

**JAMESTOWN S'KLALLAM TRIBE
TRIBAL CODE
TITLE 3 – LABOR CODE**

Chapters:

- Chapter 3.01 General**
- Chapter 3.03 Labor Organizations and Collective Bargaining**
- Chapter 3.04 Integrity of Laws Provisions**
- Chapter 3.05 Prevailing Wage**
- Chapter 3.06 Tribal Family Medical Leave Protection**
- Chapter 3.07 Codification and Amendments**

Chapter 3.01

General

Sections:

Section 3.01.01 Purpose of Title

Section 3.01.02 Organization of Title

Section 3.01.01 Purpose of Title

The Tribal Council (“Council”) of the Jamestown S’Klallam Tribe (“Tribe”), pursuant to its authority under the Tribal Constitution, has established this title to the Tribal Code to cover the various and complex matters related to labor and employment law as it impacts the Tribal government and its entities, as employer, and their employees. It is the intent of the Council that all matters that arise under this title be dealt with in a fair and balanced manner in the best interest of the Tribe, its entities, its citizens, its staff and all its employees.

Section 3.01.02 Organization of Title

Generally, this title is arranged into chapters, which can be either substantive chapters, and organized by subject matter, or administrative chapters. Each substantive chapter will have its own provisions outlining its purpose, definitions, etc., that will apply to that respective chapter. Examples of substantive chapters are 2 through 5, while examples of administrative would be 1 and 6.

Chapter 3.03 Labor Organizations and Collective Bargaining

Sections:

- Section3.03.01 Purpose for this Chapter**
- Section3.03.02 Findings for this Chapter**
- Section3.03.03 Definitions for this Chapter**
- Section3.03.04 Licensing of Labor Organizations and Business Agents; Qualifications; Fees; Term**
- Section3.03.05 Bargaining Unit Determinations; Union Election Procedures**
- Section3.03.06 Decertification Procedures**
- Section3.03.07 Employees, Employers, Labor Organizations; Rights and Duties**
- Section3.03.08 Collective Bargaining; Exceptions**
- Section3.03.09 Prohibited Practices; Employer; Labor Organization**
- Section3.03.10 Procedures for Resolving Prohibited Practice Claims**
- Section3.03.11 Procedures for Resolving Collective Bargaining Impasses**
- Section3.03.12 Tribal Court Enforcement Authority**
- Section3.03.13 Limited Waiver of Sovereign Immunity**
- Section3.03.14 Interpretive Guidance**

Section 3.03.01 Purpose for this Chapter

The purpose of this Chapter is to protect the health, welfare, and economic security of the Jamestown S'Klallam Tribe ("Tribe") by regulating the terms and conditions under which:

- A. Labor organizations may conduct business within the jurisdiction of the Tribe, and
- B. Collective bargaining may take place within the jurisdiction of the Tribe.

The further purpose of this Chapter is to promote sound relationships between the Tribe and its employees and between Tribal Entities and their employees by permitting such employees, if they freely choose, to organize and bargain collectively with regard to the terms and conditions of their employment.

Section 3.03.02 Findings for this Chapter

The Jamestown S'Klallam Tribal Council ("Council") finds that the Tribe has inherent sovereign authority to govern economic relations within its jurisdiction, including employment relations between the Tribe and its employees and Tribal Entities and their employees. The economic activities of the Tribe and Tribal Entities generate funds to support the Tribe's governmental services to its citizens and provide critical economic development opportunities for the Tribe and its citizens. Employment relations within the Tribe and Tribal Entities directly affect the health, welfare, and economic security of the Tribe and its citizens because such relations affect the generation and distribution of the Tribe's governmental resources and the economic development of the Tribe.

Like the state and federal governments, the Tribe has a direct interest in regulating labor relations within governmental agencies and enterprises, known as "public sector labor relations." The labor relations laws of states and of the federal government often prohibit strikes to protect the public interest and provide for alternative procedures to resolve collective bargaining impasses. The Tribe finds that important lessons may be drawn from the state and federal public sector labor relations laws for the design of a law governing labor relations of the Tribe and its Tribal Entities.

Section 3.03.03 Definitions for this Chapter

Unless a different meaning is clearly indicated, the following terms shall have the respective meanings:

- A. "Bargaining Unit" means a unit of employees within an employer identified as an appropriate unit for representation under the procedures of this Chapter.
- B. "Business Agent" means any person regardless of title, duly authorized and employed by or engaged by a labor organization to represent it in organizing for purposes of collective bargaining, in negotiating on

behalf of such labor organization and on behalf of any proposed or recognized collective bargaining unit or in adjusting grievances of members of a bargaining unit.

- C. "Confidential Employee" means any employee who assists and acts in a confidential capacity to persons who formulate, determine and effectuate an employer's policies with regard to the formulation and implementation of labor or employment relations matters, and this term shall otherwise be construed consistently with similar terms under public sector labor relations laws.
- D. "Day" means business days, excluding Saturdays, Sundays and legal holidays observed by the Employer, provided that this definition shall have no effect when the phrase "calendar days" is used herein.
- E. "Election Official" means the Election Official appointed by the Tribal Council for the purpose of carrying out the duties of overseeing elections and such other duties enumerated in this Chapter or amendments hereto.
- F. "Employee" means any person employed by an employer, excluding:
 - 1. Any person employed as an agricultural laborer, or in the domestic service of any family or person at his/her home, any person employed by his/her parent or spouse, or any person having the status of an independent contractor;
 - 2. Appointed or elected public officials of the Tribe, including but not limited to, Tribal Council members and their staff and appointees, Tribal Court Judges, or any board, commission or regulatory body of the Tribe, appointed by the Tribal Council or elected by the general tribal membership;
 - 3. Supervisory, managerial or Confidential Employees, as herein defined;
 - 4. Individuals who work less than four (4) hours per week or who work on a temporary, seasonal, or on-call basis; or
 - 5. Any person employed by the Board of Commissioners of the Tribal Gaming Agency or by any subdivision thereof.
- G. "Employer" means the Tribe or a Tribal Entity employing individuals who work within the Tribe's Territory.
- H. "Exclusive Bargaining Representative" or "Exclusive Representative" means a labor organization that is lawfully elected to be the exclusive bargaining representative of a Bargaining Unit within an employer.
- I. "Impasse" means the failure of an Employer and an Exclusive Representative to reach agreement in the course of negotiating a collective bargaining agreement.
- J. "Labor Organization" or "Union" means any organization of Employees organized for the purpose of bargaining over hours of employment, rates of pay, working conditions, grievances, or other terms or conditions of employment.
- K. "Laws of the Tribe" means any laws of the Jamestown S'Klallam Tribe, including its Constitution and any regulation of any of its agencies, authorities, boards, or commissions.
- L. "Lock Out" means any action by an Employer that prevents Employees from going to work for the purpose of coercing Employees to accept terms or conditions sought by an Employer in a negotiation with an Exclusive Bargaining Representative.

- M. "Management," "Manager," or "Managerial Employee" means any person who represents an Employer's interest and who formulates and effectuates an Employer's policies by expressing and making operative the Employer's decisions.
- N. "Person" means any individual, labor organization, corporation, partnership or other entity.
- O. "Strike" means an Employee's refusal, in concerted action with other Employees, to report for duty or to be willfully absent, in whole or in part, from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of employment. "Strike" shall also mean any form of picketing or boycotting of an Employer within Tribal Territory and any form of a secondary boycott against an Employer.
- P. "Supervisory Employee" or "Supervisor" means any person who has authority, in the interest of an Employer, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, adjust grievances, or discipline other Employees through the exercise of independent judgment, or who has the authority to effectively recommend such action, providing that the authority is not of a merely routine or clerical nature, and this term shall otherwise be construed consistently with similar terms under public sector labor relations laws.
- Q. "Tribe" means the Jamestown S'Klallam Tribe and any of its departments, commissions, agencies, or subdivisions.
- R. "Tribal Court" means the Jamestown S'Klallam Tribal Court as described in Title 13 of the Jamestown S'Klallam Tribal Code.
- S. "Tribal Entity" means any governmental entity or instrumentality of the Tribe, including any Class A Corporation established pursuant to Title 11 of the Jamestown S'Klallam Tribal Code, which, under principles of federal Indian law, enjoys the sovereign status of the Tribe exemplified by, but not limited to, immunity from suit.
- T. "Tribal Territory" or the "Tribe's Territory" means the territory of the Tribe as set forth in Article I, section 2 of the Tribe's Constitution.
- U. "Unfair Labor Practice" or "Prohibited Practice" means a prohibited practice or activity as set forth in Section 3.03.09 of this Chapter.
- V. "Union" or "Labor Organization" means any organization of employees organized for the purpose of bargaining over hours of employment, rates of pay, working conditions, grievances, or other terms or conditions of employment.
- W. "Union Licensing Authority" means the agency or commission authorized by the Tribal Council to administer the licensing of labor organizations under Section 3.03.04, below.

Section 3.03.04 Licensing of Labor Organizations and Business Agents; Qualifications; Fees; Term

- A. Findings and Purpose. Labor Organizations and their Business Agents doing business within Tribal Territory have the potential to affect the generation and distribution of the Tribe's resources to support governmental services to tribal citizens and the allocation of economic development opportunities for tribal citizens. The purpose of this section is to set forth licensing requirements for labor organizations and their Business Agents doing business within Tribal territory to ensure that such organizations and their Business Agents understand that they are subject to the jurisdiction of the Tribe and its laws and that such organizations and Business Agents are devoid of corrupt influences.
- B. Licenses required for Labor Organizations and Business Agents are as follows:

1. No Labor Organization or any Business Agent shall engage in organizing Employees working for any Employer without a license issued by the Tribe's Union Licensing Authority, which shall provide as follows:
 - a. The conduct of business within Tribal Territory is a privilege, subject to the consent and regulatory authority of the Tribe;
 - b. The consent of the Tribe to allow such Labor Organization and its Business Agent (or agents) to conduct business within Tribal Territory is conditioned upon such Labor Organization's agreement to be subject to the Laws of the Tribe and its regulatory authority;
 - c. In consideration of the Tribe's consent to allow such Labor Organization and its Business Agent (or agents) to conduct of business within Tribal Territory, such Labor Organization and its Business Agent (or agents) agree to:
 - (1) Comply with all Laws of the Tribe,
 - (2) Submit to the jurisdiction of the Tribe, including its Union Licensing Authority and its Tribal Court, and
 - (3) Pay an annual business license fee as required by the Union Licensing Authority;
 - d. Such Labor Organization and its Business Agent (or agents) agree that a license issued by the Tribe for conducting business within Tribal Territory may be revoked by the Union Licensing Authority at any time, after notice and opportunity to be heard, for any failure to comply with the Laws of the Tribe; and
 - e. Such other requirements as the Union Licensing Authority may require by regulation.
- C. Licensing Requirements for Business Agents. No Person shall act as a Business Agent of a Labor Organization within Tribal Territory unless that Person meets all of the following conditions:
 1. Qualifications; Limitations. A Person seeking status as a licensed Business Agent of a Labor Organization shall submit to a background check by the Union Licensing Authority or its designee to determine whether the Person's prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the effective regulation of gaming or other activities within Tribal Territory or create or enhance the dangers of unfair or illegal practices, methods and activities in the conduct of gaming or other activities within Tribal Territory.
 2. No Person shall be licensed as a Business Agent if that Person poses such a threat or if the Person has been convicted of or is currently facing charge of a crime involving dishonesty or moral turpitude.
 3. Authority; Fees. A Person seeking licensure shall submit to the Union Licensing Authority a statement signed by the president and the secretary of the Labor Organization (or the equivalent, if the Labor Organization does not designate a president and secretary) that establishes the Person's authority to act as a Business Agent for the Labor Organization and shall pay a one-time, nonrefundable application fee as required by the Union Licensing Authority.
 4. Affirmative Duty to Report Charges or Convictions. At all times during a period of licensure, a Business Agent has an affirmative duty to report to the Union Licensing Authority any new criminal charges or convictions within the guidelines of subsection C.2. of this Section and material changes to other information provided to the Union Licensing Authority under subsection C.1. of this Section.

