

MANDAN, HIDATSA AND ARIKARA NATION



EMPLOYMENT POLICIES AND PROCEDURES

Adopted April 8, 2004, pursuant to Resolution 04-45BRP by the MHA Tribal Business Council
Revised July 1, 2025 pursuant to Resolution 25-183-FWF by the MHA Tribal Business Council

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CHAPTER 1: INTRODUCTION

The Governing Body of the Mandan, Hidatsa and Arikara Nation (“Tribe” or “MHA Nation”) is, by Constitutional provision, the Tribal Business Council. The diversity of responsibilities with which the Tribal Business Council is charged requires an organizational structure that is conducive to the well-being of the Mandan, Hidatsa and Arikara Nation and its employees and that is sufficient to meet applicable statutory and regulatory requirements.

This Employment Policies and Procedures (“Policies”) is adopted to acquaint employees with the organizational structure of the Tribe and to provide information about working conditions, employee benefits and the policies affecting your employment. Employees should read, understand, and comply with all provisions of these Policies and the Supplemental Policies contained in the Appendices. It describes your responsibilities as an employee and outlines the programs developed by the Tribe to benefit its employees. The Tribe strives to provide a work environment that is conducive to both personal and professional growth. If you have questions about any provision contained within these Policies or your rights and responsibilities as an employee, you should direct your question to your Supervisor or the Human Resources Department.

The Tribal Business Council reserves the right to review, supplement or rescind any policy or portion of these Policies. Employees will be notified of any changes as they are made.

The importance and impact of employee contribution to organizational integrity, development and progress cannot be overstated. The effort of each employee directly influences the governmental responsibilities of the Tribe to its membership. Employees are therefore encouraged to submit suggestions for changes and improvements to any practice, policy, or procedure to which the Tribe subscribes, through the proper chain of command.

SECTION 1.1— NATURE OF EMPLOYMENT AND DISCLAIMER

These Policies are not intended to create a contract for employment, nor are they to be construed to constitute contractual obligations of any kind or a contract of employment between the Tribe and any of its employees. No statements from the Tribe or its employees, including statements made during performance evaluations and wage reviews, should be taken as constituting an express or implied promise of continuing employment.

The policies stated herein shall in no manner waive or be construed to waive the sovereign immunity of the Tribe or its officers and employees. Should a conflict arise between these Policies and the Constitution and Bylaws of the Tribe, the Constitution and Bylaws shall prevail. Should a conflict arise between this Manual and tribal or federal laws or regulations, such laws and regulations shall prevail.

SECTION 1.2 — ORGANIZATIONAL STRUCTURE AND LINE OF AUTHORITY

To effectively promote maintenance of an equitable management system within the governmental structure of the Tribe, the Tribal Business Council has established and implemented prudent lines of authority. The Tribal Business Council has adopted an organizational chart that describes the chain of command and lines of authority that employees must follow. Employees should be familiar with the organizational chart and chain of command and adhere to it when communicating within the organization.

A. CHIEF EXECUTIVE OFFICER

The Chief Executive Officer (or “CEO”) shall serve as first line of authority under the Tribal Business Council and will maintain direct Supervisory and administrative control over Administrators and their respective subordinates.

B. DEPARTMENT ADMINISTRATORS

Department Administrators (or “Administrators”) are responsible for the direct supervision of specific Department Directors. Administrators provide the necessary communication link between the respective departmental directors and the Chief Executive Officer.

C. DEPARTMENT DIRECTORS

Department Directors (or “Directors”) are responsible for overseeing day-to-day operations and functions of their department and provide the necessary communication link between their respective departmental employees and upper management.

D. EMPLOYEES

An employee is an individual who has been selected to fill a position within any department set forth in the MHA Organizational Chart. Employees of MHA Nation are expected to carry out all duties laid out in their position’s job description.

E. APPOINTEES

An appointee is an individual who is employed by the Tribe by virtue of an appointment by a representative of the Tribal Business Council. The appointing official determines the appointees’ duties and work schedule. The terms of appointment and compensation rest solely with the appointing official who is responsible for compliance with budgetary constraints.

SECTION 1.3 — APPLICABILITY

These Policies shall be followed by all Tribal employees including all full-time, part-time, on-leave, suspended employees, political appointees, unpaid volunteers, paid or unpaid summer youth, and paid or unpaid interns.

SECTION 1.4 — EMPLOYMENT AUTHORITIES AND POLICIES

The Tribal Business Council will adhere to and enforce all applicable statutory and regulatory requirements. The Tribe's officers and employees shall comply with all applicable statutes, laws, and policies, including those contained in this Section D as they relate to employment practices and policies. Additionally, the Tribal Business Council may in the future adopt additional policies that may be included by resolution or other action into these Policies.

F. CONFIDENTIALITY

No Tribe or tribal-related information, including, without limitation, documents, files, records, computer files, or similar materials may be released to any person or removed from tribal premises, except in the ordinary course of employment duties, without permission from the CEO or the Tribal Business Council. Additionally, the contents of the Tribe's records or information otherwise obtained regarding business may not be disclosed to anyone, except as provided in tribal or federal law.

Personnel files are the property of the Tribe and access to the information contained within them is restricted. Generally, only officials and representatives of the Tribe who have a legitimate reason to review information in a personnel file are allowed to do so. All personnel information shall be kept confidential. All employees in all positions will be required to sign a confidentiality statement. Copies of documents contained in a personnel file may be made only as needed during a grievance proceeding. See Chapter 2 for additional information.

If an employee is required to bring in medical documentation to justify use of leave or other benefits, these records will be secured in accordance with the Health Insurance Accountability and Portability Act ("HIPAA"). All HIPAA fines and punishments will be enforced accordingly.

Employees shall be subject to disciplinary action up to and including termination for violation of this Policy.

SECTION 1.5 — CONFLICT OF INTEREST AND CODE OF CONDUCT

The Tribal Business Council strictly prohibits any conflict of interest by employees in the performance of their job duties. Employees have an obligation to conduct business within guidelines that prevent actual or potential conflicts of interest or the appearance of impropriety.

NOTE: These Conflict of Interest and Code of Conduct standards are in addition to any applicable Tribal ordinances or specific departmental policies (i.e., Mandan, Hidatsa & Arikara Nation Ethics in Government Ordinance, Elbowoods Memorial Health Center, Social Services Department, Tribal Law Enforcement, etc., Code of Ethics/Code of Conduct).

A. CONFLICT OF INTEREST

An actual or potential conflict of interest exists when an employee can influence a decision that may result in personal gain for the employee, or gain to a person with whom the employee has a

close personal relationship, as a result of the employee's position with the Tribe. If an employee is in a position to influence any transaction, including purchases, contracts, or leases in which they have a separate personal interest (whether directly or through a spousal or family connection), they must disclose in writing to their Supervisor the existence of such actual or potential conflict of interest so that safeguards can be established to protect all parties.

Employees are strictly prohibited from accepting any kickbacks, bribes, substantial gifts, or special consideration as a result of any transaction or business dealing involving the Tribe.

B. CODE OF CONDUCT

The Tribe prides itself on high standards of conduct and expects its employees to uphold these ideals in their official and personal conduct. Employees are expected to conduct the official business of the Tribe with pride, excellence, integrity, diligence, and loyalty. Employees must reflect the qualities of honesty, respect, courtesy, and consideration. Employees shall avoid any actions that reflect adversely on the Tribe and its members, or which would jeopardize the effectiveness of the Tribal government.

Employees are expected to comply with all applicable Tribal policies, and applicable Tribal, state, and federal laws. In upholding the code of conduct, the Tribe will comply with Tribal, state (where applicable), and federal laws. Infractions will lead to disciplinary action up to and including termination.

SECTION 1.6 — PUBLIC STATEMENTS AND DEMONSTRATIONS

Employees may be subject to disciplinary action for making public statements (including social media posts, comments, videos, etc.) or engaging in public actions (e.g., protesting) against the Tribe while on-duty, in wearing the Tribal government insignia, or acting in their capacity as a government employee.

Employees may make or post public statements or "like," "share," or "repost" their opinions on current events and partisan political activity as long as: they do not do so while in the workplace or on duty; they do not refer to their title or position in the government while doing so; and they are not soliciting political contributions.

Employees that are off duty and not in a uniform or wearing insignia that makes it appear that you are participating in an official government capacity, are allowed to participate in peaceful demonstrations. Employees should not drive a government owned vehicle to a protest.

SECTION 1.7 — POSITIONS OF PUBLIC TRUST

Employees in positions of public trust shall be held to an elevated standard of conduct—both on and off duty—and may be subject to discipline, up to and including termination, for engaging in personal or professional conduct, including conduct not otherwise specifically impacting job duties, but which has the potential to reflect poorly upon, or jeopardize the integrity of, the Tribe. Positions of public trust include administrative positions with Supervisory or director authority

over employees or with access to sensitive Tribal and/or personnel information.

SECTION 1.8 — DRUG AND ALCOHOL POLICY

The Tribal Business Council has a comprehensive policy governing alcohol and drug use in the workplace, which strictly prohibits the use of alcohol and drugs in the workplace. The Tribe's Drug and Alcohol Policy includes pre-employment drug screening, reasonable suspicion testing and random testing for all positions. For further information refer to Chapter 5 of these Personnel Policies and Procedures and the Drug and Alcohol Policy in the Appendix section.

SECTION 1.9 — EQUAL EMPLOYMENT OPPORTUNITY

The Tribe is committed to equal employment opportunity and will not discriminate or allow discrimination against any employee based on a protected class. Except for the application of the Indian preference provisions of these Policies, the Tribe will not discriminate against any applicant for employment based on a protected class. Legally protected classes include veteran status, marital status, physical or mental disability, race, color, age, religion, sex, and national origin.

SECTION 1.10 — FAMILY AND MEDICAL LEAVE

The Tribe is committed to meeting or exceeding the standards of the Family Medical Leave Act of 1993, which requires that employees be granted leave for certain medical reasons, including the birth or adoption of a child, or the serious health condition of the employee or a family member. Please refer to Chapter 4 and Appendix H of these Policies for further information.

SECTION 1.11 — HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

The Tribe requires strict adherence to the provisions of the Health Insurance Portability and Accountability Act ("HIPAA") that govern the confidentiality and privacy of records covered by the Act. The Tribe has adopted policy and procedure manuals to ensure these requirements are complied with.

Every employee who has access to records covered by HIPAA shall strictly adhere to the Act and the Tribe's policies and procedures governing compliance with the Act. Those employees shall be required to successfully complete training on HIPAA compliance.

Violations of HIPAA or the Tribe's policies and procedures governing HIPAA shall result in disciplinary action up to and including termination.

SECTION 1.12 — INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT - P.L 101-630.

In accordance with the Indian Child Protection and Family Violence Prevention Act, the Tribe is required to complete a background investigation on all individuals applying for or employed in a

position that involves regular contact with or control over Indian children. Any individual who has been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any of two or more misdemeanor offenses, under federal, state or tribal law involving crimes of violence; sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution; crimes against persons; or offenses committed against children shall be prohibited from working in a position which involves regular contact with or control over children.

To comply with this federal law, the Tribe will conduct a background investigation for any individual who applies for a position of this nature. Covered positions include, but are not limited to: childcare services, child protective services, social services, health and mental health care, education positions, foster care, residential care, recreational or rehabilitative programs, law enforcement and detention, correctional and treatment services programs. Meeting the minimum standards for employment is a condition of employment and any individual applying for a position of this nature must comply with all background investigation procedures including the written consent to search records and fingerprinting requirements. Background investigations will be conducted by the Human Resources Department in accordance with Appendix F of these Policies and will be conducted in a confidential manner.

SECTION 1.13 — INDIAN PREFERENCE/TRIBAL EMPLOYMENT RIGHTS OFFICE

To promote tribal self-government, federal law authorizes Indian Tribes to grant preference in hiring to tribal members and other Native Americans. In accordance with tribal and federal law, the Tribe will grant preference in hiring to tribal members and other Native Americans as provided in these Policies.

The Tribal Employment Rights Ordinance was enacted to provide employment and training opportunities for members of the Tribe. The Tribal Employment Rights Commission is responsible for enforcement of the Tribal Employment Rights Ordinance.

SECTION 1.14 — INTERNET AND EMAIL USE POLICY

The Tribe reserves the right to monitor Internet traffic on Tribal equipment and retrieve and read any data composed, sent, or received through its online connections and stored in its computer systems. Employees are prohibited from engaging in illegal activities on the Internet including, but not limited to, piracy, extortion, blackmail, copyright infringement, and unauthorized access of any computers and provided equipment, such as cell phones and laptops.

The Tribe's harassment policies apply fully to the use of the Internet. Data that is composed, transmitted, accessed, or received via the Internet must not contain content that could be considered discriminatory, offensive, obscene, threatening, harassing, intimidating, or disruptive to any employee or other person. Violation of this Policy will result in discipline up to and including termination.

This Policy is intended to protect the security of the Tribe's Information Management Systems and to guarantee that the Internet and Email are used only for legitimate tribal business purposes and to gain technical or analytical information or advice for your job. All officers and employees

are required to comply with this Internet and Email Use Policy. Violations may result in disciplinary action up to and including termination.

SECTION 1.15 — MOTOR VEHICLE USE POLICY

The Tribe owns various vehicles that may be used by employees for job related reasons including necessary travel. The Tribe has adopted policies governing the proper use of Tribal motor vehicles. The Motor Vehicle Use Policy is attached to these Policies as Appendix B. All employees are required to comply with these policies. For further information refer to Appendix B of these Policies.

The Tribe requires that all employees who operate tribal vehicles or personnel vehicles during work hours must possess a valid driver's license and be eligible for coverage under the Tribe's insurance policy or carry insurance on their personal vehicle and provide a copy to fixed assets department.

SECTION 1.16 — RESOLUTION NO. 93.033.JJR

By virtue of Resolution No. 93-033-JJR, enacted March 11, 1993, the full membership of the Tribal Business Council shall constitute the Tribal Personnel Selection Committee. Any subsequent enactment or enactments of the Tribal Business Council shall be applied in accordance with the specific provisions therein set forth.

SECTION 1.17 — TRAVEL POLICIES

The Tribal Business Council authorizes travel for business purposes and training. Travel expenses are either reimbursed or advanced in accordance with the Tribe's Accounting Policies and Procedures. These Travel Policies and Procedures apply to all employees, elected officials, and other individuals approved by the Tribal Business Council to represent and travel on behalf of the Tribe.

CHAPTER 2: EMPLOYMENT

The Mandan, Hidatsa and Arikara Nation is committed to providing employment opportunities to all persons who are interested in working for a tribal governmental organization. Qualifications and experience standards are established in accordance with the duties and responsibilities of each position. Employment decisions will be made solely on the basis of job-related merit and ability to perform the duties.

SECTION 2.1. — EMPLOYMENT CLASSIFICATIONS

A. EXEMPT EMPLOYEES

Employees are classified as exempt if the nature of their positions and job duties exempt them from the overtime provisions of the Fair Labor Standards Act. Exempt employees are not entitled to overtime pay or compensation time. Their salaries are calculated on an annual basis.

B. NON-EXEMPT EMPLOYEES

Employees are classified as non-exempt if the nature of their positions and job duties do not exempt them from the overtime provisions of the Fair Labor Standards Act. Non-exempt employees are entitled to receive compensation time in accordance with the Tribe's Policy. Their wages are calculated on an hourly basis.

C. PERMANENT EMPLOYEES

Permanent employees are those that have completed their probation period and have been selected for permanent employment by the Tribal Business Council.

1. Full-time permanent employees

Full-time permanent employees are those who are normally required to work forty (40) hours per week, or, in circumstances in which position duties may require less than forty (40) hours, at least thirty-two (32) hours per week.

Full-time permanent employees are eligible to participate in all fringe benefits, including retirement, health, vision, dental and life coverage under the Tribes' Benefit Plan and are eligible for leave benefits.

2. Part time permanent employees

Part-time permanent employees are those who work thirty-one (31) hours per week or less, in accordance with their approved work schedule.

Part-time permanent employees are eligible for all leave benefits and legally mandated benefits, such as worker's compensation and social security benefits.

Part-time permanent employees are not entitled to retirement, health, vision, dental or life coverage provided under the Tribes' Benefit Plan.

D. TEMPORARY EMPLOYEES

Temporary employees are those employees whose position, at the time of hire, is for a temporary term or defined period. Temporary employees can also be employees serving the ninety (90) day probationary period before being recommended for permanent employment.

Temporary employees are entitled to all legally mandated benefits, such as worker's compensation and social security benefits, but are not entitled to annual or sick leave benefits or benefits included under the Tribe's Benefit Plan.

Temporary employees may accumulate compensation time with the approval of their Supervisor. Accumulated compensatory hours may be used upon employee request with the approval of the Supervisor.

E. TEMPORARY APPOINTMENT FOR DEFINITE PERIOD

Temporary appointments for a definite period may be approved by the Tribal Business Council upon request from a Department Director if program budgets allow.

Temporary appointees for a definite period are entitled to legally mandated benefits, such as worker's compensation and social security benefits, but are not entitled to retirement, health, vision, dental coverage under the Tribes' Benefit Plan. Temporary appointees for a defined period do not qualify for leave benefits.

Temporary appointees may be terminated from employment at any time, with or without cause, and without notice, hearing or recourse to the remedies afforded by the grievance procedure, with approval from the Tribal Business Council.

F. FEDERAL, STATE AND GRANT-FUNDED POSITIONS

Federal, State, and other grant programs may fund various positions within the Tribe. In those cases, the availability of funds from the funding agency dictates the term of employment.

If funding for these positions is no longer available to the Tribe, separation (lay-off) from employment shall be effective immediately. It shall be the responsibility of the program directors to notify any employee adversely affected as a result of the unavailability of funding.

Employees laid off under these circumstances are not entitled to file a grievance or appeal.

G. TRIBAL BUSINESS COUNCIL APPOINTEES

Representatives of the Tribal Business Council may appoint individuals to serve in a full-time or part-time capacity. Appointees serve at the pleasure of the appointing official and may be

terminated at any time, with or without cause, and without notice, hearing or recourse to the remedies afforded through the grievance procedure.

Full-time appointees who are normally expected to work forty (40) hours per week are entitled to all fringe benefits including retirement, health, vision, dental coverage under the Tribe's Benefit Plan. Full-time appointees are entitled to leave benefits and may utilize accumulated leave benefits at the discretion of the appointing official.

H. SEASONAL EMPLOYMENT

Seasonal employees are hired to perform seasonal work such as fencing, range work, and/or other general outdoor work. Seasonal employees who have a documented satisfactory work history are entitled to be called back to duty when seasonal work is necessary.

I. CONTRACT EMPLOYEES

Certain professional positions may be administered through employment contracts. Contract employees are those employees who have established an employment relationship with the Tribe but whose conditions of employment are governed by a written contract. Contract employees shall receive all legally-mandated benefits, but any additional benefits are based on individual contracts. The Tribal Business Council shall approve all employment contracts prior to the commencement of employment. Contract employees are subject to pre-employment procedures such as background checks and urine analysis testing.

SECTION 2.2 — EMPLOYMENT APPLICATIONS AND HIRING

The Tribe is committed to hiring and promoting qualified individuals to vacant and newly created positions in a fair and equitable manner. Any employee found to provide fraudulent information during the application or hiring process will not be considered for employment for six (6) months.

SECTION 2.3 — EMPLOYMENT PREFERENCES

In accordance with federal and tribal law, the Tribe will grant preference in hiring, promotion, and retention according to the following:

A. PREFERENCES

- 1. First Preference:** First preference shall be given to members of the MHA Nation who served in active duty in the United States Armed Forces for a period of more than 180 consecutive days, unless separated for a service-connected reason under honorable conditions.

Veteran's preference eligibility will be established by official documents issued by the Uniformed Services Department, Veterans Affairs Administration, the General Services Administration or the National Personnel Records Center, Military Personnel Branch.

2. **Second Preference:** Second preference shall be given to non-veterans in the following order:
 - a. MHA Nation tribal members.
 - b. Members of other federally recognized Indian Tribes whose children are enrolled or eligible for enrollment with the MHA Nation.
 - c. Members of other federally recognized Indian Tribes.
 - d. Non-Indians whose children are enrolled or eligible for enrollment with the MHA Nation.
3. **Third Preference:** Third preference shall be given to non-Indian veterans.
4. **Fourth Preference:** Fourth preference shall be given to qualified non-Indian, non-Veterans.

Any deviation in applying preference in selection, promotion and retention shall be based solely upon qualification, experience and capability standards required by the position and shall require justification and approval of the Tribal Business Council or its designee.

B. PREFERENCE POINTS

Preference points will be extended to qualified veterans as follows:

1. Ten (10) point preference will be given to a qualified veteran who has been rated disabled for service-connected conditions by the Veterans Administration or who may be a recipient of the Purple Heart.
2. Five (5) point preference will be given to all other members of Federally-recognized Tribes who served in active duty in the United States Armed Forces for a period of more than 180 consecutive days, unless separated for a service-connected condition, under honorable conditions.

SECTION 2.4 — EMPLOYEE ORIENTATION

The Tribe will provide an orientation session for all new employees through the Human Resources Department. New employees are required to participate in orientation. Orientation is an informative session regarding employment policies, practices and guidelines and the Tribe's Benefit Plan (retirement, health, vision, dental coverage, etc.) and leave benefits.

The Human Resources Department shall schedule an orientation session immediately upon receipt of the Personnel Action Request form and accompanying paperwork from a new employee's department. Upon completion of the orientation session, employees will be directed to their duty station.

SECTION 2.5 — EMPLOYEE EVALUATION/PROBATION PERIOD

The Tribal Business Council is committed to hiring and retaining qualified persons who are technically competent, show respect for fellow members of the organization, and recognize and appreciate the responsibility we bear to the membership of the Tribe. As a result, a probationary period is required for all permanent employees to gain familiarity with department operations and responsibilities. An evaluation will be completed at the expiration of the probationary period to evaluate strengths and weaknesses in employee job performance.

During the probationary period, employees are considered at will and may be recommended for termination at any time, with or without cause, and without recourse or the remedies provided for in Chapter 8.

A. INTRODUCTORY PROBATIONARY PERIODS

Every new employee and employee transferred to a new position shall be required to complete an initial ninety (90) day probationary period. The Tribe uses this time to determine the employee's strengths and weaknesses in job performance, ascertain whether training is appropriate, determine the employee's ability to perform duties required of the position, and assess the ability of the employee to accomplish goals and objectives of the position. Employees cannot be transferred, promoted, demoted, or reclassified during their initial probationary period.

B. PERFORMANCE EVALUATION DURING PROBATIONARY PERIOD

The employee's Supervisor shall conduct a written performance evaluation with the employee at the end of the initial probationary period. Strengths and weaknesses in work performance shall be addressed, as well as the corrective measures necessary to strengthen weaknesses.

The performance evaluation will include a recommendation regarding continuing employment, extending the probationary period, or recommending separation from employment. The Supervisor shall review the evaluation with the program director and forward a copy to the Human Resources Department.

C. EXTENSION OF PROBATIONARY PERIOD

At the discretion of the Department Director or Supervisor, the initial probationary period may be extended up to an additional ninety (90) days if sufficient assessment cannot be made to adequately determine performance and suitability for the position or if the employee has received an unsatisfactory evaluation. The Department Director or Supervisor is responsible for notifying the employee of the extension.

D. RECOMMENDATION FOR SEPARATION FROM EMPLOYMENT DURING PROBATIONARY PERIOD

At the end of the probationary period or any extension, if a satisfactory completion has not been attained, the Department Director or Supervisor will submit a recommendation for separation from

employment to the Human Resources Department. The Human Resources Department will submit applicable documentation to the Tribal Business Council for approval.

SECTION 2.6 — FITNESS FOR DUTY POLICY

The Tribe requires that all employees be fit for duty when they are working. The Tribe may require an employee to undergo a Fitness for Duty Evaluation when it is job-related and consistent with business necessity. An evaluation is job-related and consistent with business necessity when the Tribe has a reasonable belief that: (1) the employee's ability to perform their essential job functions is or will be impaired by a medical condition; or (2) the employee will pose a direct threat due to a medical condition. For further information regarding this Policy please refer to Appendix I of these Policies.

SECTION 2.7 — WAGE CLASSIFICATION SYSTEM

The Tribe is committed to maintaining a wage scale system by which salaries and wages are competitive and consistent with the responsibility for which employees are charged and that provides fair and equitable compensation throughout the organization.

SECTION 2.8 — OUTSIDE EMPLOYMENT

The Tribal Business Council recognizes that employees may wish to engage in employment outside of their position with the Tribe.

Any employee, including Supervisors, Department Directors, and Administrators, wishing to engage in employment outside of their position with the Tribe must obtain prior written approval for the outside employment from their direct Supervisor.

Any full-time position held by an employee through the Tribe must take precedence over any outside employment. An employee's outside work activities must be of a nature that does not conflict with the employee's duties or obligations to the Tribe. Employees are prohibited from using any tribal property or equipment in the performance of their outside employment activities. Soliciting or conducting outside business during tribal working hours is strictly prohibited.

Under no circumstance will leave benefits be authorized for the purpose of engaging in secondary employment.

No person may occupy more than one (1) permanent position (full-time or part-time) with the Tribe.

SECTION 2.9 — EMPLOYEE-OWNED BUSINESS POLICY

A. GENERAL POLICY

It is the policy of the MHA Nation to promote entrepreneurship among its membership, including Tribal employees, in a manner that does not interfere with Tribal business and department

operations. The Tribal Business Council recognizes that employees may wish to own and operate a personal business outside of their Tribal employment. This Employee-Owned Business Policy provides parameters in which Tribal employees may own a personal business in a way that does not interfere with the employee's employment with the Tribe or Tribal functions. In all cases, the full-time position held by an employee with the Tribe will take precedence over any personal business interest of the employee.

B. DEFINITIONS

1. *"Business"* means any person, firm, company, association, or corporation that has obtained a license to conduct business anywhere by the Tribe, another tribe, or a state.
2. *"TERO Licensed Business"* means any business that has been issued a license by the Mandan, Hidatsa, and Arikara Tribal Employment Rights Office.

C. APPLICABILITY

This Policy shall be followed by all Tribal employees, which, for purposes of this Policy, includes all full-time, part-time, on-leave, suspended employees, political appointees, affiliates, unpaid volunteers, paid or unpaid summer youth, and paid or unpaid interns. The provisions of this Policy are in addition to all other applicable Tribal policies and procedures. Any Tribal employee who is currently operating a business shall have ninety (90) days from the date of approval of this policy to comply with its terms.

D. PERSONAL BUSINESS APPROVAL REQUIRED

Any tribal employee that has, or desires to have, any outside personal business must submit a written request for approval to carry on such business to their immediate Supervisor. The request shall include the following information:

1. Nature of the business (i.e. business industry, what the business does, etc.).
2. Business name, location, and ownership.
3. Whether the business is tribally, or state licensed, and with which tribe or state.
4. Whether it is, has been, or intends to apply to be a TERO licensed business.
5. Whether the business currently exists, or the employee intends to start the business.

A separate request must be submitted for each business if the employee owns more than one. Such requests must be submitted immediately upon beginning employment or as soon as the employee starts, intends to start, or acquires a personal business.

Once the Supervisor has received the written request, the Supervisor will review the request for completeness and determine whether to approve or deny the request. In making such determination, the Supervisor will consider, among other things, whether:

1. The nature of the business conflicts with the employee's duties or obligations to the Tribe;

2. A conflict of interest or incompatibility exists;
3. The employee's business operations and services are incongruent with the Tribe's mission or business purposes;
4. The employee's business partners or clientele are in opposition to the Tribe's operations or morals and beliefs;
5. The employee's business is in direct competition with the Tribe's functions;
6. The employee has been previously found to be in violation of this Policy; and
7. The Tribe or TERO has previously cancelled the employee's business license. A Supervisor will provide their approval or denial to the employee in writing.

E. RECORDKEEPING

All employee business requests, approvals, and denials must be submitted to the Human Resources Department and shall be maintained in the employee's personnel file.

F. POLICY VIOLATIONS

If a request to own and operate a personal business outside of the employee's Tribal employment is approved, such approval may be withdrawn at any time in the event the employee is found to be in violation of this Policy.

G. DISCIPLINARY ACTION

Violations of this policy by an employee are subject to disciplinary action, up to and including termination, and cancellation of a Tribal business license or TERO license. Disciplinary Action will be taken in accordance with Chapter 7 of these Policies. Any disciplinary action implemented for violations of this Policy is subject to the Tribe's Complaints, Grievances, and Appeals Policies and Procedures.

SECTION 2.10 — WORK TIME/HOURS WORKED

The Tribe guarantees that every employee will be compensated in accordance with the Tribe's wage scale and classification standards and in accordance with federal law.

A. COMPENSATORY TIME

Department Directors shall allow compensatory time when the need arises for employees to work above and beyond the normal forty (40) hour work schedule. Appropriate justification and tasks required to be performed must be provided in writing and approval prior to the employee's performance of work. For further information regarding overtime compensation see Chapter 4 of these Policies.

B. TIME AND ATTENDANCE

1. Schedule of Work Hours

Unless otherwise properly approved, the normal schedule of work hours is from 8:00 a.m. to 12:00 noon, and from 12:30 p.m. to 4:30 p.m., Monday through Friday. Deviation from the department schedule may be required for certain programs including but not limited to health care programs, law enforcement, security, and maintenance.

2. Recording Work Time

Work time (hours worked) shall be recorded. The dates worked and the number of hours worked each day must accurately reflect hours actually worked.

Employees who fail to accurately record work time or who falsify time records and/or employees who record work time of other employees are subject to disciplinary action, up to and including termination.

Exempt employees shall accurately reflect time and attendance by use of a Time and Attendance Sheet. Non-exempt employees shall record time and attendance by use of a time clock system. Detailed instructions shall be given during the orientation session regarding the use of the time clock system.

The following guidelines regarding the time clock system shall apply:

- a. Starting time, time out for lunch, time in from lunch, end of day, time and total hours worked for each day, shall be recorded by the employee's use of the time clock system.
- b. Clocking in fifteen (15) minutes or more prior to normal starting time or clocking out after normally assigned work hours shall not be permitted unless prior approval of the immediate Supervisor has been obtained.
- c. Employees are required to take their scheduled lunch or meal breaks.
- d. Time shall be reviewed and signed by the immediate Supervisor or his/her designee. Leave must be properly documented through leave slips, properly executed, and approved, for entry by the designated timekeeper.

3. Absence Without Leave ("AWOL")

Any unauthorized absence from the employee's duties shall be reported as absence without leave by the Supervisor. Employees are responsible for their attendance, for reporting all absences from their duty station, and for time accountability to their immediate Supervisor.

