



23rd Navajo Nation Council

MEMORANDUM

To : Manuel Rico, Senior Programs and Projects Specialist
OFFICE OF LEGISLATIVE SERVICES

From : 15711
Tom Platero, Executive Director
OFFICE OF LEGISLATIVE SERVICES

Date : January 9, 2019

Subject : ***23rd Navajo Nation Council Expired Legislation***

Pursuant to 2 N.N.C. § 164 (A) (1), "The last day for consideration of resolutions shall be December 31st of the year immediately preceding the swearing in of the new Council", the following legislation need to be closed out and labeled as "expired":

NAVAJO NATION COUNCIL:

0399-17	0424-17	0098-18	0136-18
0183-18	0224-18	0328-18	0344-18
0356-18	0358-18	0367-18	0373-18
0385-18	0393-18	0404-18	0416-18
0422-18			

NAABIK'YATI' COMMITTEE:

0224-15	0361-16	0341-18	0406-18
0418-18	0427-18		

BUDGET AND FINANCE COMMITTEE:

0021-17	0392-17	0099-18	0261-18
0287-18	0398-18	0435-18	0436-18

HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE:

0414-18	0419-18	0451-18
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LAW AND ORDER COMMITTEE:

0114-17	0031-18	0217-18	0307-18
0353-18	0360-18	0364-18	0437-18

RESOURCES AND DEVELOPMENT COMMITTEE:

0402-15	0104-16	0121-16	0183-16
0282-16	0296-16	0370-16	0384-16
0135-17	0176-17	0386-17	0400-17
0076-18	0395-18	0415-18	0443-18

Legislation need to be closed out as soon as possible. If you have any questions, please let me know.

CONCURRENCE:



Honorable LoRenzo C. Bates, Speaker
23rd Navajo Nation Council

COPIES: Pete K. Atcitty, Chief of Staff, Office of the Speaker
Ed McCool, Acting Chief Legislative Counsel, Office of Legislative Counsel
Files

LEGISLATIVE SUMMARY SHEET

Tracking No. 0307-18

DATE: September 12, 2018

AN ACT RELATING TO HEALTH AND EDUCATION AND HUMAN SERVICES, LAW AND ORDER, NABIKIYATI COMMITTEE; ENACTING THE “NAVAJO NATION EMPLOYMENT RIGHTS ACT” OF 2018; AMENDING TITLE 15 N.N.C. §§ 601 THROUGH 620, OF THE NAVAJO NATION CODE

PURPOSE: The purpose of this legislation is to adopt the “Navajo Nation Employment Rights Act of 2018” making extensive revisions to the current Navajo Preference in Employment Act.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: 11/17/18
Website Posting Time/Date: 9:54am 9/17/18
Posting End Date: 9/22/2018
Eligible for Action: 9/23/2018

Health, Education & Human Services Committee
Thence
Law & Order Committee
Thence
Naa'bik'iyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
23rd NAVAJO NATION COUNCIL – Fourth Year, 2018
INTRODUCED BY

Jonathon L. Hale
(Prime Sponsor)

Herman m. Daniels

TRACKING NO. 0307-18

AN ACT
RELATING TO HEALTH AND EDUCATION AND HUMAN SERVICES, LAW AND
ORDER, NABIKIYATI COMMITTEE; ENACTING THE “NAVAJO NATION
EMPLOYMENT RIGHTS ACT” OF 2018; AMENDING TITLE 15 N.N.C. §§ 601
THROUGH 620, OF THE NAVAJO NATION CODE

BE IT ENACTED:

Section One. Authority

- A. The Navajo Nation Council established the Law and Order Committee (LOC) as a Navajo Nation standing committee; and empowered LOC to review and make recommendations to the Navajo Nation Council on proposed Navajo Nation Code amendments and enactments and empowered LOC with oversight authority over the Navajo Nation Labor Commission, pursuant to 2 N.N.C. §§ 164(A)(9), 600(A), 601(B)(14) and (C) (1).
- B. The Navajo Nation Council established the Health, Education and Human Services Committee (HEHS) as a Navajo Nation standing Committee; and empowered HEHS to review and recommend resolutions relating to employment and labor, pursuant 2 N.N.C §§ 400(A) and 401(B) (6)(a).
- C. The Navajo Nation Council established the Naabik'iyati' Committee as a Navajo Nation standing committee and as such proposed legislation that requires final action by the Navajo Nation Council shall be assigned to the Naabik'iyati' Committee, pursuant 2 N.N.C. §§ 164 (A)(9), 700(A).

1 D. The Navajo Nation Council must review and approve enactments or amendments of positive
2 law, pursuant to 2 N.N.C. §164(A).

3
4 **Section Two. Findings**

5 A. The Navajo Preference in Employment Act ("NPEA") expressly recognizes the Navajo
6 Nation's public policy to "promote the economic development of the Navajo Nation,"
7 "lessen the Navajo Nation's dependence upon off-Reservation sources of employment,
8 income, goods and services," " foster the economic self-sufficiency of Navajo families"
9 and "foster cooperative efforts with employers to assure expanded employment
10 opportunities for the Navajo work force." 15 N.N.C. § 602(A).

11 B. In interpreting and applying the NPEA, the Navajo Nation Supreme Court has recognized
12 the importance of economic development and attracting business owners and employers
13 to the Navajo Nation. Dilcon Navajo Westerner/True Value Store v. Jensen, 8 Nav. R.
14 28, 40 (Nav. Sup. Ct. 2000); Manygoats v. Cameron Trading Post, 8 Nav. R. 3, 18 (Nav.
15 Sup. Ct. 2000).

16 C. Despite the existence of the NPEA for over three decades, unemployment and poverty
17 remain rampant throughout the Navajo Nation. It is incumbent on the Navajo Nation
18 Council to pass laws, including amendments to the NPEA that are aimed at reversing the
19 trend of unemployment and poverty.

20 D. Moreover, amending the NPEA as discussed below is consistent with the Navajo Nation's
21 policies of fostering cooperative efforts with employers, promoting economic
22 development, fostering self-sufficiency, and attracting business owners and employers to
23 the Navajo Nation.

24 E. On April 20, 2000, the Navajo Nation Council approved Resolution No. CAP-39-00,
25 which created the Navajo Nation Occupational Safety and Health Act (NNOSHA) of
26 2000, 15 N.N.C. §§1401 et. seq.. Since the NNOSHA was enacted, the NPEA has not
27 been amended to delete language or sections in conflict with NNOSHA.

28 F. As currently written, the NPEA prohibits employers from taking adverse actions against
29 most employees without just cause and written notice of the just cause. 15 N.N.C. §
30 604(B)(8). This prohibition inhibits economic growth and is a powerful disincentive for

business owners and employers to locate on the Navajo Nation.

G. As currently written, the NPEA requires numerous amendments that incorporate guidance and decisions of the Navajo Nation Supreme Court regarding the NPEA. These Navajo Nation Supreme Court opinions include the following with references to applicable sections of the NPEA: *See Exhibit A. Navajo Nation Supreme Court decisions interpreting the NPEA.*

These NPEA sections should be amended to allow businesses and employees within the Navajo Nation to better understand, use and comply with the NPEA.

H. With respect to officers and upper level managers, who have the potential to greatly and quickly impact their employers' economic success or failure, employers must be able to respond to and address their employees' performance and conduct-related issues with expediency and efficiency.

I. The foregoing principles are acknowledged and followed throughout the United States of America, as evidenced by the fact that at-will employment is permitted in all or virtually all of the fifty states, including Utah, Arizona, and New Mexico.

J. Even on the Navajo Nation, the Navajo Nation Council has recognized the foregoing principles by exempting certain high-level government employment positions from the NPEA's just cause and written notice requirements. 15 N.N.C. § 604(B)(8).

K. In further recognition of the foregoing principles, the existing exceptions to the adverse action, just cause and written notice requirements should be amended to include persons who are employed as officers and upper level managers, so long as: (a) the employee is advised in writing that he or she may be subjected to adverse action with or without just cause and with or without written notice, (b) the employer and employee have executed a written employment contract that, at a minimum, sets forth in general or specific terms the reasons and/or conditions under which the employee may be subjected to adverse actions, and (c) the employer and employee have the opportunity to enforce or challenge the written contracts in the Courts of the Navajo Nation. The intent of this exception is to stimulate corporate economic development by recognizing that corporations and other employers can enter into valid and binding employment contracts for officers and upper level managers such as President, Vice-President, General Manager, Chief Executive

Officer, Chief Financial Officer or Treasurer, Chief Operating Officer, Human Resources Director, General Counsel, Secretary, or equivalent or similar positions.

L. In furtherance of the foregoing principles, the existing exceptions to the adverse action, just cause and written notice requirements should be amended to include small businesses, defined as being an employer with 50 or fewer employees. The intent of this exception is to stimulate small business development by allowing small businesses within the Navajo Nation to have greater control over their operations and employees.

M. Finally, in furtherance of the foregoing principles, the NPEA time periods need to be amended to allow an expedited review of employee complaints. Under the NPEA, an employee is allowed up to one year to file a charge, the Office of Navajo Labor Relations is allowed up to six months to investigate the charge, and then the employee is allowed up to 360 days to file a complaint before the Navajo Nation Labor Commission. Then, the Navajo Nation Labor Commission must schedule a hearing(s) before a decision is made on the employee complaint. The NPEA time periods are lengthy, burdensome and costly to businesses, and are not conducive to the efficient and fair resolution of claims. The NPEA should be amended to provide an expedited review of an employee complaint.

N. It is in the best interest of the Navajo Nation to improve Navajo laws that will increase economic development, create jobs and generate revenues within the Navajo Nation.

Section Two. Amendment to Title 15 of the Navajo Nation Code

The Navajo Nation Council hereby amends Title 15 of the Navajo Nation Code, as follows:

Title 15, Navajo Nation Code

Chapter 7. Navajo Nation Employment Rights ~~Preference in Employment~~ Act

§ 601. Title

This Act shall be cited as the Navajo Nation Employment Rights ~~Preference in Employment~~ Act.

1
2 **§ 602. Purpose**

3 A. The purposes of the Navajo Nation Employment Rights Preference in
4 Employment Act are:

- 5 1. To provide employment opportunities for the ~~Navajo~~ work force within the
6 Navajo Nation;
- 7 2. To provide training for the work force within the Navajo Nation Navajo
8 People;
- 9 3. To promote the economic development of the Navajo Nation;
- 10 4. To lessen the Navajo Nation's dependence upon off-Reservation sources of
11 employment, income, goods and services;
- 12 5. To foster the economic self-sufficiency of ~~Navajo~~ families within the Navajo
13 Nation;
- 14 6. ~~To protect the health, safety, and welfare of Navajo workers; and~~
15 ~~7. To foster cooperative efforts with employers to assure expanded employment~~
16 ~~opportunities for the Navajo work force within the Navajo Nation; and~~
17 7. To balance k'e, hozho and Fundamental Law measures within the work place
18 with the requirements of the Act.

19 B. It is the intention of the Navajo Nation Council that the provisions of this Act be
20 construed and applied to accomplish the purposes set forth above.

21
22 **§ 603. Definitions**

23 A. The term "bargaining unit" shall mean a class of employees under one employer, as
24 designated by the ONLR and for which a labor organization has been certified by
25 ONLR to serve as the exclusive bargaining agreement, or for which a labor
26 organization intends to seek certification by ONLR to negotiate a collective
27 bargaining agreement.

28 B. The term "Commission" shall mean the Navajo Nation Labor Commission.
29
30

1 C. The term "employment" shall include, but is not limited to, the recruitment,
2 hiring, promotion, transfer, training, upgrading, reduction-in-force, retention, and
3 recall of employees.

4 D. The term "employer" shall include all persons, firms, associations, corporations, and
5 the Navajo Nation and all of its agencies and instrumentalities, who engage the services
6 of any person for compensation, whether as employee, agent, or servant.

7 E. The term "harassment" shall mean a course of conduct directed by an employer, its
8 agents and/or instrumentalities at a specific person that causes substantial emotional
9 distress in such person and serves no legitimate purpose. Harassment can be sexual and
10 non-sexual in nature. Sexual harassment may involve sexual advances, requests for
11 sexual favors, and other verbal or physical conduct of a sexual nature between an
12 employer, its agents and/or instrumentalities and the employer's employees.

13 F. The term "sexual harassment" shall mean unwelcome or unwanted conduct of a sexual
14 nature, whether verbal or physical, when:

- 15 a. Submission to or rejection of this conduct by an individual is used as a
16 factor in decision affecting hiring, evaluation, promotion or other aspects
17 of employment;
- 18 b. This conduct substantially interferes with and individual's employment
19 performance on the job, or creates an intimidating, hostile, or offensive
20 working environment.
- 21 c. Examples of sexual harassment may include, but are not limited to ;
 - 22 i. Nonverbal actions; leering; gesturing of a sexual nature;
 - 23 ii. Unwanted sexual advances;
 - 24 iii. Demands for sexual favors in exchange for favorable treatment or
25 continued employment;
 - 26 iv. Repeated sexual jokes, flirtations, advances, or propositions;
 - 27 v. Verbal abuse of a sexual nature;
 - 28 vi. Verbal commentary about and individual's body;
 - 29 vii. Touching, rubbing, pinching, whistling, assaulting, suggestive
30 insulting coerced sexual acts, or rape;

1 viii. Environmental harassment, display in the workplace of sexually
2 suggestive objects or pictures.

3 G. The term "independent contractor" shall mean a person who, in exercise of an
4 independent employment, contracts to perform work or services according to his
5 own methods and is subject to his employer's control only as to the end product
6 or final result of his work.

