



**LAC COURTE OREILLES BAND
OF
LAKE SUPERIOR CHIPPEWA INDIANS**

TRIBAL CODE OF LAW

**TITLE XIV
POLICIES AND PROCEDURES**

As Approved and Adopted by Resolution No. 16-82, Amended by Resolution No. 16-106, Resolution No. 17-12, Resolution No. 17-128, Resolution No. 18-43, Resolution No. 18-57, Resolution No. 19-27, and Resolution No. 19-73

TITLE XIV – CHAPTER 1

**GOVERNMENTAL PERSONNEL POLICIES AND PROCEDURES
OF THE
LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS**

Preamble

This personnel policy and procedural manual is enacted pursuant to the inherent sovereign authority of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians in the implementation of Title XII, Chapter 3 of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians Tribal Code of Law (LCOTCL) – Employment Code. This personnel policy and procedural manual, outlines the general policies, rules and practices in effect for the Lac Courte Oreilles Tribal Government and is intended to be a helpful reference during your employment with the Tribe. The information contained herein is general information, and its contents do not create or constitute a contract between the Tribe and any employee. The Tribal Governing Board acting in its sovereign capacity may in its sole discretion amend this personnel policy and procedural manual from time to time. The Human Resource Director, or designee, will distribute approved revisions to all employees.

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SUBCHAPTER 1.1 - GENERAL PROVISIONS

§ 1.101 Title.

This personnel policies and procedures manual shall be known as the Governmental Personnel Policies and Procedures of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians.

§ 1.102 Authority.

This personnel policy and procedural manual is enacted pursuant to the inherent sovereign authority of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians in the implementation of Title XII, Chapter 3 of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians Tribal Code of Law (LCOTCL) – Employment Code.

§ 1.103 Purpose.

It is the purpose of this personnel policy and procedural manual to provide the general policies, rules and practices in effect at Tribe. This personnel policy and procedural manual is intended to be a helpful reference during your employment with the Tribe. The information contained herein is general information, and its contents do not create or constitute a contract between the Tribe and any employee. The Tribal Governing Board acting in its sovereign capacity on behalf of the Tribe may in its sole discretion amend this personnel policy and procedural manual from time to time. The Tribal Human Resource Director, or designee, will distribute approved revisions to all employees.

§ 1.104 Mission Statement.

We the people of Odaawaa Zaaga’iganing, the Lac Courte Oreilles Band of Lake Superior Chippewa, will sustain our heritage, preserve our past, strengthen our present, and embrace our future. We will defend our inherent sovereignty and safeguard our Mother Earth and provide for the education, health, social welfare, and economic stability of the present and future generations. We will provide for the spiritual, cultural, intellectual, physical, emotional and social wellbeing of all employees and will assist employees to grow and develop as members of the Tribe’s workforce to share in the success and prosperity of the Tribe.

§ 1.105 Effective Date.

Except as otherwise provided in specific sections, the provisions of this personnel policy and procedural manual shall be effective on the date adopted by the Tribal Governing Board.

§ 1.106 Interpretation.

The provisions of this personnel policy and procedural manual:

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(1) Shall be interpreted and applied as minimum requirements applicable to the employment related activities of the Tribe;

(2) Shall be liberally construed in favor of the Tribe;

(3) Shall not be deemed a limitation or repeal of any other tribal power or authority.

§ 1.107 Severability and Non-Liability.

If any section, provision or portion of this personnel policy and procedural manual is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this personnel policy and procedural manual shall not be affected thereby. The Tribe further asserts immunity on its part and that of its agencies, employees, and/or agents from any action or damages that may occur as a result of reliance upon and conformance with this personnel policy and procedural manual.

§ 1.108 Repeal of Inconsistent Governmental Manual(s).

All previous personnel policy and procedural manual(s) of the Tribe inconsistent with this manual are hereby repealed and the provisions of this manual shall govern the employment related activities of the Tribe.

SUBCHAPTER 1.2 – DEFINITIONS

§ 1.201 General Definitions.

Any term not defined in this section shall be given its ordinary meaning. The following terms, wherever used in this ordinance, shall be construed to apply as follows, except where the context indicates otherwise:

(1) **“Compensatory time” and “compensatory time off”** means paid time off, which is not counted as hours worked during the applicable workweek, or other work period for purposes of overtime compensation, and for which the non-exempt employee is compensated at the non-exempt employee’s regular rate.

(2) **“Contracted Employee”** means an employee who has entered into a written contract, which has been properly authorized and signed by a signatory of the Tribe and the employee which defines the employment relationship. The contract will be for a specified period, and will outline benefits, pay and other conditions of employment. The terms and conditions of employment for Contracted employees may differ from the terms in this personnel policy and procedural manual, and this manual may be incorporated by reference in the Contracted Employee’s written contract.

(3) **“Employee”** means an employee of the Tribe including: Exempt Employee, Non-exempt Employee, Full-time Employee, Part-time Employee, Seasonal Employee, or Temporary Employee.

(4) **“Executive Director”** means the individual employed by the Tribal Governing Board to manage the affairs of the Lac Courte Oreilles Tribal Government as provided for in this manual, the Employment Ordinance, and other relevant documents.

(5) **“Exempt Employee”** means an employee who the Human Resources Director, or designee, categorizes as being exempt from accruing compensatory time, and includes executive, administrative, and professional employees who are compensated on a salary basis.

(6) **“Extreme Circumstance”** means an unscheduled or unplanned circumstance exceeding an ordinary, usual, or expected event.

(7) **“Full-time Employee”** means an employee regularly scheduled to work thirty-two to forty (32-40) hours per week who has completed the ninety (90) day probationary period. Full-time employees are eligible for employee benefits subject to the limitations of the applicable benefit plans.

(8) **“Fringe Benefit”** means an extra benefit supplementing an employee’s salary, such as: health insurance, Worker’s compensation, 401(k) benefits, short-term and long-term disability.

(9) **“Immediate family member”** means Husband, Wife, Son, Daughter, Mother, Father, Brother, Sister, Grandparent, Grandchild, Niece, Nephew, Aunt and Uncle (including great-grandparents, in-laws, and step-relationship etc.). Immediate family member may also include a

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partner who has been in a relationship for a period of time or in relationship under Ojibwe tradition and practices.

(10) **“Independent contractor”** means an individual who is not an employee of the Tribe, but rather has entered into a contract with the Tribe, which defines the scope of services. Independent contractors are not employees, do not receive benefits, are not subject to this personnel policy and procedural manual and are governed by a written or verbal contract.

(11) **“LCOCHC”** means the Community Health Center of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians.

(12) **“Management”** means the Executive Director, Department Director(s), and any employee who is assigned permanent or temporary supervisory or decision making authority.

(13) **“Non-Exempt Employee”** means an employee who the Human Resource Director, or designee, categorizes as being non-exempt from accruing compensatory time.

(14) **“Part-time Employee”** means an employee regularly scheduled to work less than thirty-two (32) hours per week. Part-time employees are not eligible for employee benefits or leave.

(15) **“Positive Test Result”** means a Blood Alcohol Concentration determined to be under the influence as established in § 1.201 (23) and 1.808 (3).

(16) **“Probationary Employee”** means an employee who has not successfully completed their required probationary period.

(17) **“Seasonal Employee”** means an employee hired for an established period usually during peak workloads or seasonal demands. Seasonal workers may not be eligible for all employee benefits.

(18) **“Serious Health Condition”** means a condition which requires inpatient care at a hospital, hospice, or residential medical care facility, or a condition which requires continuing care by a licensed health care provider. This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long term health condition which, if left untreated, would result in a period of incapacity of more than three (3) days would be considered a serious health condition.

(19) **“Temporary Employee”** means an employee hired for a period of ninety (90) days or less. Temporary employees may work a full-time or part-time schedule and are not eligible for employee benefits and paid leave.

(20) **“Tribe”** means the Lac Courte Oreilles Band of Lake Superior Chippewa Indians.

(21) **“Tribal Court”** means the Court of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians.

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(22) **“Tribal Governing Board”** means the Tribal Governing Board of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians.

(23) **“Under the Influence of Alcohol, Illegal Drugs or Controlled Substances”** means the following: a Blood Alcohol Concentration that indicates a positive test result as established in § 1.808 (3); or are results that confirm the presence of illegal substance; or are results that confirm the presence of a controlled substances that an employee does not have a valid prescription for or the levels exceed the prescribed dosage.

(24) **“Valid Prescription”** means a prescription that is current and issued for a medical purpose in the usual course of professional practice by a practitioner or a covering practitioner who has conducted at least 1 in-person medical evaluation of the patient.

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SUBCHAPTER 1.3 – GOVERNANCE

§ 1.301 General.

The Tribal Governing Board is the governing body of the Tribe. Pursuant to the Amended Constitution and Bylaws of the Tribe, ultimate legal and fiscal responsibility of the Tribe is with the Tribal Governing Board, as the elected representatives of the members of the Tribe. The Tribal Governing Board possesses the inherent sovereign authority to delegate oversight and management responsibilities to program directors for the planning and daily operations of Tribal programs and entities. The Tribal Court interprets and enforces, in accordance with and subject to applicable law, as well as these policies and procedures established by the Tribal Governing Board.

§ 1.302 Sovereignty.

The Tribe is a sovereign nation, with inherent reserved rights recognized through federal treaties; as such the tribe exists within the geographical boundaries of the United States. Immunity from private lawsuits is one aspect of inherent tribal sovereignty. Immunity from suit means that no private lawsuit can be maintained against the Tribe, unless the Tribe consents to the action. Nothing in this manual, including without limitation the provisions of Subchapter 1.12, constitutes a waiver of the Tribe's inherent sovereign immunity.

§ 1.303 Employment Laws.

It is the general policy of the Tribe to extend to its employees, where possible, the rights and benefits provided by employers regulated by the laws of the United States. However, the Tribe looks to federal employment laws as guidelines only, and nothing in this personnel policy and procedural manual shall be construed as the Tribe's consent to application of such laws. Another aspect of the Tribe's inherent sovereignty is that Wisconsin Statutes are not applicable on Tribal operations without the express written permission of the Tribal Governing Board. The Tribe reserves the right to create and modify its employment laws and policies without regard to such laws or interpretations thereof.

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SUBCHAPTER 1.4 – HIRING PROCESS

§ 1.401 Equal Employment Opportunity.

The Tribe reaffirms its commitment to equal employment opportunity and advancement toward all applicants and employees regardless of race, color, creed, national origin, gender, sexual orientation, marital status, veteran status, religion, status with regard to public assistance, membership or activity in a local commission, disability, age or any other status protected by law.

§ 1.402 Indian Preference.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et. seq.* prohibits various forms of discrimination, including racial, color, gender-based, religion or national origin within the employment context. However, similar to the United States government, Indian tribes are expressly exempted from the definition of a covered “employer.” Consistent with this exemption, the Tribe grants Indian preference in employment, and will apply preference in the following order when there are two or more candidates that meet the job qualifications:

- (1) Members of the Lac Courte Oreilles Tribe,
- (2) Members of other Federally Recognized Tribes with a dependent or dependents who are members of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians,
- (3) Members of other Federally Recognized Tribes,
- (4) Non-members with a dependent or dependents who are members of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians,
- (5) All Others.

§ 1.403 Hiring Preferences.

The Tribe will utilize the following preference ranking when considering an applicant for employment. It is the responsibility of the applicant to provide the necessary documents listed below for the purpose of obtaining preferences:

- (1) Indian preference as described in § 1.402 of this manual (Applicant must provide a signed official document from a federally recognized Tribe acknowledging enrollment);
- (2) Veteran preference (Applicant must provide a Veterans Administration form DD214);
- (3) Former employees of the Tribe whom left in “good standing” and whose separation was not as a result of disciplinary action or an agreement in lieu of disciplinary action which would have otherwise resulted in termination.

§ 1.404 Employment of Relatives.

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The Tribe encourages relatives of Lac Courte Oreilles Tribal members to seek employment with the Tribe. However, the Tribe also seeks to avoid potential problems arising from family members directly supervising one another. A waiver of this provision may be granted by the Executive Director when the services of the employee cannot be obtained from any other available person with the same or equivalent qualifications.

§ 1.405 Employment of Minors.

The Tribe will utilize, solely as a guideline, federal laws pertaining to the employment of minors.

§ 1.406 Disclosure and Background Check.

(1) All applicants who are being considered for employment with the Tribe must provide the information as described in § 1.409 of this manual. Incomplete applications and application which fail to provide consent for background checks will not be considered. For all applicants considering employment with the Tribe, the Tribe reserves the right to:

(a) conduct background checks on all Governmental employees.

(2) While employed with the Tribe, every employee must notify his or her department head or director in writing of any pending criminal charge or conviction, which may result in disciplinary action pursuant to Subchapter 1.12 of this manual. The Tribe reserves the right to:

(a) issue disciplinary action depending upon the severity of the charge or conviction.

(b) conduct a criminal background check or personnel background check of current Governmental employees with reasonable suspicion of policy violations as detailed in this manual.

(3) Failure to pass a background check to the satisfaction of the Tribe or to disclose a criminal charge or conviction may result in revocation of a conditional offer of hire or disciplinary action, up to and including termination.

§ 1.407 Funding and Approval.

Prior to posting or filing a position, the department head or director must ensure there are sufficient funds to pay for salary, fringe benefits and all other costs of the position. If the job is for a shorter period and only limited funds are available or if the position is contingent upon receiving funding, this constraint will be explicitly specified at the time of advertisement. The Human Resource Director or designee shall ensure that all positions submitted for posting have all required approvals.

§ 1.408 Posting.

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Only the Human Resources Director, or designee, is authorized to post a position, provided an existing position shall only be posted with the prior approval of the Executive Director and a new position shall only be posted with the prior approval of the Tribal Governing Board. All positions shall be posted for at least ten (10) working days, provided temporary positions may be exempt from this section that are of a 14 (fourteen) day duration or less. The Human Resource Director, or designee, will advertise all job postings locally at various locations and other places as appropriate including electronic posting.