4. Overnight Travel Time

An employee who is required to travel overnight to another city for work shall be compensated for travel time not to exceed eight (8) hours for each travel day. This includes hours of work time on regular workdays during normal working hours, and corresponding hours on non-working days during the employee's normal working hours. Employees claiming hours on non-working days must submit documentation as to why the employee was required to travel on a non-working day.

5. On-Call Shifts

Employees who are on-call and waiting to be engaged in work will only be compensated for such on-call time if they are required to remain on the work premises or so close to the premises that they are unable to use the time effectively for their own purposes.

Employees who are on-call and are required to respond to a call/text message or to leave information with their employer as to where they may be reached, but not required to remain on the work premises or nearby in a way that limits their ability to use the time for their own purposes, will not be compensated for on-call time.

All employees who are on-call, whether or not they are compensated for such time or receive a call to report to work, must remain fit-for-duty for the entirety of the on-call shift.

SECTION 2.11 — PAY PRACTICES

A. SALARY AUTHORIZATION

Salary authorization documents shall be issued upon proper execution of the employment authorization request and serve as the official document for the Tribe's payroll system.

B. COMPENSATION

Employee compensation shall be in accordance with the current Pay Scale approved by the Tribal Business Council. This Pay Scale applies to all employees except professional staff who may serve under contract provisions approved by the Tribal Business Council.

C. ACTING PAY

Employees who are temporarily assigned to work in a position with a hourly rate or entry level salary that is higher than his/her regular position may be paid at the entry level of the higher position. A Salary Authorization Request form must be submitted by the Department Director/Administrator to the Human Resources Department reflecting authorization by the Chief Executive Officer of the Tribe, pay change information, salary code, effective date, and ending date authorized. If an employee's salary is higher than entry level of higher position, the acting pay increase will be at least five (5) percent. This will be determined by the program director, Administrator, or Supervisor with approval by the Chief Executive Officer.

Employees who act in a non-Supervisory position must perform most, if not all, of the duties of their position. Employees who act in a Supervisory position may not have the opportunity to perform all the duties of the position (i.e. disciplinary actions, performance evaluations, leave request reviews, etc.), but they must satisfactorily perform all the duties which may arise.

Department Directors/Administrators must decide when acting pay is appropriate based upon the circumstances of each situation. Qualifications, duration of assignment and actual duties performed should be considered when determining recommendation regarding acting pay.

Employees engaged in on-the-job training for a higher position are not eligible for acting pay. Departments which provide on-the-job training should develop a method to determine when an employee qualifies to move out of the on-the-job training status into an acting pay status. All qualified employees should be given an opportunity for on-the-job training.

D. EARLY CHECK RELEASE

An employee may receive their paycheck prior to the regularly-scheduled payday provided that the request for early payroll has been approved by the Department Director or immediate Supervisor; Chief Financial Officer or his/her designated representative; and the Tribal Business Council Treasurer.

Early payroll shall be authorized on a case-by-case basis and only for the following reasons;

1. Death in the immediate family; or
2. Hospitalization of the employee or hospitalization of an immediate family member.

For purposes of this section, immediate family member is defined as: spouse, mother, father, daughter, son, grandparent, grandchild, brother, sister, aunt, uncle.

E. PAY PERIOD

Employees will be paid every two weeks. If the regular payday occurs on a holiday, employees will be paid on the last working day before the regular payday.

Employees will receive with each check a leave and earnings statement showing gross pay, deductions, and net pay. Federal and Social Security taxes will be automatically deducted. No other deductions will be made unless required or allowed by law, contract, or employee obligation. Employees may elect to have additional voluntary deductions only if those deductions are authorized in writing.

F. LOST OR STOLEN PAYCHECK

Employees are responsible for any loss due to a lost or stolen paycheck. The Tribe will make every effort to assist in avoiding monetary loss that might be subsequently suffered by the employee. In the event that a payroll check is stolen or lost, the employee shall immediately notify the Human Resources Department and the Payroll Department in writing. Stop payment orders shall be issued

as well as a replacement check, provided that the financial institution honors the stop payment order.

If, after issuance of a replacement check, the employee recovers the lost or stolen payroll check, the employee shall return the lost or stolen paycheck to the Payroll Department.

If an employee cashes a lost or stolen check after cashing a replacement check, the employee shall be responsible for reimbursing the full amount of the paycheck to the Tribe. Under no circumstance will the employee enjoy the proceeds of both the original payroll check and replacement check.

SECTION 2.12 — REVIEW OF PERSONNEL FILE

A. PERSONNEL FILE CONTENTS

A personnel file shall be established for everyone having a valid Tribal employment contract or letter of appointment upon the date of employment and said file will be maintained as a repository for official personnel records and documents. The file shall contain all relevant job-related documents of the employee.

B. UPDATING RECORDS

It is the employee's responsibility to keep all personal information such as legal name changes, address, contact phone numbers, and emergency notification current in the employee's personnel file. The employee is also responsible for promptly notifying the Human Resources Department of other changes, such as marital status, birth of children, number of dependents for tax purposes, dependents covered by medical insurance, and named beneficiaries for life insurance that affect benefits and insurance plans.

It is the responsibility of the employee's Supervisor to ensure that the Human Resources Department is notified of all other employment related changes.

C. VIEWING PERSONNEL FILE

Personnel files are the property of the Tribe, and access to the information they contain is restricted. Generally, only Supervisors and management personnel of the Tribe who have a legitimate and or legal reason to review information in a file are allowed to do so. Personnel files for all Tribal employees are confidential and secured for safety in the Human Resources Department office.

With no less than forty-eight (48) hours' written notice to the Human Resources Department, an active employee may be granted approval to review their own personnel file. Upon approval, the Human Resources Department will prescribe a date and time for an employee to review their personnel file. However, such records may not be reproduced, removed, or altered without the consent of the Human Resources Director or other personnel designated with such authority by the Human Resources Director.

D. CONFIDENTIAL RECORDS

Certain records, such as investigation materials related to disciplinary actions, may not be maintained in an employee's general personnel file, and may not be viewed by an employee without a court subpoena or request from authorized personnel.

Unique information such as personal data, student applications, disciplinary actions and related investigatory materials, medical records, or criminal histories require specific guidelines for their release of information due to legal requirements.

Reference and credit checks and similar requests will be answered only with a statement as to whether the employee is presently employed, the employee's current or last job title, work location, and period of employment.

Salary may be verified only if the employee gives written permission. Otherwise, no personal information will be released to anyone outside of authorized Tribal employees, unless required by applicable law.

In the event that there is an error in the amount of pay, employees should promptly bring it to the attention of their Supervisor and the Human Resources Department for correction.

SECTION 2.13 — CELLULAR PHONE USE, DISTRIBUTION, AND PAYMENT POLICY

A. APPLICABILITY

This policy applies to all employees who are issued a tribal cellular phone to use in the course of their employment.

B. TRIBAL DATA

All data and information obtained by an employee through their position with the Tribe that is stored on an employee's Tribal cellular phone is, and remains at all times, the property of the Tribe.

Any unauthorized use of such data is strictly prohibited. Employees must do their due diligence to ensure such information is password protected and not accessible to any unauthorized persons.

C. ISSUANCE OF CELLULAR PHONES

Tribal cellular phones shall only be issued to employees holding positions for which the use of a cellular phone is necessary. The issuance of cellular phones and Verizon jet packs shall be at the discretion of the Department Director, Administrator, and the Chief Financial Officer, based upon each employee's job duties and the type of equipment and service that is necessary to perform those duties.

Should a Department Director determine that an employee's position warrants the issuance of a Tribal cell phone, the Director shall make a recommendation to the Administrator and Chief Financial Officer. The type of equipment and service that an employee shall receive will be determined and approved by the Department Director, Administrator, and the Chief Financial Officer and forwarded to the Property Department for issuance.

D. PROHIBITED USES

The use of a tribal cellular phone is a privilege, and any abuse of that privilege is prohibited. Employees are strictly prohibited from downloading anything that results in additional charges to the Tribe. Personal use of phones and equipment should never interfere with work-related use. Phones shall never be used to harass any individual whether through text messaging, phone calls, or use of internet social networking sites, or to engage in any type of illegal conduct or any other conduct deemed inappropriate. Violation of these prohibitions may result in disciplinary action.

E. CELLULAR PHONE USAGE AGREEMENT

All employees issued a tribal cellular phone must sign the TAT Cellular Phone Usage Agreement prior to being issued the equipment and related service. A clear understanding of the employee's personal responsibility and cost assumed by the employee will be stated in the Agreement.

F. EQUIPMENT CHARGES

The Tribe will contribute fifty dollars (\$50) toward the cost of new cellular phone equipment issued to an employee, including subsequent upgrades. Any equipment costs in excess of the Tribe's fifty-dollar (\$50) contribution must be paid by the employee. An employee may pay the excess equipment costs through payroll deduction in one lump sum or prorated over the course of four (4) pay periods. The entire balance must be paid in full within no more than four (4) pay periods. Any cost to replace lost, stolen, or broken equipment will be the employee's responsibility and may be paid through the payroll deduction payment structure.

G. EQUIPMENT UPGRADES

Equipment upgrades are available every 12 months. The employee's Department Director, Administrator, and the Chief Financial Officer must determine if an upgrade is necessary and forward the request to the Property Department. The requested equipment must be in line with the original equipment approved.

H. MONTHLY CELLULAR SERVICE

The Tribe will pay for service on the cellular phone issued to the employee as approved by the Management Team. The Department Director determines the level of cellular service based upon the employee's job duties and the necessity for cellular service to perform those duties. The employee may not add additional services beyond the level approved by their Department Director, Administrator, and the Chief Financial Officer.

I. TERMINATION OF SERVICE OR EMPLOYMENT

If the Department Director determines that an employee that has been issued a cellular phone ceases to meet the eligibility criteria set forth in this Policy, that the employee's job duties do not necessitate the level of cellular service provided to the employee, or if the employee's employment with the Tribe ends, such employee will be given the option to sign a liability waiver that allows the employee to transfer the cellular service account and phone number to the employee as a personal phone. The Human Resources Department shall notify the Property Department, Payroll Clerk, and MIS Department of when an employee is no longer eligible for Tribal cellular phone service or is no longer employed with the Tribe.

Transferring the cellular service account and phone number to the employee will end the Tribe's contractual obligation to pay for the employee's Tribal cellular service. If the employee chooses to transfer the account, the employee may purchase the equipment from the Tribe by paying the remaining balance the employee owes to the Tribe through payroll deduction or leave payout.

J. CONTINUED SERVICE AFTER SEPARATION FROM EMPLOYMENT

The employee has twenty-four (24) hours from the last day of employment to set up their own account before the cellular service is deactivated. The employee will pay the remaining balance owed to the Tribe. If the employee does not wish to purchase the cellular phone and transfer the service, the employee must turn in the phone and all accessories to their Supervisor or Department Director. On the employee's employment closeout form and inventory of equipment, any lost equipment or unauthorized service beyond employee's separation date will be deducted from their last payroll check or leave payout.

K. ACTIVATION/TECHNICAL SUPPORT/PROBLEM SOLVING

The Property Department will assist with activating the equipment. The employee shall answer voice messages in a timely manner. To limit the amount of time the Property Department allocates toward providing technical support to employee cellular phones, employees shall contact the service provider for any necessary technical assistance before requesting assistance from the Property Clerk. If the problems or issues are not resolved by the service provider, the employee may contact the Property Clerk.

L. TAT PROPERTY DEPARTMENT

Daily administration of the cellular phone equipment and service shall be the responsibility of the Property Department. The Property Department will reconcile and forward to the Payroll Clerk the cellular service bill and any cost greater than fifty dollars (\$50) for equipment and excess service charges to be deducted from the employee's wages. The Finance Department will also forward each Program's monthly equipment and service charges to the Program's Director.

Any unused devices (cellular phones and/or Verizon jet packs) will be deactivated. The Tribe will not pay for phones that are not properly managed by the Property Department or used in

accordance with the standards set forth in this Policy. A Program Director's nonadherence to this policy will result in cellular phone and Verizon jet pack costs and services being denied.

SECTION 2.13 — DRESS CODE POLICY

A. PURPOSE

To maintain a safe, healthy, clean, and functional work environment, the Tribe requires that employees wear clean and appropriate clothing for each respective job. This Dress Code Policy provides guidelines and restrictions on acceptable attire in the workplace.

B. SCOPE

This Policy applies to all full-time and part-time Tribal employees, as well as to independent contractors, volunteers, and students who work from the Tribe's offices or in public and who may come in contact with colleagues, visitors, or members of the public in the course of their duties. This includes on-site and off-site activities outside of normal working hours. While working for the Tribe, any student employees (Summer Youth & College Interns) must adhere to the guidelines of this Policy at all times.

C. POLICY

During business hours or when representing the Tribe, employees are expected to wear clothing that is consistent with the standards of a professional environment, and which does not attract undue attention or serve as a distraction to others.

Supervisors and/or Department Directors are responsible for establishing a reasonable dress code that is appropriate for the specific duties their respective employees perform. Employees should defer to their Supervisor or Department Director to determine what attire is appropriate for positions. If an employee is unsure of what is appropriate, they should ask their Supervisor for clarification.

D. ATTIRE AND APPEARANCE GUIDELINES

1. Acceptable Clothing

Business professional or business casual clothing is expected to be worn by employees while on duty as applicable and as determined by an employee's Supervisor or Department Director. The following clothing is generally considered to be acceptable business attire:

- Sports coats or blazers;
- Slacks;
- Jeans (without rips, tears, or frays);
- Chinos;
- Dockers;
- Polo shirts with collars;

- Oxford button down shirts;
- Knee length dresses or skirts;
- Appropriate office setting footwear; and
- Sweaters and cardigans.

2. Unacceptable Clothing

Acceptable business attire **DOES NOT** include the following items:

- Shorts;
- Spandex & lycra (i.e biking shorts);
- Sleeveless tops, tank tops, tube tops, or halter tops;
- Beach wear;
- Sweatpants, leggings, athletic wear;
- Overly baggy shorts or pants;
- Cutoffs pants or shorts;
- Wrinkled, torn, stained, dirty, faded, discolored, patched, ripped, frayed clothing, or clothing with missing buttons;
- Revealing or skin-tight shirts, pants, etc.;
- Clothes with offensive slogans or pictures (e.g., profanity and nude or seminude pictures, offensive gestures, suggestive cartoons);
- Clothes with political slogans, derogatory words, Nazi regalia, KKK regalia, gang colors, advertisements for competitive products or services;
- Offensive, explicit, or graphic buttons, hats, caps, or other attire; and
- Flip flops.

3. Jewelry

Jewelry that interferes with an employee's ability to perform their job duties is not permitted. Some jewelry has the potential to cause a safety hazard to the employee and to co-workers, especially if it comes in contact with office equipment.

4. Uniforms

For departments that issue work uniforms that must be worn while at work, any employee assigned uniforms must wear such uniforms while working. Uniforms must be clean, neatly pressed and in good repair when reporting to work. If the required uniform is unavailable for any reason (for new or temporary employees), employees are expected to comply with the general requirements for all employees, as well as any departmental guidelines that may be available for such circumstances. Only uniform-issued jackets, vests and/or caps may be worn.

E. ACCOMMODATIONS

The Tribe recognizes the importance of individually held religious beliefs to persons within the workforce. The Tribe will reasonably accommodate an employee's religious beliefs in terms of

workplace attire unless the accommodation creates an undue hardship. Accommodation of religious beliefs in terms of attire may be difficult considering safety issues for employees. Those requesting workplace attire accommodation based on religious beliefs should be referred to the Human Resources Department.

Where necessary, reasonable accommodation may be provided for a person with a permanent or temporary disability.

F. NON-COMPLIANCE

Management reserves the right to determine appropriateness. Violations of the policy can range from inappropriate clothing items to offensive perfumes and body odor. Any employee who is improperly dressed will be counseled or, in severe cases, may be sent home to change into conforming attire or properly groom, and return to work. Non-exempt employees will have the time charged to accrued personal days or vacation accruals or taken as leave without pay. If an employee is warned regarding unacceptable attire and appearance and/or sent home three (3) times, a written warning will be issued and placed in the employee's personnel file. Continued disregard of this Policy may be cause for further disciplinary action, up to and including termination.

CHAPTER 3: EMPLOYEE PERFORMANCE AND DEVELOPMENT

The Mandan, Hidatsa and Arikara Nation is committed to the development and success of its employees. The Tribe shall strive to extend employment and training opportunities that will enhance individual development, further individual goals, and provide the resources to assist employees in developing their skills and becoming a successful part of the organization.

SECTION 3.1 — PERFORMANCE EVALUATIONS

Every employee shall be subject to performance evaluations, which shall be conducted by the employee's immediate Supervisor according to the times set out in this Policy. The performance evaluation is designed to improve communications between Supervisors and employees and to assess employee job performance. In addition to the formal evaluation process, Supervisors and employees should also discuss job performance on an informal, regular basis or as the need arises.

Formal performance evaluations shall be conducted as follows:

1. At the end of the initial probationary period;
2. Annually;
3. Upon employee transfer or promotion to a new job;
4. Upon employee separation from employment, if a disciplinary or termination report is not issued; and
5. When reductions in force are necessary.

If a performance evaluation has been completed within one month of any of the above occasions, a new evaluation is not required, except in cases involving discipline or termination.

Formal performance evaluations shall be completed on forms provided by the Human Resources Department.

SECTION 3.2 — EMPLOYEE RECOGNITION AND AWARDS

A. MERIT INCREASES

Merit increases may be awarded to employees who receive job performance ratings that qualify them for an increase. The standard merit increase is a maximum of five (5) percent of base salary and is determined by the employee's performance rating.

Merit increases are contingent upon program funding availability. The Tribal Business Council has the authority to approve or deny all merit increases.

B. INCENTIVE PAY/AWARDS

Incentive Pay and Awards are established to recognize, encourage, and reward employees who provide a service beyond the normal scope of their job or achieve results from which the Tribe benefits. Incentive and Bonus Pay/Award Plans are designed for those employees deserving of one-

time recognition for outstanding performance. The Incentive and Bonus Pay Award requires the approval of the Tribal Business Council. Recommendations, including full justification and documentation, shall be initiated by the employee's immediate Supervisor, with concurrence by the Department Director and submitted through the Human Resources Department for Tribal Business Council consideration.

Recognition may be in the form of a one-time monetary bonus; additional compensation for a limited, specified duration; leave time added to employee's account; certification or plaque of recognition; or commemorative awards, hat, jacket, t-shirt, etc.

SECTION 3.3 — DEVELOPMENT AND TRAINING

Employee development and training is a priority for the Tribe. Permanent full-time and part-time employees who have successfully completed their probationary period are eligible to participate in structured training and educational opportunities that are directly related to their department functions and responsibilities.

Departmental Directors are responsible for ensuring that employees receive and participate in job relevant training and should therefore ensure that funds are budgeted so that employees may attend seminars, workshops and other relevant training sessions. Supervisors are responsible for recommending employees for special training, on-the-job training, and for arranging on-the-job training. Travel and training must be approved by the program or departmental director based upon availability of funds.

CHAPTER 4: LEAVE AND BENEFITS

The Mandan, Hidatsa and Arikara Nation offers a comprehensive leave and benefits package to eligible employees in accordance with the terms of this Chapter. Nothing contained in the benefits plan shall be construed to create a promise of employment or future benefits or a binding contract between the Tribe and its employees, retirees or their dependents for benefits or any other purpose. The Tribal Business Council reserves the right, in its sole and absolute discretion, to amend, modify or terminate, in whole or in part, any or all provisions of the benefits plans described in this Manual, including any benefits that may be extended to retirees or dependents. Further, the Tribe reserves the exclusive right, power, and authority, in its sole and absolute discretion, to administer, apply and interpret the benefits plan and to decide all matters arising in connection with the operation and administration of such plans.

SECTION 4.1 — ANNUAL LEAVE

Annual leave benefits are granted to permanent full-time and part-time employees for personal business, vacation periods, or time away from work. Annual leave is accrued from date of hire but cannot be used until completion of the 90-day probationary period. Annual leave cannot be used until hours have actually been accrued. Annual leave shall not be advanced or credited to any employee.

Employees shall submit annual leave requests to their Supervisors on the leave request form provided by the Human Resources Department in advance of taking the leave. The Supervisor has the authority to approve or disapprove the use of leave depending on work schedules. Except in the case of emergencies, employees must submit leave requests at least three (3) days in advance of taking leave. Leave requests for extended periods such as vacations should be submitted at least two (2) weeks in advance.

In emergency situations, employees may not have an opportunity to submit annual leave requests and attain prior approval. Employees must, however, inform their Supervisor of the need to use annual leave because of an emergency. Request for leave forms must be submitted immediately after returning to work.

The rate of accrual of annual leave is based upon an employee's length of permanent, full-time or part-time service with the Tribe. Prior permanent, full-time or part-time service with the Tribe may be included in determining the total length of service for purposes of accruing leave.

Accrual of annual leave is based on length of service as follows:

A. FULL-TIME EMPLOYEES

Length of Service	Hours Accrued Per Pay Period	Maximum Hours Per Year
0-36 Months	4 Hours	104
37-180 Months	6 Hours	156
181 Months or more	8 Hours	208

B. PART-TIME EMPLOYEES

Length of Service	Hours Accrued Per Pay Period	Maximum Hours Per Year
0-36 Months	2 Hours	52
37-180 Months	3 Hours	78
181 Months or more	4 Hours	104

At the end of each calendar year, the maximum amount of annual leave that may be carried into the following year is two hundred and forty (240) hours for full-time employees and eighty (80) hours for part-time employees. Leave in excess of those amounts must be used prior to the end of each calendar year or it will be forfeited, unless good cause exists for not being able to use the leave and approval to carry over hours in excess of the number allowed is authorized by the Tribal Business Council or its designee.

Subject to availability of funds, employees will be paid for accrued annual leave up to two hundred and forty (240) hours for full-time employees and up to eighty (80) hours for part-time employees upon separation of employment.

SECTION 4.2 — SICK LEAVE

The Tribe offers sick leave to permanent full-time and part-time employees according to the provisions of this section. Sick leave is accrued from the employee's date of hire but cannot be used until the employee has completed the 90-day probationary period.

Sick leave may be used for any of the following reasons:

- When the employee is incapacitated or unable to perform his/her job duties because of illness or injury;
- For medical, dental, or other health care provider appointments;

- When the employee is undergoing treatment by a health care provider;
- When a physician or other health care provider has determined the necessity for the employee to be absent from work; and
- When the employee is required to provide care for an immediate family member suffering from a serious health condition or injury or when the employee is required to provide for the fulfillment of a medical appointment of an immediate family member.

Immediate family members include wife, husband, daughter, son, mother, father, grandmother, grandfather, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandson, granddaughter, grandmother-in-law, grandfather-in-law.

Accrual of sick leave shall be based on length of service as follows:

A. FULL-TIME EMPLOYEES

Length of Service	Hours Accrued Per Pay Period	Maximum Hours Per Year
0-36 Months	4 Hours	104
37-180 Months	6 Hours	156
181 Months or more	8 Hours	208

B. PART-TIME EMPLOYEES

Length of Service	Hours Accrued Per Pay Period	Maximum Hours Per Year
0-36 Months	2 Hours	52
37-180 Months	3 Hours	78
181 Months or more	4 Hours	104

Sick leave may be accumulated and carried over from year to year. Upon separation from employment with the Tribe, accumulated sick leave shall be forfeited. In the event the Tribe rehires an individual, sick leave benefits will not be reinstated, regardless of the period of separation.

Use of sick leave requires approval of the employee's immediate Supervisor by use of the request for leave form. If possible, advanced approval is required. If an employee is unable to report to work due to illness or injury, the employee must notify the immediate Supervisor prior to the scheduled work time if possible. The employee is required to contact the Supervisor on each additional day of absence. The employee shall submit the request for leave form to the Supervisor upon return to work.

If an employee is absent from work for more than two (2) consecutive workdays as a result of an illness or injury or other applicable permissible reason for using sick leave, the employee shall provide the immediate Supervisor with a statement signed by the physician or other health care provider. The statement of the physician or provider shall include the nature of illness or disability, verification for necessity of the employee's absence from work, and the length of absence necessary.

Misuse or abuse of sick leave benefits will not be tolerated. Employees who misuse or abuse sick leave benefits will be subject to disciplinary action.

SECTION 4.3 — LEAVE DONATION

The Tribe authorizes the donation of sick or annual leave from one employee to another employee. This policy will help to ensure continuing income for an employee who has exhausted their sick and annual leave benefits and meets the conditions required for donation of leave. To meet the qualifications for donated leave the employee receiving donated leave must provide a doctor's note.

Donation of leave will only be authorized when an employee must be absent from work due to a serious illness, injury or health condition or due to an immediate family member's serious illness, injury or health condition which requires the employee to be absent from work. In either of those events, another employee may donate either sick or annual leave provided that the leave is donated on a value for value or dollar for dollar basis. Additionally, due to federal contract requirements, employees working under federal contracts may only receive donated leave from another employee working under the same federal contract. (See OMB Circular A-87-Cost Principals for State and Local Government.)

Donation of leave shall be subject to the approval of each employee's immediate Supervisor and shall be monitored by the Human Resources Department to ensure that the value for value requirement is adhered to. The amount of donated leave an employee may receive per calendar year shall not exceed Four Hundred and Eighty (480) hours; however, the Tribal Business Council may, in its discretion, over-ride such limitation in special circumstances.

SECTION 4.4 — HOLIDAYS

The Tribe observes those holidays recognized by the Federal Government and extends the privilege of paid holidays to its employees. In addition to federal holidays, the Tribe also recognizes certain tribal celebrations and holidays and grants paid leave to its employees on these days. All permanent full-time and part-time, temporary, and appointed employees are eligible for paid holidays. Unless otherwise provided by written agreement, contract employees are also eligible for holiday pay.

The following holidays are recognized:

- New Year's Day (January 1);
- Martin Luther King, Jr., Day (3rd Monday in January);
- All-Chief's Day (3rd Monday in February);
- Easter Monday;
- Juneteenth (June 19);

- Memorial Day (last Monday in May);
- Independence Day (July 4);
- Labor Day (1st Monday in September);
- Four Bear's Day (2nd Monday in October);
- Veteran's Day (November 11);
- Thanksgiving Day; and
- Christmas (December 25).

A recognized holiday that falls on Saturday will be observed on the Friday immediately preceding the holiday. A recognized holiday that falls on Sunday will be observed on the Monday immediately following the holiday.

Certain personnel are essential to the delivery of services to the tribal membership and the general public. The following is a list of those offices and programs that are considered essential and therefore may be required to work on certain holidays:

- Kidney Dialysis Unit Staff;
- Physicians and Physician Extenders (Physician Assistant; Nurse Practitioner);
- Health Care Professionals at Segment Clinics, including Medical Records Staff;
- Janitorial Service Providers in health care facilities;
- Designated Social Service Workers; Case Managers;
- Designated Circle of Life and Alcoholism Treatment Case Managers;
- Security Personnel; and
- Law Enforcement Personnel.

Individual Department Directors will determine which essential staff will be required to work on holidays and how the employee will be compensated for working on holidays.

SECTION 4.5 — ADMINISTRATIVE LEAVE

Under certain circumstances, the Tribe grants administrative leave to employees. Administrative leave is paid leave and will be authorized by the Tribal Business Council or the Tribal Administration. Certain essential staff may be required to work during administrative leave.

Administrative leave may be granted to employees at the discretion of the Chairman or the Tribal Business Council for the following reasons:

- Inclement or severe weather conditions;
- Hazardous conditions in the work environment that may be harmful or detrimental to the health and well-being of the employee(s);
- Participation in public activities in which the Tribe may have an interest, provided that the absence of the employee or employees does not create a detriment to the program or department and provided further that the absence of the employee or employees does not require employment relief worker or workers or the payment of overtime;
- Participation in emergency rescue, protective work or ambulance run;

- Participation in federally recognized civil defense programs for a reasonable amount of time, but not to exceed forty (40) hours in a fiscal year;
- Participation in Sun Dance ceremonies and other religious activity provided that the participating employee submits verification of attendance by completing and submitting the Religious Leave form, available at the Human Resources office. Such leave shall not exceed forty (40) hours per fiscal year;
- Scheduled Segment Pow-Wows for those employees who reside within that Segment. The Tribe may grant additional paid time off for other Tribal Celebrations. These will be determined by the Tribal Administration each year;
- Participation in Tribal Board, Commission, or Committee meetings;
- To vote in tribal, federal, state or local elections. Leave for a period not to exceed four (4) hours during a regular workday may be granted; and
- For other reasons determined by the Tribal Administration to be appropriate for administrative leave.

SECTION 4.6 — BEREAVEMENT LEAVE

The Tribe grants paid leave to permanent full-time and part-time employees who have experienced the loss of an immediate family member, or employees who will perform certain funeral service duties as specified herein.

A. FAMILY MEMBERS

Bereavement leave will be granted to employees for the loss of an immediate family member who is related to the employee by blood, marriage, or legal adoption. Immediate family members include current spouse, children, parents, grandparents, brothers, sisters, children of brothers/sisters, aunts, uncles, children of aunts/uncles, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, step-children, step-parents, step-brother, step-sister, and step-grandparents.

In the event the relationship between the employee and decedent is not common knowledge or is unclear, it will be the burden of the employee to provide additional supporting documentation to management to support the relationship.

Employees are granted paid leave for up to four (4) working days, with pay, to handle family affairs and attend the funeral of an immediate family member.

The bereavement leave period may be extended up to five (5) working days when the employee is required to travel out of state or over 300 miles from their workstations to attend a funeral.

B. FUNERAL SERVICE DUTIES

Bereavement leave shall also be granted to the Senior Pallbearer, active pallbearers, and other active participants for funeral services (i.e. Honor Guard). Senior Pallbearers will be granted paid leave for up to three (3) working days; active pallbearers will be granted up to two (2) working days. Other active participants (Honor Guard, music, etc.) for funeral services will be granted eight (8) hours of Bereavement Leave.

C. REQUEST PROCESS

A Leave of Absence Request form shall be completed and signed by the employee and department manager. The form, with required documentation attached, shall be submitted with the employee's timesheet.

SECTION 4.7 — COMPENSATORY LEAVE

The Tribe is committed to meeting or exceeding the fair labor law standards provided under the Fair Labor Standards Act ("FLSA"). The FLSA is a federal law that is intended to protect workers against certain unfair pay practices. While it is unclear whether Native American tribes are required to comply with the FLSA, the Tribe has instituted the provisions in this section to provide its employees with protections that are in line with or beyond FLSA standards.

Federal law requires employers to compensate non-exempt employees for hours worked in excess of forty (40) hours in a single workweek. Compensatory leave is paid time off that is earned and accrued by a non-exempt employee in lieu of payment for overtime hours worked. Overtime is any hours worked in excess of forty (40) hours in a workweek. The Tribe grants compensatory leave to eligible non-exempt employees who work overtime. Exempt employees are not entitled to compensatory leave.