7 H. The term "Navajo" means any enrolled member of the Navajo Nation.

8 I. The term "ONLR" means the Office of Navajo Labor Relations.

9 J. The term "probable cause" shall mean a reasonable ground for belief in the
10 existence of facts warranting the proceedings complained of.

11 K. The term "territorial jurisdiction" means the territorial jurisdiction of the Navajo
12 Nation as defined in 7 N.N.C. § 254.

13 L. The term "counsel" or "legal counsel" shall mean: (a) a person who is an active
14 member in good standing of the Navajo Nation Bar Association and duly
15 authorized to practice law in the courts of the Navajo Nation; and (b) for the sole
16 purpose of co-counseling in association with a person described in Clause (a), an
17 attorney duly authorized, currently licensed and in good standing to practice law
18 in any state of the United States who has, pursuant to written request
19 demonstrating the foregoing qualifications and good cause, obtained written
20 approval of the Commission to appear and participate as co-counsel in a particular
21 Commission proceeding.

22 M. The term "necessary qualifications" shall mean those job-related qualifications
23 which the employer has determined are essential to the performance of the basic
24 responsibilities designated for each employment position including any essential
25 qualifications concerning education, training and job-related experience, but
26 excluding any qualifications relating to ability or aptitude to perform
27 responsibilities in other employment positions. Demonstrated ability to perform
28 essential and basic responsibilities shall be deemed satisfaction of necessary
29 qualifications.

- 1 N. The term "qualifications" ~~shall~~may include the ability to speak and/or understand
2 the Navajo language and familiarity with Navajo culture, customs and traditions.
- 3 O. The term "person" shall include individuals; labor organizations; tribal, federal,
4 state and local governments, their agencies, subdivisions, instrumentalities and
5 enterprises; and private and public, profit and non-profit, entities of all kinds
6 having recognized legal capacity or authority to act, whether organized as
7 corporations, partnerships, associations, committees, or in any other form.
- 8 P. The term "employee" means an individual employed by an employer.
- 9 Q. The term "employment agency" means a person regularly undertaking, with or
10 without compensation, to procure employees for an employer or to obtain for
11 employees opportunities to work for an employer.
- 12 R. The term "labor organization" or "union" means an organization in which
13 employees participate or by which employees are represented and which exists
14 for the purpose, in whole or in part, of dealing with employers concerning
15 grievances, labor disputes, wages, rates of pay, hours or other terms and
16 conditions of employment, including a national or international labor
17 organization and any subordinate conference, general committee, joint or system
18 board, or joint council.
- 19 S. The term "petitioner" means a person who files a complaint seeking to initiate a
20 Commission proceeding under the Act.
- 21 T. The term "respondent" means the person against whom a complaint is filed by a
22 petitioner.
- 23 U. The term "Act" means the Navajo Preference in Employment Act.
- 24 V. The term "program manager" shall be as defined in The Navajo Nation Personnel
25 Policies Manual.
- 26 W. The term "adverse action" shall mean involuntary terminations of employment,
27 and demotions and disciplinary actions that result in a reduction of an employee's
28 pay, wage or salary. Expiration of a term contract is not an adverse action.
- 29 X. The term "intimidation" means severe and pervasive affirmative acts by another
30 person that would cause a person of ordinary sensibilities to feel fearful or

1 threatened and which result in a tangible, negative effect on an employee's
2 ongoing employment. Individual isolated incidents do not constitute
3 intimidation.

4 Y. The term "prejudice" means severe and pervasive affirmative acts of hostility,
5 directed against an employee, a group, a race, or their supposed characteristics,
6 that results in a tangible, negative effect on the employee's ongoing employment.

7
8 **§ 604. Navajo employment preference**

9 A. All employers doing business within the territorial jurisdiction ~~{or near the~~
10 ~~boundaries}~~ of the Navajo Nation, or engaged in any contract with the Navajo Nation
11 shall:

- 12 1. Give preference in employment to Navajos. Preference in employment shall
13 include specific Navajo affirmative action plans and timetables for all phases
14 of employment to achieve the Navajo Nation goal of employing Navajos in
15 all job classifications including supervisory and management positions.
- 16 2. Within 90 days after the later of: (a) the effective date of this § 604(A)(2);
17 or (b) the date on which an employer commences business within the
18 territorial jurisdiction of the Navajo Nation, the employer shall file with
19 ONLR a written Navajo affirmative action plan which complies with this
20 Section and other provisions of the Act. In any case where a labor
21 organization represents employees of the employer, the plan shall be jointly
22 filed by the employer and labor organization. Any such associated labor
23 organization shall have obligations under this Section equivalent to those of
24 the employer as to employees represented by such organization. Failure to
25 file such a plan within the prescribed time limit, submission of a plan which
26 does not comply with the requirements of the Act, or failing to implement or
27 comply with the terms of a conforming plan shall constitute a violation of the
28 Act. In the event of a required joint plan by an employer and associated labor
29 organization, only the noncomplying party shall be deemed in violation of the
30

1 Act, as long as the other party has demonstrated a willingness and
2 commitment to comply with the Act.

- 3 3. Subject to the availability of adequate resources, ONLR shall provide
4 reasonable guidance and assistance to employers and associated labor
5 organizations in connection with the development and implementation of a
6 Navajo affirmative action plan. Upon request, ONLR shall either approve or
7 disapprove any plan, in whole or in part. In the event of approval thereof by
8 ONLR, no charge shall be filed hereunder with respect to alleged unlawful
9 provisions or omissions in the plan, except upon 30 days prior written notice
10 to the employer and any associated labor organization to enable voluntary
11 correction of any stated deficiencies in such plan. No charge shall be filed
12 against an employer and any associated labor organization for submitting a
13 non-conforming plan, except upon 30 days prior notice by ONLR identifying
14 deficiencies in the plan which require correction.

15 B. Specific requirements for Navajo preference:

- 16 1. All employers shall include and specify a Navajo employment preference
17 policy statement in all job announcements and advertisements and employer
18 policies covered by this Act.
- 19 2. All employers shall post in a conspicuous place on its premises for its
20 employees and applicants a Navajo preference policy notice prepared by
21 ONLR.
- 22 3. Any seniority system of an employer shall be subject to this Act and all other
23 labor laws of the Navajo Nation. Such a seniority system shall not operate to
24 defeat nor prevent the application of the Act, provided, however, that nothing
25 in this Act shall be interpreted as invalidating an otherwise lawful and bona
26 fide seniority system which is used as a selection or retention criterion with
27 respect to any employment opportunity where the pool of applicants or
28 candidates is exclusively composed of Navajos or of non-Navajos.
- 29 4. The Navajo Nation when contracting with the federal or state governments or
30 one of its entities shall include provisions for Navajo preference in all phases

1 of employment as provided herein. When contracting with any federal
2 agency, the term Indian preference may be substituted for Navajo preference
3 for federal purposes, provided that any such voluntary substitution shall not
4 be construed as an implicit or express waiver of any provision of the Act nor
5 a concession by the Navajo Nation that this Act is not fully applicable to the
6 federal contract as a matter of law. Notwithstanding any other provision
7 herein, this Act shall not apply to Navajo Nation contracts with the Federal
8 Aviation Administration, or to Navajo Nation procurement contracts or
9 subcontracts that are to be paid with federal funds provided by the Federal
10 Aviation Administration, whether such funds are provided via loans or grants,
11 and whether such funds are provided on a reimbursement basis or up-front
12 payment basis.

- 13 5. All employers shall utilize Navajo Nation employment sources and job
14 services for employee recruitment and referrals, if such services are available
15 for the position in question, provided, however, that employers do not have
16 the foregoing obligations in the event an applicant Navajo is selected for the
17 employment opportunity who is a current employee of the employer.
- 18 6. All employers shall publically advertise and announce all job vacancies ~~in at~~
19 ~~least one newspaper and radio station serving the Navajo Nation~~, provided,
20 however, that employers do not have the foregoing obligations in the event
21 an applicant Navajo is selected for the employment opportunity who is a
22 current employee of the employer.
- 23 7. All employers shall use non-discriminatory job qualifications and selection
24 criteria in employment.
- 25 8. All employers shall not ~~penalize, discipline, discharge nor~~ take any adverse
26 action against any ~~Navajo~~ employee without just cause. The Act encourages
27 employers to utilize k'e, hozho and Fundamental Law to attempt to mutually
28 work things out between employer and employee in a context of mutual
29 respect. A written notification to the employee, provided contemporaneously
30 with the adverse action, citing such cause for any ~~of the above~~ adverse actions

1 is required in all cases, except where notice of the action may be reasonably
2 inferred from all the relevant circumstances. ~~Provided, that this~~

3 9. This Subsection shall not apply to:

4 a. Adverse actions taken with respect to Division Directors, program
5 managers of the Executive Branch and Legislative Branch or to
6 employees and officials of the Navajo Nation who serve, pursuant to
7 a specific provision of the Navajo Nation Code, at the pleasure of the
8 Navajo Nation Council, the standing committees of the Navajo Nation
9 Council, the President of the Navajo Nation, the Speaker of the Navajo
10 Nation Council, the Chief Justice of the Navajo Nation, or those
11 persons employed pursuant to 2 N.N.C. §§ 281(C) and 1009;

12 b. Adverse actions taken with respect to employees who are officers
13 and/or upper level managers (including without limitation employees
14 who are employed, hired, appointed, assigned and/or serving in the
15 capacity of a President, Vice-President, General Manager, Chief
16 Executive Officer, Chief Financial Officer or Treasurer, Chief
17 Operating Officer, Human Resources Director, General Counsel,
18 Secretary, or equivalent or similar position, regardless of the title
19 assigned to such position) of an employer; provided that (a) the
20 employee is advised in writing that he or she may be subjected to
21 adverse action with or without just cause, and with or without written
22 notice; and (b) the employer and employee have executed a written
23 employment contract that, at a minimum, sets forth in general or
24 specific terms the reasons and/or conditions under which the
25 employee may be subjected to adverse actions. Notwithstanding any
26 other provision of law, the Navajo Nation District Courts shall have
27 exclusive jurisdiction over actions by the employer or employee
28 arising from the written contract referenced above; alternatively, the
29 employer and employee may agree to submit such actions to
30 arbitration in accordance with the Navajo Nation Arbitration Act;

1 c. Adverse actions taken by employers with fewer than 50 full-time
2 employees; and

3 d. Adverse actions based on the following:

4 i. Excessive absenteeism or job abandonment;

5 ii. Employment evaluations and reviews; and

6 iii. Drug and alcohol abuse.

7 109. All employers shall maintain a safe and clean working environment and
8 provide employment conditions which are free of prejudice, intimidation and
9 ~~including~~ sexual harassment. The employee alleging a violation of this
10 subsection shall have the burden of proof to show the ~~that~~ violation by a
11 preponderance of the evidence.

12 ~~1011.~~ Training shall be an integral part of the specific affirmative action plans or
13 activities for Navajo preference in employment.

14 ~~112.~~ An employer-sponsored cross-cultural program shall be an essential part of
15 the affirmative action plans required under the Act. Such program shall
16 primarily focus on the education of ~~non-Navajo~~ employees, including
17 management and supervisory personnel, regarding the cultural and religious
18 traditions or beliefs of Navajos and their relationship to the development of
19 employment policies which accommodate such traditions and beliefs. The
20 cross-cultural program shall be developed and implemented through a
21 process which involves the substantial and continuing participation of an
22 employer's ~~Navajo employees, or representative Navajo employees.~~

23 ~~1213.~~ No fringe benefit plan addressing medical or other benefits, sick leave
24 program or any other personnel policy of an employer, including policies
25 jointly maintained by an employer and associated labor organization, shall
26 discriminate against Navajos in terms or coverage as a result of Navajo
27 cultural or religious traditions or beliefs. To the maximum extent feasible,
28 all of the foregoing policies shall accommodate and recognize in coverage
29 such Navajo traditions and beliefs.

30 C. Preference in Employment Positions

1. If an employer determines that a Navajo applicant meets the necessary qualifications for an open employment position, the employer shall deem the Navajo applicant to be qualified for the position and shall consider and give preference to the Navajo applicant with respect to filling the position. For purposes of this §604(C), "preference" shall mean that if an employer determines that a qualified Navajo applicant and a qualified non-Navajo applicant are equally qualified for an open employment position, the Navajo applicant shall be considered more qualified. Nothing herein prohibits employers from hiring the best available qualified applicant, as determined by the employer, regardless of the applicants' status as Navajo or non-Navajo. Irrespective of the qualifications of any non-Navajo applicant or candidate, any Navajo applicant or candidate who demonstrates the necessary qualifications for an employment position:
 1. ~~Shall be selected by the employer in the case of hiring, promotion, transfer, upgrading, recall and other employment opportunities with respect to such position; and~~
 2. Qualified Navajo employees ~~S~~shall be retained by the employer in the case of a reduction-in-force affecting such class of positions until all less qualified non-Navajos employed in that class of positions are laid-off, provided that any Navajo who is laid-off in compliance with this provision shall have the right to displace a non-Navajo in any other employment position ~~for which the~~ when the employer determines that the Navajo who was laid off has the same qualifications or is more qualified than a non-Navajo in the other employment position. Navajo demonstrates the necessary qualifications.
 3. ~~Among a pool of applicants or candidates who are solely Navajo and meet the necessary qualifications, the Navajo with the best qualifications shall be selected or retained, as the case may be. In reviewing Charges, Complaints, and other actions brought pursuant to Section 604(C), the reviewing tribunal shall accept the employer's determinations regarding applicants' and~~

employees' qualifications unless the employer's determination was clearly
arbitrary, capricious, or unsupported by the evidence.

