

# WAGANAKISING ODAWA



## TRIBAL CODE of LAW

### TITLE XIV. EMPLOYMENT

2023 – Version 10.2

WANAKISING ODAWA TRIBAL CODE of LAW

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## TITLE XIV. EMPLOYMENT

### Chapter 1. Fair Employment

#### 14.101 PURPOSE AND TITLE

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

(Source: WOS 2008-011, October 5, 2008, Section I)

#### 14.102 DEFINITIONS

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

**D.** “*Malice*” means the intent, without just cause or reason, to commit a wrongful act that will result in harm to another.

**E.** “*Management or Manager*” means any individual employed by the Tribal Government Administration, commercial entities, including the Odawa Casino Resort and ancillary enterprises and activities who has the authority, acting in the interest of Tribe, to cause another employee to be hired, transferred, suspended, laid off, recalled, promoted, discharged, assigned, rewarded or disciplined, either by taking such action or by recommending it to a superior; or who has the authority and responsibility to direct other employees. The exercise of this authority is not of a merely routine or clerical nature, but requires the exercise of independent judgment.

**F.** “*Odawa Casino Resort*” means the gaming enterprise, including related hotel and restaurant services and ancillary enterprises and activities, of the Tribe located at, or near 1760 Lears Road, Petoskey, Michigan, wherein the Tribe operates Class II and Class III gaming to generate governmental revenue for the Tribe pursuant to the Indian Gaming Regulatory Act.

**G.** “*Reckless indifference*” means conscious or reckless disregard of the consequences of one's acts or omissions.

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

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

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



(Source: WOS 2008-011, October 5, 2008, Section II)

### **14.103 TRIBAL COURT**

**1.** The Tribal Court shall have the jurisdiction to hear charges of violations of rights afforded by this Statute within the confines of Tribal employment for employees of the Little Traverse Bay Bands of Odawa Indians including violations by third-parties.

**2.** This Statute does not provide for Tribal Court jurisdiction over limitation of employment based on economic necessity, such as lessening of hours of work, demotions and/or re-organization or restructuring, provided that business decisions are fair and equitable criteria including:

**a.** Equal treatment – Team Members shall be considered for layoff without regard for sex, race, color, age, religion, national origin, sexual orientation, disability, or veteran status.

**b.** Introductory Period – In cases of restructuring or reduction in force, employees who are in their initial 90 day introductory status and are in the job classifications(s) identified within the department specified for reduction in force shall be terminated. They will have no recall rights.

**c.** Skills and Abilities – a Team Member who does not possess the necessary skills and abilities required to perform the duties for the continued operation of the department shall be selected as an affected employee.

**d.** Performance – the average of the overall ratings on the three most recent written performance appraisals within the department submitted to the Human Resources Department, as well as other performance-related documents on department file shall be considered in selecting impacted employees.

**e.** Length of Service with the Company – the employee’s length of continuous service to the Company shall be considered in selecting impacted employees. The

employee(s) with the longest length of service shall be affected last after consideration of the above items.

f. Employees on Approved Leave of Absence – an employee on any approved leave of absence during an impacted period may be affected in accordance with the above considerations.

(Source: WOS 2008-011, October 5, 2008, Section III)

#### **14.104 LIMITED WAIVER OF SOVEREIGN IMMUNITY**

1. The Tribe clearly and expressly waives its sovereign immunity to the Equitable Remedies as set forth in this Statute and clearly and expressly waives its sovereign immunity to Damages as set forth within this Statute for Employers and limits such waiver to remedies as set forth within this Statute.

2. The Tribe clearly and expressly waives its sovereign immunity to Equitable Remedies as set forth in this Statute for officials, individual employees and/or managers and the Tribe clearly and expressly waives its sovereign immunity for Damages for officials, individual employees and/or managers who act beyond the scope of their duties and authority in which the actions include either acting with malice or with reckless indifference to the rights afforded under this Statute as set forth within this Statute and limits such waiver to remedies as set forth within this Statute.

3. The Tribe asserts no sovereign immunity for third-parties; and limits the remedies as set forth by this Statute.

(Source: WOS 2008-011, October 5, 2008, Section IV)

#### **14.105 REMEDIES BEFORE THE TRIBAL COURT FOR VIOLATIONS BY THE EMPLOYER**

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

2. In any action filed under this Statute, the Tribal Court may grant the remedies set forth for violations of the Employer:

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

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

b. *Damages.* If the Tribal Court finds a blatant employment rights violation, the Tribal Court may additionally award compensatory, punitive damages or fines as provided in this subparagraph.

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

c. The total sum of compensatory, punitive damages and/or fines may not exceed:

- i. \$50,000 if the respondent has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year;
- ii. \$100,000 if the respondent has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year;

- iii. \$200,000 if the respondent has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year;
- iv. \$300,000 if the respondent has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year.

(Source: WOS 2018-013, August 15, 2018, Section V(2)(c))

- d. When a discriminatory practice involves the provision of a reasonable accommodation, damages may not be awarded when the employer demonstrates good faith efforts, in consultation with the person with the disability who has informed the employer that accommodation is needed, to identify and make a reasonable accommodation that would provide that individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.
- e. The Tribal Court may award reasonable attorney fees and costs in its discretion to the prevailing party.
- f. The Tribal Court may award the opposing party any penalties for frivolous claims or any other appropriate remedies as the Tribal Court deems.

(Source: WOS 2008-011, October 5, 2008, Section V)

#### **14.106 REMEDIES BEFORE THE TRIBAL COURT FOR VIOLATIONS BY AN INDIVIDUAL EMPLOYEE OR MANAGER**

- 1. Any charge of violation must be filed with the Tribal Court within one-hundred and eighty (180) days of the alleged violation.
- 2. In any action filed under this Statute, the Tribal Court may grant the remedies set forth for violations of an Individual Employee or Manager:
  - a. *Equitable Remedies.* If the Tribal Court finds that employment rights violation occurred, its judgment must specify an appropriate remedy or remedies for that violation. The remedies may include, but are not limited to:

- a.** An order to cease and desist from the unlawful practices specified in the order;
- b.** *Damages.* If the Tribal Court finds a blatant employment rights violation, the Tribal Court may award punitive damages or fines as provided in this subparagraph.

  - 1.** A complainant may recover punitive damages against an individual employee and/or manager if the complainant demonstrates that the individual employee and/or manager engaged in an unlawful employment rights violation with malice or with reckless indifference to the rights of an aggrieved individual protected by this Statute.
- c.** The total sum of compensatory, punitive damages and/or fines may not exceed:

  - i. \$50,000 if the respondent has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year;
  - ii. \$100,000 if the respondent has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year;
  - iii. \$200,000 if the respondent has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year;
  - iv. \$300,000 if the respondent has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year.

(Source: WOS 2018-013, August 15, 2018, Section VI(2)(c))

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

and would not cause an undue hardship on the operation of the business.

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

**f.** The Tribal Court may award the opposing party any penalties for frivolous claims or any other appropriate remedies as the Tribal Court deems.

(Source: WOS 2008-011, October 5, 2008, Section VI)

#### **14.107 REMEDIES BEFORE THE TRIBAL COURT FOR VIOLATIONS BY THIRD PARTIES**

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

**2.** In any action filed under this Statute, the Tribal Court may grant the remedies set forth for violations of a third party:

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

**1.** An order to cease and desist from the unlawful practices specified in the order;

**b.** *Damages.* If the Tribal Court finds a blatant employment rights violation, the Tribal Court may award punitive damages or fines as provided in this subparagraph.

**1.** A complainant may recover punitive damages against an individual employee and/or manager if the complainant demonstrates that the individual employee and/or manager engaged in an unlawful employment rights violation with malice or with reckless indifference to the rights of an aggrieved individual protected by this Statute.

- c. The total sum of compensatory, punitive damages and/or fines may not exceed:
  - i. \$50,000 if the respondent has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year;
  - ii. \$100,000 if the respondent has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year;
  - iii. \$200,000 if the respondent has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year;
  - iv. \$300,000 if the respondent has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year.

(Source: WOS 2018-013, August 15, 2018, Section VII(2)(c))

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

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

**f.** The Tribal Court may award the opposing party any penalties for frivolous claims or any other appropriate remedies as the Tribal Court deems.

(Source: WOS 2008-011, October 5, 2008, Section VII)

## **14.108 EMPLOYMENT DISCRIMINATION AND SEXUAL HARASSMENT**

**1.** Recognizing the traditional Odawak value of equality, mutual respect and respect for

differences, persons employed or seeking employment with the Tribe enjoy the right not to be unlawfully discriminated against based on religion, race, color, national origin, ethnicity, age, sex, height, weight, familial status, marital status, disability, perceived disability, sexual orientation, arrest or detention records, or other disposition in which a conviction did not result; in the areas of hiring and firing; compensation, assignment, or classification of employees; transfer, promotion, layoff, or recall; job advertisements; recruitment; testing; use of company facilities; training and apprenticeship programs; fringe benefits; pay, retirement plans, and disability leave; or other terms and conditions of employment.

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

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

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

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

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

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



or jokes.

(Source: WOS 2008-011, October 5, 2008, Section VIII)

#### **14.109 INDIAN PREFERENCE IN HIRING, PROMOTION AND TRAINING**

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

(Source: WOS 2008-011, October 5, 2008, Section IX)

#### **14.110 LAWFUL EMPLOYMENT DISCRIMINATION**

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

4. Limitation on benefits for marriages that involve same-sex marriages.

(Source: WOS 2008-011, October 5, 2008, Section X)

#### **14.111 DOMESTIC LEAVE AND MILITARY LEAVE**

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

(Source: WOS 2008-011, October 5, 2008, Section XI)

#### **14.112 EMPLOYMENT LEAVE FOR VICTIMS OF VIOLENCE**

1. An employee who is a victim of domestic abuse, sexual assault, stalking, or other domestic violence-related crimes may take up to thirty (30) days of unpaid leave to seek a restraining order, obtain medical care or counseling, locate safe housing or find or make secure housing arrangements, or seek legal assistance and prepare for or attend court-related proceedings.
2. Upon return from leave, an employee may not be discharged or subjected to adverse employment action for taking such leave.
3. Upon return from leave, an employee shall be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
4. Eligibility criteria, procedures and guidelines in the Employee Handbook shall apply but shall not diminish the rights provided by this Statute subject to reasonable limitations and certification as set out in the Employee Handbook.

(Source: WOS 2008-011, October 5, 2008, Section XII)

#### **14.113 EMPLOYEE LIVING WAGES**

A. In order to maintain a minimum standard of living necessary for health, efficiency and general well-being of all employees within its jurisdiction, the Little Traverse Bay Bands of Odawa Indians has set forth the following to establish a LTBB Living Wage:

1. The LTBB Living Wage shall be based on based on the formula from the United States Department of Agriculture (USDA) and Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) and Fair Market Rent price as found at Rentdata.org, an independent organization; and the basis of the formula is as follows: the rent for an average 2 to 3-bedroom rental housing cost, multiplied by twelve (12) months, divided by percentage rate of rent required by NAHASDA (30%) divided by the yearly standard hours of 2080, sets the living hourly wage.

2. The LTBB Living Wage adjustment shall be automatic and shall continue to increase by three (3) percent at the beginning of each fiscal year unless it is either repealed or replaced by Tribal Resolution, or Statute.

(Source: WOS 2019-012, August 30, 2019, Section XIII(A)(1-2))

**B.** An employer who employs those that receive tips is required to pay in hourly wages, plus the tips, equal to at least the LTBB Living Wage. The employee must retain all tips if the employee customarily and regularly receives more than \$30 a month in tips. If an employee's tips combined with the employer's direct wages do not equal the LTBB Living Wage, the employer must make up the difference.

**C.** To assist Tribal Council in making a determination of the amount set for the living wage, the living wage shall be at least one dollar or more than the minimum wage as outlined by the U.S. Fair Labor Standards Act of 1938 as amended (FLSA). For the purposes of interpreting and enforcing this section, the Tribal Court may look to the FLSA and regulations thereunder as well as relevant case law for guidance, provided however that nothing in this Statute shall be construed as an adoption by the Tribe of the FLSA, nor a waiver of sovereign immunity from suit for any claims or process under the FLSA.

(Amendment Source: WOS 2013-010, July 23, 2013, Repeal and Replace Section XIII)

#### **14.114 EMPLOYEE HOURS**

**A.** Hourly employees are paid at their regular rate of pay and are paid for all hours worked.

**B.** Hourly employee shall not be employed for a workweek longer than forty (40) hours unless such employee receives overtime compensation for the employee's employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which the employee is employed or the employee may choose compensatory time (also referred to as Paid Time Off, PTO) for hours worked in excess of forty (40) hours worked in a work week at a rate not less than one and one-half times the hours worked in excess of forty (40).

**C.** Law Enforcement personnel may work under a "14 day work period". Under a 14 day work period, a police officer is due overtime pay only if, when and to the extent actual hours worked exceed eighty (80) hours in the 14 day work period.

**D.** Exempt employees shall not receive overtime for hours worked in excess of forty (40) hours worked in a work week.

**E.** Exempt employees are generally executive employees, administrative employees, outside sales employees, learned professional employees, computer employees, creative professional employees, highly compensated employees, and meet the following:

**1.** Executive Employee whose primary duty is management of the enterprise or a recognized department or subdivision. Customarily and regularly directs the work of two or more other employees; AND has authority to hire or fire other employees, OR the employee's suggestions as to hiring, firing, promotion or other change of status of other employees are given particular weight.

**2.** Administrative employee whose primary duty is the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers. Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. Customarily and regularly exercises discretionary powers and independent judgment in performing the job.

**3.** Outside Sales employee whose primary duty is making sales or obtaining orders or contracts for services, or for the use of facilities for which a consideration will be paid by the client or customer. The employee is customarily and regularly engaged away from the employer's place or places of business. The salary requirements of this section does not apply.

**4.** Learned Professional employee whose primary duty is the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character, requiring the consistent exercise of discretion and judgment. The advanced knowledge must be in a field of science or learning and customarily acquired by a

prolonged course of specialized intellectual instruction.

- 5.** Computer employee whose primary duty of:
  - a.** application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional applications;
  - b.** design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  - c.** design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  - d.** a combination of duties described in (a.), (b.), and (c.), and the performance of which requires the same level of skills.
  