Permanent full-time and part-time, temporary, and appointed employees who are classified as non-exempt are eligible to earn compensatory leave. Compensatory leave is only granted when an employee has actually worked more than forty (40) hours in a workweek. If any leave was used during the workweek or if the employee was on work travel, the employee is not entitled to earn compensatory leave. The Tribe does not pay overtime wages to exempt or non-exempt employees.

Compensatory leave is earned at the rate of one- and one-half times every hour worked in excess of forty (40) hours. Employees must use compensatory leave hours within six (6) months after the pay period during which it was earned.

An employee may carry over a compensatory leave from one year to the next. However, employees engaged in public safety, emergency response, or seasonal activities may not accrue more than 480 hours of compensatory leave. All other non-exempt employees may accrue no more than 240 hours of compensatory leave. Any compensatory leave exceeding these limits will be paid out to the employee at the regular rate earned by the employee at the time the employee receives such payment.

Employees shall obtain written authorization from their immediate Supervisor prior to working any overtime. Overtime shall be authorized only in circumstances where an employee's workload or schedule requires the employee to work extra hours.

Upon separation from employment with the Tribe, an employee will be paid for unused compensatory leave, provided that payment for such time shall not exceed sixty (60) hours, at a rate of not less than the final regular rate received by such employee.

Exempt employees may be allowed to work flex time or adjust their schedules with the approval of

their immediate Supervisor if they are required to work excessive overtime in a forty-hour workweek.

The designated timekeeper of each program will maintain accurate records of accrued compensatory leave. Documentation of compensatory leave for recording in the payroll system will be submitted with the bi-weekly time and attendance reports.

SECTION 4.8 — EDUCATIONAL LEAVE

The Tribe offers educational leave to permanent full-time employees for the purpose of pursuing educational coursework related to the duties and responsibilities employee's position.

The employee's immediate Supervisor and the departmental director shall authorize educational leave. Educational leave may be granted for a period not to exceed six (6) hours per week for course work in an accredited educational institution. Employees utilizing educational leave must clock out when leaving for class and clock in when returning.

Annual leave and compensatory leave may be requested to supplement additional hours needed for educational purposes. Approval of annual leave or compensatory leave for educational purposes is at the discretion of the program or departmental director and shall be authorized only if it is determined that the employee's responsibilities to his or her job will not be affected. Educational leave under this section is a benefit, and not an entitlement, that the Tribe provides to employees. Such leave may be denied at the reasonable discretion of an employee's immediate Supervisor and/or the applicable departmental director.

SECTION 4.9 — JURY/COURT DUTY

The Tribe recognizes and authorizes leave for certain court and jury duty related absences.

When an employee is summoned to service on a jury, the employee shall receive regular salary while absent without loss of any leave credits. The employee shall receive regular pay and will also be entitled to any per diem and mileage as provided by tribal, federal or state statutes.

When an employee is subpoenaed to testify either in his/her official capacity or not in his/her official capacity, the employee will receive both regular pay and witness fees without loss of any leave credits.

When an employee is a party to private litigation, he/she will be required to use compensation leave or annual leave for any absences related to their participation in such litigation.

SECTION 4.10 — MILITARY LEAVE

Leave without pay will be granted to any employee who is called to active duty by any branch of the United States Armed Services, including National Guards. Benefit accruals for any employee serving on active duty longer than thirty days will be calculated in accordance with applicable federal laws.

The employee will be reinstated with full seniority to his or her former position or to a comparable position if application for re-employment is made within thirty calendar days of the date of honorable discharge or the date of release from hospitalization following discharge.

Any employee who is a member of a reserve component of the armed forces will be placed on unpaid leave for his or her annual two-week training duty. Benefit programs will be unaffected, and the employee may elect to use any annual leave or compensation leave for the absence.

SECTION 4.11 — MATERNITY/PATERNITY LEAVE

The Tribe recognizes the importance of parents being afforded adequate time to prepare for the birth of or care for a newborn child. Accordingly, the Tribe provides paid maternity and paternity leave certain eligible employees.

A. ELIGIBILITY

An employee is eligible to take maternity/paternity leave if they have been employed with the Tribe for at least twenty-four (24) consecutive months and have worked at least 2,500 hours during the twenty-four (24) months immediately preceding commencement date of maternity/paternity leave.

B. DEFINITIONS

1. Maternity leave is defined as a period of absence from work granted to a mother before or after the birth of her child.
2. Paternity leave is defined as a period of absence from work granted to a father after the birth of his child.

C. LEAVE

An eligible employee shall be entitled to paid maternity/paternity leave as follows:

1. Upon presentation to an employee's Supervisor or director of a doctor's written recommendation, a pregnant employee may be given up to six (6) weeks paid maternity leave prior to delivery.
2. Up to six (6) weeks of paid maternity leave may be given to an employee following the birth of their newborn child.
3. Absent extenuating circumstances that would result in an undue burden being placed on the Tribe, up to two (2) weeks of paid paternity leave may be given to an employee following the birth of their newborn child.
4. As provided under the Family and Medical Leave (see Section L below), an employee may take up to twelve (12) weeks of leave in a twelve (12) month period. After an employee has exhausted all paid maternity/paternity leave, and accrued hours of sick,

and annual available to the employee, in that order, the employee may take leave without pay.

D. COMPENSATION

An employee who is eligible for maternity/paternity leave will be compensated in accordance with their regular work schedule. For example, a permanent, full-time employee on maternity/paternity leave whose regular work schedule is a forty (40) hour work week will be compensated for no more than forty (40) hours per week; whereas a permanent, part-time employee who regularly works twenty (20) hours per week will be compensated for no more than twenty (20) hours per week.

SECTION 4.12 — FAMILY AND MEDICAL LEAVE

The Tribe has policies consistent with the Federal Family and Medical Leave Act (FMLA), which requires employers to provide job-protected unpaid leave for certain qualified medical reasons and will be further known as Family Medical Leave. This Policy is defined by the Tribal Business Council, which reserves the right to change the nature of the Policy as deemed necessary for the benefit of its employees. The Tribe's Family and Medical Leave Policy is further set forth in Appendix H to these Policies.

A. ELIGIBILITY

Employees who have been employed with the Tribe for at least 12 months and have worked at least 1,250 hours during the 12 months immediately preceding commencement of leave will be eligible for up to 480 hours of unpaid Family Medical Leave during a rolling 12-month period for any of the following reasons;

1. The birth of the employee's child and bonding with the newborn child;
2. Placement of a child with the employee for adoption or foster care and bonding with the newly placed child;
3. To care of the employee's spouse, child, or parent with a serious health condition;
4. A serious health condition rendering the employee unable to perform their job duties; or
5. Married employees are eligible to take Family Medical Leave at the same time but are limited to a combined total of the 480 hours.

An employee who is on disciplinary suspension, or on a suspension pending the outcome of an investigation that may result in disciplinary action is not eligible for Family Medical Leave .

B. EXTENDED FAMILY MEDICAL LEAVE

Hours exceeding the total of 480 will no longer be covered by Family Medical Leave. Employees who are facing extenuating circumstances may request an extension of leave. The extension is not to exceed a total additional 480 hours above the Family Medical Leave standard hours of 480. The Department Director and a member of the Tribal Business Council may authorize the extended leave and the employee must include an original doctor's note with the dates included. This authorization will allow the employee to request donated leave once all other leave has been exhausted.

SECTION 4.13 — MEDICAL, DENTAL, VISION AND LIFE INSURANCE AND RETIREMENT BENEFITS

The Tribe is committed to providing flexible and cost-effective medical care, disability income, life insurance and retirement benefits to eligible employees. The Tribal Business Council reserves the right, in its discretion, to change the nature of the benefits offered to employees, or to change insurance carriers, deductibles, premiums, or other features of any benefit. In addition, the Tribal Business Council may decide to discontinue one or more benefits. Covered employees will be notified of such changes or discontinuations as soon as practicable.

The Human Resources Department serves as the Administrator for the Tribe's benefits programs. The Personnel Assistant/Benefits is responsible for all communication and disclosures concerning benefits and compliance with all applicable laws and regulations. The Personnel Assistant/Benefits will furnish a summary plan description and is available to answer questions concerning the benefits plan.

All benefits are described in official documents kept on file in the Human Resources Department. These documents are available for examination by any plan participant or beneficiary. These documents are the only official and binding materials concerning the Tribe's benefits plan. All summaries and communications, both written and oral, must refer to them as binding in cases of questions or disputes.

Under the Tribe's life insurance and retirement plan, employees are required to designate a beneficiary for the employee's benefits. The designation must be made in writing and in a form acceptable to the benefits plan. Employees are responsible for maintaining the proper beneficiary designation and providing written notification to the Personnel Assistant/Benefits of any changes in status that would affect eligibility or beneficiary designation.

A. MEDICAL, DENTAL, VISION AND LIFE INSURANCE BENEFITS

The Tribe provides single medical, dental, vision and life insurance benefits to eligible employees. Full-time permanent employees are eligible for the benefits offered in this Section. The appointing official will determine the eligibility of appointees. Eligibility for contract employees will be determined according to the contract. Part-time and temporary employees are not eligible for these benefits.

Eligible employees will become eligible to participate in these benefits after completing the ninety-

day probationary period. The Tribe pays 100% of the cost for single coverage. The Tribe will pay 70% of the cost for single with a dependent or full family coverage. The employee is responsible for 30% of the cost of single with dependent or full family coverage.

B. RETIREMENT BENEFITS

The Tribe provides a retirement package through a 401(k) plan to eligible employees who choose to participate. Full-time permanent employees are eligible for the benefits offered in this Section. The appointing official will determine the eligibility of appointees. Eligibility for contract employees will be determined according to the contract. Part-time and temporary employees are not eligible for these benefits.

Eligible employees will become eligible to participate in the 401(k) plan after completing the ninety-day probationary period, provided that the Tribe will not be obligated to contribute its employer's match until after the employee has been employed for six months. Employees can contribute a specified percentage of their earnings, up to fifteen percent, into their 401(k). The Tribe will provide an employer contribution up to five percent to participating employees provided that the employee contributes at least one percent of earnings to the plan.

The retirement plan is a tax-deferred benefit. The amount of your qualifying contributions, employer contributions, and all earnings on your account are not subject to current federal income tax until you withdraw them from the plan. Participant contributions will be deducted from the employee's paycheck if the employee has authorized the deduction in writing.

SECTION 4.14 — EMPLOYEE ASSISTANCE PROGRAM AND EMPLOYEE INTERVENTION

To meet its commitment of enhancing the well-being of its employees, the Tribe offers professional counseling services through an Employee Assistance Program. This Program aids employees and their family members who are experiencing stressful situations due to workplace, financial, emotional, physical, legal, family or substance abuse related problems. Counseling and consultation assistance are offered in a strictly confidential manner. Employees will not incur any costs for using this Program. Consultation services are available 24 hours a day, 7 days a week. Employee participation is voluntary, however, Supervisors may recommend participation through the disciplinary process for employees when job performance is affected by any of the problems listed above.

All employees and members of their households are covered and eligible for this service. Employees are eligible to participate on their date of hire and for up to three months after separation from employment.

SECTION 4.15 — SERVICE PAY

To express appreciation of an employee's longevity with and contribution to the Tribe, the Tribe occasionally provides Service Pay to certain eligible employees.

A. ELIGIBILITY

All full-time and part-time employees of the Tribe are eligible to receive Service Pay. To qualify for Service Pay, an employee must have worked no less than five (5) years with the Tribe prior to ending their employment. However, any breaks in employment with the Tribe will be included when calculating an employee's years of service.

An employee seeking to receive service pay must submit a written request to the Human Resources department within no more than ninety (90) days of the last date of employment. **Employees are eligible to receive service pay only once in their lifetime.**

Service pay is a benefit, and not an entitlement, that the Tribe provides to employees. Such service pay may be denied at the discretion of Tribal Business Council.

B. SERVICE PAY AMOUNTS

Eligible employees may be awarded:

- \$1,000 for anything less than 10 years;
- \$5,000 for ten (10) years of service;
- An additional \$1,000 per full year of employment after the first ten (10) years of service; and
- A plaque of appreciation.

SECTION 4.16 — WORKSITE WELLNESS

The Tribe encourages an environment of health and wellness, which can have a positive impact on productivity and morale. This policy applies to all permanent full-time tribal employees.

For purposes of this policy, the following will apply:

- Employees may be granted, upon Supervisor approval, 30 consecutive minutes per workday to participate in physical activities/exercise.
- Participation in health or wellness activities is entirely voluntary and not mandated. Injuries or accidents while participating in such activities are exempt from workers' compensation eligibility.
- In instances of misuse or abuse where performance issues arise, or when participation adversely affects department operations, Supervisory personnel may deny or revoke this benefit.

Worksite Wellness under this section is a benefit, and not an entitlement, that the Tribe provides to employees. Such time to participate in health or wellness activities may be denied at the reasonable discretion of an employee's immediate Supervisor and the applicable departmental director.

CHAPTER 5: HARASSMENT, HEALTH, AND SAFETY IN THE WORKPLACE

The Mandan Hidatsa and Arikara Nation maintains a safe work environment conducive to effective governmental operations. Personnel activity and operating practices shall be consistent with the highest standards of health and safety.

SECTION 5.1. ANTI-DISCRIMINATION AND ANTI-HARASSMENT POLICY

A. GENERAL POLICY

It is the policy of the MHA Nation to maintain a safe and secure workplace that is free of harassment and discrimination. The Tribe does not tolerate any intimidating, humiliating, bullying, or sabotaging behavior in the workplace. The Tribe also prohibits discrimination of any kind based on age, race, color, national origin, religion, sex, sexual orientation, pregnancy status, marital status, disability, or receipt of public assistance. Employees shall be protected from retaliation by their superiors and coworkers for filing reports based on harassment or discrimination.

B. DEFINITIONS

1. **Discrimination.** Discrimination is adverse treatment of an employee based on the employee's actual or perceived membership in a protected class or category of persons to whom he/she belongs, rather than on the basis of their individual merit with respect to the terms, conditions, or privileges of employment including, but not limited to hiring, firing, promoting, disciplining, scheduling, training, evaluating, or deciding how to compensate that employee.
2. **Harassment.** Harassment is conduct that has the purpose or effect of creating an intimidating, hostile, or offensive work environment; has the purpose or effect of substantially and unreasonably interfering with an individual's work performance; or otherwise adversely affects an individual's employment opportunities because of the individual's membership in a protected class.

Harassment includes but is not limited to, epithets; slurs; jokes; pranks; innuendo; comments; written or graphic material; stereotyping; or other threatening, hostile, or intimidating acts based on race, color, ancestry, national origin, gender, sex, sexual orientation, marital status, religion, age, disability, veteran status, or other characteristic protected by law.

3. **Retaliation.** Retaliation means threats, direct or indirect (as by suggestion or inference), that an employee's job, advancement, work assignments, wages, benefits, or rights may be lost, diminished, or impaired as a result of an employee filing or intending to file a report against another employee for harassment or discrimination.
4. **Workplace.** Workplace means the place or places and environments where an employee performs all matters relating to their employment duties, whether on or off Tribal premises. It also includes actions occurring during company time or while using

company equipment, such as e-mail or phone, and includes, but is not limited to, voice messages, text messages, and communication through social networking websites or applications.

SECTION 5.2 — REPORTING HARASSMENT, DISCRIMINATION, OR RETALIATION

A. REPORT PROCESS

Employees may report instances of harassment or discrimination to the Supervisor or director of the offending employee, the reporting employee's immediate Supervisor or director, or the Human Resources Department. Supporting statements provided involving incidents occurring outside of this time period may be accepted as character evidence.

Reports shall be submitted in writing on an Employee Complaint Form, available in the HR Department office. An HR representative may assist an employee in completing the form, but the employee must review the form and sign the attestation section prior to submission.

The Tribe shall promptly and thoroughly investigate reports of violations of this Policy. Once a Supervisor or Director has received a report of harassment or discrimination, the Supervisor or Director shall provide the report to HR personnel (if not filed directly with the HR). Failure by a Supervisor or Director to forward an employee's report of harassment or discrimination to HR will result in disciplinary action.

Upon receipt of a report of harassment or discrimination, the Human Resource Department will:

1. Review the report and any supporting materials;
2. Notify the reporting employee's Director of the report filed against the accused employee;
3. Meet with the reporting employee to review the allegations made in the report;
4. Notify the Tribe's Chief Executive Officer ("CEO") and the Director of the employee alleged to have engaged in harassment or discrimination that the report has been filed;
5. Direct the accused employee's Director to schedule a meeting with said employee regarding the report; and
6. Meet with the accused employee and their director, if the employee chooses, to discuss the allegations of harassment or discrimination contained in the report.

B. CONFIDENTIAL REPORTING

In some cases, a reporting employee may wish to share a complaint in confidence. It is the Tribe's priority to exercise the utmost discretion in disclosing only information necessary to carry out the investigation and to maintain confidentiality. The Tribe cannot guarantee complete confidentiality. In order to take appropriate action, the identity of the complainant may become known. Every necessary employee that the report of harassment is shared with will be educated about the retaliation policy and the need for confidentiality.

A copy of all information relating to the report will be filed in the reporting employee's, and the accused employee's, confidential records. The maintenance of such records will be in accordance with the Tribe's Employee Records Retention Policy.

C. INVESTIGATION PROCESS

The HR Director, CEO, and Director of the accused employee at the time the investigation begins will review all evidence obtained during the investigation, reach a decision on the veracity of the complaint, and determine any appropriate disciplinary action. The HR Director shall notify both the reporting employee and accused employee of the decision in writing within no more than three (3) business days of the date of the decision.

An employee who has filed a report pursuant to this Policy may inquire, at any time, about the status of an investigation. Employees of the Tribe shall fully cooperate with the HR Director or any other authorized employee carrying out an investigation. However, this Policy does not require an individual accused of harassment or discrimination to involuntarily provide any facts, information, or evidence in response to an investigation of a report or to involuntarily sign a written statement or confession.

Every investigation into a report of harassment or discrimination will be carried out to completion regardless of whether the reporting or alleged harassing employee moves departments or positions, is no longer employed with the Tribe, or changes from an employee to a political appointee or vice versa.

NOTE: In certain instances, a third-party investigator may be utilized to conduct the investigation into a report of harassment, discrimination, or retaliation (e.g. the report is against a Director, the HR Director, or CEO).

D. INVESTIGATION OUTCOME AND DISCIPLINARY ACTION

Employees who are found guilty of engaging in harassing, discriminatory, or retaliatory behavior will be disciplined in accordance with the Tribe's Personnel Policies and Procedures, Chapter 7 – Employee Discipline and, depending on the severity of the harassment, may be subject to recommendation for termination to the Tribal Business Council. Additionally, the Tribe shall make assurances to the appropriate parties that:

1. Tribal management will take the necessary steps to ensure the harassment or discrimination ceases;
2. Any reoccurrence of the harassment or discrimination will not be tolerated; and
3. There will be no retaliation by Tribal management as a result of the harassment or discrimination being reported.

Political appointees found guilty of harassment, discrimination, or retaliation will be disciplined in accordance with this Policy at the discretion of their appointing Tribal Business Council Representative.

Anyone found to have filed a report of harassment or discrimination when such accusation is determined to be deliberately dishonest or made in bad faith shall be deemed to have violated this Policy. Employees who violate this Policy shall be appropriately disciplined in accordance with the Chapter 7 of these Policies. At all levels, the Tribe will protect the confidentiality of all reports of harassment or discrimination to the extent possible and practicable.

Any employee who has been subject to harassment or discrimination may also avail themselves of any civil and criminal legal mechanisms available under the law. Any state or Tribal court order for protection provided by an employee to the Tribe which prohibits contact by another employee will be honored and enforced by the Tribe.

Any disciplinary actions implemented for violations of this Policy are subject to the Tribe's Complaints, Grievances, and Appeals Policies and Procedures.

E. NO RETALIATION

No reprisal, retaliation, or other adverse action may be imposed upon an employee in response to:

1. Filing or responding to a bona fide report of discrimination or harassment.
2. Appearing as a witness in the investigation of a report.
3. Serving as an investigator of a report.

Lodging a legitimate report will in no way be used against the employee or have an adverse impact on the individual's employment status. However, filing groundless or malicious reports is an abuse of this Policy and will be treated as a violation.

Any suspected retaliation or intimidation should be reported immediately to the Supervisor of the retaliating employee, the immediate Supervisor of the employee experiencing retaliation, or the HR Director by utilizing an Employee Complaint Form, available in the HR Department office. All such reports will be investigated, and any employee found to have retaliated against an employee for filing a harassment or discrimination report in good faith will be appropriately disciplined, up to and including a recommendation of termination to the Tribal Business Council.

SECTION 5.3 — SEXUAL HARASSMENT POLICY

A. GENERAL POLICY

It is the policy of the MHA Nation that all Tribal employees be entitled to respect, dignity, and security in a workplace environment free of sexual harassment in any form. Employees shall be protected from retaliation by their superiors and coworkers for filing reports based on sexual harassment. While no form of harassment shall be tolerated, the Tribe considers sexual harassment to be particularly offensive. This Sexual Harassment Policy provides requirements and procedures for employees to file sexual harassment reports, and subsequent Tribal actions resulting therefrom.

B. APPLICABILITY

This Policy shall be followed by all Tribal employees, which, for purposes of this Policy, includes all full-time, part-time, on-leave, and suspended employees, political appointees, volunteers, and paid or unpaid summer youth or interns—all of which shall be referred to as “employees” throughout this Policy unless otherwise specified. The provisions of this Policy are in addition to all other applicable Tribal policies and procedures.

Additionally, a non-employee who experiences sexual harassment by an employee as a result of the employee’s Tribal employment status, and in relation to the work relationship, may utilize this Policy to file a report of sexual harassment against such employee.

C. NON-WORKPLACE SEXUAL HARASSING CONDUCT

For the purposes of this Policy, sexual harassing behavior as described in Section III below is prohibited and includes such conduct occurring in the workplace and may include such conduct occurring outside of the workplace.

D. DEFINITIONS

- 1. Retaliation.** Retaliation means threats, direct or indirect (as by suggestion or inference), that an employee’s job, advancement, work assignments, wages, benefits, or rights may be lost, diminished, or impaired as a result of an employee filing or intending to file a report against another employee for sexual harassment.
- 2. Sexual Harassment.** Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal, written, visual, or physical conduct of a sexual nature when submission to or rejection of such conduct is used as the basis for employment decisions or such conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment. Examples of sexual harassment include, but are not limited to:
 - a. Unwanted physical contact or conduct of any kind, including sexual flirtations, touching, advances, or propositions.
 - b. Verbal harassment of a sexual nature, such as lewd comments, sexual jokes or references, and offensive personal references.
 - c. Demeaning, insulting, intimidating, or sexually suggestive comments about an individual.
 - d. The display in the workplace of demeaning, insulting, intimidating, or sexually suggestive objects, pictures, or photographs.
 - e. Demeaning, insulting, intimidating, or sexual suggestive written, recorded, or electronically transmitted messages (such as email, instant messaging, and other internet materials).
 - f. Making repeated unwelcome or unwanted romantic advances or gestures (such as asking a coworker on dates, asking a coworker about their romantic relationships, leaving gifts, etc.).

- g. Any of the above behaviors occurring outside of the workplace, so long as an employment relationship exists between the individuals involved, that creates a hostile environment for any employee in the workplace.
- 3. **Workplace.** Workplace means the place or places and environments where an employee performs all matters relating to their employment duties, whether on or off Tribal premises. It also includes actions occurring during company time or while using company equipment, such as e-mail or phone, and includes, but is not limited to, voice messages, text messages, and communication through social networking websites or applications.

SECTION 5.4 — REPORTING SEXUAL HARASSMENT OR RETALIATION

A. REPORT PROCESS

The Tribe encourages any employee who has experienced, witnessed, or is aware of sexual harassing behavior to report such conduct to the Tribe in accordance with this Policy. Employees may report instances of sexual harassment to the then Supervisor or director of the alleged harasser, the complaining employee's immediate Supervisor or director, or the Human Resources ("HR") Director within no more than 180 calendar days from the last date of the occurrence upon which the report is based. Supporting statements provided involving incidents occurring outside of this period may be accepted as character evidence.

Reports shall be submitted by utilizing a Report of Sexual Harassment or Retaliation form ("form"), available in the HR Department office. An HR representative may assist an employee in completing the form, but the employee must review the form and sign the attestation section prior to submission.

The Tribe shall promptly and thoroughly investigate reports of violations of this Policy. Once a Supervisor or Director has received a report of sexual harassment, the Supervisor or Director shall provide the report to the HR Director (if not filed directly with the HR Director). Failure by a Supervisor or Director to forward an employee's report of sexual harassment to the HR Director will result in disciplinary action.

Upon receipt of a report of sexual harassment, the HR Director will:

- a. review the report and any supporting materials;
- b. notify the reporting employee's Director of the report filed against the harassing employee;
- c. meet with the reporting employee to review the allegations made in the report;
- d. notify the Tribe's Chief Executive Officer ("CEO") and the Director of the employee alleged to have engaged in sexual harassment that the report has been filed;
- e. direct the accused employee's Director to schedule a meeting with said employee regarding the report; and
- f. meet with the accused employee and their director to discuss the allegations of sexual harassment contained in the report.

B. ANONYMOUS REPORTING

The Tribe understands that some employees experiencing sexual harassment in the workplace may wish to remain anonymous. In the event that the Tribe receives an anonymous report of sexual harassment, the extent to which action may be taken will depend upon the specific information contained in the report and the circumstances surrounding the allegation, including the individual facts and the severity of the accusations. In such cases, the investigating employees will look at the merits of the circumstantial evidence and consider whether there is any reason for the report to be fabricated. Any anonymous complaint must be recorded in writing, whether submitted using the form, by email, letter, etc., or transcribed by a Supervisor, director, or HR personnel pursuant to a voicemail or other recording.

C. CONFIDENTIAL REPORTING

In some cases, a reporting employee may not wish to be anonymous but may wish to share a complaint in confidence. Such employees are reminded that the Tribe has a no retaliation policy, and if they feel as though they have been retaliated against, they should report it immediately. For some cases, it may be that information will have to be shared to conduct a thorough investigation into the report of harassment. In such cases, it is the Tribe's priority to exercise the utmost discretion in disclosing only information necessary to carry out the investigation and to maintain confidentiality. However, the Tribe cannot guarantee complete confidentiality in respect of these complaints given that often, in order to take appropriate action, the identity of the complainant will become known. Every necessary employee that the report of harassment is shared with will be educated about the retaliation policy and the need for confidentiality.

Only information relevant to investigating a report of sexual harassment will be disclosed to the accused employee, interviewees, and certain HR or interviewing employees, as necessary. For example: complete copies of the complaint, complete copies of statements by the accusing employee or interviewees, etc., may not be shared with the accused employee or interviewees. Additionally, an accused employee may not always be provided with the name of the accusing employee if withholding such information does not hinder the Tribe's ability to conduct a thorough and complete investigation.

D. INVESTIGATION PROCESS

The HR Director, CEO, and Director of the alleged harassing employee will review all evidence obtained during the investigation, reach a decision on the veracity of the complaint, and determine any appropriate disciplinary action. The HR Director shall notify the both the reporting employee and accused employee of the decision in writing within no more than three (3) business days of the date of the decision.

An employee who has filed a report pursuant to this Policy may inquire, at any time, about the status of an investigation. Employees of the Tribe shall fully co-operate with the HR Director or any other authorized employee carrying out an investigation. However, this Policy does not require an individual accused of sexual harassment to involuntarily provide any facts, information, or evidence in response to an investigation of a report or to involuntarily sign a written statement or confession.

Every investigation into a report of sexual harassment will be carried out to completion regardless of whether the reporting or alleged harassing employee moves departments or positions, is no longer employed with the Tribe, or changes from an employee to a political appointee or vice versa.

NOTE: In certain instances, a third-party investigator may be utilized to conduct the investigation into a report of sexual harassment or retaliation (e.g. the report is against a Director, the HR Director, or CEO).

E. INVESTIGATION OUTCOME

If it is determined that the accused employee committed an act of sexual harassment, corrective action will include appropriate disciplinary action in accordance with Section VI hereinbelow. Additionally, the Tribe shall make assurances to the appropriate parties that:

1. Tribal management will take the necessary steps to ensure the sexual harassment ceases;
2. Any reoccurrence of the sexual harassment will not be tolerated; and
3. There will be no retaliation by Tribal management as a result of the sexual harassment being reported.

Anyone found to have filed a report of sexual harassment when such accusation is determined to be deliberately dishonest or made in bad faith shall be deemed to have violated this Policy. Employees who violate this Policy shall be appropriately disciplined in accordance with Section VI hereinbelow. At all levels, the Tribe will protect the confidentiality of all reports of harassment to the extent possible and practicable.

Any employee who has been subject to sexual harassment may also avail themselves to any civil and criminal legal mechanisms available under the law. Any state or Tribal court order for protection provided by an employee to the Tribe which prohibits contact by another employee will be honored and enforced by the Tribe.

F. CONFIDENTIAL RECORD

A copy of all information relating to the report of sexual harassment or retaliation will be filed in the reporting employee's and the harassing employee's confidential records. The maintenance of such records will be in accordance with the Tribe's Employee Records Retention Policy.

G. NO RETALIATION

No reprisal, retaliation, or other adverse action may be imposed upon an employee in response to:

1. Filing or responding to a bona fide report of discrimination or harassment.
2. Appearing as a witness in the investigation of a report.
3. Serving as an investigator of a report.

Lodging a legitimate report will in no way be used against the employee or have an adverse impact on the individual's employment status. However, filing groundless or malicious reports is an abuse of this Policy and will be treated as a violation.

Any suspected retaliation or intimidation should be reported immediately to the Supervisor of the retaliating employee, the immediate Supervisor of the employee experiencing retaliation, or the HR Director by utilizing a Report of Sexual Harassment or Retaliation form, available in the HR Department office. All such reports will be investigated, and any employee found to have retaliated against an employee for filing a sexual harassment report in good faith will be appropriately disciplined, up to and including a recommendation of termination to the Tribal Business Council.

H. DISCIPLINARY ACTION

Employees who are found guilty of sexual harassment in the first instance in will receive a Class I Suspension in accordance with Chapter 7 of these Policies and, depending on the severity of the harassment, may be subject to recommendation for termination to the Tribal Business Council. Additionally, employees found to have engaged in sexual harassment against another individual in the first instance may be transferred transfer to another position or department to protect the employee who lodged the report.

Repeat offenders will be recommended for termination to the Tribal Business Council after the second report against them if the Tribe's investigation concludes that they are guilty of sexual harassment a second time.

Applicable disciplinary action will be carried out regardless of whether the reporting or alleged harassing employee moves departments or positions, or changes from an employee to a political appointee or vice versa.