- D. Licensing Requirements for Labor Organizations. No Labor Organization shall organize employees within Tribal Territory, through a Business Agent or otherwise, without meeting the standards for a license as required by the Tribe's Union Licensing Authority.
- E. Issuance of Licenses. Upon making a determination that a Labor Organization and Business Agent has complied with the requirements of this Section, the Union Licensing Authority shall issue to the Labor Organization and Business Agent licenses to conduct business within the Tribal Territory of the Tribe consistent with subsection B.1., above.
- F. Term; Renewal; Aggregate Fee. Licenses shall run for the calendar year in which they are issued, expiring on December 31st, but may be renewed upon payment of the fee set forth in subsection B.1.c., above, unless surrendered sooner, suspended or revoked. For Business Agents, background checks are required annually unless required sooner under the provisions of this Chapter or other applicable law. The annual license fee fixed by the Union Licensing Authority shall cover the licensing of any Labor Organization and its Business Agent (or agents).
- G. Violations. It shall be a violation of this Chapter, subject to an enforcement action in the Tribal Court pursuant to Section 3.03.12, below, for any:
 - 1. Labor Organization to engage in organizing Employees without a license issued in accordance with this Section;
 - 2. Person to act as a Business Agent for a Labor Organization without having obtained or retained a valid Business Agent's license;
 - 3. Person to make any false statement in an application for a Labor Organization or Business Agent's license; or
 - 5. Person to fail to report new charges or convictions or other material information as provided in subsection C.4., above.

Section 3.03.05 Bargaining Unit Determinations; Union Election Procedures

- A. Purpose. The purpose of this section is to ensure that in any election for a Labor Organization at an Employer, there is respect for the rights of Employees to determine, free of intimidation and coercion, whether or not they choose to authorize a Labor Organization to be their Exclusive Bargaining Representative and to ensure fair procedures for the determination of appropriate Bargaining Units, for triggering an election, for election campaigns, and the holding of elections.
- B. Appropriate Bargaining Units.
 - 1. Generally. Employees must have a sufficient community of parallel interests to be an appropriate group for bargaining. Employees with similar job duties, skills, and positions; who are part of a functionally integrated work environment; or who have common supervision shall be considered to have parallel interests.
 - 2. Specific Employees. Certain Employees, given the specific nature of their work, such as public safety officials, serve in unique vocational roles and cannot be joined in an appropriate bargaining group with other Employees.
- C. Labor Organization Notice of Employee Support to Management; Agreement on Appropriateness of Bargaining Unit or Arbitration.
 - 1. Should a licensed Labor Organization claim that 30% or more of a unit of Employees supports Labor Organization representation, it shall so inform Management, in writing, and demonstrate to the Election Official that the following conditions are met:

- a. That the group the Labor Organization seeks to represent is an appropriate one under the principles set forth in subsections B.1. and 2., above;
 - b. That there is reliable evidence of individual Employee support for Labor Organization representation; and
 - c. That the number of Employees expressing the desire to be represented by the Labor Organization within the proposed Bargaining Unit constitute thirty percent (30%) or more of the Employees in that unit.
2. For purpose of subsection C.1.b., above, "reliable evidence" may be established by a printed document bearing the Employee's original signature (and date of signature), containing a clear and conspicuous statement that, by signing, the Employee expresses a desire to be represented by the Union for the express purposes of collective bargaining.
3. For the purpose of subsection C.1.a., above, the appropriateness of the Bargaining Unit may be determined by agreement of Management and the Labor Organization or by decision of an Arbitrator pursuant to subsection I.2., below.

D. Preliminary Conditions for Scheduling an Election by the Election Official. Upon receiving a written agreement of Management and a Labor Organization as to the appropriateness of the Bargaining Unit or a decision of an Arbitrator on the same, the Election Official shall promptly proceed to confirm whether the conditions of subsections C.1.b. and C.1.c., above, are met and, if they are, certify, in writing (by first class U.S. mail, electronic mail, or fax) to Management and the Labor Organization that the following conditions are met:

1. That there is reliable evidence of individual Employee support for Labor Organization representation; and
2. That the number of Employees expressing the desire to be represented by the Labor Organization within the Bargaining Unit at issue constitute 30% or more of the Employees in that unit.

E. Scheduling the Election; Resolution of Eligible Employee Disputes; Notice of Rules.

1. Unless otherwise agreed to by Management and the Labor Organization, in the absence of an unresolved dispute over the composition of the Bargaining Unit, the Election Official shall schedule an election for eligible Employees in the Bargaining Unit no later than the next regularly scheduled pay date, 2 months from the date that the Election Official issues confirmation under subsection D., above.
2. Within 5 Days of receipt of the Election Official's announcement under subsection D., above, Management shall prepare a list of all eligible Employees in the subject Bargaining Unit in alphabetical order, along with each Employee's address and title, and provide a copy (via first class U.S. mail, electronically or via fax) to the Labor Organization. "Eligible Employees" shall include anyone hired and actually working as of the payroll period immediately preceding the Labor Organization's thirty percent (30%) minimum showing of interest submitted to the Election Official. The Labor Organization shall immediately identify any disputes it may have with regard to the list (such as omissions, incorrect inclusions), and the parties shall try to resolve differences through agreement. Disagreements shall be resolved by expedited arbitration provided for in subsection I., below, and the Arbitrator shall have discretion to order the delay of the election as necessary to ensure that no Employee is disenfranchised. The Arbitrator may extend the eligibility hire date to ensure that no Employee is improperly enfranchised or disenfranchised.
3. Management shall provide the Labor Organization with timely updates of said list through to the date of the election to the extent there are any changes to the list.

4. Notice of meeting and ground rules. Within ten (10) Days after the scheduling of an election, Management shall:
 - a. Post and distribute notices to those Employees within the Bargaining Unit who are eligible to vote, setting forth information about the date, time, and place of the election, the purpose of the election, and the Employees' rights to be educated on the benefits and deficits of Labor Organization representation. These election notices shall be facially neutral and not espouse a position for or against Labor Organization representation and shall be in substantially the following form:

***“ANNOUNCEMENT OF UNION REPRESENTATION ELECTION
UNDER TRIBAL LAW***

Employees have the right to organize and join a Union. The Laws of the Tribe recognize that, if at least thirty percent of the eligible workers in an appropriate Bargaining Unit reliably express interest in being represented by a Union, then eligible Employees in the unit shall have the right to participate in a secret ballot election to vote on whether they want Union representation. The outcome of the election will be determined by a simple majority. The [name of Union] have met the thirty percent requirement in the [name of Employer] and [describe eligible Employees] will be eligible to vote in a secret ballot election scheduled for [enter date]. Employees who are eligible to vote will be receiving individual notices of their right to participate. Whether to have Union representation or not is a question which should be studied carefully by Employees prior to voting. The Tribal Council has appointed an independent Election Official to conduct a fair election, and [name of Employer] and any disputes that arise in with respect to the election may be resolved by an independent arbitration process. Employees have the right to either support or reject Union representation without being subjected to any kind of harassment, intimidation or unwelcome solicitation. Employees cannot be punished or rewarded based on whether they are for or against having a Union.”
 - b. Notify Bargaining Unit Employees via an Employee bulletin board or other form of regular communication, meeting, or both of the rules governing election campaigns set forth in subsection F., below. The communication shall not include any kind of campaigning or solicitation, but shall only inform Employees as to the process, and rules against coercion, discrimination and harassment as set forth in subsection F., below.
 - c. Seven (7) days before the election, Management shall send notices to those Employees eligible to vote, setting forth information about the date, time, and place of the election, and the purpose of the election. This reminder notice shall also be posted on any Employee bulletin board or by other form of regular communication. Said election notices shall be facially neutral and not espouse a position for or against Labor Organization representation and shall be in substantially the same form as the notice set forth in subsection E.4.a., above.

F. Election Rules Regarding Campaign, Communications, and Conduct.

1. Application of Unfair Labor Practice Provision. To preserve Employee freedom of choice, Management and the Labor Organization are prohibited from engaging in Unfair Labor Practices, as defined in section 3.03.09, below, that would undermine the validity of the bargaining agent election.
2. Misconduct by Employees.
 - a. Employee solicitation and discussions. The Employer may enforce its existing rules limiting solicitation and prohibit any unwelcome solicitation. The Employer may restrict Employees from discussing Labor Organization matters in public areas where the focus

of Employees is customer service or in any place where Employees are in direct contact with customers, clients, patrons, or other users of services provided by an Employer. When a Bargaining Unit at any gaming, entertainment, or recreation facility is at issue, said "public areas" shall include gaming areas, reception areas, restaurants, bars, as well as aisles and corridors in proximity to such places. The Employer shall not restrict Employees from discussing Labor Organization matters in non-public areas (such as Employee lunch or break rooms) as well as parking lots while on duty unless such discussions interfere with Employees' work or customer service. The Employer shall not restrict Employees from discussing Labor Organization matters in parking lots during off-duty time, such as breaks, meal times, and before and after work.

- b. Unwelcome conversations and harassment. An Employee's request to one or more co-workers to desist from soliciting them or talking to them about the Labor Organization must be honored. Persistence by someone who ignores a clearly articulated request to stop talking about the Labor Organization may be subject to any disciplinary rules of the Employer governing harassment.
- c. Intentionally misleading other Employees. Employees who recklessly or consciously disseminate inaccurate, misleading, or false information may be subject to discipline by the Employer for such behavior under any policies of the Employer. Subject to subsection I., below, a pattern or recurrence of such behavior may constitute grounds for delaying a vote until remedial measures have been taken, or, if discovered after the balloting, such conduct may be grounds for setting aside the election results, depending upon an Arbitrator's findings regarding the impact of such conduct on a sufficient number of Employees eligible to vote in the election.

G. Elections.

- 1. Voting time and place. The secret ballot election should be arranged by the Election Official so that eligible Employees have ample time to participate. Due consideration shall be given to Employees' varied work schedules. Polling shall occur in a convenient place for Employees to vote.
- 2. No solicitation on election day. There shall be no "campaigning" on election day, provided, however, that Employees may be reminded to vote.
- 3. Role of Election Official. The Election Official shall manage the voting process and count the ballots.
- 4. Voter eligibility list. Management and the Labor Organization shall have an ongoing obligation throughout the two (2) month pre-election interval to immediately raise and try to resolve, through agreement, questions about the eligibility of any Employee, who proposes to vote, prior to the election. On the day of the vote, if Management or the Labor Organization believes an individual on the list is not eligible to vote, such individual's ballot shall be marked as "challenged" by the Election Official unless the Election Official determines that the basis for the challenge was reasonably discernible prior to the time that the challenge is made. Anyone who is not on the list who attempts to vote shall automatically have their ballot marked as "challenged" by the Election Official.
- 5. Observers. Two non-supervisory Employees who are part of the bargaining group that is the subject of the election shall act as observers, on a volunteer and unpaid basis, to help the Election Official conduct the secret ballot voting process. Management and the Labor Organization shall each select one observer per shift (the same observer may be assigned to one, two, or all three shifts). Such individuals should be familiar with the Employees eligible to vote to assure the proper distribution of ballots to only eligible participating Employees. There shall be no solicitation or campaigning of any kind by observers. For an election involving Employees at the

Seven Cedars Casino, observers shall have a current, official casino identification card, allowing them to be present within the casino.