§ 1.409 Job Application.

(1) Application Form. Applicants for employment are required to submit an application form, which will include without limitation:

- (a) Signature for permission to perform a background and reference check.
- (b) Driving record and insurance information (if applicable).
- (c) Pre-employment drug testing consent and authorization form.
- (d) Letter of interest
- (d) Resume
- (e) Proof of any stated qualifications
- (f) Three (3) letters of recommendation
- (g) Documentation of hiring preferences pursuant to § 1.403 of this manual.

(2) Background Investigations. The Human Resource Director, or designee, shall ensure that background investigations are performed prior to applicant screening pursuant to § 1.406 of this manual.

§ 1.410 Screening and Selection Process.

As an employer, the Tribe seeks to employ individuals who possess the qualifications, skills, abilities and background to meet the employment needs of the Tribe. It is also the intent of the Tribe to treat all applicants with respect and fairness along with ensuring the provisions of § 1.401 of this manual, are adhered to. Pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a, all applications shall be treated as privileged information and shall be made available only to those directly involved in the hiring process.

(1) Applicant Screening.

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(a) Upon receipt, all applications will be date stamped and kept in the hiring file until the deadline date and time has expired. After the deadline, all applications received, within the required time lines, will be reviewed by the Human Resources Director for completeness and minimum qualifications. In addition, the Human Resources Director will conduct a background and reference check to determine any issues that might prohibit an individual from being employed by the Tribe.

(b) Applicants that are deemed to meet these minimum qualifications will be notified in writing, emailed (if applicable) and/or telephonically of an offer to be interviewed. Any applications deemed to not be complete, not meet the minimum qualifications or have a background check that contains information that is detrimental to the Tribe will be notified in writing that they were not selected to be interviewed.

(c) The decision to not offer an interview will not be subject to any grievance, complaint or appeal provisions of the Tribe.

(d) In the event the Human Resources Director determines that there is no qualified or insufficient applicants the position may be reposted.

(e) Reference and background checks made by the Human Resources Director should be properly documented and retained for a period no longer than the probationary period of the position being considered.

(2) Applicant Interview.

(a) All eligible applicants will be interviewed by a committee which shall be facilitated by the Human Resources Director and composed of the following:

- (i) Human Resource Director,
- (ii) Executive Director,
- (iii) Department Head or Director,
- (iv) Immediate Supervisor for the position being interviewed,
- (v) Other as the department head or director deems appropriate.

(3) Interviewing Principles.

(a) The committee will interview each eligible applicant and shall make the selection based upon all relevant factors, including but not limited to:

- (i) Preferences defined in § 1.403 of this manual,
- (ii) Education/Training,

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(iii) Personal and professional references,

(iv) Experience relevant to position,

(v) Interview.

(b) The committee may utilize a ranking system that factors all of the areas established in subsection (3) (a) above, that will ensure a fair and equitable process for determining the best qualified candidate, and if applicable an alternate, to fill the position being interviewed. Such system may utilize points or other forms of ranking that is deemed relevant for the position in consideration.

(c) The Human Resource Director or designee shall notify the successful and unsuccessful applicants in writing within five (5) working days. If the selected individual does not accept the position or an employee does not successfully complete the probationary period, the Human Resource Director shall offer the position to the alternate selection, if applicable. If there was no alternate selected then the Human Resource Director or designee may repost the position.

(d) All relevant documents related to a hiring will be retained by the Human Resources Director for a period not longer than the probationary period for the position being considered. Pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a, all such information shall be treated as privileged information and shall be made available only to those directly involved in the hiring process.

(e) If an employee does not complete the probationary period, the Human Resource Director shall offer the position to the alternate selection. If there was no alternate selected then the Human Resource Director or designee may repost the position.

(f) The decision to not hire an interviewee will not be subject to any grievance, complaint or appeal provisions of the Tribe.

§ 1.411 Tribal Governing Board Notification.

The Executive Director will notify the TGB who was hired for what position(s) and/or if a position(s) was reposted.

§ 1.412 Orientation.

(1) All new employees will be provided an orientation within the first day of employment, and will be provided this personnel policy and procedural manual, all required forms for employment, benefits, a copy of 12 LCOTCL Chapter 6 – Worker’s Compensation Code, and day-to-day procedures. The Human Resource Director, or designee, will also answer any questions which may arise throughout the course of employment. Supervisors will provide further direction relevant to the operation of their department.

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(2) Orientation for department head or directors will include additional training with the Contracts Office, the Accounting Department and other required areas to familiarize the employee with grants management responsibilities, accounting codes and procedures, and other applicable functions.

§ 1.413 Position Description.

The Human Resource Director, or designee, will provide every employee with a copy of his or her current and or amended position description. The position description is intended to provide a general overview of the duties of the position. From time to time, however, employees will perform duties and handle duties and responsibilities that are not a part of the original position description. Position descriptions contain a general description of a position and do not create any employment rights or entitlements.

§ 1.414 Probationary Period.

(1) All newly-hired employee's will be placed on a ninety (90) calendar day probationary period. with the exception of positions identified by the department head or director as needing an extended period in order to adequately assess the employees capabilities to perform the job duties. During an employee's probationary period they will get to know fellow employees, Management and the duties involved for the position. The Tribe will work closely with employees during the probationary period to assist in understanding the needs and processes of the job. The probationary period may be waived by the Executive Director for short term or seasonal employment.

(2) The probationary period is a trial time for both the employee and the Tribe. During this probationary period, the Tribe will evaluate the employee's suitability for employment. At any time during the probationary period, an employee may resign without any detriment to the employee's record. In addition, if during this period an employee's work habits, attitude, attendance, or performance do not measure up to the Tribe's standards, the Tribe may extend the probationary period for up to ninety (90) calendar days or terminate the employee's employment without the ability of the employee to appeal the decision.

(3) Probationary employees are eligible for holiday leave and funeral leave. Probationary employees accrue Personal Time Off. Such employees cannot use Personal Time Off until the completion of their probationary period, unless authorized by their immediate supervisor with concurrence from the Executive Director and only for medical reasons or extreme circumstances. If an employee does not complete the probationary period for any reason, the employee forfeits all accrued but unused benefits.

(4) At the end of the probationary period, the Tribe will prepare a written performance evaluation and discuss overall job performance with the employee. During the course of the discussion, the employee is encouraged to present his or her comments and ideas as well.

(5) The probationary period ends only when a written evaluation of the employee is filed by the supervisor indicating the employee has passed probation, with no exceptions.

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§ 1.415 Classifications.

Upon hire, the Tribe will inform every employee of his or her employment classification, whether exempt or non-exempt, full-time, part-time, seasonal or temporary. This is important because employment classification has an effect on employee rights and benefits under this personnel policy and procedural manual (See Subchapter 1.2 – Definitions for the various classifications).

§ 1.416 Employment At-Will.

Employees, with the exception of certain contracted employees, are hired for an indefinite and unspecified duration and are not guaranteed employment for any specified length of time. As such, either the Tribe or an employee can terminate the employment relationship at-will, at any time. In addition, the Tribe can modify, amend, supplement or delete terms and conditions of employment relationship at-will, at any time, with or without cause or advance notice. No individual or governmental body, other than the Tribal Governing Board, or its authorized designee, has the power or legal authority to alter the at-will nature of the employment relationship.

SUBCHAPTER 1.5 – EMPLOYMENT

§ 1.501 Work Site Accommodations.

The Tribe is exempted from the federal and state offered definition of an employer as provided by the American's with Disabilities Act, 42 USC § 12111 (5) (B). However, as a matter of its own internal policies the Tribe discourages discrimination against persons with disabilities and when possible seeks to accommodate persons with disabilities on the job. When possible, the Tribe will make reasonable efforts to provide reasonable accommodations to all employees and applicants, including work site accessibility. Employees must notify their department head or director or the Human Resource Director, or designee, in writing of any requested reasonable accommodation within a reasonable period of time after the employee learns of the need for such accommodation.

§ 1.502 Personnel Files.

(1) The Tribe will create and maintain a personnel file for each employee beginning at the time of employment. These files are the sole property of the Tribe and are deemed confidential. All employee files, past and present, will be secured in a locked location at all times. Access will be limited to the Human Resource Director, or designee, a department head or director, the executive director, an employee or his or her representative if designated in writing which states the purpose of the disclosure. An employee may inspect his or her personnel file in the Human Resources department by contacting the Human Resource Director, or designee, to make an appointment. Files will be reviewed in a secure location under the supervision of the Human Resource Director, or designee. A personnel file may contain the following types of information:

- (a) Original employment application,
- (b) Letters of reference,
- (c) Notice of hire,
- (d) New hire forms,
- (e) Current position description,
- (f) Records of all disciplinary actions,
- (g) Performance evaluations,
- (h) Starting pay scale and subsequent increases,
- (i) Change of employment status,
- (j) Applicable skills test results,

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(k) Training and career development records,

(l) Copy of certification or licenses as required,

(m) Copy of separation notice or letter of resignation,

(n) Exit interview and inventory checklist,

(o) Other documents relied upon by the Tribe to make decisions concerning the employee's employment.

(2) The Accounting Department will maintain time, attendance, and payroll and leave records for each employee in a separate file.

§ 1.503 Medical Documentation.

The Tribe will maintain employee documentation as it relates to Doctor's excuse for longer than the allowable three day absence, return to work statements or any limitations on type of work to be performed by the employee. This information shall be maintained alongside an employee's personnel file, but shall be maintained in a separate file. Access will be limited to the Human Resource Director, or designee. All personal medical related information is subject to the provisions of the Health Insurance Portability and Accountability Act of 1996, 110 Stat. 1936.

§ 1.504 Hours of Work.

(1) The standard work hours are from 8:00 a.m. to 4:30 p.m. Employee hours may be changed at the discretion of the department head or director, and each department may establish its own work schedule, subject to the approval of the Executive Director. A written approval shall be maintained in an employee's personnel file.

(2) Each Employee must accurately record, sign and in addition have their respective Supervisor attest to the hours being paid by signing an approved timesheet or timecard. Each timesheet or timecard shall accurately reflect the actual hours being paid during the pay period and distributed by the correct payroll and account/department coding for each employee. The timesheet or timecard is a legal record of hours worked and may not be altered without consent of both the employee and his or her department head or director. Each employee and their Supervisor are responsible for the accuracy of their timesheet or timecard. The department head or director must initial all timecards recorded by the use of a time clock. Timecards are the property of the Tribe and must remain in the timecard rack. No employee shall knowingly punch the timecard of another employee or allow another employee to punch his or her timecard.

§ 1.505 Pay Period.

The Tribe's pay period is from Monday through Sunday and all hours worked during this period are to be recorded as defined in § 1.504 of this manual.

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§ 1.506 Reclassification.

The Tribe may reclassify an employee (full-time, part-time, exempt, nonexempt, etc.) if the duties or need for the employee has changed. The reclassification of an employee may result in a change in the terms and conditions of employment including without limitation eligibility for benefits, and leave. Any supervisor who seeks to reclassify an employee shall obtain proper authorization in collaboration with the Executive Director.

§ 1.507 Evaluations.

(1) Each employee will receive an annual written performance evaluation from their supervisor. The evaluation will highlight the employee's strengths and weaknesses, and ways to improve or enhance job performance. The employee and the department head or director must sign the evaluation. The employee's signature does not necessarily indicate concurrence, but does record acknowledgement and delivery of the document. Employees should not expect that evaluations will automatically result in a change in pay. However, the Tribe will rely on evaluations, in addition to all other relevant information, to make decisions about an employee's terms and conditions of employment.

(2) Failure of the department head or director to complete an evaluation for their employees may result in disciplinary action.

§ 1.508 Resignations.

Each employee must provide his or her supervisor with at least two (2) weeks prior written notice of resignation. Failure to provide notice will result in a negative recommendation for future employment and may result in forfeiture of accrued but unused leave.

§ 1.509 Transfers.

An employee may be granted an internal transfer upon agreement of the supervisors of both of the applicable departments or programs involved, subject to the prior approval of the Executive Director. The transferred employee must accept all provisions of the other position (i.e. benefits, rate of pay, duties, hours of work, etc.). The provisions of Subchapter 1.4 of this manual shall not apply to transfers with the exception of § 1.404, § 1.407, § 1.413, § 1.415, and § 1.416. In addition, the provisions of § 1.414, may not apply upon approval of the new supervisor, with concurrence from the Executive Director.

§ 1.510 Promotions.

A department head or director may recommend an employee for a promotion based upon job performance and the needs of the Tribe, subject to the prior approval of the Executive Director. The promoted employee must accept all provisions of the new position (i.e. benefits, rate of pay, duties, hours of work, etc.). The provisions of Subchapter 1.4 of this manual shall not apply to transfers with the exception of § 1.404, § 1.407, § 1.413, § 1.415, and § 1.416. In addition, the provisions of § 1.414, may not apply upon approval of the new department head or director, with

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concurrence from the Executive Director. The Executive Director shall provide the Tribal Governing Board with written notice of all promotions.

§ 1.511 Attendance.

Punctuality and regular attendance are essential to the effective operation of the Tribe. Employees must report to work on time. Any employee who will be absent from work must notify his or her immediate supervisor no later than their respective scheduled start time. Any employee who wants to leave early for any reason must have prior approval from his or her immediate supervisor, sign out and sign in upon return. Failure to report to work, without notice, for three consecutive working days will be considered job abandonment and the employee will be considered to have resigned from the Tribe. Job abandonment will not be subject to any appeal provisions and shall be subject to the provisions of § 1.508 of this manual.

§ 1.512 Lunch.

Employees are allowed one (1) hour leave for lunch. Employees must take their lunch at the usual time, between 12:00 – 1:00, unless mutually changed by the employee and supervisor.