- D. All employers shall establish written necessary qualifications for each employment position in their work force, a copy of which shall be ~~provided~~ offered to applicants or candidates at the time they ~~express an interest~~ formally apply for in such position.

§ 605. Reports

Except as otherwise provided herein, all employers doing business or engaged in any project or enterprise within the territorial jurisdiction of the Navajo Nation or pursuant to a contract with the Navajo Nation shall submit employment information and reports as required to ONLR. Such reports, in a form acceptable to ONLR, shall include all information necessary and appropriate to determine compliance with the provisions of this Act. All reports shall be filed with ONLR not later than 10 business days after the end of each calendar ~~quarter~~ year, provided that ONLR shall have the right to require filing of reports on a weekly or monthly schedule with respect to part-time or full-time temporary employment.

§ 606. Union and employment agency activities; rights of Navajo workers

- A. Subject to lawful provisions of applicable collective bargaining agreements, the basic rights of ~~Navajo~~ workers to organize, bargain collectively, strike, and peaceably picket to secure their legal rights shall not be abridged in any way by any person. The right to strike and picket does not apply to employees of the Navajo Nation, its agencies, or enterprises.
- B. It shall be unlawful for any labor organization, employer or employment agency to take any action, including action by contract, which directly or indirectly causes or attempts to cause the adoption or use of any employment practice, policy or decision which violates the Act.

§ 607. Navajo prevailing wage

- A. Definitions. For purposes of this Section, the following terms shall have the meanings indicated:

- 1 1. The term "prevailing wage" shall mean the wage paid to a majority (more
2 than fifty percent (50%)) of the employees in the classification on similar
3 construction projects in the area during a period not to exceed 24 months prior
4 to the effective date of the prevailing wage rate set hereunder; provided that
5 in the event the same wage is not paid to a majority of the employees in the
6 classification, "prevailing wage" shall mean the average of the wages paid,
7 weighted by the total number of employees in the classification.
- 8 2. The term "prevailing wage rate" shall mean the rate established by ONLR
9 pursuant to this Section.
- 10 3. The term "wage" shall mean the total of:
 - 11 a. The basic hourly rate; and
 - 12 b. The amount of: (a) contributions irrevocably made by a contractor or
13 subcontractor to a trustee or to a third person pursuant to a bona fide
14 fringe benefit fund, plan or program for the benefit of employees; and
15 (b) costs to the contractor or subcontractor which may be reasonably
16 anticipated in providing bona fide fringe benefits to employees
17 pursuant to an enforceable commitment to carry out a financially
18 responsible plan or program which was communicated in writing to
19 the employees affected. The types of fringe benefits contemplated
20 hereunder include medical or hospital health care, pensions on
21 retirement or death, compensation for injuries or illness resulting from
22 occupational activity, or insurance to provide any of the foregoing;
23 unemployment benefits; life insurance, disability insurance, sickness
24 insurance, or accident insurance; vacation or holiday pay; defraying
25 costs of apprenticeships or other similar programs; or other bona fide
26 fringe benefits.
- 27 4. The term "area" in determining the prevailing wage means the geographic
28 area within the territorial jurisdiction of the Navajo Nation; provided that in
29 the event of insufficient similar construction projects in the area during the
30 period in question, "area" shall include the geographic boundaries of such

1 contiguous municipal, county or state governments as ONLR may determine
2 necessary to secure sufficient wage information on similar construction
3 projects.

- 4 5. The term "classifications" means all job positions in which persons are
5 employed, exclusive of classifications with assigned duties which are
6 primarily administrative, executive or clerical, and subject to satisfaction of
7 the conditions prescribed in §§ 607(E)(7) and (8), exclusive of "apprentice"
8 and "trainee" classifications as those terms are defined herein.
- 9 6. "Apprentice" means: (a) a person employed and individually registered in a
10 bona fide apprenticeship program registered with the U.S. Department of
11 Labor, Employment and Training Administration, Bureau of Apprenticeship
12 and Training, or with an Apprenticeship Agency administered by a state or
13 Indian Tribe and recognized by the Bureau; or (b) a person in the first 90
14 days of probationary employment as an apprentice in such an apprenticeship
15 program, who is not individually registered in the program, but who has been
16 certified by the Bureau of Apprenticeship and Training or a state or Tribal
17 Apprenticeship Agency (where appropriate) to be eligible for probationary
18 employment as an apprentice.
- 19 7. "Trainee" means a person: (a) registered and receiving on the job training in
20 a construction occupation under a program which has been approved in
21 advance by the U.S. Department of Labor, Employment and Training
22 Administration, as meeting its standards for on-the-job training programs and
23 which has been so certified by that Administration; or (b) employed and/or
24 receiving on-the-job training under a public employment or work experience
25 program which is approved and funded by the Navajo Nation.
- 26 8. The term "construction" shall mean all activity performed under a contract
27 which relates to: (a) the building, development, rehabilitation, repair,
28 alteration or installation of structures and improvements of all types,
29 including without limitation buildings, bridges, dams, plants, highways,
30 sewers, water mains, powerlines and other structures; (b) drilling, blasting,

1 excavating, clearing and landscaping, painting and decorating; (c)
2 transporting materials and supplies to or from the site of any of the activities
3 referred to in (a) or (b) by employees of the contractor or subcontractor; and
4 (d) manufacturing or finishing materials, articles, supplies or equipment at the
5 construction site of any of the foregoing activities by employees of the
6 contractor or subcontractor.

- 7 9. The term "contract" shall mean the prime construction contract and all
8 subcontracts of any tier thereunder entered into by parties engaged in
9 commercial, business or governmental activities (whether or not such
10 activities are conducted for profit).

11 B. Establishment of wage rates.

- 12 1. For all construction reasonably anticipated to occur in the area on a regular
13 basis, ONLR shall establish a general prevailing wage rate for each
14 classification within specified types of construction. ONLR shall define
15 classifications and types of construction in accordance with guidelines
16 generally recognized in the construction industry. In all cases where
17 construction is contemplated for which prevailing wage rates have not been
18 set, the contract letting entry shall submit to ONLR a written request for a
19 project prevailing wage scale. Such request shall be submitted not less than
20 60 days prior to the scheduled date for bid solicitation and shall include
21 detailed information on the anticipated construction classifications, nature of
22 the project and completion plans. ONLR shall use its best efforts to provide
23 a project prevailing wage scale for each classification involved in the project
24 construction within 60 days after receipt of a request therefor.
- 25 2. In setting prevailing wage rates, ONLR shall conduct such surveys and collect
26 such data as it deems necessary and sufficient to arrive at a wage
27 determination. Wage data may be collected from contractors, contractors'
28 associations, labor organizations, public officials and other sources which
29 reflect wage rates paid in classifications on types of construction in the area,
30 including the names and addresses of contractors and subcontractors; the

locations, approximate costs, dates and types of construction; the number of workers employed in each classification on the project; and the wage rates paid such workers. Wage rate data for the area may be provided, and considered in making wage determinations, in various forms including signed statements, collective bargaining agreements and prevailing wage rates established by federal authorities for federally-assisted construction projects.

3. Any classification of workers not listed in a prevailing wage rate and which is to be used under a construction contract shall be classified in conformance with the prevailing wage determination issued and applicable to the project; provided that an additional classification and prevailing wage rate therefor will be established in the event each of the following criteria are satisfied:

- a. The work performed by the proposed classification is not performed by a classification within the existing prevailing wage scale;
- b. The proposed classification is utilized in the area by the construction industry; and
- c. The wages set for the proposed classification bear a reasonable relationship to the wage rates contained in the existing scale for other classifications.

4. Subject to the prior written approval thereof by the Director of ONLR, a general prevailing wage rate shall be effective on the date notice of such rate is published in a newspaper in general circulation in the Navajo Nation. The notice shall contain the following information:

- (1) The fact a prevailing wage rate has been set and approved in writing by the Director of ONLR;
- (2) The type of construction for which the rate was established;
- (3) The effective date, described as the date of publication of the notice or other specified date;
- (4) The address and telephone number of ONLR; and

(5) A statement that ONLR will provide a copy of the full wage determination on request, and respond to any reasonable questions regarding such determination or its application.

a. General prevailing wage rates shall continue in effect until such time as any modifications are adopted.

b. A prevailing wage rate for a particular project shall be effective on the date of issuance to the requesting party of a written wage determination approved by the Director of ONLR. The wage determination shall continue in effect for the duration of the project; provided that any such determination may be modified by ONLR in the event the period of time from the effective date of the determination to the date bids are solicited exceeds 180 days and the estimated date of completion of the project is more than one year after the effective date of the determination.

c. Project and general wage determinations may be modified from time to time, in whole or in part, to adjust rates in conformity with current conditions, subject to the special conditions applicable to project determinations. Such modifications become effective upon the same terms and conditions which are applicable to original determinations.

d. Fringe benefits. The fringe benefit amount of wages reflected in a prevailing wage rate shall be paid in cash to the employee, and shall not be deducted from such employee's wages, unless each of the following conditions is satisfied:

(1) The deduction is not contrary to applicable law;

(2) A voluntary and informed written consent authorizing the deduction is obtained from the employee in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining or continuing employment;

(3) No profit or other benefit is obtained as a result of deduction, directly or indirectly, by the contractor, subcontractor or any

1 person affiliated with them in the form of a commission,
2 dividend or other consideration; and

3 (4) The deduction serves the convenience and interests of the
4 employee.

5 C. No contract-letting entity, contractor or subcontractor shall proceed with a
6 construction contract subject to this Section in the absence of a contractual
7 requirement for payment of prevailing wages pursuant to a specified wage
8 determination issued by ONLR. Violation of this obligation shall render the contract-
9 letting entity, and the employer contractor or subcontractor, jointly and severally
10 liable for the difference between wages actually paid and the prevailing wage rate,
11 together with interest thereon (or if no prevailing wage rates have been set, such wage
12 rate as may be issued by ONLR during the course, or after the completion, of the
13 construction project).

- 14 1. Failure by any employer, contractor or subcontractor to pay prevailing wages
15 shall render such employer liable for the difference between the amount of
16 wages actually paid and the prevailing rate, together with interest thereon.
- 17 2. Any deduction of fringe benefits by an employer contractor or subcontractor
18 in violation of § 607(C) shall render such employer liable for the amount of
19 such deduction, together with interest thereon.
- 20 3. Upon written request of ONLR, a contract-letting entity or contractor, as the
21 case may be, shall withhold from any monies payable on account of work
22 performed by an employer contractor or subcontractor under a construction
23 contract such sums as may be determined by ONLR as necessary to satisfy
24 any liabilities of such contractor or subcontractor for unpaid prevailing wages
25 or wrongful deduction of fringe benefits.
- 26 4. If following a hearing under § 611 a contract-letting entity (other than the
27 Navajo Nation), contractor or subcontractor is found to have willfully violated
28 this Section the Commission may enter a debarment order disqualifying such
29 party from receiving any contract, or subcontract thereunder, with the Navajo
30 Nation for a period not to exceed three years.

- 1 5. The liabilities described in this § 607(C) shall not foreclose the Commission
2 from awarding such other relief or imposing such other civil penalties as may
3 be appropriate following a hearing conducted under § 611.

4 D. Exemptions. This Section shall not apply to:

- 5 1. A contract associated with a construction activity which relates to the
6 provision of architect, engineer, legal or consultant services, or, except as
7 provided under § 607(A)(8)(d), the manufacturing or furnishing of materials
8 or performance of services and maintenance work by persons not employed
9 by a prime contractor or any of its subcontractors.
- 10 2. A construction contract relating to a project having a total cost of ~~two~~ ten
11 thousand dollars (\$210,000) or less.
- 12 3. A construction contract which is let by a natural person who is an owner or
13 person legally authorized to let such contract, for such person's personal,
14 family or household purposes.
- 15 4. A construction contract to the extent the work thereunder is performed by
16 employees of the owner, or employees of the person or entity legally
17 authorized to let the prime contract.
- 18 5. A construction contract for a project receiving federal financial assistance to
19 the extent the prevailing wage is set by federal authorities pursuant to the
20 Davis–Bacon Act, 40 U.S.C., § 276a et seq.,¹ (as amended), or other federal
21 law applicable to such project.
- 22 6. A construction contract to the extent such contract requires payment of wages
23 pursuant to a wage scale established under a collective bargaining agreement
24 between any contractor or subcontractor and a labor organization.
- 25 7. With the exception of the provisions of § 607(C), an apprentice, provided that
26 the apprentice is paid not less than: (a) the basic hourly rate prescribed in the
27 registered program for the apprentice's level of progress, expressed as a
28 percentage of the applicable journeyman rate specified in the prevailing wage
29 rate; and (b) the fringe benefit amount prescribed in the registered program
30 or, if not specified, the fringe benefit amount set in the prevailing wage rate

1 for the applicable journeyman classification. An apprentice who is not
2 enrolled in a registered program (within the meaning of § 607(A)(6)), shall
3 be paid wages in an amount of not less than the level prescribed for the
4 applicable journeyman classification specified in the prevailing wage rate.

- 5 8. With the exception of the provisions of § 607(C), a trainee provided that the
6 trainee is paid not less than: (a) the basic hourly rate prescribed in the
7 approved program for the trainee's level of progress, expressed as a
8 percentage of the applicable journeyman rate specified in the prevailing wage
9 rate; and (b) the fringe benefit amount prescribed in the approved program
10 or, if not specified and as to federally approved programs only, the fringe
11 benefit amount set in the prevailing wage rate for the applicable journeyman
12 classification. A trainee who is not enrolled in an approved program (within
13 the meaning of § 607(A)(7)), shall be paid wages in an amount not less than
14 the level prescribed for the applicable journeyman classification specified in
15 the prevailing wage rate.