- 6.** Creative professional employee whose primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.
  
- 7.** Employee whose is paid at least \$913 per week (\$47,476 for a full-year worker) or more; and customarily and regularly perform at least one of the duties of an exempt executive, administrative, or professional employee.
  
- 8.** Employee who has an annual earnings are \$134,004 or more which may include commissions, nondiscretionary bonuses and other nondiscretionary compensation earned; and customarily and regularly perform at least one of the duties of an exempt executive, administrative, or professional employee.
  
- F.** For the purposes of interpreting and enforcing this section, the Tribal Court may look to the FLSA and regulations thereunder as well as relevant case law for guidance, provided however that nothing in this Statute shall be construed as an adoption by the Tribe of the FLSA,

nor a waiver of sovereign immunity from suit for any claims or process under the FLSA.

(Amendment Source: WOS 2016-007, September 1, 2016, deemed enacted, Repealed and Replaced Section XIV of WOS 2013-010)

#### **14.115 FREEDOM TO WORK WITHOUT JOINING A UNION AND RIGHT TO WORK**

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

- f. any deduction from wages, earnings or compensation without written consent.

(Source: WOS 2008-011, October 5, 2008, Section XV)

#### **14.116 ENFORCEMENT**

The Tribal Court has exclusive civil jurisdiction over any actions brought under this Statute and may order such remedies as the Tribal Court deems appropriate. Any Employer shall have the right to suspend or terminate the employment of any employee found to be in violation of this Statute.

(Source: WOS 2008-011, October 5, 2008, Section XVI)

#### **14.117 EXHAUSTION OF REMEDIES**

1. An employee must pursue any administrative claim, if available, with diligence and in good faith.
2. An employee may not cut short the administrative process prior to its final disposition, for upon abandonment a complainant fails to exhaust administrative relief and may not thereafter seek redress from the courts.
3. “Procedural due process rights” means the right to adequate notice, a meaningful opportunity to be heard, and the right to representation at the employee’s option and expense.

(Source: WOS 2008-011, October 5, 2008, Section XVII)

#### **14.118 SAVING CLAUSE**

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part,



paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

(Source: WOS 2008-011, October 5, 2008, Section XVIII)

#### **14.119 EFFECTIVE DATE**

Effective upon signature of the Executive or shall be deemed enacted if not expressly vetoed by the Executive within thirty (30) days of submission. The Tribal Council may, by an affirmative vote of seven (7) members of the Tribal Council, override a veto by the Executive.

(Source: WOS 2008-011, October 5, 2008, Section XIX)

## Chapter 2. Management and Labor Relations

### 14.201 PURPOSE AND TITLE

The Little Traverse Bay Bands of Odawa Indians (the “Tribe”) exercises powers of self-government over its Citizens and territory. The Tribe has inherent authority to govern labor relations within its jurisdiction, and this includes regulating the terms and conditions under which collective bargaining may or may not occur within its tribal government and commercial enterprises. The Tribe’s inherent authority further includes the right to protect the health, welfare, and political integrity of the Tribe from being harmed or threatened by the activities within the Tribe’s territory. The purpose of this Statute is to protect essential attributes of tribal self-government and the health and welfare of the Citizens of the Tribe if labor organizations seek to conduct operations within the jurisdiction of the Tribe.

(Source: WOS 2008-013, October 5, 2008, Section I)

### 14.202 DEFINITIONS

- A.** “*Commercial Enterprises*” means the Odawa Casino Resort and ancillary enterprises and activities and other tribally owned enterprises or businesses.
- B.** “*Employee, Individual Contributor, or Team Member*” means an individual employed Little Traverse Bay Bands of Odawa Indians including Tribal Government Administration, commercial entities including the Odawa Casino Resort and ancillary enterprises and activities beginning on the first day of work and after the employment process and issuance of a temporary gaming license. The first ninety (90) days and up to a maximum of one-hundred and eighty (180) days of employment shall be considered an “Introductory Period.” Independent contractors are excluded.
- C.** “*Employer*” means all departments and agencies of the Tribal Government Administration and commercial entities of the Tribe, including the Odawa Casino Resort and ancillary enterprises and activities.

**D.** “*Gaming Regulatory Commission*” means the Little Traverse Bay Bands of Odawa Indians Gaming Regulatory Commission established pursuant to Waganakising Odawak Statute 2005-06, May 15, 2005 or as amended.

**E.** “*Indian Gaming Regulatory Act*” means 25 U.S.C. §§ 2701-2721.

**F.** “*Labor organization, labor association, or labor union*” means any organization of employees organized for the purpose of bargaining over hours of employment, rates of pay, working conditions, grievances, or other terms or conditions of employment.

**G.** “*Lock Out*” means any action by the Tribe that prevents its employees from going to work for the purpose of coercing employees to accept terms or conditions sought by the Tribe in a negotiation with a labor organization representing the employees.

**H.** “*Malice*” means the intent, without just cause or reason, to commit a wrongful act that will result in harm to another.

**I.** “*Management*” means any individual employed by the Tribal Government Administration, commercial entities, including the Odawa Casino Resort and ancillary enterprises and activities who has the authority, acting in the interest of LTBB, to cause another employee to be hired, transferred, suspended, laid off, recalled, promoted, discharged, assigned, rewarded or disciplined, either by taking such action or by recommending it to a superior; or who has the authority and responsibility to direct other employees. The exercise of this authority is not of a merely routine or clerical nature, but requires the exercise of independent judgment.

**J.** “*Odawa Casino Resort*” means the gaming enterprise, including related hotel and restaurant services, of the Tribe located in Petoskey, Michigan, wherein the Tribe operates Class II and Class III gaming to generate governmental revenue for the Tribe pursuant to the Indian Gaming Regulatory Act.

**K.** “*Reckless indifference*” means conscious or reckless disregard of the consequences of one's acts or omissions.

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

**M.** “*Tribal Court*” means the Tribal Court of LTBB that has jurisdiction to hear charges of violations of rights afforded by this Statute including violations by third-parties.

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

**O.** “*Tribe*” or “*LTBB*” means the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2008-013, October 5, 2008, Section II)

#### **14.203 FAIR RIGHT TO WORK**

**A.** With respect to employment or the terms or conditions of employment within any Tribal Government or Tribal commercial enterprise including the Odawa Casino Resort and ancillary enterprises and activities:

**1.** The right to work must be protected and maintained free from undue restraints and coercion. The right of persons to work shall not be denied or abridged by any Employer or by any labor organization on account of membership or non-membership in any labor union, labor organization, or association.

**2.** No person shall be required to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment.

3. No person, as a condition of employment or continuation of employment, shall be required to pay any dues, fees, or other charges of any kind to any labor union or labor organization or to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessment or other charges regularly required of members of a labor organization.

4. No person shall be required, as a condition of employment or continuation of employment to be recommended, approved, referred, or cleared by or through a labor organization.

5. It shall be unlawful to deduct from the wages, earnings or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the Employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the Employer.

6. No person shall be required by any Employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.

7. It shall be unlawful for any person, labor organization, or officer, agent or member thereof, or Employer, or officer or agent thereof, by any threatened or actual intimidation of an employee or prospective employee or his parents, spouse, children, grandchildren, or any other persons residing in the employee's or prospective employee's home, or by any damage or threatened damage to his property, to compel or attempt to compel such employee or prospective employee to join, affiliate with, or financially support a labor organization or to refrain from doing so, or to otherwise forfeit his rights as guaranteed by provisions of this Statute. It shall be unlawful to cause or attempt to cause such employee to be denied employment or discharged from employment because of support or nonsupport of a labor organization by inducing or attempting to induce any other person to refuse to work with such employee.

**8.** Any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and an Employer which violates the rights of employees as guaranteed by the provisions of this Statute is hereby declared to be against public policy and is null and void and of no legal effect.

(Source: WOS 2008-013, October 5, 2008, Section III)

#### **14.204 LIMITED WAIVER OF SOVEREIGN IMMUNITY**

**A.** The Tribe clearly and expressly waives its sovereign immunity to the Equitable Remedies as set forth in this Statute and clearly and expressly waives its sovereign immunity to Damages as set forth within this Statute for Employers and limits such waiver to remedies as set forth within this Statute.

**B.** The Tribe clearly and expressly waives its sovereign immunity to Equitable Remedies as set forth in this Statute for officials, individual employees and/or managers and the Tribe clearly and expressly waives its sovereign immunity for Damages for officials, individual employees and/or managers who act beyond the scope of their duties and authority in which the actions include either acting with malice or with reckless indifference to the rights afforded under this Statute as set forth within this Statute and limits such waiver to remedies as set forth within this Statute.

**C.** The Tribe asserts no sovereign immunity for third-parties; and limits the remedies as set forth by this Statute.

(Source: WOS 2008-013, October 5, 2008, Section IV)

#### **14.205 REMEDIES BEFORE THE TRIBAL COURT FOR VIOLATIONS BY THE EMPLOYER**

**A.** Any charge of violation must be filed with the Tribal Court within one-hundred and eighty (180) days of the alleged violation.

**B.** In any action filed under this Statute, the Tribal Court may grant the remedies set forth

for violations of the Employer:

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

  - a.** An order to cease and desist from the unlawful practices specified in the order;
  - b.** An order to employ or reinstate the employee, with or without back pay or reasonable front pay if reinstatement is unfeasible;
- 2.** *Damages.* If the Tribal Court finds a blatant employment rights violation, the Tribal Court may additionally award compensatory, punitive damages or fines as provided in this subparagraph.

  - a.** A complainant may recover compensatory damages against an employer for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.
  - b.** A complainant may recover punitive damages against an employer if the complainant demonstrates that the employer engaged in an unlawful employment rights violation with malice or with reckless indifference to the rights of an aggrieved individual protected by this Statute.
- 3.** The total sum of compensatory, punitive damages and/or fines may not exceed \$50,000, excluding the amount for actual loss of wages.
- 4.** When a discriminatory practice involves the provision of a reasonable accommodation, damages may not be awarded when the employer demonstrates good faith efforts, in consultation with the person with the disability who has informed the employer that accommodation is needed, to identify and make a reasonable accommodation that would provide that individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

5. The Tribal Court may award reasonable attorney fees and costs in its discretion to the prevailing party.

6. The Tribal Court may award the opposing party any penalties for frivolous claims or any other appropriate remedies as the Tribal Court deems.

(Source: WOS 2008-013, October 5, 2008, Section V)

#### **14.206 REMEDIES BEFORE THE TRIBAL COURT FOR VIOLATIONS BY AN INDIVIDUAL EMPLOYEE OR MANAGER**

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

B. In any action filed under this Statute, the Tribal Court may grant the remedies set forth for violations of an Individual Employee or Manager:

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

a. An order to cease and desist from the unlawful practices specified in the order;

2. *Damages.* If the Tribal Court finds a blatant employment rights violation, the Tribal Court may award punitive damages or fines as provided in this subparagraph.

a. A complainant may recover punitive damages against an individual employee and/or manager if the complainant demonstrates that the individual employee and/or manager engaged in an unlawful employment rights violation with malice or with reckless indifference to the rights of an aggrieved individual protected by this Statute.



3. The total sum of punitive damages and/or fines may not exceed \$50,000, excluding the amount for actual loss of wages from each individual employee and/or manager.
4. When a discriminatory practice involves the provision of a reasonable accommodation, damages may not be awarded when the employer demonstrates good faith efforts, in consultation with the person with the disability who has informed the employer that accommodation is needed, to identify and make a reasonable accommodation that would provide that individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.
5. The Tribal Court may award reasonable attorney fees and costs in its discretion to the prevailing party.
6. The Tribal Court may award the opposing party any penalties for frivolous claims or any other appropriate remedies as the Tribal Court deems.

(Source: WOS 2008-013, October 5, 2008, Section VI)

#### **14.207 REMEDIES BEFORE THE TRIBAL COURT FOR VIOLATIONS BY THIRD PARTIES**

- A. Any charge of violation must be filed with the Tribal Court within one-hundred and eighty (180) days of the alleged violation.
- B. In any action filed under this Statute, the Tribal Court may grant the remedies set forth for violations of a third party:
  1. *Equitable Remedies.* If the Tribal Court finds that employment rights violation occurred, its judgment must specify an appropriate remedy or remedies for that violation. The remedies may include, but are not limited to:
    - a. An order to cease and desist from the unlawful practices specified in the order;

**2.** *Damages.* If the Tribal Court finds a blatant employment rights violation, the Tribal Court may award punitive damages or fines as provided in this subparagraph.

**a.** A complainant may recover punitive damages against a third party if the complainant demonstrates that the third party engaged in an unlawful employment rights violation with malice or with reckless indifference to the rights of an aggrieved individual protected by this Statute.

(Section 2. amended by WOS 2008-013, December 7, 2008)

**b.** The total sum of punitive damages and/or fines may not exceed \$50,000, excluding the amount for actual loss of wages from each individual third party.

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

**3.** The total sum of punitive damages and/or fines may not exceed \$50,000, excluding the amount for actual loss of wages from each individual third party.

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

**5.** The Tribal Court may award reasonable attorney fees and costs in its discretion to the prevailing party.

**6.** The Tribal Court may award the opposing party any penalties for frivolous claims or any other appropriate remedies as the Tribal Court deems.

(Source: WOS 2008-013, October 5, 2008, Section VII)

#### **14.208 STRIKES AND LOCKOUTS**

**A.** Each employee offers a critical service to the operations of the Tribe and its Tribal Government Administration and commercial entities, including the Odawa Casino Resort, ancillary enterprises and activities. These critical services provide and generate revenue for support services for Tribal Citizens and the Tribe, and are critical to the public health, safety, and welfare of the Tribe.

**B.** An employee shall not strike and the Tribe shall not institute a lockout. The Tribe does not violate this Statute if there is a total or partial cessation of the Tribal Government Administration, the Odawa Casino Resort and other ancillary enterprises operations in response to a strike held in violation of this Statute.

**C.** This Statute does not limit, impair, or affect the right of a employees to the expression or communication of a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of employment or their betterment as long as the expression or communication does not interfere with the full, faithful, and proper performance of the duties of employment.

