administration, revision, interpretation, and application of this policy. The policy will be reviewed annually and revised as needed.