16
17 **§ 608. Health and safety of Navajo workers [Reserved]**

18 ~~Employers shall, with respect to business conducted within the territorial jurisdiction of~~
19 ~~the Navajo Nation, adopt and implement work practices which conform to occupational safety~~
20 ~~and health standards imposed by law.~~

21
22 **§ 609. Contract compliance**

- 23 A. Unless otherwise authorized by this Act; all ~~All~~ transaction documents, including
24 without limitation, leases, subleases, contracts, subcontracts, permits, and collective
25 bargaining agreements between employers and labor organizations (herein
26 collectively "transaction documents"), which are entered into by or issued to any
27 employer and which are to be performed within the territorial jurisdiction of the
28 Navajo Nation shall contain a provision pursuant to which the employer and any other
29 contracting party affirmatively agree to strictly abide by all requirements of this Act.
30 Unless authorized by this Act; with ~~With~~ respect to any transaction document which

1 does not contain the foregoing provision, the terms and provisions of this Act are
2 incorporated therein as a matter of law and the requirements of the Act shall constitute
3 affirmative contractual obligations of the contracting parties. In addition to the
4 sanctions prescribed by the Act, violation of the Act shall also provide grounds for
5 the Navajo Nation to invoke such remedies for breach as may be available under the
6 transaction document or applicable law. Unless authorized by this Act and to the~~To the~~
7 extent of any inconsistency or conflict between a transaction document and the Act,
8 the provision of the transaction document in question shall be legally invalid and
9 unenforceable and the Act shall prevail and govern the subject of the inconsistency
10 or conflict.

- 11 B. Every bid solicitation, request for proposals and associated notices and
12 advertisements which relate to prospective contracts to be performed within the
13 territorial jurisdiction of the Navajo Nation shall expressly provide that the contract
14 shall be performed in strict compliance with this Act. With respect to any such
15 solicitation, request, notice or advertisement which does not contain the foregoing
16 provision, the terms and provisions of this Act are incorporated therein as a matter of
17 law.

18
19 **§ 610. Monitoring and enforcement**

- 20 A. Responsible Agency. Except as otherwise provided herein, compliance with the Act
21 shall be monitored and enforced by ONLR.

22 B. Charges.

- 23 1. Charging Party. Except as otherwise provided herein, any Navajo person may
24 file a charge ("Individual Charge") claiming a violation of his or her rights
25 under the Act. ONLR, on its own initiative, may file a charge ("ONLR
26 Charge") claiming a violation of rights under the Act held by identified
27 Navajos person or a class of Navajos persons, including a claim that
28 respondent is engaging in a pattern of conduct or practice in violation of rights
29 guaranteed by the Act. An Individual Charge and ONLR Charge are
30 collectively referred to herein as a "Charge".

1 2. Form and Content. A Charge shall be in writing, signed by the charging party
2 (which shall be the Director of ONLR in the case of an ONLR Charge), and
3 contain the following information:

- 4 a. The name, address and any telephone number of the charging party;
- 5 b. The name and address or business location of the respondent against
6 whom the Charge is made.
- 7 c. A clear and concise statement of the facts constituting the alleged
8 violation of the Act, including the dates of each violation and other
9 pertinent events and the names of individuals who committed,
10 participated in or witnessed the acts complained of;
- 11 d. With respect to a Charge alleging a pattern or practice in violation of
12 the Act, the period of time during which such pattern or practice has
13 existed and whether it continues on the date of the Charge;
- 14 e. The specific harm sustained by the charging party in the case of an
15 Individual Charge or the specific harm sustained by specified ~~Navajos~~
16 persons or a class of ~~Navajos~~ persons with respect to an ONLR
17 Charge; and
- 18 f. A statement disclosing whether proceedings involving the alleged
19 violation have been initiated before any court or administrative agency
20 or within any grievance process maintained by the respondent,
21 including the date of commencement, the court, agency or process and
22 the status of the proceeding.
- 23 g. ONLR shall provide assistance to persons who wish to file Individual
24 Charges. Notwithstanding the foregoing provisions, a Charge shall be
25 deemed sufficient if it contains a reasonably precise identification of
26 the charging party and respondent, and the action, pattern or practice
27 which are alleged to violate the Act.

28 3. Place of Filing. Individual Charges may be filed in any ONLR office. An
29 ONLR Charge shall be filed in ONLR's administrative office in Window
30 Rock.

- 1 4. Date of Filing. Receipt of each Individual Charge shall be acknowledged by
2 the dated signature of an ONLR employee which shall be deemed the date on
3 which the Individual Charge is filed. The date on which an ONLR Charge is
4 signed by the ONLR Director shall be deemed the date of filing for such
5 Charge.
- 6 5. Amendment. A Charge may be amended by filing, in the office where the
7 Charge was first submitted, a written instrument which sets forth the
8 amendment and any portions of the original Charge revised thereby. To the
9 extent the information reflected in the amendment arose out of the subject
10 matter of the original Charge, the amendment shall relate back and be deemed
11 filed as of the filing date of such Charge. Any portion of the amendment
12 which does not qualify for relation back treatment shall constitute a new
13 Charge.
- 14 6. Time Limitation. A Charge shall be filed within ~~one year~~ sixty (60) days after
15 accrual of the claim which constitutes the alleged violation of the Act. The
16 date of accrual of a claim shall be the earlier of:
- 17 a. The date on which the charging party had actual knowledge of the
18 claim; or
- 19 b. Taking into account the circumstances of the charging party, the date
20 on which the charging party should reasonably have been expected to
21 know of the existence of the claim; provided, however, that a Charge
22 relating to a continuing, or pattern or practice, violation of the Act
23 shall be filed within ~~one year~~ sixty (60) days after the later of:
- 24 (1) The date of termination of such violation, pattern or practice;
25 or
- 26 (2) The date of accrual of the claim to which the Charge relates.
- 27 Failure to file a Charge within the time limitations prescribed
28 herein shall bar proceedings on the related claim before the
29 Commission or in any court of the Navajo Nation; provided,
30 however, that nothing herein shall be interpreted as foreclosing

proceedings before any Navajo court or administrative body (other than the Commission) on any claim which also arises under applicable common, statutory or other law independent of this Act.

7. Notice to Respondent. Within seven (7)~~20-calendar~~ days after a Charge is filed, ONLR shall serve a copy thereof on respondent; provided, however, that if in ONLR's judgment service of a copy of the Charge would impede its enforcement functions under the Act, ONLR may in lieu of a copy serve on respondent a notice of the Charge which contains the date, place and summary of relevant facts relating to the alleged violation, together with the identity of the charging party unless withheld for the reason stated above. Service of any amendment to the Charge shall be accomplished within 20 days after the amendment is filed. Failure of ONLR to serve a copy of a Charge or notice thereof within the prescribed time period shall not be a ground for dismissal of the Charge or any subsequent proceedings thereon.

8. Withdrawal of Charge.

a. ONLR may, in its discretion, withdraw any ONLR Charge upon written notice thereof to respondent and each person identified in the Charge whose rights under the Act were alleged to have been violated. Any person receiving notice of withdrawal or any other person who asserts a violation of his or her rights as a result of the violation alleged in the withdrawn ONLR Charge may file an Individual Charge which, if filed within 90 days after the issuance date of ONLR's withdrawal notice, shall relate back to the filing date of the ONLR Charge.

Any charging party may, in his or her discretion, withdraw an Individual Charge by filing a written notice of withdrawal with the ONLR office where the Charge was submitted, with a copy thereof filed with the ONLR administrative office in Window Rock. ONLR shall, within 20 days after receiving the notice, transmit a copy to the respondent. ~~Within 90 days after receipt of the withdrawal notice,~~

~~ONLR may file an ONLR Charge relating in whole or part to the violations alleged in the withdrawn Individual Charge. Any filing of an ONLR Charge within the prescribed time period shall relate back to the filing date of the withdrawn Charge.~~

9. Overlapping Charges. Nothing herein shall be construed as prohibiting the filing of any combination of Individual Charges and an ONLR Charge which, in whole or part, contain common allegations of violations of the Act.

10. Informants. Irrespective of whether a person is otherwise eligible to file an Individual Charge, any such person or an organization may in lieu of filing a Charge submit to ONLR written or verbal information concerning alleged violations of the Act and may further request ONLR to file an ONLR Charge thereon. In addition to other limitations on disclosure provided in § 610(M) and in the absence of the written consent of the informant, neither the identity of the informant nor any information provided by such informant shall be disclosed to the respondent, agents or legal counsel for the respondent, or the public, either voluntarily by ONLR or pursuant to any discovery or other request for, or order relating to, such information during the course of any judicial or non-judicial proceeding, including a proceeding before the Commission or any subsequent appeal or challenge to a Commission or appellate decision; provided, however, that in the event the informant is called as a witness by ONLR at a Commission proceeding involving the information provided by the informant:

a. The informant's name may be disclosed, but his or her status as an informant shall remain privileged and confidential and shall not be disclosable through witness examination or otherwise; and

b. With the exception of the witness status as an informer, information provided by the informant is disclosable in accordance with the procedures outlined under § 610(M).

C. Investigation of Charges.

1 1. ONLR shall conduct such investigation of a Charge as it deems necessary to
2 determine whether there is probable cause to believe the Act has been
3 violated.

4 2. Subpoenas.

5 a. The Director of ONLR shall have the authority to sign and issue a
6 subpoena compelling the disclosure by any person evidence relevant
7 to a Charge, including a subpoena ordering, under oath as may be
8 appropriate:

9 (1) The attendance and testimony of witnesses;

10 (2) Responses to written interrogatories;

11 (3) The production of evidence, including without limitation
12 books, records, correspondence or other documents (or lists or
13 summaries thereof) in the subpoenaed person's possession,
14 custody or control, or which are lawfully obtainable by such
15 person; and

16 (4) Access to evidence for the purposes of examination and
17 copying. Neither an individual charging party nor a
18 respondent shall have a right to demand issuance of a
19 subpoena prior to the initiation of any proceedings on the
20 Charge before the Commission, in which event subpoenas are
21 issuable only pursuant to the procedures governing such
22 proceedings.

23 b. Service of the subpoena shall be effected by one of the methods
24 prescribed in § 610(O). A subpoena directed to a natural person shall
25 be served either on the person at his or her residence or office address
26 or, in the case of personal delivery, at such residence or office either
27 on the person subpoenaed or on anyone at least 18 years of age (and
28 in the case of office service, a person who is also an employee of such
29 office). Service of a subpoena directed to any other person shall be
30 addressed or delivered to either the statutory agent (if any) of such

1 person or any employee occupying a managerial or supervisory
2 position at any office of the person maintained within or outside the
3 territorial jurisdiction of the Navajo Nation. Personal service may be
4 performed by a natural person at least 18 years of age, including an
5 employee of ONLR.

6 c. The subpoena shall set a date, time and place for the attendance of a
7 witness, or production of or access to evidence, as the case may be,
8 provided that the date for compliance shall be not less than 30 days
9 after the date on which service of the subpoena was effected.

10 d. Any person served with a subpoena intending not to fully comply
11 therewith shall, within five business days after service, serve on the
12 Director of ONLR a petition requesting the modification or revocation
13 of the subpoena and identifying with particularity each portion of the
14 subpoena which is challenged and the reasons therefor. To the extent
15 any portion of the subpoena is not challenged, the unchallenged parts
16 shall be complied with in accordance with the terms of the subpoena
17 as issued. The ONLR Director shall issue and serve on petitioner a
18 decision and reasons therefor within eight business days following
19 receipt of the petition, and any failure to serve a decision within such
20 period shall be deemed a denial of the petition. In the event the
21 Director's decision reaffirms any part of the subpoena challenged in
22 the petition, the Director may extend the date for compliance with
23 such portion for a period not to exceed 10 business days. Any
24 petitioner dissatisfied with the decision of the ONLR Director shall
25 either:

26 (1) Comply with the subpoena (with any modifications thereto
27 reflected in the Director's decision); or

28 (2) Within five business days following receipt of the Director's
29 decision or the date such decision was due, file a petition with
30 the Commission (with a copy concurrently served on the

ONLR Director) seeking modification or revocation of the subpoena and stating with particularity therein each portion of the subpoena challenged and the reasons therefor. A copy of the ONLR Director's decision, if any, shall be attached to the petition.

- e. In the event a person fails to comply with a served subpoena, ONLR may petition the Commission for enforcement of the subpoena. For purposes of awarding any relief to petitioner, the Commission may issue any order appropriate and authorized in a case where it is established that a Commission order has been violated. A copy of the petition shall be concurrently served on the non-complying person.
- f. Beginning on the first day of non-compliance with a subpoena served on a respondent, or any employee or agent of respondent, until the date of full compliance therewith, there shall be a tolling of all periods of limitation set forth in this Section.