**D.** An employee shall be considered on strike, if the employee who, without the lawful approval of his or her supervisor, willfully absents himself or herself from their position, or abstains in whole or in part from the full, faithful and proper performance of his or her duties for the purpose of:

- 1.** including, influencing or coercing a change in employment conditions, compensation, rights, privileges or obligations of employment; or
- 2.** protesting or responding to an act alleged or determined to be an unfair labor practice committed by the employer,

(Section D amended by WOS 2008-013, December 7, 2008)

**E.** If an employer alleges that there is a strike by one (1) or more employees in violation of this Statute, the employer may file such violation with the Tribal Court of the full or partial days an employee was engaged in the alleged strike.

**F.** If an employee alleges that there is a lockout by the employer in violation of this Statute, the employee may file such violation with the Tribal Court of the full or partial days of the alleged lockout.

**G.** The Tribal Court shall conduct a hearing within sixty (60) days of the alleged violation and shall issue its decision and order. If the Court finds that a violation has occurred the Court may fine each employee or the employer.

**H.** The Tribal Court shall transmit money received from fines imposed by this Statute to the General Fund of the Tribe.

(Source: WOS 2008-013, October 5, 2008, Section VIII)

#### **14.209 LICENSING AND REGISTRATION OF LABOR ORGANIZATIONS**

**A.** No labor organization shall engage in organizing employees including solicitation of union membership in any manner, without a license, issued by the Little Traverse Bay Bands of Odawa Indians Gaming Regulatory Commission, which shall provide as follows:

- 1.** the right of such labor organization to be present and conduct business within the Tribe's territorial jurisdiction is a privilege, subject to the consent and regulatory authority of the Tribe;
- 2.** the consent of the Tribe to allow such labor organization to be present and conduct business within the territory jurisdiction of the Tribe is conditioned upon such labor organization's agreement to be subject to the laws of the Tribe and its regulatory authority, including this Statute;

3. in consideration of the Tribe's consent to such labor organization's conduct of business within the territorial jurisdiction of the Tribe, such labor organization agrees to
  - a) comply with all rules, regulations, and laws of the Tribe
  - b) submit to the jurisdiction of the Tribe, including its Tribal Court, and
  - c) pay an annual business license fee in the amount of fifty dollars, (\$50.00.).
  
4. such labor organization agrees that a license issued by the Tribe for conducting business within the territorial jurisdiction of the Tribe may be revoked by the Tribe at any time, with or without hearing, for any failure to comply with the laws of the Tribe; and
  
5. such other requirement as the Gaming Regulatory Commission may require under its regulations.

**B.** Subject to the requirements of this Statute and the Administrative Procedures Statute (Waganakising Odawak Statute 2008-001, as may be amended or replaced) the Gaming Regulatory Commission is authorized to promulgate such regulations as it deems necessary to investigate and license any labor organization seeking to conduct business within the territorial jurisdiction of the Tribe.

(Section B. amended by WOS 2008-013, December 7, 2008)

**C.** Every labor organization engaged in organizing any including the solicitation of union membership in any manner, shall file a report with the Enjinaaknegeng within Twenty-one (21) days of initiating any such organizing effort. The report, which shall be filed by the president of the labor organization, shall contain the following information:

1. The name and address of the labor organization;
  
2. The names and addresses of the president, secretary, treasurer, and business agent of the labor organization;
  
3. The name and address of the national and/or international organization, if any,

with which the labor organization is affiliated;

**4.** A copy of the current constitution, by-laws, or other written rules governing the organization;

**5.** All information regarding qualifications for or restrictions on membership; levying of assessments; participation in insurance or other benefit plans; authorization for disbursement of labor organization funds; audit of labor organization financial transactions; the calling of regular and special meetings; the selection of officers and stewards and any representatives to other bodies composed of labor organizations' representatives; a specific statement of the manner in which each current officer was elected, appointed, or otherwise selected; discipline or removal of officers or agents for breaches of their trust and a specific statement regarding any past disciplinary action of removal of officers or agents for breach of their trust; impositions of fines, suspensions and expulsions of members including the grounds for such action and any provisions made for notice, hearing, judgment on the evidence, and appeal procedures, along with a detailed statement regarding any imposition of fines, suspensions and expulsions of members in the past calendar year; and

**6.** A copy of the Labor Organization's Annual Report, as reported on the United States Department of Labor's Form LM-2.

**D.** The president of any such labor organization described in subsection (a) shall file with the Office of General Counsel for the Tribe a notice of any changes to the information required above within 10 days after the changes are made and provide any additional information requested by the Tribe's Office of General Counsel.

**E.** Should a labor organization establish representation of any employees for any Employer, it shall provide the foregoing information on an annual basis, no later than the first Monday in January, which is not otherwise designated a tribal holiday.

**F.** It shall be a violation of this section for any labor organization, any person or employee acting on behalf of any labor organization to fail to register or to make any false statements on any reports required to be filed pursuant to this section.

(Source: WOS 2008-013, October 5, 2008, Section IX)

#### **14.210 TRIBAL EMPLOYMENT PREFERENCES**

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

**B.** Prohibition of Collective Bargaining Affecting Tribal Employment Preferences. Any and all policies, laws, or regulations of the Tribe or any Employer providing employment preferences to Tribal Citizens and Citizens of other federally recognized Tribes, including preferences given for hiring, training, and retention in the context of reductions in force shall not be subject to bargaining with any labor organization.

(Source: WOS 2008-013, October 5, 2008, Section X)

#### **14.211 ENFORCEMENT**

**A.** Any employee or third-party who violates, or seeks to violate, the provisions of this Statute shall be subject to a civil action brought before the Tribal Court and may be subjected to such remedies as set forth in this Statute.

**B.** Any Employer shall have the right to suspend or terminate the employment of any employee found to be in violation of this Statute.

**C.** An employee or labor organization shall have the right to seek injunctive relief against the Tribe to enforce the prohibition against lockouts.

(Source: WOS 2008-013, October 5, 2008, Section XI)

#### **14.212 EXHAUSTION OF REMEDIES**

- A.** A claimant must pursue through the administrative process with diligence and in good faith.
  
- B.** Any claim not finalized by the administrative process, shall be considered abandonment of a claim and failure to exhaust administrative relief and may not thereafter seek redress from the courts.

(Source: WOS 2008-013, October 5, 2008, Section XII)

#### **14.213 JUDICIAL REVIEW**

Little Traverse Bay Bands of Odawa Indians Tribal Court shall have exclusive jurisdictions of for violations brought under this Statute.

(Source: WOS 2008-013, October 5, 2008, Section XIII)

#### **14.214 SAVING CLAUSE**

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

(Source: WOS 2008-013, October 5, 2008, Section XIV)

#### **14.215 EFFECTIVE DATE**

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



the veto.

(Source: WOS 2008-013, October 5, 2008, Section XV)

## Chapter 3. Indian Preference in Tribal Employment

### 14.301 PURPOSE

This Statute rescinds and replaces Waganakising Odawak Statute 1998015. This Tribal Employment Statute is hereby enacted to mandate the preferential employment, promotion and training of tribal members and other persons by the Tribe and its business enterprises, as permitted and promoted under federal law based on the unique political relationship between Indian tribes and the United States.

(Source: WOS 2002-04, July 7, 2002, Section I)

### 14.302 DEFINITIONS

- A. “Tribal Business Enterprise”** means any business owned, operated or licensed by the Little Traverse Bay Bands of Odawa Indians.
- B. “Employment Preference”** means a preference given to a job applicant or employee in hiring, promotion and training decisions when choosing qualified applicants or employees.
- C. “Qualified Applicant”** means a person who meets minimum qualifications, experience, background, abilities or education.

(Source: WOS 2002-04, July 7, 2002, Section II)

### 14.303 EMPLOYMENT PRACTICES

**A. Indian Preference.** The Tribe and Tribal Business Enterprises shall grant an Employment Preference for hiring, promotion and training to the following persons in the following order:

1. Members of the Little Traverse Bay Bands of Odawa Indians,
2. Other federally recognized members of North American Indians Tribes.

**B. General.** Except for the Indian preference stated in Section III (A) employment, promotion and training opportunities within the Tribe and Tribal Business Enterprises will be offered to qualified individuals without regard to race, religion, color, ancestry, gender, age or national origin.

(Source: WOS 2002-04, July 7, 2002, Section III)

**C. Contractors and Subcontractors.** This subsection repealed by WOS 2018-019, Section VIII(A-D).

(Source: WOS 2018-019, October 17, 2018, Section VIII)

#### **14.304 POSTING OF NEW AND VACANT POSITIONS**

All new and vacant positions shall be posted for a minimum of seven (7) calendar days and shall include the necessary qualifications of the job with clear description of experience, background, abilities, skills, and education that is needed in order to be successful in the position.

(Source: WOS 2013-006, June 14, 2013, Section IV, Repealed WOS 2013-006, Section IV)

#### **14.305 INTERIM POSITIONS**

**A.** Interim positions, also known as “acting” positions, are defined as a temporary position or performing services temporarily.s

**B.** Interim positions may only be utilized to fill a permanent position that cannot be left vacant.

**C.** Interim positions do not need to be posted and may be filled immediately. The interim period shall not exceed a six (6) month period. Only one interim position term can be used per permanent vacancy occurrence.

(Source: WOS 2013-006, June 14, 2013, Section V)

#### **14.307 NEW POSITION VERSUS PROMOTION**

- A. A new position occurs when the job duties and qualifications significantly expand, and there is a significant pay increase.
- B. A promotion occurs when the core job functions remains the same and the pay is within the same range.
- C. If a position changes from part to full-time, the position shall be posted unless already filled by a Tribal Citizen in which case the Citizen may be promoted to full time status.
- D. If a Tribal Citizen holds a position where job duties, pay level and qualifications increase, the new job is essentially an expansion of their current job, and they meet the expanded qualifications, the Tribal Citizen may be promoted without posting.

(Source: WOS 2019-011, August 30, 2019, Section IV)

#### **14.308 EFFECTIVE DATE**

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval whichever comes first, or, if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2013-006, June 14, 2013, Section VI)

## Chapter 4. Whistle Blower Protection

### 14.401 PURPOSE

The purpose of this Statute is to protect the interests of Tribal employees and the Tribe by prohibiting retaliatory action against employees who report violations of the law.

(Source: WOS 2010-001, February 7, 2010, 2000, Section I)

### 14.402 DEFINITIONS

- A.** “*Employee, Individual Contributor, or Team Member*” means an individual employed by the Little Traverse Bay Bands of Odawa Indians including Tribal Government Administration, commercial entities and the Odawa Casino Resort and ancillary enterprises and activities beginning on the first day of work and after the employment process and if applicable the issuance of a temporary gaming license. The first ninety (90) days and up to a maximum of one-hundred and eighty (180) days of employment shall be considered an “Introductory Period.” Independent contractors are excluded.
- B.** “*Employer*” means all departments and agencies of the Tribal Government Administration and commercial entities of the Little Traverse Bay Bands of Odawa Indians, including the Odawa Casino Resort and ancillary enterprises and activities.
- C.** “*Malice*” means the intent, without just cause or reason, to commit a wrongful act that will result in harm to another.
- D.** “*Odawa Casino Resort*” means the gaming enterprise, including related hotel and restaurant services and ancillary enterprises and activities, of the Tribe located at, or near 1760 Lears Road, Petoskey, Michigan, wherein the Tribe operates Class II and Class III gaming to generate governmental revenue for the Tribe pursuant to the Indian Gaming Regulatory Act.
- E.** “*Reckless indifference*” means conscious or reckless disregard of the consequences of one's acts or omissions.

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

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

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

**I.** “*Tribal Court*” means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

(Source: WOS 2010-001, February 7, 2010, 2000, Section II)

#### **14.403 TRIBAL COURT**

The Tribal Court shall have the jurisdiction to hear charges of violations of rights afforded by this Statute within the confines of Tribal employment for employees of the Little Traverse Bay Bands of Odawa Indians including violations by third-parties.

(Source: WOS 2010-001, February 7, 2010, 2000, Section III)

#### **14.404 RETALIATION PROHIBITED**

**A.** No employee shall be terminated, demoted, penalized or disciplined in any way as a direct result of the employee’s reporting of activity, over which the employee has actual knowledge and which the employee reasonably believes to be in violation of any applicable law, to a supervisor, tribal law enforcement official, or the Tribal Council.

**B.** Cause of Action. Any employee who is subject to retaliatory action based on good faith and reasonable reporting as described in subsection (A) shall have standing to bring a cause of action in Tribal Court for the remedies set forth in this Statute.

(Source: WOS 2010-001, February 7, 2010, 2000, Section IV)

#### **14.405 LIMITED WAIVER OF SOVEREIGN IMMUNITY**

**A.** The Tribe clearly and expressly waives its sovereign immunity to the limited remedies as set forth in this Statute.

**B.** Officials, individual employees and/or managers of the Tribe, who act beyond the scope of their duties and authority in which the actions include either acting with malice or with reckless indifference are not immune from suit.

(Source: WOS 2010-001, February 7, 2010, 2000, Section V)

#### **14.406 LIMITED REMEDIES BEFORE THE TRIBAL COURT FOR VIOLATIONS**

**A.** Any charge of violation must be filed with the Tribal Court within one-hundred and eighty (180) days of the alleged violation.

**B.** In any action filed under this Statute, the Tribal Court may grant the following remedies set forth:

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

**a)** An order to cease and desist from the unlawful practices specified in the order;

**b)** An order to employ or reinstate the employee, with or without back pay or reasonable front pay if reinstatement is unfeasible;

**2.** *Damages.* If the Tribal Court finds a blatant violation, the Tribal Court may additionally award compensatory, punitive damages or fines.

3. The total sum of compensatory, punitive damages and/or fines may not exceed \$50,000, excluding the amount for actual loss of wages.
4. The Tribal Court may award reasonable attorney fees and costs in its discretion to the prevailing party.
5. The Tribal Court may charge the non-prevailing party court costs.
6. If the Tribal Court finds that the non-prevailing party's claims were frivolous, the Court may fine the party and may order any other appropriate remedies as the Tribal Court deems.

(Source: WOS 2010-001, February 7, 2010, 2000, Section VI)

#### **14.407 EXCLUSIVE JURISDICTION AND SOVEREIGN IMMUNITY**

**A. Exclusive Tribal Jurisdiction.** The Tribal Court shall have exclusive jurisdiction over claims or actions of any kind allowed pursuant to this Statute.

