

WHITE MOUNTAIN APACHE

LABOR CODE

Effective September 1, 2010

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WHITE MOUNTAIN APACHE LABOR CODE

CHAPTER ONE LABOR RELATIONS

[NOTE: Chapter One is derived from Ordinance No. 151, enacted November 14, 1986; amending and rescinding Ordinance No. 103 and No. 116; and Ordinance No. 154, amending and rescinding Section 6 of Ordinance No. 151, enacted June 18, 1987.]

SECTION 1.1 PURPOSE AND INTENT

A. Like land, water, and minerals, jobs in private employment on or near the Fort Apache Indian Reservation are an important resource for Indian people, and Indians must use their rights to obtain their rightful share of such jobs as they become available.

B. Indians have unique and special employment rights and the White Mountain Apache Tribal Government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indians.

C. Indians are also entitled to the protection of the laws that the Federal government has adopted to combat employment discrimination; Tribal governments can and should play a role in the enforcement of those laws.

D. The White Mountain Apache Tribe believes that it is important to establish an employment rights program and office in order to use the aforementioned laws and powers to increase employment of Indians and to eradicate discrimination against the Indian people.

SECTION 1.2 DEFINITIONS

A. Labor Relations Department means the Labor Relations Department of the White Mountain Apache Tribe as established pursuant to Section 1.3A of this Chapter.

B. Labor Relations Officer means the appointed Director of the Labor Relations Department of the White Mountain Apache Tribe.

C. Employer or Non-Tribal Employer means any non-tribal government employer or contractor doing business on the Fort Apache Indian Reservation including tribal member employers but shall not include the White Mountain Apache Tribal Government, its operations, departments or enterprises.

[Note: Section 1.2 D was amended by Ordinance No. 203, enacted December 20, 1995.]

D. Indian Preference means the following priority order of preference:

1. Enrolled member of the White Mountain Apache Tribe.
2. Indian spouse of an enrolled member of the White Mountain Apache Tribe.
3. Other Indians.

The above preference priority applies to all employment activities, including those undertaken pursuant to the Indian Self Determination and Education Assistance Act, P.L. 93-638, as amended, except for employment funded by federal government programs unrelated to the Indian Self Determination Act, which shall have the following priority order of preference:

1. Local Indian.
2. Other Indians.

SECTION 1.3 LABOR RELATIONS DEPARTMENT

A. The White Mountain Apache Tribe does hereby establish the Labor Relations Department of the White Mountain Apache Tribe as an independent office of the Tribe, reporting directly to the Director of Administration and Finance.

B. The Director of Labor Relations Office shall be appointed by the Tribal Chairman, with the concurrence of the Tribal Council. The Director shall have the authority to hire staff, expend funds appropriated by the Tribal Council, and to obtain and expend funding from federal, state, or other sources to carry out the purposes of the Labor Relations Department. The Labor Relations Department shall have the authority to issue rules, regulations, and guidelines to implement the employment rights requirements imposed by this Chapter, to hold hearings, to subpoena witnesses and documents, to require employers to submit reports and to take such other actions as are necessary for the fair and vigorous implementation of this Chapter.

SECTION 1.4 EMPLOYMENT REQUIREMENTS

A. All non-tribal employers operating within the exterior boundaries of the Fort Apache Indian Reservation are hereby required to give preference to Indians in hiring, promotion, training, and all other aspects of employment. Said employers shall comply with the rules, regulations, and guidelines of the Labor Relations Department which set forth the specific obligations of the employer in regard to Indian preference.

B. Any employer who has a collective bargaining agreement with one or more unions shall obtain written agreements from said union(s) stating that the union shall comply with the Indian preference laws, rules, regulations, and guidelines of the White

Mountain Apache Tribe. Such agreement shall be subject to the approval of the Labor Relations Department.

C. Except as provided in Section 1.9 herein, the provisions of this Chapter shall not apply to the White Mountain Apache Tribal Government, its departments, enterprises, or other governmental operations.

SECTION 1.5 IMPLEMENTATION AUTHORITY OF LABOR RELATIONS DEPARTMENT

A. The following actions may be taken hereunder against non-tribal employers by the Labor Relations Department to implement the above Employment Requirements:

1. Impose numerical hiring goals and timetables that specify the minimum number of Indians an employer must hire, by craft or skill level.

