

**ORDINANCE
OF THE GOVERNING BODY OF THE
CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION, MONTANA**

BE IT ENACTED BY THE COUNCIL OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES, that the Personnel Laws of the Tribal Government of the Confederated Salish and Kootenai Tribes, Tribal Ordinance 69 C as amended, is amended by repealing it in its entirety and replacing it with Tribal Ordinance 69 D.

**THE PERSONNEL LAWS OF THE TRIBAL GOVERNMENT OF THE
CONFEDERATED SALISH AND KOOTENAI TRIBES**

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CHAPTER 1. GENERAL PROVISIONS

Part 1. Short Title.

This Ordinance shall be known as the Personnel Ordinance of the Confederated Salish and Kootenai Tribes.

Part 2. Authority.

This Ordinance is enacted pursuant to the provisions of Article VI, Section 1, parts a, l, n and u of the Constitution and Bylaws of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation.

Part 3. Effective Date.

This Ordinance shall become effective upon passage by the Tribal Council. Once this Ordinance becomes effective, it rescinds Ordinance 69 C, as amended and approval by the Secretary of Interior or her delegate pursuant to Article VI, Part 2 of the Tribal Constitution.

Part 4. Purpose and Scope.

- a. This Ordinance establishes the law governing employment with the following entities of the Confederated Salish and Kootenai Tribes, which shall be called employers:
 1. all branches of Tribal government which directly report to the Tribal Council as identified in the most recently approved Tribal government organizational chart;
 2. Mission Valley Power, subject to exceptions contained herein;
 3. Two Eagle River School;
 4. Salish and Kootenai Housing Authority;
 5. such other entities of Tribal government as the Tribal Council may from time to time authorize;
 6. this Ordinance shall not apply to elected or appointed boards or commissions, including, but not limited to, business, education, environmental, housing and gaming boards or commissions unless authorized by Tribal Council resolution.
- b. This Ordinance shall not apply to contract employees except as expressly stated in an employment contract.

Part 5. Exceptions.

The following Tribally-operated programs and entities are authorized pursuant to federal law, regulation, contract or union organization that direct various aspects of employment. To the extent such federally-directed or union-directed employment practices conflict with this Ordinance, the federal or union direction shall control.

- a. Head Start;
- b. Mission Valley Power;
- c. Federal hiring programs designed to foster work experience or training.

Part 6. Definitions.

To the extent not inconsistent with the following definitions, all words and phrases used in this Ordinance shall be given their plain and ordinary meaning.

- a. “Anniversary Date” means the date an employee encumbers an employment position and pay level.
- b. “Day” means a working day for Tribal government unless the context provides otherwise.
- c. “Department Head” means, in context either the duly appointed person filling the position of top management in a department of Tribal government or, if an employer subject to this Ordinance is not a department of Tribal government, the person filling the position of top management in that entity.
- d. “Department of Tribal government” means a lawfully organized subdivision of the governmental offices of the Confederated Salish and Kootenai Tribes of the Flathead Nation.
- e. “Division Manager” means a management position with discretionary authority below the Department Head level that is responsible for management and oversight of a discrete grouping of related programs within a department which serve multi-functional or multi-disciplinary purposes.
- f. “Doctor” means a person currently licensed to practice medicine in the State of Montana who is not related to an employee who invokes medical services under this Ordinance.
- g. “Employer” means the departments or other entities of Tribal government subject to this Ordinance.
- h. “Executive Officer” means the Director of Tribal Services, Director of Financial Management and Director of Administrative Services.

- i. "Exempt employee" means Executive Officers, Department Heads, Division Managers and Program Managers. Contract employees are also exempt employees unless the employment contract expressly provides otherwise.
- j. "Immediate family" means a spouse, son, daughter, parent, brother, sister, grandparent or great grandparent, grandchild or great grandchild, aunt, uncle, niece, nephew, stepchild or stepparent, mother in law, father in law, sons in law and daughters in law, and partners in common law marriage as traditionally recognized by the Tribes.
- k. "May" means that something is permissive or discretionary.
- l. "Ordinance" means this Ordinance and any implementing policies.
- m. "Personnel Department" means the Department of Tribal government charged with implementing this Ordinance.
- n. "Shall" means that something is required or mandatory.

Part 7. Carryover Effect.

All disciplinary actions, grievance procedures and employment-based litigation that have been properly initiated before the effective date of this Ordinance shall be prosecuted under the terms of the law in effect at the date they were initiated.

Part 8. Other Laws.

- a. This Ordinance repeals and supersedes all previous versions of Ordinance 69 and all amendments to such Ordinances, subject to the effective date provisions in this chapter.
- b. To the extent this Ordinance may conflict with Ordinance 93 B, entitled the Wrongful Discharge Ordinance or any other Tribal statutory or common law, this Ordinance shall control.
- c. Citation to federal employment laws is for reference purposes and shall not be deemed an admission that any such laws apply to employment subject to this Ordinance.

Part 9. No Right to Employment.

Neither this Ordinance nor any policy or contract enacted pursuant to this Ordinance shall be construed to create any type of contractual right, entitlement or privilege of employment with the Tribal government unless it expressly so provides.

Part 10. Exclusive Remedy, Exhaustion.

- a. Subject to exceptions expressly identified in Chapter 1, this Ordinance provides the exclusive remedy for addressing employment disputes arising out of employment subject to this Ordinance. There is no independent remedy for wrongful or constructive discharge from employment.
- b. Failure to exhaust all remedies available under this Ordinance, or seeking redress outside of the remedies provided in this Ordinance, shall constitute a complete bar to administrative and judicial review of issues addressed by this Ordinance.
- c. An employee who presents a grievance subject to this Ordinance to the Tribal Council shall be deemed to have waived his or her right to seek any form of relief from the Tribal government.

Part 11. Severability.

In the event of a court finding of invalidity of any word, phrase, paragraph or other component of this Ordinance, such invalid portion shall be severed and the remainder of the Ordinance shall remain in full force and effect.

CHAPTER 2. PERSONNEL DEPARTMENT

Part 1. Establishment.

The Personnel Department is a department of Tribal government. The Personnel Department shall be administered by the Personnel Department Head. The Department Head shall be appointed by the Employer they report to as defined in the most recently approved Tribal government organizational chart. The Personnel Department shall be responsible for assuring that this Ordinance is implemented in a fair and consistent manner.

Part 2. Powers and Duties of Personnel Department.

The Personnel Department shall implement the provisions of this Ordinance. The primary responsibilities of the Department include the power and duty to:

- a. advise the Tribal Council on workforce utilization;
- b. recommend to the Tribal Council any policies that the Department deems necessary to implement this Ordinance;
- c. develop and maintain compensation and classification plans for approval by the Tribal Council;
- d. implement procedures for the efficient operation of the Department;

- e. implement procedures for hiring employees covered by this Ordinance;
- f. implement procedures for evaluating employees covered by this Ordinance;
- g. implement procedures for disciplinary actions for violations of this Ordinance;
- h. implement procedures for employees covered by this Ordinance to seek redress for grievable acts;
- i. maintain a system of records for all personnel matters, including a secure system for confidential records;
- j. coordinate employment opportunities with the Tribal Indian preference office;
- k. develop programs for the improvement of employee effectiveness, safety and health;
- l. develop an Employee Handbook, to be provided to every employee upon hiring, containing a copy of this Ordinance and any implementing policies pertaining to employment;
- m. provide semi-annual employment training to employers that includes a review of this Ordinance with particular emphasis on the grievance process;
- n. investigate from time to time the operation and effect of implementation of this Ordinance and any policies;
- o. hire Personnel Department employees to carry out the provisions of this Ordinance;
and
- p. such other duties as are necessary to carry out the purposes of this Ordinance.

CHAPTER 3. EMPLOYMENT PROCEDURES

Part 1. Vacancy Records.

The Personnel Department shall maintain all vacancy records. Vacancy records shall include, but are not limited to, Personnel Action forms, position descriptions, screening forms, background checks, interview records, correspondence with applicants, and results of tests administered.

Part 2. Employee Recruitment.

- a. Prior to advertising an employment position the employer shall submit a position description to the Personnel Department for classification.

- b. The Personnel Department shall classify the position, set the pay in accordance with the Tribal pay plan, and prepare the advertisement.
- c. A position may be filled with a participant in a federal employment work experience or training program and the relevant federal criteria for pay and benefits shall apply.
- d. The Personnel Department shall give notice of all vacancies at least two weeks in advance of the closing date for receipt of applications. Notice shall be posted in Tribal offices throughout the Reservation and may be published in newspapers and other publications at the request of the employer.
- e. Requests for advertising vacancies shall be submitted to the Personnel Department using a Personnel Action form. A complete job description, classification and all necessary purchase requisitions must accompany the Personnel Action form and must be received in the Personnel Department at least one week prior to the advertising timeframe.
- f. Employers may request approval from Tribal Council to engage employee recruitment organizations to fill positions. The ability to pay for such services must be identified by the Employer prior to requesting approval from the Tribal Council.