§ 1.513 Break Periods.

Employees are allowed one fifteen (15) minute break between the hours of 8:00 a.m. and noon and another fifteen (15) minute break between 1:00 p.m. and 4:30 p.m. Employees should be mindful and courteous of workload requirements and the need to make certain that break periods should not be abused.

§ 1.514 Inclement Weather.

(1) In the event of inclement weather conditions, the Tribal Governing Board and Administrative staff will gather information on existing and anticipated weather and road conditions from the Transportation Directors and local TV broadcasts.

(2) Administrative Staff will contact Tribal Governing Board members to determine if Tribal Government offices will open as usual, will be closed, or will have a later opening time.

(3) By 6:30 am, Administrative Staff will contact local radio stations (WOJB, WRLS, WHSM) if the Tribal Government offices will be closed or opening later than normal. If there are no announcements on the local radio stations, then the Tribal Government offices will be open as usual.

(4) When Tribal Government offices are open, employees that would prefer to not drive during inclement weather conditions must contact their supervisor to obtain the approval to utilize accrued PTO. However, employees are to make every reasonable effort to come to work, especially employees with meetings or appointments scheduled.

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SUBCHAPTER 1.6 – WAGES

§ 1.601 Wage Classifications.

The Tribe establishes wage and salary classifications for each position based on many factors, including, but not limited to position category, education, experience, knowledge, ability and level of responsibility.

§ 1.602 Wage Increases.

The Tribe will consider cost of living, merit and wage increases on an annual basis. All such increases are contingent upon many factors, including funding availability and performance evaluation. Any increase is at the discretion of the Tribal Governing Board.

§ 1.603 On Call Staff.

Personnel that are designated to be a weekly “on-call” worker will be provided an additional stipend above their normal pay to compensate them for their services. Such compensation will be in lieu of compensatory time accrual.

§ 1.604 Compensatory Time.

(1) The Human Resource Director, or designee, will classify and consistently review the classification of employees as either Exempt or Non-exempt. Exempt employees are compensated on a salary basis and will not accrue compensatory time for hours worked in excess of forty (40) hours in a workweek. Non-exempt employees will accrue, in lieu of overtime compensation, compensatory time for authorized hours worked in excess of forty (40) hours in a workweek. Time paid for PTO or other paid leave does not count as hours worked for purposes of calculating compensatory in a work week.

(2) A Non-exempt employee shall not work over forty (40) hours in a workweek without the prior written authorization of the department head or director. A department head or director may adjust any employee’s work schedule to avoid accumulation of compensatory time.

(3) The Tribe will permit a Non-exempt employee to use accrued compensatory time off with their supervisor’s approval as long as the use of the compensatory time will not unduly disrupt the operations of the Tribe.

(4) A Non-exempt employee must use compensatory time during the fiscal year in which it was accrued, and all such unused time shall be forfeited at the end of the fiscal year, provided a maximum of forty (40) hours may be carried over into any new fiscal year. The Tribe may enforce this provision any time it becomes aware an employee carried over too much compensatory time from one fiscal year to the next.

(5) A Non-exempt employee who has accrued compensatory time off shall be paid for up to forty (40) hours of unused compensatory time at employee’s ending rate of pay upon the

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resignation of employment. Employees that have been terminated pursuant to Subchapter 1.12 of this manual shall forfeit all remaining uncompensated accrued compensatory time. At no other time may an employee cash out accrued compensatory time.

§ 1.605 Temporary Increases.

A department head or director who obtains prior authorization of the Executive Director may temporarily increase the pay rate of an employee during the time that the employee is temporarily performing the duties of a position with a higher salary range. Any increase will cease upon removal of the conditions that warranted the increase.

§ 1.606 Employer Payroll Deductions.

Various payroll deductions are made each payday to comply with applicable laws, including but not limited to federal and state income tax withholding and social security. At the end of each calendar year, the Tribe will provide each employee with a Wage and Tax Statement (W-2) form. This statement summarizes employee income and deductions for the year.

§ 1.607 Bank Deposits or Payroll Deductions.

The Tribe may automatically deposit Employees' paychecks at financial institutions and may provide for payroll deductions, subject to applicable, charges, procedures and limitations. In addition, the Tribe may make deductions from Employees' paychecks in accordance with orders issued by a court of competent jurisdiction. Employees should contact the Accounting Department with any questions.

§ 1.608 Workers' Compensation.

The Tribe carries insurance to cover the cost of work-incurred injury or illness. Benefits help pay for employees' medical treatment and a portion of any income lost while recovering. An employee must report any work-related injury or illness to his or her department head or director by completing the "First Report of Injury or Illness Form," which must be completed within the timelines as stated in the 12 LCOTCL Chapter 6 – Worker's Compensation Code. Refer to the 12 LCOTCL Chapter 6 – Worker's Compensation Code for additional guidelines.

SUBCHAPTER 1.7 – AVAILABLE BENEFITS

§ 1.701 Available Benefits.

(1) The following is a brief list of benefits available to eligible employees;

- (a) Group Health Insurance/COBRA
- (b) Holiday
- (c) Personal Time Off (PTO)
- (d) Additional Paid Leave
- (e) Unpaid Leave
- (f) Family and Medical Leave
- (g) Life Insurance, Disability Insurance and Retirement Plan
- (h) Employee Assistance Program
- (i) Christmas Bonus
- (j) Employee Recognition – Years of Service

(2) The Tribe reserves the right, at its sole and absolute discretion, to rescind or amend benefits, to change insurance carriers, or to require employees to contribute towards premium costs. The Tribe may make these changes at any time, except as provided by law. The Human Resource Director or Benefits Administrator, or their designee, will notify employees of changes. While the Tribe intends to continue offering sponsored benefits, there is no guarantee that such benefits will always be available.

§ 1.702 Eligibility.

The following employee classifications and eligibility for Fringe Benefits are as follows;

(1) Full Time Employee. Full time Employees, as defined in § 1.201 (8) of this manual, are eligible for all Fringe Benefits after satisfactorily completing their probationary period, unless otherwise provided for in an Employment Contract with the Tribe or mandated by law.

(2) Part Time Employee. Part Time Employees, as defined in § 1.201 (16) of this manual, are not eligible for any fringe benefits offered by the Tribe, unless otherwise mandated by law.

§ 1.703 Group Health Insurance / Cobra.

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(1) Group Health Insurance is through the Federal Employee Health Benefits; FEHB. An eligible employee may select an insurance provider that best meets their individual needs through FEHB. FEHB is offered for both single, single plus one, and family coverage. Employees considered to be full time status will be required to pay 21%, or as amended from time to time by official action of the Tribal Governing Board, of the premium for the plan selected. Employee's portion of payment will be made through payroll deductions done weekly.

(2) Employees who are covered by the group health plan may have the right to choose continuation of health coverage if coverage is lost due to a reduction in hours of employment or termination of employment. Continuation coverage is provided pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, and later amendments, otherwise known as "COBRA". Employees should contact the Human Resource Director for additional information regarding qualifying events or other requirements of COBRA.

§ 1.704 Holiday Leave.

The Tribe grants eligible employees paid holiday leave. The Tribal Governing Board will approve the holiday schedule at least one (1) month prior to the beginning of a new calendar year. Eligible employees will receive the following paid holidays:

- (1) New Year's Eve Day and New Year's Day (2 Days)
- (2) Martin Luther King Jr. Day
- (3) Treaty Day
- (4) President's Day
- (5) Good Friday
- (6) Easter Monday
- (7) American Indian Day
- (8) Memorial Day
- (9) Independence Day
- (10) Honor the Earth Powwow (Friday prior to or the Monday after)
- (11) Labor Day
- (12) Indigenous Day
- (13) Veterans Day

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(13) Thanksgiving (2 Days)

(14) Christmas Eve Day and Christmas Day (2 Days)

(15) Other official holidays as established by the Tribal Governing Board

§ 1.705 Personal Time Off.

(1) Employees will accrue paid Personal Time Off (PTO) at the following rates:

(a) If employed up to three (0 to 3) years, 16 hours per month for a total of 192 hours per year.

(b) If employed three years to ten years (3 to 10), 20 hours per month for a total of 240 hours per year.

(c) If employed more than ten (10+) years, 24 hours per month for a total of 288 hours per year.

(d) Employees who work 32-39 hours per week shall receive a prorated annual leave at 75% of the above.

(2) In no circumstance will employees accrue any amounts over the maximum designated accumulations stated above. If an employee is on any leave without pay the employee will not accrue any PTO until the employee returns to a full time status. An employee who quits his or her employment without providing at least a two (2) week notice will forfeit any accrued PTO unless otherwise approved by his or her department head or director in collaboration with the Executive Director. An employee who provides the requisite notice will be paid up to one hundred twenty (120) hours of accrued PTO.

(3) For purposes of calculating length of service it will be the responsibility of the employee to provide the Human Resources Director with a statement from other Lac Courte Oreilles Tribally controlled entities stating the start and end dates. The length of service will only be calculated utilizing the certifiable time for an employee that left a position in good standing (i.e. not termination).

(4) Prior to the utilization of accrued PTO, Employees must schedule and have the use of accrued PTO time approved so it will not interfere with job responsibilities, except as otherwise provided by law. If an employee is on PTO and there is early release or closure of the employee's worksite, the employee shall be credited any such leave during the period of early release or closure. If requesting more than three (3) days of PTO time employees shall obtain prior authorization at least five (5) working days in advance of the leave date. The department head or director may or may not approve such request depending on a variety of factors, including project deadlines and schedules. In extreme emergency situations the Executive Director, in consultation with the employees Supervisor, may waive the five (5) day notification provision, if requested by the employee in writing citing the reason.

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(5) To utilize PTO for unscheduled absences employees must notify the Tribe and their immediate supervisor prior to their designated start time. If an Employee is absent from work for 3 days or longer, which is related to an illness or other medical related issues, a Physicians excuse must be provided that substantiates their absence.

(6) Probationary employees will not be able to use PTO during their 90 day probationary period unless it is for extreme circumstances with approval of their department head or director and concurrence of the Executive Director.

§ 1.706 Sharing of Personal Time Off Prohibited.

Employees are not permitted to share PTO under any circumstances. Paid Time Off has no “cash value” and cannot be paid out prior to providing a requisite notice of resignation.

§ 1.707 Additional Paid Leave.

The Tribe grants employees additional paid leave in certain situations, including the following:

(1) Civil Leave. The Tribe grants eligible employees paid civil leave during the required absence when any employee appears as a witness for the federal, state or Tribal Government, in obedience to a subpoena. An employee must promptly notify his or her department head or director upon receipt of any subpoena. If an employee receives any stipend for such civil leave, he or she must use PTO during any work absence for such service. No employee shall take both compensated time and stipend pay during the required absence for civil leave.

(2) Jury Duty Leave. The Tribe grants eligible employees paid leave during the required absence for jury service. An employee must promptly notify his or her department head or director upon receipt of any notice to appear. If an employee receives any stipend for such jury duty leave, he or she must use PTO during any work absence for such service. No employee shall take both compensated time and stipend pay during the required absence for jury service.

(3) Funeral Leave.

(a) All full-time employees will be given a five (5) day leave without loss of pay for funeral services for immediate family. Immediate family includes the following:

(i) Husband, Wife, Son, Daughter, Mother, Father, Brother, Sister, Grandparent, Grandchild, Niece, Nephew, Aunt and Uncle (including great-grandparents, in-laws, and step-relationship, etc.), including a partner who has been in a relationship for a period of time or in relationship under Ojibwe tradition and practices.

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(b) Up to three (3) day leave for other persons will be given only if the full-time employee is assisting the family during their immediate time of loss, subject to prior approval of employee's supervisor.

(c) All other funeral leave will be limited to no more than one (1) day with pay to attend the funeral services, subject to the notification and approval of employee's immediate supervisor.

(4) Committee or Board Leave. The Tribe grants eligible full-time employees paid leave to serve on committees or boards of the Tribal Governing Board and may approve leave to participate in other outside boards or committees. An employee must receive prior approval from his or her department head or director prior to accepting an appointment or volunteering to sit on any committee or board. If an employee receives any stipend for such committee or board service, he or she must use PTO during any work absence for such service. No employee shall take both compensated time and stipend pay when attending a committee or board meeting. Attendance at any meetings related to such appointment must be preapproved by the employees immediate Supervisor and such appointment/meetings shall not interfere with an employees work performance and duties.

(5) Maternity Leave. The Tribe grants eligible full-time female employees up to eight (8) weeks, a maximum of three hundred and twenty (320) hours paid leave, for time to deliver and care for a newborn child. If an employee has medical problems prior to delivery, she may utilize paid maternity leave, subject to the maximum limit, with written verification from her doctor. An employee must request and obtain the prior approval of his or her department head or director to utilize this leave. The paid leave under this section is included in the maximum leave provided for in § 1.709 of this manual.

(6) Paternity Leave. The Tribe grants eligible full-time employees up to two (2) weeks, maximum of eighty (80) hours, paid leave to care for a newborn child. An employee must request and obtain the prior approval of their department head or director to utilize this leave. The paid leave under this section is included in the maximum leave provided for in § 1.709 of this manual.

(7) Parental Leave. The Tribe grants eligible full-time employees up to two (2) weeks, maximum of eighty (80) hours, paid leave for adoption, customary adoption or guardianship of a pre-school (0-5 years of age) child. Leave will be granted only after the legal proceeding has been completed. An employee must request and obtain the prior approval of his or her department head or director to utilize this leave. The paid leave under this section is included in the maximum leave provided for in § 1.709 of this manual.

(8) Military Leave. The Tribe grants eligible full-time employees up to ten (10) days, maximum of eighty (80) hours, paid leave upon presentment of official orders requiring attendance for training or to perform other duties as a member of the United States Armed Forces. An employee serving on military leave with pay will be paid only the difference between compensation fees received for such duties and his or her normal salary. An employee must notify his or her department head or director prior to such leave. The Tribe will look to the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA) 38 U.S.C. § 4301

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et. seq. solely as a guideline in determining reemployment of employees who take extended military leave.