6. Polling place and process. The Election Official shall ensure that the voting process is orderly, with limited talking in the balloting area; that managerial and supervisory personnel of the Employer not be permitted to be in or near polling places; that no Employee votes by absentee ballot; and that there is no loitering or mingling at the polling location before or after voting.
7. Ballots.
 - a. Form. Ballots shall be simple and plainly worded. Employees shall be told not to sign or mark ballots, but to check off their preference relative to Labor Organization representation with a "✓" or an "x" in the designated box next to their choice, in substantially the following form:

“**BALLOT**
Do you want to be represented by the [name of Union] for purposes of collective bargaining? Please mark your choice in the appropriate box. YES NO”
 - b. Challenged ballots. A challenged ballot shall be placed in an envelope and sealed, with the Employee's name written on the outside of the envelope, and then placed in the ballot box by the Election Official.
8. Counting the vote. After the final polling period ends, Management and the Labor Organization shall confer with the Election Official to determine if there are any challenged ballots and whether any of the challenged ballots can be resolved. Any challenged ballot which remains challenged shall be saved and set aside without being counted. The Election Official shall then proceed with counting the votes. The Election Official shall open the ballot box and mingle the votes. The Election Official shall open each individual ballot, read it aloud, and then place it into stacks of "Yes" and "No" ballots. After each ballot is opened and properly stacked, the Election Official shall count all properly marked ballots, keeping track of the tally. The election observers shall be present throughout this process. Representatives of the parties may also be present.
9. Procedure if challenged ballots could affect outcome. If the number of the challenged ballots could affect the outcome of the vote, the eligibility of all challenged ballots shall be determined through the Dispute Resolution procedures under subsection I., below.
10. Official tally. Upon the completion of the tally, the Election Official shall deliver to Management and the Labor Organization an official tally, certified under oath, indicating the number of votes for each choice. Delivery may be made by hand, electronic mail, first class U.S. mail, or fax.
11. Objections; dispute resolution. Management and the Labor Organization shall have seven (7) Days following the completion of voting to file any objection or claim of violation of the provisions of this Chapter. Such notices shall set forth, in detail, the factual basis for the objection or claim and shall be delivered in writing to the Election Official with copies to the other party. Should the Election Official receive such a written objection or claim, the Election Official shall direct the parties to proceed to dispute resolution under subsection I.4., below. Said directive shall be sent to the Employer and the Labor Organization by U.S. first class mail, electronic mail, or fax.

H. Election Results.

1. If the Labor Organization achieves a simple majority in the election, Management and the Labor Organization shall proceed to engage in collective bargaining in accordance with this Chapter, provided that no election shall be considered valid unless it is by secret ballot vote of a majority of the Employees in a Bargaining Unit in accordance with the provisions of this Chapter.

2. If the Labor Organization fails to achieve a simple majority in the election, the results shall be treated as a choice for no Labor Organization representation for the subject Bargaining Unit for a period of twelve (12) months. During this twelve (12) month period, the Labor Organization shall not engage in solicitation or organizing relative to the subject Bargaining Unit. Any such solicitation or organizing may be subject to an action for injunctive relief by the Employer in the Tribal Court.

I. Dispute Resolution.

1. Generally. Any alleged violation or dispute involving any aspect of this Chapter, including but not limited to the inclusion or exclusion of particular Employees from the subject Bargaining Unit as well as violations of subsection F. or subsection G., above, may take the form of a written demand for arbitration, setting forth the facts alleged and the specific provision of this Chapter at issue. If the parties are unable to resolve the dispute within seven (7) days of service of any such demand, they shall proceed to resolve their dispute before an Arbitrator, drawn from the National Academy of Arbitrators. If the parties are unable to agree upon an Arbitrator, they shall so inform the Election Official, who shall then choose the Arbitrator from the National Academy of Arbitrators.
2. Disputes on whether the condition set forth in subsection C.1.a., above, is met shall be resolved by the Arbitrator after such hearing as the Arbitrator deems necessary to resolve the dispute. The Arbitrator shall issue a decision in writing, setting forth the rationale for the decision. The Arbitrator's decision shall be final and binding on the parties.
3. Disputes arising under subsection F., above, before scheduled vote; notice; good faith effort to resolve.
 - a. Should either Management or the Labor Organization become aware of perceived or potential violation of this Chapter prior to the election, they shall notify the other, in writing (via electronic mail or fax and via U.S. first class mail) of the charge and the basis for the charge. Management and the Labor Organization shall then make a good faith effort to resolve the alleged violation. This good faith effort shall include the parties providing unprivileged information relevant to the charge that is requested by the other party.
 - b. If such good faith efforts do not result in resolution of the charge, the objecting party may provide a copy of the charge to the Arbitrator, simultaneously serving the other party, and ask the Arbitrator to immediately convene a conference call to discuss the charge and (i) in what manner it can promptly be resolved without disturbing the election timetable (such as mediation, expedited proceedings; hearing via conference call; written submission; in-person meeting or other mutually agreeable format) and (ii) whether the circumstances of the charge merit postponing the election until such time as the charge is resolved by the Arbitrator or whether the election should proceed with the Arbitrator authorized to issue the appropriate remedy after the election has been conducted. The determination of the Arbitrator, as to how the charge will be addressed and whether it will delay the election, shall be made within twenty-four (24) hours of the conference, and shall be final and binding.
 - c. Failure by a party to raise an allegation in a reasonably timely manner may be treated by the Election Official or an appointed Arbitrator as a waiver.
4. Disputes arising after vote; good faith resolution of disputes. Should either Management or the Labor Organization assert an objection or claim under subsection G.11., above, the parties shall confer and attempt, in good faith, to resolve the objection or claim. Should the parties fail to resolve an alleged violation, the charging party may invoke Arbitration in accordance with subsection I.3.b., above, to resolve the party's claim.

5. Power and discretion of Arbitrator; written decisions; sanctions.
 - a. The Arbitrator shall be empowered to impose such remedial measures as the Arbitrator deems would resolve any dispute or fully ameliorate the impact of any conduct in violation of this Chapter, ordering remedies typically available under prevailing public sector labor relations law.
 - b. Allegations shall be provable by a preponderance of the evidence, and the rules of evidence applicable to trials in the Tribal Court shall apply.
 - c. The decision of the Arbitrator shall be in writing and issued as soon as possible following the close of a hearing, and, in any event, no more than fourteen (14) days following such hearing.
 - d. The Arbitrator's decision shall be final and binding on the Employer and the Labor Organization.

Section 3.03.06 Decertification Procedures

- A. Decertification Petition. An Employee, a licensed Business Agent of a Labor Organization or a registered Labor Organization may petition the Election Official to conduct an election for the decertification of a Labor Organization as the exclusive representative of Employees in a Bargaining Unit by filing a petition with the Election Official containing signatures (with dates) of thirty percent (30%) or more of the Employees in a Bargaining Unit stating that they no longer desire to be exclusively represented by that Labor Organization for the purposes of collective bargaining within the unit.
- B. Election Procedure. An election for decertification shall be governed by the same procedures for election as set forth in Section 3.03.05, above. A Labor Organization will be decertified unless a majority (50% plus one) of the eligible votes cast are in favor of continued representation by the Labor Organization.
- C. Timing of Election Relative to Existing Collective Bargaining Agreement. When there is a collective bargaining agreement in effect, a petition for a decertification election shall be made to the Election Official no earlier than one hundred twenty (120) days and no later than ninety (90) days before the expiration of the collective bargaining agreement. If a collective bargaining agreement has expired and a successor agreement has not become effective, a decertification petition may be filed at any time.
- D. When, within the time period prescribed in subsection C. of this section, a competing Labor Organization files a petition containing signatures of at least thirty percent (30%) of the Employees in a unit that can be considered an appropriate Bargaining Unit, a representation election, rather than a decertification election, shall be conducted in accordance with procedures set forth in Section 3.03.05, above.
- E. When an exclusive representative has been certified but no collective bargaining agreement is in effect, the Election Official shall not accept a request for a decertification election earlier than twelve (12) months subsequent to a Labor Organization's certification as the exclusive representative.

Section 3.03.07 Employees, Employers, Labor Organizations; Rights and Duties

- A. Employees; Freedom of Choice; Right to Work Without Union Membership or Dues Requirements.
 1. Employees shall have the right to engage in self-organization, to form, join, or assist Labor Organizations, to bargain collectively through representatives of their own choosing for the purpose of collective bargaining or other mutual aid or protection, except as prohibited by this Chapter, and shall also have the right to refrain from any and all of such activities.
 2. No Employee shall be required, as a condition of Employment within an Employer, to:
 - a. Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a Labor Organization;

- b. Become or remain a member of a Labor Organization;
- c. Pay dues, fees, assessments or other charges of any kind or amount to a Labor Organization;
- d. Pay to any charity or other third party, in lieu of such payments any amount equivalent to or a pro-rata portion of dues, fees, assessments or other charges regularly required of members of a Labor Organization; or
- e. Be recommended, approved, referred or cleared through a Labor Organization by means of a hiring hall or similar process.

Any such agreement shall be void and unenforceable.

- B. Employer; Labor Organization; Freedom of Speech. The expression of any opinion, view, fact, or the presentation of any argument for or against a Labor Organization by an Employer or a Labor Organization, or the dissemination of information, whether in oral, written, graphic, electronic or visual form, shall not constitute an prohibited labor practice under any provisions of this Chapter or other Tribal law, provided that such expression contains no promise of benefit or threat of reprisal, and is not clearly false.
- C. Labor Organization; Recognition by Employer. An Employer subject to this Chapter shall recognize a Labor Organization that has been certified by the Election Official as the exclusive representative of the majority of Employees in an appropriate Bargaining Unit.
- D. Labor Organization; Exclusive Bargaining Representative; Duty to Negotiate. A Labor Organization that has been certified by the Election Official as the exclusive bargaining representative of Employees in an appropriate Bargaining Unit shall have the right and duty to act for, fairly represent, and negotiate agreements covering all Employees in the unit without discrimination and without regard to their Labor Organization membership.
- E. Employee; Right to Directly Present Grievance to Employer. An Employee represented by a Labor Organization may at any time present a grievance directly to an Employer, and the Employer may address the grievance directly with the Employee without the intervention of a Labor Organization, provided that the resolution of the grievance may not violate the provisions of a collective bargaining agreement then in effect. The Employer shall notify the appropriate Labor Organization of the grievance and its resolution.
- F. Strikes by Employees Prohibited. Nothing in this Section shall constitute a grant of the right to Strike to Employees, and such Strikes are prohibited.