Part 3. Tribal Preference

- a. Priority for hiring all classes of employment will be on the basis of necessary qualifications for the position in accordance with the following preference:
 - 1. Enrolled members of the Confederated Salish and Kootenai Tribes.
 - 2. First generation descendants of enrolled CSKT members.
 - 3. Enrolled members of other federally-recognized Tribes.
 - 4. Non-Indians.
- b. Applicants who are veterans or who have served in the military and have been satisfactorily discharged will have preference over other applicants, if equally qualified.

Part 4. Reorganization and Reduction-in-Force.

If an employer is undergoing a reorganization, whether or not it is due to a reduction-in-force, any vacant, renamed or reclassified position may be filled from within the department or program subject to this Ordinance.

Part 5. Application Submission Procedures.

- a. Applications for employment must be submitted on a form provided by the Personnel Department.

- b. Completed applications for employment must either be submitted to the Personnel Department or be postmarked no later than the specified closing date.
- c. Facsimile and electronic copies of an application may be submitted, but must be complete and accurate and submitted no later than the specified closing date.

Part 6. Application Screening Procedures.

- a. The Personnel Department shall screen all completed applications within ten (10) working days after the closing date of a vacancy announcement.
- b. Selection for interviews will be made on the basis of correlation of information contained in the application to the specifications contained in the vacancy announcement.
- c. Incomplete or nonconforming applications will be disqualified from consideration.
- d. The Personnel Department shall document the screening process and record it as a permanent part of the vacancy record.
- e. Where there are numerous applicants who qualify for the employment position, the Personnel Department, in consultation with the employer, has the discretion to select a reasonable number of the best qualified applicants for interviews.
- f. If an insufficient number of applicants who qualify for Tribal preference apply for a vacancy, the position may be advertised. The Personnel Department shall make that decision after consultation with the employer, after screening is complete.

Part 7. Notification.

- a. After completion of the screening process, the Personnel Department shall notify the employer of the applicants selected for interviews. The Personnel Department shall notify all applicants of their status.
- b. Failure to be selected is not a grievable issue.

Part 8. Interviewing Procedures.

- a. The Personnel Department shall arrange interview times with the employer. A Personnel Department employee, the employer and others who may be chosen by the employer will interview the screened applicants. Interviews shall determine whether applicants who have been selected for interview by the Personnel Department satisfy the requirements of the job description and shall be documented using forms provided by the Personnel Department. The forms shall become a permanent part of the vacancy record.

- b. The Personnel Department shall conduct telephone or visual electronic format interviews with applicants residing off of the Reservation when agreed to by the employer.
- c. Interviews will not be rescheduled unless the applicant can show good cause for his or her inability to attend an interview. The employer must approve a rescheduled interview.
- d. The employer shall submit to the Personnel Department its interview questions, tests and other materials it intends to use in the interview at least three days prior to the interview. Unwritten follow-up questions to responses to written questions are allowed.
- e. When indicated by the nature of the job, the Personnel Department shall conduct appropriate civil and criminal background checks of applicants.

Part 9. Selection Procedures.

- a. The employer shall make the hiring recommendation to the Personnel Department and shall provide to the Personnel Department a written justification of the hiring decision.
- b. Upon receipt of a hiring recommendation, the Personnel Department shall determine compliance with this Ordinance and if properly complied with shall notify the applicant of his or her selection in writing.
- c. A hiring decision shall not be determined or influenced by any person not present at all interviews for the selection decision.
- d. After the employer makes a tentative hiring decision, the Personnel Department will verify the candidate's references upon request of the employer and will notify the employer of its findings.
- e. The employer shall make a final hiring decision and shall notify the Personnel Department of its decision in writing.
- f. The Personnel Department shall notify in writing all applicants of the selection made.
- g. The procedures governing the selection of positions which report directly to the Tribal Council, as identified in the most recently approved Tribal government organization chart, shall be at the discretion of the Tribal Council.
- h. If an employee is terminated or voluntarily resigns during the first ninety (90) days of his or her new hire or reassignment probationary period, the employer may select another qualified applicant from those interviewed. Provided, however, that if the employer is Two Eagle River School, the employer may select another qualified

applicant from those initially interviewed at any time during the school year without re-advertising the vacancy to avoid disruption of the class room.

- j. Failure to be selected is not grievable.

Part 10. Physical Examinations.

The nature of particular employment positions may require an employee to possess and maintain certain physical fitness standards and to successfully complete periodic physical examinations as a condition of continued employment. Any employment position with these requirements shall be advertised as such at the time of initial hire and applicants may be required to pass a physical examination by a doctor as a precondition to employment.

Part 11. Screening Tests.

An employer may require as part of the interview and as a condition for employment that an applicant successfully pass written, verbal or physical tests relevant to the subject matter of the employment position at issue. Any test must be in a form developed by the employer and approved by the Personnel Department.

Part 12. Ineligible Applicants.

The following conditions shall constitute grounds for disqualification of an applicant from consideration for employment:

- a. An applicant would be the supervisor of, or be supervised by, a member of his or her immediate family.
- b. Failure to submit a complete, accurate and timely application and all required documentation required in the vacancy announcement.
- c. Failure to pass physical or other examinations required as a condition of employment.
- d. Submitting any false or misleading statement or information in an application or interview.
- e. Using or attempting to use political pressure, bribery or other unlawful means to secure employment.
- f. Obtaining information regarding application or selection criteria not otherwise in the public domain.
- g. Failure to meet the qualifications contained in the vacancy announcement.
- h. An applicant who is not lawfully authorized to accept employment under Tribal or federal law.

- i. Any person who has been terminated from employment for failure to comply with substance abuse policies shall not be eligible for employment for six months following such termination.

Part 13. Orientation of New Employees, Employee Handbook.

- a. New employees shall report to the Personnel Department on their first day of work for an orientation session. All new employees shall be provided a copy of the Employee Handbook and will be required to sign an acknowledgment of receipt of it.
- b. Each employee shall be given a position description during his or her job orientation.

Part 14. Personnel Records.

- a. The Personnel Department shall establish and maintain official personnel files for each employee, which may contain confidential information. Records in the Personnel Department shall take precedence over an employee or employer's records. It is the responsibility of all employers to forward to the Personnel Department all personnel records that an employer generates on every employee. Personnel records that have not been forwarded to the Personnel Department for inclusion in the personnel records of an employee shall not be presumed accurate.
- b. The Personnel Department shall establish and maintain a separate file for each grievance procedure, appeal and litigation.
- c. Personnel records are closed and confidential except to Tribal government officials demonstrating to the Personnel Department a governmental need for the record. The information in personnel files may be used only for the purposes for which it was provided and shall not be released to others without the written consent of the employee or applicant, or by Order of the Tribal Court or hearings officer. The Personnel Department shall assure confidentiality of personnel records.
- d. Employees have the right to review their personnel file and may obtain copies upon written request. The original files shall not be removed from the Personnel Department.
- e. Upon termination of employment, an employee's personnel file shall be placed in inactive status and confidentiality shall be maintained as provided herein.

Part 15. Personnel Action Forms.

Employers shall use a Personnel Action form obtained from the Personnel Department for processing any personnel actions within one working day after the event giving rise to the Personnel action.

CHAPTER 4. CLASSES OF EMPLOYMENT

Part 1. Permanent Full Time.

A permanent full time employee is an employee who fills an employment position consisting of forty (40) hours of work per week for fifty two (52) weeks per year.

Part 2. Permanent Part Time.

A permanent part time employee is an employee who fills an employment position consisting of less than a forty hour (40) work week or less than fifty two (52) weeks per year. Permanent part time includes:

a. Seasonal employee.

1. An employee who works during a specified season which is less than fifty two weeks per year.
2. A seasonal employee accrues benefits according to the period of time worked.
3. Seasonal employees may be reinstated non-competitively for successive seasons.

b. Furlough employee.

1. An employee who is placed on leave without pay at various times during a year.
2. A furlough employee accrues benefits according to the period of time worked.
3. A vacancy announcement shall clearly designate a position as a furlough employment position.

Part 3. Emergency Hire.

- a. An employee who works for the same employer for no more than sixty (60) consecutive work days is an emergency hire. Emergency hire employees are hired from an emergency hire register established in the Personnel Department.
- b. If an employer desires to extend the term of an emergency hire beyond sixty (60) days, it must first submit a written justification to the Personnel Department. Written approval from the Personnel Department must be received prior to an extension being granted.
- c. Emergency hire employees accrue no benefits.

Part 4. Contract Employee.

- a. An employee who works under the terms of an employment contract is a contract employee.
- b. All employment contracts that require approval under federal law and all contracts for employees which report directly to the Tribal Council, as identified in the most recently approved Tribal government organizational chart, shall be executed by the Chair of the Tribal Council, or in the absence of the Chair, the Vice Chair or Acting-Chair, on behalf of the Tribes. Employment contracts for all other employees shall be executed by the Employer for whom they will be employed.
- c. Contract employees are subject to the provisions of this Ordinance only as expressly specified by the terms of their employment contract.
- d. Unless expressly provided in an employment contract, employment contracts shall not be interpreted to contain any expectation of employment beyond the term of the contract.