**B. No Waiver as to Other Forums.** Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribe from any suit or action in state, federal or any other tribal court, before any state, federal or tribal agency or in any other forum or context whatsoever.

**C. No Waiver as to Claim Defended by United States.** Notwithstanding any other provision of this Statute, there shall be no waiver of sovereign immunity as to any claim of injury which is defended by the United States because such claim is deemed a claim against the United States under the Indian Self-Determination and Education Assistance Act, the Federal Tort Claims Act, or any other federal law. Upon certification by the Enjinaaknegeng that defense of any claim of injury has been tendered to the United States, any action or proceeding on such claim shall be stayed by order of the Tribal Court without bond. The action or proceeding in Tribal Court shall be dismissed, after notice to the parties and opportunity for a hearing, upon receipt of notice satisfactory to the Tribal Court that the United States has assumed defense of the claim of injury. The stay shall be dissolved and an order directing further proceedings in the



action or proceeding on the claim of injury shall be entered by the tribal Court, after notice and hearing thereon, upon receipt of notice satisfactory to the Tribal Court that the United States has declined to assume defense of the claim of injury.

(Source: WOS 2010-001, February 7, 2010, 2000, Section VIII)

#### **14.408 SEVERABILITY**

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2010-001, February 7, 2010, 2000, Section IX)

#### **14.409 EFFECTIVE DATE**

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

(Source: WOS 2010-001, February 7, 2010, 2000, Section X)

## **Chapter 5. Constitutionally Mandated Compensation for Election Board Members**

*Codification Note: Repeals and replaces 2010-013*

### **14.501 PURPOSE**

This Compensation Statute is hereby enacted to establish the compensation levels for the Election Board members based on Constitutional duties. This Statute replaces and repeals Waganakising Odawak Statute 2010-013 Constitutionally Mandated Compensation for Election Board Members, and any previous Statute, Resolution or Policy language with regard to compensation levels for such positions as stated in this purpose.

(Source: WOS 2020-007, May 4, 2020, Section I)

### **14.502 DEFINITIONS**

**A.** “*Compensation*” means the amount of monthly stipend payment for attendance at regularly scheduled meetings, elections, work-sessions, committee meetings, phone-polls, phone conferences, special meetings, emergency meetings, hearings, travel, training, electronic meetings, workgroups, teams or other meetings and any other activity in conjunction with carrying out Election Board Constitutional duties or any relevant Statute, to be paid monthly.

**B.** “*Tribal Constitution*” means the LTBB Constitution adopted by the Tribal Membership February 1, 2005.

**C.** “*Tribe*” shall mean the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2020-007, May 4, 2020, Section II)

### **14.503 COMPENSATION IMPLEMENTATION**

The compensation, as set by this statute, shall be implemented the calendar day after the next general election day is held. For example, if the “general election day” is held on Monday, June 8, 2020, then this statute shall be implemented on Tuesday, June 9, 2020 the next calendar

day following the general election day.

(Source: WOS 2020-007, May 4, 2020 Section III)

#### **14.504 COMPENSATION ESTABLISHED**

- A.** The Election board members shall receive the monthly stipend compensation of six-hundred and twenty-five dollars (\$625.00) a month for performing their constitutional duties.
- B.** The above compensation shall be subject to federal and state (if applicable) taxation. Tax withholdings are elective and may be withheld from each payment.
- C.** Election board members shall not be paid any additional stipend for travel or for participation in any election, meeting, activity or event.

(Source: WOS 2020-007, May 4, 2020, Section IV)

#### **14.505 TRAVEL EXPENSE**

Travel expenses for approved travel may be paid in advance or reimbursed at the same rate as allowed employees in the Tribal Council approved Tribal Governmental Employees Travel Reimbursement Policy, or as amended.

(Source: WOS 2020-007, May 4, 2020, Section V)

#### **14.506 COMPENSATION PROHIBITIONS**

- A.** Persons receiving compensation authorized by this Statute shall be prohibited from:
  - 1.** Receiving unemployment compensation for any reductions or termination of said compensation.
  - 2.** Receiving any other type of payment for compensation not explicitly listed in this Statute, including stipends.

**3. Receiving overtime.**

(Source: WOS 2020-007, May 4, 2020, Section VI)

**14.507 EMPLOYMENT**

Election Board Members positions are not considered employment positions.

(Source: WOS 2020-007, May 4, 2020, Section VII)

**14.508 SEVERABILITY**

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2020-007, May 4, 2020, Section VIII)

**14.509 EFFECTIVE DATE**

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto, but shall not be implemented until after the next election and until the next Tribal Council or individual councilors are sworn in.

(Source: WOS 2020-007, May 4, 2020, Section IX)

## **Chapter 6. Constitutionally Mandated Compensation – Tribal Chairperson and Tribal Vice-Chairperson**

### **14.601 PURPOSE**

The purpose of this Statute is to establish the compensation levels for the Tribal Chairperson and Tribal Vice-Chairperson in accordance with the Tribal Constitution and based on Constitutional duties. This Statute repeals and replaces: Waganakising Odawak Statute 2010-014 *Constitutionally Mandated Compensation for Tribal Chairperson and Tribal Vice-Chair*; Waganakising Odawak Statute 2008-014 *Constitutionally Mandated Compensation Statute*; Waganakising Odawak Statute 2003-05 *Tribal Council Compensation*; and WOS 2005-04 *Constitutionally Mandated Compensation* and any previous Statute, Resolution or Policy language with regard to compensation levels for such positions as stated in this purpose.

(Source: WOS 2023-004, June 8, 2023 by Veto Override, Section I)

### **14.602 DEFINITIONS**

- A.** “*Annual Salary*” means the amount of annual compensation paid to the individual during the calendar year for performing the function of the Tribal Chairperson or Tribal Vice Chairperson and for carrying out the duties of the Tribal Chairperson or Vice Chairperson as stated in the Tribal Constitution and any relevant Statute and paid in equal increments.
- B.** “*Compensation*” means the annual salary paid weekly in equal increments and any benefits allowed by this Statute.
- C.** “*Tribal Constitution*” means the LTBB Constitution adopted by the Tribal Membership February 2, 2005.
- D.** “*Tribe*” shall mean the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2023-004, June 8, 2023 by Veto Override, Section II)

### **14.603 COMPENSATION CHANGE RESTRICTIONS**

A. In accordance with Article VIII (G) of the Tribal Constitution, any increase or decrease in the compensation established in this Statute shall not take effect until after the next general election.

(Source: WOS 2023-004, June 8, 2023 by Veto Override, Section III)

#### **14.604 COMPENSATION ESTABLISHED**

A. In accordance with Article VIII (G) of the Tribal Constitution, Compensation of the Tribal Chairperson and Tribal Vice Chairperson is herein established. The Tribal Chairperson and the Tribal Vice Chairperson shall be compensated as follows:

1. To fulfill the responsibilities of the Tribal Chairperson as outlined in the Tribal Constitution and any relevant Statute, the Tribal Chairperson shall be compensated and paid an annual salary in the amount of **\$125,000**.
2. To fulfill the responsibilities of the Vice-Chairperson as outlined in the Tribal Constitution and any relevant Statute, the Tribal Vice-Chairperson shall be compensated and paid an annual salary in the amount of **\$100,000**.

B. Additional to the annual salary established in this Statute, the Tribal Chairperson and the Tribal Vice-Chair shall receive the following:

1. Contributions to the Tribe's retirement plan or a similar plan shall be allowed with the same conditions and restrictions applied to Tribal employees and other contributors in the Tribal Government Retirement plan.
2. Health insurance, life insurance and other Tribal insurance programs at the same rate as governmental employees.

C. The compensation of the Chairperson and the Vice-Chairperson shall be subject to federal and state taxation where applicable. Tax withholdings are elective and may be withheld from each payment.

**D.** Compensation shall be paid in equal increments.

(Source: WOS 2023-004, June 8, 2023 by Veto Override, Section IV)

#### **14.605 COMPENSATION PROHIBITIONS**

Persons receiving compensation authorized by this Statute shall be prohibited from:

**A.** Receiving unemployment compensation for any reductions or termination of said compensation.

**B.** Receiving any other type of payment for compensation not explicitly listed in this Statute, including stipends.

**C.** Receiving overtime provision.

(Source: WOS 2023-004, June 8, 2023 by Veto Override, Section V)

#### **14.606 TRAVEL EXPENSE REIMBURSEMENT**

Travel expenses shall be reimbursed at the same rate as allowed employees in the Tribal Governmental Employees Travel Reimbursement Policy approved by Tribal Council.

(Source: WOS 2023-004, June 8, 2023 by Veto Override, Section VI)

#### **14.607 EMPLOYMENT**

In accordance with Article XV (A)(3) of the Tribal Constitution, the Tribal Chairperson and Tribal Vice-Chairperson may work in Tribal enterprises. If employed in Tribal enterprises, the Chairperson and Vice-Chairperson may not hold more than one fulltime paid position in the Tribes enterprises, even if they decline pay for one of the positions.

(Source: WOS 2023-004, June 8, 2023 by Veto Override, Section VII)

#### **14.608 SEVERABILITY**

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2023-004, June 8, 2023 by Veto Override, Section VIII)

#### **14.609 EFFECTIVE DATE**

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2023-004, June 8, 2023 by Veto Override, Section IX)



## **Chapter 7. Constitutionally Mandated Compensation for Tribal Prosecutor**

### **14.701 PURPOSE**

This Compensation Statute establishes the compensation levels for the Tribal Prosecutor based on Constitutional duties. This Statute replaces and repeals Waganakising Odawak Statute 2010-015 and any previous Statute, Resolution or Policy language regarding compensation levels for the position of Tribal Prosecutor.

(Source: WOS 2016-002, February 26, 2016, Section I)

### **14.702 DEFINITIONS**

- A. “Annual Salary” means the amount of annual compensation paid during the calendar year for carrying out the duties of Tribal Prosecutor as stated in the Tribal Constitution or any relevant Statute.
- B. “Attorney” means a person licensed to practice law in the Tribal Court and courts of a state in the United States.
- C. “Full-time status” means an average of forty (40) hours a week with reasonable time off for sickness or disability, holidays or personal time. Work assignments are expected to be completed during the normally scheduled work week, with reasonable flexibility and extra hours as necessary.
- D. “Tribal Constitution” means the LTBB Constitution adopted by the Tribal Citizenship on February 2, 2005.
- E. “Tribe” means the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2016-002, February 26, 2016, Section II)

### **14.703 COMPENSATION CHANGE RESTRICTIONS**

Any statutory amendment changing the level of compensation for the Tribal Prosecutor shall not decrease the amount of compensation during the individual appointed terms for the Prosecutor or Associate Prosecutors.

(Source: WOS 2016-002, February 26, 2016, Section III)

#### **14.704 COMPENSATION ESTABLISHED**

**A.** The Tribal Prosecutor is considered full-time status and shall be compensated and paid a set annual salary to fulfill the responsibilities as stated in the Tribal Constitution and any relevant Statute as follows, subject to federal and state (if applicable) taxation, paid weekly or bi-weekly, with tax withholdings handled in the same manner as for other LTBB governmental employees:

1. 0 to 5 years of experience as an attorney shall be paid \$60,000.00
2. 6 to 10 years of experience as an attorney shall be paid \$75,000.00
3. 11 years or more year of experience as an attorney shall be paid \$90,000.00

**B.** Contributions to the Tribe's retirement plan or a similar plan shall be allowed with the same conditions and restrictions applied to Tribal employees and other contributors in the Tribal Government Retirement plan.

**C.** Health insurance, life insurance and other Tribal insurance programs are offered at the same rate and conditions as for LTBB governmental employees.

(Source: WOS 2016-002, February 26, 2016, Section IV)

#### **14.705 COMPENSATION PROHIBITIONS**

Persons receiving compensation authorized by this Statute shall be prohibited from:

**A.** Receiving unemployment compensation for any reductions or termination of said compensation.

**B.** Receiving any other type of payment as compensation not explicitly listed in this Statute, including stipends.

**C.** Receiving overtime pay or compensation.

(Source: WOS 2016-02, February 26, 2016, Section V)

#### **14.706 TRAVEL REIMBURSEMENT**

The Tribal Prosecutor shall be responsible for all travel expenses incurred while performing services for the Tribe for travel within the LTBB Reservation, and Emmet and Charlevoix Counties, or commuting for a residence outside those locations.

Other travel expenses for approved travel shall be reimbursed at the same rate as allowed employees in the Tribal Governmental Employees Travel Reimbursement Policy, as approved by Tribal Council.

(Source: WOS 2016-002, February 26, 2016, Section VI)

#### **14.707 ASSISTANT PROSECUTORS**

The Tribe Council has the discretion, but is not required, to appoint assistant prosecutors under Article X, Section B.2 of the Tribal Constitution. In the event that Tribal Council appoints one or more assistant prosecutors, compensation will be negotiated on a case-by-case basis taking into consideration the level of experience and projected workload, and may take the form of an independent contract or employment relationship as appropriate under the particular circumstances.

(Source: WOS 2016-02, February 26, 2016, Section VII)

#### **14.708 SEVERABILITY**

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason,

held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2016-02, February 26, 2016, Section VIII)

#### **14.709 EFFECTIVE DATE**

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2016-002, February 26, 2016, Section IX)

## Chapter 8. Constitutionally Mandated Compensation for Judges and Justices

### 14.801 PURPOSE

This Compensation Statute is hereby enacted to establish the compensation levels for the Judges and Justices based on Constitutional duties. This Statute replaces and repeals Waganakising Odawak Statute 2008-014 Constitutionally Mandated Compensation Statute Waganakising Odawak Statute 2003-05 *Tribal Council Compensation* and WOS 2005-04 *Constitutionally Mandated Compensation* and any previous Statute, Resolution or Policy language with regard to compensation levels for such positions as stated in this purpose.