2. Require non-tribal employers to establish or participate in such training programs as the Labor Relations Department determines necessary in order to increase the pool of qualified Indians on the Fort Apache Indian Reservation as quickly as possible. Also, the Tribal Employment and Training Program (WIA) is hereby mandated to establish a construction worker trainee program and to obtain certification for the program from the Department of Labor.

3. Coordinate, in conjunction with the Tribal Personnel Office, the establishment of a tribal hiring hall and impose a requirement that no non-tribal employer may hire a non-Indian until the tribal hiring hall has certified that no qualified Indian is available to fill the vacancy.

4. Prohibit non-tribal employers from using qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the employer can demonstrate that such criteria or requirements are absolutely required by business necessity. In developing regulations to implement this requirement, the Labor relations Department shall adopt the EEOC guidelines on these matters to the extent that they are appropriate. The Labor Relations Department shall have the right to impose its own requirements in addition to or in lieu of EEOC guidelines.

5. To enter into agreements with unions to insure union compliance with this Chapter. Such agreements shall in no way constitute recognition or endorsement of any union.

6. Take such other actions as are necessary to achieve the purposes and objectives of this Chapter. However, the implementation of any activities or requirements that constitute a significant new component to this program, beyond those listed in sub-paragraphs of this Section, shall be subject to the prior approval of the Tribal Council.

B. The Labor Relations Department is authorized to enter into cooperative relationships with Federal Employment Rights agencies, such as EEOC and OFCCP, in order to eliminate discrimination against Indians on and off the Fort Apache Indian Reservation.

SECTION 1.6 EMPLOYMENT RIGHTS FEE

[Note: Section 1.6 was derived from Ordinance No. 154, enacted June 18, 1987, rescinding Section 6 of Ordinance No. 151, and Ordinance No. 244, enacted September 1, 2010.]

A. An employment rights fee is imposed as follows:

1. Every employer with a construction contract in the sum of Ten Thousand Dollars (\$10,000) or more, shall pay a one-time fee of five percent (5%) of the total amount of the contract. Such fee shall be paid by the employer prior to commencing work on the Fort Apache Indian Reservation. However, where good cause is shown, the Director may authorize a construction contractor to pay said fee in installments over the course of the contract. The fees imposed pursuant to this Section are in lieu of any other tax or permit fees imposed under this Code or the Tribal Tax Code, Chapter 11.

2. Every employer, other than construction contractors, with five (5) or more employees working on the Fort Apache Indian Reservation, or with gross sales on the Fort Apache Indian Reservation of Fifteen Thousand Dollars (\$15,000.00) or more shall pay a quarterly fee of One Percent (1%) of his employees quarterly payroll, which shall be paid within thirty days after the end of each quarter. This fee shall not apply to education, health, governmental, or non-profit employers, or to utilities franchises by the White Mountain Apache Tribe.

3. The Labor Relations Officer shall be responsible for collecting said fees pursuant to any rules and regulations adopted by the Tribal Council of the White Mountain Apache Tribe. Said fees shall be paid to the White Mountain Apache Tribal Treasurer, and shall be credited to the Tribal Labor Relations Department Account of the White Mountain Apache Tribe. The fees collected shall provide funds to operate the Labor Relations Department and governmental operations of the White Mountain Apache Tribe.

SECTION 1.7 SANCTIONS FOR NON-COMPLIANCE

A. Any employer who fails to comply with the laws, rules, regulations, or guidelines on employment rights of the White Mountain Apache Tribe or who fails to obtain the necessary agreements from its signatory unions shall be subject to sanctions which shall include but are not limited to:

1. denial of the right to commence business on the Fort Apache Indian Reservation;
2. fines;
3. suspension of the employer's operation;
4. termination of the employer's operation;
5. denial of the right to conduct any further business on the Fort Apache Indian Reservation;
6. payment of back pay or other relief in order to correct any harm done to aggrieved Indians; and
7. the summary removal of employees hired in violation of the White Mountain Apache Tribe's employment rights requirements.

B. Sanctions shall be imposed by the Labor Relations Officer, after allowing the employer an opportunity to present evidence showing why it did not violation the requirements or why it should not be sanctioned. An employer shall have the right to appeal to the tribal Court any decision by the Labor Relations Officer that imposes sanctions on him.