Section 3.03.08 Collective Bargaining; Exceptions

- A. Duty to Bargain Collectively. It is the duty of Employers and designated and duly certified exclusive representatives of Employees, through their bargaining agents (the "parties"), that are subject to this Chapter to meet at reasonable times and confer in good faith with respect to wages, hours, benefits, and other terms and conditions of employment, except for those matters that are excluded from collective bargaining under this Chapter or other Tribal law, and to execute a contract incorporating any agreement reached, if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession or agree to a proposal that would contradict or violate Tribal law.
- B. Exceptions; Tribal Gaming Regulatory Authority; Tribal Employment Preferences, Substance Abuse Testing, Management Prerogatives.
 - 1. Tribal Gaming Regulatory Authority. Nothing contained in this Chapter shall in any way diminish the authority of the Tribal Gaming Agency or any other authority, agency, commission or regulatory body established by the Tribe, to regulate the conduct of gaming within the Tribe's Territory and safeguard the integrity of gaming, including the prevention of illegal activities or

influences affecting gaming. Further, nothing in Tribal law or this Chapter shall require an Employer to bargain collectively concerning governmental regulatory issues, including, but not limited to:

- a. The enforcement of all rules, whether in laws, rules, ordinances, policies or procedures, with respect to the Tribe's gaming facilities , or the power to conduct investigations and hearings in respect thereto.
- b. Ensuring the physical safety of gaming operation patrons and employees, and any other person while in the Tribe's gaming facilities.
- c. Physically safeguarding assets transported to, within, and from the Tribe's gaming facilities.
- d. Preventing illegal activity from occurring within the Tribe's gaming facilities or gaming operations, including, but not limited to, the maintenance of Employee procedures and surveillance systems.
- e. Recording of any and all occurrences that deviate from normal operating policies and procedures, including the maintenance of a closed circuit surveillance system within the Tribe's gaming facilities.
- f. Consistent with gaming industry practice and in accordance with Tribal law, the establishment of Employee practices and procedures designed to permit detection of any irregularities, such as, but not limited to, cheating, theft, fraud, alcohol or drug use while on the premises, or other similar activities.
- g. The conduct of audits of the Tribe's gaming facilities.
- h. The specifications, rules, standards and procedures for each game.
- i. The number or types of games offered.

2. Any policies of an Employer or laws of the Tribe, giving preferences to citizens of the Tribe or other Native Americans with respect to hiring, promotion, or retention of employment with an Employer shall not be subject to collective bargaining.
3. Employers shall have the right to address the terms and conditions for testing Employees for alcohol and drug use, consistent with the laws of the Tribe, and such policies shall not be subject to bargaining with any Labor Organization.
4. Management decisions to hire, to layoff, to recall, or to reorganize duties shall not be mandatory subjects of bargaining, and in any negotiated agreement, the criteria negotiated by an Employer and an Exclusive Bargaining Representative to establish the order of layoff and recall may include, but may not be limited to, seniority.

C. Duration of Collective Bargaining Agreements. Collective bargaining agreements entered into under this Chapter shall have a duration of no more than three (3) years.

Section 3.03.09 Prohibited Practices; Employer; Labor Organization

A. Employers; Prohibitions. Employers who are subject to this Chapter are prohibited from:

1. Interfering with, restraining or coercing Employees (including use of a Lockout) in the exercise of their rights under Section 3.03.07, above.

2. Dominating or interfering with the formation, existence or administration of any Labor Organization licensed in accordance with the provisions of this Chapter.
3. Discriminating in regard to hiring, discharging, compensation, benefits, demotion, disciplining, suspending, barring or laying off because of an Employee's exercise of rights under Subsection 3.03.07, above.
4. Refusing to bargain collectively in good faith with a Labor Organization that has been designated under this Chapter as the exclusive representative of Employees in an appropriate Bargaining Unit.
5. Refusing to comply with the terms of a valid collective bargaining agreement that has been entered into between an Employer and the Exclusive Representative pursuant to this Chapter.

B. Labor Organizations; Prohibitions. Labor Organizations and their agents that are subject to this Chapter are prohibited from:

1. Interfering with, restraining or coercing Employees in the exercise of their rights under this Chapter or any other provision of Tribal law.
2. Interfering with, restraining or coercing an Employee in their selection of an Exclusive Representative for purposes of collectively bargaining or the adjustment of grievances, or their election not to be represented.
3. Discriminating against any Employee with regard to Labor Organization membership.
4. Interfering with, dominating or coercing an Employer to recognize a particular Labor Organization as the representative of employees if another Labor Organization has been certified as the Exclusive Representative of Employees in an appropriate Bargaining Unit under the provisions of this Chapter.
5. Refusing to bargain collectively in good faith with an Employer, if the Labor Organization has been designated as the Exclusive Representative of Employees in an appropriate Bargaining Unit under the provisions of this Chapter.
6. Refusing to comply with the terms of a valid collective bargaining agreement that has been entered into between an Employer and the Exclusive Representative pursuant to this Chapter.
7. Attempting to influence the outcome of any Tribal election in any manner, including making donations to any candidate or party; provided, however, that this prohibition does not apply to a Tribal citizen Employee acting in their individual capacity.
8. Causing, encouraging, instigating, or engaging in picketing on Tribal Territory.
9. Causing, encouraging, instigating, or engaging in a Strike or work slow-down of any kind.
10. Breaching the duty of fair representation as provided in Section 3.03.07 D., above.

C. Prohibited Practices Violations; Enforcement. A violation of any of the provisions of this section by a covered party shall constitute a prohibited labor practice, subject to enforcement as follows:

1. Violations by Employers of subsections 3.03.09 A.1.'s lockout prohibition and 3.03.09 A.5., related to a breach of a collective bargaining agreement, above, are subject to actions in the Tribal Court pursuant to Section 3.03.12, below.
2. Violations by Labor Organizations and their agents of subsections 3.03.09 B.6., breach of a collective bargaining; 3.03.09 B.7., attempting to influence tribal elections; 3.03.09 B.8., picketing

prohibition; 3.03.09 B.9., Strike or work slow-down prohibition; and 3.03.09 B.10., breach of duty of fair representation, above, are subject to actions in the Tribal Court pursuant to section 3.03.12, below.

3. All other violations of this section are subject to resolution pursuant to Section 3.03.11, below, provided, however, that alleged violations of this section occurring in the context of an election campaign of an exclusive bargaining representative shall be resolved solely in accordance with section 3.03.05 I., above.

Section 3.03.10 Procedures for Resolving Prohibited Practices Claims

- A. Generally. Claims of prohibited practices under section 3.03.09, above, may be brought by an Employer, an Employee, or a Labor Organization and shall be made, in writing, to the adverse party, setting forth the facts alleged and the specific provision of section 3.03.09 at issue. If the parties are unable to resolve the dispute within seven (7) days of service of any such claim, and such dispute does not give rise to a direct action in the Tribal Court pursuant to section 3.03.09 C., the parties shall proceed to resolve their dispute before an Arbitrator, drawn from the National Academy of Arbitrators. If the parties are unable to agree upon an Arbitrator, they shall so inform the Election Official, who shall then choose the Arbitrator from the National Academy of Arbitrators.
- B. Arbitration.
 1. The Arbitrator shall conduct a hearing at a location agreed to by the parties or, failing agreement, at a location chosen by the Arbitrator that is convenient to the parties. The Arbitrator may administer oaths, may issue subpoenas (under the same terms that subpoenas may issue from the Tribal Court), and may petition the Tribal Court to enforce any subpoena compelling the attendance of witnesses and the production of records, subject to such protection order any party may obtain from the Tribal Court to protect against the disclosure of confidential or privileged information.
 2. The selected Arbitrator shall apply the law of the Tribe to resolve the claim, but in the absence of such law, the Arbitrator shall apply persuasive authority governing public sector labor relations.
 3. The Arbitrator shall issue a decision in writing, setting forth the rationale for the decision, which shall be mailed to the parties, return receipt requested within thirty (30) days of the completion of arbitration. Except as provided by subsection 3.03.10 C., below, the Arbitrator's decision shall be final and binding upon the parties.
 4. Unless otherwise agreed to by the parties, in cases where the Employer and the Exclusive Bargaining Representative are adversaries, if the Arbitrator's decision is in favor of the Employer on every issue, the Exclusive Bargaining Representative shall pay the fee of the Arbitrator (and the Arbitrator's decision shall so provide), and if the Arbitrator's decision is in favor of the Exclusive Bargaining Representative on every issue, the Employer shall pay the fee of the Arbitrator (and the Arbitrator's decision shall so provide). Otherwise, the Arbitrator shall allocate the cost of the Arbitrator's services between the parties in accordance with the issues on which they have prevailed or not prevailed, and they shall pay their respective share of the Arbitrator's fee in accordance with the Arbitrator's decision.
- C. Judicial Review.
 1. A party who claims that the Arbitrator's decision is in violation of, or conflicts with, the laws of the Tribe or is procured by corruption, fraud or other undue or illegal means, may, within ten (10) days of receipt of the Arbitrator's decision, bring a petition for review of the Arbitrator's decision to the Tribal Court.

2. In any such review, the Court shall be limited to i) review for errors of law and ii) the issuance of an order affirming the Arbitrator's decision or correcting it for legal error as is necessary to render it in compliance with the law of the Tribe.
3. Should the Court find that a party's petition for review is frivolous or is filed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees, costs incurred by the other party as a result of the petition and court costs.
4. The decision of the Tribal Court may be appealed to the Tribal Court of Appeals in accordance with the rules of procedure for ordinary appeals in the Tribal Code.

D. Time Limits. Prohibited practice claims, other than those giving rise to an action in the Tribal Court under subsection 3.03.09 C., above, must be made under subsection 3.03.10 A., above, no later than ninety (90) calendar days after the alleged action constituting the alleged prohibited practice or be otherwise barred. Claims for breach of collective bargaining agreements under subsections 3.03.09 A.5. or 3.03.09 B.6., above, and for breach of duty of fair representation under 3.03.09 B.10., above, must be filed in the Tribal Court within one hundred eighty (180) calendar days of the alleged breach or be otherwise barred.

E. Charges of Discrimination by Employees. An Employee who believes they have been subjected to unlawful discrimination in violation of section 3.03.09 A.3. or section 3.03.09 B.3., above, shall have the right to adjudicate such a claim as a prohibited practice claim before an Arbitrator in accordance with the procedures, cost allocations, and time limitations set forth in subsections 3.03.10 A. through C., above, provided that for claims under section 3.03.09 A.3., above, a claim shall not proceed before an Arbitrator unless the Employee has first sought to resolve the claim by bringing it before the:

1. Employer's human resources department and if there is no human resources department, the Tribe's Human Resources Department,
2. Tribe's CEO, and
3. Tribal Council (in that order),

unless the discrimination claim involves any of those three entities in which case the claim need not be brought before such entity.

F. Privileged Information. In submitting to the procedures under this section, no Employer shall be required to disclose information that it deems confidential without a protective order issued by the Tribal Court or a confidentiality agreement entered into by the parties.

Section 3.03.11 Procedures for Resolving Collective Bargaining Impasses

A. Agreement to Resolve Negotiation Impasse. As the first step in the performance of their duty to bargain, Management and the Exclusive Bargaining Representative shall endeavor to agree upon Impasse procedures. Such procedures shall define the conditions under which an Impasse exists. Any such agreement with respect to the resolution of Impasse issues shall not conflict with the provisions of this Chapter. Unless mutually agreed to by the parties, the Impasse procedures of this section shall not be invoked during the pendency of any charge regarding the required scope of good faith bargaining under Section 3.03.08, above.

B. Mediation. Following the commencement of negotiations, if Management and the Exclusive Bargaining Representative reach an Impasse, and they do not otherwise agree to proceed directly to arbitration, they

shall jointly retain a Mediator to assist them in resolving the Impasse issues. In the absence of an agreement on the Mediator, either party may request the Election Official to appoint a Mediator, and the Election Official's appointment of such Mediator shall be binding on the parties. Any Mediator so appointed by the Election Official shall be experienced in labor mediation, and shall be drawn from lists of such mediators maintained by the American Arbitration Association. It shall be the function of the Mediator to bring the parties together to effectuate a settlement of the dispute, but the Mediator may not compel the parties to agree. Any information disclosed by either party to the Mediator in the performance of their duties is privileged and shall be maintained in confidence by the Mediator.