Part 5. Exempt Employee.

Exempt employees shall not be entitled to overtime compensation.

Part 6. Limits on Employment.

No employee, other than firefighters, law enforcement officers and emergency response personnel, may be employed by more than one Tribal governmental employer if his or her total work hours exceed forty (40) hours in any consecutive seven day period.

CHAPTER 5. PROBATION

Part 1. Placement Probation.

- a. Each new employee including Workforce Investment Act program and on-the-job training shall serve a probationary period of 180 consecutive calendar days unless otherwise specified in the vacancy announcement.
- b. Department Heads shall serve a probationary period of 365 consecutive calendar days from date of hire.
- c. Disciplinary action or termination during placement probation is not grievable.

Part 2. Reassignment Probation.

- a. An employee who is assigned to a different employment position shall be required to serve a probationary period of 90 days, unless specified otherwise in the Personnel Action form.
- b. Disciplinary action or termination during reassignment probation is not grievable.

Part 3. Probation Procedure.

- a. Probationary periods other than disciplinary probation or reassignment probation shall be stated in any vacancy announcement.
- b. (1) At the end of a probationary period the employer shall ensure that the employee's performance of probation is evaluated and submitted to the Personnel Department.

(2) If the probation evaluation is not submitted to the Personnel Department within five (5) days after the end of the probation period, it shall be presumed that the employee has satisfactorily completed the probationary period.

Part 4. Apprentices Agreements.

The terms of probationary status for any union apprentice contract or agreement shall control over the provisions of this Ordinance.

Part 5. Termination During Probation.

- a. The employer shall provide employee and the Personnel Department with written notice of termination during any probation period.
- b. Termination during any probationary period shall be at the will of the employer and is not grievable.

CHAPTER 6. EMPLOYEE BENEFITS

Part 1. Paid Time Off.

- a. All employees, except exempt and emergency employees, shall earn paid time off, according to their work schedule and the following table unless otherwise provided in a contract for employment:

| | Less than 3 years of service | 3-5 years of service | 6-8 years of service | 9-11 years of service | 12 or more years of service |
|-----------------------------|------------------------------------|-------------------------|-------------------------|--------------------------|-----------------------------------|
| Hours accrued, Full-time | 8 | 9 | 10 | 11 | 12 |

| | | | | | |
|--------------------------------|-------------------------------|----------------------------------|---------------------------------|----------------------------------|-------------------------------|
| Hours accrued, part-time | 10% of the hours worked | 11.25% of the hours worked | 12.5% of the hours worked | 13.75% of the hours worked | 15% of the hours worked |
|--------------------------------|-------------------------------|----------------------------------|---------------------------------|----------------------------------|-------------------------------|

- b. Paid time off includes leave taken for sickness, emergencies, vacation and personal time off from employment.
- c. Paid time off must be approved by the employer in advance, provided, however, in the case of illness, accident or emergencies which cause an absence from employment without prior approval, the employee shall notify the employer as soon as possible.
- d. Employees can accrue no more than one thousand (1,000) hours of paid time off with the cutoff date being the last day of the last pay period in December of each year, any in excess is lost after that date. Upon separation from the Tribes, the total balance shall be paid to the employee at 100% of current rate of pay.
- e. When a designated holiday or other paid leave occurs during an employee's paid time off, the employee will receive holiday pay or other paid leave, as the case may be, and not be charged paid time off.
- f. When employment terminates during any fractional part of a pay period, an employee shall not accrue paid time off for that pay period.
- g. Paid time off cannot be used before it is earned. It is the responsibility of the employer to monitor leave balances when certifying time sheets. An employee is not eligible to accrue paid time off until he or she has worked a full pay period.
- h. No paid time off will be earned during a pay period in which leave-without-pay is taken or when the employee is in an absent-without-leave status.
- i. Any employee serving on a board or committee not directly related to the employment position the person holds is required to use paid time off or leave-without-pay to attend all meetings, participate in any activity associated with the board or committee, or for any travel related to the board or committee. However, employees serving on the Safety Committee are not required to use leave to attend those meetings.
- j. When an existing employee is hired by another department, the employee's balance of paid time off hours will be transferred to the hiring department.

Part 2. Funding Paid Time Off Accrual.

- a. Each Department shall pay an amount established by the Office of Financial Management prior to the commencement of each fiscal year for each encumbered employee position existing within the Department or other agency of Tribal

government. Such funds shall be paid into a paid time off account, which will be used to pay off accrued paid time off attributable to an employee's paid time off balance at separation.

- b. The balance of any accrued paid time off shall not exceed one thousand (1000) hours at the end of the last day of the pay period of the year. Employees must use or lose any additional hours in excess of one thousand hours at the end of the last day of the last pay period of the year.
- c. Employees that have banked sick leave that was credited to a reserve account at the time of paid time off implementation may use that banked sick leave for a long-term illness after they have exhausted their paid time off or the amount will be paid to the employee at 50% of value upon separation of employment.

Part 3. Employment Credit for Paid Time Off.

- a. Employment with the Tribes, Salish Kootenai College, and Post and Pole shall be credited for paid time off accrual. Employees who were employed by the Bureau of Indian Affairs or Indian Health Service, if such employment was located on the Flathead Indian Reservation, shall be credited for paid time off accrual.
- b. Employment with S&K Holding, S&K Development, S&K Technologies, S&K Aerospace, and any other Tribal enterprise, if such employment occurred after October 11, 1985, shall not be credited for paid time off accrual.
- c. Active military service, as documented by a DD214, will be credited for paid time off accrual, but will not be credited as time served with the Tribes for the purpose of service awards.
- d. It is the responsibility of the employee to report all Tribal, Bureau of Indian Affairs or Indian Health Service time served on the Flathead Indian Reservation, or military service to the Personnel Department. An employee may report such service anytime during their tenure with the Tribe. In the absence of any satisfactory records, the burden of proof is on the employee to provide satisfactory evidence of employment to the Personnel Department Head in order to receive credit for service. In the absence of Tribal Personnel records an employee may provide pay statements, W-2 statements or social security earnings statements. No retroactive leave accrual will be given.

Part 4. Holidays.

- a. All employees, except emergency hire employees, will be entitled to the following holidays: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day. In addition, the Tribal Council may designate additional floating holidays.
- b. Holidays occurring on Saturday will be observed on the preceding workday.

- c. Holidays occurring on Sunday will be observed on the following workday.
- d. Employees who are required to work on designated holidays shall receive regular pay and holiday pay in accordance with the number of hours in their normal workday. In order to receive pay for a designated holiday, an employee must be in a work or paid leave status during scheduled workdays immediately preceding and immediately following the holiday.
- e. Holidays may not be accumulated or used in calculating termination pay.

Part 5. Maternity and Paternity Leave.

- a. After using accrued hours of compensatory time and paid time off, in that order, employees requesting maternity or paternity leave may request unpaid leave in accordance with the Family and Emergency Medical Leave provisions of this Ordinance.
- b. A doctor's certification of ability to work may be required for a pregnant employee if her physical ability to perform is questioned by the employer.

Part 6. Family and Emergency Medical Leave.

- a. Family and emergency medical leave provides employees with unpaid leave for family and emergency medical purposes for twelve (12) work weeks during any 12-month period for the following conditions:
 - 1. birth of a child and care of a newborn within one year after birth;
 - 2. placement of a child with the employee for adoption or foster care within one year after placement;
 - 3. care for an immediate family member with a serious health condition requiring ongoing medical attention as certified in a doctor's evaluation of the health condition; or
 - 4. a medical condition that makes the employee unable to perform the duties of his or her position as certified in a doctor's evaluation of the medical condition.
- b. To be eligible for family and emergency medical leave, employees must have completed at least one complete year of Tribal employment. Emergency hire and seasonal employees are excluded from this coverage.
- c. Any unpaid leave under this part is in addition to the employee's paid time off and any compensatory time off available to the employee. The employee may request the

employer to offset unpaid leave by substituting such paid leave as appropriate for any part of the unpaid leave.