(9) Voting Leave. The Tribe will grant eligible employees two (2) hours paid leave to exercise the right to vote subject to the voting verification requirements established by the Tribal Governing Board. An employee must request and obtain the prior approval of his or her department head or director to utilize this leave.

(10) Birthday Leave. The Tribe will grant eligible employees eight (8) hours of paid leave for the employee's birthday, provided the employee must take such leave within five (5) calendar days, either before or after, the date of the birthday.

(11) In-House Medical Appointments. The Tribe may grant employees paid release time to attend medical appointments at the Lac Courte Oreilles Community Health Center.

(12) Education Leave. The Tribe may grant employees paid release time to attend job-related or degree seeking courses. An employee must consult with his or her department head or director prior to registering to ensure the course is acceptable and must request and obtain the prior written approval of his or her Department head or Director with concurrence from the Executive Director to utilize this benefit. An employee must also have an approved Professional Development Plan on file with the Human Resource office. An employee must promptly provide his or her Department head or Director and the Human Resource Director, or designee, with written proof of course completion. A failure to successfully complete a course may jeopardize an employee's ability to obtain approval of subsequent paid release time hereunder. The Tribe may pay the tuition, books and associated fees of an employee attending an accredited institution of higher learning. The employee must be attending for the purpose of obtaining a degree or enrolling in courses in a field of study that is related to their position of employment with the Tribe. An employee desiring to have the Tribe pay these expenses must have an approved Professional Development Plan on file which is approved by their immediate Supervisor and agree to the terms and conditions of an Educational Expense Reimbursement Agreement and is subject to program availability of funding pursuant to § 1.407 of this manual.

(13) Conferences and Meetings. The Tribe may grant employees time to attend job-related conferences and professional meetings. An employee must consult with his or her department head or director prior to registering to ensure the conference or professional meeting is acceptable. An employee must request and obtain the prior written approval of his or her department head or director to utilize this benefit.

§ 1.708 Unpaid Leave.

(1) Disciplinary Leave. The Tribe may take disciplinary action, up to and including termination or suspension without pay, against employees who violate the provisions of this personnel policy and procedural manual.

(2) 30-Day Leave of Absence. The Tribe may grant eligible employees up to thirty (30) days unpaid leave, without loss of employment status. The Tribe may grant such leave only when

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the resulting leave will not adversely affect the operations of the Tribe. An employee must request and obtain the prior written approval of his or her department head or director with written concurrence from the Executive Director to utilize this leave.

(3) Religious Leave. The Tribe may grant eligible employees up to an additional fifteen (15) days of unpaid religious leave. An employee must request and obtain the prior approval of his or her department head or director to utilize this leave.

§ 1.709 Family and Medical Leave.

Employees may be eligible for up to twelve (12) weeks of family and medical leave during any twelve (12) month period. The leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances. This policy sets forth the Tribe's policies and procedures for requesting family and medical leave.

(1) Eligibility for Leave. To be eligible for family and medical leave under this policy all of the following conditions must be met:

(a) An employee must have been employed by the Tribe for at least twelve (12) months or fifty-two (52) weeks.

(b) An employee must have worked at least one thousand two hundred fifty (1250) hours during the twelve (12) months immediately preceding the request for leave.

(2) Reasons for Requesting and Types of Leave. Employees who are eligible for leave under this policy may request up to twelve (12) workweeks of unpaid leave during any twelve (12) month period for the following reasons:

(a) To care for a child following the child's birth or placement for adoption or foster care (this may be taken only within twelve (12) months of the birth or placement).

(b) To care for an immediate family member who has a serious health condition as defined in § 1.201 (18) of this manual.

(c) Because the employee has a serious health condition as defined in § 1.201 (18) of this manual, which prevents the employee from performing the functions of the position.

(3) If an employee takes PTO for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the Tribe may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

(4) If both parents work for the Tribe, and each wishes to take leave for the birth of a child, adoption or acceptance of a child in foster care, or to care for an immediate family member with a serious health condition, the employees may only take a combined total of twelve (12) weeks of unpaid leave.

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(5) Employees can take up to twelve (12) weeks of leave under this policy during any twelve (12) month period. The Tribe will measure the twelve (12) month period as a rolling twelve (12) month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes a leave, the Tribe will compute the amount of leave you have taken under this policy and subtract it from the twelve (12) weeks of available leave, and the balance remaining is the amount an employee is entitled to take at that time. An employee's family or medical leave taken may run concurrently with other types of leave including workers' compensation and other leaves, such as short-term or long-term disability, etc.

(6) Intermittent or Reduced Work Schedule Leave. Leaves may be taken all at once or on an intermittent or reduced work schedule basis. Intermittent or reduced work schedules may be used only in the following circumstances:

(a) In situations where leave is requested due to the birth, adoption or acceptance of a child in foster care, intermittent or reduced work schedules will be granted at the Tribe's sole discretion and if granted must be taken within one (1) year of the birth or placement of the child.

(b) In situations where leave is requested in order to care for an immediate family member who suffers from a serious health condition or because of an employee's own serious health condition, intermittent or reduced work schedules will be granted only when an employee can prove the leave is medically necessary.

(c) In situations where an intermittent or reduced work schedule is permitted, the Tribe may require an employee to transfer to an alternative position with equivalent pay and benefits in order to accommodate the recurring periods of absence.

(7) Use of Paid and Unpaid Leave. Employees who have accrued PTO must use paid leave first and take the remainder of the twelve (12) weeks as unpaid leave.

(a) Employees who take a leave because of their own serious health condition or the serious health condition of a family member must use all accumulated PTO prior to being eligible for unpaid leave.

(b) Employees who take leave for the birth of a child must use paid PTO for physical recovery following childbirth, except where such leave is compensated as paid maternity leave under this personnel policy and procedural manual or as paid short-term or long-term disability leave. These employees must then use all paid PTO, and then will be eligible for unpaid leave for the remainder of the twelve (12) weeks. Employees who take leave for the adoption or acceptance of a child in foster care must use all paid PTO prior to being eligible for unpaid leave.

(8) Procedure for Requesting Leave. In situations where leave is foreseeable, employees must provide written notice to the department head or director at least thirty (30) days prior to the date on which the leave is scheduled to begin. If the leave is foreseeable due to a planned medical

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treatment, employees must make reasonable efforts to schedule the treatment(s) to minimize disruptions to governmental operations. If circumstances occur, in which it is not practicable to provide thirty (30) days' notice, employees must provide written notice as far in advance as is practicable. If an employee fails to provide thirty (30) days advance written notice of a requested leave and have no reasonable excuse, the leave may at the Executive Director's discretion be delayed for up to thirty (30) days from the date of written notice.

(9) Medical Certification Requirement. When leave is requested because of a serious health condition affecting an employee or his or her immediate family member, the Tribe requires the employee to obtain certification of the health condition from the pertinent doctor or health care provider. This certification must be provided to the department head or director within fifteen (15) days after the leave is requested or, when the need for leave was unforeseeable, within fifteen (15) days after the leave has commenced unless it is not practicable to do because of the nature of the health condition.

(a) If an employee seeking leave due to a serious health condition fails to provide the required medical certification, the leave will be denied until the certification is provided. If the leave request was not foreseeable, such as in a medical emergency, the failure to provide the required medical certification within a reasonable time may result in the denial of continuation of leave. Medical certification provided in justification of a request for leave must include the following information:

(i) The date on which the serious health condition started and its expected duration,

(ii) The diagnosis concerning the condition,

(iii) A brief description of the treatment prescribed for the condition,

(iv) A statement of whether in-patient hospitalization is required, or

(v) A statement that the employee is needed to care for his or her immediate family member afflicted with a serious health condition or, if the employee has the serious health condition, a statement that he or she is unable due to the health condition to perform the essential functions of the position or work of any kind.

(b) The Tribe, if it doubts the certification, at its expense, may require an employee seeking leave due to a serious medical condition to obtain a second opinion from a doctor or other health care professional designated by the Tribe. If the second opinion conflicts with the certification provided by the employee, the Tribe may, at its sole discretion and at its expense, require a third opinion from a doctor or other health care professional designated jointly by the Tribe and the employee. Such a third opinion will be final and binding.

(c) If an employee plans to take intermittent leave or work a reduced schedule, the certification must also include dates and the duration of treatment and a statement of

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medical necessity for taking intermittent leave or working a reduced schedule. During a leave taken under this section, employees may be required to provide, periodically, written notice to the Executive Director concerning his or her status and intention to return to work.

(10) Return from Leave. Upon completion of leave due to an employee's own serious health condition, the employee must provide the Tribe with medical certification from his or her doctor or other health care professional that the employee is now able to return to work. If an employee fails to provide this certification, he or she will not be permitted to return to work until such certification is provided. An employee who takes leave under this policy will be able to return to the same job or a job with equivalent status, pay, benefits and other employment terms. The Tribe may choose to exempt certain highly compensated employees from this requirement and not return them to the same or similar position.

(11) Health Benefits during Leave.

(a) During a leave taken pursuant to this policy, an employee's health benefits under any existing Tribal sponsored health plan will be continued as if the employee had continued in employment continuously for the duration of the leave. If, however, an employee fails to return at the end of a leave taken under this policy, except if this is due to the continuation, recurrence or onset of a serious health condition or something else beyond the employee's control, then the Tribe may recover from the employee all of the health care premiums paid to maintain health coverage during the leave.

(b) If under the Tribe's current policy, an employee pays a portion of the health care premium, while on paid leave, the Tribe will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received by the first day of each month. If the payment is more than thirty (30) days late, the employee's health care coverage may be dropped for the duration of the leave.

§ 1.710 Life Insurance, Disability Insurance and Retirement Plan.

If requested by the Employee, the Tribe provides eligible employees Life and Disability insurances along with a Retirement Plan. An Employee wanting these types of benefits should consult with the Tribe's Benefit's Administrator for further information.

§ 1.711 Employee Assistance Program.

The Tribe recognizes that individual employees may develop personal problems which could have negative effects on job performance. The Tribe offers an Employee Assistance Program (EAP) for all employees, the purpose of which is to encourage the early diagnosis and treatment of personal, psychological, and medical problems. Employees are encouraged to contact the Human Resource Director, or designee, for information regarding the EAP. Employees are responsible for submission of all documents and paperwork to pay the costs incurred for services rendered in connection with the EAP. Employees may utilize their health insurance plan as coverage is available; otherwise the service will be self-pay. Employees may attend a scheduled EAP appointment with the LCO-CHC during

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work hours. If the EAP appointment is at another facility the employee may use permitted paid or unpaid leave for EAP absences. EAP appointments (that the employee is required to attend by the Employer) will be coordinated with the employee's supervisor so customer service does not get interrupted.

(1) Self-Referral. An employee may request assistance from their supervisor for personal, psychological, or medical reasons at any time during their employment. Strict confidentiality will be maintained throughout this process.

(a) Procedure: A department head or director shall provide the employee and the Human Resource Director, or designee, with written notice using the LCOCHC – Behavior Health Clinic intake form and a signed consent form to release and or share information between departments of any referral. The Human Resource Director will set up the EAP Process with the LCOCHC – Behavioral Health Director. The Behavioral Health Director will report to the Human Resource Director on the status of the referral within five (5) working days after receipt of the referral. Regardless of any EAP referral, employees must maintain an acceptable level of job performance. Documentation of completion or non-completion of the EAP will be on file in the employee's personnel file located in the Human Resource Department.

(i) A leave of absence to attend inpatient treatment shall be granted to employees requesting assistance through self-disclosure. The leave of absence may not exceed 12 weeks pursuant to § 1.709 of this manual.

(ii) Employees placed on a leave of absence from self-disclosure shall:

1) Be allowed to return to the position, shift, and level of seniority that was held by the employee prior to the leave being granted.

2) Be allowed to maintain tribally sponsored Health; Life and short-term disability Insurance Benefits during the leave. The employee will be responsible for their portion of insurance premiums.

3) Be allowed to utilize any accrued Paid Time Off hours earned prior to the leave.

4) Any accrual of Paid Time Off hours shall be in accordance with the Tribe's policies on family and medical leave pursuant to § 1.709 of this manual.

(iii) An employee returning to duty following a leave of absence from self-disclosure will be required to undergo testing for illegal drugs and prescribed medication for which they do not have a valid prescription as a condition of returning to work. If the applicant is suspected to be under the influence of alcohol at the time of return to drug screen, a PBT may be requested. Employees who refuse to take a test is thereby insubordinate will be considered to have produced a positive

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test result and shall be terminated. Upon receipt of a positive test result as defined in § 1.201 (15), the employee shall be subject to disciplinary action, up to and including termination pursuant to § 1.808 (6) of this manual and the positive test sample will be sent for a confirmation test result pursuant to § 1.808 (1) of this manual.

(iv) Utilization of this self-disclosure provision does not negate any disciplinary action for which an employee is subject to pursuant to § 1.808 (6) of this manual, or any other tribal law or policy.

(2) Employer Referral. An employee's department head or director shall refer an employee to the Human Resource Director, or designee, when an employee's conduct mandates as such.

(a) Procedure: A department head or director shall provide the employee and the Human Resource Director, or designee, with written notice using the LCOCHC – Behavior Health Clinic intake form and a signed consent form to release and or share information between departments of any referral. The Human Resource Director will set up the EAP Process with the LCOCHC – Behavioral Health Director. The Behavioral Health Director will report to the Human Resource Director on the status of the referral within five (5) working days after receipt of the referral. Employees shall comply with the referral to the EAP and follow subsequent recommendations for referral and treatment. Failure to show-up for required scheduled EAP appointment will result in further disciplinary action up to and including termination of employment. Regardless of any EAP referral, employees must maintain an acceptable level of job performance. Documentation of completion or non-completion of the EAP will be on file in the employee's personnel file located in the Human Resource Department.