C. Arbitration. If the parties fail to resolve their disputes within thirty (30) days after the completion of mediation, they may mutually agree in writing to proceed to binding arbitration. Absent agreement, either party may request that the Impasse issues proceed to resolution by binding arbitration, and such request shall be served upon the other party, in writing, return receipt requested.

1. Within ten (10) days of the parties' written agreement or the receipt by one party of a request for binding arbitration, the parties shall jointly select an Arbitrator, drawn from the National Academy of Arbitrators, who shall not be the same individual who served as the Mediator (if any). If the parties are unable to agree upon an Arbitrator, they shall so inform the Election Official, who shall then choose the Arbitrator from the National Academy of Arbitrators.
2. The submission of the Impasse items to the Arbitrator shall be limited to those issues upon which the parties have not reached agreement. Within ten (10) days of the appointment of the Arbitrator, Management and the Exclusive Bargaining Representative shall each submit to the Arbitrator their respective recommendations for settling the dispute on each unresolved issue, and the draft collective bargaining agreement to the extent that agreement has been reached.
3. The Arbitrator shall conduct a hearing at a location agreed to by the parties or, failing agreement, at a location chosen by the Arbitrator that is convenient to the parties. The Arbitrator may administer oaths, may issue subpoenas (under the same terms that subpoenas may issue from the Tribal Court), and may petition the Tribal Court to enforce any subpoena compelling the attendance of witnesses and the production of records, subject to such protection order any party may obtain from the Tribal Court to protect against the disclosure of confidential or privileged information. The Arbitrator shall issue a decision on each issue remaining at Impasse not later than thirty (30) days from the close of hearing.
4. In issuing said decision, the Arbitrator shall redact any factual material deemed confidential pursuant to an agreement of the parties or pursuant to a Tribal Court protective order issued on behalf of a party.
5. The parties may continue to negotiate all offers until an agreement is reached or a decision is rendered by the Arbitrator.
6. The Arbitrator shall consider, in addition to any other relevant factors, the following factors insofar as they are readily discernible and not subject to privilege from disclosure:
 - a. Any past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
 - b. Comparison of wages, hours and conditions of employment of the involved Employees with those of other Employees doing comparable work in facilities of comparable size geographic location, and economic volume, giving consideration to factors peculiar to the area and the classifications involved.
7. Unless the parties agree otherwise, the Arbitrator shall select the most reasonable offer of the parties' respective final offers on each remaining Impasse item and provide a written summary of the selected provisions to each party, return receipt requested.

8. Said selections of the Arbitrator shall be binding upon the parties, provided, however, that, subject to subsection 3.03.11 H., below, provisions related to the Employer's obligation to pay wages, salaries, bonuses, insurance premiums, pension or retirement contributions shall not be binding upon the parties.

D. **Privileged Information.** In submitting to the procedures for Impasse resolution under this section, no Employer shall be required to disclose information that it deems confidential without a protective order issued by the Tribal Court or a confidentiality agreement entered into by the parties.

E. **Costs of Impasse Resolution Proceedings.** Unless otherwise agreed to in writing, the Employer and the Exclusive Bargaining Representative shall share equally all fees and costs of mediation and arbitration provided for by this section.

F. **Status of Terms and Conditions of Employment Pending Impasse Resolution.** At all times when an Impasse remains unresolved, the status quo regarding wages and working conditions shall remain in effect even if a prior collective bargaining agreement governing the Bargaining Unit has expired. In such event, the status quo or the terms of any prior collective bargaining agreement shall continue in force and effect, until a new agreement shall be executed; provided, however, that for the purposes of this paragraph, the "status quo," or "continuing terms" shall not include increases to wages, increases in Employer contributions to insurance, or increases in Employer contributions to pensions.

G. **Tribal Court Review.**

1. A party who claims that a decision of the Arbitrator is in violation of, or conflicts with, the laws of the Tribe or is procured by corruption, fraud or other undue or illegal means, may, within ten (10) days of receipt of the Arbitrator's decision, bring a petition for review to the Tribal Court.
2. In any such review, the Tribal Court shall be limited to i) review for errors of law and ii) the issuance of an order affirming the Arbitrator's decision or correcting it for legal error as is necessary to render it in compliance with the laws of the Tribe.
3. Should the Court find that a party's petition for review is frivolous or filed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees and costs incurred by the other party as a result of the petition.

H. **Limited Review by Tribal Council of Economic Terms Recommended by the Arbitrator Upon Rejection by Employer.** If an Employer rejects an Arbitrator's decision regarding the Employer's obligation to pay wages, salaries, bonuses, insurance, pension or retirement contributions, it shall so inform the Exclusive Bargaining Representative and the Tribal Council in writing, within ten (10) Days of receipt of the Arbitrator's decision.

Thereafter, the Tribal Council shall schedule an executive session meeting at which the Employer shall appear and show cause for why it has rejected the Arbitrator's decision regarding wages, salaries, bonuses, insurance, pension or retirement contributions.

In advance of the Tribal Council meeting, the Employer shall submit to the Tribal Council the decision of the Arbitrator, together with a written statement setting forth the reasons for its rejection of the decision, and it shall, at the same time, mail a copy of said written statement to the Exclusive Bargaining Representative. In advance of the Tribal Council meeting, the Exclusive Bargaining Representative shall be given the opportunity to submit a written statement setting forth the reasons why the Arbitrator's decision is appropriate and, upon submission of such a written statement to the Tribal Council, the Exclusive Bargaining Representative shall mail a copy to the Employer.

At the scheduled meeting of the Tribal Council, both the Employer and the Exclusive Bargaining Representative shall have the opportunity to be heard. The Tribal Council shall decide only whether:

1. The Employer's final offer with respect to the Impasse over wages, salaries, bonuses, insurance, pension or retirement shall become part of the parties' collective bargaining agreement, or
2. The Arbitrator's decision on any such Impasse issue shall become part of the parties' collective bargaining agreement.

Section 3.03.12 Tribal Court Enforcement Authority

- A. Strikes and Picketing: Civil Actions, Penalties, Decertification and Exclusion. Any Employee, Labor Organization, or agent of any Labor Organization who violates, or seeks to violate, the prohibition against Strikes or picketing under this Chapter shall be subject to an action by the affected Employer for declaratory and injunctive relief before the Tribal Court. Any Labor Organization found by the Tribal Court to be in violation of the prohibition against Strikes or picketing shall be deemed decertified from representing any Employees and shall further be deemed not legally entitled to be present within Tribal Territory and be subject to exclusion on a temporary or permanent basis under such terms as the Tribal Court may impose. Upon issuing any order finding such violation, the Tribal Court may award attorney fees and costs to the Employer, and the Employer shall have the right to suspend or terminate the employment of Employees found by the Tribal Court to have been instrumental in the violation.
- B. Lock Outs: Civil Actions. An Employee or Labor Organization shall have the right to seek declaratory and injunctive relief before the Tribal Court against Employers to enforce the prohibition against Lock Outs set forth in subsection 3.03.09 A.1., above. Upon a finding by the Tribal Court that an Employer has violated that subsection, the Tribal Court may award such Employee or Labor Organization attorney fees and costs.
- C. Unlawful Attempt to Influence Tribal Elections. A Labor Organization that attempts to influence the outcome of Tribal elections in violation of subsection 3.03.09 B.7., above, shall be subject to an action before the Tribal Court by the Tribe, through legal counsel, for declaratory and injunctive relief. Any Labor Organization found by the Tribal Court to have violated that subsection shall be deemed decertified from representing any Employees and shall further be deemed not legally entitled to be present within Tribal Territory and subject to exclusion on a temporary or permanent basis under such terms as the Tribal Court may impose.
- D. Licenses: Civil Actions, Penalties, Exclusions. Any Labor Organization or bargaining agent that:
 1. Engages in activities that require a license under this Chapter, without such a license, or
 2. Violates the terms of a license issued in accordance with this Chapter, or
 3. Violates section 3.03.04 G., above,
shall be subject to an action before the Tribal Court by the Tribe or its Union Licensing Authority, through legal counsel, for declaratory and injunctive relief.

Any Labor Organization or bargaining agent found by the Tribal Court to have violated the licensing requirements of this Chapter or the terms of a license may be subject to a civil penalty, not to exceed Five Thousand Dollars (\$5,000.00). Any Labor Organization or bargaining agent found by the Tribal Court to be in violation the licensing requirements of this Chapter or the terms of a license issued under this Chapter may be deemed not legally entitled to be present within Tribal Territory and subject to exclusion on a temporary or permanent basis under such terms as the Tribal Court may impose. Insofar as such Labor Organization has been certified as an Exclusive Bargaining Representative of an Employee Bargaining Unit, it may be deemed decertified as a result of such violation upon a finding by the Tribal Court that its actions constitute an egregious violation of the laws, policies, customs or values of the Tribe.
- E. Breach of Collective Bargaining Agreements. Claims for breach of a collective bargaining agreement entered into by an Employer and an Exclusive Bargaining Representative under this Chapter may be brought before the Tribal Court.

F. Breach of Duty of Fair Representation. Claims for breach of the duty of fair representation provided by subsection 3.03.07 D., above, may be brought before the Tribal Court.

Section 3.03.13 Limited Waiver of Sovereign Immunity

The Tribe hereby waives its sovereign immunity, for itself and Tribal Entities, solely for actions and remedies under sections 3.03.05 I.; 3.03.10; 3.03.11; 3.03.12 B.; and 3.03.12 E..

Section 3.03.14 Interpretative Guidance

The provisions of this Chapter shall be construed consistently with the laws of the Tribe and, if not in conflict with the laws of the Tribe, or prevailing public sector labor relations laws.

Chapter 3.04 Integrity of Laws Provisions

Sections:

- Section 3.04.01 Findings for this Chapter**
- Section 3.04.02 Purpose for this Chapter**
- Section 3.04.03 Scope and Jurisdiction for this Chapter**
- Section 3.04.04 Definitions for this Chapter**
- Section 3.04.05 Prohibition of Employer Testimony and Documents Disclosure in External Proceedings When Employees Fail to Exhaust Tribal Remedies**
- Section 3.04.06 Actions for Injunctive Relief to Prevent Disclosures**
- Section 3.04.07 Authority of the Tribal Court to Resolve Jurisdictional Disputes**

Section 3.04.01 Findings for this Chapter

- A. The Tribal Council has enacted Chapter 3 of this title pursuant to its inherent sovereign authority.
- B. In providing for procedures, rights, and remedies for Employers, Employees, and Labor Organizations under Title 3, including those afforded through actions in the Tribal Court, the Tribal Council has carefully considered (and continues to consider) the values and interests of the Tribe in order to establish fair processes, rights, and remedies for the parties and interests at stake. This has included careful consideration of, amongst other things:
 - 1. The time, costs, and inconvenience of parties and witnesses involved in proceedings to resolve controversies or to establish rights and remedies provided by Chapter 3 of this title;
 - 2. The need to protect the Tribe and Tribal Entities from undue burdens from litigation, while according fair treatment to Employees within those operations; and
 - 3. Methods to resolve disputes through early settlement, including mediation.
- C. The integrity of Chapter 3 of this title is threatened if parties bypass the procedures, rights, and remedies established therein and seek, instead, to invoke procedures or remedies outside of the Tribe's law and jurisdiction for controversies that Chapter 3 of this title is designed to address and resolve in accordance with the unique public policies of the Tribe. Investigations or proceedings directed at Employers, apart from those provided for by Chapter 3 of this title, which seek to address controversies or rights covered by that chapter, require the expenditure of time and resources to the detriment of those involved and, in many instances, to the Tribe or its Tribal Entities. Such investigations or proceedings also threaten duplicative witness testimony and production of documents already available, or undertaken, pursuant to the provisions of said chapter.