Political appointees found guilty of sexual harassment will be disciplined in accordance with this Policy at the discretion of their appointing Tribal Business Council Representative.

I. NO APPEAL OF DISCIPLINARY ACTION

Any disciplinary action(s) implemented under this Policy are not subject to the Tribe's Reports, Grievances, and Appeals Policies and Procedures. Consequently, any final disciplinary actions imposed in accordance with this Policy are not appealable.

SECTION 5.5 — WORKPLACE VIOLENCE POLICY

A. GENERAL POLICY

It is the policy of the MHA Nation to provide a safe working environment to its employees and therefore strictly prohibits violence in any form in the workplace. The Workplace Violence Policy is to ensure the highest standard of health and safety for all employees, tribal members, customers, contractors, and visitors, both in the workplace and at all other places wherein the Tribe does business. The Tribe will respond appropriately to every reported incidence of disruptive, threatening, or violent behavior.

B. APPLICABILITY

This Policy shall be followed by all Tribal employees. The provisions of this Policy are in addition to all other applicable Tribal policies and procedures, such as the Drug and Alcohol Use Policy and Vehicle Use Policy.

C. DEFINITIONS

1. Violence. Violence is defined as:
 - a. Fighting or threatening violence or using obscene, abusive, or threatening language or gestures in the workplace towards another coworker, customer, client, tribal member, or visitor. This includes the use of physical force to harm or injure another, shouting, shoving, pushing, or intimidating another.
 - b. Possession of dangerous or unauthorized materials such as explosives or firearms in the workplace.
 - c. Intentionally damaging or destroying property of another employee, customer, or client of the Tribe.
 - d. Creating a hostile work environment through unwelcome words, actions or physical contact not resulting in physical harm to another person.
 - e. Stalking.
2. Workplace. Workplace means the place or places and environments where an employee performs all matters relating to their employment duties, whether on or off Tribal premises. It also includes actions occurring during company time or while using company equipment, such as e-mail or phone, and includes, but is not limited to, voice messages, text messages, and communication through social networking websites or applications.

SECTION 5.6 — REPORTING WORKPLACE VIOLENCE

A. WHAT TO REPORT

Behaviors of concern can be precursors to greater levels of violence. It is imperative that all employees are aware of behaviors of concern so that plans may be put in place to prevent greater violence from occurring in the workplace. The following behaviors of concern could indicate the potential for an individual to engage in violent behavior, and should be reported in addition to incidents of actual violence as described above:

- Reacting angrily or emotionally in a way that seems disproportionate to the situation.
- Being confrontational, angry, or behaving in an unpredictable, restless, or agitated manner.
- Engaging in intimidating, belligerent, insubordinate, defiant, or challenging behavior.
- Making direct or veiled threats about harming or killing oneself or others.
- Harassing or threatening to harm others.
- Discussing dangerous weapons and/or bringing such weapons into the workplace.
- Displaying overt signs or extreme stress, resentment, hostility, or anger.
- Making threatening remarks.

- Exhibiting sudden or significant deterioration of performance.
- Displaying irrational or inappropriate behavior.

B. REPORTING PROCEDURE

Employees who encounter violence or any potentially dangerous situations should immediately report such situations to their Supervisor, Security Department, or the Human Resources Department. Such reports may be submitted on the Tribe's Employee Complaint Form, available from the Human Resources Department, or by written statement (email, letter, etc.). Physical violence or immediate threats of physical violence may be reported verbally. Reports of workplace violence may be made anonymously and will be investigated accordingly. Reports or incidents warranting confidentiality will be handled appropriately and information will be disclosed to others only on a need-to-know basis. All parties involved in a potentially dangerous situation will be counseled and the results of investigations will be discussed with them. The Tribe will take appropriate action at any indication of a potentially hostile or violent situation.

Supervisors, Directors, and security personnel must report any and all incidents of violence in the workplace. Depending on the situation, Supervisors and Directors should report incidents of violence either as the violence is occurring or subsequent to the occurrence on a form prescribed by the Human Resources Department. A Supervisor or Director who fails to report an incident of violence in the workplace is subject to disciplinary action in accordance with this Policy. The Security Department and the Human Resources Department will identify and maintain a list of workplace violence incidents and will design a plan to prepare for possible emergency situations.

C. DANGEROUS/EMERGENCY SITUATIONS

Employees who confront or encounter an armed or dangerous person should not attempt to challenge or disarm the individual. If possible, the employee should attempt to safely vacate the area where the armed or dangerous person is located. If a Supervisor, Security Personnel, or Human Resources personnel can be safely notified of the need for assistance without endangering the safety of the employee or others, such notice should be given.

D. EMPLOYEE ASSISTANCE PROGRAM

Counseling for employees may be available through the Tribe's Employee Assistance Program for both the victim and any others within the Tribal employees affected by a violent or traumatic event in the workplace.

E. DISCIPLINARY ACTION

Violations of this Policy by an employee are subject to disciplinary action, up to and including termination, and civil and/or criminal charges provided by law. Tribal political appointees are subject to disciplinary action at the discretion of the appointing Tribal Business Council ("TBC") and/or the TBC. Any disciplinary action implemented for violations of this Policy is not subject to the Tribe's Complaints, Grievances, and Appeals Policies and Procedures. Consequently, any such final disciplinary actions are not appealable.

A person engaging in violent behavior may be subject to immediate suspension with a recommendation of termination to the TBC if he/she is an employee or may prohibited from entering a Tribal workplace if he/she is a customer, client, Tribal member, or visitor.

SECTION 5.7 — DRUGS AND ALCOHOL IN WORKPLACE

This Policy prohibits the illegal or unauthorized use, possession, sale, purchase, transfer, or presence in an employee's system of any illegal or prohibited substance, including alcohol, while on duty, while on the Tribe's premises, and/or while engaged in Tribe business. This Policy also prohibits off-duty conduct that could be detrimental to the public trust, including conduct that results in arrest or conviction for criminal drug/alcohol offenses.

The Tribe may recommend completion of an approved rehabilitation program as a means of discipline. Violation of this Policy will result in disciplinary action up to and including termination.

This Policy also includes drug testing under the following circumstances:

1. Pre-employment testing for safety sensitive positions;
2. Random testing for safety sensitive positions;
3. Reasonable suspicion testing for all employees;
4. Following an accident or injury;
5. Following return to duty after rehabilitation;
6. Follow-up to rehabilitation.

For further information regarding this Policy please refer to Appendix A of this Manual.

SECTION 5.8 — SAFETY AND INJURIES IN THE WORKPLACE

Employees are required to obey safety rules, exercise caution in all their work activities, and immediately report any unsafe conditions to their Supervisor. All employees are expected to correct unsafe conditions as promptly as possible.

All accidents that result in injury of any nature must be reported immediately to your Supervisor. Such reports are necessary to comply with laws and initiate insurance and workers compensation procedures.

The Tribe provides comprehensive workers compensation coverage for its employees. Workers' Compensation covers any injury or illness, as defined by law, sustained in the course of employment, that requires medical, surgical or hospital treatment.

Any employee who sustains a work-related injury or illness should inform his or her Supervisor **within twenty-four hours (required by law)**. No matter how minor an on-the-job injury may appear, it is important that it be reported immediately and forwarded to the Human Resources Department. Failure to do so could result in the employee being denied benefits.

SECTION 5.9 — ANTI-FRAUD

The Tribe is committed to the promotion of ethical behavior and values and, to that end, prioritizes a work culture that enhances the culture of integrity and transparency, and emphasizes the individual responsibility of its employees.

This Anti-Fraud Policy shall be construed in addition to and in accordance with the Mandan, Hidatsa & Arikara Nation Ethics in Government Ordinance (“Ordinance”), and where any terms conflict, the Ordinance shall control.

A. DEFINITION

Fraud means any illegal act characterized by deceit, concealment, or violation of trust. Such acts are not dependent upon the application or threat of violence or of physical force. Fraud is perpetrated by individuals to obtain money, property, or services; to avoid payment or loss of services; or to secure personal or business advantages.

B. EMPLOYEE RESPONSIBILITIES

All employees are responsible for preventing and reporting fraud. Employees shall act with the highest degree of honesty, integrity, accountability, and propriety. Employees shall conduct their duties in a manner that does not jeopardize, but rather safeguards, the Tribe’s resources and assets. Employees are strictly prohibited from engaging in fraudulent behavior.

C. REPORTING

Any employee suspicions of fraud or other irregularities should be immediately reported in writing to the Human Resources Department and/or Chief Executive Officer, or directly to the Tribe’s Ethics and Rules Committee. An employee who makes a report made under this Policy shall be afforded the protections provided pursuant to the Tribe’s Whistleblower Protection Policy.

D. DISCIPLINE

Employees who violate this Anti-Fraud Policy are subject to disciplinary action, up to and including termination, and civil and/or criminal charges provided by law. Tribal political appointees are subject to disciplinary action at the discretion of the appointing official and/or the Tribal Business Council.

SECTION 5.10 — WHISTLEBLOWER PROTECTION

The Tribe encourages its employees to report suspected or actual conduct constituting a matter of public concern to the Human Resources Department, Chief Executive Officer, or directly to the Tribe’s Ethics and Rules Committee. This Policy ensures that employees may report without retribution. Whistleblower protections are provided in two important areas: confidentiality and retaliation. There shall be no adverse employment actions taken against a reporting employee, such as termination, compensation decreases, demotion, poor work assignments, harassment, or other

mistreatment of the reporting employee as a result of such report.

A. DEFINITIONS

1. Matter of public concern. Matter of public concerns means any of the following actions or omissions of any Tribal employee in the course of their employment that the whistleblower reasonably believes has occurred within six (6) months of the date of the report:
 - a. a violation of a tribal, state, federal, or municipal law, regulation, or ordinance;
 - b. a danger to public health or safety;
 - c. dishonest, unethical, or otherwise improper; and/or
 - d. gross mismanagement, substantial waste of funds, or a clear abuse of authority.
2. Retaliation. Retaliation means threats, direct or indirect (as by suggestion or inference), that an employee's job, advancement, work assignments, wages, benefits, or rights may be lost, diminished, or impaired as a result of an employee filing or intending to file a report against another employee that is a matter of public concern.
3. Whistleblower. Whistleblower means an employee who reports to Tribal management (Supervisor, director, Human Resources Director, Chief Executive Officer, etc.) an activity that the reporting employee reasonably, and in good faith, considers to be a matter of public concern.

B. CONFIDENTIALITY

The confidentiality of the whistleblower will be maintained to the greatest extent possible; however, a whistleblower's identity may have to be disclosed to conduct a thorough investigation, to comply with the law, and to provide accused individuals their legal rights of defense.

C. REPORTING

If an employee has knowledge, or a reasonable concern, of conduct that may constitute a matter of public concern, the employee is to report such activity in writing to their immediate Supervisor, Department Director, or the HR Director. All reports or concerns will be promptly submitted by the receiving Supervisor or director to the HR Director, who is responsible for investigating and coordinating any necessary corrective action. Any concerns involving the HR Director should be reported to the CEO.

D. RETALIATION

Any suspected retaliation against a whistleblower should be reported immediately, in writing, to the Supervisor of the retaliating employee, the Supervisor of the employee experiencing retaliation, or the HR Director. All reports will be investigated, and any employee found to have retaliated against an employee for filing a report in good faith will be appropriately disciplined, up to and including a recommendation of termination to the Tribal Business Council. The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.

E. TRIBAL ACTION

If it is determined that an employee of the Tribe committed an act that is a matter of public concern, the Tribe will take appropriate corrective action in accordance with Chapter 7 of these Policies. The Tribe may also avail itself to any civil and criminal legal mechanisms available under the law.

F. RECORDS

Unless necessary to document discipline or termination of an employee as a result of a whistleblower report, all records related to whistleblower reports shall not be part of any employee personnel file. Such records shall be maintained in accordance with the Human Resources Record Retention & Destruction Policy.

G. LIMITATIONS

A person is not entitled to the whistleblower protections provided in this section unless he or she reasonably believes that the information reported is, or is about to become, a matter of public concern, and reports the information in good faith.

A person is entitled to the protections under this policy only if the matter of public concern is not the result of conduct by the individual seeking protection, unless it is the result of conduct by the person that was required by the whistleblower's Supervisor, director, or other management personnel.

SECTION 5.11 — SMOKE/VAPE-FREE WORKPLACE

Smoking and vaping are prohibited in all enclosed areas within all Tribal premises without exception. This includes Tribal and GSA vehicles, and all other enclosed facilities.

For purposes of this policy, smoking refers to the use of traditional tobacco products. Vaping refers to the use of electronic nicotine delivery systems or electronic smoking devices.

Employees wishing to smoke or vape may do so only within authorized areas designated by the Tribe.

Failure to abide by this policy may result in disciplinary action up to, and including, recommendation of termination to the Tribal Business Council.

SECTION 5.12 — CHILDREN IN THE WORKPLACE

For purposes of this Policy, children refers to individuals under 18 years of age, or any child not otherwise authorized to accompany an employee to work pursuant to the Infant at Work and Breastfeeding Mothers Policy, located in Appendix C of these Policies.

Generally, children are not permitted in the workplace. However, some exceptions may apply. With Supervisory approval, children may be brought to the workplace of an employee for brief visits.

Children must always be supervised by their parent or guardian during these visits. Approval is at the sole discretion of the employee's Supervisor and there is no burden of justification on the Supervisor for turning down a request. Circumstances in which an employee may, with Supervisor approval, bring his/her child into the workplace include:

1. Brief visits – (e.g., an employee brings his/her child to introduce to co-workers);
2. Specific Tribal events (e.g., events on Tribal premises that are sanctioned by the Tribe and where attendance by children is encouraged); and
3. In the event of an emergency with no other alternatives and with the director's approval. Such stays should not exceed two (2) hours.

Children 12 years of age and older may be allowed to stay in the workplace for longer periods of time. A child's presence must not disrupt the work environment or negatively impact productivity. Children are not allowed in areas containing confidential information. Sick children are not allowed in the workplace.

NOTE: An employee who wishes to bring their child into the workplace **must first sign a waiver of liability** acknowledging that the Tribe is not responsible for any harm or bodily injuries that may occur to the child while in the workplace. Liability waiver forms may be obtained from the Human Resources Department.

Children are not permitted in any hazardous areas. Areas that are considered hazardous include, but are not limited to:

1. Mechanical rooms, confined spaces, food preparation areas;
2. Any areas, indoors or out, containing power tools or machinery with exposed moving parts or rotary equipment;
3. Areas with excessive noise, temperatures, or pollutants;
4. Tribal or GSA vehicles and heavy duty or other motorized equipment;
5. Laboratories or other specialized work areas that include chemicals, biological hazards, radioactive hazards, flammables, explosives, compressed gasses, sharp objects, lasers, animals, or hazardous wastes;
6. Any other high-risk areas (rooftops, construction zones, etc.); and
7. Patient treatment or direct client service areas.

Failure to abide by this policy may result in disciplinary action up to, and including, recommendation of termination to the Tribal Business Council.

SECTION 5.13 — EMPLOYEE SOCIAL MEDIA POLICY

A. PURPOSE AND DEFINITION

The Tribe acknowledges the free speech rights of its employees contained in the United States Constitution and the Tribe's Constitution; however, there are certain limits to such free speech as addressed in this Policy.

“Social media” refers to platforms and technologies that allow a social media user to share communications, postings or information, or participate in social networking.

B. APPLICABILITY

This Policy applies to all employees who work for the Tribe, whether employed full-time or part-time, and while furloughed, on paid or unpaid vacation, or on family medical leave.

C. ACCEPTABLE USE OF SOCIAL MEDIA

1. Off-duty Use of Social Media

Employees must ensure that social media activity does not interfere with their work. The Tribe considers off-duty social media activities to be personal endeavors, and employees may use them to express their thoughts or promote their ideas.

2. On-duty Use of Social Media

Employees may engage in social media activity during work time provided it: (1) is directly related to their work; (2) is approved by their Supervisor/director; and (3) does not identify, whether by reference or photograph, the Tribe’s leadership, employees, clients, customers, vendors, or otherwise confidential material without express permission. The Tribe monitors employee use of Tribal computers and the Internet, including employee social media activity.

The creation of a social media page with use of any variation of the Tribe’s name or any associated department must be approved by the Chief Executive Officer (“CEO”). Approval of such social media page(s) is at the discretion of the CEO. Further all usernames, passwords, and other log-in information must be kept current and shared with the CEO or delegate.

D. EMPLOYEE CONDUCT AND STANDARDS

A social media site is a public place, and employees should avoid making inappropriate comments or engaging in inappropriate behaviors. Employees should not engage in harassing or discriminatory behavior that targets other employees or individuals because of their protected class status or make defamatory comments on social media. Employee social media conduct shall comply with the requirements set forth in the Discrimination and Harassment and Workplace Violence sections of these Policies.

1. Prohibited Behavior

The following are specific examples of prohibited social media conduct:

- Defamatory statements. A defamatory statement is one that is spoken, untrue, and tends to injure the reputation of the person referred to in it. A social media video post in which an employee falsely states “Jane Doe was fired for stealing supplies from her employer,” is an example of a defamatory statement.

- Pornographic content. A social media post which depicts the employee or other person partially clothed or unclothed, engaging in erotic kissing or touching, or making statements of a sexual nature are examples of social media posts which are pornographic in nature. This includes posts of an employee, with their consent, made by another individual.
- Disclosure of proprietary information. Examples of proprietary information include, but is not limited to, the Tribe's financial data, salary structure, vendor lists, contracts, computer system details, etc. Disclosure of such information on social media is prohibited.
- Harassing conduct. An employee who comments, messages, or posts intimidating, or offensive content aimed at another colleague through social media is considered harassment. For example: sending vulgar or offensive messages to fellow employees, whether during work hours or not, or to any other individuals during work hours constitutes harassment.
- Libel. A libelous statement is a written or published defamatory statement. The defamatory statement example above, if made as a written post rather than a video, would be libelous.
- Hostile content. An example of hostile social media content is when an employee shares derogatory or violent words or imagery aimed at or as commentary on a specific social or political group.

Employees shall not engage in criminal or dishonest conduct via social media.

E. POST DISCLAIMERS

If an employee discusses matters related to the Tribe on a social media site, the site or posting must include a disclaimer, before the sharing of any employee content, stating that the views expressed therein are not the views of the Tribe and that the employee is expressing only their personal views (e.g. "The views expressed on this website/social media account are mine alone and do not necessarily reflect the views of my employer/the MHA Nation.") This disclaimer must be placed in a prominent position on the applicable social media website or application and must be repeated for each posting expressing an opinion related to the Tribe or the Tribe's business.

Employees must keep in mind that if they post information on social media that is in violation of this Policy, or other applicable Tribal policies, and/or Tribal, federal, state, or local law, the disclaimer will not shield them from disciplinary action.

F. COMPETITION

Employees should not use social media to criticize the Tribe's competition and should not use it to compete with the Tribe.

G. CONFIDENTIALITY

Employees shall not identify or reference the Tribe's clients, customers, or vendors without express permission. Employees are prohibited from disclosing the Tribe's trade secrets or information

restricted from disclosure by law. Employees may write about their jobs in general but may not disclose any confidential or proprietary information. Please refer to Chapter 1(C) of these Policies. When in doubt, ask before publishing.

H. NEW IDEAS

New ideas related to work or the Tribe's business belong to the Tribe and employees shall not post them on a social media platform without the Tribe's permission.

I. TRADEMARKS AND COPYRIGHTS

Employees shall not use the Tribe's or others' trademarks on a social media platform or reproduce the Tribe's or others' material without first obtaining permission.

J. LEGAL

Employees are expected to comply with all applicable laws, including but not limited to, Tribal law, Federal Trade Commission guidelines, copyright, trademark, and harassment laws.

K. DISCIPLINE

Violations of this policy may result in disciplinary action up to and including immediate termination of employment.

NOTE: Nothing in this policy is meant to, nor should it be interpreted to, in any way limit employee rights under any applicable federal, state, Tribal, or local laws, including employee rights under the National Labor Relations Act to engage in protected concerted activities with other employees to improve or discuss terms and conditions of employment, such as wages, working conditions, and benefits.

CHAPTER 6: SEPARATION FROM EMPLOYMENT

The Mandan Hidatsa and Arikara Nation strives to sustain and maintain a level of employment sufficient for operations and delivery of quality services to its members. This Chapter addresses the various ways by which employment with the Tribe may be separated.

SECTION 6.1 — EMPLOYEE RESIGNATION

Employees are free to voluntarily resign from their position with the Tribe at any time. Employees are required to give at least two (2) weeks' written notice to their Supervisor prior to their anticipated resignation date. The notice of resignation shall include a forwarding address. In the absence of an employment contract, employees who serve in health care positions are required to give thirty (30) days' written notice of resignation. Failure to give the required notice shall result in forfeiture of non-vested tribal benefits.

Verbal resignations shall not be accepted. Supervisors should make every attempt to ameliorate the situation resulting in verbal resignation. Depending upon the circumstances, this may involve suggesting to the employee that he/she take leave. In the event that an employee verbally resigns and leaves his/her duty station, the action of the employee will be considered "job abandonment." Under these circumstances, the Supervisor may make a recommendation for termination to the Tribal Business Council.

Upon receipt of a written resignation, the Supervisor shall forward the employee's notice of resignation to the Human Resources Department. The HR department shall follow the closeout procedures.

An employee who is absent from work for three (3) consecutive workdays without proper notification or request for leave to the employee's Supervisor shall be deemed as having involuntarily resigned from employment and the employee's employment will be thereby terminated without the right to a grievance or appeal.

Should an employee submit a resignation letter while a disciplinary action is pending, the disciplinary action will continue and both the disciplinary action with recommended discipline and resignation will be submitted to the Personnel Selection Committee for consideration. Additionally, record of the pending disciplinary action will remain in the employee's personnel file.

A. RESCINDING A RESIGNATION

An employee seeking to rescind their resignation may do so by submitting a written request to their Supervisor. Such rescission may only be made under the following circumstances:

1. if the employee's Supervisor and/or Department Director has not already provided written acceptance of the employee's resignation;
2. if such request to rescind a resignation is submitted prior to the Human Resources Department processing the closeout;

3. if the employee's position that they resigned from has not already been filled;
4. if the employee has not previously rescinded a resignation within thirty (30) days prior;
and
5. if the employee did not resign while a disciplinary action was pending.

Requests to rescind a resignation will be considered on a case-by-case basis by the employee's Supervisor and/or Department Director, prior to the Human Resources Department processing the closeout. If a request to rescind a resignation is accepted, the Supervisor and/or Department Director will provide such acceptance to the employee in writing and notify the HR department immediately.

SECTION 6.2 — RETIREMENT

Employees are eligible for retirement on the first day of the month following the month in which age sixty-five (65) is reached. An employee who chooses to retire shall provide his/her Supervisor with advance notice; a 90-day notice is preferred.

An employee who has chosen to retire from employment shall contact the Human Resource Department for initiation of the necessary documentation to access his/her pension/retirement fund.

SECTION 6.3 — LAYOFF/REDUCTION IN FORCE

Layoffs may occur when it is determined by the Tribal Business Council that a position is no longer necessary or cost effective. In such event, the Tribe will make every effort to transfer laid off employees to other open and available positions that the laid off employee may be qualified for. The Tribe will not guarantee the same rate of pay.

Federal and state grant or contract programs often provide the funds through which positions are created and established within the Tribe. When these funds are no longer available, the necessity may arise to lay off individuals employed under these programs. In the event that a layoff is inevitable, the Tribe will attempt to communicate the information to affected employees as soon as possible.

A reduction in force may be necessary due to changes in the organization or the lack of funds. The following order for work force reduction shall be applied to non-Supervisory employees and Supervisory personnel whose work is generally of a routine or repetitive nature and whose responsibilities do not regularly require exercise in judgment are subject to the following order of work force reduction:

1. Employees under the probationary period in order of effective date of hire, beginning with the most recently hired.
2. Temporary employees in order of effective date of hire, beginning with the most recently hired.
3. Permanent part-time employees in order of effective date of hire, beginning with the most recently hired and performance appraisal outcome.
4. Permanent full-time employees based upon length of service, and performance appraisal rating.

Reduction in force shall be applied to all other employees in accordance with the following criteria:

1. Demonstrated current and past performance, based on performance appraisal evaluation;
2. Promotion potential and transferability of skills to other duties and responsibilities; and
3. Length of service with the Tribe.

SECTION 6.4. — TERMINATION

Employment with the Tribe is also subject to termination during the probationary period without cause and termination after the probationary period for cause in accordance with Chapter 7.

CHAPTER 7: EMPLOYEE DISCIPLINE

The Mandan, Hidatsa and Arikara Nation follows a system of progressive discipline that is intended to sustain and maintain the expectations to which it holds its employees. These policies are also intended to improve employee performance and to assist employees to reach their full potential.

SECTION 7.1 — DISCIPLINARY STANDARDS

Discipline is intended to assist employees in taking responsibility for unacceptable behavior and conduct. It is not the Supervisor's responsibility to change an employee's behavior. The employee is responsible for correcting his/her own behavior.

Discipline is necessary in those instances when an employee fails to adhere to policies and procedures or fails to perform assigned duties in a satisfactory manner. Discipline is not intended to be punitive in nature, but rather it is a means whereby the Supervisor attempts to teach, instruct, and inform the employee of behavioral or performance shortcomings and what must be done to correct those shortcomings. When a Supervisor exercises discipline, the stated values of honesty and ethical behavior, and mutual respect should guide both the content and presentation of the discipline.

SECTION 7.2 — DISCIPLINARY PROCESS

A. INVESTIGATION

When a problem arises that may require employee discipline, the Supervisor must take the time to gather all the relevant facts concerning the situation. The investigation may involve nothing more than interviewing the employee(s) involved and taking notes. The Supervisor may be required to review documents such as time and attendance records, performance evaluations, disciplinary actions, safety records, work orders/requests, and any other documentation that might be pertinent to the situation being investigated.

A thorough and objective investigation by a Supervisor is critical to making a good decision in response to a problem. Supervisors may need several days in order to complete their investigation. This period of time should not exceed five (5) working days.

Investigations related to law enforcement officer conduct are addressed under the Tribal Law Enforcement Officer Misconduct Investigations Policy in Appendix E of these Policies.

B. MEETING WITH THE EMPLOYEE

Upon completion of an investigation, the Supervisor will schedule a meeting with the employee to discuss the facts that have been gathered. The purpose of this meeting is to let the employee know exactly what the Supervisor has discovered and to give the employee an opportunity to clarify, correct or explain any points the employee believes have not been correctly understood.

The employee should be given an opportunity to present his/her “side of the story” in light of the facts that have been gathered. The Supervisor should take notes of the meeting, documenting the comments and information presented by the employee.

C. DECIDING WHAT ACTION TO TAKE

After the Supervisor has completed the investigation (including meeting with the employee), the Supervisor must decide what action to take. In addition to the information gathered during the Supervisor’s investigative activities, other factors that may be considered including the employee’s tenure under the Supervisor, the employee’s recent performance evaluations, and previous counseling or disciplinary actions.

The Supervisor should exercise reasonable judgment and decide which disciplinary action is appropriate given all the facts surrounding the situation.

The Supervisor should be mindful of being consistent, uniform, and equitable when deciding what action to take. Violations or situations that are similar in nature should be dealt with in a similar manner by the Supervisor, unless facts warrant otherwise.

The Supervisor should ask the employee what he/she intends to do to correct the problem. If the employee makes a commitment to change his/her behavior, a specific plan of action needs to be agreed upon. If the employee has no comments on how he/she intends to correct the problem, the Supervisor must present the corrective action expected of the employee. The corrective action taken should fit the violation.

NOTE: The levels of discipline outlined in these Policies are progressive, and it is at the Supervisor’s discretion which level of discipline is necessary in a given situation. Accordingly, when grounds for disciplinary action exists, an employee is not required to first receive counseling before being placed on a performance improvement plan; nor is a Supervisor required to provide an oral warning to an employee before imposing a more severe disciplinary action, such as suspension or a recommendation for termination.

D. DOCUMENTATION

Disciplinary actions may be questioned or challenged. Good and adequate documentation will provide Supervisors with the necessary information needed to respond to all challenges.

Any communications between the Supervisor and employee should be documented for the benefit of both parties. Maintenance and retention of documentation will explain why decisions were made.

SECTION 7.3 — GROUNDS FOR DISCIPLINARY ACTION

Employees are subject to disciplinary action when an employee fails to adhere to these Policies. The following is a list of additional conduct for which an employee may be subject to disciplinary action. This list is not intended to be all-inclusive, and employees may be disciplined for other

types of misconduct not included within this list:

- Fraternization in the workplace.
- Failure to perform assigned work or follow specified job instructions.
- Failure to perform work in a satisfactory manner.
- Failure to observe safety procedures and rules.
- Carelessness or negligence in performing work.
- Repeated absence or tardiness from work.
- Stretching breaks or otherwise wasting time.
- Inability or unwillingness to work harmoniously with other employees.
- Failure to maintain or operate equipment, tools, or vehicle in a proper manner.
- Misuse or misappropriation of tribal funds or tribal property.
- Falsifying, misrepresenting, or omitting information for the benefit of self or others.
- Discourteous treatment of others.
- Giving or accepting gifts, money, or favors in exchange for some benefit to self or others.
- Serious misconduct on the job.
- Abusive language to the public or other employees.
- Unauthorized use of telephones.
- Insubordination by refusing a Supervisor's directive.
- Sleeping on the job.
- Misuse of leave.
- Theft of tribal property or property of another employee.
- Unauthorized absence from work or duty station.
- Violation of any departmental or program rules, procedures, policies, or regulations.

SECTION 7.4 — DISCIPLINARY ACTION ALTERNATIVES

Supervisors must decide what is an appropriate disciplinary action in a given instance. Factors to consider in making this decision include:

- Severity of the problem or degree of negligence;
- Number of previous disciplinary actions;
- Frequency of previous problems (time lapse between disciplinary actions); and
- Employee's work record.

One-on-one counseling sessions with the Supervisor may be used in lieu of formal discipline. One-on-one counseling sessions offer an opportunity for the Supervisor to meet privately with the employee to discuss performance or behavioral problems when they first arise. A counseling session with an employee will not require the Supervisor to place any written disciplinary action into an employee's personnel file. However, the Supervisor should maintain notes of the meeting held with the employee.

Performance improvement plans (PIP) may also be used by a Supervisor in lieu of taking disciplinary action against an employee. A performance improvement plan may include the employee being placed on an additional probationary period, during which the employee must

address and correct any performance shortcomings or behaviors. Failure to comply with a performance improvement plan and a satisfactory probationary period may result in the Supervisor taking formal disciplinary action.