(i) A leave of absence to attend inpatient treatment shall be granted to employees when required by an approved LCOCHC- Behavioral Health EAP treatment plan. The leave of absence may not exceed 12 weeks pursuant to § 1.709 of this manual.

(ii) Employees placed on a leave of absence when required by an approved LCOCHC- Behavioral Health EAP treatment plan shall:

1) Be allowed to return to the position, shift, and level of seniority that was held by the employee prior to the leave being granted.

2) Be allowed to maintain tribally sponsored Health; Life and short-term disability Insurance Benefits during the leave. The employee will be responsible for their portion of insurance premiums.

3) Be allowed to utilize any accrued Paid Time Off hours earned prior to the leave.

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4) Any accrual of Paid Time Off hours shall be in accordance with the Tribe's policies on family and medical leave pursuant to § 1.709 of this manual.

(iii) An employee returning to duty following a leave of absence from a referral of the employer will be required to undergo testing for illegal drugs and prescribed medication for which they do not have a valid prescription as a condition of returning to work. If the applicant is suspected to be under the influence of alcohol at the time of return to drug screen, a PBT may be requested. Employees who refuse to take a test is thereby insubordinate will be considered to have produced a positive test result and shall be terminated. Upon receipt of a positive test result as defined in § 1.201 (15), the employee shall be subject to disciplinary action, up to and including termination pursuant to § 1.808 (6) of this manual and the positive test sample will be sent for a confirmation test result pursuant to § 1.808 (1) of this manual.

(iv) Participation in an approved LCOCHC- Behavioral Health EAP treatment plan does not negate any disciplinary action for which an employee is subject to pursuant to § 1.808 (6) of this manual, or any other tribal law or policy.

§ 1.712 Christmas Bonus.

Christmas bonuses may be paid to employees as determined by the Tribal Governing Board, which will be subject to any funding or other limitations.

§ 1.713 Employee Recognition – Years of Service.

(1) Employees that have worked for the Tribe for fifteen (15) years shall receive a gift equal to one week's pay.

(2) Employees that have worked for the Tribe for twenty (20) years shall receive a gift equal to two week's pay.

(3) Employees that have worked for the Tribe for twenty five (25) years shall receive a gift equal to two week's pay, a gift and plaque.

(4) Upon retirement (25 years or more), an employee shall receive one hundred dollars for each year of service to the Tribe.

SUBCHAPTER 1.8 – CONDUCT

§ 1.801 General Statement of Conduct.

All Employees must conduct themselves in a manner, which is kind, courteous, ethical and respectful to all members of the public, including fellow employees. In all instances, employees must exercise good judgment and conduct themselves with the highest degree of professionalism. A failure to follow any conduct policies or other provisions of this personnel policy and procedure manual may result in disciplinary action, up to and including termination.

§ 1.802 Conflict of Interest.

Employees are not permitted to engage in nepotism, favoritism, and any outside business transactions, or other activities, which are detrimental to the best interests of the Tribe. This includes activities that, directly or indirectly, divert business opportunities from the Tribe or confer an unfair advantage upon or benefit to a family member. It also includes activities that negatively reflect upon the Tribe's image or are contrary to the mission of the Tribe, except for activities specifically protected by law. The Tribe respects the right of employees to engage in activities outside their employment that are of a private nature and unrelated to their job or the Tribe. However, employees must fully disclose to their department head or director or the Human Resource Director, or designee, all business and personal activities that represent such a conflict of interest with the Tribe. If an employee is unsure whether a conflict of interest exists, the employee is encouraged to seek the advice of the Human Resource Director, or designee.

§ 1.803 Outside Employment.

Employees may not accept simultaneous employment with another tribal agency or another employer without the express permission of the Executive Director. Permission may be denied if the other employer is a competitor or supplier of the Tribe. The request may be denied with employment of another tribal agency if the total hours worked in a given week violates tribal policy or interferes with the work expectations of the Tribe. The Tribe considers all full time employees' work with the Tribe to be their primary employment responsibility. As such, outside employment will not be considered an excuse for poor performance, absenteeism, tardiness or refusal/inability to work overtime.

§ 1.804 Political Activity.

Employees shall not directly or indirectly use their authority, influence or political aspirations to compel individuals to participate or not participate in Tribal political activity and/or election processes. Campaign buttons, posters, or apparel related to tribal political activity is prohibited at the workplace, and distributing literature, emailing, and circulating petitions related thereto during work time or in work areas is strictly prohibited. In addition, employees shall not use Tribal property and services to influence individuals to participate or not participate in the Tribal election process.

§ 1.805 Harassment.

(1) The Tribe has a “zero-tolerance” policy with respect to employee harassment. Any form of unlawful employee harassment based on race, color, religion, sex, national (including Tribal) origin, age, disability or status in any protected group is prohibited. The Tribe will not tolerate interference with the ability of employees to perform their expected job duties. Harassment of employees or members of the public by employees will result in disciplinary action, up to and including termination.

(a) Sexual Harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature. No supervisor, manager or any other employee shall threaten or insinuate, either explicitly or implicitly that another employee's refusal to submit to sexual advances will adversely affect that person's employment, wages, advancement, assigned duties, or any other condition of employment or career development. Similarly, no supervisor, manager or employee shall promise, imply or grant any preferential treatment in connection with another employee engaging in sexual conduct.

(i) Sexual harassment also includes unwelcome sexual flirtations, advances or propositions, verbal abuse of a sexual nature, subtle pressure or requests for sexual activities, unnecessary touching of an individual, graphic or verbal commentaries about an individual's body, sexually degrading words used to describe an individual, a display in the workplace of sexually suggestive objects or pictures, sexually explicit or offensive jokes, or physical assault.

(b) Racial and National (including Tribal) Origin Harassment. Racial and national origin harassment is verbal or physical conduct that denigrates, belittles or shows hostility or aversion towards an individual because of his or her race or national (including tribal) origin and has the purpose or effect of creating an intimidating, hostile, or offensive working environment, or has the purpose or effect of unreasonably interfering with an individual's work performance or otherwise adversely affects an individual's employment opportunities. This includes, but is not limited to, epithets, slurs, intimidating or hostile acts that relate to race, or national (including tribal) origin, written or graphic material that denigrates, belittles or shows hostility or aversion toward an individual because of his or her race, or national (including tribal) origin and that is placed on walls, bulletin boards or elsewhere on our premises or circulated in facilities.

(c) General. Harassment under this policy may also include words or conduct committed by customers or suppliers of the Tribe. In the event that any harassing or offensive language or conduct occurs, employees must report it to the Human Resource Director, or designee, immediately so the matter can be addressed promptly.

(d) Enforcement. Each member of Management is responsible for creating an atmosphere free of harassment, sexual, racial or otherwise. Further, employees are responsible for respecting the rights of their coworkers.

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(2) If an employee experiences any job-related harassment based on sex, race, national (including tribal) origin, disability, or another factor, or believes that he or she has been treated in an unlawful, discriminatory manner, the employee must promptly report the incident to his or her department head or director or Human Resource Director, or designee, who will investigate the matter and take appropriate action. All employee complaints will be kept confidential to the maximum extent possible.

(3) The Tribe prohibits any form of retaliation against any employee for filing a bona fide complaint under this policy or for assisting in a complaint investigation. However, if, after investigating any complaint of harassment or unlawful discrimination, the Tribe determines that the complaint is not bona fide and was not made in good faith or that an employee has provided false information regarding the complaint, disciplinary action may be taken against the individual who filed the complaint.

§ 1.806 Alcohol and Drugs.

(1) All employees of the Tribe are subject to the drug testing procedures as provided in § 1.808 of this manual.

(2) Employees are expected to come to work with a clear mind, unimpaired by drugs or alcohol. No employee under the influence of alcohol, illegal drugs or controlled substances as established in § 1.201 (23) shall be permitted to come to or remain at work.

(3) Employees, while on the Tribe's property or on duty, shall not be under the influence of alcohol or illegal drugs; possess or consume alcoholic beverages; possess or consume prescription drugs in the absence of a valid prescription; or use, sell, possess, transfer or purchase illegal drugs or controlled substances. Prescription drugs shall be used only in the manner, combination, and quantity prescribed by a licensed medical practitioner while on the Tribe's property or while on duty. As a condition of continued employment with the Tribe, all employees must notify the Tribe of any criminal drug statute conviction or charges against them no later than five (5) days after receiving such conviction or charges.

(4) Drug means any substance other than alcohol capable of altering an individual's mood, perception, pain level or judgment. A prescribed drug is any substance prescribed for individual consumption by a licensed medical practitioner. An illegal drug is any drug or controlled substance, the sale or consumption of which is illegal.

(5) The legal use of controlled substances prescribed by a licensed medical provider is not prohibited, but all employees are required to make such use known to the appropriate supervisor within five (5) days they are prescribed the controlled substance. Failure to make the legal use of a controlled substance as prescribed by a licensed medical provider to the appropriate supervisor shall result in disciplinary action up to and including termination.

§ 1.807 Drug Free Workplace Act Compliance.

As Approved and Adopted by Resolution No. 16-82, Amended by Resolution No. 16-106, Resolution No. 17-12, Resolution No. 17-128, Resolution No. 18-43, Resolution No. 18-57, Resolution No. 19-27, and Resolution No. 19-73

(1) The Tribe hereby establishes a policy providing for a drug-free workplace as required by the Drug Free Workplace Act of 1988, 41 U.S.C. 701 *et. seq.* As such, as required by the Act, the Tribe hereby publishes a statement notifying employees that the Tribe prohibits the unlawful manufacture, illegal distribution, dispensation, possession or use of a controlled substance in the workplace. All employees who violate this policy shall be subject to disciplinary action, up to and including termination. As a condition of continued employment with the Tribe, all employees must notify the Tribe of any criminal drug statute conviction or charges no later than five (5) days after receiving such conviction or charges.

(2) General Provisions.

(a) Consent. No alcohol test may be administered, urine sample obtained, or any drug test conducted without the consent of the person being tested. An employee gives consent to participate in any and all forms of testing as a condition of continued employment with the Tribe.

(b) Record Keeping. It is essential that all necessary documentation from each form of testing is maintained in the Human Resources Department in applicable employee files for no less than 5 years. Employee violations will never expire.

(c) Notice of Conviction or Charges.

(i) An employee will be responsible for notifying his/her immediate supervisors in writing within five (5) day of any criminal drug statute conviction or charges for violation. The employee's department head or director shall notify the Human Resource Director who will notify the Office of the Attorney General.

(ii) As required by law, the Office of the Attorney General will be responsible for notifying the applicable funding agency of the employee's department within ten days after receiving notice from the human resource director, or designee of an employee's criminal drug statute conviction or charges occurring in the workplace or while on duty.

(d) Illegal Distribution or Illegal Dispensing of Controlled Substance on Tribal property. Any employee who manufactures, illegally distributes, or illegally dispenses a controlled substance on Tribal property or while on duty will be terminated. Such termination shall not be subject to appeal.

(3) Rehabilitation and Rehiring. Any employee who has been dismissed for violation of the Tribe's Drug-Free Workplace Policy may be eligible for re-employment after 90-days with the Tribe upon proof of rehabilitation provided by an accredited treatment facility that the person has been to treatment or has successfully completed appropriate treatment and is in recovery.

§ 1.808 Drug and Alcohol Testing Procedures.

As Approved and Adopted by Resolution No. 16-82, Amended by Resolution No. 16-106, Resolution No. 17-12, Resolution No. 17-128, Resolution No. 18-43, Resolution No. 18-57, Resolution No. 19-27, and Resolution No. 19-73

All employees and applicants for employment are subject to drug and alcohol testing, including reasonable suspicion, pre-employment, and return-to-duty; with the exception of TANF, WIOA & WIOA youth workers. Drug tests require laboratory testing as provided by the Mandatory guidelines for Federal Workplace Drug Testing Programs pursuant to 94 FR 28101, May 15, 2015 as amended, as minimum standards for the following classes of drug and correlative cutoff concentrations: Cocaine; Opiates including opium and codeine derivatives such as Oxycodone, Oxymorphone, Hydrocodone, Hydromorphone; Amphetamines and Methamphetamines including Methylenedioxyamphetamine (MDA) and Methylenedioxyethylamphetamine (MDEA); Phencyclidine (PCP). Nothing precludes the Human Resource Director, or designee, in testing for substances which are not included on this list, should the Tribal Governing Board, or designee, determine it is in the best interests of the Tribe to include substances which are not listed above to ensure a drug free workplace. Employees are encouraged to contact the Human Resource Director, or designee, with any questions regarding drug and alcohol testing. Failure or refusal to participate in an employer-directed drug test is considered insubordination and the employee will be terminated for insubordination.

(1) General Drug and Alcohol Testing Procedures. In cases where an employee is required to undergo testing for the presence of alcohol or drugs including reasonable suspicion, pre-employment, and return-to-duty, the following procedures shall apply:

(a) LCO-CHC using a licensed laboratory of the LCO-CHC choice that conducts substance abuse testing that is deemed appropriate by the Tribal Governing Board for business purposes; i.e., screening and confirmatory testing, will take a sufficient sample to assure that confirmation testing can occur in the event of an initial positive test result. The initial cost for this testing will be incurred by the Tribe.

(b) The laboratory evaluation of the samples will be carried out by a laboratory that is contracted with the LCO-CHC and is certified by either the College of American Pathologists or the National Institute on Drug Abuse.

(c) In the event of a positive test result, a confirmation test will be performed by a laboratory specified in subs. (b) above, using the original sample (not a new sample). The confirmation test will be based on a different analytical method of higher analytical certainty.

(d) The employee within two (2) working days of the results must request any further confirmation testing (using the original sample) by a laboratory specified in subs. 1(a) above, in writing. Costs of confirmation testing incurred will be paid by the employee.