Section 3.04.02 Purpose

The purpose of this Chapter is to protect the integrity of the procedures, rights, and remedies established by Chapter 3 of this title as described in the foregoing findings.

Section 3.04.03 Scope; Jurisdiction

This Chapter applies to Employers who employ Employees within the Territory of the Tribe. The Tribal Court shall have exclusive jurisdiction over any actions under this Chapter.

Section 3.04.04 Definitions

The definitions set forth in Chapter 3 of this title shall apply to the terms used in this Chapter unless the context clearly indicates otherwise.

Section 3.04.05 Prohibition of Employer Testimony and Documents Disclosure in External Proceedings When Employees Fail to Exhaust Tribal Remedies

- A. Disclosures only with approval of Tribal Council. Except with the express, written approval of the Tribal Council, as evidenced by a formal resolution, Employers are prohibited from giving testimony or witness

statements of any kind or producing documents or other information of any kind in response to requests or subpoenas issued by outside authorities, other than those authorities expressly granted powers under Chapter 3 of this title, engaged in investigations or proceedings on behalf of current or former Employees or any Labor Organization, when such Employees or Labor Organizations have failed to exhaust their remedies provided by any provisions of Chapter 3 of this title.

B. Examples of failure to exhaust remedies. For the purposes of subsection A., above, Employees or Labor Organizations shall be deemed to have "failed to exhaust their remedies provided by any provisions of Chapter 3 of this title" if they have failed to exhaust the procedures, rights, remedies, and appeals (including opportunities to challenge jurisdiction) available under Chapter 3 of this title or the procedures of the Tribal Court, and have, instead, invoked investigations or proceedings outside of those authorized by Chapter 3 of this title to:

1. Address controversies or rights covered by Title 3, such as unfair labor practices governed by sections 3.03.09 and 3.03.10 of Chapter 3 of this title and proceedings for enforcement of the Tribe's wages and hours laws under the Tribal Code, or
2. Challenge the assertion of jurisdiction under Chapter 3 of this title.

Section 3.04.06 Actions for Injunctive Relief to Prevent Disclosures.

The Tribal Court shall have authority to grant preliminary and permanent injunctions, upon motion of the Tribal Council, to prevent Employer disclosures in violation of subsection 3.04.05, above, and the sovereign immunity of Employers from such actions is hereby waived.

Section 3.04.07 Authority of the Tribal Court to Resolve Jurisdictional Disputes.

In any case or proceeding commenced under Chapter 3 of this title, where the regulatory or adjudicatory jurisdiction of the Tribe or the Tribal Court is called into question, the Tribal Court shall have authority to address the jurisdictional question by means of a declaratory judgment.

Chapter 3.05 Prevailing Wage

Sections:

Section 3.05.01 Title of Chapter

Section 3.05.02 Purpose and Authority of Chapter

Section 3.05.03 Scope

Section 3.05.04 Definitions

Section 3.05.05 Payment of Prevailing Wage Required

Section 3.05.06 Determination of Tribal Prevailing Wage

Section 3.05.07 Employer Requirements

Section 3.05.08 Tribal Court Action and Remedies

Section 3.05.09 Sovereign Immunity

Section 3.05.01 Title of Chapter

This Chapter shall be known and may be cited as the Jamestown S'Klallam Prevailing Wage Code.

Section 3.05.02 Purpose and Authority of Chapter

The purpose of this Chapter is to codify the Tribe's authority to determine area prevailing wages to the extent permitted under federal law so that the federal Davis-Bacon Act (40 U.S.C. § 3141 et seq.) area prevailing wage determinations will not apply to a Covered Agreement, as defined below.

Section 3.05.03 Scope

This Chapter shall cover Tribal construction projects funded under programs of the Federal Government that would normally be covered by the Federal Davis-Bacon Act.

Section 3.05.04 Definitions

- A. "Covered Agreement" means any contract or agreement using federal funds obtained by the Tribe for construction that would normally be covered under the Davis-Bacon Act;
- B. "Council" shall mean the Tribal Council, the governing body of the Tribe;
- C. "Construction" includes alteration, maintenance or repair, including, but not limited to, painting and decorating of buildings;
- D. "Contractor" means anyone who is awarded a contract or agreement using federal funds subject to the Davis-Bacon Act, or is otherwise subject to the Davis-Bacon Act;
- E. "Davis-Bacon Act" means 40 U.S.C. § 3141 et seq., as amended from time-to-time;
- F. "Prevailing Wage(s)" shall mean the wages, as determined by the Council, or its designee, prevailing on the Tribe's Reservation or within the Tribe's service area for each existing and future categories of employees including, but not limited to: architects, technicians, engineers, draftsmen, laborers, mechanics, contractors, and subcontractors. The above list of employees requiring payment of Prevailing Wages does not apply to any unpaid volunteer, intern or any volunteer who receives a nominal fee, expenses, or reasonable benefits and who is not otherwise employed at any time in the construction, including construction of affordable housing projects;
- G. "Subcontractor" means anyone who is awarded a portion of a contract using federal funds by a general or prime contractor, or is otherwise subject to the Davis-Bacon Act;
- H. "Tribe" means the Jamestown S'Klallam Tribe; and
- I. "Tribal Court" shall mean Jamestown S'Klallam Tribal Court.

Section 3.05.05 Payment of Prevailing Wage Required

Any agreement for Tribal construction projects, funded by programs of the federal government, to which the Davis-Bacon Act would normally apply, shall contain a provision requiring not less than Prevailing Wages, as determined by the Tribe, to be paid to the Contractor, Subcontractor, or other covered employees.

Section 3.05.06 Determination of Tribal Prevailing Wage

- A. The Tribe may periodically undertake or commission a wage survey to determine the Prevailing Wage as follows:
 1. The Tribe shall obtain wage rates from available sources of each class of profession or trade and shall establish the Prevailing Wages that are comparable to survey data;
 2. The Tribe shall retain, for not less than three years, the survey report and the wage rates reported by each source;
 3. Wage rates shall include the base hourly rate and may include the value of benefits paid to or on behalf of employees based upon eligibility; and
 4. Any survey commissioned by the Council, or its designee, of Prevailing Wages shall contain a list of each covered class of profession, trade and trainees and the hourly rate for each and the dates the data was collected for the schedule of Prevailing Wages.
- B. The Council may delegate the conducting and establishment of the schedule of Prevailing Wages under this Chapter to any outside agency, or agency of the Tribe, provided the Council shall approve the schedule of Prevailing Wages by motion or resolution before they become effective.

Section 3.05.07 Employer Requirements

- A. A Covered Agreement for construction using federal funds shall contain a provision requiring not less than Prevailing Wages, as determined by the Tribe. Each employer, including the Tribe, its departments and programs, Contractors, and Subcontractors, shall pay Prevailing Wages and shall maintain certified payroll records reporting the hourly rates paid to each employee. Any employee falling under a Covered Agreement shall be entitled to inspect and obtain a copy of their certified payroll record during regular office hours;
- B. The Tribe shall provide every potential employer to be subject to a Covered Agreement, at the time bids or proposals are solicited, with a copy of the most current schedule of Prevailing Wages; and
- C. At all times each employer under a Covered Agreement shall post at the job site and its principal office a copy of the schedule of Prevailing Wages furnished by the Tribe.

Section 3.05.08 Tribal Court Action and Remedies

- A. Any Covered Agreement may contain a provision stating the remedies for failure to pay Tribally determined Prevailing Wages ("Wage Penalty") or failing to maintain records ("Records Penalty");
- B. Any adversely affected employee covered under this Chapter, may bring an action in the Tribal Court against any covered employer to recover the amount of the Wage or Records Penalty and may receive reasonable attorney's fees under this Chapter. A decision of the Tribal Court may be appealed to the Jamestown S'Klallam Tribal Court of Appeals to the extent otherwise allowed under Tribal law. There shall not be a right of appeal to any other court nor is a cause of action created hereby for a proceeding in any other court, proceeding or tribunal;
- C. No action under this Chapter shall be allowed more than two (2) years after the date such wages became due and payable under a Covered Agreement; and
- D. Any adversely affected employee covered under this Chapter shall first be required to exhaust all administrative remedies prior to bringing an action in Tribal Court under this Chapter.

Section 3.05.09 Sovereign Immunity

This Chapter provides only those remedies and damages identified above and none other. Its provisions shall not be construed or interpreted to grant jurisdiction to any other court, except Tribal Court, over the Tribe or over individuals acting in their official Tribal capacity. Nothing in this Chapter shall be construed to be a waiver of any Tribal sovereign immunity except as specifically and expressly provided in this Chapter and other titles of the Tribal Code. Nothing herein shall act to waive sovereign immunity for injunctive or declaratory relief nor for monetary damages or penalties, however characterized or described, beyond reasonable attorney's fees and recovery against the employer, without any interest or penalties, of the Wage Penalty as defined above.

Chapter 3.06 **Tribal Family Medical Leave Protection**

Sections:

Section 3.06.01 Purpose; Authority and Intent

Section 3.06.02 Scope; Jurisdiction

Section 3.06.03 Federal Law Adopted as the Law of the Tribe

Section 3.06.04 Sovereignty Retained

Section 3.06.05 Tribal Family Medical Leave Requirement

Section 3.06.06 Definitions

Section 3.06.07 Employee Benefits Protection

Section 3.06.08 Effect on Existing Employee Benefits

Section 3.06.09 Prohibited Acts

Section 3.06.10 Implementation

Section 3.06.11 Limited Waiver of Sovereign Immunity

Section 3.06.12 Right to File a Complaint; Available Remedies; Right to Bring a Cause of Action; Form of Complaint

Section 3.06.13 Effective Date; Severability; Amendments

Section 3.06.01 Purpose; Authority and Intent

The Tribe, as an exercise of its inherent governmental authority, adopts this Chapter as a sovereign nation. The purpose of this Chapter is to entitle eligible Employees to take reasonable leave for medical reasons and to accomplish this purpose in a manner that accommodates the legitimate interests of Employers in accordance with the values and traditions of the Tribe.

Section 3.06.02 Scope; Jurisdiction

This Chapter applies to Employers who employ Employees within the Territory of the Tribe. The Tribal Court shall have exclusive jurisdiction over any actions under this Chapter.

Section 3.06.03 Federal Law Adopted as the Law of the Tribe

Subject to the express retention of tribal sovereignty stated in section 4, the Tribe hereby adopts the provisions of the Federal Family Medical Leave Act (“FMLA”) as the law of the Tribe, provided that insofar as there is any conflict between the terms of this Chapter and the FMLA, this Chapter shall control.

Section 3.06.04 Sovereignty Retained

By incorporating the provisions of the FMLA as the law of the Tribe by reference in this Chapter, the Tribe does not waive the Tribe’s or any Tribal Entity’s sovereign immunity from suit for any claims or process under the FMLA; nor does the Tribe consent to the applicability of the FMLA to Employers.

Section 3.06.05 Tribal Family Medical Leave Requirement

A. Leave Requirement - Every Employee (1) who has been employed by the same Employer for at least 12 consecutive months and (2) who has worked for such employer for at least 1,250 hours of service during the previous 12 months is entitled to up to 12 work weeks of unpaid Tribal Family Medical Leave in the 12-month period designated by the Employer.

An eligible Employee who is the spouse, son, daughter, parent, or next of kin of a covered service-member shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the service-member with a serious injury or illness, as defined in Section 3.06.06, below. The leave described in this paragraph shall only be available during a single 12-month period.