SECTION 7.5 — FORMAL DISCIPLINARY ACTION

All disciplinary actions shall be processed and documented on a form provided by the Human Resources Department. Supervisors may attach written memorandums. Copies shall be provided to the employee and the original document will be housed with the Human Resources Department. The Human Resources Department shall be exclusively responsible for maintaining personnel files and records and all disciplinary matters and documentation shall be maintained in those files. **Supervisors and departments shall not maintain separate personnel files.**

The levels of formal discipline outlined below are progressive, and it is at the Supervisor's discretion which level of discipline is necessary in a given situation.

A. 1ST WRITTEN WARNING

The 1st written warning is the level of discipline intended for less serious infractions and/or first offenses. In administering a 1st written warning, the Supervisor will meet with the employee and discuss the following:

1. What is expected of the employee and why;
2. How, in the opinion of the Supervisor, the employee has not met the personal conduct or performance requirements of the job and how his/her personal conduct or performance has been unsatisfactory;
3. The employee's reasons for his/her personal conduct and/or poor performance;
4. Specific actions the employee needs to take to improve their conduct or performance to a satisfactory level; and
5. The consequences to expect if the behavior or poor performance continues.

Upon completion of the meeting with the employee, the Supervisor will sign the 1st written warning, attempt to obtain the signature of the employee, and provide a copy to the employee with the original to the Human Resources Department.

In the event the employee refuses to sign a written warning, the Supervisor should have another Director/Supervisor witness by initialing the written warning that the employee was issued a written warning and refused to sign the warning. If an employee is unavailable to sign due to incarceration, failing to report to work for three (3) consecutive days, etc., the Supervisor will write "unavailable to sign" on the employee's signature line, and have the written warning witnessed by another Director/Supervisor.

B. 2ND WRITTEN WARNING

The 2nd written warning is intended for serious and/or repeated infractions. When a Supervisor determines a 2nd written warning to be appropriate discipline, the Supervisor will present the

written warning to the employee and discuss its contents, which should include the following:

1. Previous warnings and write ups;
2. A description of specific infraction or violation;
3. The employee's response to the disciplinary action;
4. Specific actions the employee needs to take to improve personal conduct or performance to a satisfactory level; and
5. A warning that continuation of the problem(s) will result in more severe disciplinary action up to and including termination.

Upon completion of the meeting with the employee, the Supervisor will sign the 2nd written warning, attempt obtain the employee's signature, and provide a copy to the employee with the original to the Human Resources Department.

In the event the employee refuses to sign a written warning, the Supervisor should have another Director/Supervisor witness by initialing the written warning that the employee was issued a written warning and refused to sign the warning. If an employee is unavailable to sign due to incarceration, failing to report to work for three (3) consecutive days, etc., the Supervisor will write "unavailable to sign" on the employee's signature line, and have the written warning witnessed by another Director/Supervisor.

C. SUSPENSION

Depending upon the nature and severity of the violation, an employee may be suspended for a maximum period of six (6) months. Suspension shall be imposed under the following Classes, at the discretion of the employee's Supervisor and/or Department Director:

1. Classes of Suspension

- a. **Class I Suspension:** Suspension Without Pay with the following conditions:
 - No accumulation of annual or sick leave
 - No annual or other leave may be used during the suspension.
- b. **Class II Suspension:** Suspension Without Pay. An employee under this section shall not receive compensation for employment; however, the employee may exhaust their annual leave during the suspension.
- c. **Class III Suspension:** Suspension with Pay. A suspended employee may receive full compensation for up to thirty (30) days. This Class of suspension is intended to be used for investigations pending possible suspension without pay or termination.
 - The Tribal Business Council may authorize, at its discretion, a longer paid suspension period for an employee.
 - If the Tribal Business Council authorizes a longer paid suspension period for an employee in a position funded by a federal program, such suspension period after the first thirty (30) days will be paid out of tribal funds.

Upon suspension, the suspended employee's Department Director shall work with the Chief Executive Officer, Federal Programs Manager, Human Resources Director, Payroll Department, and/or other appropriate department or individual to properly determine the allocation of funds for a paid suspension or use of accrued leave.

If workloads are such that a suspension would be inconvenient to the work team and/or severely lessen productivity, an employee's suspension may be delayed by a few workdays or until the following work week in order to lessen the negative impact of the employee's absence on the work crew.

Suspensions without pay shall be documented in the same manner as written warnings.

An employee who is reinstated following a suspension may be required to complete a Performance Improvement Plan.

D. TERMINATION AND INVOLUNTARY RESIGNATION

Termination or involuntary resignation is the final level of discipline. Terminations and involuntary resignations will be documented on the Disciplinary Action form with supporting documentation. An employee who has been absent from work for three (3) consecutive workdays without proper notification or request for leave to their Supervisor shall be deemed to have involuntarily resigned and shall not have the right to a grievance or appeal process.

The Tribal Business Council shall review and approve all terminations. All relevant documentation must be provided. An employee may be suspended with or without pay pending approval of a termination or involuntary resignation by the Tribal Business Council.

Upon a decision by the Tribal Business Council to terminate an employee, such decision shall be immediately provided to the Human Resources Department. The Human Resources Department shall notify department managers, security, and employees, as necessary, of the termination.

When a Supervisor anticipates the employee receiving a disciplinary action may become hostile, the Supervisor shall request Tribal Security personnel to deliver the disciplinary action to the employee at their workplace or their last known address on file. The Security personnel making such delivery shall acknowledge receipt of delivery or the employee's refusal to accept such delivery.

E. RIGHT TO APPEAL

An employee may have a right to appeal certain disciplinary actions in accordance with Chapter 8 of these Policies.

SECTION 7.6 — ARRESTS AND CONVICTIONS POLICY

A. GENERAL POLICY

It is the policy of the MHA Nation to provide a safe and secure environment for its employees and the public with whom its employees interact; to protect its funds, property, and other assets; and to maintain its reputation and integrity. This Arrests and Convictions Policy, set forth in Appendix D to these Policies, provides requirements and procedures for employees to report arrests and convictions to their Supervisor immediately.

CHAPTER 8: COMPLAINTS, GRIEVANCES, AND APPEALS POLICIES AND PROCEDURES

SECTION 8.1 — GENERAL PROVISIONS

A. DEFINITIONS

1. **Complaint.** A complaint shall generally include an employee's expressed feeling of dissatisfaction with physical or psychological conditions of employment or with treatment by Supervisors, Department Administrators, co-workers, other employees, committees, or other decision-making bodies affecting any aspect of employment, and shall include, but not be limited to, the following specific actions whether personally experienced by the employee or witnessed by the employee against another individual:
 - a. Application of Tribal policies, procedures, rules, or regulations which are deemed by the employee to be detrimental.
 - b. Treatment deemed by the employee to be unfair, inequitable, unjustifiable, or unreasonable, such as intimidation, harassment, coercion, or reprisal;
 - c. Action deemed by the employee to be discriminatory based on color, race, national origin, sex, age, religion, marital status, or any other protected class; or
 - d. Improper or unfair administration of employee benefits or other aspects of employment, such as salary, fringe benefits, leave, performance evaluation, or transfer.
2. **Grievance.** A grievance shall generally constitute any of the situations identified as a Complaint which has not been resolved through the Complaint Procedure as detailed in Section 8.2 below. *In instances of **suspension or termination only**, an employee may bypass the Complaint Procedure and file a Grievance directly with the Human Resources Department if filed within **twenty-four (24)** hours of such suspension or termination.*

B. FINALITY OF COMPLAINT/GRIEVANCE PROCEDURE RESOLUTION

The resolution reached by the parties at any step of the Complaint Procedure or Grievance Procedure shall be final and binding. Accordingly, an employee may not renege on or appeal a resolution reached and agreed to by all involved parties at any stage of the Complaint Procedure or Grievance Procedure, and such resolution is final.

SECTION 8.2 — COMPLAINTS

An employee who has an issue with a fellow employee, Supervisor, or certain working conditions which he/she desires to resolve may do so by filing a Complaint in accordance with this Policy.

A. COMPLAINT PROCEDURE

An employee may file a Complaint by complying with the following procedural steps:

1. Informal discussion with Supervisor

Employee concerns should first be discussed with the employee's Supervisor. Many concerns can be resolved informally when an employee and Supervisor take time to review the concern and discuss options to address the issue.

2. Written Complaint to Supervisor

If the aggrieved employee is not satisfied with the results obtained through informal discussions, the employee may submit a written Complaint by utilizing the Employee Complaint Form available in the Human Resources Department office to his/her Supervisor. The aggrieved employee has five (5) business days from the date of the occurrence upon which the Complaint is based, or from the date of informal discussions with the employee's Supervisor, to present such Complaint in writing to his/her Supervisor. In the event the Complaint is toward the Supervisor, the aggrieved employee may present the Complaint to the Department Director. If the complaint is towards the Department Director, the aggrieved employee may present the Complaint to the Department Administrator. The written Complaint shall set forth the following information:

- a. The nature of the Complaint;
- b. Detailed information including evidence of the issue, witnesses, related policies, etc.;
- c. The remedy or outcome sought by the aggrieved employee; and
- d. An email address to which any communications or decisions related to the Complaint may be addressed.

The Supervisor shall acknowledge receipt of the Employee Complaint Form by signature and shall note the date of receipt in writing. The Supervisor shall provide the submitted Employee Complaint Form to the Human Resources Department within two (2) working days of receipt.

Within three (3) business days from the date of receipt of the written Complaint, the Supervisor shall meet with the aggrieved employee and any other persons directly involved in the Complaint to discuss the facts and circumstances surrounding the Complaint and attempt to resolve the matter to the satisfaction of all parties involved.

On the business day next following the date of the meeting between the Supervisor, aggrieved employee, and the other party, the Supervisor shall direct his/her written decision regarding the Complaint to the aggrieved employee by email at the email address provided in the written Complaint.

In the event that the aggrieved employee is dissatisfied with the decision rendered by the Supervisor or the Supervisor has failed to take the requisite action within the time period prescribed above the aggrieved employee may pursue the next step in this procedure.

3. Presentation to Department Director or Administrator

In the event that the Supervisor failed to take the required actions identified above, or in the event the employee's Complaint is directly against the Supervisor, the aggrieved employee may present his/her Complaint to the Department Director. If the complaint is towards the Department Director, the aggrieved employee may present the Complaint to the Department Administrator. The employee has two (2) days from the date of receipt of the written decision of the Supervisor, or from the date which the Supervisor failed to take such required action, to present his/her Complaint in writing to the Department Director or the departments Administrator if the complaint is towards the Department Director. If the Complaint is not directed at the Supervisor or Department Director, and was presented first to the Supervisor pursuant to the previous step in this procedure, the written Complaint shall set forth the following information:

- a. An explanation of the Complaint and details of all previous efforts to resolve the issue;
- b. A copy of the written Complaint submitted to the Supervisor;
- c. A copy of the Supervisor's written response to the employee's Complaint; and
- d. Detailed information regarding the employee's dissatisfaction with the Supervisor's response.

If the Complaint is toward the aggrieved employee's Supervisor or Department Director, and is being presented for the first time under this step, the written Complaint shall set forth the following information:

- a. The nature of the Complaint;
- b. Detailed information including evidence of the issue, witnesses, related policies, etc.;
- c. The remedy or outcome sought by the aggrieved employee; and
- d. An email address to which any communications or decisions related to the Complaint may be addressed.

The Department Director or Administrator shall acknowledge receipt of the Employee Complaint Form by signature and shall note the date of receipt in writing. The Department Director or Administrator shall provide the submitted Employee Complaint Form to the Human Resources Department within two (2) working days of receipt thereof.

Within three (3) business days from the date of receipt of the written Complaint, the Department Director or Administrator shall meet with the aggrieved employee, the Supervisor and any other persons directly involved in the Complaint to discuss the facts and circumstances surrounding the Complaint and attempt to resolve the matter to the satisfaction of all parties involved.

On the next business day following the date of the meeting between the Department Director or Administrator, Supervisor, aggrieved employee, and other involved parties, the Department Director or Administrator shall direct his/her written decision regarding the Complaint to the aggrieved employee by email at the email address provided in the written Complaint.

If the employee is dissatisfied with the decision of the Department Director or Administrator, or the Department Director or Administrator has failed to take the requisite action within the time period prescribed above, the aggrieved employee may file a Grievance in accordance with the Grievance Policy as provided in Section 8.3 below.

NOTE: The aggrieved employee must complete all steps of the Complaint Procedure prior to filing a Grievance or such Grievance will be denied. A Grievance may only be filed in the event the Complaint Procedure does not resolve the issue at hand.

B. PROCEDURE EXCEPTIONS

Combined Supervisor/Administrative Positions. In certain instances, one individual may maintain two (2) Supervisory/administrative positions (e.g., a Department Director or Administrator may also be the sole Supervisor within the department, and the Human Resources Director may be the sole Supervisor within the Human Resources Office). In those instances, to avoid redundancy the aggrieved employee shall be required to present his/her Complaint only one (1) time to the appropriate Supervisor/administrative individual within the prescribed time period from the date of the occurrence upon which the Complaint is based. If the complaining employee's direct Supervisor is also the Department Director or Human Resources Director, the employee shall be allowed the time period provided under Section 8.3(B)(1)(b). (For example: If an employee's direct Supervisor is the Department Director, the employee would be allowed five (5) business days from the date of the occurrence to file a Complaint with the Human Resources Director, rather than within two (2) days after the date of the Supervisor's decision).

SECTION 8.3 — GRIEVANCES

Full- and part-time employees who have completed the initial ninety (90) day probationary period and who have completed all steps under the Complaint Procedure without receiving a satisfactory outcome may file Grievances as detailed below.

A. GENERAL GRIEVANCE INFORMATION

Each employee who has a valid Grievance should be encouraged to initiate and pursue the procedure prescribed in this Chapter and shall not be subjected to any form of reprisal in response to filing a Grievance.

1. Legal Representation

The first stage in the procedure at which the aggrieved employee shall be entitled to be represented by legal counsel shall be at the hearing before the Hearing Officer.

2. Form of Grievances

A Grievance shall be submitted to the Director of Human Resources by completing and filing the Grievance Form, available in the Human Resources Department office, and including any additional required documentation.

A Grievance missing any of the information required on the Grievance Form shall be deemed incomplete and returned to the aggrieved employee for completion. The Human Resources Department shall document in writing the reason for returning the Grievance Form to the employee and shall note the date of return. The aggrieved employee shall have the opportunity to resubmit the Grievance to the Human Resources Department within one (1) business day of the date of return, or prior to the expiration of the allotted time frame for filing a Grievance, if such period has not yet elapsed.

Grievances which are found to be without merit or made in bad faith shall nullify an employee's rights under this procedure.

3. Employee Requirements

Both parties to the Grievance must be present at and participate in every meeting required by this procedure. Failure on the part of the aggrieved employee to appear at any such meeting or hearing without good cause shall result in the automatic dismissal of the Grievance. Failure on the part of the adverse party to appear at any such meeting or hearing without cause may result in granting reasonable and appropriate relief sought by the aggrieved employee. Failure by an employee to meet any of the filing deadlines set out in this Chapter will result in the loss of the right to file a Grievance.

4. Confidentiality

All information and documentation relating to a Grievance filed pursuant to this Chapter shall be maintained in confidence. Supervisors, Department Directors, Department Administrators, and the Human Resources Director shall not discuss the facts and circumstances surrounding a pending Grievance with any individual other than the parties to the Grievance and other Supervisory or administrative personnel involved with the Grievance.

5. Notice

A party to a Grievance shall receive notice related to Grievance proceedings by email upon initiation of the Grievance procedure. Parties to a Grievance are responsible for monitoring their email accounts and/or providing the Human Resources Department with any substitute email address for notice. If for any reason a party to a Grievance does not receive notice by email due to his/her failure to provide an accurate email address, monitor such email account provided for notice, or failure to provide a substitute email address, any decision resulting from the party not receiving notice is final.

If a party is represented by an attorney, any notice related to the Grievance proceedings shall be made to the attorney of record by hand delivery, first-class mail, or via email with receipt of delivery.

6. Tribal Business Council or Committee

Neither party to a Grievance should attempt to circumvent the procedures prescribed in this

Chapter by approaching the Tribal Business Council, a Tribal Business Council Representative, or any Tribal Business Committee, nor attempt to influence or communicate with such person through an assistant, family member, or friend, in pursuit of an alternative resolution of a Grievance. Employees violating this provision shall nullify their rights to any procedure or relief provided in this Chapter.

Neither the Tribal Business Council nor any Tribal Business Council Committee shall have any involvement, formal or informal, at any stage in the Grievance procedure except as may be necessary to provide evidence as a witness in a hearing. Nor shall any individual member of the Tribal Business Council or of any Tribal Business Council Committee intercede in or interfere with the conduct of any pending Grievance.

7. Procedure Exceptions

Employee Suspensions or Terminations. In those cases where an employee has been suspended or terminated from his/her employment, the aggrieved employee shall have the right to file with the Human Resource Department a written request for a hearing before the Hearing Officer, without having to comply with the procedures set out in Section VI below. In these cases, the aggrieved employee shall file the request within a period of **twenty-four (24) hours** from receipt of the letter of suspension or termination. Failure by the aggrieved employee to present his/her written Grievance to the Human Resource Department shall result in nullification of employee's remedies under this Chapter.

B. GRIEVANCE PROCEDURE

This Grievance Procedure may only be utilized by an employee who has followed the steps provided under the Complaint Procedure in Section 8.2 above. An employee who has complied with the Complaint Procedure to address an issue with a fellow employee or Supervisor, and who is dissatisfied with the outcome, may file a Grievance with the Human Resources Department by complying with the following procedural steps:

1. Presentation to the Human Resource Department

In the event that an employee is dissatisfied with the outcome of the Complaint Procedure, the aggrieved employee may present his/her Grievance to the Human Resources Department. The employee has two (2) business days from the date of receipt of the written decision of the Department Director or Administrator regarding the employee's Complaint, or from the date on which the Department Director, Administrator, or Supervisor failed to take a required action under the Complaint Procedure, to present his/her Grievance in writing on the Grievance Form to the Human Resources Department. The written Grievance shall set forth the following information:

- a. An explanation of the Grievance and details of all previous efforts to resolve the issue;
- b. A copy of the written Complaint submitted to the Department Director or Administrator;
- c. A copy of the Department Director or Administrator's written response to the employee's Complaint, if one was issued;

- d. Detailed information regarding the employee's dissatisfaction with the Department Director or Administrator.

The Human Resources Department shall acknowledge receipt by signature and shall note the date of receipt in writing.

Within five (5) business days from the date of receipt of the written Grievance, the Human Resource Department shall meet with the aggrieved employee, the Supervisor, the Department Director or Administrator, and any other persons directly involved in the Grievance as identified by the aggrieved employee, to gather information regarding the facts and circumstances surrounding the Grievance and to attempt to resolve the matter to the satisfaction of all parties involved.

Within three (3) business days following the date on which said meeting was held, the Human Resources Department shall direct to the aggrieved employee, by email at the email address provided in the written Grievance, his/her written decision regarding the Grievance.

In the event that any party to the Grievance is dissatisfied with the decision rendered by the Human Resources Department or the Human Resources Department has failed to take reaction within the time period prescribed, the aggrieved party may pursue an appeal under Section 8.4 below.

SECTION 8.4 — APPEALS TO HEARING OFFICER

Only employees who have completed the Grievance Procedure and are dissatisfied with the outcome thereof may file an appeal in response to the Human Resources Department's decision for consideration by the Hearing Officer.

A. HEARING BEFORE THE HEARING OFFICER

1. Matters for Appeal

Appeals to the Hearing Officer are limited to appeals of disciplinary actions, appeals regarding improper or unfair administration of employee benefits, and appeals regarding discriminatory actions on the basis of color, race, national origin, sex, age, religion, marital status or some other legally protected class. Grievances of other actions, or which are found to be without merit, do not provide an employee the right to a hearing before a Hearing Officer.

2. Hearing Officer

Hearing Officers shall be appointed by the Human Resources Director to preside over appeals on a case-by-case basis. The decision to appoint an individual as Hearing Officer for an appeal is within the sole discretion of the Human Resources Director.

3. Filing an Appeal

A party to a Grievance who is dissatisfied with the Human Resources Department's decision may

request a hearing before the Hearing Officer by filing an Appeal of Grievance Decision Form available in the Human Resources Department office with the Human Resources Department within two (2) business days from the date of receipt of the Grievance decision. The Human Resources Department shall acknowledge receipt by signature and shall note the date of receipt in writing.

4. Setting a Hearing and Identifying Witnesses

Upon receipt of a request for hearing, the Human Resources Department shall set a hearing date before the Hearing Officer, to be set no sooner than ten (10) business days and no later than thirty (30) business days from the date of receipt of the written request for hearing.

No later than three (3) business days prior to the date of the hearing, the Human Resources Director shall provide each party to the Grievance a written notice via email at the email address provided upon initiation of the Grievance Procedure setting forth the time, date, and location of the hearing. The notice shall also include an identification of the rights and obligations of each party to the Grievance.

Upon receipt of the notice of hearing, each party to the Grievance shall identify and contact any witnesses he/she intends to call at the hearing and submit to the Human Resources Director, no later than twenty-four (24) hours prior to the commencement of the hearing: (1) a list of such witnesses and (2) copies of any documentary evidence which the party intends to introduce at the hearing.

5. Requests for Continuance

If a party to the Grievance determines that he/she will be unable to attend the hearing on the date set or will not be fully prepared to present his/her case at the hearing, such party may submit to the Human Resources Department a written request for a continuance of the hearing. Said request shall be submitted no later than twenty-four (24) hours prior to the hearing date and shall set forth the grounds for the request. If the Hearing Officer is satisfied that the party has demonstrated good cause for the requested continuance, the Hearing Officer shall grant the continuance and set a new hearing date at the earliest practicable date. Only one (1) continuance per party will be granted.

B. GRIEVANCE APPEAL HEARING PROCEDURE

The Hearing Officer shall preside over the hearing and ensure that the hearing is conducted and proceeds in an orderly manner.

Upon the commencement of the hearing, the Human Resource Director shall briefly advise the Hearing Officer of the nature of the Grievance and the parties involved. The Human Resources Director shall continue to be present throughout the hearing and may participate in an advisory capacity.

Each party to the Grievance shall have the following rights:

1. To be represented by legal counsel;
2. To present relevant and material evidence through himself/herself and through witnesses;
3. To confront and cross-examine the adverse party and his/her witnesses;
4. To secure the list of witnesses who will testify on behalf of the adverse party, prior to the commencement of the hearing, at any time after said list has been submitted by the adverse party to the Human Resource Department; and
5. To secure copies of any documentation relating to the Grievance as maintained on file in the Human Resources Department at least twenty-four hours prior to the hearing.

The party to the Grievance who requested the hearing before the Grievance Officer shall proceed first in the presentation of his/her evidence and at the conclusion of such presentation, the other party shall have the opportunity to present his/her evidence.

At the conclusion of each presentation, the Hearing Officer shall have the opportunity to ask questions of each party and any of their witnesses.

The Hearing Officer has the authority to overturn or uphold any disciplinary action.

The Hearing Officer may make other recommendations regarding supervision and conditions of employment of an aggrieved employee. The Hearing Officer does not have authority to order or make changes in the organizational structure or provide any further type of relief.

At the conclusion of the hearing, the Hearing Officer shall render a decision and inform the Human Resources Department of the decision in writing. The Human Resources Director shall furnish each party to the Grievance a copy of the decision within two (2) business days following receipt of the decision by email at the email address provided in the written Grievance. The decision of the Hearing Officer shall be final and binding and not subject to any further judicial or administrative review.

The hearing shall be electronically recorded, and the Human Resources Director shall securely maintain the transcript for a period of one (1) year.

**MANDAN, HIDATSA, AND ARIKARA NATION
PERSONNEL POLICIES AND PROCEDURES APPENDICES**

Appendix A-1:	Alcohol and Drug Use Policy (Non-DOT)
Appendix A-2:	Alcohol and Drug Use Policy (DOT)
Appendix B:	Motor Vehicle Policy
Appendix C:	Infant at Work and Breastfeeding Motors Program Policy
Appendix D:	Arrest and Convictions Policy
Appendix E:	Tribal Law Enforcement Officer Misconduct Investigations Policy
Appendix F:	Background Check Policy
Appendix G:	Lived Experience Policy
Appendix H:	Family and Medical Leave
Appendix I:	Fitness for Duty Policy
Appendix J:	Safety and Injuries
Appendix K:	Service and Animals
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MANDAN, HIDATSA AND ARIKARA NATION



APPENDIX A-1 EMPLOYMENT POLICIES AND PROCEDURES

ALCOHOL AND DRUG POLICY TRIBAL/NON-DEPARTMENT OF TRANSPORTATION

Adopted April 8, 2004, pursuant to Resolution 04-45BRP by the MHA Tribal Business Council
Revised July 1, 2025 pursuant to Resolution 25-183-FWF by the MHA Tribal Business Council

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I. DEFINITIONS

- A.** Controlled Substances – Substances whose manufacture, possession, and use is regulated by Title III of the Three Affiliated Tribes Tribal Code and/or the federal Controlled Substances Act.
- B.** Drug – Any substance that affects an employee’s ability to perform his/her job or poses a threat to the safety of others. The definition of “dangerous drug” includes prescription drugs taken not as directed, controlled substances, and any hazardous volatile material or substance intentionally misused by inhaling its vapors.
- C.** On Duty – Includes all working hours as well as meal periods and break periods, regardless of whether on Tribe premises.
- D.** Post-accident Testing – A drug/alcohol test given to an employee who is involved in a vehicular, industrial, or other type of accident while on duty, on Tribal premises, engaged in Tribal business, utilizing Tribal property, or at a Tribe-sponsored function.
- E.** Pre-employment Testing – A drug/alcohol test given to an employee that must be completed prior to beginning employment, transferring to a new position in a new Department, or moving into a new position within the same Department.
- F.** Random Test – A drug/alcohol test given to a predetermined percentage of employees who are selected on a random and unannounced basis.
- G.** Reasonable Suspicion Test – A drug/alcohol test given based on a belief that a current employee is using or has used drugs or alcohol in violation of the Tribe’s Policy.
- H.** Sensitive Function/Position – Functions that, if performed improperly, could result in injury or death to employees or others or could create significant property or environmental damage. Sensitive positions include, but are not limited to, social services positions involving the transporting of, care of, and/or close contact with persons and children (i.e., Childcare providers- daycare and school employees, Elbowoods healthcare professionals, law enforcement officers, heavy equipment operators, etc.).
- I.** Department-Wide/Director-Wide Unannounced Testing – A drug/alcohol test given to an employee as a member of a Department or as a Director in which the entire Department or all Directors are tested on an unannounced basis at the discretion of the applicable Department Director or Tribal Business Council.
- J.** Tribal Premises – Includes any work site, parking lot, vehicle, vessel, or office that is owned, rented, utilized, or serviced by the Tribe, plus any employee-owned and/or employee rented vehicles on the property of the Tribe, and any location

where an employee represents the Tribe in any capacity.

- K. Verified Negative (drug test result) – A drug test result reviewed by a Medical Review Officer and determined to have no evidence of prohibited drug use.
- L. Verified Positive (drug test result) – A drug test result reviewed by a Medical Review Officer and determined to have evidence of prohibited drug use.

II. PURPOSE OF POLICY

- A. The Mandan, Hidatsa and Arikara Nation (“Tribe” or “MHA Nation”) is committed to providing a workplace environment that promotes the safety, and encourages the personal health and productivity, of its employees. The Tribe recognizes that an employee’s substance abuse is a threat to the safety, health, and job performance of its employees and others. A goal of this Policy is to balance the Tribe’s respect for individuals with the need to maintain a safe, productive, drug and alcohol-free workplace. In formulating this Policy, the Tribe has also recognized that alcohol and drug dependencies are treatable conditions.
- B. The Tribe has adopted this Policy governing employee alcohol and drug use and testing for the following purposes:
 - 1. To establish and maintain a safe and healthy working environment for all employees;
 - 2. To preserve the reputation of and maintain public confidence in the Tribe and its employees;
 - 3. To reduce absenteeism and tardiness, improve productivity, and assure worker fitness for duty;
 - 4. To protect the public from risks posed by Tribal employees’ misuse of alcohol and use of prohibited drugs; and
 - 5. To provide rehabilitation assistance for employees who seek such help.
- C. Employee drug and alcohol use is prohibited as provided in this Policy hereinbelow, and an employee who violates this Policy is subject to disciplinary action, up to and including termination.

NOTE: *All employees with Commercial Driver’s Licenses (“CDLs”) must abide by the federal guidelines for Department of Transportation (“DOT”) drivers as described and defined in the Tribe’s Department of Transportation Drug and Alcohol Policy (“Tribal DOT Policy”). In such cases, the CDL drivers shall conform to the Tribal DOT Policy, which shall supersede this non-DOT Policy. This non-DOT Policy will be followed for all other considerations that are not included in the Tribal DOT Policy.*

III. DRUG AND ALCOHOL USE POLICY

This Policy applies to all job applicants, sensitive and non-sensitive positions, full-time and part-time employees, volunteers, contract employees, and contractors while they are on duty, on Tribal premises, engaged in Tribal business, or at a Tribe-sponsored function, and to off-site lunch periods or breaks when a Tribal employee is scheduled to return to work. Visitors, vendors, and contractor employees are governed by this Policy while on Tribal premises and will not be permitted to conduct business with the Tribe if found to be in violation of this Policy.

A. PROHIBITED EMPLOYEE CONDUCT

1. Use and Possession.

Prohibited employee conduct under this Policy includes, but it is not limited to:

- a. The illegal or unauthorized use/consumption, possession, sale, manufacture, purchase, transfer, and transportation of alcohol/dangerous drugs by an employee while on duty, on Tribal premises, engaged in Tribal business, or at a Tribe-sponsored function.
- b. Being under the influence of or impaired by alcohol/dangerous drugs while on duty or reporting for duty, on Tribal premises, while conducting Tribal business, at a Tribe-sponsored function, and off-duty alcohol/dangerous drug use that results in excessive absenteeism, tardiness, accidents, and performance problems.
- c. Use of alcohol eight (8) hours before the performance of sensitive functions.
- d. Use of alcohol within eight (8) hours following an accident, or until the employee undergoes a post-accident test, whichever occurs first.
- e. Off-duty employee conduct that could be detrimental to the public trust, job performance, or workplace morale, meaning, for purposes of this Policy, arrest or conviction for violation of a federal, state, or local criminal alcohol/drug statute.
- f. The use, possession, sale, or purchase of alcohol at a Tribe-sponsored function without the prior approval of the Tribe.

2. Possession Exceptions

- a. No alcoholic beverage is permitted on Tribal premises except when:
 - i. In sealed containers within private vehicles for purpose of transportation; or

- ii. Otherwise, pre-authorized by the Tribe.
- b. No controlled substances or drug paraphernalia are allowed on Tribal premises, unless they are:
 - i. In the authorized and legal custody of health professionals employed by the Tribe;
 - ii. Provided under a valid medical prescription and administered to the employee by or under the authority of a licensed medical practitioner treating the employee.