D. Dismissal of Charges.

- 1. Individual Charges. ONLR shall dismiss an Individual Charge upon reaching any one or more of the following determinations:
 - a. The Individual Charge, on its face or following an ONLR investigation, fails to demonstrate that probable cause exists to believe a violation of the Act has occurred;
 - b. The Individual Charge was not filed in accordance with the requirements of § 610(B)(2) or within the time limits prescribed by § 610(B)(6);
 - c. The charging party has failed to reasonably cooperate in the investigation of, or attempts to settle, the Individual Charge;
 - d. The charging party has refused, within 30 days of receipt, to accept a settlement offer agreed to by respondent and approved by ONLR, which accords substantially full relief for the harm sustained by such party; or

- e. The Charge has been settled pursuant to § 610(G).
 2. ONLR Charges. ONLR shall dismiss an ONLR Charge upon determining that:
 - a. No probable cause exists to believe a violation of the Act has occurred;
 - b. The Charge was not filed within the time limits prescribed by § 610(B)(6); or
 - c. The Charge has been settled pursuant to § 610(G).
 3. Partial Dismissal. In the event a portion of a Charge is dismissable on one or more of the foregoing grounds, only such portion of the Charge shall be dismissed and the remainder retained by ONLR for final disposition.
 4. Notice. Written notice of dismissal, stating the grounds therefor, shall be served on respondent and the individual charging party in the case of an Individual Charge or, in the case of an ONLR Charge, on the respondent and any person known to ONLR who claims to be aggrieved by the violations alleged in such Charge. Such notice shall be accompanied by a right to sue proceed authorization pursuant to § 610(H).
- E. Probable Cause Determination. Following its investigation of a Charge and in the absence of a settlement or dismissal required under § 610(D), ONLR shall issue written notice of its determination that probable cause exists to believe a violation of the Act has occurred or is occurring. Such notice shall identify each violation of the Act for which probable cause has been found, and copies thereof shall be promptly sent to the respondent, the charging party in the case of an Individual Charge, and, in the case of an ONLR Charge, each person identified by ONLR whose rights are believed to have been violated. Any probable cause determination shall be based on, and limited to, the evidence obtained by ONLR and shall not be deemed a judgment by ONLR on the merits of allegations not addressed in the determination.
- F. Conciliation. If, following its investigation of a Charge, ONLR determines there is probable cause to believe the Act has been or is being violated, ONLR shall make a good faith effort to secure compliance and appropriate relief by informal means through conference, conciliation and persuasion. In the event there is a failure to

1 resolve the matter informally as to any allegations in an Individual Charge for which
2 probable cause has been determined, ONLR shall either issue the notice prescribed
3 in § 610(H) or initiate a Commission proceeding under § 610(I) concerning
4 unresolved allegations. A successful resolution of any such allegation shall be
5 committed to writing in the form required under § 610(G). Nothing herein shall be
6 construed as prohibiting ONLR from initiating or participating in efforts to
7 informally resolve a Charge prior to issuance of a probable cause determination.

8 G. Settlement.

- 9 1. Settlement agreements shall be committed to writing and executed by
10 respondent, the individual charging party if any and, in the case of any
11 Charge, by the Director of ONLR. Refusal of an individual charging party to
12 execute a settlement agreement subjects the Individual Charge to dismissal
13 under the conditions set forth in § 610(D)(1)(d). Settlement agreements may
14 also be signed by those aggrieved persons identified as having a claim with
15 respect to an ONLR Charge.
- 16 2. Settlement agreements hereunder shall be enforceable among the parties
17 thereto in accordance with the terms of the agreement. Any member of a class
18 of persons affected by the settlement who is not a signatory to the agreement
19 shall have the right to initiate proceedings before the Commission pursuant to
20 the procedure in § 610(H)(2)(a)(3).
- 21 3. Each settlement agreement shall provide for the dismissal of the Charge to the
22 extent the violations alleged therein are resolved under the agreement. Upon
23 completion of the terms of settlement, such dismissal shall be binding and the
24 Individual Charging Party shall not be afforded a notice of right to proceed
25 by ONLR.
- 26 4. Any breach of a settlement agreement by respondent shall present grounds for
27 filing a Charge under this Section. A charging party asserting a claim for
28 breach may either seek:
 - 29 a. Enforcement of that portion of the settlement agreement alleged to
30 have been breached; or

- 1 b. In the case of a material breach as to any or all terms, partial or total
2 rescission of the agreement, as the case may be, and such other further
3 relief as may have been available in the absence of settlement. A
4 Charge asserting a breach of a settlement agreement with respect to
5 any original allegation in the Charge covered by such agreement shall,
6 for purposes of all time limitations in this Section, be deemed to arise
7 on the accrual date of the breach.

8 H. Individual Right to ~~Sue~~ Proceed.

9 1. Individual Charges.

- 10 a. Prior to the expiration of ~~180~~ninety (90) days following the date an
11 Individual Charge was filed, ONLR, by notice to the individual
12 charging party, shall authorize such individual to initiate a proceeding
13 before the Commission in accordance with the procedures prescribed
14 in § 610(J), if:

15 (1) The Individual Charge has been dismissed by ONLR pursuant
16 to § 610(D)(1);

17 (2) ONLR has issued a probable cause determination under §
18 610(E), there has been a failure of conciliation contemplated
19 by § 610(F), and ONLR has determined not to initiate a
20 Commission proceeding on behalf of the individual charging
21 party; or

22 (3) Notwithstanding the absence of a probable cause
23 determination or conclusion of conciliation efforts, ONLR
24 certifies it will be unable to complete one or both of these steps
25 within ~~180~~ninety (90) days after the date on which the
26 Individual Charge was filed.

- 27 b. After the expiration of ~~180~~ninety (90) days following the date an
28 Individual Charge was filed, the individual charging party shall have
29 the right to initiate a proceeding before the Commission irrespective
30 of whether ONLR has issued a notice of right to ~~sue~~ proceed, made a

1 probable cause determination, or commenced or concluded
2 conciliation efforts.

3 2. ONLR Charges.

4 a. Prior to the expiration of ~~180~~ ninety (90) days following the date an
5 ONLR Charge was filed, ONLR, by notice to any person known to it
6 who claims to be aggrieved by the allegations presented in such
7 Charge, shall authorize such person to initiate a proceeding before the
8 Commission in accordance with the procedures prescribed in § 610(J),
9 if:

10 (1) The ONLR Charge has been dismissed by ONLR pursuant to
11 § 610(D)(2);

12 (2) ONLR has issued a probable cause determination under §
13 610(E), there has been a failure of conciliation contemplated
14 by § 610(F), and ONLR has determined not to initiate a
15 Commission proceeding on the Charge;

16 (3) ONLR has entered into a settlement agreement under § 610(G)
17 to which such aggrieved person is not a party; or

18 (4) Notwithstanding the absence of a probable cause
19 determination or conclusion of conciliation efforts, ONLR
20 certifies it will be unable to complete one or both of these steps
21 within ninety (90) days after the date on which the ONLR
22 Charge was filed.

23 b. After the expiration of ~~180~~ ninety (90) days following the date an
24 ONLR Charge was filed and prior to the date on which ONLR
25 commences a Commission proceeding, any person claiming to be
26 aggrieved by the allegations presented in such Charge shall have the
27 right to initiate a proceeding before the Commission irrespective of
28 whether ONLR has issued a notice of right to ~~sue~~ proceed, made a
29 probable cause determination or commenced or concluded
30 conciliation efforts.

1 3. Content of Notice. A notice of right to sue shall include the following
2 information:

- 3 a. Authorization to the individual charging party or aggrieved person to
4 initiate a proceeding before the Commission pursuant to and within
5 the time limits prescribed by § 610(J);
6 b. A summary of the procedures applicable to the institution of such
7 proceeding, or a copy of the Act containing such procedures;
8 c. A copy of the Charge; and
9 d. A copy of any written determination of ONLR with respect to such
10 Charge.

11 4. ONLR Assistance. Authorization to commence Commission proceedings
12 hereunder shall not prevent ONLR from assisting any individual charging
13 party or aggrieved person in connection with Commission proceedings or
14 other efforts to remedy the alleged violations of the Act.

15 I. ONLR Right to ~~Sue~~ Proceed.

16 1. Individual Charges. ONLR shall have the right to initiate proceedings before
17 the Commission based on the allegations of an Individual Charge with respect
18 to which ONLR has issued a probable cause determination under § 610(E)
19 and there has been a failure of conciliation contemplated by § 610(F). ONLR
20 shall have such right notwithstanding that the individual charging party has a
21 concurrent right to ~~sue~~ proceed hereunder which has not been exercised.
22 ONLR's right to ~~sue~~ proceed shall continue until such time as the individual
23 charging party commences a Commission proceeding and, in that case, shall
24 be revived in the event the proceeding is dismissed or concluded for reasons
25 unrelated to the merits. Initiation of Commission proceedings by ONLR shall
26 terminate the right to ~~sue~~ proceed of an individual charging party, subject to
27 revival of such right in the event the proceeding is dismissed or concluded for
28 reasons unrelated to the merits. Nothing herein shall be construed as
29 foreclosing ONLR from exercising its right to intervene in a Commission
30 proceeding under § 610(L).

1 2. ONLR Charges. ONLR shall have the right to initiate proceedings before the
2 Commission based on the allegations of an ONLR Charge with respect to
3 which ONLR has issued a probable cause determination under § 610(E) and
4 there has been a failure of conciliation contemplated by § 610(F). ONLR
5 shall have such right notwithstanding that a person claiming to be aggrieved
6 as a result of the allegations in the ONLR Charge has a concurrent right to ~~sue~~
7 proceed hereunder which has not been exercised. In the event an aggrieved
8 person first initiates a Commission proceeding in an authorized manner,
9 ONLR's right to ~~sue~~ proceed shall only expire as to such person and shall
10 revive in the event the aggrieved person's proceeding is dismissed or
11 concluded for reasons unrelated to the merits. Nothing herein shall be
12 construed as foreclosing ONLR from exercising its right to intervene in a
13 Commission proceeding under § 610(L).

14 J. Initiation of Commission Proceedings. Proceedings before the Commission shall be
15 initiated upon the filing of a written complaint by a petitioner with the Commission.

16 1. Complaints shall satisfy each of the following conditions:

- 17 a. The petitioner is authorized to file the Complaint under the terms and
18 conditions prescribed by this Act;
19 b. The underlying Charge was filed within the time limits prescribed in
20 § 610(B)(6); and
21 c. The complaint was filed within ~~360~~ one hundred and eighty (180) days
22 following the date on which the underlying Charge was filed.

23 2. Upon motion of respondent and a showing that any one or more of the
24 foregoing conditions has not been satisfied, the Commission shall dismiss the
25 complaint; provided, however, that no complaint shall be dismissed under (b)
26 above as to any allegation of a pattern of conduct or practice in violation of
27 the Act to the extent such pattern or practice continued to persist during the
28 time limits prescribed in § 610(B)(6); and provided further that, in the absence
29 of dismissal or conclusion of Commission proceedings on the merits, nothing
30 herein shall be construed as prohibiting the refiling of a Charge alleging the

1 same or comparable pattern or practice violations of the Act which continued
2 to persist during the time limits prescribed in § 610(B)(6) for refileing such
3 Charge.

4 K. Preliminary Relief. Prior to the initiation of Commission proceedings on a Charge
5 and notwithstanding the failure to satisfy any precondition to such proceedings, either
6 ONLR, an individual charging party or aggrieved person may, upon notice to
7 respondent, petition the Commission for appropriate temporary or preliminary relief
8 in the form of an injunction or other equitable remedy on the ground that prompt
9 action is necessary to carry out the purposes of the Act, including the preservation
10 and protection of rights thereunder. Nothing herein shall be construed as foreclosing
11 a petition which seeks comparable relief subsequent to the commencement of
12 Commission proceedings.

13 L. Intervention in Commission Proceedings. Within three business days after the date
14 on which any complaint, or petition pursuant to § 610(K), is filed with the
15 Commission, other than a complaint or petition filed by ONLR, the Commission shall
16 cause copies thereof to be sent to the ONLR Director and the Attorney General of the
17 Navajo Nation. ONLR shall have an unconditional right to intervene in the
18 Commission proceeding initiated by such complaint or petition upon the timely
19 application by motion accompanied by a pleading setting forth the claims for which
20 intervention is sought.

21 M. Confidentiality.

22 1. Conciliation. In the absence of written consent of the persons concerned,
23 statements or offers of settlement made, documents provided or conduct by
24 participants in conciliation efforts under § 610(F) shall not be admissible in
25 any Commission or other proceeding relating to the Charge which is the
26 subject of conciliation, to prove liability for or invalidity of the Charge or the
27 amount or nature of relief therefor; provided, however, that nothing herein
28 shall be construed as requiring the exclusion of such evidence merely because
29 it was presented in the court of conciliation if:

30 a. The evidence is otherwise discoverable; or

1 b. The evidence is offered for another purpose, including without
2 limitation, proving bias or prejudice of a witness, negating a
3 contention of undue delay, or proving an effort to obstruct a criminal
4 investigation or prosecution.

5 2. Charge, Records and Information.

6 a. Prior to the institution of Commission proceedings thereon, and in the
7 absence of the written consent of the persons concerned, ONLR shall
8 not disclose as a matter of public information any Charge, response
9 thereto, any statements or other information obtained in the course of
10 its investigation of the Charge, except that nothing herein shall prevent
11 earlier disclosure of such information by ONLR in its discretion, and
12 pursuant to the Navajo Nation Privacy Act, 2 N.N.C. §81 et. seq.

13 (1) To charging parties or their attorneys, respondents or their
14 attorneys, witnesses or other interested persons where the
15 disclosure is deemed by ONLR to be necessary for securing a
16 resolution of the Charge, including appropriate relief therefor;
17 or

18 (2) To employees or representatives of the Navajo Nation or
19 employees or representatives of federal, state or local
20 authorities who have a governmental interest in the subject
21 matter of the Charge; or

22 (3) To persons for the purpose of publishing data derived from
23 such information in a form which does not reveal the identity
24 of charging parties, aggrieved persons, respondents or persons
25 supplying the information.