B. Authorized Reasons for Tribal Family Medical Leave - Eligible Employees may use Tribal Family Medical Leave for one or more of the following reasons:

1. Because of the birth of a son or daughter of the employee, in order to care for such son or daughter;

2. Because of the placement of a son or daughter with the employee for adoption or foster care;
3. In order to care for the spouse, or a son, daughter, or parent, of the Employee, if such spouse, son, daughter, or parent has a serious health condition;
4. Because of a serious health condition that makes the Employee unable to perform their job functions;
5. Because of any qualifying exigency, as defined in Section 3.06.06, below, arising out of the fact that the spouse, or a son, daughter, or parent of the Employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the U.S Armed Forces; or
6. To care for a covered service-member with a serious injury or illness if the Employee is the spouse, son, daughter, parent, or next of kin of the covered service-member.

The entitlement to leave under subparagraphs 1. and 2., above, for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement. The right to take leave under this Chapter applies equally to male and female Employees. Thus a father, as well as a mother, can take family leave for the birth, placement for adoption, or foster care of a child provided that they are "caring" for the child.

C. Nature of Leave Requirement - Tribal Family Medical Leave granted under this Chapter is unpaid leave. An eligible Employee may elect, or an employer may require the employee, to substitute any accrued paid time off (including vacation leave, sick leave, medical leave bank, extended illness bank, and floating holidays) of the Employee for leave provided under this section.

D. Conditions - The following conditions apply to Tribal Family Medical Leave granted under this section:

1. Notice. The Employee must give at least 30 calendar days' notice of the intended date upon which the medical leave will commence and terminate, unless prevented by a medical emergency from giving that notice. Where it is not possible for an Employee to provide 30 calendar days' notice, the Employee must provide notice to the employer as soon as possible.

The following requirements shall apply with regard to the Employee's notice:

- a. The Employee's notice shall specify the reasons for the requested leave, shall state the anticipated duration of the leave, and shall state the anticipated start date of the leave;
- b. The Employee's notice shall be directed to Human Resources; and
- c. In any case in which the leave is due to the covered active duty of a family member, the Employee shall provide such notice as soon as possible;

2. Certification. The employer may require that requests for leave for the Employee's own serious health condition or to care for a family member's serious health condition be supported by a certification issued by a health care provider. The health care provider shall not have a familial relationship with the Employee or have a close working relationship with the Employee as determined at the discretion of the medical director. The employer may also require that an Employee's leave because of a qualifying exigency or to care for a covered service-member with a serious injury or illness be supported by a certification.

Upon request of the employer, the Employee shall provide, in a timely manner, a certification containing all the following information:

- a. The date on which the serious health condition commenced;

- b. The probable duration of the condition;
- c. The appropriate medical facts within the knowledge of the health care provider regarding the condition;
- d. For purposes of leave to care for a family member, (i) a statement that the eligible Employee is needed to care for the son, daughter, spouse, or parent and (ii) an estimate of the amount of time that such Employee is needed to care for the son, daughter, spouse, or parent; and
- e. For purposes of leave for the Employee's own serious health condition, a statement that the Employee is unable to perform the functions of the position of the Employee;
- f. In the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, (i) the dates on which such treatment is expected to be given and (ii) the duration of such treatment;
- g. In the case of certification for intermittent leave, or leave on a reduced leave schedule, for the Employee's own serious health condition, (i) a statement that the particular leave schedule is medically necessary and (ii) the expected duration of the leave schedule;
- h. In the case of certification for intermittent leave, or leave on a reduced leave schedule, for the Employee to care for another with a serious health condition, (i) a statement that the particular leave schedule is necessary for the care of the son, daughter, parent, or spouse with the condition, or (ii) a statement that the leave will assist in their recovery, and the expected duration of the leave schedule; and
- i. In the case of leave taken to care for a covered service-member, a certification completed by an authorized health care provider of the covered service-member (Department of Defense provider, Veterans Affairs provider, TRICARE provider), (i) a statement as to whether the injury or illness was incurred in the line of duty on active duty, (ii) the approximate date on which the serious injury or illness commenced, or was aggravated, and its probable duration, (iii) a statement or description of appropriate medical facts regarding the health condition for which Tribal Family Medical Leave is requested, (iv) information sufficient to establish that the covered service-member is in need of care;
- j. In the case of leave taken because of a qualifying exigency, (i) a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered activity status, and the dates of the military member's covered active duty service, and (ii) a signed certification from the Employee setting forth:
 - the facts regarding the qualifying exigency for which leave is requested,
 - the approximate date on which the qualifying exigency commenced or will commence,
 - the beginning and end dates for such leave,
 - if leave will be taken intermittently, an estimate of the frequency and duration of the qualifying exigency,
 - if the qualifying exigency involves meeting with a third party, appropriate contact information for the individual whom the Employee is meeting and a brief description of the purpose of the meeting, and
 - if the qualifying exigency involves rest and recuperation leave, a copy of the military orders, which indicates that the military member has been granted such leave and the dates of the leave.

If an Employee fails to provide the required certification, or fails to cure any defects (incomplete or vague entries) in a required certification within 7 calendar days after notice by the employer of

such defects, then the employer shall be authorized to deny the leave request made by the Employee.

3. Second Opinions. In any case in which the employer has a reasonable basis to doubt the validity of the medical certification provided, the employer may require, at its own expense, that the Employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection 2. of this section for such leave. A health care provider designated or approved under this subsection 3. shall not be employed on a regular basis by the employer. In the event that the second opinion differs from the opinion in the original certification, the employer and Employee shall jointly designate a third health care provider to provide a third opinion, which opinion shall be considered final and binding on the Employee and the employer.
4. Recertification. The employer may require the Employee to obtain re-certifications on a reasonable basis.
5. Obligation to Schedule Medical Treatment with Employer's Interests in Mind. In every case in which the necessity for leave is foreseeable based on planned medical treatment, the Employee shall make a reasonable effort to schedule the treatment so as not to disrupt the operations of the employer. This requirement applies whether the leave is necessary for the Employee's own serious health condition or to care for a family member with a serious health condition.
6. Intermittent or Reduced Scheduled Leave. The following conditions apply to leave taken on an intermittent basis or on a reduced schedule:
 - a. Leave taken due to the birth of a son or daughter or as a result of placement of a son or daughter with the Employee for adoption or foster care may not be taken by an Employee intermittently or on a reduced leave schedule, unless the employer agrees;
 - b. Leave taken due to one's own serious health condition or to care for a family member with a serious health condition may be taken intermittently or on a reduced leave schedule, but only when it is medically necessary as certified by a health care provider;
 - c. If an Employee requests intermittent leave, or leave on a reduced leave schedule, for any reason specified in subsection B. of this section, the employer may require the Employee to transfer temporarily to an alternative position for which the Employee is qualified if such new position (i) has equivalent pay and benefits and (ii) better accommodates recurring periods of leave than the Employee's regular position; and
 - d. An Employee who is taking leave on an intermittent basis or on a reduced schedule shall comply with the Employer's usual notice or procedural requirements for calling in absences and requesting leave. For example, an Employer (i) may require an Employee to call in, on a daily or less frequent basis, to speak with a particular individual or (ii) may require an Employee to sign a personal certification verifying that s/he took the leave for the medical reason provided.
7. Spouses Employed by the Same Employer. In any case in which spouses entitled to leave under Section A of this section are employed by the same Employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period if such leave is taken pursuant to Section 5, subparagraph B.1. or B.2., or to care for a sick parent under Section 3.06.05, subparagraph B.3., or to a combined total of 26 weeks of leave during a 12-month period to care for a covered service-member with a serious injury or illness under subparagraph B.6.
8. Employee's Substance Abuse. Substance abuse may be a serious health condition in certain instances. However, leave under this Chapter may only be taken for treatment for substance abuse

by a health care provider. Absence because of the Employee's use of the substance, rather than for treatment, does not qualify for leave under this Chapter. The rules regarding substance abuse at work always apply.

9. Employer's Option to Provide Domestic Partner Tribal Family Medical Leave. Any employer may elect, by policy provided to (and acknowledged by) its employees or by contract with an employee, to provide Tribal Family Medical Leave under this Chapter to care for domestic partners. In that event, such domestic partners shall be treated in the same manner as spouses are treated under this Chapter. To qualify for domestic partner coverage under this subparagraph D.9., an employee must have registered their domestic partnership and the name of their domestic partner with the Human Resources Director (or the equivalent employer representative) with the employer on such forms or affidavits as may be required by the employer. Nothing in this subparagraph D.9. shall be interpreted to require the provision of Tribal Family Medical Leave benefits to employees with domestic partners at any employer that has not elected to provide it.
10. Equal Treatment of Spouses and Domestic Partners Who Work for the Same Employer. The restrictions upon spouses of a single employer under subparagraph D.7., above, for leave taken pursuant to Section 3.06.05, subparagraph B.1., B.2., B.3., or B.6. shall apply to two employees of a single employer who consider themselves "domestic partners" whether or not the employer has elected to provide Tribal Family Medical Leave to care for domestic partners pursuant to Section 3.06.05, subparagraph D.9. Nothing in this subparagraph D.10. shall be interpreted to require the provision of Tribal Family Medical Leave benefits to employees with domestic partners at any employer that has not elected to provide it in accordance with subparagraph D.9.

Section 3.06.06 Definitions

For purposes of this Chapter, the following definitions shall apply:

- A. "Covered active duty or call to covered active duty" means, in the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country and, in the case of a member of the Reserves, duty during the deployment of the member of the Armed Forces to a foreign country under a federal call or order to active duty in support of a contingency operation.
- B. "Covered Service-member" means (i) a current member of the Armed Forces, a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or (ii) a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.
- C. "Covered Veteran" means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time.
- D. "Employee" means any person employed by an Employer.
- E. "Employer" means the Tribe or a Tribal Entity employing individuals who work within the Tribe's Territory.
- F. "Employment benefits" means all benefits provided or made available to Employees by an Employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an Employer.
- G. "Federal Family Medical Leave Act" or "FMLA" means the Family Medical Leave Act, Title 29 of the United States Code, sections 2601 et seq., as amended, and regulations adopted by the United States Department of Labor pursuant to the FMLA.

H. "Health care provider" means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the Tribe or any other person capable of providing health care services. For purposes of this Chapter, "others capable of providing health care services" include only:

1. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and by the Tribe and performing within the scope of their practice as defined under State law;
2. Nurse practitioners, nurse mid-wives, clinical social workers and physician assistants who are authorized to practice in the State and by the Tribe and who are performing within the scope of their practice as defined under State law;
3. Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an Employee or family member is receiving treatment from a Christian Science practitioner, an Employee may not object to any requirement from an Employer that the Employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement; or
4. Any health care provider from whom an Employer or the Employer's designated HR staff will accept certification of the existence of a serious health condition to substantiate a claim for health benefits.

I. "Key Employee" means an Employee who is a salaried Employee who is among the highest paid 10 percent of the Employees employed by the Employer.

J. "Military caregiver leave" means leave taken to care for a covered service-member with a serious injury or illness under this Chapter.

K. "Parent" means the biological parent of an Employee or an individual who stood in loco parentis to an Employee when the Employee was a son or daughter.

L. "Qualifying exigencies" has the same meaning as set forth in 29 CFR Section 825.126. Generally speaking, qualifying exigencies are situations justifying leave from work arising out of the foreign deployment of an employee's spouse, son, daughter, or parent, such as (i) issues arising from a military member's short notice deployment, (ii) the need to attend military events, (iii) the need to make arrangements for childcare or to transfer a child to a new school or day care, (iv) the need to care for the military member's parent, (v) the need to make financial and legal arrangements, (vi) the need to attend counseling related to the covered active duty, or (vii) to spend time with the military member who is on a short-term, temporary rest and recuperation leave during deployment.