- d. Employees requesting family or medical leave shall provide thirty (30) consecutive calendar days advance notice to the employer, except a shorter period may be allowed at the discretion of the Personnel Department Head. When leave is being requested for a medical condition, or to care for an ill child, spouse or parent, the leave may be taken intermittently or on a reduced work schedule. Employees wishing to take unpaid leave on a reduced or intermittent schedule must receive approval from the employer.
- e. Form CSKT-FEML must be completed by any employee requesting leave under this part. This request must be made to the employer. The approval or disapproval of this leave is at the discretion of the employer. The employer must then forward the original completed form with a Personnel Action form to the Personnel Department.
- f. The employee shall make reasonable efforts to schedule medical treatment, subject to the approval of the employee's doctor, so as not to disrupt the operations of the employer.
- g. In the case of a serious illness an employer may transfer an employee to another position that accommodates the needs of the employer and employee.
- h. If a request for leave is based on a medical problem, the employer may require a second doctor's opinion. Cost of the second opinion shall be paid by the employer.
- i. The employer may require periodic status reports on the employee's ability and intention to return to work.
- j. An employee, other than a key employee as defined in the Family and Medical Leave Act, using family and emergency medical leave is entitled to be returned to the same or equivalent position with equivalent benefits, pay status and other terms and conditions of employment upon expiration of the family and emergency medical leave term and upon certification from the treating doctor that the employee is fit to return to that position.
- k. The employer shall require an employee to obtain medical certification from a doctor as a precondition to the employee's ability to return to work.
- l. Health insurance benefits for employees taking family and emergency medical leave shall continue at the same level and under the same conditions as would be in effect if the employee had continued on the job so long as the employee timely pay his or her share of premiums during this time. Employees who do not return to work from leave shall reimburse the Tribes for Tribal payment of health premiums if paid while they were on family and emergency medical leave. This does not apply to employees who

do not return to work and provide the employer with a doctor's certification that they are unable to perform their employment duties.

- m. Medical leave for illness or other physical or mental disabilities which incapacitate an employee may be allowed for a period of up to one year if approved by the Tribal Council. This provision applies to those employees who have exceeded twelve (12) work weeks of unpaid leave in a twelve (12) month period.

Part 7. Educational Leave.

- a. Full-time employees may receive paid educational leave for a maximum of eight (8) hours per week for attendance at an educational undertaking that benefits their current position. Approval or denial of educational leave is at the discretion of the employer.
- b. Employees may be excused from work by the employer for Salish and Kootenai cultural education purposes at the discretion of the employer.
- c. Employees may be granted a leave-of absence to pursue education that is directly related to their present position, provided that:
 - 1. The employee must in writing prepare an educational leave plan and request approval of the plan from his or her employer.
 - 2. If the employer approves educational leave without pay, the employer shall draft a contract which includes but is not limited to: duration of leave, Tribal obligations, employee responsibilities, duration of leave, provisions for renewal, program of course work to be pursued, degree to be obtained, provisions for future employment (if any), standards for performance and completion of course work, and provisions for termination of the contract.
 - 3. The contract shall be presented to the Personnel Department and Legal Department for review and to the Tribal Council for approval. Approval or denial of any such contract is at the sole discretion of the Tribal Council.
 - 4. An employee shall accrue no benefits during a leave of absence for education purposes.

Part 8. Military Leave.

- a. Employees who are members of any reserve component of the U.S. Armed Forces will be allowed leave-of-absences for required training or duty not to exceed fifteen (15) working days during one calendar year. In the event that the time required for such duty is longer, the time may be approved at the discretion of the employer. If an employee uses paid time off during an absence for military duty, then he or she will be allowed to receive military pay. Additionally, employees will accrue leave on a

pro-rated basis during military leave-of-absences, if absence from employment is covered in whole or in part by paid time off.

- b. Any employee inducted into the U.S. Armed Forces through draft, enlistment, or call to active duty who vacates a position and who makes application for re-employment within ninety (90) days after satisfactory completion of service, and/or hospitalization continuing after discharge for a period of not more than one year, shall be re-employed where he or she is qualified, either in their former position or in another position with like seniority, status and pay.

Part 9. Court Leave.

All employees shall be granted paid leave if their absence is in obedience to a subpoena or direction by proper authority to appear as a witness or a juror for the Federal, State, District, Municipal, or Tribal Court, or to testify in his/her capacity as an employee. Compensation for witness or jury duty will be reimbursed to the Tribes, with the exception of mileage. Paid time off cannot be used for court leave.

Part 10. Other Leave.

- a. An employer may grant an employee leave-without-pay for a period not to exceed sixty (60) days for non-medical purposes. If leave-without-pay is requested for more than sixty (60) calendar days, it must be approved by the Tribal Council. Periods of leave-without-pay shall not be credited toward service benefits.
- b. Paid leave may be granted for up to forty (40) consecutive hours in the case of a death of a member of an employee's immediate family.
- c. Other periods of paid leave due to weather conditions or other emergency situations may be designated by the Tribal Chairperson.
- d. Employees may be granted paid leave for participation in religious ceremonies or traditional activities as approved by the Culture Committee Directors pursuant to Committee cultural leave guidelines. It is the employee's responsibility to notify his or her employer prior to the event if possible, that he or she will be absent from work. Employers may verify the employee's participation in activities, but shall not discourage or prohibit participation pending Culture Committee verification. The Culture Committees will not provide verification of participation in the activities until after the event. An employee's absence from work for participation not approved by the Culture Committees shall be treated as an unexcused absence, unless other prior arrangements are made with the employer.
- e. Military Honor Guard shall obtain a change-of-duty assignment to perform Honor Guard services on a case-by case basis.

- f. Employees, except emergency employees, may participate for up to four (4) hours per week in physical fitness activities. No more than one-half of the time utilized by the employee shall be paid time, and no less than one-half of the time utilized shall be paid time off, lunch breaks, or time before and after working hours. Prior to initiating leave for physical fitness, an employee shall complete an "Employee Physical Fitness Program" form and submit it to their employer for approval or denial.

Part 11. Cafeteria Plan.

- a. Effective July 1, 2003 the Tribal Council adopted a flexible benefits plan. Employees shall be eligible for participation in the plan pursuant to the terms and conditions contained in said plan.
- b. The Tribal Council reserves the right at any time to amend or terminate the plan.

Part 12. Insurance and Retirement Plans.

- a. The Tribal government may select health insurance, life insurance, long-term disability insurance and retirement plans for employees. The terms for qualification for any such insurance or plans will be contained in the insurance or plan documents, copies of which can be obtained from the Personnel Department.
- b. Employees who seek coverage under any such insurance or plan shall promptly initiate application for coverage at the Personnel Department, or run the risk of failing to satisfy the terms of the plan. Specific time frames for qualification for coverage are identified in the plan documents.
- c. The Tribal Council reserves the right at any time to amend or terminate any such insurance or plan.

Part 13. Leave Sharing.

- a. An employee may be eligible to receive no more than sixty (60) days of leave sharing in any calendar year.
- b. To be eligible to receive contributions of leave time an employee must be:
 - 1. An employee covered under this Ordinance; or
 - 2. A contract employee whose contract specifically states they are entitled to leave sharing, and
 - 3. An employee who has been approved for leave sharing and has used all their paid time off; and

4. An employee who has a signed certification by a doctor attesting to serious medical condition afflicting the employee or members of the employee's immediate family, defined as:
 - (a) an illness, injury, impairment, or physical or mental condition that involves either overnight inpatient care in a hospital, hospice, or residential care facility, or continuing treatment by a health care provider for three or more consecutive days;
 - (b) any period of incapacity, meaning confined to bed, because of pregnancy or pre-natal care; or
 - (c) any period of incapacity of three or more days because of a chronic serious condition, such as bronchitis, pneumonia or influenza.
 5. Any employee age sixty-five (65) or older with an age-related medical condition which requires medical treatment as stated by a doctor may request to be a leave recipient.
 6. Any employee who is eligible for worker's compensation benefits is not eligible for leave sharing.
 7. Any employee who has exhausted their Paid Time Off and has used the allotted time allowed for bereavement leave, may be eligible for leave sharing for an additional two (2) weeks.
- c. To apply for leave sharing an applicant must:
1. Submit a completed doctor's statement that justifies eligibility for leave sharing to the Personnel Department no later than 5:30 p.m. on the second Tuesday of the pay period in which the applicant wants leave sharing to commence.
 2. Employers will be requested by the Personnel Department to submit a Personnel Action form once medical documentation is received from the employee.
 3. After all required documentation is provided, and the Personnel Department Head has made a determination to grant or deny leave sharing, the employer and employee will be notified.
 4. A recipient of leave sharing must submit a doctor's release to work certification prior to returning to work.
- d. Employees who wish to contribute leave may do so on an hour-for-hour basis and must be:

1. Covered under this Ordinance; or
 2. A contract employee whose contract specifically states that they are entitled to accrue leave time.
- e. Donors cannot donate hours which would decrease their paid time off balance below 40 hours. Donors will complete the donor's form and submit it to the Personnel Department no later than 5:30 p.m. on the second Tuesday of the pay period within which the donation is to take effect.

CHAPTER 7. EMPLOYEE RESPONSIBILITIES

Part 1. Performance.

Employees shall at all times comply with the employee responsibilities addressed in this Ordinance and shall perform satisfactorily the duties specified in the job description, applicable personnel records and any contracts pertaining to their employment. Failure to do so shall constitute a basis for disciplinary action, up to and including termination.

Part 2. Outside Employment.

Employees may seek employment outside of the scope of this Ordinance, including an elected position on the Montana State Legislature, if, prior to obtaining outside employment, the employee discusses the potential with his or her employer and in the written opinion of the employer such employment does not constitute, or have the appearance of constituting, a conflict of interest with or impair employment under this Ordinance or otherwise conflict with this Ordinance

Part 3. Conflict of Interest.

