

## GOVERNMENT EMPLOYMENT RELATIONS ACT OF 2005

Ordinance# 05-600-01

### Article I. Purpose; Findings

- 1.01. *Purpose.* The purpose of this Ordinance is to identify the employment laws and policies of the Tribe as an employer.
- 1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:
- a. The Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to "...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:
    1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;
    2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]" *Article IV, Section 7(a).*

### Article II. Adoption; Amendment; Repeal; Severability

- 2.01. *Adoption.* Amendments to this Ordinance are adopted by Tribal Council Resolution #
- a. Resolution 25-XXXX-XX. Restoring the need for Tribal Council approval for exceptions to progressive discipline, defining the limits of the waiver of sovereign immunity, and clarifying when progressive discipline is not appropriate.
  - b. Resolution # 18-1205-360-Permanent adoption of amendments removing requirement for Tribal Council approval for exceptions to progressive discipline, changing the appeal period to ten business days, and correcting typos and formatting errors.
  - c. . Resolution # 05-1102-565-Permanent adoption of Ordinance after Public Comment
  - d. Resolution # 05-0706- 305 adopting the Ordinance on an emergency basis.
- 2.02. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Act, Ordinance #04-100-07.
- 2.03. *Repeal.* This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act.
- 2.04. *Severability.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications

of this Ordinance, which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

~~2.05. *Sovereign Immunity*: To the extent necessary to carry out the just cause provisions of section 4.01 (a) of this Ordinance and application of damages as authorized under Article IV, the Tribal Council hereby authorizes the limited waiver of the sovereign immunity of the Tribe contained in Section 5.01 herein in accordance with Article XI, Section I of the Constitution.~~

### Article III. Definitions

- 3.01. *General*. As used in this Ordinance, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings.
- 3.02. *Constitution* means the Constitution of the Little River Band of Ottawa Indians
- 3.03. *Controlled Substance* means Marijuana, or any Marijuana Infused Product, as those terms are defined under Article XVII, Sections 17.01(b-c) of the Law and Order Ordinance, any drug or other substances, identified or defined as a “controlled substance” under the provisions of M.C.L. Section 333.7212 and Section 333.7214.
- 3.04. *Dangerous Weapon* means a pistol or other firearm, or a pneumatic gun, dagger, dirk, razor, stiletto, knife with a blade over three (3) inches in length, pocketknife opened by a mechanical device, stabbing instrument, iron bar, club, blackjack, brass knuckles, SAP gloves, taser, stun gun, cattle prod, explosives, explosive devices, gunpowder, black powder, fireworks, or other object specifically designed or customarily carried or possessed for use as a weapon.
- 3.05. *Grievance* means a dispute, claim, or complaint arising under the terms of this policy and filed by an employee. Grievances are limited to matters of violation, interpretation, or unfair applications of this policy. The employee filing a grievance must show how the grievance directly affects him or her.
- 3.06. *Human Resources Department* means the office responsible for managing the employment related information of government employees. Where appropriate, Human Resources Department may refer to the physical offices or a representative of that department assigned to a particular responsibility. For example, managing employment benefits.
- 3.07. *Just Cause* means conduct that is of such a serious nature or extent that it essentially breaks the employment relationship.
- 3.08. *Progressive discipline* means the system of increasingly severe consequences for repeated violations of the standards of behavior or performance, starting with less severe measures such as verbal warnings and progressing to more serious actions and ultimately to termination if the violations continue. As used in the Tribal Government, Progressive Discipline may, at the supervisor’s discretion, begin with a verbal warning. In all cases, except for those listed in

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Section 4.04 below, Progressive discipline shall progress through a number of written warnings before moving to suspension and finally termination. Demotion shall not be a tool of progressive discipline.

**Commented [RJF1]:** Do promotions come with a probationary period?

3.09. *Tribe* means the Little River Band of Ottawa Indians.

**Commented [RJF2R1]:** Yes, current employees who accept a new position within the Tribal Government shall serve a thirty (30) day probationary period.

#### Article IV. Employment Relations

4.01. *Employment Relations.* Unless stated otherwise, all employees shall be considered to have a just cause employment relationship with the employer as defined and limited within this Ordinance. The doctrine of at-will employment shall not be interpreted as the policy of this Tribe, provided, however, that, the Tribe or the employee may terminate the employment relationship at-will during the probationary period. Nothing in this Ordinance shall prohibit amendments, revisions, or repeal of this Ordinance by the Tribal Council.