(e) The results of any drug or alcohol tests shall be kept confidential, except information shall be shared between departments as deemed necessary. All policies regarding employee personnel records shall be strictly adhered to and followed in accordance with the provisions of this Manual.

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(f) A portable breath test (PBT) conducted by a Class 1 PBT Certified person of the LCO-CHC choice that is deemed appropriate by the Tribal Governing Board for business purposes shall be utilized for alcohol testing.

(2) Pre-Employment Testing Procedures.

(a) An applicant for employment will be required to undergo testing for illegal drugs and prescribed medication for which they do not have a valid prescription as a condition of employment. If the applicant is suspected to be under the influence of alcohol at the time of their pre-employment drug screen, a PBT may be requested.

(b) Applicants who test positive for alcohol, illegal drugs, and/or prescribed medication for which they do not have a valid prescription, shall be denied employment.

(c) An applicant who initially declines a drug test will be denied employment and not eligible for employment for 90 days.

(3) Probable Cause Testing Procedures.

(a) Upon a finding by an employee's department head or director that there is probable cause that the employee is either under the influence of alcohol (under the influence shall mean a blood alcohol concentration of 0.02 grams of alcohol per 100 milliliters of a person's blood or while the person has 0.02 grams of alcohol per 210 liters of a person's breath) or drug abuse that is impairing the employee's ability to carry out job-related activities, the employee shall be required to be tested for the presence of drugs or alcohol pursuant to subs. (c), below. A finding of probable cause and directive requiring the employee to submit to testing for drugs or alcohol must be in writing signed by the employee's department head or director. The probable cause finding must be supported by evidence of specific, personal observations concerning job performance, appearance, behavior, speech, or bodily odors of the employee. If hearsay information is received, such information must be corroborated by personal observations, or observations and evaluation by the Executive Director, or designee.

(b) Once an employee's department head or director has determined that probable cause pursuant to subs. (a), above exists, the employee's department head or director shall immediately contact the Human Resource Director, or designee and convey that one of his or her employees is under the influence of alcohol or a controlled substance and that such influence is impairing that employee's ability to carry out his or her job related duties.

(c) Upon receiving contact from an employee's department head or director, the Human Resource Director, or designee shall have the employee drug tested and if alcohol related have the employee submit to a portable breath test (PBT) conducted by a Class 1 PBT Certified person as specified in subs. (1)(f), above. If the employee refuses to take a test (including but not limited to a drug test, drug urine test, or PBT test) after being required to do so, the employee is thereby insubordinate and considered to be in violation of the Drug Testing Policy and shall be terminated.

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(d) Upon receipt of a positive test result, the employee shall be immediately relieved of their duty station and will be subject to disciplinary action, subs. (6) below, and the positive test sample will be sent for a confirmation test result pursuant to subs. (1) above. In all cases, an employee may face legal consequences for his/her actions. Upon receipt of a positive confirmation test result pursuant to subs. (1) above, the employee shall be referred by the Human Resource Director, or designee to participate in the Employee Assistance Program pursuant to § 1.711 (1) of this manual. Failure to comply and successfully complete an approved LCOCHC- Behavioral Health EAP treatment plan within the timeframe established in the treatment plan will result in termination.

(4) [Open.]

(5) Return to Duty Procedures. An employee returning to duty following a chemical dependency related leave of absence must receive a release by a licensed physician stating that the reasons for the employee being placed on leave have been resolved.

(6) Discipline for Drug Testing Violation. In all cases, an employee may face legal consequences for his/her actions.

(a) Any employee who uses (or is under the influence of) alcohol and/or drugs, possesses alcohol and/or drugs or intoxicants on Tribal property or while on duty will be subject to disciplinary action, up to and including termination as follows:

(i) First Offense: The employee will be informed of a first offense in writing and will be suspended three (3) days without pay.

(ii) Second Offense: If a second offense occurs, the employee will be suspended five (5) days without pay. During the suspension, the employee must have a conference with the LCO-CHC's alcohol and drug counselor and undergo an assessment. If it is determined that the violation reflects a drug or alcohol abuse problem that is affecting the employee's job performance, then a plan of action will be developed by a licensed counselor and the employee. The licensed counselor will put the plan in writing and the plan will be approved for employment purposes by the employee's department head or director with final approval by the executive director. Failure to comply and successfully complete any approved LCO-CHC Behavioral Health EAP treatment plan will result in termination. Such termination shall not be subject to appeal.

(iii) Third Offense: If a third offense occurs, the employee shall be terminated. Such termination shall not be subject to appeal.

(b) Any employee who refuses to take a test as established in § 1.808 (1) will be considered insubordinate and will be terminated for insubordination. Such termination shall not be subject to appeal.

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(c) Rehabilitation and Rehiring. Any employee who has been dismissed for violation of the Tribe's Drug Testing Policy may be eligible for re-employment after 90-days with the Tribe upon proof of rehabilitation provided by an accredited treatment facility that the person has been to treatment or has successfully completed appropriate treatment and is in recovery.

§ 1.809 Inspection and Search.

(1) The Tribe has the authority to inspect or search the entire work-place, including, but not limited to any office or desk when there are reasonable grounds for suspecting that the search will turn-up evidence that an employee violated any provision of this manual or otherwise engaged in work-related misconduct.

(2) The Tribe has the authority to inspect or search, when the inspection or search is necessary for non-investigatory work-related purpose, including locating and retrieving any information from a location within the work place.

(3) The Tribe has the authority to inspect or search any employee's personal possessions located within the work place when there are reasonable grounds for suspecting that the search will turn-up evidence that the employee violated any provision of this manual or otherwise engaged in work-related misconduct.

(4) If an employee is found to be in possession of any item or substance prohibited by this manual or fail to comply with any inspection or search conducted in accordance with this manual, the employee will be subject to appropriate disciplinary action, up to and including termination. Any illegal substances that are found, in the course of an inspection or search, will be turned over to law enforcement.

§ 1.810 Confidentiality.

(1) In the course of performing duties for the Tribe, employees may obtain or become aware of confidential information, such as personnel, financial and legal information of the Tribe, its programs, operations, enterprises and employees, including but not limited to information encompassed in any reports, investigations, research or development work, mailing lists, bid lists, directories, listings, plans, specifications, proposals, marketing plans, financial projections, cost sheets, bid estimates, bid spreadsheets, vendor or subcontractor quotes, financial data and any and all concepts or ideas, materials or information related to the business, products, or services of the Tribe or its customers and vendors ("Confidential Information").

(2) Employees must hold all Confidential Information in strict confidence and shall not directly or indirectly disclose Confidential Information or permit the release thereof to any outside person or entity except as necessary to perform employment duties or as otherwise required by law. If any question arises about whether information must be treated as confidential, employees must treat such information as confidential until confirmed otherwise by their department head or director, in consultation with the Office of the Attorney General.

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(3) Employees also must not use or release, directly or indirectly, any proprietary information or trade secrets of the Tribe without prior authorization from their department head or director, in consultation with the Office of the Attorney General. Trade secrets include any formula, pattern or devise of compilation of information which is used in the Tribe's business or operations.

(4) Violations of confidentiality, including the disclosure of confidential information (verbal, written or documents) as defined under this section shall be subject to discipline, up to and including termination. The Tribe reserves the right to prosecute any violations to fullest extent allowed under tribal, state or federal law.

§ 1.811 Media Inquiries.

The Tribe generates public interest and persons often seek newsworthy information. Therefore, it is our policy to allow only authorized representatives to make contact with or provide information or comments to reporters and news agencies regarding the Tribe. Any employee who is contacted by a reporter regarding the Tribe must inform his or her department head or director of the request for information. Prior written authorization by the Tribal Governing Board Chairman or his/her designee is required prior to any media release of information.

§ 1.812 Security Measures / Limited Access Control Areas.

Maintaining security and limiting access to certain areas of the Tribe's facilities is important to the continued success and is required by law in some instances. Employees shall not permit unauthorized persons, which may include Tribal employees, to enter secure and limited access controlled areas or to access confidential or protected information.

§ 1.813 Dress and Appearance.

Employees must dress and groom themselves in accordance with appropriate social and business standards. An employee's department head or director or the Executive Director retain the right to request any employee to change his or her mode of dress or grooming if deemed provocative or otherwise inappropriate. In addition, employees must maintain good personal hygiene.

§ 1.814 Smoking.

(1) Employees shall smoke only in designated areas, notwithstanding subd. (3) below.

(2) Smoking is prohibited in the following areas, notwithstanding subd. (3) below:

(a) In any Tribal owned or leased vehicle;

(b) In any Governmental building designated as a workplace.

Violators of this section are subject to disciplinary action, up to and including termination.

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(3) Nothing in this policy shall be deemed to limit or interfere with the use of tobacco at traditional ceremonies and cultural functions.

§ 1.815 Internet and Telephones.

(1) All electronic and telephonic communication systems and all communications and information transmitted by, received from, or stored in these systems are the property of the Tribe and as such are to be used solely for job-related purposes. The use of any software and business equipment, including, but not limited to, e-mail, internet access, facsimile machines, computers, telephones (land lines and cellular phones) and copy machines for private purposes is prohibited.

(2) No employee may not use a pass code or voice-mail access code that has not been issued to that employee or that is unknown to the Tribe. Moreover, improper use of the e-mail system (*e.g.*, distributing offensive jokes or remarks) will not be tolerated.

(3) Employees shall not use the Tribe's internet, voice mail and e-mail resources, phones and other systems in a prohibited manner, including:

(a) To transmit, view, retrieve, or store any communications of a discriminatory or harassing nature or materials that are considered obscene or pornographic;

(b) To access pornographic internet sites, display or print any associated materials, pictures and cartoons;

(c) To harass or transmit messages with derogatory or inflammatory remarks about an individual's race, sex (including pregnancy), age, disability, religion, national origin or physical attributes or transmit abusive, profane or offensive language;

(d) For non-business, personal or private use, including but not limited to game playing and personal communication not associated with business;

(e) To disclose any confidential or proprietary information except where such disclosure is authorized or permitted in this personnel policy and procedural manual.

(4) Employees shall not use the Tribe's internet, voice mail and e-mail resources and other systems and equipment, including but not limited to computer hardware, software, copier, fax machine and postage machine in a manner that is contrary to the provisions of any purchase or lease contract, such as unlawful copying of computer software.

(5) Notwithstanding the Tribe's right to retrieve and read any voice or electronic mail messages, such messages should be treated as confidential by other employees and accessed only by the intended recipient. Employees are not authorized to retrieve or read any voice or e-mail messages that are not sent to them. Any exception to this policy must receive prior written approval by Management.

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(6) The Tribe may monitor, record and listen to all internet, e-mail and voice mail usage, to assure compliance with its policies, for cost analysis and for legitimate business purposes. Thus, the Tribe may listen to, access and disclose any information in the electronic communication and telephone systems, even such information or communication protected by an employee's personal password, at any time, with or without notice to the employee. Employees have no expectation of privacy in connection with the use of these systems, or the transmission, receipt or storage of information in such systems.

§ 1.816 Solicitation and Distribution.

(1) In the interest of good housekeeping and safety, employees shall not distribute non-work literature such as leaflets, pamphlets, etc., at all times in working areas. It is the responsibility of each employee of the Tribe to keep all facilities clean and orderly.

(2) Non-employees, other than customers and vendors, are not permitted on Tribal property for the purpose of solicitations or any other reason without the express authorization of the Tribal Governing Board.

§ 1.817 Workplace Violence.

(1) The Tribe is concerned about the increased violence in society, which has also filtered into many workplaces, and has taken steps to help prevent incidents of violence from occurring at its facilities. It is our policy to expressly prohibit any acts or threats of violence against any employee in or about our facilities or elsewhere at any time. We will not condone any acts or threats of violence against our employees, customers, or visitors on the Tribe's property at any time or while they are engaged in business with or on behalf of the Tribe, on or off our premises.

(2) In keeping with the spirit and intent of this policy, and to ensure the objectives in this regard are attained, the Tribe is committed to the following:

(a) To provide a safe and healthful work environment;

(b) To take prompt remedial action, up to and including immediate termination, against any employee who engages in any threatening behavior or acts of violence or who uses any obscene, abusive, or threatening language or gestures;

(c) To take appropriate action when dealing with customers, former employees, or visitors to our property who engage in such behavior. Such action may include notifying the police or other law enforcement personnel and prosecuting violators of this policy to the maximum extent of the law;

(d) To establish viable security measures to ensure that the Tribe's facilities are safe and secure to the maximum extent possible and to properly handle access to the Tribe's facilities by the public, off-duty employees, and former employees.

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(3) Employees, former employees, customers and visitors shall not bring or possess unauthorized firearms or other weapons onto the Tribe's premises. Any employee who displays a tendency to engage in violent, abusive, or threatening behavior or who otherwise engages in behavior that the Tribe, in its sole discretion, deems offensive or inappropriate, or who possesses a firearm or weapon in violation of this policy will be subject to disciplinary action, up to and including termination.

(4) Employees have a "duty to warn" Tribal Management of any suspicious workplace activity or situations or incidents that they observe or that they are aware of that involve other employees, former employees, customers, or visitors and that appear problematic. This includes, for example, threats or acts of violence, aggressive behavior, offensive acts, threatening or offensive comments or remarks, and the like. Employee reports made pursuant to this policy will be held in confidence to the maximum possible extent. The Tribe will not condone any form of retaliation against any employee for making a report under this policy.

§ 1.818 Off-Duty Misconduct.

Employees shall not engage in off-duty misconduct which is deemed detrimental to the Tribe. While it is impossible to predict every detrimental situation, the Tribe may determine that off-duty misconduct is adverse to the Tribe, because it is serious in nature; is at odds with an employee's job duties; or is notorious and has the potential to discredit the Tribe. Any arrest shall be reported to the employee supervisor and the Human Resource department within 72 hours. Any arrest shall be subject to review by the department director, and may include discipline including a suspension or termination depending on the determination and severity of the allegations leading to an arrest. An arrest and conviction related to misconduct shall be subject to discipline which may include termination.