(Source: WOS 2010-016, November 19, 2011, Section I)

### 14.802 DEFINITIONS

- A. “*Annual Salary*” means the amount of annual compensation paid during the calendar year for Judiciary activities in conjunction with carrying out Tribal Council Constitutional duties or any relevant Statute.
- B. “*Attorney*” means licensed to practice in Tribal Court and courts of a state in the United States.
- C. “*Compensation*” means an annual compensation to be paid in equal increments to be determined by the Judiciary.
- D. “*Full-time status*” means an average of forty (40) hours a week with reasonable time off for sickness or disability, holidays or personal time. Work assignments are expected to be completed during the normally scheduled work week, with reasonable flexibility and extra hours as necessary.
- E. “*Part-time status*” means an average of twenty (20) hours or less a week with reasonable time off for sickness or disability, holidays or personal time. Work assignments are expected to be completed during the normally scheduled work week, with reasonable flexibility and extra hours as necessary.

**F.** “*Tribal Constitution*” means the LTBB Constitution adopted by the Tribal Membership February 2, 2005.

**G.** “*Tribe*” shall mean the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2010-016, November 19, 2011, Section II)

#### **14.803 COMPENSATION CHANGE RESTRICTIONS**

Any statutory amendment changing the level of compensation for the Judges and Justices shall not decrease the amount of compensation during the individual appointed terms.

(Source: WOS 2010-016, November 19, 2011, Section III)

#### **14.804 COMPENSATION ESTABLISHED FOR JUDGES**

**A.** Chief Judge is considered full-time status and shall be compensated and paid a set annual salary to fulfill the responsibilities as outlined in the Constitution and any relevant Statute as follows and shall be subject to federal and state (if applicable) taxation. Tax withholdings are elective and may be withheld from each payment:

1. 0 to 5 years of experience as an attorney shall be paid \$85,000.00
2. 6 to 9 years of experience as an attorney shall be paid \$110,000.00
3. 10 years or more experience as an attorney shall be paid \$135,000.00
4. Is not a licensed attorney but with 0 to 5 years of experience sitting as an active judge then shall be paid \$60,000.00
5. Is not a licensed attorney but with 6 to 9 years of experience of sitting as an active judge then shall be paid \$75,000.00s
6. Is not a licensed attorney but with 10 years or more of experience sitting as an active judge then shall be paid \$90,000.00
7. Contributions to the Tribe’s retirement plan or a similar plan shall be allowed with the same conditions and restrictions applied to Tribal employees and other contributors in the Tribal Government Retirement plan.

8. Health insurance, life insurance and other Tribal insurance programs at the same rate as governmental employees.

B. The Associate Judge(s) position is considered to be part-time status and shall be compensated and paid a set annual salary to fulfill the responsibilities as outlined in the Constitution and any relevant Statute as follows and shall be subject to federal and state (if applicable) taxation. Tax withholdings are elective and may be withheld from each payment:

1. 0 to 5 years of experience as an attorney shall be paid \$40,000.00
2. 6 to 9 years of experience as an attorney shall be paid \$50,000.00
3. 10 years or more experience as an attorney shall be paid \$65,000.00
4. Is not a licensed attorney but with 0 to 5 years of experience sitting as an active judge then shall be paid \$25,000.00
5. Is not a licensed attorney but with 6 to 9 years of experience of sitting as an active judge then shall be paid \$35,000.00
6. Is not a licensed attorney but with 10 years or more of experience sitting as an active judge then shall be paid \$50,000.00

(Source: WOS 2010-016, November 19, 2011, Section IV)

#### **14.805 COMPENSATION ESTABLISHED FOR APPELLATE JUSTICES**

A. Appellate Justices shall be compensated and paid an annual salary in the amount of \$15,000.00 and shall be subject to federal and state (if applicable) taxation. Tax withholdings are elective and may be withheld from each payment.

(Source: WOS 2010-016, November 19, 2011, Section V)

#### **14.806 TRAVEL EXPENSE**

A. Travel expenses for approved travel shall be reimbursed at the same rate as allowed employees in the Tribal Governmental Employees Travel Reimbursement Policy, as approved by Tribal Council.

(Source: WOS 2010-016, November 19, 2011, Section VI)

#### **14.807 COMPENSATION PROHIBITIONS**

Persons receiving compensation authorized by this Statute shall be prohibited from:

- A.** Receiving unemployment compensation for any reductions or termination of said compensation.
- B.** Receiving any other type of payment as compensation not explicitly listed in this Statute, including stipends.
- C.** Receiving overtime compensation.

(Source: WOS 2010-016, November 19, 2011, Section VII)

#### **14.808 SEVERABILITY**

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2010-016, November 19, 2011, Section VIII)

#### **14.809 EFFECTIVE DATE**

- A.** Effective upon signature of the Executive or thirty (30) days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.
- B.** This Statute will not affect the compensation of any sitting Judge or Associate Judge during their term of office and will only apply to any new appointments made after the effective date of this Statute.



(Source: WOS 2010-016, November 19, 2011, Section IX)

## Chapter 9. Constitutionally Mandated Compensation – Tribal Council

### 14.901 PURPOSE

The purpose of this Statute is to establish the compensation levels for the Tribal Council in accordance with the Tribal Constitution and based on Constitutional duties. This Statute repeals and replaces: Waganakising Odawak Statute 2010-017 *Constitutionally Mandated Compensation for Tribal Council Member*; Waganakising Odawak Statute 2008-014 *Constitutionally Mandated Compensation Statute*; Waganakising Odawak Statute 2003-05 *Tribal Council Compensation*; and WOS 2005-04 *Constitutionally Mandated Compensation* and any previous Statute, Resolution or Policy language with regard to compensation levels for such positions as stated in this purpose.

(Source: WOS 2023-003, June 8, 2023 by Veto Override, Section I)

### 14.902 DEFINITIONS

**D.** “*Compensation*” means the amount of annual pay for attendance at regularly scheduled Tribal Council meetings, work-sessions, legislative committee meetings, phone-polls, phone conferences, special meetings, emergency meetings, hearings, travel, training, committee meetings, electronic meetings, workgroups, teams or other meetings and any other activity in conjunction with carrying out Tribal Council Constitutional duties or any relevant Statute, to be paid pro rata, in equal increments and shall follow the practice of the Little Traverse Bay Bands of Odawa Indians governmental employees.

**E.** “*Regularly Scheduled Tribal Council Meeting*” means the Tribal Council Meetings that are set on an annual basis and published.

**F.** “*Tribal Constitution*” means the LTBB Constitution adopted by the Tribal Membership February 1, 2005.

“*Tribe*” shall mean the Little Traverse Bay Bands of Odawa Indians.

**C.** “*Stipend*” for attendance at non-regularly scheduled meeting and work session, special or emergency meetings, legislative committee meetings, events, trainings, hearings, and any other

activities approved by policy or motion in advance and shall be limited to one stipend per day.

**D.** “*Tribal Constitution*” means the LTBB Constitution adopted by the Tribal Membership February 2, 2005.

**E.** “*Tribe*” shall mean the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2023-003, June 8, 2023 by Veto Override, Section II)

#### **14.903 COMPENSATION CHANGE RESTRICTIONS**

**A.** In accordance with Article VII (F) of the Tribal Constitution, any increase or decrease in the compensation shall not take effect until after the next general election.

(Source: WOS 2023-003, June 8, 2023 by Veto Override, Section III)

#### **14.904 COMPENSATION ESTABLISHED**

**A.** In accordance with Article VII (F) of the Tribal Constitution, Compensation of the Tribal Council is hereby established. Tribal Councilors shall be compensated as follows:

- 1.** Tribal Council Officers shall be compensated an annual salary of **\$55,000.00**.
- 2.** Non-Officer Tribal Councilors shall be compensated an annual salary of **\$50,000.00**.

**B.** Additional to the annual salary established in this Statute, Tribal Councilors shall receive the following:

- 1.** Contributions to the Tribe’s retirement plan or a similar plan shall be allowed with the same conditions and restrictions applied to Tribal employees and other contributors in the Tribal Government Retirement plan.
- 2.** Health insurance, life insurance and other tribal insurance programs at same rate

as tribal government employees. Tribal Councilors may elect to participate.

**C.** The compensation of the Tribal Council shall be subject to federal and state taxation where applicable. Tax withholdings are elective and may be withheld from each payment.

**D.** Compensation shall be paid weekly in equal increments.

(Source: WOS 2023-003, June 8, 2023 by Veto Override, Section IV)

#### **14.905 TRAVEL EXPENSE**

Travel expenses for approved travel may be paid in advance or reimbursed at the same rate as allowed employees in the Tribal Council approved Tribal Governmental Employees Travel Reimbursement Policy, or as amended.

(Source: WOS 2023-003, June 8, 2023 by Veto Override, Section V)

#### **14.906 STIPENDS**

Tribal Council Officers and Tribal Councilors shall not be paid a stipend for participation in any activity or event.

(Source: WOS 2023-003, June 8, 2023 by Veto Override, Section VI)

#### **14.907 COMPENSATION PROHIBITIONS**

**A.** Persons receiving compensation authorized by this Statute shall be prohibited from:

- 1.** Receiving pay for two (2) or more Tribal Council positions. Councilors shall only receive pay as a Tribal Council Officer or a Non-Officer Tribal Councilor; additional pay is not allowed even when a Tribal Councilor assumes an additional position or additional responsibilities
- 2.** Receiving unemployment compensation for any reductions or termination of

compensation established by this Statute.

3. Receiving any other type of payment for compensation not explicitly listed in this Statute, including stipends.
4. Receiving overtime.
5. Receiving any pro-rata amount of compensation for missed meetings due to incarceration from a sentencing of a crime.

(Source: WOS 2023-003, June 8, 2023 by Veto Override, Section VII)

#### **14.908 EMPLOYMENT**

In accordance with Article XV (A)(3) of the Tribal Constitution, Tribal Councilors may work in Tribal enterprises shall abstain from discussions and voting on matters involving that enterprise. If employed in Tribal enterprises, the Tribal Councilor may not hold more than one fulltime paid position in the Tribes enterprises, even if they decline pay for one of the positions.

(Source: WOS 2023-003, June 8, 2023 by Veto Override, Section VIII)

#### **14.909 SEVERABILITY**

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2023-003, June 8, 2023 by Veto Override, Section IX)

#### **14.910 EFFECTIVE DATE**

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval

whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto, but shall not be implemented until after the next election and until the next Tribal Council or individual councilors are sworn in.

(Source: WOS 2023-003, June 8, 2023 by Veto Override, Section X)

## Chapter 10. Worker's Compensation Statute

### 14.1001 SHORT TITLE

This Statute shall be entitled "Workers' Compensation" Statute. This statute rescinds and replaces any and all previous Statutes, Resolution, Regulations and/or policies related to this subject matter, including WOS 2013-005.

(Source: WOS 2017-003, July 31, 2017, Section I)

### 14.1002 PURPOSE

To authorize such employment benefits for employees of the Tribe and its sub-entities to which the employee would be entitled to for accidental injuries sustained by the worker arising out of and in the course of their employment which require medical services or result in disability or death.

(Source: WOS 2017-003, July 31, 2017, Section II)

### 14.1003 DEFINITIONS

**A.** "Average Weekly Wage" means the average of the highest 39 weeks of the last 52 weeks of gross wages prior to injury. In the case of a worker who has not worked for an employer within the immediate preceding twelve (12) months, the average weekly wage shall be calculated based on the salary level the worker was hired at or is currently receiving. For workers serving as volunteers, the average weekly wage shall be the salary of similarly paid positions for the employer performing similar work.

**B.** "Child" includes dependent natural legitimate children, dependent stepchildren, adopted children and recognized illegitimate children; but does not include married children unless they are shown to be dependents.

**C.** "Claim" means a claim filed with the administrator by or on behalf of a worker for benefits provided under this Statute.

**D.** “Claimant” means the injured worker or, in the event of death of the worker, dependents of the deceased.

**E.** “Death” is any fatality of the worker proximately and directly caused by work injury or occupational disease.

**F.** “Dependents” means the following persons:

**1.** The widow or widower; if married; or in a relationship similar to that of a person related by marriage; and living with the deceased at the time of deceased’s death and legally entitled to be supported by the deceased as a dependent.

**2.** A child under eighteen (18) years of age, or a dependent with a disability and is incapable of self-support, unmarried and dependent upon the deceased; or a child under twenty-five (25) years of age enrolled as a full-time student in an accredited education institution at the time of the worker’s injury.

**3.** A grandchild, brother or sister, niece or nephew of the worker under eighteen (18) years of age, who were wholly dependent on the earnings of a deceased worker for support at the time of his on-the-job injury.

**G.** “Disability” means a limitation of an employee’s wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work related disease. The establishment of disability does not create a presumption of wage loss.

**H.** “Employer” shall mean the Tribe, and its sub-entities, all departments and agencies of the Tribal Government Administration and commercial entities of the Little Traverse Bay Bands of Odawa Indians, including the Odawa Casino Resort and ancillary enterprises and activities.

**I.** “Injury” means an action that causes, contributes to or aggravates any physical or mental impairment, including, without limitation, death and/or occupational disease arising out of and in the course and scope of employment.



**J.** “Maximum Weekly Rate” means 90 percent of the state average weekly wage for the year prior to the injury; as listed by the State of Michigan, [\*State Average Weekly Wage & Maximum Benefit Amounts from 1982-Present\*](#) and not to exceed the maximum amount of state average weekly wage. The amount of the maximum weekly rate can be determined by using the State of Michigan Workers’ Compensation Calculator.

**K.** “Minimum Weekly Rate” means 25 percent of the state average weekly wage for the year prior to the injury; as listed by the State of Michigan, [\*State Average Weekly Wage & Minimum Benefit Amounts from 1982-Present\*](#). The amount of the minimum weekly rate can be determined by using the State of Michigan Workers’ Compensation Calculator.

**L.** “Parent or Grandparent” shall mean the natural or adoptive father or mother or the natural grandfather or grandmother of the worker.

**M.** “Reservation” means all lands within the boundaries of the reservations for the Little Traverse Bay Bands of Odawa Indians as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse Bay Bands of Odawa Indians reservation by the U.S. Department of the Interior.

**N.** “Settlement” means full release and waiver of any and all claims and benefits associated with this Statute.

**O.** “Spouse” means the person married to the worker at the time of the death or injury to the worker.

**P.** “Tribe”, “Tribal” or “LTBB” means or refer to the Little Traverse Bay Bands of Odawa Indians.

**Q.** “Tribal Court” means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

**R.** “Wage Earning Capacity” means the wages the employee earns or is capable of earning at a job reasonably available to that employee, whether or not wages are actually earned.