- a. Employees shall not give, accept or otherwise directly or indirectly benefit from any monetary award, gratuity, gift, free sample, entertainment, service or favor from any present or potential vendor, person, contractor, business, government or other entity having or proposing to have any business relationship with the Tribal government.
- b. Employees shall not engage in any act that provides a competitive advantage to any vendor, person, contractor, business, government or other entity that is or may be adverse to the interests of the Tribal government or that is or may be in a business relationship with the Tribal government.
- c. Employees shall report promptly to the Personnel Department any contact or communication directed to them that they perceive to represent either a potential or real conflict of interest or an offer or enticement to engage in a conflict of interest.

Part 4. Comportment.

Employees shall conduct themselves in a manner that does not reflect negatively on the employer.

Part 5. Standard of Dress.

Employers shall have the discretion to set written standards of dress for their employees based upon considerations of safety, comfort and public image.

Part 6. Injuries On The Job.

Employees shall promptly report to the employer all injuries they suffer while on the job and the employer shall forward the report to the Payroll Office for submission for workers compensation coverage if applicable.

Part 7. Care of Property.

Employees shall exercise ordinary care when utilizing facilities, property, equipment, money, credit cards, vehicles and supplies owned or controlled by the Tribal government unless the nature of the employment or the facilities, property, equipment, vehicles and supplies requires a heightened level of care, which shall be adhered to.

Part 8. Substance Abuse.

- a. The unlawful manufacture, distribution, use, possession, sale, trade or gift of illegal drugs, controlled substances or alcohol while on the job and while on the job during job-related travel shall be the basis for disciplinary action.
- b. The unlawful manufacture, use, distribution, possession, sale, trade or gift of illegal drugs, controlled substances or alcohol off of the job in a manner that impairs an employee's job performance shall be the basis for disciplinary action.
- c. Personal use of a controlled substances pursuant to and in accordance with a valid doctor's prescription while on the job, provided that such use does not interfere with job performance, shall not be the basis for disciplinary action.
- d. Employees shall notify their employer of any criminal conviction based upon unlawful manufacture, distribution, use, sale, trade or gift of illegal drugs, controlled substances or alcohol within 5 days of the conviction.

Part 9. Substance Abuse Treatment.

- a. The employer shall undertake reasonable accommodations to keep open the position of an employee who is undergoing a doctor-prescribed substance abuse treatment that necessitates an absence from work so that upon successful completion of treatment

the employee may return to the employment position held prior to treatment; provided, however, that if such accommodations cause adverse impacts to the ongoing work to be performed or disrupts the efficient course of Tribal employment the employee may be terminated.

- b. If an employment position is being held for an employee undergoing doctor-prescribed substance abuse treatment, the employer shall maintain employee's health insurance coverage and accrual of leave benefits as long as the employee is utilizing compensatory time or is on paid time off to cover absence from work.
- c. To be reinstated into an employment position held open as a result of substance abuse treatment an employee must provide the employer the treating doctor's statement that the employee has successfully completed the prescribed treatment program.

Part 10. Harassment and Bullying Prohibited.

- a. Harassment is the act of singling out a person or people for non-complimentary or disparaging treatment of any nature as a result of the person's sex, sexual preference, age, political affiliation, religious beliefs, heritage, race, employment position, disability, other distinguishing attribute or feature, or other class or category that is protected by federal or Tribal law.
 - 1. Harassment can include-sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical behavior of a sexual nature-or may be non-sexual, such as making offensive comments about a person or category of people.
 - 2. Words or actions are harassment when sufficiently pervasive or severe to create an offensive or hostile work environment or when they result in an adverse employment decision, such as a victim being fired, demoted or resigning as a result of these types of words or actions.
 - 3. A harasser may be any employee or elected official and may be a senior staff member or supervisor.
- b. Bullying is defined as-conduct, whether verbal, physical, or otherwise, that could intimidate, hurt or harm and generally (but not necessarily always) is repeated, intentional aggression involving or creating a power imbalance between the aggressor and victim.
 - 1. Examples of bullying include, but are not limited to, slander; ridicule; maligning an individual or his/her family; persistent, hurtful name calling; humiliation or shaming; acts of retribution, and abusive or offensive remarks about a person.

2. A bully may be any employee, official, may be a senior staff member or supervisor.

Part 11. Participation in Political Activities.

- a. Subject to the provisions of Chapter 7, Part 2, employees shall not participate in partisan political activities while on the job or otherwise performing services or functions for the Tribal government.
- b. Employees shall not use facilities, property, equipment, money, credit cards, vehicles, communication devices, or supplies owned or controlled by the Tribal government for partisan political purposes.

Part 12. Nepotism.

No employer or employee in a supervisory position may supervise an employee who is a member of his or her immediate family.

Part 13. Crimes and Offenses Against the Tribes.

Any employee who is convicted by a court of committing or attempting to commit a crime or civil offense involving theft, conversion of property or embezzlement against the Tribes, Tribal property or other property in the custody or control of the Tribal government shall be terminated from employment without any right to grieve such termination.

Part 14. Non-Disclosure of Confidential or Protected Information.

Employees shall not disclose, release, or otherwise cause or allow to be disclosed or release information that is confidential, protected by CSKT's attorney-client privilege, non-disclosure agreement or similar restriction or by a court order or order of a hearings officer

CHAPTER 8. PROMOTION, DEMOTION AND DIRECTED REASSIGNMENT

Part 1. Promotion.

- a. A promotion results when an employee is advanced by an employer to a position which is classified in a higher pay level than his or her previous position.
- b. Current employees may be considered for promotions before new employees are hired to fill a vacancy.
- c. An employee's qualifications for a promotion shall be certified by the Personnel Department prior to promotion under the following process:

1. The employer shall make a request to the Personnel Department that an employee be considered for promotion on a Personnel Action Form accompanied by:
 - (a) a copy of the current position description for the position to be filled; and
 - (b) an Application For Employment form completed by the employee.
 2. Upon receipt of the Personnel Action Form, position description and completed Application For Employment, the Personnel Department shall screen the employee's application to verify qualification for the position.
 3. The Personnel Department shall notify the employer of its decision to approve or disapprove the request.
 4. The effective date of a promotion will be the first day of the pay period following Personnel Department approval of the request for promotion.
- d. Upon promotion, an employee's anniversary date will change to the effective date of the promotion.

Part 2. Demotion.

- a. A demotion results when an employee is removed from an employment position and placed in one which is classified in a lower pay level than his or her previous position.
- b. The employer shall provide the employee and the Personnel Department with a written statement of the reasons for the demotion at the time of the demotion.
- c. An employee may be demoted to a position in a lower class for which he or she is qualified under the following sets of circumstances:
 1. When the employee voluntarily request such demotion; or
 2. When the employer determines that the employee is not qualified for the present position; or
 3. When the employee's job performance is inadequate to satisfy the employment requirements; or
 4. When the present position is being abolished.
- d. Upon demotion, an employee's anniversary date will change and his or her pay will be decreased to the entry level of the lower classified position.

Part 3. Directed Reassignment.

- a. A directed reassignment results when an employer removes an employee from an employment position and places him or her in a different position which is classified in the same pay level as the employee's former position.
- b. The employer shall make a request to the Personnel Department that an employee be reassigned by submitting a Personnel Action Form accompanied by:
 - 1. a copy of the current position description for the position to be filled; and
 - 2. an Application For Employment form completed by the employee.
- c. Upon receipt of the Personnel Action Form, position description and completed Application For Employment, the Personnel Department will screen the employee's application to determine if the required qualifications for the position are met and notify the employer of its determination of whether or not the qualifications are met.
- d. If the employee meets the qualification, the employer will submit a Personnel Action Form for the employee with the required documentation to the Personnel Department to effectuate the directed reassignment.
- e. Upon a directed reassignment, an employee's anniversary date will not change, and his or her pay rate will remain the same.

CHAPTER 9. WORK SCHEDULE

Part 1. Work Week and Hours Worked.

- a. A standard work week consists of any forty (40) hour period occurring during the 168 hours of 7 consecutive 24-hour periods. The standard work schedule for employees is Monday through Thursday 7:00 a.m. to 12:00 p.m. and 12:30 p.m. to 5:30 p.m. A work week established by the employer may begin on any day of the week and at any time of the day; provided, however, that any deviations from the standard work schedule must be approved by the employer and documented with a Personnel Action Form.
- b. Hours worked include all time an employee is on duty at his or her prescribed place of work, as well as any additional time the employee is authorized to work. Paid holidays are not included in hours worked. Hours worked do not include any type of the paid leave status.

Part 2. Tardiness and Unexcused Absence.

- a. The employer shall discipline employees, except employees deemed to be exempt employees as defined in the Fair Labor Standards Act, for tardiness or un-excused absence by docking one quarter hour of personal leave or one quarter hour of pay for every 15 minute increment or portion thereof, of tardiness or unexcused absence from work.
- b. An employee who is repeatedly tardy or partakes in repeated unexcused absences may be subject to any other disciplinary action.