B. PRESCRIPTION DRUGS

1. In General

- a. A legally-prescribed drug means a substance for which the individual has a prescription or other written approval by a physician for the use of the drug during medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The appropriate use of legally prescribed drugs and over-the-counter medication is not prohibited.
- b. The use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to supervisory personnel and medical advice must be sought by the employee, as appropriate, before performing sensitive work-related duties. Failure to do so will result in disciplinary action up to and including termination. Should the effect of medication adversely affect an employee in a sensitive position, the employee may be temporarily removed or reassigned from the sensitive position if deemed appropriate.
- c. The misuse or abuse of legally prescribed drugs or over-the-counter medication while on duty, engaged in Tribal business, on Tribal premises, or at a Tribe-sponsored function is strictly prohibited.

2. Medical Marijuana

- a. The Tribe has adopted regulations regarding the use of legally-prescribed medical marijuana. Employees who legally obtain a medical marijuana "registration card" from the North Dakota Department of Health are allowed to possess and consume certain quantities of medical marijuana under state law, however, employees are prohibited from doing so while on duty or on-call.

- b. The Tribe may, in its sole discretion, choose not to treat a positive test for detected levels of marijuana as a verified positive for employees with legally issued North Dakota or other state medical marijuana registration cards depending on the employee's position. Employees who obtain a registration card from the North Dakota Department of Health, or the applicable Department if obtained in another state, must submit a copy of the registration card to the Human Resources Department at the time of testing.
- c. Employees with a medical marijuana registration card who have relocated to North Dakota from another state will have 90 days to obtain a registration card through the North Dakota Department of Health.
- d. If an employee does not have a medical marijuana registration card and tests positive for marijuana, the employee will receive a verbal warning and one day suspension for the first offense. The employee will have 90 days to obtain a medical marijuana registration card and submit it to the Human Resources Department. If the employee does not obtain a registration card, the employee shall be subject to disciplinary action.

C. HIGHLY-SENSITIVE AND SAFETY-SENSITIVE EMPLOYEES

- 1. The Tribe categorizes some positions as safety-sensitive or highly-sensitive due to their potential to detrimentally affect the safety and effectiveness of the workplace, and the public health and trust if performed improperly.
- 2. Safety-sensitive positions include those which require the performance of a sensitive function(s) that, if performed improperly, could result in injury or death to employees or others or could create significant property or environmental damage. Examples of safety-sensitive positions include, but are not limited to, social services positions involving the transporting of, care of, and/or close contact with persons and children (i.e., Childcare providers- daycare and school employees, Elbowoods healthcare professionals, law enforcement officers, heavy equipment operators, etc.).
- 3. Highly-sensitive positions include high-level administrative positions and those with supervisory or Director authority over safety-sensitive positions or with access to sensitive Tribal and/or personnel information (i.e., HR Director, Elbowoods Chief Medical Officer, Chief of Police, etc.).
- 4. These categorizations are inexhaustive and are subject to periodic update.

D. EMPLOYEE ASSISTANCE PROGRAM

The Tribe maintains an Employee Assistance Program (“EAP”) which provides access to professional services to aid employees who have personal problems affecting work performance, including mental, emotional, psychological problems, personal stress arising from conditions within the home, and drug and alcohol problems. The EAP provides short-term confidential counseling for the employee and his/her family at no cost. Contact and additional information for the EAP may be obtained from Human Resources.

1. Voluntary Referral

- a. The Tribe maintains an EAP and encourages the use of the program’s resources before an employee’s status is affected by drug and/or alcohol abuse. An opportunity for voluntary rehabilitation/treatment may be available on a one-time basis to all employees provided that the employee seeks it before:
 - i. The commission of any act subject to disciplinary action;
 - ii. Any alcohol or drug test sample is submitted for testing; or
 - iii. The employee’s selection for alcohol/drug testing.
- b. The length of voluntary rehabilitation will be for a reasonable time. Voluntary participation in rehabilitation will not prevent disciplinary action(s) for violations of Tribe Policy that have already occurred or for subsequent violations of Tribe Policy occurring after voluntary referral.
- c. An employee who seeks voluntarily rehabilitation will be evaluated by a Substance Abuse Professional (“SAP”), or an outside Licensed Addiction Counselor (“LAC”) selected by the employee and shall submit to the SAP/LAC recommended rehabilitation/treatment program. Failure by the employee to cooperate with and abide by the rules of the rehabilitation/treatment program will result in termination. The employee must either sign a standard Release of Information allowing the SAP/LAC to talk to the employee’s supervisor/HR Director about the employee’s recovery, progress, and successful completion of the program, or must provide the Tribe with progress reports from the therapist or agency running the program on at least a monthly basis. The employee must abide by any rules in place regarding post-rehabilitation.
- d. Every effort will be made by the SAP to recommend a rehabilitation/treatment program covered by the employee’s insurance provider; otherwise, evaluation/counseling/rehabilitation/treatment is the responsibility of the employee.

- e. Employees will be allowed to use available sick and/or annual leave during the rehabilitation/treatment period. The Tribe will exercise its discretion whether to remove an employee from duty if continued performance during rehabilitation/treatment could pose a significant safety risk.
- f. At the conclusion of voluntary rehabilitation/treatment, arrangements for return-to-duty and follow-up testing may be made. Return-to-duty and follow-up tests may consist of an initial drug/alcohol test prior to return to duty and additional unannounced and/or scheduled drug/alcohol tests. Follow-up testing shall not exceed two (2) years.

2. Proof of Voluntary Rehabilitation Completion

Prior to returning to duty or prior to subsequent rehire with the Tribe, an employee who voluntarily sought rehabilitation must present to their supervisor and the HR Director proof that such voluntary rehabilitation/treatment was completed. Failure to present such proof of completion may result in the employee's inability to return to duty or ineligibility for rehire.

3. Involuntary Referral

- a. Referral, Evaluation, And Treatment
 - i. Any employee whose off-duty abuse of alcohol or dangerous drugs results in excessive absenteeism, tardiness, accidents, or performance problems (including any employee testing positive for alcohol on a return-to-duty test) may be involuntarily referred to the EAP/SAP (voluntary rehabilitation will no longer be available) and may face termination for refusal to seek and successfully complete rehabilitation. An employee who has tested positive for alcohol or drugs or who has been directed to obtain an evaluation, shall be referred to and evaluated by an SAP to determine what kind of assistance the employee needs to address problems associated with alcohol and drug use and shall follow the recommendations for action as outlined by the SAP including, but not limited to, participation in any rehabilitation program. The SAP shall determine whether the employee has properly followed any rehabilitation program prescribed. Employees who refuse to follow the SAP's recommendations shall be terminated.

- ii. The employee must either sign a Release of Information form allowing the EAP/SAP to talk to the employee's supervisor/HR Director about the employee's recovery, progress, and successful completion of the program, or must provide the Tribe with progress reports from the therapist or the agency running the program on at least a monthly basis.
- iii. Any expense for evaluation/counseling/rehabilitation/treatment in excess of that covered by the Tribe's benefit program is the responsibility of the employee.

b. Return-To-Duty and Follow-Up Testing Provisions

- i. All employees who are involuntarily referred for and undergo counseling or a rehabilitation program for alcohol misuse or drug use will be subject to return-to-duty alcohol and/or drug testing and to follow-up testing as directed by the SAP. Return-to-duty and follow-up tests shall consist of an initial drug/alcohol test prior to return to duty and additional unannounced and/or scheduled drug/alcohol tests given to employees who have completed rehabilitation or who have previously violated the Tribe's alcohol and drug abuse Policy and are returning to duty. Follow-up testing shall consist of at least six (6) unannounced tests within the first twelve (12) months following a return to duty and shall not exceed three (3) years.
- ii. The Tribe may direct the employee to undergo return-to-duty and follow-up testing for both alcohol and drugs if deemed necessary by the SAP. Such testing is distinct from testing which may be imposed as a component of counseling/rehabilitation/treatment.
- iii. Any employee who violates this Policy and wishes to retain employment with the Tribe must agree to the following conditions:
 - A. The employee must execute a "return to work" agreement;
 - B. The employee must agree to submit to prescribed follow-up testing (random and/or scheduled) in accordance with this Policy;
 - C. The employee must provide evidence of successful completion of his/her program of recovery; and
 - D. The employee must submit to, and pass, a drug

and/or alcohol test. Before an employee returns to duty after completing counseling/rehabilitation/treatment, the employee shall undergo a return-to-duty alcohol test indicating a zero-alcohol level and/or a drug test with a verified negative result.

- iv. While participating in an in-patient counseling or rehabilitation program an employee shall be exempted from the random-testing designated positions pool.
- v. Employees subject to follow-up testing shall remain in the random pool even if it results in duplicate testing.

c. Subsequent Rehire Compliance and Completion Proof

Prior to subsequent rehire with the Tribe, an employee previously subject to the provisions of items 1 and 2 of this Section must present to the Human Resources Department proof of compliance with and completion of such requirements. Failure by the employee to present such proof may result in the employee's exclusion from rehire eligibility for 12 months.

4. Leave

Absences during on duty hours for counseling and rehabilitation/treatment shall be charged to sick leave, annual leave, and leave without pay.

E. DRUG FREE WORKPLACE ACT AND CONVICTIONS

- 1. Any employee who is convicted of a violation of any federal, state, or local criminal alcohol/drug statute must notify his/her supervisor within seventy-two (72) hours of the conviction and may be subject to disciplinary action up to and including termination.
- 2. The employee may be immediately suspended without pay pending an investigation by Tribal personnel. Law enforcement will be notified, as appropriate, where illegal activity is suspected. If a substance which appears to be an illegal drug is found within the effective control of an employee, the matter will be turned over to law enforcement at the earliest possible time and the employee will be immediately suspended without pay pending investigation by Tribal personnel.
- 3. A sensitive employee convicted of a violation of a criminal alcohol/drug statute occurring off-duty must report the conviction to his/her supervisor within five (5) days, shall be immediately suspended with pay pending investigation by Tribe Personnel and is subject to alcohol/drug testing. Any

employee convicted of a violation of a criminal alcohol/drug statute occurring off-duty is subject to the range of disciplinary action up to and including termination, as his/her supervisor deems appropriate on a case-by-case basis.

4. For the purpose of this section, a conviction includes a finding of guilt, an admission of guilt, a no contest plea, any form of deferred adjudication, any requirement of community service, and/or imposition of sentence by any judicial body.
5. Failure to meet the notice requirements of this section will result in disciplinary action up to and including termination.

IV. DRUG AND ALCOHOL TESTING POLICY

The Tribe implements drug and alcohol testing of Tribal employees and applicants for all positions to provide drug and alcohol-free work and service environments.

A. GENERAL TESTING PROVISIONS

Submitting to testing as required by this Policy is a condition of employment and continued employment with the Tribe.

1. Testing Circumstances

Any new employee or existing employee being moved into a new position is subject to pre-employment drug testing. All employees are subject to random alcohol and drug testing, and are subject to alcohol and/or drug testing:

- a. where there is reasonable suspicion of prohibited conduct;
- b. following an accident or injury;
- c. following a return to duty after rehabilitation and/or prohibited conduct; and
- d. as a follow-up to rehabilitation and/or prohibited conduct;
- e. pursuant to Department-wide/Director-wide unannounced testing to occur at the discretion of the applicable Department Director or Tribal Business Council.

2. Test Administration During, and After, General Business Hours

- a. All drug tests shall be conducted by HR or the Tribal Security Department (“Security”) personnel, or by other such agent contracted by the Tribe to administer drug tests (“contracted agent”), who are properly trained.
- b. During regular operational hours when the Tribe is open for business

(i.e., Monday through Friday from 8:00 a.m. to 4:30 p.m. CST), all drug tests shall be administered by HR or by a contracted agent, appropriately qualified in accordance with the requirements listed in the preceding paragraph.

- c. After hours, when the Tribe is closed for business (i.e., Monday through Friday before 8:00 a.m. and after 4:30 p.m. CST, weekends, Tribe holidays, and early Tribe closings), drug tests shall be conducted by Security personnel meeting the qualifications listed above.

3. Detection Levels

Detection levels established under 49 CFR Part 40 shall be used to determine whether drug test results are positive for alcohol, amphetamines, barbiturates, Buprenorphine, benzodiazepines, cocaine, ecstasy, fentanyl, marijuana, methadone, methamphetamines, opioids, oxycodone, tramadol, K2/K3/spice. If drug testing is conducted for any other drug classes, the cutoff limits recommended by the manufacturer or recognized by the testing laboratory shall be used to determine whether drug test results are positive.

4. Refusal to Submit to Required Testing.

A refusal to submit to Tribe-administered drug/alcohol testing is treated like a positive alcohol/drug test result and may result in disciplinary action up to and including termination. The foregoing sections apply to periods when employees are on breaks, between shifts, or at lunch, if they are scheduled or may be assigned to work thereafter on the same day.

5. Conduct That Constitutes a Refusal to Submit to Testing

Conduct constituting a refusal by an employee to submit to testing includes, but is not limited to, the following:

- a. failure to provide a sample (e.g. refusal provide urine sample or refusal to blow into the mouthpiece);
- b. failure to provide an adequate urine sample;
- c. refusal to sign required forms; or
- d. engaging in conduct that clearly obstructs the testing process (e.g., failure to show up at the appointed time for designated testing; leaving the scene of an accident without a valid reason).

6. Inability to Provide an Adequate Sample

Should an employee attempt and fail to provide an adequate amount urine for drug test purposes, the employee shall be provided with one (1) 16.9-ounce bottle of

water to drink (drinking more than one bottle of water affects the sample and will invalidate the results) and allowed up to no more than three (3) hours to provide a sample. Unless documentation from a physician of a medical condition that may have caused such failure (excluding situational anxiety or dehydration) is furnished to HR within seventy-two (72) hours, such failure will be regarded as a refusal by the employee to submit to drug and/or alcohol testing.

B. KNOWLEDGE OF PROHIBITED CONDUCT BY A SUBORDINATE

1. Supervisors and managers are required to use and apply all aspects of this Policy in an unbiased and impartial manner. Supervisors and managers shall not permit a subordinate employee to perform sensitive functions when the Supervisor or manager has actual knowledge that the employee has engaged in conduct that is prohibited by this Policy.
2. Any supervisor or manager who knowingly disregards the requirements of this Policy, or who is found to deliberately misuse the Policy in regard to subordinates, shall be subject to the range of disciplinary action, up to and including termination. Should an employee reasonably suspect his/her supervisor of violating Tribal Policy, the employee shall report his/her suspicion to a supervisor of the supervisor suspected of violating the Policy.

C. AN ATTEMPT TO TAMPER WITH OR SUBSTITUTE A URINE SPECIMEN.

An attempt by the employee to adulterate or substitute the specimen provided will result in termination of the employee.

D. PRE-EMPLOYMENT TESTING (APPLICANT TESTING)

1. Pre-employment drug testing shall be required of all applicants for any positions.
2. An applicant who is made a conditional offer of employment for a sensitive position by the Tribe shall take a drug test within forty-eight (48) hours of notification of the conditional offer. The procedures set forth in this Policy will be followed for pre-employment drug tests. If there is an attempt at adulteration or substitution, if the drug test is verified positive, adulterated, or substituted, or if the applicant refuses to take the drug test, the Tribe will terminate any further action toward employment and the applicant may not reapply for employment with the Tribe for six (6) months thereafter.

NOTE: *An applicant required to submit to drug testing under this Section may not begin employment in the applicable position until after the applicant has received a negative drug test result from the Medical Review Officer.*

E. POST-ACCIDENT TESTING

1. On-the-Job Vehicular Accidents

- a. Any employee, contractor, volunteer, or applicant whose performance could have contributed to an accident shall be tested for controlled substances and alcohol as soon as is practicable (within eight (8) hours) following the accident. Post-accident testing is mandatory unless employee performance is discounted completely as a causative or contributing factor.
- b. If a law enforcement officer directs and conducts a drug and/or alcohol test on the employee at the scene of an accident, the employee shall immediately notify his/her supervisor or another Tribal official and provide the following information of the officer conducting the test: (1) name and badge number; (2) jurisdiction (Federal, State, County, Tribe, etc.); and (3) telephone number.
- c. If testing is not conducted at the scene of an accident by a law enforcement official, the employee must immediately notify his/her supervisor and submit to a drug/alcohol test no later than eight (8) hours after the accident.

2. Industrial Post Accident and Occupational On-The-Job Injury

Post-accident drug and alcohol testing is mandatory for industrial/on-the-job accidents unless employee performance can be discounted completely as causative or contributing to the accident. Any verified positive drug test results or results indicating the presence of alcohol will result in disciplinary action. Testing is mandatory in the case of any of the following circumstances: (1) a fatality; (2) on-the job/industrial accident/injury resulting in incapacitation (inability to continue performing his/her job) or the need for immediate medical attention for anyone; (3) property damage of \$2,000 or more.

3. All Accidents

- a. No employee shall use alcohol for at least eight (8) hours following an on-the-job accident or until submitting to a post-accident test, whichever is first. Employees who fail to remain readily available for post-accident testing or leave the scene of an on-the-job accident without a valid reason prior to submitting to drug anti-alcohol tests will be deemed to have refused to submit to testing.
- b. In the case where an employee is seriously injured and cannot provide a specimen at the time of the accident, he/she must provide the necessary authorization to release information needed to determine the existence of drugs and alcohol in his/her system.

- c. Employees who test positive for drugs or alcohol and whose performance either directly contributed to an on-premises accident involving significant personal injury, or where such performance cannot be discounted as a direct contributory factor to such an accident, shall be subject to termination.

F. REASONABLE SUSPICION TESTING

1. Generally

- a. Reasonable suspicion testing will be done in cases where there is a reasonable belief by a supervisor/manager that an employee may be using alcohol or controlled substances, or may be under the influence of alcohol or controlled substances while on duty or has used alcohol within eight (8) hours of performing sensitive functions. Reasonable suspicion to test may be based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.
- b. In cases where a supervisor/manager has reasonable belief that an employee may be using alcohol or controlled substances, or may be under the influence of alcohol or controlled substances while on duty, or has used alcohol within eight (8) hours of performing sensitive functions, the supervisor will contact HR to provide notification of the reasonable suspicion and to request testing.
- c. Reasonable suspicion testing will also be performed when the Tribe has a reasonable suspicion, based upon an employee's attendance or performance record, or observations or verified information submitted to the Tribe, that the employee is currently improperly using or under the influence of alcohol or controlled substances. Additionally, testing will be done when the employee is in possession of alcohol or illegal drugs while on duty.

2. Reasonable Suspicion Notification

- a. When a supervisor requests reasonable suspicion testing for alcohol and/or drugs, the employee shall be notified and HR personnel will promptly travel to the location of the employee to perform testing. Should the employee be at a work site with inadequate resources for HR personnel to conduct drug and/or alcohol testing, the employee shall be given the necessary documentation and be driven to the test site by the supervisor or other official. Because the employee is being tested for reasonable suspicion and may possibly be under the influence, the employee shall not be allowed to operate a vehicle.

- b. The Tribe reserves the right to take whatever action necessary to prevent an employee from driving a vehicle to the test site for reasonable suspicion testing including, but not limited to, contacting law enforcement.
- c. When an employee is transported to a test site under reasonable suspicion, it will be the responsibility of the employee to make arrangements for transportation home after the test is completed.

3. Inability to Obtain a Reasonable Suspicion Test

- a. If an alcohol and/or drug test required by this section is not administered within two (2) hours following the reasonable suspicion determination, the supervisor will document the reasons the test was not timely administered; if the alcohol and/or drug test is not administered within eight (8) hours of the reasonable suspicion determination, all efforts to administer the test shall cease and the supervisor will prepare a report stating the reasons why the test was not timely administered. The report shall be forwarded to the HR Director.
- b. If a supervisor is unable to obtain a reasonable suspicion alcohol and/or drug test not due to the employee's refusal, the employee may not remain on or return to duty if the employee appears to be under the influence of alcohol and/or drugs. In this situation, the employee will only be permitted to return to work when:
 - i. an alcohol or drug test shows a level of zero alcohol or drug metabolites in the employee's system; or
 - ii. twenty-four (24) hours have elapsed since the reasonable suspicion observations.

G. RANDOM TESTING

Random testing for drugs and alcohol shall be conducted for all Tribal employees. A random test is a drug/alcohol test given to a predetermined percentage of employees who are selected on a random and unannounced basis.

1. Random Testing Rate

The Tribe has determined that random testing will be done two (2) times per year at a rate of 2% of the random testing pool for alcohol, and at a rate of 2% of the random testing pool for drugs per random testing period. The random pool of employees in positions requiring a CDL will be separate from the pool of other highly- and safety-sensitive employees and testing will be conducted in accordance with the Tribal DOT Policy.

2. Random Testing Notification

An employee selected for random testing, and the employee's immediate supervisor, shall be notified the same day the test is scheduled upon arrival of HR personnel, or other authorized personnel designated by the HR Director as necessary, administering the test. The supervisor shall notify the employee of his/her selection for testing, explain to the employee that his/her selection is random and not the result of any individualized suspicion of drug or alcohol use, and administer the test on-site. An employee must immediately report for testing and shall be allowed no more than three (3) hours to produce a sample for testing in accordance with this Policy.

3. Deferral of Testing

An employee selected for random drug or alcohol testing may obtain deferral of testing if the employee's immediate and higher-level supervisors concur that a compelling need necessitates a deferral on the grounds that the employee is:

- a. In a leave status (sick, annual, administrative, Family Medical Leave Act ("FMLA") leave, or leave without pay); or
- b. In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification.

An employee whose random drug or alcohol test is deferred will be subject to an unannounced test within the thirty (30) days following deferral. This time period may be extended in such circumstances where an employee is on extended administrative leave or leave under the Family Medical Leave Policy.

H. DEPARTMENT-WIDE/DIRECTOR-WIDE UNANNOUNCED TESTING

Department-wide unannounced drug and alcohol testing may be required at the discretion and direction of the applicable Department Director or the Tribal Business Council. Director-wide unannounced drug and alcohol testing may also be required at the discretion and direction of the Tribal Business Council. For purposes of Director-wide unannounced testing, the term "Director" shall include Department and program heads and chief officers. Department-wide and Director-wide unannounced drug and alcohol testing is separate and apart from random testing and is not included in the random testing rate.

1. Testing Notification

Employees subject to Department-wide or Director-wide unannounced drug and alcohol testing shall be notified the same day the test is scheduled upon arrival of HR personnel, or other authorized personnel designated by the HR Director as necessary, administering the test. The Department Director or the CEO shall notify the employees of the Department-wide or Director-wide unannounced testing, explain that each employee is subject to testing, that selection is not the result of

any individualized suspicion of drug or alcohol use, and that testing will be administered on-site. An employee must immediately report for testing and shall be allowed no more than three (3) hours to produce a sample for testing in accordance with Section IV.A.4 above.

2. Deferral of Testing

An employee subject to Department-wide or Director-wide unannounced drug or alcohol testing may obtain deferral of testing if the employee's first-line and higher-level supervisors or Director concur that a compelling need necessitates a deferral on the grounds that the employee is:

- a. In a leave status (sick, annual, administrative, Family Medical Leave Act ("FMLA") leave, or leave without pay); or
- b. In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification.

An employee whose random drug or alcohol test is deferred will be subject to an unannounced test within the thirty (30) days following deferral. This time period may be extended in such circumstances where an employee is on extended administrative leave or leave under the FMLA.

I. ADMINISTRATION OF ALCOHOL AND DRUG TESTING

It is the Policy of the Tribe that the administration of alcohol and drug testing shall be conducted in a manner that protects employees and the integrity of the testing process, safeguards the validity of the test results, and ensures such results are attributable to the correct employee. In ensuring such tests are administered in such a manner, proper procedures will be followed in accordance with applicable statutory standards. A copy of such procedures may be provided to an employee upon request to HR.

J. DRUG TESTING RESULT NOTIFICATION AND MEDICAL REVIEW OFFICER

1. For alcohol and controlled substances testing, the Tribe shall utilize the services of a Medical Review Officer ("MRO"). An MRO is a licensed physician who is responsible for receiving laboratory results generated by the Tribe's drug testing program. The MRO has knowledge of substance abuse disorders and has appropriate medical training to interpret and to evaluate an employee's positive test result(s) together with the individual's medical history and any other biomedical information.
2. The MRO will notify the employee or applicant of a positive alcohol or drug test result, a result indicating adulteration or substitution, or an invalid test result. The employee/applicant will have the opportunity to present to the MRO an explanation for the particular result and may be permitted, at the discretion of the MRO up to five (5) days to submit evidence that supports a legitimate medical explanation for the result.

3. If the MRO determines there is no legitimate medical explanation for the confirmed positive result, the MRO will report it as a verified positive test result to the HR Director and to the management official empowered to recommend or take disciplinary action. If the MRO determines that there is a justification for the positive result, the test will be reported to the HR Director as a negative test result. A result indicating adulteration or substitution with no legitimate medical explanation is reported as a positive test. *Adulteration or substitution will result in termination of the employee.*
4. The Tribe's Policy is that drug test results will be available within seven (7) days. The MRO will make reasonable efforts to contact the employee/applicant to discuss the results of a drug test if the results are confirmed positive, indicate adulteration or substitution, or are invalid. The MRO may verify a test as positive without communicating directly with the employee about the test in the following circumstances:
 - a. The employee expressly declines the opportunity to discuss the test;
 - b. The MRO after making two (2) attempts has been able to contact the employee after receiving the confirmed positive test result from the laboratory; or
 - c. The HR Director has successfully made and documented a contact with the employee and instructed the employee to contact the MRO, and more than seventy-two (72) hours have passed since the date the employee was successfully contacted by the HR Director.

In the instances listed above, no medical review of a positive test will occur and no medical explanation for controlled substances or alcohol in an employee's system will be accepted.

K. VERIFICATION AND POST-VERIFICATION PROCEDURE AND EMPLOYEE GRIEVANCE

1. This section is not applicable to job applicants who are not currently working for the Tribe.
2. As the Tribe deems appropriate, an employee who has been removed from work due to reasonable suspicion of alcohol or drug use or is given a post-accident drug test may not return to work until the results of the test have been verified negative by the MRO. Such employee shall be placed on administrative leave pending obtaining alcohol/drug test results, unless the employee has been suspended for violation of another work rule which also covers the time missed waiting for test results.
3. Following verification of any positive drug or alcohol test result, an employee will be immediately removed, if the employee is on duty, from

his/her job position and placed on suspension pending further procedures, and the procedures under Section III - Involuntary Referral, above, shall apply.

4. All test results or disciplinary action taken against the employee therefrom are final and not subject to the Tribe's Complaints, Grievances, and Appeals Policy and Procedure.

L. CONFIDENTIALITY OF RECORDS AND TEST RESULTS

1. Confidentiality of Records

All alcohol and drug testing information specifically relating to individuals is confidential and will be treated as such by anyone authorized to review or compile personnel records. The HR Director shall maintain all records relating to drug and alcohol testing. Any Tribal employee who is subject to a such testing shall, upon written request to the HR Director, have prompt access to his/her drug and alcohol test records.

2. Disclosure of Test Results

The results of a drug/alcohol test of a Tribal employee may be disclosed without the prior written consent of such employee, if the disclosure would be

- a. To the MRO or the staff of the MRO;
 - b. To the SAP or EAP in which the employee is receiving counseling or treatment or otherwise participating;
 - c. To the supervisory or management official within the Tribe having authority to take adverse personnel action against such employee;
 - d. To the decisionmaker in a grievance or other proceeding initiated by or on behalf of the aggrieved individual, and arising from the results of an alcohol or controlled substances test;
 - e. Pursuant to the order of a court of competent jurisdiction or where required by the Tribe to defend against any challenge against any adverse personnel action;
 - f. Otherwise as in accordance with law.
3. For the purposes of this section, "management official" includes any management, government, security, or personnel official whose duties necessitate review of the test results in order to process adverse personnel action against the employee.

M. CONSEQUENCES OF POSITIVE TEST RESULTS

1. Disciplinary Action

Disciplinary action for a positive drug and/or alcohol test shall be generally as follows:

- a. Temporary or probationary employees
 - i. 1st positive drug and/or alcohol test: recommendation for termination.
 - b. Permanent employees
 - i. 1st positive drug and/or alcohol test
 - A. Highly-Sensitive/Safety Sensitive and Non-Sensitive positions: Referral to EAP/SAP, must complete EAP/SAP or LAC's recommendation, 5-day class 1 suspension (without pay and may not use accrued leave) or class 2 suspension (without pay and may use accrued leave).
 - ii. 2nd positive drug and/or alcohol test: Termination.
2. Depending on the nature of the incident under which an employee tested positive for drugs and/or alcohol, the employee's Director and the HR Director may determine whether the employee shall receive a class 1 or class 2 suspension.
 3. The Human Resources Director shall have the authority to deviate from the actions listed above as may be deemed necessary based upon the nature of the incident and in the sole discretion of the Human Resources Director.
 4. **Eligibility to Apply for Rehire**

Any employee in a regular position who has been terminated for violation of the Tribe's Alcohol and Drug Policy will be ineligible to apply for a non-sensitive position for a period of six (6) months, depending on the position; and a safety-sensitive or highly-sensitive position for a period of twelve (12) months. A person previously terminated for violation of the Tribe's Alcohol and Drug Policy may be required to present documentation of the completion, during the time the employee was not employed with the Tribe, of an approved alcohol and/or drug treatment program before being rehired by the Tribe.

N. PEYOTE

The Tribe recognizes that some members of the Native American Church use peyote in religious services as a sacrament. A bona fide Native American Church member's use of peyote in religious services is not against Tribal Policy. However, a sensitive employee must notify his/her supervisor

within one week of use of peyote in a religious service, if the use will be on a day before a workday, and no employee may perform the sensitive job function of driving for twenty-four hours after such use. Employees who violate the provisions of this section will be subject to discipline as provided hereinabove.

NOTE:

Neither this Policy nor any of its terms are intended to create a contract of employment, or to alter the existing employment or contractual relationship in any way. The Tribe retains the right to modify, revoke, suspend, terminate, or change any term or provision of this Policy at any time, with reasonable notice to the employee.

This Policy is effective as amended as of July 1, 2025 and supersedes all prior policies and statements relating to prohibited substances. All questions concerning this Policy should be directed to the HR Director at (701) 627-8113.