**S.** “Wage Loss” means the amount of wages lost due to a disability. The employee shall establish a connection between the disability and reduced wages in establishing the wage loss.

**T.** “Weekly Rate Calculation” means weekly wage that can be determined by using the State of Michigan Workers’ Compensation Calculator.

(Source: WOS 2017-003, July 31, 2017, Section III)

#### **14.1004 JUDICIAL INTERPRETATION**

For the purposes of interpreting, enforcing issues relating to the entitlement to benefits, ambiguity in relationship to benefits, and the nature and extent of benefits provided by this Statute, the Tribal Court may look to the substantive provision of the State of Michigan Worker's Disability Compensation Act of 1969, (Michigan Public Act No. 317 of 1969, as amended, being MCL 481.101 et seq.) or as may be amended, but the Tribal Court shall not be bound by State laws, regulations or case law, but may use same for guidance purposes only. Nothing in this Statute shall be construed as an adoption by the Tribe of the Worker's Disability Compensation Act of 1969, (Michigan Public Act No. 317 of 1969, as amended, being MCL 481.101 et seq.) nor a waiver of sovereign immunity from suit for any claims or process under the Michigan law.

(Source: WOS 2017-003, July 31, 2017, Section IV)

#### **14.1005 WAIVER OF SOVERIEGN IMMUNITY and EXCLUSIVE JURISDICTION**

**A.** The Tribe waives its sovereign immunity from suit only to the extent of and as provided in this Statute, strictly construed and applied. This waiver shall extend only to Tribal workers and other persons specifically entitled to benefits under this Statute, and shall not be construed to apply or extend to actions by any other party or actions beyond the scope of this Statute including tort liability.

**B.** The Tribe consents to suit only and solely in Tribal Court, and only to the extent, and upon the terms and conditions, specified in this Statute. By enactment of this Statute the Tribe does not consent to suit in or submit to the jurisdiction of any other court or forum, including without limitation the courts of the State of Michigan or the federal courts.

**C.** The right to the recovery of benefits as provided in this Statute shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. The issue of whether an act was an intentional tort shall be a question of law for the Tribal Court.

**D.** A worker who pursues and recovers benefits under the workers' compensation laws of another jurisdiction is barred from recovering under this Statute. If a worker files suit or makes formal demands against a third party and compensation has been claimed and awarded, the employer having paid such compensation or having become liable therefore, shall be subrogated to the rights of the employee, to recover against such third party to the extent of the employer's compensation liability.

**E.** The employer and/or their representative, insurer, guarantor, or surety shall be subrogated to the rights of the worker to pursue any claims for benefits against any third party that is liable for the injuries to said worker arising out of and in the course and scope of employment; and while the worker was acting in the furtherance of the employer's interest to the extent of the benefits bestowed upon the said worker.

(Source: WOS 2017-003, July 31, 2017, Section V)

#### **14.1006 WORKER**

**A.** The term "worker" and "employee" are interchangeable as applied within this Statute.

**B.** A worker means every person who has entered into the employment of or performs work for an employer, works under contract of service, express or implied, or apprenticeship.

C. For application of this Statute the definition of worker also includes every elected, appointed or assigned person by the Constitution, Statute, charter, bylaws of a corporation, or any other means, compensated monetarily or otherwise.

D. Workers shall include all persons employed by the employer regardless of where they work, whether it within the Reservation or outside of the Reservation. Workers shall include volunteers or other persons providing work for an employer who do so without receiving benefits.

E. The term worker shall not include an independent contractor working under contract for an employer, whether that contract is express or implied.

F. Workers shall include persons serving in any Tribal Police Department Reserve Program or any volunteer firefighters working for the Tribal Fire Department or other volunteer positions.

(Source: WOS 2017-003, July 31, 2017, Section VI)

#### **14.1007 REPORTING and CLAIMING**

A. An employee shall report any injury, oral or writing, no matter how slight, to his or her supervisor within ninety-six (96) hours after the injury has occurred. No benefit will be paid to the employee, if the employee does not report the injury within ninety-six (96) hours to their supervisor. If the injury incapacitates the employee, the time periods shall not begin to run until the incapacity ends. An injury may be reported by another on behalf of the employee.

B. A supervisor receiving a report or notice of an injury from the employee shall promptly report the claim to the Administrator in writing within seventy-two (72) hours of receipt of the report or notice of injury, or as soon as possible thereafter.

C. The employee must file with Tribal Court within three-hundred and sixty-five (365) days of the date of the injury or within three-hundred and sixty-five (365) days from the last payment, or failure to do so will bar any and all benefits.

(Source: WOS 2017-003, July 31, 2017, Section VII)

**14.1008 NON-DEFENSE**

**A.** In an action to recover damages for personal injury sustained by an employee in the course of his employment or for death resulting from personal injuries so sustained it shall not be a defense:

1. That the employee was negligent, unless it shall appear that such negligence was a willful act.
2. That the injury was caused by the negligence of a fellow employee.
3. That the employee had assumed the risks inherent in or incidental to, or arising out of his employment, or arising from the failure of the employer to provide and maintain safe premises and suitable appliances.

(Source: WOS 2017-003, July 31, 2017, Section VIII)

**14.1009 BENEFITS and INJURIES**

**A.** It is the intent of this Statute to provide substantially similar benefits as provided in similar circumstances under the State of Michigan Worker's Disability Compensation Act of 1969, (Michigan Public Act No. 317 of 1969, as amended, being MCL 481.101 et seq.) or as it may be amended in the future.

1. In order to obtain medical benefits under this Statute, and employee must show an "Injury" as defined herein.
2. In order to obtain wage loss benefits under this Statute, and employee must show a "Disability" as defined herein.
3. Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions and degenerative arthritis are compensable if contributed to or aggravated or accelerated by the employment in a significant manner.

**4.** Mental disabilities are compensable if arising out of actual events of employment, not unfounded perceptions thereof, and if the employee's perception of the actual events is reasonably grounded in fact or reality.

**5.** Course and scope of employment shall mean an act or action within a worker's job duties or assignments, as set forth in the worker's job description or otherwise, which acts or actions are in the furtherance of the employer's interest.

**6.** An employee going to or from his or her work, while on the premises where the employee's work is to be performed, and within a reasonable time before and after his or her working hours, is presumed to be in the course of his or her employment. Notwithstanding this presumption, an injury incurred in the pursuit of an activity that the major purpose of which is social or recreational is not covered under this statute.

**B.** Wage loss may be established, among other methods, by demonstrating the employee's good-faith effort to procure work within his or her wage earning capacity. A partially disabled employee who establishes a good-faith effort to procure work but cannot obtain work within his or her wage earning capacity is entitled to weekly benefits as if totally disabled.

**C.** No compensation shall be paid under this Statute for any injury which does not incapacitate the employee from earning full wages, for a period of at least 1 week, but if incapacity extends beyond the period of 1 week, compensation shall begin on the eighth day after the injury. If incapacity continues for 2 weeks or longer or if death results from the injury, compensation shall be computed from the date of the injury.

**D.** Benefits continue so long the employee is disabled. Benefits are reduced by five (5) percent each year beginning with the year the employee receives funds under the Social Security Act, 42 U.S.C. 301 to 1397f. The reduction continues until for a period of 10 years and thereafter continues at the rate of fifty (50) percent so long as they are disabled. The five (5) percent reduction only applies if the employee is receiving social security benefits; or based on the preference of the Administrator, the benefit may be reduced by 50% of the amount received by the employee under the Social Security Act, 42 U.S.C. 301 to 1397f.

1. If the injured employee has been receiving old-age insurance benefit payments under the Social Security Act, Chapter 531, 49 Stat. 620, before the date of the personal injury or work-related disease, then the weekly benefits payable after the reduction provided by this subdivision (the fifty (50) percent reduction method) shall not be less than 50% of the weekly benefits otherwise payable without the reduction.
2. If the five percent reduction is utilized, then the weekly payments shall not be reduced below the minimum weekly rate.
3. The benefit may be reduced by the after-tax amount of the payments received or being received under a self-insurance plan, a wage continuation plan, or under a disability insurance policy provided by the same employer from whom benefits are received if the employee did not contribute directly to the plan or to the payment of premiums regarding the disability insurance policy.
4. The benefit may be reduced by the after-tax amount of the pension or retirement payments received or being received by the employee pursuant to a plan or program established or maintained by the same employer, if the employee did not contribute directly to the pension or retirement plan or program. Subsequent increases in a pension or retirement program shall not affect the coordination of these benefits.
5. The benefit may be reduced by the ratio of the employer's contributions to the total contributions made to a qualified profit sharing plan under section 401(a) of the internal revenue code or any successor to section 401(a) of the internal revenue code covering a profit sharing plan which provides for the payment of benefits only upon retirement, disability, death, or other separation of employment to the extent that benefits are vested under the plan provided that those employers do not provide a pension plan.

**E. Specific injuries:**

1. The employee shall establish an initial showing of disability, by the following:

- a.** Disclose his or her qualifications and training, including education, skills, and experience, whether or not they are relevant to the job the employee was performing at the time of the injury.
- b.** Provide evidence as to the jobs, if any, he or she is qualified and trained to perform within the same salary range as his or her maximum wage earning capacity at the time of the injury.
- c.** Demonstrate that the work-related injury prevents the employee from performing jobs identified as within his or her qualifications and training that pay maximum wages.
- d.** If the employee is capable of performing any of the jobs identified in section c., show that he or she cannot obtain any of those jobs. The evidence shall include a showing of a good-faith attempt to procure post-injury employment if there are jobs at the employee's maximum wage earning capacity at the time of the injury.

**2.** Once an employee establishes an initial showing of a disability, the employer bears the burden of production of evidence to refute the employee's showing. In satisfying its burden of production of evidence, the employer has a right to discovery if necessary for the employer to sustain its burden and present a meaningful defense. The employee may present additional evidence to challenge the evidence submitted by the employer.

**3.** If a personal injury arising out of the course of employment causes total disability and wage loss and the employee is entitled to wage loss benefits, the employer shall pay or cause to be paid to the injured employee weekly compensation equal to 80% of the employee's after-tax average weekly wage, but not more than the maximum weekly rate. Compensation shall be paid for the duration of the disability.

**4.** If a personal injury arising out of the course of employment causes partial disability and wage loss and the employee is entitled to wage loss benefits, the employer shall pay or cause to be paid to the injured employee as provided in this section weekly



compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the employee's wage earning capacity after the personal injury, but not more than the maximum weekly rate. Compensation shall be paid for the duration of the disability.

**5.** If disability and wage loss are established, entitlement to weekly wage loss benefits shall be determined as applicable pursuant to this section and as follows:

**a.** If an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan unemployment insurance agency and the employee refuses that employment without good and reasonable cause, the employee shall be considered to have voluntarily removed himself or herself from the work force and is not entitled to any wage loss benefits under this Statute during the period of refusal.

**b.** If an employee is terminated from reasonable employment for fault of the employee, the employee is considered to have voluntarily removed himself or herself from the work force and is not entitled to any wage loss benefits under this Statute.

**c.** If an employee is employed and the weekly wage of the employee is less than that which the employee received before the date of injury, the employee shall receive weekly benefits under this Statute equal to 80% of the difference between the injured employee's after-tax weekly wage before the date of injury and the after-tax weekly wage that the injured employee earns after the date of injury, but not more than the maximum weekly rate of compensation. Maximum rate of benefits is 90 percent of the state average weekly wage for the year prior to the injury.

**d.** If an employee is employed and the average weekly wage of the employee is equal to or more than the average weekly wage the employee received before the date of injury, the employee is not entitled to any wage loss benefits under this Statute for the duration of that employment.

**e.** If the employee, after having been employed pursuant to this subsection loses his or her job through no fault of the employee and the employee is still disabled, the employee shall receive compensation under this Statute as follows:

- i.** If the employee was employed for less than 100 weeks, the employee shall receive compensation based upon his or her average weekly wage at the time of the original injury.
- ii.** If the employee was employed for 100 weeks or more but less than 250 weeks, then after exhausting unemployment benefit eligibility, the Tribal Court may determine that the employment since the time of the injury has not established a new wage earning capacity and, if the Court makes that determination, benefits shall be based on his or her average weekly wage at the original date of injury. If the Court does not make that determination, the employee is presumed to have established a post-injury wage earning capacity and benefits shall not be paid based on the wage at the original date of injury.
- iii.** If the employee was employed for 250 weeks or more, the employee is presumed to have established a post-injury wage earning capacity.

**F.** For occupational injuries:

- 1.** To establish an initial showing of disability, an employee shall do the following:
  - a.** Disclose his or her qualifications and training, including education, skills, and experience, whether or not they are relevant to the job the employee was performing at the time of the injury.
  - b.** Provide evidence as to the jobs, if any, he or she is qualified and trained to perform within the same salary range as his or her maximum wage earning capacity at the time of the injury.

**c.** Demonstrate that the work-related injury prevents the employee from performing jobs identified as within his or her qualifications and training that pay maximum wages.

**d.** If the employee is capable of performing any of the jobs identified in subdivision (c), show that he or she cannot obtain any of those jobs. The evidence shall include a showing of a good-faith attempt to procure post injury employment if there are jobs at the employee's maximum wage earning capacity at the time of the injury.

**2.** Once an employee establishes an initial showing of a disability, the employer bears the burden of production of evidence to refute the employee's showing. In satisfying its burden of production of evidence, the employer has a right to discovery if necessary for the employer to sustain its burden and present a meaningful defense. The employee may present additional evidence to challenge the evidence submitted by the employer.

**3.** If a personal injury arising out of the course of employment causes total disability and wage loss and the employee is entitled to wage loss benefits, the employer shall pay or cause to be paid to the injured employee as provided in this section weekly compensation equal to 80% of the employee's after-tax average weekly wage, but not more than the maximum weekly rate. Compensation shall be paid for the duration of the disability.

**4.** If a personal injury arising out of the course of employment causes partial disability and wage loss and the employee is entitled to wage loss benefits, the employer shall pay or cause to be paid to the injured employee as provided in this section weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the employee's wage earning capacity after the personal injury, but not more than the maximum weekly rate. Compensation shall be paid for the duration of the disability.