26 b. Except as otherwise provided herein, any person to whom a
27 permissible disclosure is made hereunder shall be bound to maintain
28 the confidentiality of such information from further disclosure and
29 shall use the information solely for the purpose for which it was
30 disclosed.

1 2. Privileged Information. Neither ONLR, charging parties, aggrieved persons,
2 respondents, witnesses or persons supplying information in connection with
3 a Charge shall be compelled, either before or after commencement of
4 Commission proceedings, to disclose any information which represents the
5 opinions or conclusions formed by ONLR during the course of its
6 investigation of a Charge, or any information which is protected by the
7 attorney-client privilege, the informer's privilege referred to in § 610(B)(10),
8 or any other absolute or limited privilege recognized under the laws of the
9 Navajo Nation. To the extent justice requires, the Commission may,
10 balancing the rights of parties and affected persons, prohibit or limit the
11 disclosure of any other information for good cause shown, including a
12 showing that disclosure would impede enforcement of the Act, jeopardize
13 rights guaranteed thereunder, or cause annoyance, embarrassment, oppression
14 or undue burden or expense to parties or affected persons.

15 N. Non-retaliation. It shall be unlawful for any employer, labor organization, joint
16 labor-management committee involved in apprenticeship or other matters relating to
17 employment, employment agency or other person to, directly or indirectly, take or
18 attempt to induce another person to take, any action adversely affecting:

- 19 1. The terms and conditions of any person's employment or opportunities
20 associated with such employment;
- 21 2. An applicant's opportunity for employment;
- 22 3. The membership of an employee or applicant for employment in a labor
23 organization; or
- 24 4. Any other right, benefit, privilege or opportunity unrelated to employment,
25 because such person has opposed an employment practice subject to this Act
26 or has made a charge, testified, or assisted or participated in any manner in an
27 investigation, proceeding or hearing under the Act.

28 O. Service of Documents. Service of any notice, determination or other document
29 required to be transmitted under this Section shall be accomplished by personal
30 delivery or certified mail, return receipt requested.

1
2 **§ 611. Hearings**

3 A. The Commission shall schedule a hearing within sixty (60) days of the filing of a
4 written complaint by a petitioner with the Commission. The hearing shall be held at
5 a location designated by the Commission.

6 1. Notice. The Commission shall issue a notice of hearing. The time and place
7 of the hearing shall be clearly described in the notice. The notice shall also
8 set forth in clear and simple terms the nature of the alleged violations and
9 shall state that: (a) the violations may be contested at a hearing before the
10 Commission; and (b) any party may appear by counsel and cross-examine
11 adverse witnesses.

12 2. Upon application by a party to the Commission, demonstrating by competent
13 proof a need for a subpoena, or on the Commission's own motion, the
14 Commission may issue subpoenas compelling the disclosure by any person
15 evidence relevant to the Complaint, including a subpoena ordering, under
16 oath as may be appropriate:

17 a. The attendance and testimony of witnesses;

18 b. Responses to written interrogations;

19 c. The production of evidence; and

20 d. Access to evidence for the purpose of examination and copying.

21 3. The Commission is authorized to administer oaths and compel attendance of
22 any person at a hearing and to compel production of any documents.

23 4. In the event a party does not make an appearance on the day set for hearing
24 or fails to comply with the rules of procedure set forth by the Commission for
25 the conduct of hearings, the Commission is authorized to enter a default
26 determination against the non-appearing and/or non-complying party.

27 B. Burden of proof. In any hearing, the employee alleging violation shall have the
28 burden of proof to show violation by a preponderance of evidence.

29 C. Hearing. The Commission shall conduct the hearing in a fair and orderly manner and
30 extend to all parties the right to be heard.

1. The Commission shall not be bound by any formal rules of evidence.
2. The respondent shall have the opportunity to answer the complaint and the parties shall have the right to legal counsel, to present witnesses, and to cross-examine adverse witnesses.
3. The Commission shall issue its decision by a majority vote of a quorum present which shall be signed by the Chairperson of the Commission.
4. Copies of the decision shall be sent to all parties of record in the proceeding by certified mail, return receipt.
5. Records of the proceeding shall be recorded. Any party may request a transcript of the proceeding at their own expense.
6. The decision of the Commission shall be final with a right of appeal only on questions of law to the Navajo Nation Supreme Court.

§ 612. Remedies and sanctions

A. If, following notice and hearing, the Commission finds that respondent has violated the Act, the Commission shall:

1. Issue one or more remedial orders, including without limitation, directed hiring, reinstatement, displacement of ~~non-Navajo~~ employees, back-pay, front-pay, injunctive relief, mandated corrective action to cure the violation within a reasonable period of time, and/or, upon a finding of intentional violation, imposition of civil fines; provided that liability for back-pay or other forms of compensatory damages shall not accrue from a date more than two years prior to the date of filing of the Charge which is the basis for the complaint.
2. In the case of an individual suit initiated pursuant to § 610(H), award costs and attorneys' fees if the ~~respondent's losing party's~~ position was not substantially justified.
3. Refer matters involving respondent contracts, agreements, leases and permits to the Navajo Nation Attorney General for appropriate action.

1 4. Not grant monetary awards for emotional distress except upon specific
2 findings, supported by competent evidence, that (1) the violation of the Act
3 actually caused the emotional distress; (2) the monetary award is necessary to
4 cure the violations; and (3) the amount of the monetary award is reasonably
5 tied to the complaining party's efforts to treat the emotional distress that arose
6 from the violation.

7 B. In the absence of a showing of good cause therefor, if any party to a proceeding under
8 this Act fails to comply with a subpoena or order issued by the Commission, the
9 Commission may impose such actions as are just, including without limitation any
10 one or more of the following:

11 1. In the case of non-compliance with a subpoena of documents or witnesses:

- 12 a. An order that the matters for which the subpoena was issued or any
13 other designated facts shall be deemed established for the purposes of
14 the proceeding and in accordance with the claim of the party obtaining
15 the order;
- 16 b. An order refusing to allow the disobedient party to support or oppose
17 designated claims or defenses, or prohibiting that party from
18 introducing designated matters in evidence; or
- 19 c. An order striking pleading or parts thereof, or staying further
20 proceedings until the subpoena is obeyed, or dismissing the action or
21 proceeding or any part thereof, or rendering a judgment by default
22 against the disobedient party.

23 2. In the case of non-compliance by a party or non-party with a Commission
24 subpoena of documents or witnesses or with any other order of the
25 Commission:

- 26 a. An order holding the disobedient person in contempt of the
27 Commission and imposing appropriate sanctions therefor, including a
28 civil fine; or
- 29 b. An order directing the disobedient person to pay the reasonable costs
30 and/or attorney's fees caused by the non-compliance.

1 C. The person or party in whose favor a Commission's decision providing for remedial
2 action is entered shall have the right to seek legal and/or equitable relief in the District
3 Courts of the Navajo Nation to enforce the remedial action; provided that the
4 Commission itself shall have the right to seek legal and/or equitable relief in the
5 District Courts of the Navajo Nation to enforce civil fines or sanctions imposed by
6 the Commission against a person or party. In both instances the Attorney General of
7 the Navajo Nation shall have an unconditional right to intervene on behalf of the
8 Navajo Nation.
9

10 **§ 613. Appeal and stay of execution**

11 A. Any party may appeal a decision of the Commission to the Navajo Nation Supreme
12 Court by lodging a written notice of appeal, in the form prescribed by the Navajo
13 Rules of Civil Appellate Procedure and within ~~10~~ thirty (30) days after receipt of the
14 Commission's decision.

15 B. In the absence of a stipulation by the parties approved by the Commission, a stay of
16 execution of the decision from which the appeal is taken shall only be granted upon
17 written application of the appellant to the Commission and an opportunity for
18 response by appellee. The application for a stay shall be filed within the period
19 prescribed for appeal in Subsection (A) hereof. No stay shall be issued unless the
20 appellant ~~presents a clear and convincing showing~~ shows that each of the following
21 requirements have been satisfied or that the appellant otherwise satisfies the
22 requirements for a stay under generally accepted principles:

- 23 1. Appellant is likely to prevail on the merits of the appeal;
- 24 2. Appellant will be irreparably harmed in the absence of a stay;
- 25 3. Appellee and interested persons will not be substantially harmed by a stay;
- 26 4. The public interest will be served by a stay; and
- 27 5. An appeal bond or other security, in the amount and upon the terms prescribed
28 by Subsection (C) below, has been filed with and approved by the
29 Commission; provided that no appeal bond shall be required of ONLR, the
30

1 Navajo Nation or any governmental agency or enterprise of the Navajo
2 Nation.

3 C. The appeal bond shall be issued by a duly authorized and responsible surety which
4 shall obligate itself to pay to appellee, or any other person in whose favor an award
5 is made by the Commission decision, the amounts specified or described in the bond
6 upon conclusion of the appeal and failure of appellant, following written demand by
7 appellee, to satisfy the foregoing obligations.

8 1. The amount or nature of liability assumed by the surety shall be specified in
9 the bond and shall include:

10 a. The total amount of all monetary awards made in the Commission
11 decision, together with such interest thereon as may be prescribed in
12 the Commission's decision;

13 b. Costs of appeal and attorneys' fees incurred by appellee in defending
14 the appeal and which may be awarded to appellee by the Navajo
15 Nation Supreme Court;

16 c. Damages sustained by appellee or other recipients of a Commission
17 award for delay in satisfaction of the Commission decision caused by
18 the appeal; and

19 d. Such other amount or liability reasonably required to be secured to
20 protect the interests of the appellee or other award recipients.

21 2. The bond shall provide that the surety submits to the jurisdiction of the
22 Commission and the Courts of the Navajo Nation, and irrevocably appoints
23 the Commission as the surety's agent upon whom any papers affecting the
24 surety's liability on the bond may be served. The surety's liability may be
25 enforced on motion of the appellee filed with the Commission, with copies
26 thereof served on the surety and appellant.

27 3. In lieu of posting an appeal bond, appellant may, with the approval of the
28 Commission, post a cash bond and undertaking in the amount and upon the
29 terms which are required above with respect to an appeal bond.
30

1 4. No appeal bond or cash bond and undertaking, nor the liabilities of the surety
2 or appellant thereunder, shall be exonerated or released until all amounts and
3 liabilities prescribed therein have been fully paid and satisfied.

4 D. Within three business days following the filing with the Navajo Nation Supreme
5 Court of any appeal from a Commission proceeding, the Clerk of such Court shall, in
6 all cases other than those in which ONLR is not either the appellant or appellee, cause
7 copies of the notice of appeal and all other documents filed in connection therewith
8 to be sent to the ONLR Director and the Attorney General of the Navajo Nation.
9 ONLR shall have an unconditional right to intervene and participate as amicus in the
10 appeal proceedings upon timely application therefor by motion lodged with the
11 Navajo Nation Supreme Court. ONLR's right of participation shall be coextensive
12 with that of the parties to the appeal, including the right to file opening, answering
13 and reply briefs, and the right to present oral argument to the Court.

14
15 **§ 614. Grievance Procedure For Navajo Nation Government Employees**

16 A. Any employee of the Navajo Nation Executive or Legislative Branch or a non-Local
17 Governance Act Certified Chapter, or applicant for employment with the Navajo
18 Nation Executive or Legislative Branch or non-Local Governance Act Certified
19 Chapter, who alleges a violation of this Act shall file a grievance as provided by the
20 Navajo Nation Personnel Policies Manual. The hearing officer may award the
21 employee or applicant any remedy authorized by Section 612(A) of this Act.
22 Directed verdict shall be discouraged in favor of a hearing to hear evidence from all
23 parties.

24 B. Any employee of the Navajo Nation Judicial Branch or an applicant for employment
25 with the Navajo Nation Judicial Branch who alleges a violation of the Act shall file
26 a grievance as provided by the Judicial Branch Employee Policies & Procedure. The
27 hearing body may award the employee or applicant any remedy authorized by Section
28 612(A) of this Act.

29 C. Except as otherwise provided in this Act, in any compliance review hearing, the
30 employee alleging violation shall have the burden of proof to show violation by a

1 preponderance of evidence. Directed verdict shall be discouraged in favor of a
2 hearing to hear evidence from all parties.

3 D. Any party to the grievance may appeal a final decision of the hearing officer or
4 hearing board to the Navajo Nation Supreme Court within ten (10) calendar days of
5 receipt of the decision. The employee or applicant shall file a notice of appeal with
6 the Navajo Nation Supreme Court and the hearing officer or hearing board.

7 E. Transcripts and records of appeals.

8 1. If considered necessary, the party appealing a decision shall file a transcript
9 of the proceeding with the Navajo Nation Supreme Court within thirty (30)
10 calendar days from the filing of the notice of appeal.

11 2. If a transcript is considered unnecessary, within ten (10) calendar days of the
12 filing of the notice of appeal, the party appealing a decision shall give notice
13 to the Navajo Nation Supreme Court and the appellee that the appellant will
14 not file a transcript.

15 3. If the appellant fails to file a transcript or notice that the appellant will not file
16 a transcript within the required time, the Navajo Nation Supreme Court shall
17 dismiss the appeal.

18 4. The hearing officer or hearing board shall submit the record of the proceeding
19 within ten (10) calendar days of the filing of the notice of appeal. Failure of
20 the hearing officer or hearing board to file the record within that time period
21 shall not be grounds for dismissal of the appeal.