SECTION 1.8 AGENCY AND OFFICE COORDINATION

A. All reservation employment and training functions, including JTPA and the BIA Employment Assistance Program shall devote such of their resources as are necessary to prepare Indians for the job opportunities to be opened by the Tribal Labor Relations Program.

B. The Labor Relations Officer shall coordinate with the Director of the Tribal Personnel Office, in the following:

1. Identification of job openings, both actual and potential, and definitions of skill levels and training requirements required to qualify Indian workers; and

2. Development of current lists of available qualified workers for the various job categories.

C. The Tribal Personnel Office shall be responsible to develop and maintain a current "skills bank", or inventory of unemployed Indian workers on reservation. The Tribal Economic Development Office shall coordinate closely with the Tribal Personnel Office and the Labor Relations Department in identifying actual and potential job opportunities resulting from economic development projects and activities.

SECTION 1.9

TRIBAL GOVERNMENT COMPLIANCE; REPORTS

A. The White Mountain Apache Tribal Governmental operations, departments and enterprises shall give preference to qualified Indians in hiring, promotion, training and all other aspects of employment in accordance with the priority order of preference set forth in Section 1.2D of this Chapter.

B. Upon request of the labor Relations Officer, Tribal Department Directors, Enterprise Managers and other tribal hiring authorities shall submit a report to the Labor Relations Department which shall include the total number of employees of the department or enterprise and which shall be categorized as follows:

1. Number of employees who are enrolled members of the White Mountain Apache Tribe.

2. Number of Indians employees who are spouses of enrolled members of the White Mountain Apache Tribe.

3. Number of Indian employees who are neither enrolled members of the White Mountain Apache Tribe nor spouses of enrolled members of the Tribe.

C. In any case where it is alleged that a tribal hiring authority did not give preference in hiring to qualified Indian applicants, any aggrieved applicant has the right to file a grievance in accordance with the grievance procedures set forth in the Personnel Policies and Procedures of the White Mountain Apache Tribe; or, upon request of the aggrieved applicant, the Labor Relations Officer shall file a grievance on behalf of the applicant and may represent the applicant at the grievance hearings.

D. In no event shall any grievance against a tribal hiring authority be brought before the Tribal Council of the White Mountain Apache Tribe until all administrative remedies have been exhausted and a final determination has been made by the Grievance Committee in accordance with the grievance procedures set forth in the Personnel Policies and Procedures of the White Mountain Apache Tribe.

E. Nothing in this Chapter shall be construed to empower the Labor Relations Department with any adjudicatory authority regulatory powers, or control over tribal governmental operations or tribal employment procedures.

CHAPTER TWO MINIMUM WAGE

[Note: Chapter Two is derived from Ordinance No. 123, enacted on July 15, 1982.]

SECTION 2.1 PURPOSE AND INTENT

The purpose of this Chapter [Minimum Wage Ordinance] is to protect and stabilize the wages of persons employed on the Fort Apache Indian Reservation be they employed by the White Mountain Apache Tribe and its Enterprises or be they employed by non-tribal employers within the exterior boundaries of the Fort Apache Indian Reservation.

The intent of this Chapter is to provide said employees of employers within the Fort Apache Indian Reservation some measure of adequate remuneration for their labor and to provide them with a certain standard of living rather than to receive compensation which often may be uncertain and fluctuating. Further, the requirement of a minimum wage will increase job stability and will enhance the stability and unity of family well-being and further the economic well-being of the White Mountain Apache Tribe.

SECTION 2.2 DEFINITIONS

A. **PERSON** - Shall mean a natural person, Indian or non-Indian, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

B. **BUSINESS** - A profession, trade or occupation or other calling carried out for profit or livelihood, or any employee or agent of the same.

C. **AGENCY** - Any organization unit engaged in carrying out business on the Fort Apache Indian Reservation, i.e., Arizona State government, White Mountain Apache Tribe, or non-tribal government.

D. **MINIMUM WAGE** - Minimum wage means the prevailing minimum wage as increased from time to time by and pursuant to the Fair Labor Standards Act (Federal Wage and Hour Law) as required from time to time by said act; providing, that no other exemptions or provisions of the Federal Wage and Hour Law shall be applicable to construe or interpret the applicability of this minimum wage standard to employers within the exterior boundaries of the Fort Apache Indian Reservation.