Part 3. Breaks.

Work breaks shall not exceed one (1) hour in any work day and shall be scheduled at the discretion of the employer, provided that the employee is required to work a forty (40) hours each work week, subject to holidays.

Part 4. Work Schedules While in Travel Status.

- a. When work-required travel results in an employee being on duty for more than his or her regular scheduled hours, the employer may, as a discretionary matter, make arrangements to modify the work schedule.
- b. No employee may receive pay and benefits in excess of the employees' normal work day hours for any day involving work-related travel.

CHAPTER 10. POSITIONS AND PAY

Part 1. Pay Plan.

- a. All positions shall be classified by the Personnel Department unless an exemption is approved by the Tribal Council. Employees in classified service shall be compensated in accordance with the pay plan established by the Personnel Department.
- b. The Personnel Department shall update market pay rates annually in July with new rates to be effective at the start of the upcoming fiscal year.
- c. The rate of pay for each classified employee will be set at a specific pay level.
- d. No employee shall be paid less than the federal minimum wage, unless otherwise provided by law.

Part 2. Classification System and Position Description.

- a. The Personnel Department shall establish and maintain a job classification system, subject to approval of the Tribal Council.
- b. All classified positions will be paid according to the job classification. Each employee shall be assigned a classification according to the position description.
- c. A copy of the position description shall become part of the employee's official personnel file. The employee will certify in writing that he or she has read and understands the position description and agrees to abide by it.

Part 3. Overtime Pay.

- a. Overtime pay must be authorized in writing by the employer prior to accrual.
- b. Over-time hours will be paid at one and one-half times the employee's rate of pay.
- c. Exempt employees shall not be entitled to overtime pay.

Part 4. Compensatory Time.

- a. Compensatory time must be authorized in writing by an employer prior to accrual. Compensatory time must be used within thirty (30) working days of accrual, unless a waiver is authorized by the employer. Time worked in excess of the employee's normal work week will be earned as time and one-half.
- b. Exempt employees shall not be entitled to compensatory time.
- c. If an employee is terminated, resigns, retires or dies, any unused compensatory time shall be paid to the employee or the employee's estate at the employee's hourly rate of pay upon termination, resignation, retirement or death.

Part 5. Holiday Pay.

Employees shall receive holiday pay in accordance with the number of hours in their normal work day and approved rate of pay.

Part 6. Appointment Rate.

- a. Employees shall be appointed at an entry rate within the defined minimum and mid-point of the approved salary range for a classified position, provided, however, that the appointment rate at hiring may be up to the maximum of the defined range of the pay level if the Personnel Department finds that any of the following circumstances apply:

1. The desired applicant is earning more than the entry rate and will not accept entry rate;
 2. An applicant has exceptional job qualifications;
 3. There is a shortage of qualified applicants and a pay rate higher than entry rate is necessary to recruit applicants.
- b. Appointment rate will not be below entry rate unless the Personnel Department finds that the desired applicant is a participant in any federal hiring program designed to foster work experience or training.

Part 7. In-Service Increases.

- a. **Merit Increases:** After initial hiring, Employers may provide merit increases, up to the maximum of the defined range of the pay level if, upon completion of an employee's annual performance evaluation, an employee has received an Outstanding, or Above Standard rating and the Employer has sufficient budget available to support and sustain such an increase. A merit increase shall not exceed 8% of the employee's previous pay rate for Outstanding performance evaluations and shall not exceed 5% of the employee's previous pay rate for Above Standard rating and at no time, shall increase above the maximum of the defined range of the relevant pay level.
- b. **Market-Based Increases:** Based upon the results of the annual salary survey conducted by the Personnel Department, employees shall receive increases, regardless of the results of their annual performance evaluation, to the equivalent market rate based on their pay level.

Part 8. Promotions, Demotions, and Directed Reassignments.

- a. Upon promotion from a position in one pay level to a position in a higher pay level, the employee is entitled to pay at a rate at least equivalent to the employee's rate of pay before the promotion.
- b. An employee who is demoted shall be compensated at entry level of the lower classified position.
- c. An employee who receives a directed reassignment will be paid at a rate of pay within the pay level of the new position for the employee.

Part 9. Temporary Pay Increases

- a. The Tribal Council must approve placing an employee in acting capacity for any position which directly reports to Tribal Council, as identified in the most recently

approved Tribal government organizational chart. Any request for a temporary pay increase for such employees must be approved by the Tribal Council.

- b. Employees who are placed in an acting capacity not subject to section (a) above must be approved by the Employer responsible for the position being filled. Any request for a temporary pay increase for such employees must be approved by the Employer after review by the Personnel Department for compliance with this Ordinance.
- c. At the time the temporary placement is approved, a pay increase will only be granted if the placement in the position will be for a period of ninety (90) consecutive working days or more. The duration of the temporary appointment cannot exceed one (1) year. The temporary appointment will be evaluated every ninety (90) days by the Tribal Council or Employer to determine if the temporary appointment should continue or end.
- d. Once the temporary appointment is approved, the employee will be placed at the entry level range (Step 1 through Step 6) of the classification of the position they are being placed in. If their rate of pay is at or above Step 6, their rate of pay may be increased anywhere from Step 7 through Step 13 of the classification of the position they are being placed in.
- e. The employee will return to their former rate of pay when the temporary appointment is completed. The funding source for the position will be from the department budget where the temporary placement is located. If there are budget concerns or problems, the department will recommend an alternative budget source to be considered and approved by the Tribal Council.
- f. Temporary pay increases shall be made retroactively after the employee has initiated the temporary pay increase position.

CHAPTER 11. PERFORMANCE APPRAISAL

Part 1. Performance Appraisal Evaluations.

- a. Employers shall complete a performance appraisal evaluation and shall submit the evaluation to the Personnel Department on all employees other than contract employees at least annually on or before an employees' anniversary date and shall provide copies of the evaluation to the employee. Failure to timely submit an evaluation shall be deemed a satisfactory evaluation for step increases only.
- b. Performance appraisals shall be conducted in accordance with the Supervisor's Performance Planning and Review Manual. The criteria on which an employee is evaluated will be the performance objectives and standards contained in the job description, position description and the provisions of this Ordinance.

- c. Failure of Employers to complete performance evaluations in a timely manner may be a basis for disciplinary action.

Part 2. Procedure.

- a. The Personnel Department shall notify each employer on a monthly basis which employees are due for evaluations in the following month. Such notice shall occur prior to
 - 1. the end of any probationary period; and
 - 2. the employee's anniversary date
- b. Extensions of time to submit an evaluation may be granted by the Personnel Department only under circumstances that render timely evaluation impossible.
- c. Each employee evaluation shall be placed in the employee's official personnel file and made a permanent part thereof.

CHAPTER 12. DISCIPLINARY ACTION

Part 1. Authority.

- a. The authority to discipline employees is vested in the Tribal Chair, in consultation with the Tribal Council, or the Employer in accordance with the most recently approved Tribal government organizational chart. Supervisory employees in a Department may recommend in writing to the Employer disciplinary actions for employees under their supervision stating reasons and the proposed disciplinary action.
- b. Disciplinary actions for employees, including Executive Officers, must be submitted to the Personnel Department on a Personnel Action Form in order to constitute an official disciplinary action.
- c. Contract employees are subject to disciplinary action in accordance with the terms of the contract for employment. If a contract is silent on the matter, disciplinary action shall be in accordance with contract law.

Part 2. Disciplinary Action not Cumulative or Progressive.

- a. Failure to pursue disciplinary action in one instance shall not affect the ability of an employer to take disciplinary action in any other instance.
- b. Disciplinary action is not progressive. Each disciplinary action is an independent action under this Ordinance.

Part 3. Reasons for Disciplinary Action.

- a. Reasons for taking disciplinary action include, but are not limited to, any of the following reasons:
 1. Insubordination.
 2. Tardiness.
 3. Unexcused absences.
 4. Unsatisfactory job performance.
 5. Use of alcohol, prescription or illegal drugs and controlled substances on the job or in a manner that adversely impacts job performance.
 6. Dereliction or failure to perform employee responsibilities in whole or in part.
 7. Conduct on the job not in keeping with standards of behavior generally associated with employment.
 8. Off the job conduct that negatively impacts job performance.
 9. Conduct that constitutes a danger to the orderly administration of Tribal government.
 10. Inciting or engaging in unlawful political activities, or engaging in partisan political activities, demonstrations, riots or civil disobedience while on the job or job-related travel or while utilizing property of any nature that is owned or controlled by the Tribal government.
 11. Conflict of interest.
 12. Criminal conviction if it adversely impacts job performance or reflects negatively on the employer.
 13. Criminal conviction involving injury to persons or property, including reckless driving.
 14. Conviction of a crime or a civil offense against Tribal government.
 15. Failure to exercise the proper level of care for, or misuse, damage other than ordinary wear and tear, theft, misappropriation of facilities, property, equipment, money, credit cards, vehicles and supplies owned or controlled by the Tribal government.

