

NOTICE OF PROPOSED CODE AMENDMENT

The following proposed Code Amendment was passed for First Reading by Tribal Council on July 23, 2020.

TITLE: 9 EMPLOYMENT AND CONTRACTING **Chapter 9-4 EMPLOYMENT ACTION REVIEW**

The Tribal Council enacted the Employment Review Code by Ordinance No. 055 on May 16, 2004.

The Tribal Council has determined that the grievance processes set forth in the CTCLUSI Employee Handbook and the CTCLUSI Team Member Handbook provide adequate, independent review of disciplinary actions; and

Tribal Council hereby approves an amendment to rescind the Employment Action Review Code in its entirety, as set out in the attached Exhibit A hereto, and hereby approves such amendment for first reading and posting for a twenty-eight (28) day period

DATE OF THE TRIBAL COUNCIL MEETING AT WHICH THE PROPOSED CODE IS EXPECTED TO BE CONSIDERED FOR FINAL PASSAGE:

October 11, 2020

The notice of the proposed amendment/creation of Code/Ordinance shall be published in the Tribal Newsletter and the text will be posted for public comment for twenty-eight (28) days in the Administration Building, Tribal Hall, Outreach Offices, on the Tribes' website and at Three Rivers Casino (Office of the Gaming Commission). Written comments should be sent to the Tribal Council in care of Jeannie McNeil, CTCLUSI, 1245 Fulton Avenue, Coos Bay OR 97420 or email: jmcneil@ctclusi.org.

TITLE 9 – EMPLOYMENT AND CONTRACTING

CHAPTER 9-4 EMPLOYMENT ACTION REVIEW

9-4-1 Purpose

(a) — The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (Tribes) declares that the purpose of this Chapter 9-4 is to enhance the employment relationship between the Tribes and Tribal employees consistent with the Tribal Council’s responsibility to manage Tribal resources in order to provide governmental services and to promote the social and economic welfare for the benefit of Tribal employees and residents of and visitors to the territory of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians.

9-4-2 Definitions

(a) “Date of the Final Employment Decision”—the earlier of the following two dates: (i) the date the affected Employee has exhausted review procedures established in the written employment policies of the appropriate Tribal Employer, including but not limited to any grievance procedure, for resolving a dispute relating to the terms and conditions of employment; or (ii) the date the Decision Maker delivers a written notice of Final Employment Decision by hand delivery to the Employee or places a written notice of Final Employment Decision in certified mail to the Employee’s last known address.

(b) “Day”—calendar day. Whenever a deadline falls on a weekend or holiday observed by the Tribal Court, the deadline shall be extended to the next day that is not a weekend or holiday observed by the Tribal Court.

(c) “Decision Maker”—(i) the Tribal Administrator or any board, officer, employee or agent of the Tribes, including any agency and instrumentality of the Tribes other than a Tribal Government Corporation, to whom authority has been delegated to make a final Employment Decision; (ii) the chief executive officer of a Tribal Government Corporation or any board, officer, employee or agent of a Tribal Government Corporation to whom authority has been delegated by a Tribal Government Corporation to make a Final Employment Decision; or (iii) the chief executive officer of any Tribal Entity or any board, officer, employee or agent of such Tribal Entity to whom authority has been delegated to make a Final Employment Decision.

(d) “Employee”—an employee of a Tribal Employer who is not in an introductory period or temporary status.

(e) “Employee Benefits”—vacation, sick leave, medical, or other insurance coverage, or other employment benefits provided to an Employee by the Tribes, but the term Employee Benefits as used in this Chapter 9-4 does not include claims for workers’ compensation or unemployment compensation.

~~(f) “File”, “Filed” or “Filing”— those procedures for filing documents with the Tribal Court in accordance with the Tribal Code or the Tribal Court’s Supplemental Court Rules.~~

~~(f) “Final Employment Decision”— a final determination resulting in termination of employment of an Employee, made by a Decision Maker. No action or decision resulting in termination of employment of an Employee shall be deemed a Final Employment Decision subject to judicial review until and unless: (i) the affected Employee has exhausted review procedures established in the written employment policies of the appropriate Tribal Employer, including but not limited to any grievance procedure, for resolving a dispute relating to the terms and conditions of employment; or (ii) the Decision Maker delivers a written notice of Final Employment Decision by hand delivery to the Employee or by certified mail to the Employee’s last known address, including a notice to the affected Employee of a right to file a petition for judicial review under this Chapter 9-4 in Tribal Court within thirty (30) days after the Decision Maker hand delivers or mails the Final Employment Decision.~~

~~(g) “General Counsel”— attorney or law firm designated as General Counsel by resolution of the Tribal Council as of the time notice is to be given under this Chapter 94. The identity and contact information for General Counsel may be obtained from the Tribal Administrator’s office.~~

~~(h) “Tribal Court”— the Tribes’ Tribal Court established pursuant to Article VII, Section 1, of the Constitution of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon.~~