E. **EMPLOYER** - Employer as used in this Chapter means any person who hires or employs any other person to perform work or services and pays for those services or work by means of wages or a salary and includes any person acting directly or indirectly in the interest of an employee in relation to an employee.

SECTION 2.3 **SCOPE OF CHAPTER**

A. Every employer who engages in any business within the exterior boundaries of the Fort Apache Indian Reservation shall pay to each of his employees who in any work week is engaged in the employ of said business or in the production of goods and services for such business not less than the minimum wage of \$3.35 per hour and shall pay such increases in the minimum wage as established by the Fair Labor Standards act (Federal Wage and Hour Law) as required from time to time by said act; providing, that no other exemptions or provisions of the Federal Wage and Hour Law shall be applicable to construe or interpret the applicability of this minimum wage standard to employers within the exterior boundaries of the Fort Apache Indian Reservation.

SECTION 2.4 **EXEMPTIONS**

This Chapter shall be applicable to all employers except the various livestock associations within the exterior boundaries of the Fort Apache Indian Reservation, Youth camps employing minors under the age of sixteen years of age, and those employers which from time to time the Tribal Council may declare exempt by amendment to this Chapter.

SECTION 2.5 **ENFORCEMENT AUTHORITY**

The Apache Tribal Employment Rights Office shall conduct a survey of compliance with this Chapter establishing a minimum wage for all employers conducting business as defined in this Chapter within the exterior boundaries of the Fort Apache Indian Reservation; and in order to carry out the purposes of this Chapter, the Apache Labor Relations Department shall have the authority to issue rules, regulations, and guidelines to implement the minimum wage requirements imposed by this Chapter, to hold hearings, to subpoena witnesses and documents, to require employers to submit reports and to take such other actions as are necessary for the fair and vigorous implementation of this Chapter.

SECTION 2.6 **EMPLOYER COMPLIANCE WITH LABOR RELATIONS REGULATIONS**

All employers operating within the exterior boundaries of the Fort Apache Indian Reservation are hereby required to comply with the rules, regulations and guidelines of the Tribal Labor Relations Department, which shall set forth the specific obligations of the employer in regards to compliance with this Chapter [minimum wage ordinance].

SECTION 2.7 **SANCTIONS FOR NON-COMPLIANCE**

A. Any employer who fails to comply with this Chapter and the law, rules, regulations, or guidelines for compliance with the same as promulgated by the Tribal Labor Relations Department shall be subject to sanctions which shall include but are not limited to:

1. Denial of the right to commence business on the Fort Apache Indian Reservation;
2. Civil penalties;
3. Suspension of the employers operations;
4. Termination of the employers operations;
5. Denial of the right to conduct any further business on the Fort Apache Indian Reservation; and
6. Payment of any back pay in order to correct harm or injury suffered by an aggrieved employee.

B. Sanctions shall be imposed by the Director of the Apache Tribal Labor Relations Department, after allowing the employer an opportunity to present evidence showing why it did not violate the requirements of this ordinance or why it should not be sanctioned. An employer shall have the right to appeal to the Tribal Court any decisions by the director that imposes sanctions on him. The employer shall have a further right to appeal after exhausting his remedies in the Tribal Court by an appeal to the Tribal Council of the White Mountain Apache Tribe which shall not entertain any new evidence of compliance or non-compliance but will restrict its review to the record made at the administrative and Tribal Court level.

SECTION 2.8 CIVIL PENALTY

A. In addition to any of the sanctions set forth in Section 2.7A above, any employer who fails to comply with this Chapter and rules and regulations promulgated by the Tribal Labor Relations Department is liable for a civil penalty of not less than One Hundred Fifty (\$150.00) Dollars or more than Five Hundred (\$500.00) Dollars for the first offense and not less than Five Hundred (\$500.00) Dollars nor more than One thousand (\$1,000.00) Dollars for the second offense.

B. In addition to any of the sanctions set forth herein, any employer found in willful violation of this Chapter shall pay the employee aggrieved by such willful non-compliance with this chapter, treble the amount of wages wrongfully withheld.

