

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)