§ 1.819 Children in the Workplace.

The presence of children in the workplace is discouraged because it can be disruptive to other employees. However, the Tribe recognizes that there may be circumstances when it is necessary for an employee to have a child at the workplace for a short period. A supervisor has the authority to prohibit an employee from having a child at the workplace if the supervisor determines that the employee is abusing this policy or the workplace is being disturbed.

§ 1.820 Policy Regarding Use of Social Media by Employees.

(1) While the Tribe encourages its employees to enjoy and make good use of their off-duty time, certain activities on the part of employees may become a concern if they have the effect of impairing the work of any employee; harassing, demeaning, or creating a hostile working environment for any employee; disrupting the smooth and orderly flow of work within the office; or harming the goodwill and reputation of the Tribe. In the area of social media (print, broadcast, digital, and online services such as Facebook, LinkedIn, MySpace, Plaxo, and Twitter, among others), employees may use such media in any way they choose as long as such use does not produce the adverse consequences noted above. For this reason, the following provisions apply regarding an employee's use of social media, both on and off duty:

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(a) An employee shall be subject to disciplinary action, up to and including termination of employment, depending upon the severity and repeat nature of the offense, if an employee publishes any personal information about the employee, another employee of the Tribe, the Tribe and its officials, or a tribal member in any public medium (print, broadcast, digital, or online) that:

(i) has the potential or effect of involving the employee, their coworkers, tribal members or the Tribe in any kind of dispute or conflict with other employees or third parties;

(ii) interferes with the work of any employee;

(iii) creates a harassing, demeaning, or hostile working environment for any employee;

(iv) disrupts the smooth and orderly flow of work within the office, or the delivery of services to tribal members;

(v) harms the goodwill and reputation of the Tribe in the community at large; or

(vi) tends to place in doubt the reliability, trustworthiness, or sound judgment of the person who is the subject of the information.

(b) No employee may use the Tribe's equipment or facilities for furtherance of non-work-related social media related activities or relationships without the express advance permission of their program Director.

(c) Employees who conduct themselves in such a way that their social media related actions toward and relationships with each other interfere with or damage work relationships, disrupt the flow of work or tribal member relations, or cause unfavorable publicity in the community, should be concerned that their conduct may be inconsistent with one or more of the provisions of this policy. In such a situation, the employees involved should request guidance from their program Director or the Executive Director to discuss the possibility of a resolution that would avoid such problems. Depending upon the circumstances, failure to seek such guidance may be considered evidence of intent to conceal a violation of the policy and to hinder an investigation into the matter.

(d) Use of social media that involves any kind of criminal activity or harms the rights of others may result in criminal prosecution or civil liability to those harmed, or both.

(e) Social media access and use involving Tribal equipment and resources are subject to the Tribe's computer and internet policy at all times.

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(f) The provisions in this policy are not intended to restrict communications regarding the terms and conditions of the workplace.

(2) How an employee uses social media is not a matter of concern as long as it is consistent with the aforementioned provisions on this policy. Employees may address any questions on this policy to the Lac Courte Oreilles Legal Department.

SUBCHAPTER 1.9 – WORKPLACE SAFETY

§ 1.901 General Rules.

(1) The safety of employees is important to the Tribe. Fire extinguishers, exits and first-aid kits are available in marked locations around Tribal facilities. Employees must strictly adhere to all applicable safety regulations and comply with the following general rules:

(a) Employees must report immediately all accidents or injuries to a supervisor without exception;

(b) Employees may smoke only in designated areas;

(c) Employees must be careful and take necessary precautions when operating, cleaning or repairing any machinery;

(d) Employees must be present prior to starting any operation or task which calls for more than one employee;

(e) Employee must not attempt to operate equipment without authorization or proper training or certification;

(f) The Tribe will not tolerate horseplay or practical jokes. Accidents or injuries resulting from such horseplay or conduct shall not be considered work related.

§ 1.902 Accidents or Injuries.

If an accident or injury occurs, until medical help arrives employees should try to provide aid and comfort to the injured person. Employees should try to keep the circumstances of any accident or injury fresh in their minds so that the incident can be reported accurately and to provide information that may prevent a repeated incident.

§ 1.903 Protective Equipment.

The Tribe will furnish required safety equipment to employees, if the work requires such equipment. Safety equipment includes safety glasses, gloves, safety shoes, noise protection devices, special protective devices for handling hazardous chemicals and waste, etc. Employees must follow all rules concerning the wearing of safety equipment at all times and must not remove safety equipment from any machinery, such as machine guards.

§ 1.904 Hazardous Materials.

The Tribe complies with all applicable “Right to Know” laws, which means employees will be made aware of any chemical hazards at the workplace. Employees will also receive special training concerning the labeling, handling and disposal of hazardous substances, and what steps should be taken in the event of a spill or release.

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§ 1.905 Personal Responsibility.

All employees shall take personal responsibility in the performance of all workplace related activities. If at any time an employee reasonably determines that a workplace related activity is unsafe or warrants protective equipment, the employee shall make all reasonable efforts to remedy the situation.

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SUBCHAPTER 1.10 – VEHICLE DRIVER CERTIFICATION

§ 1.1001 Purpose.

The purpose of this subchapter is to certify employees who may operate a vehicle or travel on tribal business and to minimize Tribal exposure to liability claims resulting from vehicle accidents.

§ 1.1002 Scope.

Any person driving on Tribal business including all employees and volunteers shall comply with this subchapter. Tribal business does not include an employee's regular commute to and from the work place.

§ 1.1003 Policy.

Drivers of Tribal, personal, or rental vehicles may be authorized to drive on Tribal business if they are 18 years of age and certification criteria contained in this subchapter are satisfied.

§ 1.1004 Procedures.

Drivers must achieve certification to drive on tribal business by meeting the requirements listed in § 1.1005 of this manual.

§ 1.1005 Minimum Certification Requirements.

(1) Tribal Vehicle Certification.

(a) Current Wisconsin Driver's License

(b) Commercial Driver's License if required by Federal law or other contractual obligations

(c) License requirements listed in the employee's current job description.

(d) Completed Driving Record Authorization Form in employee's personnel file.

(e) None of the following driving violation convictions within the last year:

(i) Operating without valid driver's license

(ii) Obstruction in regard to driver violation

(iii) Reckless driving

(iv) Violation of Occupational License

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- (v) Causing great bodily harm with vehicle
- (vi) Negligent homicide by use of motor vehicle
- (vii) Operating while license suspended
- (viii) Vehicle usage resulting in felony conviction
- (ix) Operating a school bus without a school bus license

(2) Personal Vehicle Certification.

(a) Current Wisconsin Driver's License

(b) Evidence of current minimum insurance coverage as follows, verified by an insurance policy with copy supplied to the Human Resource Director at every policy renewal:

- (i) \$100,000 per Person
- (ii) \$300,000 per Accident for Bodily Injury
- (iii) \$25,000 Property Damage

§ 1.1006 Recordkeeping.

(1) The Human Resource Department will maintain a current list of all certified drivers.

(a) Lists will be supplied to the Travel Clerk.

(2) Tribal Vehicle Drivers must notify the Human Resource Department within five (5) working days of any conviction affecting their certification eligibility. Failure to do so may be considered "employee misconduct" and subject to disciplinary action.

§ 1.1007 Supervisors Responsibility.

(1) Supervisors shall ensure that no uncertified employees drive on Tribal business.

(a) Departments, where appropriate, shall create Standard Operating Procedures which minimize drivers risk exposure.

(2) Supervisors shall take action when employees or the Human Resource Department report violations. Actions may be, but are not limited to:

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(a) Reassigning the uncertified employee to a position which does not require driving.

(b) Removing the driving requirement from the employee's job description.

(c) Place the employee on unpaid leave until they become recertified.

(d) Termination of employment because of a valid driver's license is a required qualification on the job description.

(3) If all fines, suspensions, revocations, and any other penalties or conditions imposed on the driver due to the driving violation conviction(s) are satisfied, the Supervisor may decide to re-certify the driver if all other certification requirements are satisfied.

(4) If a supervisor has reason to question an employee's mental or physical health as it relates to the employee's ability to drive on Tribal business, the supervisor shall refer the employee to the Employee Assistance Program (EAP) for an assessment.

SUBCHAPTER 1.11 – PROBLEM SOLVING

§ 1.1101 Scope.

(1) Problem Solving Process. When people work closely together it is only natural that problems, questions or conflict may sometimes arise. It is in the best interest of the Tribe and all employees that these issues be resolved as quickly and fairly as possible; therefore, the Tribe supports an “open-communication policy” to encourage addressing these issues. The following “Problem Solving Process” has been designed to provide guidelines for resolution of questions, problems or conflicts:

(a) If you have a work related or personal problem that you think the Tribe can help you resolve, you are encouraged to discuss it with your supervisor. Your supervisor is usually in the best position to help you.

(b) If you do not get an answer, or you are not satisfied with the answer, the issue should be written down and presented to the Human Resources Director. The Human Resources Director will facilitate a meeting to assist with mutually resolving the issue.

(c) In the unlikely situation that these steps have not resolved the issue, you may take your problem to the Executive Director.

(2) Chain of Command. All employees are required to follow the chain of command, with no exceptions. The chain of command consists of and is limited to the following:

(a) Your Supervisor

(b) Human Resources Director

(c) Executive Director

(3) Open Communication Policy. The Tribe supports open lines of communication between employees, which assures all employees concerns will be heard and considered. It is the belief and commitment of the Tribe to maintain direct lines of communication and good working relationships with all employees. Problems arise in all work places and this process is designated to identify and correct those problems and issues in a fair, equitable and timely manner. It should be noted that not all problems or issues will have an outcome that all parties agree with but in no circumstances will insubordinate behavior or communications be tolerated.

SUBCHAPTER 1.12 – DISCIPLINARY ACTION AND APPEAL

§ 1.1201 Consent.

Each employee shall agree to, by signing, a Consent to Appeal Procedure as a condition of continued employment. The Appeals Procedure constitutes a contract between the Tribe and the employee and establishes the framework under which employees may appeal disciplinary action imposed under this subchapter or employment claims, provided no employee can appeal any disciplinary action based on activity that results in an arrest and conviction. In addition, regarding employment claims, it is important to note that nothing in this personnel policy and procedural manual shall be construed as the Tribe consenting to application of any law or waiving applicable defenses, including the defense that the subject law does not apply to the Tribe.

§ 1.1202 Grounds for Disciplinary Action.

(1) Employees must perform assigned duties at or above satisfactory levels; they must follow standards of workplace behavior contained in this manual and comply strictly with all applicable laws, rules and regulations. A system of progressive discipline will be utilized, when appropriate, to afford employees an opportunity to correct behavior. Therefore, verbal and written warnings are utilized as a corrective action tool and will not be subject to the appeal procedures identified in § 1.1204.

(2) An employee may be suspended for any conduct which results in an arrest, pending the determination of the Executive Director of the seriousness of the offense. Conduct by an employee which results in a felony arrest and/or felony conviction as defined under state and federal law will result in termination.

(3) The Tribe reserves the right to impose discipline for any of the actions listed in this section; such action may include suspension and /or termination:

- (a) Incompetence;
- (b) Neglect of duty;
- (c) Insubordination;
- (d) Refusal to work;
- (e) Willful misconduct;
- (f) Political activity as defined in § 1.804 of this manual;
- (g) False representation in conjunction with job performance;
- (h) Intoxication or use of intoxicants during working hours;

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- (i) Conviction of any felony either in performance of job duties, or in private affairs;
- (j) Negligence or willful damage to tribal property;
- (k) Discourteous treatment of the public or fellow employees during working hours;
- (l) Loss of driver's license if required for the job;
- (m) Job performance which results in serious harm to the employee's program;
- (n) Failure to properly report to work on time;
- (o) Unauthorized disclosure of confidential information;
- (p) Conflict of interest;
- (q) Theft;
- (r) Falsification of timecards;
- (s) Willful violation of any Tribal law, rule, regulations or any deliberate action that is detrimental to the Tribe;
- (t) Willful violation of security or safety rules;
- (u) Negligence or any careless action which endangers the life or safety of another person;
- (v) Unauthorized possession of dangerous or illegal firearms, weapons, or explosives on the Tribe's property or while on duty;
- (w) Engaging in criminal conduct or acts of violence, or making threats of violence toward anyone on the Tribe's premises or when representing the Tribe;
- (x) Provoking a fight on Tribal property;
- (y) Refusing to obey instructions properly issued by Management;
- (z) Refusing to help out on a special assignment;
- (aa) Threatening, intimidating, or coercing fellow employees on or off the premises – at any time, for any purpose;
- (bb) Dishonesty; willful falsification or misrepresentation on the application for employment or other work records; falsifying other data requested by the Tribe;

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(cc) Giving confidential or proprietary Tribal information to competitors, other organizations, the general public, or to unauthorized employees; working for a competing business while still employed by the Tribe, breach of confidentiality of personnel information;

(dd) Malicious gossip and/or spreading rumors; engaging in behavior designed to create discord and lack of harmony; interfering with another employee on the job;

(ee) Poor work performance;

(ff) Leaving work before the end of a workday or not being ready to work at the start of a workday without approval of Management; stopping work before time specified for such purposes, unless authorized by law.

§ 1.1203 Types of Disciplinary Actions.

(1) Employees must perform assigned duties at or above satisfactory levels, follow standards of workplace behavior contained in this personnel policy and procedural manual and comply strictly with all applicable laws, rules and regulations. A system of progressive discipline will be utilized, when appropriate, to afford employees an opportunity to correct behavior, however some personnel infractions are severe enough to impose any of the below-mentioned disciplinary actions, up to and including termination. Disciplinary actions may be handled in any manner deemed appropriate by the Tribe. This may include, but is not limited to, the following:

(a) Employee Warning.