C. Any employer found to have willfully violated any of the provisions of this chapter may be excluded from the reservation in accordance with Tribal Law in addition to any other sanctions provided herein.

D. Employers are prohibited from terminating an employee in retaliation for his or her filing a complaint with the Tribal Labor Relations Department for failure to pay the employee the minimum wage established by this Chapter.

**CHAPTER THREE
UNEMPLOYMENT BENEFITS**

[Note: Chapter Three is derived from Ordinance No. 80, enacted March 6, 1968.]

SECTION 3.1 FRAUDULENT RECEIPT OF BENEFITS; PENALTY

Any person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact in order to obtain or increase a benefit or other payment under the Employment Security Act, Section 23-601 A.R.S. et seq., either for himself or for another person, or under an Employment Security Act of another state, the federal government, or a foreign government, shall be punished by a fine of not less than \$25.00 nor more than \$200.00 or by imprisonment for not more than 60 days, or both. Each such false statement or representation failure to disclose a material fact shall constitute a separate offense.

SECTION 3.2 RESTITUTION

If the existence of fraud by any person resulting in benefits to which he was not entitled, has been found by the Tribal Court, such person shall be liable to repay such amount to the Commission for the fund or to have such sum deducted from any future benefits payable to him under said laws.

**CHAPTER FOUR
WORKERS COMPENSATION**

[Note: Chapter Four is derived from Ordinance No. 147, enacted on August 14, 1985.]

SECTION 4.1 ADOPTION OF WORKERS COMPENSATION LAWS

A. BE IT ENACTED by the Tribal Council of the White Mountain Apache Tribe that it hereby adopts as tribal procedure and tribal law the Worker's Compensation Laws of the state of Arizona as set forth in Title 23 of the Arizona Revised Statutes and the Rules of Procedure for Workmen's Compensation Hearings before the Industrial Commission of Arizona as set forth this date and any amendments thereto, with the following exceptions:

SECTION 4.2 REFERENCE TO ARIZONA LAWS AND AGENCIES

All references in the Arizona laws and procedures to "local authorities", "State of Arizona", "Superior Court", "Industrial Commission" or any related state agencies shall mean the corresponding authorities, agencies, or departments of the tribal government of the White Mountain Apache Tribe.

SECTION 4.3 VISITING JUDGE AUTHORIZED

The Judge of the Tribal court is hereby authorized to request a visiting judge and an administrative law judge to preside at Worker's Compensation hearings, if it is determined by the Tribal Court Judge to be necessary.

SECTION 4.4 INCONSISTENT LAWS

A. Any tribal laws or procedure, duly authorized by the Tribal Council, at this date or hereafter passed, which are inconsistent with the Worker's Compensation Laws or Rules of Procedure of the State of Arizona shall be deemed as amendments to the laws and procedures herein adopted.

B. Nothing in this Chapter shall prohibit the Tribal Council from duly enacting Worker's Compensation Laws or Procedures in addition to or inconsistent with those passed by the State of Arizona and herein adopted as tribal law and procedure.

SECTION 4.5 SOVEREIGN IMMUNITY PRESERVED

A. BE IT FURTHER ENACTED that the enactment of this Chapter does not constitute a waiver of the sovereign immunity of the White Mountain Apache Tribe; provided, however that the defense of sovereign immunity shall not be raised by the Tribe's Worker's Compensation carrier to the extent of the carrier's statutory liability.

CHAPTER 4.6 COPY OF COMPLAINT TO CARRIER

BE IT FURTHER ENACTED that upon the filing of a petition or complaint contesting claim status, the Tribal Court shall forward a copy of the petition or complaint to the Tribe's Worker's Compensation carrier within five (5) days of the date of filing.

SECTION 4.7 INTERPRETATION OF LAWS

BE IT FURTHER ENACTED that the interpretation of the Worker's Compensation Laws and Rules of Procedure for Workmen's Compensation Hearings, as herein adopted, shall be made to the best possible extent, consistent with tribal governmental structure and organization and Arizona State Court decisions.

**CHAPTER FIVE
GENERAL PROVISIONS**

SECTION 5.1 SEVERABILITY

If any provision of this Code, or the application thereof, is held invalid, the remainder of this Code, or other applications of such provisions, shall not be affected.