16. Use of telephones, computers, and other forms of technology owned or controlled by the Tribal government that is not required or necessary to the job.
17. Harassment or bullying.
18. Disclosure of confidential or protected information.
19. Any other reason specified in this Ordinance or in federal or Tribal law, regulation or policy.

Part 4. Documentation.

- a. The Employer invoking disciplinary action shall provide the employee with a copy of a Personnel Action Form documenting the specific nature and reasons for a disciplinary action, together with notice of the right to file a grievance, if applicable. The employer invoking disciplinary action shall provide the Personnel Department with the original Personnel Action Form within one working day of serving the employee. Provided, however, that no Personnel Action Form or action report is required for the discipline of an oral warning.
- b. The Tribal Chairperson, in consultation with the Tribal Council, shall be responsible for implementing disciplinary action for employees who report directly to the Tribal Council according to the most recently approved Tribal government organizational chart. All other employees will be subject to disciplinary action by their respective Employer.

Part 5. Types of Disciplinary Action.

- a. The following types of disciplinary action may be taken and the selection of action shall be at the discretion of the employer invoking disciplinary action.
 1. Oral Warning - No written record shall be entered into the employee's personnel file.
 2. Corrective Interview - The employer invoking disciplinary action shall conduct an interview to make the employee aware of his or her acts giving rise to disciplinary action. The employer invoking disciplinary action shall record the interview and enter any corrective steps required by the employer in the employee's official personnel file.
 3. Suspension - An employee may be suspended without pay for up to five (5) working days, or longer if suspension involves issues of public health or safety.

4. Termination - When circumstances so warrant, an employee may be terminated

CHAPTER 13. TERMINATION OF EMPLOYMENT

Part 1. Resignation.

Any employee intending to resign shall file a written resignation with the employer at least two weeks before leaving employment. The resignation shall state effective date, reasons for leaving, and a forwarding address.

Part 2. Reduction-In-Force and Reemployment Procedures.

- a. A reduction in force (RIF) is the abolishment of a position or positions due to a lack of work, lack of funds, or changes in policy, priorities, etc., that affect the organizational structure. When considering a reduction-in-force, an employer shall consider preference, qualifications, past performance and seniority.
- b. The RIF and reemployment procedure provides equitable treatment of employees in all departments of the Confederated Salish and Kootenai Tribes in the event that a RIF becomes necessary. This policy applies to all positions within the Tribal organization, excluding positions under contract that have specified durations of employment.
- c. Any department considering a RIF shall immediately report any and all positions to be affected to the Personnel Department Head. Organizational charts will be revised to remove the positions affected by the RIF and the department head must receive Tribal Council approval.
 1. All affected employees will receive written notice of the RIF which shall include the reason and effective date (at least 30 days in advance of the anticipated date for reduction). This written notification shall be coordinated through the Personnel Department and signed by the Department Head responsible for the department undergoing Reduction In Force.
 2. Each RIF'd employee if requested by the employee shall be entitled to receive priority for re-employment for a period of one (1) year following the effective date of the RIF. When vacancies become available, RIF'd employees shall receive written notification, via certified mail, from the Personnel Department stating the position and/or positions available. RIF'd employees will be instructed in the letter to complete a Tribal Application for Employment for consideration for the positions.
 3. If a RIF'd employee wishes to be considered for an available position, he/she must respond to the written notification within five working days of receipt of

the notification. If during the one (1) year, a RIF'd employee does not consider or accept employment offers, his/her rights to receive priority for re-employment will terminate.

4. Upon placement in another position, employees will be required to serve a probationary period of six (6) months. The Department will determine the rate of pay for the position. The rate of pay must correspond to the Pay Plan at the appropriate pay level and cannot exceed the maximum rate of the new position. The employee's anniversary date will also change to the effective date of the new position.
5. Position descriptions for current employees that lose supervisory authority due to the RIF must be re-written to reflect such. This shall be completed prior to presenting the revised organizational chart to the Tribal Council.

Part 3. Disability.

- a. The Tribal government prohibits employment discrimination against qualified individuals with disabilities. A qualified individual with a disability is an individual with a disability who meets the skill, experience, education, and other job-related qualifications of a position held, and who can perform the essential functions of a job with reasonable accommodation.
- b. The term "disability" means, with respect to individuals:
 1. a physical or mental impairment that substantially limits one or more major life activities;
 2. a record of such an impairment; or
 3. is regarded in the community as having such an impairment.
- c. An employer shall endeavor to provide reasonable accommodation to a qualified individual with a disability before considering termination.
- d. "Reasonable accommodation" means change in the work environment or in the way that work is done that results in equal employment opportunity for an individual with a disability, including but not limited to:
 1. making existing facilities used by employees accessible to, and usable by, an individual with a disability;
 2. job restructuring;
 3. modifying work schedules;

4. reassignment to a vacant position for which a disabled employee qualifies;
 5. acquiring or modifying equipment or devices; or
 6. providing qualified readers or interpreters.
- e. **Undue Hardship** - An employer is not required to provide an accommodation if it will impose an undue hardship on the operation of the Tribal government. Undue hardship is an action that is costly, extensive, substantial, or disruptive, or that would alter the nature or operation of Tribal government.
- f. An employee may be terminated when he or she cannot perform the required duties because of physical or mental impairment. Employers shall consult with the Personnel Department regarding all cases of termination for mental or physical reasons to ensure that proper medical evidence substantiates the termination. Termination due to mental or physical incapacitation will be made after exhausting all reasonable accommodation efforts.
- g. Persons who use controlled substances illegally are not protected when disciplinary action is taken as a result of the illegal use. This includes employees who improperly use prescription drugs as well as those who use illegal drugs.

Part 4. Termination During Probation.

Termination during a probationary period may be without cause and is not grievable.

Part 5. Termination for Cause.

If an employee is not in a probationary period, an employee may only be terminated for cause by an employer. The employer shall submit a written statement of the reasons to the employee and the Personnel Department on a Personnel Action Form at the time of dismissal. Cause includes, but is not limited to, those reasons specified at Chapter 12, Section 3, entitled Reasons for Disciplinary Action.

Part 6. Return of Tribal Property.

- a. Prior to an employee's last day of work he or she must return to the employer in good condition all facilities, property, equipment, money, credit cards, vehicles and supplies the employee utilized during the course of his or her employment and that are owned or controlled by the Tribal government. Failure to return such items in a good and operable condition shall constitute the basis for legal action against the employee.
- b. Employees approved for long term disability must also return to the employer in good condition all facilities, property, equipment, money, credit cards, vehicles and supplies until such time they return to duty.

CHAPTER 14 GRIEVANCE PROCEDURES

Part 1. Grievance.

A grievance is a written request by an employee filed with the Personnel Office for personal relief in a matter of concern or dissatisfaction with what they believe to be a violation of personnel or employment conditions which are subject to this Ordinance.

Part 2. Tribal Policy

The Tribes recognize that disagreements will occur between employees and management and that it is to the benefit of all concerned to resolve such issues promptly and equitably. It is the Tribes' policy that no retaliatory action will be taken against an employee for filing or considering the filing of a grievance. In like manner, employees who provide information concerning matters at issue in a grievance or who act as representatives are to be free from retaliatory action. The Tribes also recognize that it would be inappropriate to take action against a supervisor solely because subordinates have filed grievances.

Part 3. Grievable Issues.

An employee may file a grievance only for one or more of the following reasons:

- a. disciplinary action taken without cause when cause is required;
- b. unsafe working conditions;
- c. failure by an employer to comply with the provisions of this Ordinance;
- d. employment practices that violate this Ordinance or written employment policies of Tribal Government that are incorporated herein.
- e. harassment, bullying or retaliation by any Tribal employee, appointed or elected official
- f. employment practices that violate Tribal or federal law.

Part 4. Acts That Are Not Grievable

Acts or issues that do not satisfy the standards of Part 3 of this Chapter, and that are therefore not grievable, include, but are not limited to, the following:

- a. Contents of Tribal law and policy.
- b. Non-selection for interview, hire or promotion.
- c. The substance of elements and performance standards contained in an employee's position description or classification.
- d. Termination during any probationary period.
- e. Management decisions relating to benefit plans and packages.
- f. Reclassification of a position that does not result in a reduction of pay.
- g. Change in the elements of a position description that does not result in a reduction in pay.
- h. Change in work schedule or duty station.

- i. Employee disagreements or interactions with other employees that are not in violation of federal or Tribal law or policy.
- j. Requests by an employee to an employer that are either illegal or beyond the employer's scope of authority.
- k. Oral warnings.
- l. Termination arising out a reduction in force.
- m. Directed reassignment.