22 F. The Navajo Nation Supreme Court shall review and decide the appeal within thirty
23 (30) days of the filing of the transcript or the notice that appellant will not file a
24 transcript. If a decision within that time is not feasible, at the request of a party or by
25 its own order, the Navajo Nation Supreme Court may extend that time up to sixty
26 (60) days. The Navajo Nation Supreme Court shall create expedited rules of appellate
27 procedure to decide the appeal within the required time period.

28 G. Remedies; enforcement of awards.

29 1. If the employees or applicant prevails on his or her grievance, and the Navajo
30 Nation program does not appeal the decision, the program and Navajo Nation

1 Controller shall pay the monetary remedies awarded within thirty (30)
2 calendar days of receipt of the final decision of the hearing officer or board.

3 2. If the hearing officer or board directs reinstatement of the employee to his or
4 her position or directs the hiring of the applicant for employment, and the
5 Navajo Nation program does not appeal the decision, the program shall
6 initiate the processing of all documentation necessary to reinstate the
7 employee or hire the applicant within ten (10) calendar days of the decision.

8 3. The filing of an appeal by the Navajo Nation program under Subsection (C)
9 shall automatically stay the payment of monetary remedies of reinstatement
10 or this pending the decision by the Navajo Nation Supreme Court. However,
11 any monetary remedy, such as back-pay, will continue to accrue until the
12 decision is issued, unless otherwise ordered by the Supreme Court. If the
13 employee or applicant prevails on appeal, the Navajo Nation program will
14 fulfill the award within the time periods set out in Subsection (1) and (2),
15 calculated from the date of receipt of the Navajo Nation Supreme Court's
16 decision.

17 4. If the Navajo Nation program fails to perform its obligations within the time
18 periods in Subsections (1) through (3), the employee or applicant may file an
19 action under Section 554(G) of the Navajo Sovereign Immunity Act to
20 enforce the award. If the employee or applicant prevails in that action, he or
21 she may receive the original award of the hearing officer or board and any
22 additional relief authorized by 1 N.N.C. §554(G)(1).

23 H. The remedies set forth in this Section are the exclusive remedies for employees
24 of or applicants for employment with the Navajo Nation Executive, Legislative,
25 and Judicial Branches and non-Local Governance Certified Chapters for
26 violations of the Act. ONLR and the Commission shall have no jurisdiction over
27 alleged violations of the Act by the Navajo Nation Executive, Legislative or
28 Judicial Branch or non-Local Governance Certified Chapters.

1 **§ 615. Non-Navajo spouses**

- 2
- 3 A. When a non-Navajo is legally married to a Navajo, he or she shall be entitled to
- 4 preference in employment under the Act. Proof of marriage by a valid marriage
- 5 certificate shall be required. In addition, such non-Navajo spouse shall ~~be required~~
- 6 ~~to have provide proof that he or she has~~ resided within the territorial jurisdiction of
- 7 the Navajo Nation for a continuous one year period immediately preceding the
- 8 application for Navajo preference consideration.
- 9 B. Upon meeting the above requirements, such consideration shall be limited to
- 10 preference in employment where the spouse would normally be in a pool of non-
- 11 Navajo workers. In this instance, Navajo preference would place the non-Navajo
- 12 spouse in the applicant pool of Navajos for consideration. However, preference
- 13 priority shall still be given to all Navajo applicants who meet the necessary job
- 14 qualifications within that pool.
- 15 C. Non-Navajo spouses having a right to secondary preference under this Section shall
- 16 also have and enjoy all other employment rights granted to Navajos under the Act, it
- 17 being understood that Navajos retain a priority right with respect to provisions of the
- 18 Act concerning preferential treatment in employment opportunities.
- 19

20 **§ 616. Polygraph test**

- 21 A. No person shall request or require any employee or prospective employee to submit
- 22 to, or take a polygraph examination as a condition of obtaining employment or of
- 23 continuing employment or discharge or discipline in any manner an employee for
- 24 failing, refusing, or declining to submit to or take a polygraph examination.
- 25 B. For purposes of this Section, “polygraph” means any mechanical or electrical
- 26 instrument or device of any type used or allegedly used for examine, test, or question
- 27 individuals for the purpose of determining truthfulness. This provision shall not
- 28 apply to federal or state government employees.
- 29
- 30

1 **§ 617. Rules and regulations**

2 The Health, Education and Human Services Committee of the Navajo Nation Council is
3 authorized to promulgate rules and regulations necessary for the enforcement and
4 implementation of the provisions of this Act. The Commission is hereby delegated the authority
5 to adopt and implement, on its own initiative and without any approval, rules of procedure and
6 practice governing the conduct of proceedings under § 611 of the Act, provided that such rules
7 are consistent with the provisions of the Act. The ONLR is delegated the authority to adopt and
8 implement, on its own initiative and without any approval, policies that govern ONLR's
9 responsibilities and duties to implement, monitor and enforcement of this ACT, insofar as such
10 policies are consistent with the provisions of the Act and those rules and regulations promulgated
11 by the Health, Education and Human Services Committee of the Navajo Nation Council as cited
12 herein.
13

14 **§ 618. Prior inconsistent law repealed**

15 All prior Navajo Nation laws, rules, regulations, and provisions of the Navajo Nation
16 Code previously adopted which are inconsistent with this Act are hereby repealed.
17

18 **§ 619. Effective date and amendment of the Act**

- 19 A. The effective date of this Act shall be 60 days after the passage of the Act by the
20 Navajo Nation Council and shall remain in effect until amended or repealed by the
21 Navajo Nation Council.
- 22 B. Any amendment or repeal of the Act shall only be effective upon approval by the
23 Navajo Nation Council, and shall not be valid if it has the effect of amending,
24 modifying, limiting, expanding or waiving the Act for the benefit or to the detriment
25 of a particular person.
- 26 C. Any amendment to the Act, unless the amendment expressly states otherwise, shall
27 be effective 60 days after the passage thereof by the Navajo Nation Council.
- 28 D. The time limits prescribed in § 610 relating to filing a Charge and subsequent
29 proceedings thereon were added by amendment adopted by the Navajo Nation
30 Council subsequent to the effective date of the original Act. Notwithstanding an

1 actual accrual date for any alleged violation of the Act which is prior to the effective
2 date of the amendment which added the time limits in § 610 hereof, such alleged
3 violation shall be deemed to accrue on the effective date of the foregoing amendment
4 for purposes of all time limits set forth in § 610.
5

6 **§ 620. Severability of the Act**

7 If any provision of this Act or the application thereof to any person, association, entity
8 or circumstances is held invalid, such invalidity shall not affect the remaining provisions or
9 applications thereof.
10

11 **Section Four. Effective Date**

12 The provisions of this Act shall become effective in accord with 2 N.N.C. § 221(B).

13 **Section Five. Codification**

14 The provisions of this Act which amend sections of the Navajo Nation Code shall be
15 codified by the Office of Legislative Counsel.

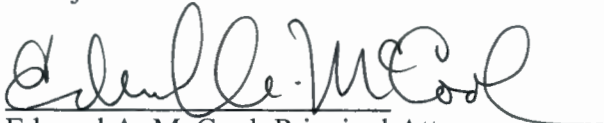
16 **Section Six. Savings Clause**

17 Should any provisions of this Act be determined invalid by the Navajo Nation Supreme
18 Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation
19 Supreme Court, or any other court of competent jurisdiction, those portions of this Act which
20 are not determined invalid shall remain the law of the Navajo Nation.
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MEMORANDUM

TO: Honorable Jonathan Hale
Navajo Nation Council

FROM: 
Edward A. McCool, Principal Attorney
Office of Legislative Counsel

DATE: September 12, 2018

SUBJECT: AN ACT RELATING TO HEALTH AND EDUCATION AND HUMAN SERVICES, LAW AND ORDER, NABIKIYATI COMMITTEE; ENACTING THE “NAVAJO NATION EMPLOYMENT RIGHTS ACT” OF 2018; AMENDING TITLE 15 N.N.C. §§ 601 THROUGH 620, OF THE NAVAJO NATION CODE

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that this particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§500, 501. Nevertheless, “the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration.” 2 N.N.C. §164(A)(5).

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0307-18_____ SPONSOR: Jonathan Hale

TITLE: An Act Relating to Health, Education and Human Services, Law and Order, Nabikiyati Committee; Enacting the "Navajo Nation Employment Rights Act" of 2018; Amending Title 15 N.N.C. §§ 601 through 620, of the Navajo Nation Code

Date posted: September 17, 2018 at 9:54am

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

**Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590**

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0307-18

SPONSOR: Honorable Jonathan L. Hale

TITLE: An Action Relating to Health, Education and Human Services, Law and Order, Nabikiyati Committee; Enacting the "Navajo Nation Employment Rights Act" of 2018; Amending Title 15 N.N.C. §§ 601 through 620, of the Navajo Nation Code

Posted: September 17, 2018 at 9:54am

5 DAY Comment Period Ended: September 22, 2018

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Inconclusive Comments (1)	1. Ralph Roanhorse, Director of Human Resources; Navajo Nation Judicial Branch.



**Legislative Secretary II
Office of Legislative Services**

9/23/2018 1:20pm

Date/Time

RE: Legislation No: 0307-18

Ralph L. Roanhorse <rroanhorse@navajo-nsn.gov>

Fri 9/21/2018 5:14 PM

To: comments <comments@navajo-nsn.gov>;

The following is a list of comments regarding the proposed legislation 0307-18 regarding the "Navajo Nation Employment Rights Act"

Page 6 line 13 Item F. Sexual Harassment. – definition is consistent with Employee Personnel Policies and Procedures Manual so think that this is a good change and expands the definition of sexual harassment.

Page 11 line 18 Item 6. "All employers shall publically advertise and announce all job vacancies , provided, however, that employers do not have the foregoing obligations in the event an applicant is selected for the employment opportunity who is a current employee of the employer.

First, I don't like the wording shall publically advertise and announce all job vacancies; I would hope that you would clarify publically advertise, because an employer could post a flier at the chapter house and say that it was publically advertised, I would rather state either on website or newspaper or other media outlets.

Second, the next sentence needs to be clarified. If the idea is to state that current employees can be considered for positions in the organization without advertisement, then would need to be clarified.

Page 12 line 12 Item b. "adverse actions taken with respect to employees who are officers and/or upper level managers (including without limitation employees who are employed, hired, appointed, assigned, and/or serving in the capacity of a President, Vice-President, General Manager, Chief Executive Officer, Chief Financial Officer or Treasurer, Chief Operating Officer, Human Resources Director. . .

Need clarification, in terms if this applies to the Navajo Nation Judicial Branch.

Page 14, line 1 item 1. :if an employer determines that a Navajo applicant meets the necessary qualifications for an open employment position, the employer shall deem the Navajo applicant to be qualified for the position and shall consider and give preference to the Navajo applicant with respect to filling the position. for purpose of this 6034 (c), "preference shall mean that if an employer determines that a qualified Navajo applicant and a qualified non-Navajo applicant are equally qualified for an open employment position, the Navajo applicant shall be considered more qualified. Nothing herein prohibits employers from hiring the best available qualified applicant, as determined by the employer, regardless of the applicant's status as Navajo or non-Navajo.

The first sentence appears to say that the Navajo applicant should be chosen if both candidates are equally qualified. However, the next sentence, seems to say that the best available qualified applicant can be chosen. I believe this needs to be more clear in its wording. However, I do think that this is a good change in that the best individual should be chosen for the position considering all hiring factors.

Ralph Roanhorse, Director of Human Resources

Navajo Nation Judicial Branch

P.O. Box 520

Window Rock, AZ 86515

Phone: (928) 871-6899

Fax: (928) 871-6862

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0307-18

SPONSOR: Honorable Jonathan L. Hale

TITLE: An Action Relating to Health, Education and Human Services, Law and Order, Nabikiyati Committee; Enacting the "Navajo Nation Employment Rights Act" of 2018; Amending Title 15 N.N.C. §§ 601 through 620, of the Navajo Nation Code

Posted: September 17, 2018 at 9:54am

5 DAY Comment Period Ended: September 22, 2018

Digital Comments received:

Comments Supporting (1)	1. Byron Clarke
Comments Opposing	<i>None</i>
Inconclusive Comments	<i>None</i>



 Legislative Secretary II
 Office of Legislative Services

10/11/2018 3:05pm
 Date/Time

10/9/2018

LEGISLATION NO: _0307-18____ SPONSOR: Jonathan Hale - comments

LEGISLATION NO: _0307-18____ SPONSOR: Jonathan Hale

Alva Byron Clarke <abclarke4@gmail.com>

Mon 10/8/2018 12:27 PM

To: comments <comments@navajo-nsn.gov>;

Comments regarding LEGISLATION NO: _0307-18____ SPONSOR: Jonathan Hale

I support and encourage the passage of this legislation. My degree is in economics and I have been an executive with a business on the Navajo Nation for almost 10 years.

During this time, I have observed that forcing companies to bring back employees that disrupt the workplace is not healthy for goods or services that might be provided to our Navajo customers.

Additionally, many outside investors and companies have openly expressed to me that they would never do business on the Navajo Nation for fear that they would not be able to let bad employees go without the threat of a costly lawsuit--a lawsuit that is not based on the merits of the employee's actions, but on an agency's interpretation of the policy that impacts employment.

Since the NPEA has come in to force, unemployment rates on Navajo land have not improved substantially, if at all. The most economically advanced states and countries have tendencies to allow businesses to hire and terminate more or less freely, (absent discrimination). There is a place for the NPEA, but it has expanded its original intent and hurt the nation by pushing away good business opportunities.

The proposed legislation is a step in the right direction to allowing business to do business without getting sued for every small reason.