- a. Because Tribal government employees have a just cause employment relationship with the Tribe, they are authorized to file an appeal of disciplinary actions with the Tribal Court Clerk according to the provisions of Section 4.01(b)
- b. Until and unless the Tribal Council passes a Tribal Employment Rights Ordinance (“TERO”) to govern the employment rights of employees of the Tribe, employees may file a complaint with the Fair Employment Practices Investigators by swearing under oath with the Tribal Court Clerk on the **GERA Complaint Form** available from the Tribal Court Clerk provided that the Form is filed within the time provided in Section 4.07 below. If and when TERO is adopted by the Tribe, the processes laid out therein shall be the only remedies available to employees of the Tribal Government.
- c. Once a complaint has been properly filed with the Tribal Court Clerk, the FEPI shall follow the steps outlined in Sections 6.03(a) and (c) of the Fair Employment Procedures Act. The only remedies the FEPI may provide to the employee shall be those discussed in Section 4.06 of this Act.
- d. The rights created in this Ordinance permit employees to file an appeal in Tribal Court, which alleges that the employee is aggrieved only by one or more of the following actions:
  1. The employee has been terminated without just cause;
  2. The employee has been suspended without just cause; and/or
  3. The employee has been demoted without just cause.
- e. If the employee was terminated, suspended, or demoted as a result of unlawful employment practices as defined under the Fair Employment Practices Code,

**Commented [RJF3]:** Convert FEPA complaint form to a GERA complaint form

Ordinance #05-600-03, they shall be brought under the procedures of the Fair Employment Practices Code.

- f. The right to appeal a disciplinary action to Tribal Court shall not apply to:
1. A person in a temporary position whose employment is terminated due to lack of work or funding or at the end of the defined term;
  2. A person separated from any department due to curtailment of funds or reduction in staff as authorized in a program budget or budget modification approved by the Tribal Council; or

- g. All other disciplinary actions may be appealed through the next level of supervisory authority until reaching the director, whose decision shall be issued in writing and shall be final. As used in this Section, director is the employee of the Tribe reporting directly to the Ogema. Employees working directly for the Ogema may also appeal a disciplinary action under the provisions of this Act to provide an impartial forum for their appeal to be heard. Excluding those actions listed in this Section 4.01.g and in Section 4.01.d, no further appeal of a disciplinary action shall be authorized under this Section.

**Commented [RJF4]:** Are there other individuals who should be included in this provision if accepted?

- h. Tribally chartered enterprises and businesses shall not be governed by this Ordinance.

- 4.02. *Just Cause-Applied.* Just cause, as used in this Ordinance, means a termination undertaken as the result of actions or omissions of the employee, which either violate employment rules and responsibilities of the employer, violate a federal grant restriction requirement, or represent a failure on the part of the employee to carry out, in a workmanlike manner, the responsibilities of the position for which the individual is employed. Employment rules and responsibilities are those requirements of the department and/or program, which are specifically identified to the employee by the supervisor, listed in personnel manuals, required under Tribal law, or required under applicable federal law. Employees, as part of their working environment, shall be required, as a part of their employment, to be aware of and know the laws and regulations of the Tribe, to be aware of and know the applicable federal laws and regulations regarding the department in which they are employed, and/or program activities related to their employment, and to be aware of and know the personnel laws, regulations, and policies of the Tribe without requiring documentation of having been presented copies of these documents.

**Commented [RJF5]:** Outline the steps needed to be taken for dismissal, suspension, and termination so there are no misunderstandings on how the process should work.

#### 4.03. *Progressive Discipline.*

- a. The Tribal government shall be required to create and maintain progressive disciplinary policies and procedures consistent with the definition provided in

Section 3.08. Progressive discipline identifies that an employee can improve their work product and work habits through education and knowledge, and that identification and correction of unwanted actions or inactions can result in improvement of the employee job performance. Provided that, the actions listed in Section 4.04 below shall result in immediate suspension and/or termination of the employee without resort to progressive disciplinary action.

- b. Notwithstanding anything to the contrary in either this Ordinance or the disciplinary policies of the Tribal government, the supervisor bringing the complaint against the employee, shall, prior to taking any disciplinary actions described in Section 4.01.d., provide the employee with a written notice of the charges against them, a written explanation of the employer's evidence constituting just cause, and an opportunity for the employee to present his or her side of the action.
- c. After any pre-disciplinary action proceedings conducted under Section 4.03.b, the Tribal government shall provide the employee with a written decision and notify the employee of the right to appeal the disciplinary action in accordance with Section 4.01 of this Ordinance and the relevant provisions of the FEPA.
- d. Except for those situations listed in Section 4.04, or in cases where the Tribal Council has approved an exception to the use of progressive discipline as described in Section 4.05, employees shall be provided with written warnings and a meaningful opportunity to improve their work product and work habits to a satisfactory level through the use of progressive discipline prior to the use of suspensions or termination.