Part 5. Employees Rights in the Grievance Process

Employees who are covered by a contract (unless the contract allows), emergency hires, or employees who are serving a new hire or reassignment probationary period, shall not be eligible to file and prosecute a grievance. An employee pursuing a grievance shall have the right to be assisted or represented by any other person of the employee's choosing at any step in the grievance process as long as there is not a conflict of interest. Tribal Council, employees of the Personnel Department, and Officers of Tribal Court who are employed by the Tribes may not represent an employee during the grievance process. Costs of such assistance or representation shall be paid by the grieving employee. Record of a grievance proceeding initiated by an employee shall not be made a part of the employee's official Personnel file, but shall be kept in a grievance file unique to that employee. The grievance file shall contain all filings from all parties and a complete copy shall be conveyed to the Hearings Officer if one is appointed.

Part 6. Grievance Procedures

- a. Grievance procedures shall always follow the sequence outlined below. An employee shall file a Grievance Procedure Form with the Personnel Department Lead Personnel Specialist within four (4) working days after the occurrence of event to be grieved. The form must be completed, signed and dated by the grieving employee. A Grievance Procedure Form must specify the act or acts grieved, the employer who is accused, the relief sought, and must identify all witnesses and evidence the grievant intends to introduce into the record. The relief sought shall not include any requests for disciplinary action, written statement of apology or reassignment to a different position. Failure to file a completed Grievance Procedure Form within four (4) working days of a grievable event shall be an absolute bar to prosecuting a grievance.
 - 1. Upon receipt of a completed Grievance Procedure Form, the Lead Personnel Specialist shall date stamp the Grievance Procedure Form, review it for completeness, and if complete, initiate a Grievance File on the matter. An incomplete Grievance Procedure Form shall be a basis for denying the grievance.
 - 2. If the Grievance Form does not satisfy any of the elements of Part 3, the Lead Personnel Specialist shall, within four (4) working days of receipt, issue a brief written denial of the Grievance and provide a copy of said denial to the Personnel Department Head, grievant and the employer against whom the

grievance is filed. The decision to deny shall be served on the grievant by certified mail and the record of mailing included in the Grievance File.

3. If a grievance is denied, or if a hearing officer's decisions is contested, the grievant may, within ten (10) working days from the date of the denial, seek relief by filing a Complaint in the Tribal Court and must contemporaneously serve a copy of the Complaint to the Managing Attorney of the Tribal Legal Department.
 4. If the Lead Personnel Specialist determines that the grievance satisfies one or more of the elements of Part 3, he or she shall promptly issue a brief written authorization for the grievance to proceed and shall contemporaneously provide a copy of said authorization to the Personnel Department Head, the employer against whom the grievance was filed and to the Managing Attorney of the Tribal Legal Department. The decision shall be served on the grievant by certified mail and a record of the mailing included in the Grievance File.
- b. If the Lead Personnel Specialist authorizes the grievance to proceed, he or she shall provide the employer being grieved with a copy of the Form, and require a written response from the employer within four (4) working days from the date of that decision. The response shall be included in the Grievance File.
 - c. If the grievance satisfies one or more elements of Part 3, the aggrieved person may petition for an informal hearing before a Hearings Officer to be appointed by the Personnel Department Head. The petition shall be included in the Grievance File.
 - d. The Hearings Officer shall be a graduate of an accredited law school.
 - e. Failure of an aggrieved party to petition the Lead Personnel Officer for an administrative hearing within ten (10) working days of receipt of the denial of his or her grievance shall constitute a complete bar to prosecuting the grievance.
 - f. At a minimum, a petition for Hearings Officer review shall contain;
 1. The name, mailing address and telephone number of the parties and their representatives, if any; and
 2. A copy of the Grievance Procedure Form that identifies all evidence, witnesses and relief the grievant seeks.
 - g. Upon authorization for a grievance to proceed, the Lead Personnel Specialist shall promptly provide a copy of the Grievance Form to the employer against whom the grievance is based and to the Managing Attorney of the Tribal Legal Department. A copy of the responses shall be included in the Grievance File.
 - h. The Managing Attorney may intervene as a party on behalf of the Tribal government as a matter of right if it appears that the grievance raises issues of Tribal governmental interest. If the Managing Attorney serves notice to intervene on the

parties and Hearings Officer, the Hearings Officer shall provide copies of the Grievance File and both party's filings to the Managing Attorney. The response of the Managing Attorney shall be included in the Grievance File.

- i. Upon appointment of a Hearings Officer the Lead Personnel Specialist shall provide him or her a complete copy of the Grievance File. Before the Hearings Officer reaches a final decision, the parties are entitled to a reasonable opportunity to submit, in writing for the Hearings Officer's consideration:
 1. Evidence and witness statements identified in the Grievance Procedure Form to support or refute the grievance; and
 2. Exceptions to, or justification for, the actions that gave rise to the grievance;
 3. Proposed findings of fact, conclusions of law and appropriate relief, if any;
 4. The persons submitting the above materials to the Hearings Officer shall contemporaneously serve the other parties with copies of the same materials.
- j. The Hearings Officer may grant a request by a party for oral argument and briefing or may order oral argument on his or her own motion. Oral argument shall be limited to material in the record. The hearing shall be informal, provided, however, that the Hearings Officer may limit redundant or hearsay evidence or testimony.
- k. Requests for oral argument shall be made in writing to the Lead Personnel Specialist who shall promptly forward them to the Hearings Officer and shall be served contemporaneously on all parties.
- l. The Hearings Officer deems a hearing appropriate, he or she shall issue an order specifying a time for briefing the time and place for oral argument, which shall be served on all parties.
- m. Oral arguments shall be recorded and recordings shall become part of the record. A party requesting a transcript of the hearing shall pay for its production. If more than one party requests a transcript, the cost of production shall be split evenly.
- n. The Hearings Officer shall issue a written decision including findings of fact, conclusions of law and the relief granted within thirty (30) days of receipt of a petition for administrative hearing, provided, however, that this time frame may be extended sufficiently to allow oral argument, if oral argument is granted. The Hearings Officer shall provide a copy of the decision to the Personnel Department to be placed in the Grievance File.
- o. Any party may seek judicial review of the Hearings Officer's decision by filing a Complaint in Tribal Court within ten (10) working days of receipt of the Hearings Officer's decision. Judicial proceedings shall be limited to a review of the record.
- p. Punitive damages are not available under this ordinance.

CHAPTER 15. CAREER DEVELOPMENT AND TRAINING

Part 1. Definition.

Career development is defined as a program of action designed to further the career growth of employees during their employment.

Part 2. Training.

- a. In-service training of all new employees shall be provided by the employer during normal working hours.
- b. An employer may require the attendance of employees at meetings, conferences, or seminars intended to improve the skills or knowledge of an employee. Acceptance of such training by an employee at reasonable times and with reasonable frequency is a condition of employment.
- c. Any person employed in a supervisory position shall within one year after initial appointment or promotion be required to attend training in management supervision.

CHAPTER 16. INCENTIVE AWARD PROGRAM

Part 1. Authority.

The Personnel Department shall be responsible for implementing the Incentive Awards program.

Part 2. Incentive Award.

An employee may be nominated by his or her employer for an award for a special achievement or act of service that was clearly outside the employee's normal scope of work, or for performance of normal responsibilities under extraordinary circumstances.

The maximum incentive award shall not exceed \$5,000 in a three-year period or \$2,000 in any given year. Employees may receive awards during three consecutive years of service, as long as the total of the three years does not exceed \$5,000. In addition, awards shall only be given when the employer's appropriate budget is able to absorb the cost.

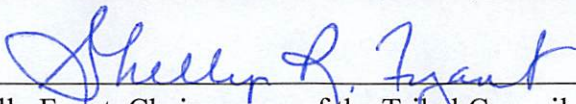
Part 3. Procedures.

- a. Employers may submit a nomination form to the Personnel Department. The nomination form must include the recommendation and signature of the employee's employer. A copy of the position description of the employee being nominated must be included with the nomination form.

- b. The Personnel Department shall review each nomination form to determine if the nomination form appropriately addresses the circumstances outlined in this chapter in which an incentive award may be granted and may seek additional information as necessary, or require the submitting employer to re-submit the form with additional information included in order to ensure compliance with this section. After the Personnel Department has reviewed forms and addressed any such documentation issues, they will process the award form.
- c. Upon final review, the Personnel Department shall inform the immediate supervisor, employer and employee of the approval or disapproval of the award.

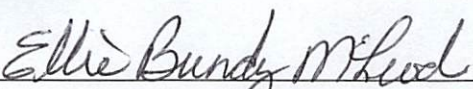
CERTIFICATION

The foregoing ordinance was adopted by the Tribal Council on April 22, 2021, with a vote of 8 for, 1 opposed, and 0 not voting, pursuant to the authority vested in it by Article VI, Section 1 (a), (l) and (u) of the Tribes' Constitution and Bylaws, as adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984, as amended).



Shelly Fyant, Chairwoman of the Tribal Council

ATTEST



Ellie Bundy McLeod, Secretary of the Tribal Council

Submitted to the Secretary of Interior or their designee on _____, 2021.