M. "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an Employee.

N. "Reserve Components of the U.S. Armed Forces" includes the Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, the Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation.

O. "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves (1) inpatient care in a hospital, hospice, or residential medical care facility; or (2) continuing treatment by a health care provider.

P. "Serious injury or illness" means--

1. In the case of a current member of the Armed Forces, an injury or illness that was incurred by the covered service-member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the service-member medically unfit to perform the duties of the member's office, grade, rank, or rating; and
2. In the case of a covered veteran, an injury or illness that is incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces), and that is either:
 - a. A continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces; or
 - b. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating of 50% or greater, and the need for military caregiver leave is related to that condition; or
 - c. A physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or
 - d. An injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Q. "Son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is (1) under 18 years of age; or (2) 18 years of age or older and incapable of self-care because of a mental or physical disability.

R. "Spouse" means a husband or wife, as the case may be, and includes individuals married to a person of the same sex who were legally married in a state that recognizes same-sex marriages.

S. "Tribe" means the Jamestown S'Klallam Tribe and any of its departments, commissions, agencies or subdivisions.

T. "Tribal Court" means the Jamestown S'Klallam Tribal Court as described in Title 13 of the Jamestown S'Klallam Tribal Code.

U. "Tribal Entity" means any entity or instrumentality of the Tribe, other than a Department of Tribal Government, including any Class A Corporation established pursuant to Title 11 of the Jamestown S'Klallam Tribal Code, which, under principles of federal Indian law, enjoys the sovereign status of the Tribe exemplified by immunity from suit.

V. "Tribal Territory" or the "Tribe's Territory" means the territory of the Tribe as set forth in Article I, Section 2 of the Tribe's Constitution.

W. "Unable to Perform the Functions of the Position" means when an Employee is "unable to perform the functions of the position" where the health care provider finds that the Employee is unable to work at all or is unable to perform any one of the essential functions of the Employee's position with or without a reasonable accommodation.

Section 3.06.07 Employee Benefits Protection

A. Restoration to position. Except as provided herein, any Employee who exercises the right to Tribal Family Medical Leave under this Chapter, on return from such leave, is entitled to be restored by the Employer to the position held by the Employee when the leave commenced or to an equivalent position with equivalent Employee benefits, pay and other terms and conditions of employment. Notwithstanding anything to the

contrary contained in this Chapter, an Employer may deny restoration under this section to any Employee if the Employee obtains Tribal Family Medical Leave fraudulently, or in the following circumstances:

1. If the Employee would not otherwise have been employed at the time reinstatement is requested (for example, if an Employee is laid off, if the Employee's shift has been eliminated, or if the Employee was hired for a specific term or only to perform work on a discrete project and that term / project has expired or been completed);
2. If the Employee is unable to perform an essential function of the position because of a physical or mental condition (including but not limited to the continuation of a serious health condition), either with or without a reasonable accommodation;
3. If the Employee fails to provide a requested fitness for duty certification;
4. In the case of a Key Employee, if such denial is necessary to prevent substantial and grievous economic injury to the operations of the Employer. Provided, however, that an Employer who believes that reinstatement may be denied to a Key Employee must give written notice to the Employee at the time the Employee gives notice of the need for TFM leave (or when the leave commences, if earlier) that he or she qualifies as a "Key Employee." At the same time, the Employer must also fully inform the Employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the Employer should determine that substantial and grievous economic injury to the Employer's operations will result if the Employee is reinstated from Tribal Family Medical Leave.

As soon as an Employer makes a good faith determination, based on the facts available, that substantial and grievous economic injury to its operations will result if a key Employee is reinstated, the Employer shall notify the Employee in writing of its determination, that it cannot deny Tribal Family Medical Leave, but that it intends to deny restoration to employment on completion of the Tribal Family Medical Leave. The Employer must serve this notice either in person or by certified mail. This notice must explain the basis for the Employer's determination, and, if leave has commenced, must provide the Employee a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the Employee to return. If an Employee on leave does not return to work in response to the Employer's notification of intent to deny restoration, the Employee continues to be entitled to maintenance of health benefits. A Key Employee's rights under this Chapter shall continue unless and until the Employee either gives notice that he or she no longer wishes to return to work, or the Employer actually denies reinstatement at the conclusion of the leave period.

An Employee is still entitled to request reinstatement at the end of the leave period even if the Employee did not return to work in response to the Employer's notice. The Employer must then again determine whether a substantial and grievous economic injury to its operations will result, based on the facts at that time. If the Employer so determines, the Employer shall notify the Employee in writing (in person or by certified mail) of the denial of restoration.

- B. **Maintenance of Employee Benefits.** During any Tribal Family Medical Leave taken under this Chapter, the Employer shall maintain health insurance coverage for the duration of such leave at the level and under the conditions coverage would have been provided if the Employee had continued in employment. The taking of leave pursuant to this Chapter shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. However, nothing in this section shall be construed to entitle any Employee to the accrual of any employment benefits during any period of leave or to any right, benefit, or position of employment except those to which the Employee would have been entitled had the Employee not taken the leave.
- C. **Return to Work Certification.** As a condition of restoration to employment, the Employer may require the Employee to provide a health care provider certification stating that the Employee is able to resume work and perform the essential functions of his/her position. Nothing in this Chapter shall be construed to

prohibit an Employer from requiring an Employee on leave to report periodically to the Employer on the status and intention of the Employee to return to work.

Section 3.06.08 Effect on Existing Employee Benefits

- A. Benefit accrual. The taking of Tribal Family Medical Leave under this Chapter shall not result in the loss of any Employee benefit accrued before the date on which the leave commenced. However, an Employee has no greater right to benefits and conditions of employment than if the Employee had been continuously employed during the leave period. In accordance with the policies of the Tribe, Employees who are out on unpaid leave pursuant to this Chapter shall not be entitled to accrue paid time off while on leave.
- B. Limitations. Nothing in this Chapter shall be construed to entitle any restored Employee to the accrual of any seniority or employment benefits during any period of leave or any right, benefit, or position of employment other than any right, benefit, or position to which the Employee would have been entitled had the Employee not taken the leave.

Section 3.06.09 Prohibited Acts

The following shall be considered prohibited acts for an Employer under this Chapter:

- A. Unlawful interference or denial of rights. An Employer may not interfere with, restrain or deny the exercise of or the attempt to exercise any right provided by this Chapter.
- B. Unlawful discrimination against exercise of rights. An Employer may not discharge or otherwise discriminate against any Employee for exercising any right provided by this Chapter.
- C. Unlawful discrimination against opposition. An Employer may not discriminate or retaliate against any Employee for opposing any practice made unlawful by this Chapter.

Section 3.06.10 Implementation

Employers subject to the provisions of this Chapter shall develop and adopt, subject to the Tribal Council's approval, policies and procedures to implement the provisions of this Chapter.

Section 3.06.11 Limited Waiver of Sovereign Immunity

The Tribe hereby expressly waives the sovereign immunity of the Tribe, Tribal Entities, and Departments of Tribal Government for suits and process in the Tribal Court for the limited purpose of enforcing this Chapter.

Section 3.06.12 Right to File a Complaint; Available Remedies; Right to Bring a Cause of Action; Form of Complaint

- A. Relationship to the FMLA. The Tribe does not adopt the procedures of the FMLA pertaining to the recovery of any remedy by an Employee under the FMLA as the law of the Tribe, and the procedures provided in this Chapter shall be the sole procedures for an Employee seeking recovery for a violation of this Chapter. However, the standards for awarding Employees remedies for violations of the FMLA shall be used for determining the award of remedies to Employees for violations of this Chapter.
- B. Administrative Exhaustion. Any Employee who claims that an Employer has violated this Chapter must commence an administrative claim as provided herein within 180 calendar days of the Employee's discovery of an alleged violation. Any Employee alleging a violation of this Chapter shall pursue the following administrative remedies for resolution of the claim, in the order listed, before filing an action in Tribal Court:
 1. The Employer's human resources manager and if there is no human resources manager, the Tribe's Human Resources Director;
 2. The Employer's CEO/Director/General Manager; and
 3. The Tribal Council/Board of Directors.

The Employee's claim shall be in writing, and the Employee shall have the right to proceed to the next level of administrative review if the Employee's claim is not resolved at any given level within 21 calendar days after the filing of the claim.

The Tribal Council may, at its option, request the advice or assistance of a Tribal Personnel Committee in processing an Employee's administrative claim. Such Personnel Committee will be comprised of 2-3 executive/management committee members and one individual with a medical background.

C. **Administrative Remedies Available.** If the Employee's claim is found to have merit, the Employee may be awarded any of the following remedies at any level of the administrative process by a written decision, dated and delivered to the Employee:

1. A directive to the Employer to cease and desist from engaging in a violation of this Chapter;
2. An award of wages, salary, employment benefits, or other compensation denied or lost to such Employee by reason of the violation, plus that same amount as a civil penalty;
3. Any other relief that is deemed reasonably necessary to remedy a violation of this Chapter, including employment, reinstatement, or promotion.

D. **Action in Tribal Court.** An Employee who remains aggrieved from an alleged violation of this Chapter after completion of all three administrative steps under subsection C., above, may bring suit in the Tribal Court for a review of his or her claim.

1. An appeal of an administrative decision under this section filed with the Tribal Court shall contain:
 - a. The name and address of the Employee;
 - b. The name and address of the Employer;
 - c. The section of this Chapter that was allegedly violated;
 - d. A description of the events and facts that support the Employee's claim, including the impact of the violation on the claimant; and
 - e. A request for remedies.
2. If the Tribal Court makes a determination that the Employee has proven that the Employer has violated this Chapter or failed to abide by an award granted to the Employee in the administrative process under subsection C., above, the Tribal Court may order one or more of the following remedies:
 - a. That the Employer must cease and desist from engaging in a violation of this Chapter;
 - b. A directive to the Employer to cease and desist from engaging in a violation of this Chapter;
 - c. An award of wages, salary, employment benefits, or other compensation denied or lost to such Employee by reason of the violation, plus that same amount as a civil penalty;
 - d. Any other relief that is deemed reasonably necessary to remedy a violation of this Chapter, including employment, reinstatement, or promotion.
3. Any judicial complaint brought under this Chapter must be brought within one (1) year of the final administrative decision issued under subsection C., above.

4. An Employee who claims that that an Employer has retaliated against the Employee for pursuing an administrative decision under subsection C., above, or for testifying in any proceeding under this Chapter may bring a claim in the Tribal Court and upon a finding that the Employee has proven such retaliation, the Tribal Court may award such legal and equitable remedies as the Tribal Court deems just.

Section 3.06.13 Effective Date; Severability

- A. The provisions of this Chapter shall take effect thirty (30) calendar days after adoption by the Tribal Council.
- B. If any provision of this Chapter is ruled illegal by a court of competent jurisdiction, the remaining provisions of the Chapter shall remain unaffected.

Chapter 3.07 **Codification and Amendments**

Sections:

- Section 3.07.01 Codification**
- Section 3.07.02 Amendments**

Section 3.07.01 Codification

Title 3 Labor Code was accepted by Tribal Council on May 4, 2004 and codified as a Title in this code on June 14, 2004 with Resolution #24-04.

Section 3.07.02 Amendments

Amended on October 22, 2007 with Resolution #38-07; further amended April 18, 2012 with Resolution #17-12, May 17, 2012 with Resolution #21-12, February 5, 2013 by Resolution #04-13 and September 12, 2014 by Resolution #25-14.