MANDAN, HIDATSA AND ARIKARA NATION



APPENDIX A-2 EMPLOYMENT POLICIES AND PROCEDURES

ALCOHOL AND DRUG POLICY DEPARTMENT OF TRANSPORTATION

Adopted April 8, 2004, pursuant to Resolution 04-45BRP by the MHA Tribal Business Council
Revised July 1, 2025 pursuant to Resolution 25-183-FWF by the MHA Tribal Business Council

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I. DEFINITIONS

- A. Alcohol test – A test administered by a breath alcohol technician (“BAT”) on the breath specimen of an employee using a breath testing device (“EBT”) to measure an employee’s breath alcohol content (“BAC”). Also, any other alcohol or sobriety test deemed appropriate and conducted as post-accident testing by Tribe, federal, or state officials.
- B. Dilute specimen – A urine specimen with creatinine and specific gravity values that are lower than expected for human urine (i.e. higher than average water content).
- C. Medical Review Officer (“MRO”) - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the Tribe’s drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual’s confirmed test results together with his or her medical history and any other biomedical information.
- D. On duty – Includes all working hours as well as meal periods and break periods, regardless of whether on Tribal premises.
- E. Split Specimen – An additional urine specimen collected with the original specimen, to be tested in the event the original specimen tests positive.
- F. Tribal premises – Includes any work site, parking lot, vehicle, vessel, or office that is owned, rented, utilized, or serviced by the Tribe, plus any employee-owned and/or employee rented vehicles on the property of the Tribe, and any location where an employee represents the Tribe in any capacity.
- G. Verified Negative (drug test result) – A drug test result reviewed by a Medical Review Officer and determined to have no evidence of prohibited drug use.
- H. Verified Positive (drug test result) – A drug test result reviewed by a Medical Review Officer and determined to have evidence of prohibited drug use.

II. PURPOSE OF POLICY

- A. The Mandan, Hidatsa and Arikara Nation (“Tribe” or “Tribal”) is committed to providing a workplace environment that promotes the safety and encourages the personal health and productivity of its employees. This policy complies with 49 CFR Part 655, as amended, 49 CFR Part 382, as amended, and 49 CFR Part 40, as amended. Copies of Parts 655, 382, and 40 are available in the Human Resources Department office and can be found on the Internet at the Department of Transportation (“DOT”) Office of Drug and Alcohol Policy and Compliance website: <http://www.transportation.gov/odapc>.

- B. All employees covered by this Policy are required to submit to drug and alcohol tests as a condition of employment in accordance with these regulations. Covered employees may also be subject to the non-DOT drug and alcohol use and testing policies of the Tribe.
- C. In addition, the DOT has published 49 CFR Part 32, implementing the Drug-Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the Federal Transit Administration (“FTA”). All Tribal employees are subject to the provisions of the Drug-Free Workplace Act of 1988.

III. POLICY

A. COVERED EMPLOYEES

This Policy applies to every person whose position requires the possession of a commercial driver’s license (“CDL”), every employee performing a “safety-sensitive function” as defined below, and any person applying for such positions.

- 1. Under Federal Motor Carrier Safety Administration (“FMCSA”) (49 CFR Part 382), an individual is a covered employee if they perform any of the following safety-sensitive functions:
 - a. Driving a commercial motor vehicle which requires the driver to have a CDL.
 - b. Waiting to be dispatched to operate a commercial motor vehicle.
 - c. Inspecting, servicing, or conditioning any commercial motor vehicle.
 - d. Performing all other functions in or upon a commercial motor vehicle (except resting in a sleeper berth).
 - e. Loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloading, remaining in readiness to operate the vehicle, or giving or receiving receipts for shipments being loaded or unloaded.
 - f. Repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
- 2. Under FTA (49 CFR Part 655), an individual is a covered employee if they perform any of the following safety-sensitive functions:
 - a. Operating a revenue service vehicle, in or out of revenue service.
 - b. Operating a non-revenue vehicle requiring a CDL.
 - c. Controlling movement or dispatch of a revenue service vehicle.
 - d. Maintaining (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used in revenue service.
 - e. Carrying a firearm for security purposes.

3. A volunteer is a covered employee if:
 - a. the volunteer is required to have a CDL to operate a motor vehicle; or
 - b. the volunteer performs a safety-sensitive function and receives remuneration in excess of his or her actual expenses incurred.

B. PROHIBITED BEHAVIOR

1. Use of illegal drugs is prohibited at all times. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in 49 CFR Part 40. Under this DOT Alcohol and Drug Policy the use of the following drugs are prohibited:
 - a. Amphetamines
 - b. Cocaine metabolites
 - c. Marijuana metabolites
 - d. Opioids
 - e. Phencyclidine (“PCP”)
2. Additionally, all covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
3. All covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. If the on-call employee claims the ability to perform his or her safety-sensitive function, he or she must take an alcohol test with a result of less than 0.02 prior to performance.
4. All covered employees are prohibited from consuming alcohol within eight (8) hours prior to the performance of safety-sensitive job functions.
5. All covered employees are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug and alcohol test, whichever occurs first.
6. Depending upon the circumstances and job responsibilities, should the employee test positive for drugs or refuse to be tested, he/she may be terminated. A result indicating substitution or adulteration will result in termination.

C. CONSEQUENCES FOR VIOLATIONS

The Tribe reserves the right to impose harsher disciplinary action it deems appropriate and reasonable based upon the particular circumstances surrounding the employee's conduct.

1. FTA (Federal Transit Administration) Consequences

- a. Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, the employee will be immediately removed from safety-sensitive duty and referred to a Substance Abuse Professional (SAP).
- b. Following a BAC of 0.02 or greater, but less than 0.04, the employee will be immediately removed from safety-sensitive duties for at least eight (8) hours unless a retest results in the employee's alcohol concentration being less than 0.02.

2. FMCSA (Federal Motor Carrier Safety Administration) Consequences

- a. Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, the employee will be immediately removed from safety-sensitive duty and referred to Substance Abuse Professional ("SAP") and recommended for a rehabilitation/treatment program.
- b. Following a BAC of 0.02 or greater, but less than 0.04, the employee will be immediately removed from safety-sensitive duties until the start of the employee's next regularly scheduled duty period, but not less than twenty-four (24) hours following administration of the test.

3. Treatment/Discipline

- a. Per Tribal policy, any employee who tests positive for drugs or alcohol (BAC at or above 0.04) or refuses to test will be referred to an SAP and recommended for a rehabilitation/treatment program. Failure by the employee to cooperate with and abide by the rules of the rehabilitation/treatment program will result in termination.
- b. Every effort will be made by the SAP to recommend a rehabilitation/treatment program covered by the employee's insurance provider; otherwise, evaluation/counseling/rehabilitation/treatment is the responsibility of the employee.

- c. Employees will be allowed to use available sick and/or annual leave during the rehabilitation/treatment period. The Tribe will exercise its discretion whether to remove an employee from duty if continued performance during rehabilitation/treatment could pose a significant safety risk.
- d. At the conclusion of rehabilitation/treatment, arrangements for return-to-duty and follow-up testing may be made. Follow-up testing shall not exceed two (2) years.

D. CIRCUMSTANCES FOR TESTING

1. Pre-Employment Testing

- a. Pre-employment alcohol tests are conducted after making a contingent offer of employment or transfer. All pre-employment alcohol tests will be conducted using the procedures set forth in 49 CFR Part 40.
- b. A negative pre-employment drug test result is required before an employee can perform safety-sensitive functions. If a pre-employment test is cancelled, the individual will be required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions.
- c. If a covered employee has not performed a safety-sensitive function for ninety (90) or more consecutive calendar days and has not been in the random testing pool during that time, the employee must take and pass a pre-employment test before he or she can return to a safety-sensitive function.
- d. An applicant who has failed or refused a DOT pre-employment drug and/or alcohol test will terminate any further action toward employment and the applicant may not reapply for employment with the Tribe for six (6) months thereafter.

2. Reasonable Suspicion Testing

- a. All covered employees shall be subject to a drug and/or alcohol test when the Tribe has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing will be made by a trained supervisor or other trained company official on the basis of specific, contemporaneous, articulable observations concerning

the appearance, behavior, speech, or body odors of the covered employee.

- b. Covered employees may be subject to reasonable suspicion drug testing any time while on duty. Covered employees may be subject to reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

E. POST-ACCIDENT TESTING

1. FTA Procedures

- a. Covered employees shall be subject to FTA post-accident drug and alcohol testing under the following circumstances:
 - i. As soon as practicable following an on-the-job accident, drug and alcohol tests will be conducted on each surviving covered employee operating the public transportation vehicle at the time of the accident. In addition, any other covered employee whose performance could have contributed to the accident, as determined by the Tribe using the best information available at the time of the decision, will be tested.
 - ii. For all accidents, drug testing shall occur not more than thirty-two (32) hours from the time of the event, and alcohol testing shall occur within two (2) hours and not more than eight (8) hours from the time of the event. A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test.
- b. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

2. FMCSA Procedures

Covered employees shall be subject to FMCSA post-accident drug and alcohol testing under the following circumstances:

a. Fatal Accidents

As soon as practicable following an on-the-job accident involving a commercial motor vehicle operating on a public road in commerce, and resulting in the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee who was performing safety-sensitive functions with respect to the vehicle.

b. Non-fatal Accidents

i. As soon as practicable following an on-the-job accident involving a commercial motor vehicle operating on a public road in commerce, and not resulting in the loss of a human life, an alcohol test will be conducted on each driver who receives a citation within eight (8) hours of the occurrence under State, Tribal, or local law for a moving traffic violation arising from the accident.

ii. As soon as practicable following an on-the-job accident involving a commercial motor vehicle operating on a public road in commerce, and not resulting in the loss of a human life, a drug test will be conducted on each driver who receives a citation within thirty-two (32) hours of the occurrence under State, Tribal, or local law for a moving traffic violation arising from the accident, if:

- A. The accident results in injuries requiring immediate medical treatment away from the scene; or
- B. One or more motor vehicles incur disabling damage and must be transported away from the scene by a tow truck or other motor vehicle.

c. For all accidents under this Section, drug testing shall occur not more than thirty-two (32) hours from the time of the event, and alcohol testing shall occur within two (2) hours but not more than eight (8) hours from the time of the event. A covered employee subject to post-accident testing must remain readily available, and failure to do so shall be considered a refusal to test.

d. Nothing in this Section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

F. RANDOM TESTING

1. Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of the day when safety-sensitive functions are performed.
2. Testing rates will meet or exceed the minimum annual percentage rate set each year within each DOT agency. The current year testing rates can be viewed online at <http://www.transportation.gov/odapc/random-testing-rates>. If a given driver falls under the random testing rules of more than one DOT agency, the driver will be subject to random drug and alcohol testing at the annual percentage rate established by the DOT agency regulating more than 50% of the driver's function.
3. The selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Under the selection process used, each covered employee will have an equal chance of being tested each time selections are made.
4. A covered employee may only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.
5. Each covered employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the designated testing site.

G. RETURN TO DUTY TESTING

Any employee who is allowed to return to safety-sensitive duty after failing or refusing to submit to a DOT drug and/or alcohol test must first be evaluated by an SAP, complete an SAP-required program of education and/or treatment, and provide a negative return-to-duty drug and/or alcohol test result. Any return-to-duty drug testing will be directly observed. All tests will be conducted in accordance with 49 CFR Part 40, Subpart O.

H. FOLLOW-UP TESTING

1. Employees returning to safety-sensitive duty following leave for substance abuse rehabilitation will be required to undergo unannounced follow-up alcohol and/or drug testing for a period of one (1) to five (5) years, as directed by the SAP. The duration of testing will be extended to account for

any subsequent leaves of absence, as necessary. The type (drug and/or alcohol), number, and frequency of such follow-up testing shall be directed by the SAP.

2. A covered employee may only be subject to follow-up alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. A covered employee may be subject to follow-up drug testing anytime while on duty. All follow-up drug tests will be directly observed. All testing will be conducted in accordance with 49 CFR Part 40, Subpart O.

I. TESTING PROCEDURES

All FTA and FMSCA drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended.

1. Dilute Urine Specimen

- a. If there is a negative dilute test result, the Tribe will accept the test result and there will be no retest, unless the creatinine concentration of a negative dilute specimen was greater than or equal to 2 mg/dL, but less than or equal to 5 mg/dL.
- b. Dilute negative results with a creatinine level greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL require an immediate recollection under direct observation (see 49 CFR Part 40, section 40.67).

2. Split Specimen Test

In the event of a verified positive test result for a split specimen, the covered employee can request that the split specimen be tested at a second laboratory. The Tribe guarantees that the split specimen test will be conducted in a timely fashion. *The request for a retest must take place within seventy-two (72) hours of notification of a verified positive result and the expense of a retest will be borne by the employee/applicant.*

J. TEST REFUSALS

1. A covered employee will be considered to have refused to test if they:
 - a. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the Tribe.
 - b. Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process

- commences for a pre-employment test has not refused to test.
- c. Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
 - d. In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of the covered employee's provision of a specimen.
 - e. Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
 - f. Fail to undergo a medical examination or evaluation as directed by the Tribe as part of the insufficient breath procedures.
 - g. Fail or decline to take a second test as directed by the collector or the Tribe for drug testing.
 - h. Fail to undergo a medical evaluation as required by the MRO or the Tribe's Designated Employer Representative (DER).
 - i. Fail to cooperate with any part of the testing process.
 - j. Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
 - k. Possess or wear a prosthetic or other device used to tamper with the collection process.
 - l. Admit to the adulteration or substitution of a specimen to the collector or MRO.
 - m. Adulterate or substitute a urine specimen.
 - n. Refuse to sign the certification at Step 2 of the Alcohol Testing Form.
 - o. Fail to remain readily available following an accident.
2. If the MRO reports that a covered employee has a verified adulterated or substituted test result, it is considered a refusal to take a drug test. A result indicating substitution or adulteration will result in termination.
3. A covered employee who has refused to take a drug and/or alcohol test will incur the same consequences as testing positive and will be immediately removed from performing safety-sensitive functions, and will be referred to an SAP.

K. VOLUNTARY SELF-REFERRAL

1. FTA Procedures

- a. Any employee who has a drug and/or alcohol abuse problem and has not been selected for reasonable suspicion, random, or post-accident testing or has not refused a drug or alcohol test may voluntarily refer herself/himself to the Director of Human Resources, who will refer the individual to an SAP or allow the

covered employee to seek a licensed addiction counselor (“LAC”) for evaluation and treatment.

- b. The SAP/LAC will evaluate the employee and make a specific recommendation regarding the appropriate treatment. Employees are encouraged to voluntarily seek professional substance abuse assistance before any substance use or dependence affects job performance.
- c. Any safety-sensitive employee who admits to a drug and/or alcohol problem will immediately be removed from his/her safety-sensitive function and will not be allowed to perform such function until successful completion of a prescribed rehabilitation program.

2. FMCSA Procedures

- a. Any covered employee who has a drug and/or alcohol abuse problem and has not been selected for reasonable suspicion, random, or post-accident testing or has not refused a drug or alcohol test may voluntarily refer her or himself to supervisory personnel, who will refer the individual to an SAP or allow the covered employee to seek an LAC for evaluation and treatment.
- b. The SAP/LAC will evaluate the employee and make a specific recommendation regarding the appropriate treatment. Employees are encouraged to voluntarily seek professional substance abuse assistance before any substance use or dependence affects job performance.
- c. Any safety-sensitive employee who admits to a drug and/or alcohol problem will immediately be removed from his/her safety-sensitive function until successful completion of a prescribed rehabilitation program. Prior to participating in a safety-sensitive function, the employee must also undergo a DOT return-to-duty drug test with a verified negative result and/or a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

L. PRESCRIPTION DRUG USE

- 1. A legally prescribed drug means the individual has a prescription or other written approval by a physician for the use of a drug in the course of medical treatment. It must include the patient’s name, the name of the substance, quantity/amount to be taken, and the period of authorization. The appropriate use of legally prescribed drugs and over-the-counter medication is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or

judgment may be adversely affected must be reported to supervisory personnel and medical advice must be sought by the employee, as appropriate, before performing sensitive work-related duties. Failure to do so will result in disciplinary action up to and including termination. Should the effect of medication adversely affect a covered employee, the employee may be temporarily removed or reassigned from their position if deemed appropriate.

2. The misuse or abuse of legally prescribed drugs or over-the-counter medication while on duty, engaged in Tribe business, on Tribe premises, or at a Tribe-sponsored function is strictly prohibited.

M. MEDICAL MARIJUANA

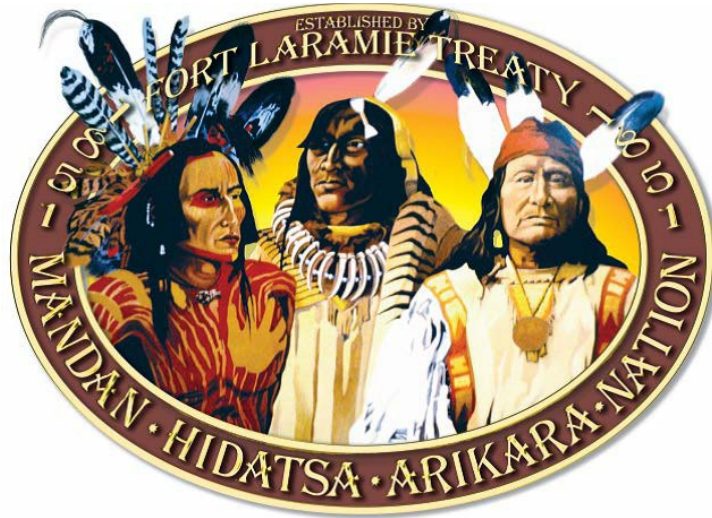
Under 49 CFR Part 40 at 40.151(e), the DOT does not authorize “medical marijuana” under a state law to be a valid medical explanation for a covered employee’s positive drug test. As such a covered employee’s use of medical marijuana under a valid state license will still be render a drug test positive, and the employee will be subject to the disciplinary actions in accordance with this policy and DOT regulations.

NOTE:

Neither this policy nor any of its terms are intended to create a contract of employment, or to alter the existing employment or contractual relationship in any way. The Tribe retains the right to modify, revoke, suspend, terminate, or change any term or provision of this policy at any time, with reasonable notice to the employee.

This policy is effective as amended as of July 1, 2025 and supersedes all prior policies and statements relating to prohibited substances. All questions concerning this policy should be directed to the Director of Human Resources at (701) 627-8113.

MANDAN, HIDATSA AND ARIKARA NATION



APPENDIX B EMPLOYMENT POLICIES AND PROCEDURES

MOTOR VEHICLE USE POLICY

Adopted April 8, 2004, pursuant to Resolution 04-45BRP by the MHA Tribal Business Council
Revised July 1, 2025 pursuant to Resolution 25-183-FWF by the MHA Tribal Business Council

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I. GENERAL POLICY

- A. It is the policy of the Mandan, Hidatsa and Arikara Nation (“Tribe” or “Tribal” or MHA Nation”) to allow use of Tribal property for business purposes only. Use of Tribal vehicles for activities other than business purposes by employees or other persons is **strictly prohibited**. This Policy is intended to prevent and prohibit the abuse and misuse of tribally-owned vehicles, to ensure such vehicles are used only for authorized purposes, and to protect such vehicles from unnecessary wear and tear.
- B. All Tribal vehicles are for the exclusive use of employees, the Department Directors, or Tribal Business Council members in the course of conducting business on behalf of the Tribe.
- C. **Under no circumstances will any vehicle be used for personal business.** Allowing any unauthorized person (i.e. family members, friends, etc.) to drive a Tribal vehicle is **strictly prohibited**. Additionally, no unauthorized person may be transported in any Tribal vehicle unless being transported under an authorized Tribal program. Any person using a vehicle for personal matters is subject to disciplinary action under the Tribe’s Personnel Policies and Procedures. Personal use includes, but is not limited to, taking children to and from school and running personal errands.

II. APPLICABILITY

This Motor Vehicle Use Policy (“Policy”) will be followed by all Tribal and General Services Administration (“GSA”) vehicle operators who are covered by the Tribe’s insurance Policy. All eligible employees, Department Directors, and Tribal Business Council members must follow the requirements of this Policy. Employees holding jobs requiring regular driving for business as an essential job function must, as a condition of employment, be able to meet the driver approval standards of this Policy at all times.

III. TRIBE RESPONSIBILITIES

The following constitutes the responsibilities of the Tribe acting by and through the Property and Supply Department in relation to vehicles purchased and owned by the Tribe:

- A. Assume primary responsibility for the functions set out in this section.
- B. Provide economical transportation and transportation services to meet the requirements of Tribal Departments and their personnel for official business purposes.
- C. Issue vehicles to Departments or programs for official business purposes. Vehicles will only be issued to programs or Departments and will not be issued to individual employees, Directors, or Tribal Business Council members.

- D. Procure vehicles when necessary and authorized according to program budgets for programs and Departments according to the Tribe's Procurement Policy.
- E. Ensure that all vehicles have adequate insurance coverage and file any claims for damages to any vehicles with the Tribe's insurance carrier.
- F. Ensure the proper identification and licensing of all Tribally owned vehicles. All Tribal vehicles will be licensed with the Tribe's personalized insignia.
- G. Ensure optimum utilization of tribally owned vehicles.
- H. Provide procedures to ensure economical and safe operation of Tribal vehicles.
- I. Promote the use of alternative fuels.
- J. Maintain emission test records and notify Departments when vehicles are due for emissions testing, where applicable.

IV. DEPARTMENT RESPONSIBILITIES

The following constitutes the responsibilities of Tribal programs and Departments and their employees authorized to operate program and Departmental vehicles. An operator is any employee authorized by their Department Director to operate or use a Tribally-owned vehicle.

- A. Once a vehicle has been issued to a Department or program, that Department or program and its Director assumes full responsibility for the maintenance and care of the vehicle until returned to the Property and Supply Department.
- B. The Director of each program or Department is responsible for authorizing their employees to operate Department vehicles when necessary for the performance of their job duties or for official use within their Departments. Such authorization shall be documented on the Tribe's Employee Vehicle Use Authorization form (see Exhibit A) and submitted to the Property/Fixed Assets Department. Directors shall ensure that employees have read and understand this Policy prior to authorizing operation of the vehicle. Employees will not be authorized under any circumstances to operate a vehicle if they do not possess a valid state driver's license or work permit.
- C. It is the responsibility of the Department that has been issued the vehicle to ensure the operator is qualified to operate the type of vehicle he/she is assigned to operate and is licensed as required by the State and/or the Department of Transportation ("DOT"). As prescribed by the Commercial Motor Vehicle Safety Act of 1986, all drivers of commercial motor vehicles must have a commercial driver license to operate any of the following:

1. A single vehicle having a gross vehicle weight rating (“GVWR”) in excess of 26,000 pounds;
 2. A trailer with a GVWR of more than 10,000 Pounds, if the combination weight rating is more than 26,000 pounds;
 3. A vehicle is designed to transport more than 15 persons (including the driver); or
 4. Any size vehicle used in the transportation of hazardous materials requiring a vehicle placard under 49 CFR. Par 172, Subpart F (the state may have additional definitions of a CMV).
- D. It is the responsibility of the Department that has been issued a Tribal vehicle to ensure the vehicle is equipped with a logbook to record mileage, fuel charges, and maintenance/repair charges. A copy of the Insurance card and registration will be provided by the Property and Supply Department and must be kept in the vehicle at all times. It is the responsibility of the Departmental Director to notify the Property and Supply Department of any accidents/collisions, damages to the vehicle, or stolen items, and to ensure license renewals and to ensure proper assessments to any changes that may occur. Departments issued a vehicle will be responsible for all costs related to vehicle usage or accidents/collisions or damages; this includes payment of the costs of all insurance coverage for the vehicle to the Property and Supply Department Office.

V. DRIVER RESPONSIBILITIES AND VEHICLE USE REQUIREMENTS

- A. The operator of a Tribal vehicle assumes full responsibility for the vehicle or equipment until its return to the applicable Department. The vehicle or equipment and keys shall be returned to the Department when it is no longer needed for official use.
- B. Employees issued a Tribally-owned vehicle are responsible for exercising reasonable diligence in the care of the vehicle at all times. Failure to observe Tribal policies and applicable state traffic regulations and to take proper care of the vehicle may be considered justification for termination of the right to use the vehicle and denial of further vehicle use by the employee. Such determination shall be made after reasonable notice to the Departmental Director concerned has been given.
- C. Each driver is responsible for the actual possession, care, and use of the Tribal vehicle in their possession. Therefore, a driver’s responsibilities include, but are not limited to, the following:
1. Operation of the vehicle in a manner consistent with reasonable practices that avoid abuse, theft, neglect, or disrespect of the equipment.
 2. Obeying all traffic laws.
 3. The use of seat belts and shoulder harness is mandatory for driver and passengers.
 4. Adhering to manufacturer's recommendations regarding service, maintenance, and inspection. Vehicles should not be operated with any

- defect that would prevent safe operations.
- 5. Attention to and practice of safe driving techniques and adherence to current safety requirements.
- 6. Restricting the use of vehicles to authorized driver only.
- 7. Accurate, comprehensive, and timely reporting of all vehicle incidents and accidents/collisions by an authorized driver and thefts of a Tribal vehicle to the Fixed Assets Specialist, in the Property and Supply Department.

Failure to comply with any of these responsibilities will result in disciplinary action.

- D. Every driver of a Tribal vehicle must fill out the information required in the vehicle logbook, including beginning, and ending mileage for each time the vehicle is being used. Any repairs and/or maintenance work done to the vehicle must be filed with the Fixed Assets Specialist in the vehicle folder.
- E. All Tribal vehicles must be parked at the designated Tribal location. NO Tribal vehicle may be kept overnight at employees' residence, except for those allowed under this Policy.
- F. Segment vehicles must be parked at the segment's community centers when not in use.
- G. Every driver of a Tribal vehicle must clean the vehicle used after each use. Cleaning must include removal of all trash from the vehicle.
- H. Carrying guns/firearms is permitted in only those vehicles so designated.
- I. Every driver must have a valid driver's license or work permit on file with the Properly Supervisor in the Property and Supply Department.
- J. Drivers must report moving violation citations, criminal charges, and arrests in accordance with the Tribe's Arrests and Convictions Policy.

VI. REQUIREMENTS FOR OPERATING A TRIBAL VEHICLE

Each driver must receive written authorization prior to using a Tribal vehicle. Such authorization shall be documented on the Tribe's Employee Vehicle Use Authorization form (see Exhibit A) and submitted to the Property/Fixed Assets Department. Eligible employees, Department Directors, and Tribal Business Council members must meet the following requirements to be eligible for authorization to use Tribal vehicles for business purposes:

- A. Possess a current North Dakota driver's license, work permit, or possess a current driver's license issued in another state and meet the licensing requirements to possess a valid driver's license with the State of North Dakota. Individuals who are new residents of North Dakota and who possess a valid driver's license issued by another state must obtain a current and valid driver's license issued by the state of

North Dakota within sixty (60) days of becoming a North Dakota resident. Such North Dakota driver's license must be submitted to the employee's Department Director and the Finance Department.

- B. Be listed on, or eligible for coverage under, the Tribe's insurance Policy.
- C. Not have experienced any of the following during the six (6) months prior to obtaining authorization to use a Tribal vehicle:
 - 1. Conviction of:
 - a. the sale, handling, or use of drugs;
 - b. an alcohol or drug related offense while driving;
 - c. three (3) or more speeding violations for driving 16 miles-per-hour or more over the speed limit (if classified as reckless driving in the jurisdiction where convicted, such violation will be considered a serious moving violation);
 - d. any combination of three or more moving violations, at fault accidents, or suspensions with reinstatements; or
 - e. any major moving violations.
 - 2. Involvement in two (2) or more chargeable accidents/collisions.

The list above is also subject to the inclusion of any additional requirements prescribed by the Tribe's vehicle insurance Policy carrier.

- D. If using a large, heavy vehicle or equipment (i.e. 15-passenger van or bus, snow plow, garbage truck, tractor trailer, etc.) that may only be legally operated by individuals who possess a Commercial Driver's License (CDL), such individuals must possess a current CDL that would be considered valid under Tribal and State of North Dakota law. No person who does not possess a CDL may otherwise be authorized to drive such vehicles. Individuals who are new residents of North Dakota and who possess a valid CDL issued by another state must obtain a current and valid driver's license issued by the State of North Dakota within thirty (30) days of becoming a North Dakota resident. Such North Dakota CDL must be submitted to the employee's Department Director and the Finance Department.
- E. Driving privileges may be withdrawn or suspended and/or the Tribal vehicle removed from any authorized driver not meeting the above requirements. Unauthorized use of a Tribal vehicle will result in disciplinary action under the Tribe's Personnel Policies and Procedures and may result in criminal prosecution depending on the circumstances of the unauthorized use.

VII. AUTHORIZED AND PROHIBITED USES OF TRIBALLY OWNED VEHICLES

- A. When a Tribally-owned vehicle is issued to a Department, it shall be used only for Tribal business and/or for the performance of job duties. This includes transportation between: places where the employee's presence is required

incidental to tribal business; (2) such places and places of temporary lodging when public transportation is unavailable or its use is impractical; and (3) between either of the above places and suitable eating places, drug stores, cleaning establishments, etc., and such similar places necessary for the sustenance, comfort, or health of the employee to foster the continued efficient performance of tribal business.

- B. Personal use of Tribally-owned vehicles, including personal travel, while on or off duty, is prohibited.
- C. Vehicles will not be used to travel to and from work unless the vehicle is being returned to the Department after official business use.
- D. The use of alcohol or illegal drugs while operating a Tribal vehicle is strictly prohibited and may result in immediate termination from employment.
- E. Smoking/Vaping or use of tobacco products in Tribal vehicles is prohibited.
- F. Engaging in distracted driving is strictly prohibited. Distracted driving includes, but is not limited to, using a hand-operated device (i.e., cell phone, laptop computer, Global Positioning System tool)—whether or not the vehicle is in motion or stopped at a traffic light—to make or answer phone calls, read or respond to text messages, emails, etc., or access any other information on the device.
- G. Authorization to carry passengers: Only persons traveling on Tribal business are permitted as passengers in Tribal vehicles and any passenger must be specifically related to approved Departmental-related business. Exemptions apply:
 - 1. In instances of serious emergency; or
 - 2. When transportation of members of the public is in the best interests of the Tribe and authorized in writing by a Departmental Director or Tribal Business Council Representative.

VIII. ACCIDENT/COLLISION PROCEDURES

- A. In case of a vehicle collision, the employee driving the Tribal vehicle involved in the collision must do the following, as applicable:
 - 1. Call the Police Department immediately;
 - 2. Obtain the name, address, and telephone of the driver of the other vehicle;
 - 3. Obtain the make, model, and year of the other vehicle and the License Plate number on the vehicle;
 - 4. Obtain the name of the vehicle owner if different then the driver and their address and telephone number.
 - 5. Obtain the name, address, and telephone number of the other driver's insurance company.
 - 6. Obtain the name of the officer taking the police report.