**5.** If disability and wage loss are established, entitlement to weekly wage loss benefits shall be determined as applicable pursuant to this section and as follows:

**a.** If an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan unemployment insurance agency and the employee refuses that employment without good and reasonable cause, the employee shall be considered to have voluntarily removed himself or herself from the work force and is no longer entitled to any wage loss benefits under this Statute during the period of refusal.

**b.** If an employee is terminated from reasonable employment for fault of the employee, the employee is considered to have voluntarily removed himself or herself from the work force and is not entitled to any wage loss benefits under this Statute.

**c.** If an employee is employed and the average weekly wage of the employee is less than that which the employee received before the date of injury, the employee shall receive weekly benefits under this Statute equal to 80% of the difference between the injured employee's after-tax weekly wage before the date of injury and the after-tax weekly wage that the injured employee earns after the date of injury, but not more than the maximum weekly rate of compensation.

**d.** If an employee is employed and the average weekly wage of the employee is equal to or more than the average weekly wage the employee received before the date of injury, the employee is not entitled to any wage loss benefits under this Statute for the duration of that employment.

**e.** If the employee, after having been employed pursuant to this subsection, loses his or her job through no fault of the employee and the employee is still disabled, the employee shall receive compensation under this Statute as follows:

**i.** If the employee was employed for less than 100 weeks, the employee shall receive compensation based upon his or her wage at the time of the original injury.

- ii. If the employee was employed for 100 weeks or more but less than 250 weeks, then after the employee exhausts unemployment benefit eligibility, Tribal Court may determine that the employment since the time of the injury has not established a new wage earning capacity and, if the Court makes that determination, benefits shall be based on the employee's wage at the original date of injury. If the Court does not make that determination, the employee is presumed to have established a post-injury wage earning capacity and benefits shall not be paid based on the wage at the original date of injury.
- iii. If the employee was employed for 250 weeks or more, the employee is presumed to have established a post-injury wage earning capacity.

(Source: WOS 2017-003, July 31, 2017, Section IX)

#### **14.1010 MEDICAL BENEFIT**

**A.** The employer shall furnish, or cause to be furnished, to an employee who receives a personal injury arising out of and in the course of employment, reasonable medical, surgical, and hospital services and medicines, or other attendance, when they are needed. Attendant or nursing care shall not be ordered in excess of 56 hours per week if the care is to be provided by the employee's spouse, brother, sister, child, parent, or any combination of these persons.

**B.** The employer shall also supply to the injured employee dental service, crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatus, and other appliances necessary to cure, so far as reasonably possible, and relieve from the effects of the injury.

(Source: WOS 2017-003, July 31, 2017, Section X)

#### **14.1011 VOCATIONAL REHABILITATION**

- A.** An employee who has suffered an injury covered by this Statute shall be entitled to prompt rehabilitation services. If he or she is unable to perform work for which he or she has previous training or experience.
  
- B.** Vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him or her to useful employment, including additional payments for transportation or any extra and necessary expenses during the period and arising out of his or her program of vocational rehabilitation.
  
- C.** Vocational rehabilitation training, treatment, or service shall not extend for a period of more than fifty-two (52) weeks except in cases when, after review by Tribal Court the period may be extended for an additional fifty-two (52) weeks or portion thereof.
  
- D.** There may be a loss or reduction of compensation if there is an unjustifiable refusal by the employee to accept rehabilitation for each week of the period of refusal.
  
- E.** Payments received for education through the Tribe or any Tribal program may be offset and paid to the employee for actual costs only.

(Source: WOS 2017-003, July 31, 2017, Section XI)

#### **14.1012 PAYMENT FOR SPECIFIC LOSS**

- A.** In cases included in the following schedule, the disability in each case shall be considered to continue for the period specified, and the compensation paid for the personal injury shall be 80% of the after-tax average weekly wage subject to the weekly maximum and minimum rates of compensation under this Statute.
  
- B.** The effect of any internal joint replacement surgery, internal implant, or other similar medical procedure shall be considered in determining whether a specific loss has occurred. The specific loss period for the loss shall be considered as follows:
  - 1.** Thumb, 65 weeks.

2. First finger, 38 weeks.
3. Second finger, 33 weeks.
4. Third finger, 22 weeks.
5. Fourth finger, 16 weeks.

**C.** The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of 1/2 of that thumb or finger, and compensation shall be 1/2 of the amount above specified.

**D.** The loss of more than 1 phalange shall be considered as the loss of the entire finger or thumb. The amount received for more than 1 finger shall not exceed the amount provided in this schedule for the loss of a hand.

1. Great toe, 33 weeks.
2. A toe other than the great toe, 11 weeks.
3. The loss of the first phalange of any toe shall be considered to be equal to the loss of 1/2 of that toe, and compensation shall be 1/2 of the amount above specified.
4. The loss of more than 1 phalange shall be considered as the loss of the entire toe.
5. Hand, 215 weeks.
6. Arm, 269 weeks.
7. An amputation between the elbow and wrist that is 6 or more inches below the elbow shall be considered a hand, and an amputation above that point shall be considered an arm.
8. Foot, 162 weeks.

9. Leg, 215 weeks.

10. An amputation between the knee and foot 7 or more inches below the tibial table (plateau) shall be considered a foot, and an amputation above that point shall be considered a leg.

11. Eye, 162 weeks.

12. Eighty percent loss of vision of 1 eye shall constitute the total loss of that eye.

E. The amounts specified in this clause are all subject to the same limitations as to maximum and minimum as above stated. In case of the loss of 1 member while compensation is being paid for the loss of another member, compensation shall be paid for the loss of the second member for the period provided in this section. Payments for the loss of a second member shall begin at the conclusion of the payments for the first member.

F. Benefits for wage loss and a specific loss cannot be received at the same time

(Source: WOS 2017-003, July 31, 2017, Section XII)

#### **14.1013 ADMINISTRATOR DUTIES and AUTHORITY**

A. The Administrator shall mean either the Insurance Company providing coverage hereunder, or any subcontractor appointed by said Insurance Company.

B. The Administrator shall be the payer of the worker's benefits. The Administrator shall administer this Statute in accordance with the terms and conditions described herein, and remit payment for all benefits as provided in this Statute and the Administrator shall have the authority to determine the distribution of benefits checks.

C. The Administrator shall be empowered to request medical reports, police reports, autopsy reports, and special investigations, engage the services of adjusters and consultants, and perform other activities as required to process any claim for benefits.



**D.** In the case of death of a worker, the Administrator shall have the right to request the performance of an autopsy on the decedent from an appropriate official licensed to perform autopsies, and further the Administrator shall have the right to request any and all reports made from such autopsies. If requested, the legal beneficiaries of the deceased worker are entitled to have a representative present at any autopsy ordered by the Administrator.

**E.** The Administrator shall maintain complete and accurate administrative records and claim files shall be maintained on all activities relating to the claims. All closed files shall be preserved for not less than six (6) years.

(Source: WOS 2017-003, July 31, 2017, Section XIII)

#### **14.1014 ACCEPTANCE/DENIAL OF CLAIM**

Upon receiving a claim for benefits from an injured worker, the Administrator shall promptly investigate the claim and begin payment of benefits within twenty-one (21) days of a valid claim or the Administrator shall send the claimant written notice of dispute within twenty-one (21) days. The Administrator shall complete its investigation within forty-five (45) days of receipt of the claim and shall commence the payment of benefits or notify the claimant in writing that the claim is disputed.

(Source: WOS 2017-003, July 31, 2017, Section XIV)

#### **14.1015 TOTAL AND PARTIAL DISABILITY INCOME BENEFITS**

**A.** Except as provided herein, such benefits will continue to be paid in accordance with the terms of this Statute until which time the earliest of the following occurs:

- 1.** Where a worker is entitled to benefits under this Statute for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the benefits, payments of the unpaid balance for such injury shall cease and all liability for such benefits thereafter shall terminate.

2. The worker claimant is incarcerated;
3. A full, unrestricted medical release from care;
4. A new or intervening incident is the proximate cause of disability;
5. Benefits will cease when the employee has been released to regular duty work status whether the employee is regular, temporary or seasonal;
6. Benefits are refused by the worker;
7. The worker's earning capacity is reduced for reasons other than the disability from the work-related injury;
8. The worker dies from any cause not resulting from the injury for which he was entitled to benefits under this section, and the worker's estate is not entitled to any further benefits as defined by this Statute.
9. If the worker is offered a bona fide offer of employment, for equal or higher pay, and the employee refuses the offer, then benefits cease.

(Source: WOS 2017-003, July 31, 2017, Section XV)

#### **14.1016 DEATH BENEFIT**

**A.** When death ensues to the worker by reason of a compensable injury or occupational disease, benefits shall be payable to the dependents who were wholly dependent on the earnings of the worker for support at the time of his or her injury of the worker's average weekly wage, commencing from the date of death. Payment of benefits will be made as follows:

1. If there are no children entitled to benefits, then all death benefits to be paid to the surviving spouse for the projected probable life span of the decedent based on current mortality tables as published by the Center for Disease Control/National Center for Health Statistics, not to exceed a cap of benefits at five-hundred (500) weeks, the life of

the surviving spouse or until remarriage, whichever comes first, provided that upon remarriage two years' benefits shall be paid to the surviving spouse in a lump sum. To be an eligible "surviving spouse" under this Statute, the surviving spouse must have been married and living with the decedent at the time of the compensable injury. If there are surviving eligible children, the surviving spouse shall be entitled to one-half of death benefits.

**2.** If there is a surviving spouse, one-half of death benefits paid to each surviving eligible child in equal shares.

**3.** If there is no surviving spouse, benefits are to be paid to each surviving eligible child and dependent grandchildren equally until the child shall reach the age of eighteen (18), or until the child dies, whichever comes first.

**a.** Any child will be eligible for continued benefits beyond the age of eighteen (18) should they become enrolled as a full-time student in an accredited educational institution within six (6) months of graduating from high school. They shall be eligible for continued benefits to the age of twenty-one (21) as long as they continue as a full-time student; and

**b.** Any child who was physically or mentally incapacitated from earning wages at the time of the compensable injury causing death for the duration of the incapacity or the incapacitated child's death, whichever earlier.

**4.** If the worker is not survived by any legal beneficiaries, any duty to pay such benefits, but not including burial benefits with a maximum benefit of \$6,000.00, under this Statute shall cease immediately;

**B.** Where a worker is entitled to benefits under this Statute for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to benefits, payments of the unpaid balance for such injury shall cease and all liability thereafter shall terminate.

**C.** If a legal beneficiary as defined in this section dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with this section.

**D.** If all legal beneficiaries cease to be eligible, any duty to pay the remaining death benefits payable under this section shall cease immediately.

**E.** Upon request from the Administrator, all persons claiming to be eligible for death benefits shall furnish all necessary documentation to support their claim of eligibility.

**F.** If death results from a compensable injury, the person and/or entity who incurs liability for the costs of the burial shall be paid \$6,000.00 to cover burial expenses. This burial benefits payment shall not be reduced as a result of any burial benefits paid by any other source.

(Source: WOS 2017-003, July 31, 2017, Section XVI)

#### **14.1017 MEDICAL BENEFITS**

No benefits are payable for any part of a charge for confinement, treatment, or service that exceeds reasonable and customary (prevailing) charges or that exceeds the State of Michigan fee schedule, whichever is least. Over-the-counter medications are not covered unless prescribed by a physician.

(Source: WOS 2017-003, July 31, 2017, Section XVII)

#### **14.1018 FILING A CLAIM TO TRIBAL COURT**

**A.** Any dispute or decision made by the Administrator can be protested by filing a claim in Tribal Court.

**B.** The employee must file with Tribal Court within three-hundred and sixty-five (365) days of the date of the injury or within three-hundred and sixty-five (365) days from the last payment, or failure to do so will bar any and all benefits.

(Source: WOS 2017-003, July 31, 2017, Section XVIII)

#### **14.1019 HEARINGS**

**A.** The claimant shall have the right to be represented by an attorney or other spokesperson in all matters presented to the Tribal Court, to cross-examine all witnesses and review all evidence of any nature, as may relate to the matter under consideration.

**B.** The Tribal Court shall have the right to cross-examine the worker claimant and all witnesses and to perform such discovery activity as may be deemed necessary to fully explore all aspects surrounding the occurrence and injury.

**C.** The Tribal Court shall not be bound by the rules of evidence or by technical or formal rules of procedure and may conduct investigations in such a manner as in his or her judgment is best calculated to ascertain the substantial rights of the parties and to carry out the spirit of this Statute.

**D.** A full and complete record shall be kept of all proceedings before the Tribal Court by means of a recording device or by a stenographer.

(Source: WOS 2017-003, July 31, 2017, Section XIX)

#### **14.1020 APPEALS of TRIBAL COURT DECISIONS**

The decision of the Tribal Court may be appealed to the Tribal Appellate Court.

(Source: WOS 2017-003, July 31, 2017, Section XX)

#### **14.1021 RELEASE OF MEDICAL RELATED INFORMATION**

Any worker, employer or insurance carrier or its agents making or defending a claim for benefits agrees to the release of all information to which the worker, employer, carrier, or its agents have access concerning the worker's physical or mental condition relative to the claim and further waives any privilege for the release of such information.

(Source: WOS 2017-003, July 31, 2017, Section XXI)

#### **14.1022 SETTLEMENTS**

**A.** The employer and worker may negotiate settlement of future medical expenses, income loss, impairment, death benefits and other benefits under this Statute that are owed to the worker, or his/her estate.

**B.** If the worker is represented by an attorney, any settlement issued on behalf of a worker will be properly executed by signed memorandum or release and such settlements shall not need Tribal Court approval.

**C.** If the worker is not represented by an attorney, then such settlement shall need Tribal Court approval.

(Source: WOS 2017-003, July 31, 2017, Section XXII)

#### **14.1023 MENTAL TRAUMA INJURIES**

**A.** Mental disabilities are compensable if arising out of actual events of employment, not unfounded perceptions thereof, and if the employee's perception of the actual events is reasonably grounded in fact or reality.

**B.** Mental traumas, disorders, and/or conditions, even if manifested in physical symptoms and/or related to stress, are not compensable injuries under this Statute, except that mental trauma is only recoverable if resulting from accidental injury traceable to a definite time, place, and cause rather than from repetitive mental trauma, or from an unusual traumatic event as established by a licensed psychiatrist or psychologist, and the mental injury was caused by or occurs subsequent to or simultaneous with such accidental injury or unusual traumatic event.