~~(i) “Tribal Council”— the branch of the Tribes designated by that name in Article VI of the Constitution of the Tribes.~~

~~(j) “Tribal Employer”— the Tribes, a Tribal Government Corporation or a Tribal Entity.~~

~~(k) “Tribal Entity”— any business, governmental or quasi-governmental entity wholly owned by the Tribes that is not a Tribal Government Corporation.~~

~~(l) “Tribal Government Corporation”— any Corporation chartered by the Tribal Council which is wholly owned by the Tribes, including any subsidiary or subdivision of a Tribal Government Corporation that is chartered by the Tribal Council and wholly owned by a Tribal Government Corporation. Tribal Government Corporations are agencies and instrumentalities of the Tribes.~~

~~(m) “Tribal Law”— the Constitution of the Tribes, initiatives and referendums adopted by members of the Tribes in accordance with the Constitution of the Tribes, Tribal Code, ordinances and other legislative enactments adopted by the Tribal Council, and common law of the Tribal Court.~~

~~(n) “Tribes”— the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon, including all agencies, departments, offices, divisions, commissions, authorities, corporations, instrumentalities or other entities of the Tribes.~~

9-4-3 Waiver of Sovereign Immunity and Remedies

~~(o) Absent applicable law to the contrary, the sovereign immunity of the Tribes shall continue except that such immunity is hereby expressly waived to judicial review exclusively by the Tribal Court of any Final Employment Decision upon the timely filing of a petition for judicial review with the Tribal Court by an aggrieved Employee in accordance with the standards and procedures established by this Chapter 9-4.~~

~~(p) The rules, standards and procedures for judicial review provided by this Chapter 9-4 are integral parts of the limited waiver of sovereign immunity provided by this Chapter 9-4 and shall be strictly and narrowly construed.~~

~~(q) The remedies under this Chapter 9-4 upon an order reversing or remanding a Final Employment Decision shall be limited, as appropriate, to reinstatement, payment of back pay, and payment of other back Employee Benefits. No rule of law shall be applied under this Chapter 9-4 imposing absolute or strict liability, equitable remedies, punitive damages or exemplary damages, nor shall any award be made under this Chapter 9-4 for any damages or remedies other than those specifically stated in this section 9-4-3(c).~~

~~(r) This Chapter 9-4 does not waive the sovereign immunity of any officers, employees or agents of any Tribal Employer.~~

~~(s) This Chapter 9-4 does not waive the sovereign immunity of any Tribal Employer except as expressly provided in this Chapter 9-4.~~

~~(t) This Chapter 9-4 provides the exclusive remedy for claims relating to the terms and conditions of employment between any person and any Tribal Employer other than claims relating to workers' compensation and unemployment compensation. No person may make any other form of claim, including, but not limited to any claim for damages or other remedies, under any other provision of the Tribes' Tribal Code or otherwise, arising out of or relating to the terms and conditions of employment between any person and a Tribal Employer.~~

9-4-4 Judicial Review of a Final Employment Decision

~~(a) Judicial review initiated by a petition for judicial review under this CLUSITC 9-4-4(a) is the sole and exclusive remedy for an Employee aggrieved by a Final Employment Decision. To initiate judicial review of a Final Employment Decision, an Employee must file a written petition for judicial review with the Tribal Court within thirty (30) days after the Date of the Final Employment Decision. The petition for judicial review must include, at a minimum: (i) the name, address and telephone number of the Employee; and (ii) the basis for the petition for judicial review, including a statement of the relevant facts. Except as provided in CLUSITC 9-4-4(b), failure to file a written petition with the Tribal Court within thirty (30) days after the Date of the Final Employment Decision shall be a jurisdictional defect which shall deprive the Tribal Court of jurisdiction to review the petition.~~

~~(b) — A written Final Employment Decision delivered to an Employee by hand delivery or certified mail without a notice of the Employee's right to file a petition for judicial review is valid and effective to terminate the Employee's employment, but the time for filing a petition for judicial review pursuant to CLUSITC 9-4-4(a) shall not commence until such notice of judicial review rights is delivered to the Employee by hand delivery or placed in certified mail to the Employee's last known address.~~

~~(c) — Prior to filing a petition for judicial review with the Tribal Court, the aggrieved Employee shall serve copies of any such petition on: (i) the Decision Maker; (ii) either the Tribal Administrator of the Tribes or, where the Final Employment Decision relates to the terms and conditions of employment with a Tribal Government Corporation or Tribal Entity, upon the chief executive officer of the Tribal Government Corporation or Tribal Entity which issued the Final Employment Decision; (iii) the Tribes' General Counsel; and (iv) the Chair of the Tribal Council. Proof of such service shall be filed with the Tribal Court together with the petition for judicial review. Failure to make such service prior to filing the petition for judicial review and failure to file proof of such service, together with the petition for judicial review, shall be jurisdictional defects which shall deprive the Tribal Court of jurisdiction to review the petition. Service may be made by personal service or by proof of mailing by certified mail, return receipt requested. Where service is by certified mail, return receipt requested, service shall be deemed effective on the day of such mailing.~~