(i) An employee may receive a verbal or written warning from their supervisor to rectify behavior which requires disciplinary action. Neither a verbal or written warning is appealable pursuant to § 1.1204 of this manual.

(ii) The department head or director will discuss with the employee the seriousness of the problem and the possible consequences of a failure to correct the problem. The department head or director will review applicable policies and will document the meeting through signature of both the department head or director and the employee.

(iii) The Human Resource Director, or designee, will maintain all employee warnings in an employee's personnel file in the event that further progressive discipline is necessary.

(b) Suspension.

(i) An employee may be recommended for suspension by their supervisor when the employee's behavior warrants such disciplinary action. The recommendation must be written in a manner that clearly states the justifiable reason and forwarded to the Human Resources Director. The Human Resources

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Director will consult with the Supervisor to ensure the reason is justified and clearly stated. If the Human Resources Director is satisfied that all the information is contained in the documentation and there is clear substantiated reason for the suspension, the same will be forwarded to the Executive Director for final approval or denial. All suspensions are without pay. Suspensions are appealable pursuant to § 1.1204 of this manual.

(ii) Upon return from suspension, the department head or director will meet with an employee regarding the nature of the problem. A corrective action plan will be developed with the employee including specific timelines for completion.

(iii) The Human Resource Director, or designee, shall document all suspensions and maintain all corrective action plans in the employee's personnel file in the event that further progressive discipline is necessary.

(c) Probationary Period in lieu of Termination.

(i) In lieu of termination an employee may be placed on a probationary period for a serious violation of this personnel policy and procedural manual, as recommended by a Supervisor and agreed to and evidenced by the signature of the employee on a "Waiver of Appeal Process" form. The Supervisor must follow the same procedures as outlined in § 1.1203 (1) (b). During this probationary period, the Tribe will evaluate the employee's continued suitability for employment. If during this period an employee has not shown improvement or adequately addressed the issues surrounding the probationary period in lieu of termination the Supervisor may recommend the termination of the employee's employment, without the ability of the employee to appeal the decision, subject to the approval of the Executive Director.

(ii) Employees placed on a probationary period pursuant to this section are eligible for holiday leave and funeral leave. Probationary employees pursuant to this section shall accrue Personal Time Off. Such employees cannot use Personal Time Off until the completion of their probationary period, unless authorized by their immediate supervisor with concurrence from the Executive Director and only for medical reasons or extreme circumstances.

(iii) At the end of the probationary period pursuant to this section, the Tribe will prepare a written performance evaluation and discuss with the employee the curative conduct of the employee pertaining to the problem causing the probationary period as well as the employee's overall job performance.

(iv) The Human Resource Director, or designee, shall document all probationary periods pursuant to this section and maintain all written performance evaluations pertaining to this section in the employee's personnel file in the event that further progressive discipline is necessary.

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(d) Termination.

(i) An employee may be recommended for termination from employment by their supervisor at any time, depending upon the severity of the offense. The recommendation must be written in a manner that clearly states the justifiable reason and forwarded to the Human Resources Director. The Human Resources Director will consult with the Supervisor to ensure the reason is justified and clearly stated. If the Human Resources Director is satisfied that all the information is contained in the documentation and there is clear substantiated reason for the termination, the same will be forwarded to the Executive Director for final approval or denial. All terminations are appealable pursuant to § 1.1204 of this manual.

(ii) The department head or director shall document all terminations and provide a copy of all documentation to the Human Resource Director, or designee.

(2) The Tribe retains the sole discretion to determine what behavior warrants disciplinary action and what type of disciplinary action will be imposed. The Tribe reserves the right to terminate employees at any time for any reason that does not violate applicable law with or without notice and with or without prior resort to other means of discipline.

§ 1.1204 Disciplinary Action Appeal Procedure.

(1) Appeal Policy.

(a) It is the policy of the Tribe to ensure fair and equitable treatment for all employees. Therefore, the Tribe hereby issues a waiver of its sovereign immunity pursuant to 2 LCOTCL § 5.301 to all non-contracted employees for the limited purpose of appealing in Tribal Court as detailed in this section, any suspension or termination received by an employee pursuant § 1.1202 of this manual. Verbal and written warnings are corrective action tools and thus are not subject to appeal.

(b) Any additional claims asserted by an employee against the Tribe, must be filled pursuant to 2 LCOTCL § 1.901. The Tribe has not waived its sovereign immunity with regard to any claims filed pursuant to 2 LCOTCL § 1.901.

(2) Appeal Procedures. A formal appeal will be filed and processed in the manner described below, except that time limits may be waived or extended by written mutual consent of the parties involved.

(a) Appeal. The Employee will submit a written statement detailing the issue being appealed within three (3) working days of receiving a suspension or termination pursuant to § 1.1202 of this manual. An Employee's failure to file an appeal within the specified time period will be considered a waiver of the formal appeal procedure and the disciplinary action will be final.

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(b) If at any time during the process the Employee and the Employee's Supervisor are able to agree on a solution to the appeal filed, they may submit a joint statement outlining the acceptable terms to the Executive Director. If the terms are approved by the Executive Director, then the matter is settled with copies provided to the Employee and the Supervisor with a copy retained by the Human Resource Director. The Executive Director decision will be final.

(3) Hearings.

(a) Scheduling of Hearings.

(i) Upon timely receipt of all appeal documentation, the Human Resource Director, or designee, will file the employment appeal with the Tribal Court and request an initial hearing.

(ii) The Tribal Court shall notify the employee of the initial hearing date of their employment appeal by personal delivery or certified mail at least five (5) days prior to the scheduled hearing date.

(iii) The Lac Courte Oreilles Office of the Attorney General shall be notified of all appeals by the Tribal Court in the same manner as provided in subsection (3) (a) (ii), above. The Human Resource Director, or designee, shall provide the Lac Courte Oreilles Office of the Attorney General with the entire record of the grievance and all information submitted in connection to the appeal.

(iv) All employees requested to testify at an employment appeal hearing, must attend the hearing when directed by the Human Resource Director, or designee. Failure to appear may result in a monetary fine or disciplinary action or both. The Tribe recognizes that some employees possess official immunity and may not be compelled to testify.

(b) Tribal Court Hearings. The Tribal Court will conduct an employment appeal hearing pursuant to the provisions of this section. Any reliance by the Tribal Court upon the provisions of Title II, Chapter 1 of the LCOTCL – Court and Civil Procedure Code shall be secondary to the provisions of this ordinance.

(i) The Tribal Court shall schedule an initial appearance within thirty (30) days of the filing, at which time the Tribe shall enter its initial plea, the Tribal Court shall set forth a scheduling order pursuant to 2 LCOTCL § 1.905 and shall schedule a trial date pursuant to 2 LCOTCL § 1.1001. The initial trial date shall be scheduled within sixty (60) days of the filing.

(ii) the Trial shall be conducted pursuant to 2 LCOTCL – Subchapter 1.10.

(iii) The Tribal Court shall determine, by a preponderance of the evidence, whether the Tribe reasonably believed that the employee committed any of the

policy violation(s) upon which the discipline was based and whether the employer followed the appropriate procedural steps established in § 1.1202 of this manual.

1) The Tribal Court is required to defer to interpretations of this ordinance as made by the Tribe [pursuant to the Chevron Doctrine], unless such interpretations are unreasonable. An action determined to be unreasonable shall be established by clear and convincing evidence.

(iv) If the Tribal Court determines that the employer had a reasonable basis to believe that it met the burden of proof regarding any of the violations and the appropriate procedural steps established in § 1.1202 of this manual were followed, it shall uphold the decision of the employer; and shall uphold all disciplinary measures taken without substituting its judgment for that of the employer.

(v) If the Tribal Court determines that the employer did not have a reasonable basis to believe that it met the burden of proof regarding any of the violations and procedural steps established in § 1.1202 of this manual, it shall overturn the decision of the employer and order that the employee's personnel file reflect such decision conditioned on the following:

1) Any award of back wages or other benefits that may have been withheld from the employee shall be limited to ninety (90) days;

2) No attorney's fees may be awarded as established in 2 LCOTCL § 1.1106.

3) Any award of back wages shall be reduced by all amounts earned through other employment or unemployment insurance during the time between the employee's separation and the conclusion of this action;

4) The employee has a duty to mitigate any award of back wages by attempting to retain other employment. In order to provide proof of mitigation, the employee must provide evidence to the Tribal Court that the employee has applied for at least one (1) equivalent positions per week.

5) The employee is not guaranteed restoration to his or her previous position. Such reinstatement shall occur at the discretion of the Tribe. If the Tribe restores the employee to his or her previous position, the Human Resource Director shall meet with the employee and the department head or director and develop a work reinstatement plan including specific timelines and tasks for reintroduction into the workforce.

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(vi) The Tribal Court may issue its decision orally immediately. In all cases it shall issue a written decision within forty-five (45) days as established by 2 LCOTCL § 1.1104 and shall provide the parties with notice thereof. If the Tribal Court does not issue a written decision within forty-five (45) days, it is presumed that the Tribal Court has determined that the employer had a reasonable basis to believe that it met the burden of proof and as a result the action of the employer shall be upheld. The written decision shall include findings of fact, a conclusion regarding each violation, and any money judgments as conditioned in subsection (3) (b) (v), above. The decision shall be provided to each party by first-class mail to the person's last known address; electronic mail to the party and to the party's attorney or lay advocate who has filed a notice of appearance in the action; or by delivery to such person, the person's home, or the person's office.

(vii) If either party disagrees with the decision of the Tribal Court, that party may appeal the decision to the Court of Appeals by filing a notice of appeal within ten (10) working days of the party's receipt of the decision pursuant to subsection (3) (b) (vi) above. The filing of an appeal by the employer shall stay any action under subsection (3) (b) (v) above, pending resolution of the appeal by the Court of Appeals. Failure to abide by the timeline stated in this section shall be deemed a waiver of the disciplinary appeal and the Tribal Court's decision shall be deemed as final. A Clerk of Court shall submit to the Court of Appeals the record of the employment appeal hearing within five (5) working days of receiving a copy of the notice of appeal. The Lac Courte Oreilles Office of the Attorney General shall be notified of all appeals of a Tribal Court decision pursuant to the methods established in subsection (3) (b) (vi) above.

(c) Court of Appeals Hearings. Either party may request a review of the Tribal Court's decision by the Lac Courte Oreilles Court of Appeals. The Court of Appeals review will be limited to the information presented to the Tribal Court and the limited review is to determine whether the Tribal Court committed a clear error. If the Court of Appeals finds any clear errors in the decision of the Tribal Court, it shall overturn the decision and may remand the matter back the Tribal Court for further review consistent with the Court of Appeals findings.

(i) The Court of Appeals shall have the discretion to decide whether to schedule an oral argument pertaining to an employment appeal.

(ii) The Court of Appeals may issue a decision without an oral argument after reviewing the decision of the Tribal Court and the evidence submitted during the grievance and appeal processes.

(iii) In all cases, the Court of Appeals shall review the findings of fact and conclusions of law solely to determine whether the Tribal Court committed a clear error. A "clear error" occurs when a decision is not reasonably supported by the facts, law, standard of review, or evidentiary standards.

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(iv) If the Court of Appeals determines that the Tribal Court committed a clear error, regarding any of the violations and procedural steps established in § 1.1202 of this manual, it shall overturn the decision of the Tribal Court and may remand the matter back the Tribal Court for further review consistent with the Court of Appeals findings

(v) If the Court of Appeals determines that the Tribal Court did not commit a clear error(s) regarding any of the violations and the procedural steps established in § 1.1202 of this manual, it shall uphold the decision of the Tribal Court.

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**PERSONNEL POLICIES AND PROCEDURES MANUAL
RECEIPT AND ACKNOWLEDGEMENT**

I hereby acknowledge receipt of a copy of the Governmental Personnel Policies and Procedures of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians. This personnel policy and procedural manual contains the policies and rules that apply to me. I agree to read the manual and follow it during my employment with the Tribe. I further understand the Tribe may amend this personnel policy and procedural manual at any time and that such changes will be communicated to me in writing.

Employee Signature

Date

Employee Name (Printed)

Please keep a copy of this acknowledgement for your records.

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CONSENT TO APPEAL PROCESS

I hereby consent, as a condition of my employment, to the exclusive jurisdiction of the Tribe’s Disciplinary Action and Appeal procedures as set forth in Subchapter 1.12 of this manual, and the jurisdiction of the Tribal Court for all disputes in connection with my employment with the Tribe. I acknowledge that my failure to comply with time limitations for resolving a complaint or filing an appeal will preclude further consideration of any matter. I hereby waive any right I may have to litigate in another court of law, any and all claims arising out of my employment, and hereby waive any right I may have to a jury trial, and agree instead to submit any and all disciplinary action claims to the Disciplinary Action and Appeal procedures as set forth in Subchapter 1.12 of this manual. I hereby consent to the application of Tribal law, both substantive and procedural, regarding all proceedings, matters and things relating to my employment relationship with the Tribe.

Employee Signature

Date

Employee Name (Printed)

Please keep a copy of this consent for your records.

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WAIVER OF APPEAL PROCESS

I hereby consent, as a condition of my employment, to participate in a Probationary Period in lieu of Termination pursuant to § 1.1203 (1) (c) of this manual. I hereby waive any right I may have to the Appeal procedures as set forth in § 1.1204 of this manual through my participation in this Probationary Period in lieu of Termination. I hereby acknowledge that as a condition of my employment that I have consented to the application of Tribal law, both substantive and procedural, regarding all proceedings, matters and things relating to my employment relationship with the Tribe.

Employee Signature

Date

Employee Name (Printed)

Please keep a copy of this consent for your records.