-Byron Clarke-

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0307-18

SPONSOR: Honorable Jonathan L. Hale

TITLE: An Action Relating to Health, Education and Human Services, Law and Order, Nabikiyati Committee; Enacting the "Navajo Nation Employment Rights Act" of 2018; Amending Title 15 N.N.C. §§ 601 through 620, of the Navajo Nation Code

Posted: September 17, 2018 at 9:54am

5 DAY Comment Period Ended: September 22, 2018

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Inconclusive Comments (3)	<ol style="list-style-type: none"> 1. Ronald M. Curtis, Program Manager I; Office of Navajo Labor Relations. 2. Eugene Kirk, Labor Compliance Officer; Office of Navajo Labor Relations. Comments and Recommendations Amendment of NPEA 3. Gililand "Gil" Damon, LCO; Office of Navajo Labor Relations.



**Legislative Secretary II
Office of Legislative Services**

10/23/2018 8:55am


Date/Time

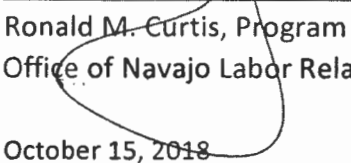


THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

MEMORANDUM

To : Tom Platero, Executive Director
Office of Legislative Services


From : Ronald M. Curtis, Program Manager I
Office of Navajo Labor Relations


Date : October 15, 2018

Subject : Comments of Proposed Legislation No. 307-18 "Enacting the Navajo Nation Employment Right Act of 2018; Amending Title 15 N.N.C §§ 601 through 620 of the Navajo Nation Code"

Submitted herewith is my comments concerning the above subject proposed legislation;

1. NPEA amendments will not cause any reversal of decades of unemployment and poverty. This is an ambiguous observation not supported by any review whether NPEA is a cause of the unemployment and poverty on Navajo.

In reality, NPEA as it is currently written, has had significant positive impacts for the benefits of plaintiffs who have had employment actions taken against them reversed or they were awarded a settlement by the Respondent.

2. NPEA does not inhibit economic growth nor is it a disincentive for business owners and employers to locate on the Navajo Nation. NPEA is designed to protect the worker from adverse actions taken by an employer. Employers locating on Navajo have a contractual obligation to employ and hire qualified Navajos. NPEA provides protections for the worker that is not otherwise provided by any other Navajo Code.
3. The Navajo Nation is unique in that it does not practice at-will employment in all work places. Page 3 of 51 of the proposed legislation points to the fact that all fifty states permit at-will employment. Just because all fifty states permit at-will employment does not mean that the Navajo Nation has to follow suit.
4. Section 604. B. 8. is provided for those employees who serve at the pleasure of the President, Speaker, or the Chief Justice. Notification of termination or removal without cause is a known requirement for appointees of the Navajo Nation.

5. ONLR disagrees with a “waiver” of the NPEA for businesses that employ 50 or less employees. Discretion of management is not the authority of the government, but rather, the law is designed to protect the worker who without any protections can be terminated without cause. A majority of businesses with 50 or less employees operate within the jurisdiction of the Navajo Nation, and if we allow them to remove someone without just cause is not protecting our Navajo People and their welfare. Are we protecting the employer, or the employee?
6. ONLR has no disagreement with the new limits to file a charge and investigate a charge. We currently attempt to expedite every employment charge filed within 90 days, from the day an employment charge is filed to the case closed date. Other cases often require more time because the respondent fails to cooperate with the investigation or they cite ONLR has no jurisdiction.
7. ONLR disagrees with the removal of language in Section 602. A. “To protect the health, safety, and welfare of the Navajo workers, and”
8. ONLR disagrees with the removal of language in Section 604. A “or near the boundaries”. This wording must remain in the NPEA to address and protect employees who are working for a contractor or employer within 25 miles of the Navajo Nation, and who will use primarily Navajo or Indian employees.
9. ONLR disagrees with the insertion of proposed language in Section 604. C. 1. “Nothing herein prohibits employers from hiring the best available qualified applicant, as determined by the employer, regardless of the applicants’ status as Navajo or non-Navajo.” This defeats the intent of providing every qualified Navajo an opportunity for employment which could not be provided otherwise.
10. ONLR disagrees with proposed legislation for Section 610. B. 6. to reducing the time limitation for filing a Charge from one year to sixty (60) days. This does not allow sufficient time for the plaintiff to seek redress for wrongful termination purposes. A better timeline would be 120 days to file a Charge.
11. Section 610. B. 7. Is recommended to be changed to 10 working days, in order to thoroughly review the employment charge and determine if a violation did occur.
12. Page 36 of 51, #3. Content of Notice should also be changed to “...notice of right to proceed, in order to be consistent with other similar language throughout this section.

This is the extent of my recommendations and observations of the proposed legislation no. 307-18, sponsored by Jonathan Hale, Chairperson of the HEHSC. I can be reached at rmcurtis@navajo-nsn.gov if you have any questions.

October 11, 2018

Analysis of Proposed Legislation no. 307-18 “Enacting the Navajo Nation Employment Rights Act of 2018, Amending Title 15 N.N.C. §§ 601 Through 620, Of the Navajo Nation Code”.


1. NPEA amendments will not cause any reversal of decades of unemployment and poverty. This is an ambiguous observation not supported by any review whether NPEA is a cause of the unemployment and poverty on Navajo.

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3. The Navajo Nation is unique in that it does not practice at-will employment in all work places. Page 3 of 51 of the proposed legislation points to the fact that all fifty states permit at-will employment. Just because all fifty states permit at-will employment does not mean that the Navajo Nation has to follow suit.
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This is the extent of my recommendations and observations of the proposed legislation no. 307-18, sponsored by Jonathan Hale, Chairperson of the HEHSC.



Ron Curtis, Program Manager I
Office of Navajo Labor Relations



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

MEMORANDUM

AD19-041

TO : Ron Curtis, Program Manager I
DHR – Office of Navajo Labor Relations

Handwritten signature and date: 10/10/18

FROM : *Eugene Kirk*
Eugene Kirk, Labor Compliance Officer
Office of Navajo Labor Relations

DATE : October 10, 2018

SUBJECT : **Comments and Recommendations Amendment of NPEA**

I offer my comments and recommendations of proposed legislations of the Navajo Preference in Employment Act ("NPEA") to be enacted into law. I am not too clear if my comments serves as the ONLR's position or recommendations be considered if the NPEA amendments is a positive law for the benefits of Navajo workers also to promote the economic development.

In reviewing the Resolution under Section two (2). Findings (c) state: Despite the existence of the NPEA for the three decades, unemployment and poverty remain rampant throughout the Navajo Nation. For as long I've been employed with the ONLR during the three (3) decades, I am in disagreement that there is no factual basis which support this fact. At the time, there were non-Navajo Contractors and/or business owners that hired mostly non-Navajos also brought with them their core workforce. This prevailing climate were protested by several Navajo labor groups it included the Union representatives dissatisfied Navajo preference was not to stern of any enforcement. Comparing those conditions inhibit reversing the unemployment trend led to enact a Navajo preference law.

At present, a majority of general contractors are Navajo owners including their subcontractors and they utilize an abundance of Navajo craftsmen in various trades, they continue to provide training or apprenticeship to increase skill craftsmen. I observe less non-Navajo contractors despite those that operate have Navajo workers performing the projects on the Navajo Nation supervise by Navajo while the owners remain outside the Navajo Nation as an oversight. The ongoing enforcement by ONLR has resulted substantial gains in employment opportunities, stringent protection of employment rights litigated has established case laws by NN Supreme Court and it took the force of law and perseverance of staff of ONLR to convince employers their obligations in abiding with the NPEA.

I am certain this term of the Resolution is flawed because the ONLR has never been ask for their input to suggest its recommendations even any issues to any provision that could impede

enforcement. I believe the amendments are under control of outside lawyers, corporations with promises to bring in business opportunities and/or leaders that support the initiatives as its contended for business growth. The NPEA was intended to generate employment opportunities as an aim for Navajo workers to sustain self-sufficiency for their families. If the business ventures is going to be stimulated then the original objectives of the NPEA will be lessen to ensure corporations will have the upper hand to detriment Navajo Preference opportunities. This is my comments with respect to the language of the Resolution its so discouraging the focus of a new amended law if its positive or not. There is two (2) Task Force reports that contain the rational of the amendments of each section of the NPEA. With this amendment nothing is define to bear the background of new mandates of law.

Under Chapter 7 state amending the title to NN Employment Right Act what is the rational to strike the previous title which was challenge in federal courts and to the highest US Supreme Court that it gain the distinction by the justices it meant the sovereignty protection of the Navajo Nation and it people. Now this distinction will be dishonored in crafting amended title as a law that is not positive.

The timeline should remain the 180 days for review by the ONLR and the Commission to exercise the 180 days, to shorten the timeline would not be adequate for an investigation to be timely completed especially because of short staff. This would mean just rush a determination without no justice that are sought by individual claimants. As it is now with short staff the filing of charges has become escalated that timely action became a cumbersome task.

These are my comments, I could have stated additional issues, the assigned directives did not afford me enough time.

Cc: LaVonne Tsosie, Division Director
Chrono File

EK/an

RE: Legislation #307-18

Gililand Damon <gililanddamon@navajo-nsn.gov>

Wed 10/10/2018 12:03 PM

To: Ronald M. Curtis <rmcurtis@navajo-nsn.gov>;

Cc: Michael Armijo <michaelarmijo@navajo-nsn.gov>; Eugene Kirk <ekirk@navajo-nsn.gov>;

[Handwritten signature]
10/10/18

Mr. Curtis,

Per your request the following is my comments and recommendation to the Navajo Preference in Employment Act proposed amendments:

§603 Definitions, E. the term "harassment" is not part of the NPEA as that term was replaced by "sexual harassment" by resolution CMA-13-16.

Recommendation: Delete this provision.

§604 B. (9.) This whole section is confusing, as it states "this subsection" which subsection?

Recommendation: Reword to provide clarity.

§604 B. (9.) (c.) Question: Does the proposed amendment mean that contractors on construction site that have less than fifty workers on site are not required to have just cause to discipline their employees by this provision?

Recommendation: Reword to provide clarity.

That's all I have for now.

Thank you,

Gililand "Gil" Damon, LCO
Office of Navajo Labor Relations
Post Office Box 1943
Window Rock, Arizona 86515
Office 928.871-6800 / Fax 928.871.7088
<http://www.onlr.navajo-nsn.gov/>

Committee Report

THE HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE OF THE NAVAJO
NATION COUNCIL to whom has been assigned;

LEGISLATION NO. 0307-18

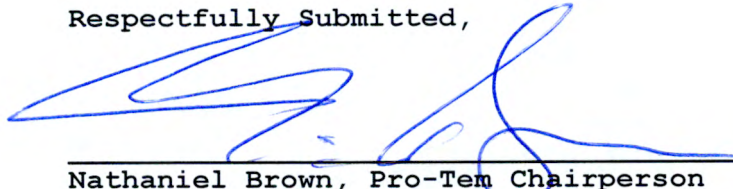
AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND
ORDER, NAABIK'IYATI' COMMITTEE; ENACTING THE "NAVAJO NATION EMPLOYMENT
RIGHTS ACT" OF 2018; AMENDING TITLE 15 N.N.C. §§ 601 THROUGH 620, OF
THE NAVAJO NATION CODE

(Note: Eligible for Committee Action September 23, 2018)

Sponsor: Honorable Jonathan L. Hale

Has had under consideration and report the same with the recommendation
that Legislation 0307-18 PASS with no Amendment and no Directive; and
therefore referred the same to the **LAW AND ORDER COMMITTEE OF THE NAVAJO
NATION COUNCIL**

Respectfully Submitted,



Nathaniel Brown, Pro-Tem Chairperson
Health, Education and Human Services Committee

September 24, 2018 - Main Motion

Motion by: Honorable Nelson BeGaye

Seconded by: Honorable Amber Kanazbah Crotty

Vote: 3 in favor; 0 Opposed; Pro-Tem Chairperson Not Voting

Yeas: Nelson BeGaye; Amber Kanazbah Crotty; Jonathan L. Hale

Nays: None

Absent (excused): Norman M. Begay; Steven Begay

HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE
Regular Meeting
September 24, 2018

Roll Call
Vote Tally Sheet

LEGISLATION NO. 0307-18

AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER, NAABIK'IYATI' COMMITTEE; ENACTING THE "NAVAJO NATION EMPLOYMENT RIGHTS ACT" OF 2018; AMENDING TITLE 15 N.N.C. §§ 601 THROUGH 620, OF THE NAVAJO NATION CODE

(Note: Eligible for Committee Action September 23, 2018)

Sponsor: Honorable Jonathan L. Hale

Has had under consideration and report the same with the recommendation that Legislation 0307-18 PASS with no Amendment and no Directive; and therefore referred the same to the **LAW AND ORDER COMMITTEE OF THE NAVAJO NATION COUNCIL**

September 24, 2018 - Main Motion

Motion by: Honorable Nelson BeGaye

Seconded by: Honorable Amber Kanazbah Crotty

Vote: 3 in favor; 0 Opposed; Pro-Tem Chairperson Not Voting

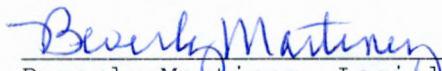
Yeas: Nelson BeGaye; Amber Kanazbah Crotty; Jonathan L. Hale

Nays: None

Absent (excused): Norman M. Begay; Steven Begay



Nathaniel Brown, Pro-Tem Chairperson
Health, Education and Human Services Committee



Beverly Martinez, Legislative Advisor
Health, Education and Human Services Committee