~~(d) — The filing of a petition for judicial review shall not stay enforcement or effectiveness of a Final Employment Decision.~~

~~(e) — The exclusive record for judicial review of a Final Employment Decision hearing shall be compiled by the Decision Maker and shall include:~~

- ~~(1) The written Final Employment Decision;~~
- ~~(2) A copy of relevant portions of the Employee's personnel file;~~
- ~~(3) A copy of all documentary information, evidence, investigation reports and incident reports submitted to or relied upon by the Decision Maker;~~
- ~~(4) A copy of any written contract between the Employee and the Tribal Employer; and~~
- ~~(5) All judicial review related documents filed with Tribal Court and any additional information requested by the Tribal Court.~~

~~(f) — Within thirty (30) calendar days after the filing of a petition for judicial review of a Final Employment Decision, the Decision Maker shall submit to the Tribal Court the record as described in CLUSITC 9-4-4(e). Should the Decision Maker fail to do so, the Tribal Court may order the Decision Maker to comply. A copy of the record shall be provided to the Employee at the Tribes' expense.~~

~~(g) — The Tribal Court shall review the Final Employment Decision and the record. The Tribal Court may reverse or remand a Final Employment Decision only if it finds, solely based on the record, that the Final Employment decision was:~~

- ~~(6) Not in accordance with Tribal Law or applicable federal law;~~
- ~~(7) Contrary to constitutional right, power, privilege or immunity;~~
- ~~(8) Taken without observance of procedure required by Tribal Law; or~~
- ~~(9) A breach of a written contract between the Employee and a Tribal Employer; provided, however, that when a written contract permits the Tribal Employer to terminate the Employee's employment in certain circumstances, the Decision Maker's determination that such circumstances were present will be upheld if the determination is supported by such evidence as a reasonable mind might accept as adequate to support a conclusion.~~

~~(h) — The Employee shall have the burden of persuasion.~~

~~(i) — The decision of the Tribal Court shall be final, subject only to review by the Tribal Court of Appeals.~~

9-4-5 Applicable Law

~~Tribal law and applicable federal law apply to the terms and conditions of employment with any Tribal Employer and likewise shall govern all petitions for judicial review of Final Employment Decisions. Nothing in this Chapter 9-4 shall limit or qualify the right of a Tribal Employer to adopt and enforce employment policy.~~

~~The Tribal Court shall recognize the right of a Tribal Employer to rely upon supervisors and managers to exercise judgment and discretion in making decisions affecting the terms and conditions of employment, including but not limited to, matters involving employee recruitment, hiring, compensation, training, retention, scheduling, assignment and transfer of responsibilities, promotion, demotion, discipline, suspension and termination.~~

9-4-6 Severability

~~If any provision of this Chapter 9-4 or application of this Chapter 9-4 to any person or circumstance is determined to be invalid, such invalidity shall not affect other provisions or application of this Chapter 9-4 to other persons or circumstances which can be given without the invalid provision or application. To this end, the provisions of this Code are declared to be severable.~~

APPENDIX A
LEGISLATIVE HISTORY AND EDITORIAL CHANGES

EMPLOYMENT ACTION REVIEW

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the revisions to Chapter 9-4 Employment Action Review by Ordinance No. 055D at a Tribal Council meeting on March 9, 2014. Vote was 6 (for), 0 (against), 1 (absent) and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the revisions to Chapter 9-4 Employment Action Review by Ordinance No. 055C at a Tribal Council meeting on October 24, 2012. Vote was 4 (for), 0 (against), 2 (absent) and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians adopted Ordinance No. 055B revising CLUSITC 9-4-2(e) to correct the definition of “File,” “Filed” and “Filing”, in a regular Tribal Council meeting on February 13, 2011. Vote was 6 (for), 0 (against) and 1 (absent).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians approved and enacted the amended “Employment Action Review” Code, Resolution No. 07-111, Ordinance No. 055A, in a regular Tribal Council meeting on October 14, 2007. Amended was 9-4-2(c) and (f) to clarify the employees and employment actions that are subject to review in Tribal Court. Vote was 7 (for), 0 (against) and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians approved and enacted the “Employment Action Review” Code, Resolution No. 04-030, Ordinance No. 055, in a regular Tribal Council meeting on May 16, 2004. Vote was 7 (for), 0 (against) and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians approved to rescind Chapter 9-4 “Employment Action Review” Code in its entirety by Resolution No. 20-059, Repealing Ordinance No. 055, in a Special Tribal Council meeting on July 23, 2020. Vote was 6 (for), 0 (against) and 0 (abstaining).