(Source: WOS 2017-003, July 31, 2017, Section XXIII)

#### **14.1024 BENEFITS PRECLUDED BY NEGLIGENCE AND/OR REFUSAL OF WORKER TO SUBMIT TO TREATMENT**

No benefits shall be payable for the death and/or disability of a worker if the worker's death is caused by, or the worker's disability aggravated, caused or continued by, an unreasonable refusal and/or neglect to submit to and/or follow any competent or reasonable surgical or medical treatment, medical aid, or advice and there is substantial likelihood that the medical treatment would be successful, provided that there is no risk of mortality.

(Source: WOS 2017-003, July 31, 2017, Section XXIV)

#### **14.1025 INJURY OR DEATH BY CONSUMPTION AND/OR APPLICATION OF DRUGS AND/OR CHAMICALS AND/OR INTOXICATION**

**A.** No benefits of any nature shall be payable for injury and/or death caused to by any drug, including narcotics and hallucinogens, whether organic or chemical in nature, or any gas, vapors, and/or fumes taken and/or inhaled voluntarily, or by voluntarily poisoning, except those drugs prescribed by a physician or other practitioner licensed to prescribe such medication. However, no benefits under this Statute shall be payable in the event the worker claimant's injury or death was caused by the intentional abuse of prescribed drugs in excess of the prescribed therapeutic amounts.

**B.** No wage benefits shall be payable for injury and/or death contributed to by any drug, including narcotics and hallucinogens, whether organic or chemical in nature, or any gas, vapors, and/or fumes taken and/or inhaled voluntarily, or by voluntarily poisoning, except those drugs prescribed by a physician or other practitioner licensed to prescribe such medication.

**C.** No benefits of any nature shall be payable for any worker injured or killed while in a state of intoxication regardless of whether or not the intoxicated condition was the proximate or contributing cause of the injury or death. It is only necessary to prove that the worker was intoxicated at the time of the incident or accident to deny benefits under this Statute. All workers accepting employment with an employer and under this Statute, agree to submit to post-incident/post-accident drug and alcohol screening as authorized in the applicable employer/employee personnel policies, and agree to waive any privilege associated with the results of said tests.

(Source: WOS 2017-003, July 31, 2017, Section XXV)

**14.1026 FALSE STATEMENT OR REPRESENTATION TO OBTAIN BENEFITS;  
PENALTY AND FORFEITURE**

If, in order to obtain any benefits under the provisions of this Statute, any person who knowingly makes a false statement or representation in connection with their claim, shall forfeit all rights to benefits under this Statute. The employer shall be entitled to take any action permitted by law to recover any payment or benefits paid under this Statute to a worker where the payment or benefits was based upon the fraudulent or false statements or misrepresentation by the worker.

(Source: WOS 2017-003, July 31, 2017, Section XXVVI)

**14.1027 INJURIES RESULTING FROM SELF-INFLICTED INJURIES, WILLFUL  
MISCONDUCT OR “HORSEPLAY”**

No benefits of any nature shall be payable for any worker’s injury or death caused by a worker’s willful intention to injure himself or another. An injury sustained during “horseplay” is not incurred in the course and scope of employment and thus such an injury under this Statute is not compensable.

(Source: WOS 2017-003, July 31, 2017, Section XXVII)

**14.1028 INJURIES RESULTING FROM “ACTS OF GOD”**

No benefits of any nature shall be payable for any worker injured or killed when the injury arose out of an act of God, unless the employment exposes the worker to a greater risk of injury from an act of God than ordinarily applies to the general public. Further, injury or death which results from a natural cause, i.e., heart attack, stroke or other natural function failure, which does not arise out of the course and scope of employment while the worker was acting in the furtherance of the employer’s interest, shall not be compensable.

(Source: WOS 2017-003, July 31, 2017, Section XXVIII)



**14.1029 RECREATIONAL, SOCIAL OR ATHLETIC ACTIVITIES**

**A.** No benefits of any nature shall be payable for any worker injured or killed if the injury or accident occurred as a result of the worker’s voluntary participation in an off-duty, recreational, social, or athletic activity not constituting part of the worker’s work-related duties, except where these activities are expressly required by the employer.

**B.** No benefits under this Statute shall be payable to any worker if the injury, disease, or death arises from participation in voluntary physical fitness activities during the regular workday, regardless of whether the worker is or is not compensated for the time in which the physical fitness activities take place.

(Source: WOS 2017-003, July 31, 2017, Section XXIX)

**14.1030 INJURIES CAUSED BY THIRD PARTIES**

No benefits of any nature shall be payable for any worker injured or killed as the result of an act of a third party, including co-workers, who intended to injure the worker because of reasons personal to that worker and not directed at the worker for reasons related/relevant to his employment.

(Source: WOS 2017-003, July 31, 2017, Section XXX)

**14.1031 SECONDHAND SMOKE CLAIMS**

**A.** No benefits under this Statute shall be payable to or on behalf of any worker injured or killed as a result of exposure to or injury by second-hand smoke unless and until the claimant demonstrates by a preponderance of the evidence the following:

**B.** The worker has worked for the employer for the ten (10) years prior to the filing of the claim for benefits under this Statute;

C. The worker’s workplace during the ten (10) year period referenced in (A) above involved exposure to second-hand smoke;

D. The worker has not smoked cigarettes, cigars, or other tobacco products, in the last ten (10) years; and

E. The worker has not shared a residence or previously worked in an area where family members, in the case of the residence, or fellow workers, in the case of prior employment, smoked in the home or workplace in the last ten (10) years.

(Source: WOS 2017-003, July 31, 2017, Section XXXI)

#### **14.1032 IDIOPATHIC CLAIMS**

Idiopathic injury and related injuries are not compensable. “Idiopathic Injury” means an injury which is either peculiar to the individual or arising spontaneously from an obscure or unknown cause. This includes epileptic attacks, diabetic seizures, heart disease, cardiovascular or respiratory conditions, heart attack, the failure or occlusion of any coronary blood vessels, stroke, thrombosis, allergic disorders, auto-immune diseases, *etc.*

(Source: WOS 2017-003, July 31, 2017, Section XXXII)

#### **14.1033 WAR AND MILITARY ACTION EXCLUSION**

A. No benefits under this Statute shall be payable for injury caused directly or indirectly by the following events. Such injury is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

1. War, including undeclared or civil war; or
2. Warlike action by a military force. Including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

3. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
4. With respect to any action that comes within the terms of this exclusion and involves nuclear reaction or radiation, or radioactive contamination, this War and Military Action Exclusion supersedes the Nuclear Hazard Exclusion.

(Source: WOS 2017-003, July 31, 2017, Section XXXIII)

#### **14.1034      TERRORISM EXCLUSION**

**A.** No benefits under this Statute shall be payable for injury caused directly or indirectly by terrorism, including action in hindering or defending against an actual or expected incident of terrorism. Such loss or damage is excluded regardless of any other cause or even that contributes concurrently or in any sequence to the loss.

**B.** Terrorism means activities against persons, organizations or property of any nature that involve the following or preparation for the following:

1. Use of threat of force or violence; or
2. Commission or threat of a dangerous act; or
3. Commission or threat of an act that interferes with or disrupts an electronic communication, information, or mechanical system; and
4. When one or both of the following applies:
  - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy, or
  - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

C. But with respect to any such activity that also comes within the terms of the War and Military Action Exclusion, that exclusion supersedes this Terrorism Exclusion.

(Source: WOS 2017-003, July 31, 2017, Section XXIV)

#### **14.1035 SAVINGS CLAUSE**

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

(Source: WOS 2017-003, July 31, 2017, Section XXV)

#### **14.1036 EFFECTIVE DATE**

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval whichever comes first, or, if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2017-003, July 31, 2017, Section XXXVI)

## Chapter 11. Financial Disclosure of Tribal Officials

*Codification Note: This Statute Repeals and Replaces WOS 2006-023 previously located at 6.1801 in this code.*

### 14.1101 PURPOSE

This Statute is hereby enacted to establish a standard requirement for financial disclosure from elected and appointed officials in accordance with the *Tribal Constitution, Article XV. B* that states: “*The Tribal Council shall enact a statute requiring financial disclosure statements of candidates, and elected or appointed governmental officials.*”

(Source: WOS 2016-003, June 30, 2016, Section I)

### 14.1102 DEFINITIONS

- A. The “Tribe” means the Little Traverse Bay Bands of Odawa Indians.
- B. “Elected Official” means any Tribal Chair, Vice Chair and Tribal Councilors.
- C. “Immediate Family” means husband, wife, son, daughter, step-son, step-daughter, father, step-father, father-in-law, mother, step-mother, mother-in-law, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, child, step-child, son-in-law, daughter-in-law or a person whose relationship with the Tribal Citizen is similar to that of persons who are related by blood or marriage.
- D. “Judiciary Official” means any Judge or Justice of the Tribal Court.
- E. “Personal Financial Interest” shall mean a financial interest for the official or any immediate family members.
- E. “Tribal Citizen” means an enrolled member of the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2016-003, June 30, 2016, Section II)

#### **14.1103 ELECTED OFFICIALS**

- A.** No elected official shall be sworn into office until the following information is submitted to the Legislative Office:
- 1.** A list of all current employers;
  - 2.** A list of all positions currently held on boards, commissions, or committees,
  - 3.** A description of any financial interest in a business, company, corporation, stock or bond, but not retirement funds, mutual funds or any type of financial instrument in which the owner does not have control over the purchase and sale of the instrument's holdings;
  - 4.** Location of all real-estate holdings.
- B.** Any changes to the submitted information shall be reported to the Legislative Office within 30 days of the change or event.

(Source: WOS 2016-003, June 30, 2016, Section III)

#### **14.1104 JUDICIARY OFFICIALS**

- A.** No Judiciary official shall be sworn into office until the following information is submitted to the Judiciary Office:
- 1.** A list of all current employers;
  - 2.** A list of all positions currently held on boards, commissions, or committees;
  - 3.** A description of any financial interest in a business, company, corporation, stock or bond, but not retirement funds, mutual funds or any type of financial instrument in

which the owner does not have control over the purchase and sale of the instrument's holdings;

4. Location of all real-estate holdings.

C. Any changes to the submitted information shall be reported to the Judiciary Office within 30 days of the change or event.

(Source: WOS 2016-003, June 30, 2016, Section IV)

#### **14.1105 EXECUTIVE COMMISSIONS, BOARDS AND COMMITTEES**

Annually, all Executive Commission, Boards and Committees members shall sign a statement verifying that any of the following is not in conflict with their appointment:

1. Employment;
2. Positions on boards, commissions, or committees;
3. Financial interest in a business, company, corporation, stock or bond, but not retirement funds, mutual funds or any type of financial instrument in which the owner does not have control over the purchase and sale of the instrument's holdings;

(Source: WOS 2016-003, June 30, 2016, Section V)

#### **14.1106 PUBLIC RECORD**

The information shall be available to Tribal Citizens in accordance with Disclosure of Public Document Statute, or as amended.

(Source: WOS 2016-003, June 30, 2016, Section VI)

#### **14.1107 SEVERABILITY**

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2016-003, June 30, 2016, Section VII)

#### **14.1108        EFFECTIVE DATE**

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

(Source: WOS 2016-003, June 30, 2016, Section VIII)



## Chapter 12. Ethics for All Levels of Tribal Government

### 14.1201 PURPOSE

The purpose of this statute is to set forth the adoption of the *Constitutionally Mandated Rules of Conduct for All Levels of Tribal Government*, the process for adjudicating ethical complaints by the various branches of government.

(Source: WOS 2018-018, September 24, 2018, Section I)

### 14.1202 DEFINITIONS

A. “Branch of Government” means the Executive, Judicial and Legislative Branches of government, including the Prosecutor and Election Board.

B. “Employee” means any person employed or performs work for an employer, works under contract of service, express or implied, whether temporary, full-time, Human Resources approved volunteer or apprenticeship.

C. “Official” means Tribal Councilor, Tribal Chair, Vice Chair, Judge or Justice, Prosecutor, or Election Board member, within the Little Traverse Bay Bands of Odawa Indians Tribal government for the purposes of this statute.

D. “Rules of Conduct” means the *Constitutionally Mandated Rules of Conduct for All Levels of Tribal Government*.

E. “Tribe”, “Tribal” or “LTBB” means the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2018-018, September 24, 2018, Section II)

### 14.1203 CONSTITUTIONALLY MANDATED RULES OF CONDUCT

A. Tribal Council shall adopt *Constitutionally Mandated Rules of Conduct for All Levels of Tribal Government*, in accordance with the Little Traverse Bay Bands of Odawa Indians Tribal

Constitution, Section Article VII, (D)(6), the Tribal Council shall have the power to: “*Adopt rules of conduct to govern all levels of Tribal government*”. The purpose of Rules of Conduct is to establish clear standards for the principles and expectations that are binding on Tribal Officials and employees.

**B.** Any branch of government or agency may establish their own Rules of Conduct provided that they are as stringent as the *Constitutionally Mandated Rules of Conduct for All Levels of Tribal Government*.

(Source: WOS 2018-018, September 24, 2018, Section III)

#### **14.1204 COMPLAINTS**

**A.** Each Branch of Government shall develop its own policy and procedures to address complaints by Tribal Citizens regarding Officials, Employees and any other sub-entity of that Branch of Government (Executive Committees, Commissions and Boards; Tribally Chartered Corporations). Such policies and procedures shall include, at a minimum, the following:

1. Timeframes
2. Complaint requirements
3. Remedies
4. Burden of proof
5. Hearings

**B.** All Policies and Procedures shall be submitted to Tribal Council for approval within one-hundred and twenty (120) calendar days from the enactment of this Statute.

(Source: WOS 2018-018, September 24, 2018, Section IV)

#### **14.1205 SEVERABILITY**

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2018-018, September 24, 2018, Section V)

#### **14.1206        EFFECTIVE DATE**

This Statute takes effect immediately upon its enactment. Enactment of this Statute shall have no effect on the membership status of any tribal members enrolled by the Tribe under previous legislation.

(Source: WOS 2018-018, September 24, 2018, Section VI)