**Commented [RJF6]:** Review and take out future references.

4.04. *Exceptions to Progressive Discipline.* While it is generally the policy of the Tribal Government to deal with actions of an employee which violate the rules of conduct outlined in the Employee Handbook through progressive discipline, some actions are so outside the limits of appropriate work behavior that they can only be handled through immediate suspension or termination. The following actions are all exempt from the Tribal Government's progressive discipline policies.

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- a. Possession of a Dangerous Weapon, as defined in Section 3.04 above, in the workplace so long as the weapon in question is not a regular part of the employee's work equipment required for the performance of the Employee's work;
- b. Possession of controlled substances while present on the property of any Tribal Government facility.
- c. Assault of any kind on a person while on the property, including the curtilage of a Tribal Government facility when the employee is present for the purpose of working, regardless of whether the employee has begun or finished their shift for the day. However, this provision shall not apply in instances when it is clear the employee has acted in defense of themselves or in defense of others.

- d. Threatening, either verbally or through the use of an electronic device or system, to commit an act of violence with a firearm, explosive, pepper spray, mace, or other chemical agent, or any other Dangerous Weapon against an employee, or other person on Tribal Government property if the threat can be reasonably interpreted to mean an act that has a substantial likelihood of causing death or serious injury.
- 4.05. *Tribal Council Approval Required.* Except for the exceptions listed in Section 4.04 above, Tribal Council approval shall be required whenever a supervisor wishes to deviate from the progressive discipline policies and procedures adopted by the Tribe pursuant to Section 4.03(a) above.
- 4.06. *Grievance Matter; Relief available.* The FEPI may order the following relief in grievance matters:
- a. *Uphold.* The FEPI may uphold the disciplinary action in total.
  - b. *Remand.* The FEPI may remand the disciplinary action to the Ogema, Tribal Council, or Tribal Court, as appropriate, for corrective action in line with their report. The FEPI's report shall identify why the disciplinary action was excessive and/or in violation of this Act, other existing Tribal law, or regulation. A disciplinary action that is remanded for corrective action-such as to reduce a suspension, reverse a demotion, or reinstate a termination-shall identify if the employee is entitled to receive damages made up of the wages, including benefits that he or she would have received during a reduced suspension period, the difference between the prior wages and the demotion, less time off, or the difference between the period the employee was reinstated, and any period of suspension, if any. An employee that continued to work or had corrective action as a result of a remanded complaint that resulted in a suspension equivalent to that already incurred, shall not be awarded damages. Damages shall not include medical bills, insurance costs, or other losses incurred by the employee. An employee that refuses demotion or refuses to work during the period between the final decision, the appeal, and any remand period shall not be awarded damages.
  - c. *Dismiss.* The FEPI may dismiss the appeal in all cases where it is determined that the action being appealed is outside of the scope of authority of this Act.
- 4.07. *Appeal Deadline.* An employee must file an appeal with the Employment Division of Tribal Court within ten (10) business days of receiving a written disciplinary action.
- 4.08. *Peacemaking.* Nothing in this Act shall be construed as limiting an employee's right to Peacemaking when a conflict exists with another employee, a supervisor, Lead, or someone else in the employee's chain of command or workplace prior to the initiation of disciplinary actions.

**Commented [RJF8]:** I have tried to clarify this sentence but it is still confusing.

#### ~~Article V. Limited Waiver of Sovereign Immunity~~

5.01 ~~The Tribal Council hereby authorizes a limited waiver of sovereign immunity solely in favor of employees or former employees of the Tribal Government ("Employees") who have faced disciplinary action in their employment, for the limited purpose of allowing the Employees to appeal the disciplinary actions to the Employment Division of the Tribal Court in accordance with the Employment Division of the Tribal Court Code Ordinance, this Ordinance, and the Constitution. The waiver of sovereign immunity is further limited solely to appeals filed by an employee claiming to be aggrieved by one or more of the actions listed in subparts 1 through 3 of Article IV, Paragraph 4.01(b) and solely into the Employment Division of the Tribal Court. The Tribe expressly does not waive its sovereign immunity from uncontested suit for any other persons or for any other purposes besides those listed in this Section 5.01.~~

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**CERTIFICATION**

I, Pam Johnson, do hereby certify that this is a true and correct copy of the Government Employment Relations Act of 2005, Ordinance #05-600-01, adopted by Tribal Council Resolution #05-1102-565 and most recently amended by Tribal Council Resolution #25-~~XXX~~-XXX.

\_\_\_\_\_  
Date

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Pam Johnson  
Tribal Council Recorder