7. Report to the Human Resources office for testing within eight (8) hours of the accident.
- B. All collision information must be reported on the Tribal Vehicle Incident Report form (see Exhibit B) and submitted to the Department Director within three (3) business days of the collision. The Department Director shall forward the report to the Fixed Assets Department in the Property and Supply Department, along with at least two (2) estimates of the damages from the collision, within five (5) business days of receiving the report. All employees involved in a collision who fail to file a Tribal Vehicle Incident Report are subject to disciplinary action in accordance with the Tribe's Personnel Policies & Procedures.
- C. At-fault accidents/collisions caused by a Tribal employee may be subject to disciplinary action, depending on the circumstances involved. Each accident will be handled on a case-by-case basis with the Property Supervisor, Fixed Assets Department, and the Human Resources Director in accordance with the Tribe's Personnel Policies and Procedures.
- D. Repeated not-at-fault accidents/collisions by a Tribal employee may result in collection of amounts not covered by insurance from the employee's paycheck, along with disciplinary action, and/or a ban on further use of Tribal vehicles.
- E. All accidents/collisions are subject to the Tribe's Alcohol and Drug Policies.

IX. VEHICLE ASSIGNMENT PROCEDURES

- A. Preference in use of Tribal vehicles other than assigned vehicles shall be determined by the Property and Supply Department with concurrence from the Fixed Assets Department.
- B. Any employee who needs to use a Tribal vehicle must complete and file with their Department Director an Employee Tribal Vehicle Use Authorization form (see Exhibit A) three (3) days prior to the intended use of the vehicle. The Property Supervisor will determine if the employee is eligible to operate a Tribal vehicle.
- C. Use of a vehicle without following this Policy will be considered unauthorized use and may result in disciplinary action under the Tribe's Personnel Policies and Procedures.

X. IRREGULAR HOURS

- A. The Tribal Business Council realizes that in some circumstances a Department may be required to work irregular hours. Irregular hours shall mean those hours not between 8:00 a.m. and 4:30 p.m., weekends, and holidays.

- B. A list of Departments that work irregular hours and/or a 24-hour emergency on-call schedule will be given to the Tribal Police Department for their information. Other Departments that are not 24-hour on-call, but respond to the needs of the Tribal office and/or the community during irregular hours shall possess the following when operating a Tribal vehicle during irregular hours:
 - 1. Documentation justifying the reason the employee is operating the Tribal vehicle; and
 - 2. Travel documentation if utilizing a Tribal vehicle for program travel purposes.
- C. Any employee utilizing a Tribal vehicle during irregular hours without the proper authorization and documentation is subject to disciplinary action under the Tribe's Personnel Policies and Procedures.

XI. STORAGE OF VEHICLES

The storage location of Tribally-owned vehicles shall be at the Department's physical location. Tribal vehicles may not be stored at an employee's residence or garage, except in those cases where the employee's Department Director has determined such storage to be in the best interest of the Tribe. The employee must receive written approval from their Department Director with concurrence of the CEO/Federal Programs Director/Property Director.

XII. PROCEDURES FOR VEHICLE RECOVERY

- A. It is the responsibility of all Tribal employees and Tribal Business Council members to report suspicious activities or unlicensed drivers to their Department Director, Human Resources Director, or CEO, immediately.
- B. A duplicate set of keys for each vehicle will be kept in a secure, locked location in the Property and Supply Department office.
- C. During and after normal business hours the respective Department Director will be the contact person for reporting vehicle incidents. A Tribal Vehicle Incident Report form (see Exhibit B) must be completed and submitted to the Department Director identifying the incident and which vehicle must be recovered.
- D. Tribal Security will be notified by the Department Director or Human Resources Director as to which vehicle needs to be recovered and will secure the vehicle. Once recovered, Tribal Security must report the recovery to the Department Director or Human Resources Director, immediately.
- E. After successful recovery by Tribal Security, the Department Director or Human Resources Director will notify the local police Department to recover and secure the Tribal vehicle. Once recovered, the local police Department will notify the Tribal Security Department to retrieve the recovered Tribal vehicle.

XIII. PROGRAM VEHICLE SALE, TRANSFER, OR DISPOSAL

- A. All Tribally-owned vehicles/heavy equipment that are deemed no longer necessary for Tribal business use shall be deemed excess property and placed for sale provided that any vehicle less than five (5) years old may not be placed for sale without the approval of the Tribal Business Council.
- B. If a program no longer needs a Tribal vehicle and the vehicle is in operating condition, the steps below must be followed:
 - 1. The Director must write a letter to the Fixed Assets Specialist with all of the vehicle information and state that the Department no longer needs the Tribal vehicle.
 - 2. The Fixed Assets Specialist will then notify the Tribal Business Council that the vehicle is available and transfer the vehicle to the program that is in need of a Tribal vehicle.
- C. If a Tribal vehicle is no longer needed by any program the vehicle shall be placed for sale and open only to Tribal employees (if no employee wishes to purchase the vehicle, it shall be sold through a bid process open to the public). The following criteria shall be applied when selling a Tribally owned vehicle:

1. Employee Sale

- a. The sale price of the vehicle shall be the actual retail price of the vehicle as determined by quotes from at least three (3) licensed dealerships. This is the amount the purchaser must pay.
- b. The employee must pay at least 1/4 of the amount of the sale price at purchase as a down payment for the vehicle. No exceptions will be made.
- c. The employee then must establish an amount of at least 5% of remaining balance that will be deducted monthly from the employee's payroll, or a minimum of \$100 dollars bi-weekly payroll deduction, for the remainder of the cost of the said vehicle.
- d. The employee must purchase their own insurance upon acquisition for the vehicle and provide proof of coverage to the Property Director. Whether full coverage insurance is necessary will be determined by the Property Director. Liability insurance on the vehicle shall be mandatory while title to the vehicle is in the name of the Tribe.
- e. If the employee terminates his/her employment with the Tribe, full payment of the balance shall be required to keep the vehicle. No

exceptions will be made.

- f. Title to the vehicle shall be issued to the purchaser upon full satisfaction of sale price.
- g. Failure to pay for the vehicle or otherwise comply with the terms of the sale will result in repossession of the vehicle.

2. Bid Process

- a. For non-employee sales, the Department Director must write a letter to the Fixed Assets Specialist with all of the vehicle information and state that the vehicle may go out for bids.
- b. The Fixed Assets Specialist will then put out a notice listing the items, equipment, and vehicles that are up for auction. All bid letters must be submitted to the Fixed Assets Specialist. Once the auction is closed the person with the highest bid will receive an award letter stating that they were the highest bidder.
- c. The Fixed Assets Specialist will send a letter to the Director of the program from which a vehicle was submitted for auction letting the Department Director know how much the item went for and what line item the funds went into.

XIV. PROGRAM VEHICLE PURCHASE

- A. All program vehicle purchases must go through the Property and Supply Department to ensure that the Fixed Assets Specialist has all documentation on a newly purchased vehicle and to assign a Tribal Letter Plate to the new vehicle.
- B. All vehicle purchases **MUST** be delivered to the Fort Berthold Indian Reservation to avoid motor vehicle tax being charged to the Tribe.
- C. All vehicle trade-ins must go through the Property and Supply Department to ensure that the Fixed Assets Specialist has all documentation on the new vehicle being purchased and the vehicle being traded in so the plates on the trade-in can be transferred to the new vehicle.
- D. Once a vehicle is bought by the Tribe, it will immediately be put on the Tribe's insurance. An insurance card may be picked up from the Fixed Asset Specialist.

XV. PROGRAM VEHICLE INVENTORY

- A. Vehicle inventory, excluding GSA vehicles, will be updated every year. GSA vehicle inventory will be updated every six (6) months.

- B. All Tribal and GSA vehicles on the Tribe's insurance will be inspected every six (6) months to verify that all vehicles are in good condition and that there is no negligence or abuse to any of the vehicles. Photos will be taken of every vehicle during inspection.
- C. If negligence is found, the Department Director will be required to show documentation as to why there was negligence with the vehicle.

XVI. VIOLATIONS OF POLICY AND DISCIPLINARY ACTION

- A. When a violation of the provisions of this Policy is reported to a Departmental Director, the Department Director will report the allege violation to the Transportation Director, Human Resources Director, and the CEO (collectively referred to herein as the "panel"). The panel and the Department Director will then meet with the violating employee to determine if a violation has occurred by processing the facts available to them. The violation must be reported by utilizing the Tribe's Incident Report Form (see Exhibit C).
- B. sIf the employee is determined by the panel to have violated this Policy, a one (1) time warning will be issued by the employee's supervisor/Department Director. When the same employee is determined to have violated this Policy a second time, he/she will be recommended for termination from employment with the Tribe by his/her supervisor. The grievance procedures set out in the Tribe's Personnel Policies and Procedures shall apply.

EXHIBIT A: EMPLOYEE VEHICLE USE AUTHORIZATION FORM

THREE AFFILIATED TRIBES EMPLOYEE VEHICLE USE AUTHORIZATION FORM

DIRECTIONS: Sections I and II to be completed by Tribal employee requesting vehicle use authorization and submitted to Department Director. Section III-V to be completed by Department Director and submitted to Property & Supply Department for processing.

I. EMPLOYEE INFORMATION

Employee Name: _____ Date: _____

Department: _____ Department Director: _____

Vehicle Use Purpose: _____

Driver's License No.: _____ Expiration: _____ CDL: ☐ Yes ☐ No

II. EMPLOYEE ACKNOWLEDGMENT

I _____ understand and attest that while in possession of and/or operating a Three Affiliated Tribes vehicle that I am required to comply, and will comply, with all applicable Tribal, state, and federal laws and the Tribe's Vehicle Use Policy.

Dated this ____ day of _____, 20 ____.

Employee Signature

III. USAGE HOURS

The employee is authorized to use the applicable Tribal or GSA vehicle(s) during the following hours:

☐ Regular hours (M-F, 8:00 a.m. – 4:30 p.m.) ☐ Irregular hours

Specify dates/days/hours: _____

IV. STORAGE INFORMATION

Authorized to store in non-Tribal location(s): ☐ Yes ☐ No

If marked yes above, provide authorized non-Tribal storage location(s) information and explanation/parameters for such storage: _____

CEO/Federal Programs Director/Property Director approval required for non-Tribal location storage:

Written authorization attached: ☐ Yes ☐ No

-OR-

Approval signature: _____

Name & Title: _____

Date: _____

THREE AFFILIATED TRIBES
EMPLOYEE VEHICLE USE AUTHORIZATION FORM

V. DEPARTMENT DIRECTOR AUTHORIZATION

I _____ certify that the above completed information is true and correct. As such, I authorize the employee listed in Section I to utilize a tribal vehicle, subject to approval by the Property and Supply Department Supervisor.

Dated this ____ day of _____, 20 ____.

Department Director Signature

FOR PROPERTY & SUPPLY DEPARTMENT USE ONLY

Date Received: _____ Approved: ☐ Yes ☐ No Date Approved: _____

Property & Supply Department Supervisor Approval Signature: _____

VEHICLE INFORMATION

Authorized Vehicle Use: ☐ Departmental ☐ Specific If vehicle-specific, complete the items below:

Vehicle Type: ☐ Tribal ☐ GSA CDL required: ☐ Yes ☐ No

Plate No. & State: _____ VIN: _____ Year: _____

Make: _____ Model: _____ Color: _____ Condition: _____

Insurance Company Name: _____ Policy No.: _____

EXHIBIT B: TRIBAL VEHICLE INCIDENT REPORT

THREE AFFILIATED TRIBES TRIBAL VEHICLE INCIDENT REPORT

[TO BE COMPLETED FOR ALL DEPARTMENT TRIBAL AND GSA VEHICLES

THIS REPORT MUST BE COMPLETED AND SUBMITTED TO THE APPLICABLE
TRIBAL DEPARTMENT DIRECTOR WITHIN 3-5 BUSINESS DAYS OF THE VEHICLE INCIDENT*

I. REPORTING INFORMATION

Date of Report: _____ Police Report No. (if applicable)[†]: _____

Reported by: _____ Department: _____

Department Contact Info: _____

II. INCIDENT

Date of Incident: _____ Time: _____ ☐ A.M. ☐ P.M.

Location: _____

Incident Description: _____

Collision Type (if applicable): _____

Contributing Factors: _____

Other Vehicles or Objects Involved: _____

No. of Vehicles: _____ Vehicles Towed: _____

Witness 1: _____ Contact Information: _____

Witness 2: _____ Contact Information: _____

Police Officer: _____ Badge No: _____

III. TRIBAL/GSA VEHICLE INFORMATION

Driver Name: _____ Department: _____

Supervisor: _____ Department Director: _____

Driver's License No.: _____ DOB: _____

Address: _____

Phone No.: _____ Email: _____

Passengers: _____

* Incidents involving any kind of collision must be reported to the applicable Department Director within no more than three (3) business days, all other incidents not involving a collision must be reported within no more than five (5) business days.

[†]All vehicle incidents involving any kind of collision with an object/person/animal/vehicle/etc. must be reported to the police and documented in a police report.

**THREE AFFILIATED TRIBES
TRIBAL VEHICLE INCIDENT REPORT**

Vehicle Type: ☐ Tribal ☐ GSA Plate No. & State: _____ VIN: _____

Year: _____ Make: _____ Model: _____ Color: _____

Driver authorized to utilize vehicle: ☐ Yes ☐ No Proof of driver authorization attached to this report: ☐ Yes ☐ No

Purpose for utilizing the vehicle: _____

Insurance Company Name: _____ Policy No. _____

Does the Tribal/GSA vehicle need to be recovered? ☐ Yes ☐ No If yes, list the vehicle recovery location below:

IV. OTHER VEHICLE

Driver Name: _____

Driver's License No.: _____ DOB: _____

Tribal/GSA Vehicle: ☐ Yes ☐ No If yes, Department: _____ Vehicle Type: ☐ Tribal ☐ GSA

Address: _____

Phone No.: _____ Email: _____

Passengers: _____

Vehicle: ☐ Moving ☐ Stationary Plate No. & State: _____ VIN: _____

Year: _____ Make: _____ Model: _____ Color: _____

Insurance Company Name: _____ Policy No. _____

V. DAMAGES

Damaged Property	Location/Description	Repair Cost	Amount Covered by Insurance

VI. INJURIES/DEATH

Injured Person Name	Injuries	Medical Care Required	Total Cost	Amount Covered

Reporting Employee Signature: _____ Date: _____

Department Director Signature: _____ Date of Receipt: _____

Fixed Assets Specialist: _____ Date of Receipt: _____

EXHIBIT C: INCIDENT REPORT FORM

THREE AFFILIATED TRIBES

404 Frontage Road, New Town, ND 58763– (P) 701-627-4781 / (F) 701-627-1377

Incident Report Form

This form shall be used to report an incident involving an employee to be reported to the Director of Human Resources and recorded in the employee's personnel file.

INSTRUCTIONS: Complete all sections of this incident form. You may attach additional pages if necessary.

1. REPORTING PARTY:

Name of Individual filing report:	
Department and Position/Title:	
Address:	
City, State, Zip Code:	
Telephone:	Email:

2. INCIDENT INFORMATION:

Incident Type:
Date of Incident:
Location:
City, State, Zip Code:
Description of Incident (additional pages may be attached):

Name and Role of Parties Involved (including contact information):

1. _____
2. _____
3. _____

Name and Role of Witnesses (including contact information):

1. _____
2. _____
3. _____

Police Report filed? _____ Precinct: _____

Reporting Officer: _____ Phone: _____

Follow-Up Action:

Supervisor Name

Supervisor Signature

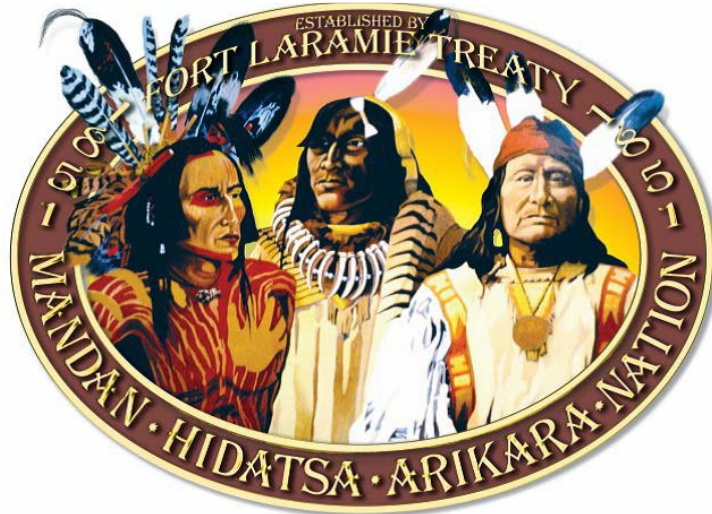
Date: _____

FOR THREE AFFILIATED TRIBES USE ONLY:

Date & Time Received: _____

Received by: _____ Incident Number: _____

MANDAN, HIDATSA AND ARIKARA NATION



APPENDIX C EMPLOYMENT POLICIES AND PROCEDURES

INFANT AT WORK AND BREASTFEEDING MOTHERS PROGRAM POLICY

Adopted April 8, 2004, pursuant to Resolution 04-45BRP by the MHA Tribal Business Council
Revised July 1, 2025 pursuant to Resolution 25-183-FWF by the MHA Tribal Business Council

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I. GENERAL POLICY

- A. It is the policy of the Mandan, Hidatsa and Arikara Nation (“Tribe” or “Tribal” or MHA Nation”) to provide a positive work environment to its employees that recognizes parents’ responsibility to their jobs and to their infants through this Infant at Work and Breastfeeding Mothers Program Policy (“Program” or “Policy”). Eligible employees who are mothers, fathers, or legal guardians may be able to bring their infant between the ages of six (6) weeks to nine (9) months (or when the infant gains mobility, whichever comes first) to the workplace with them. Additionally, breastfeeding mothers will be provided reasonable break time to allow them to express their breast milk at work or breastfeed their infant outside of the workplace (if no longer considered an infant in accordance with this Policy) until the infant is one (1) year old.
- B. This Policy may allow eligible employees who need or wish to return to work to bring their infant, while supporting a positive work/life balance and honoring the employee’s contributions to the Tribe.

II. APPLICABILITY

This Policy shall be followed by all Tribal employees, which, for purposes of this Policy, includes all permanent full-time, part-time, on-leave, and suspended employees, political appointees, and affiliates. Affiliates are unpaid volunteers and paid or unpaid summer youth or interns. The provisions of this Policy are in addition to all other applicable Tribal policies and procedures. The term “employee” shall be used throughout this Policy to refer to employees, political appointees, and affiliates unless otherwise specified.

III. PURPOSE

- A. It is the purpose of this Policy to establish eligibility requirements and guidelines to allow eligible employees to have their infant in the workplace and for breastfeeding mothers to use break times and designated areas for expressing their breast milk and breastfeeding.
- B. Benefits for employees under the Program include:
 - 1. The promotion of breastfeeding and increased bonding with infants
 - 2. Reduced daycare costs
 - 3. Increased financial stability
 - 4. Lower stress for parents
 - 5. More options for women
 - 6. Enables working fathers to be more involved with their infants
 - 7. Increased job satisfaction

IV. DEFINITIONS

- A. Infant. A child between six (6) weeks and nine (9) months of age (or when the child gains mobility, whichever comes first).
- B. Mobility. Mobility varies depending on each child's individual development. Mobility is defined as crawling, walking, or another form of movement that results in the child moving from one location to another without assistance.
- C. Parent. An individual who (through birth, adoption, or placement for foster care) is the parent or the legal guardian of an infant.
- D. Workplace. Workplace means the place or places and environments where an employee performs all matters relating to their employment duties, whether on or off Tribal premises.

V. INFANT AT WORK ELIGIBILITY

- A. A full-time or part-time permanent employee of the Tribe who is the parent (through birth, adoption, or placement for foster care) or the legal guardian of an infant is eligible to participate in the Program. Participation in the Program is subject to the provisions of this Policy, to the specific job responsibilities of the parent, and to ensuring the physical safety of the infant. Typically, only employees working in an office setting will be eligible to utilize this Policy's benefits. An employee participating in the Program is limited to having one (1) infant in the workplace at a time under this Policy.
- B. An employee shall be **ineligible** for participation in the Program for any the following reasons:
 - 1. Is in their probationary period
 - 2. Is currently subject to a corrective or disciplinary action
 - 3. Job responsibilities involve
 - a. direct services or client/patient contact;
 - b. work in high-traffic areas;
 - c. driving a Tribal or GSA vehicle;
 - d. maintenance, janitorial, or facility services; or
 - e. employee holds an otherwise sensitive position.

Note: Bringing an infant to work is prohibited where the parent has direct patient/client contact or where there are secured areas and/or potential safety concerns for the infant, employees, or the public.

- C. Participation in the Program is also subject to the approval of the employee's direct supervisor and the Human Resources Department ("HR"). Requests are evaluated and approved on a case-by-case basis following the requirements and procedure

details in the following sections.

- D. An employee's participation in the Program may be terminated at the supervisor's discretion, with approval by HR, for various reasons including, but not limited to, the following:
 - 1. Employee fails to follow the guidelines of this Policy.
 - 2. Employee's job duties or workplace environment change in a way that makes the employee ineligible for participation in the Program.
 - 3. The infant's presence in the workplace is disruptive to the productivity of the employee or coworkers.
 - 4. Employee becomes subject to a corrective or disciplinary action.
- E. An employee's participation in the Program will automatically terminate once the infant reaches nine (9) months of age or gains mobility, whichever comes first. Employees should monitor the development of their infant and make alternate childcare arrangements before the child is no longer considered an infant under this Policy.

VI. REQUIREMENTS

- A. Employees seeking to utilize this Policy to bring their infant to work must complete and submit to their supervisor the following forms, which may be obtained from HR:
 - 1. Infant at Work and Breastfeeding Mothers Program Request form
 - 2. Infant at Work and Breastfeeding Mothers Program Waiver of Liability, Indemnification, and Medical Release form
 - 3. Infant at Work and Breastfeeding Mothers Office Inspection Checklist

VII. PROCEDURES

- A. **Request permission to bring infant to work:**
 - 1. Employees may request the required Infant at Work and Breastfeeding Mother Program forms from HR.
 - 2. Prior to the infant's birth (if possible) or before the desired employee participation in the Program start date, employee must complete the Infant at Work and Breastfeeding Mothers Program Request forms and meet with their supervisor to discuss the request form and whether the employee's work situation, job duties, and job performance are appropriate for the Program. Employees must also have their worksite evaluated by a safety officer, or other designated inspector, using the Infant at Work and Breastfeeding Mother Program Office Inspection Checklist, prior to approval of participation in the Program.

- a. If supervisor approves the request:
 - i. Employees must take their approved Infant at Work and Breastfeeding Mother Program Request forms and completed Infant at Work and Breastfeeding Mother Program Office Inspection Checklist to HR.
 - ii. Employees (and infant's other parent) must complete the Infant at Work and Breastfeeding Mother Program Waiver of Liability, Indemnification, and Medical Release forms and submit the same to HR.
 - iii. Employees should retain a copy of all completed and signed forms for their records and provide a copy to their supervisor.
- b. If supervisor denies the request:
 - i. Supervisor must provide employees with the reason for the denial in the designated area of the Infant at Work and Breastfeeding Mothers Program Request form, and send both to HR for review.
 - A. If HR upholds the supervisor's denial, HR shall notify the requesting employee and provide them with the reason for the denial in the designated area of the Infant at Work and Breastfeeding Mothers Program Request form.
 - B. If HR disagrees with the supervisor's denial, HR shall contact the supervisor to discuss the denial. The supervisor and HR shall collectively reach a decision on approval/denial. HR shall indicate the reason for the denial in the designated area of the Infant at Work and Breastfeeding Mother Program Request form and provide a copy of the same to the employee.

B. Termination of participation in the Program:

- 1. Participation in the Program shall automatically end upon the infant attaining nine (9) months of age, or when the infant gains mobility, whichever comes first.
- 2. The Tribe, through the supervisor, with the approval of HR, retains the right to terminate with or without cause, the employee's participation in the Program, upon reasonable notice, at any time. The supervisor must provide written notice to employee stating why the privilege is being terminated and termination effective date.

VIII. EXPECTATIONS AND GUIDELINES

- A. When approved to participate in the Program, the following expectations and guidelines shall be followed:
1. **Workstation:** Employee (parent) must provide all supplies and equipment needed to care for and to provide for the infant's developmental needs and safety at the workstation. The infant shall be located primarily at the parent's workstation during the workday. The infant may be in another employee's workstation—if an Office Inspection Checklist has been approved for the space—for brief intervals (not to exceed a half hour/30 minutes). However, the arrangement must agreed upon by the parent, other employee, and the supervisor(s). It remains the parent's responsibility to ensure the environment is safe for the infant at all times.
 2. **Location:** The employee participating in the Program accepts complete responsibility for the safety of the infant. If the employee's work duties require that they leave their primary work site, the infant must accompany the employee. The employee shall not transport the infant in a Tribally owned or GSA vehicle. The employee shall never leave the work building for any length of time without taking the infant with them.
 3. **Work Requirements:** There may be work circumstances that require the employee's full attention or for which the inclusion of an infant is not appropriate. In these circumstances, it will be necessary for the employee to make other arrangements for childcare during these times. These circumstances could include, but are not limited to, select meetings, work events/presentations, and required work-related travel.
 4. **Work Time:** Parents will provide care for the infant while performing job duties. In coordination with their supervisor, the parent may be required to flex/adjust their work hours or submit leave to accommodate for excessive loss of productivity. Any modifications to the employee's regular work schedule must be requested/approved by their supervisor.
 5. **Home:** If the infant is disruptive for a prolonged period of time and is unable to be calmed, causes a distraction in the workplace, or prevents the parent and/or other employees from accomplishing work, the parent must take the infant home. Absences from work are subject to regular leave request policies.
 6. **Illness:** A sick infant shall not be brought to work. If the infant becomes sick during the day, the infant must be taken home.

7. **Vaccinations:** It is recommended that each infant, parent, and other employees the infant may interact with be vaccinated, as appropriate for age. Current recommended immunization schedules are published by the CDC and can be found at the CDC's website.
8. **Infant Feeding:** Infant feeding shall take place at the employee's designated and approved workstation, unless another space has been identified and approved for infant feeding. Any infant feeding space other than the employee's workstation must be approved pursuant to the Office Inspection Checklist. Some Departments may have designated lactations rooms available to breastfeeding/lactating mothers.
9. **Infant Diapering:** The employee must provide all supplies and equipment needed to care for the infant at the work site and ensure that the area is kept in a clean and sanitary condition. When an infant accompanies the employee to work, soiled disposable and cloth diapers must be stored in a closed container (provided by the parent) in a designated location and removed from the workplace daily.

IX. BREASTFEEDING MOTHER ELIGIBILITY

- A. The Tribe provides eligible employees the right to take reasonable break time to express breast milk for their nursing child for up to one (1) year after the child's birth. An employee is eligible for such break time if they are the mother of an infant no more than one (1) year of age.
- B. Eligible employees may take reasonable break time each time the employee needs to express breast milk. An employee will not be paid for such time used to express breast milk unless they are typically compensated for such break in the same way that other employees are compensated (i.e., if all employees are provided two 15-minute breaks per shift and the employee uses such break time to express breast milk). Supervisors may not prohibit an eligible employee from taking reasonable break time to express breast milk.
- C. For time that may be needed beyond the reasonable break times, breastfeeding employees may use personal leave or may make up the time as negotiated with their supervisors, at the supervisor's discretion. The schedule shall be worked out and agreed upon by the employee and their supervisor. Breastfeeding employees shall also work with their supervisor to identify appropriate private space within their workplace to express breast milk.
- D. Breastfeeding employees shall store their expressed breast milk in appropriate bags or bottles that can be sealed. The employee shall store the same in a container (e.g., cooler, insulated bag, etc.) that may be stored at the employee's workstation or in a community refrigerator used by all employees. Expressed milk must be taken out of the workplace by the employee daily.

X. COMPLAINTS

Complaints concerning an employee's participation in the Program should first be attempted to be resolved informally. Complainants may remain anonymous, or they may talk to the parent's supervisor or HR. Complaints shall be reviewed by the supervisor and discussed with the complainant (if applicable). The supervisor shall notify the parent of the complaint (while protecting the identity of the complainant) and discuss it with the parent to determine how to resolve the complaint. Complaints that cannot be resolved satisfactorily shall be referred to HR. HR shall investigate the complaint and make recommendations to resolve the complaint. Complaints may also be resolved in accordance with the Tribe's Complaints, Grievances, and Appeals Policy and Procedures.

MANDAN, HIDATSA AND ARIKARA NATION



APPENDIX D EMPLOYMENT POLICIES AND PROCEDURES

ARRESTS AND CONVICTIONS POLICY

Adopted April 8, 2004, pursuant to Resolution 04-45BRP by the MHA Tribal Business Council
Revised July 1, 2025 pursuant to Resolution 25-183-FWF by the MHA Tribal Business Council

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I. APPLICABILITY

This Policy shall be followed by all Tribal employees, which, for purposes of this Policy, includes all full-time, part-time, on-leave, and suspended employees, political appointees, and affiliates. Affiliates are unpaid volunteers and paid or unpaid summer youth or interns. The provisions of this Policy are in addition to all other applicable Tribal policies and procedures, including the Drug and Alcohol Use Policy and Vehicle Use Policy. The term “employee” shall be used throughout this Policy to refer to employees, political appointees, and affiliates unless otherwise specified.

II. DEFINITIONS

- A. Arrest. An arrest occurs when a person has been taken into custody, usually because the person has been suspected of or observed committing a crime. After being taken into custody, the person can be questioned further and/or charged.
- B. Arrest Warrant. An arrest warrant is document issued by a judge or magistrate that authorizes the police to detain and take an individual into custody based upon a finding of probable cause that the individual committed a crime.
- C. Conviction. A conviction is a formal determination that someone is guilty of a unlawful offense, made by the verdict of a jury or the decision of a judge in a court of law. An unlawful offense includes, but is not limited to, major traffic violations (such as DUI/DWI, reckless or negligent driving, driving with an invalid license, or leaving the scene of an accident); worthless check violations; or any citation for violation of federal, state, or local ordinances or statutes that result in a fine, restitution, or incarceration. Guilty verdicts, guilty pleas, and pleas of nolo contendere (no contest) are also classified as a conviction.
- D. Criminal Charge. A criminal charge is an allegation of a formal nature from law enforcement that a person committed one or more crimes. These can be misdemeanor or felony charges.
- E. Federal Indictment. A federal indictment is a formal accusation issued by a Grand Jury against one or more defendants, charging them with one or more crimes. In the federal criminal system, the indictment is the principal method by which a prosecutor initiates criminal proceedings. A federal indictment is a type of criminal charge.

III. ARRESTS

A. Reporting

- 1. With the exception of employees serving in a law enforcement position, any Tribal employee or affiliate who is charged with a crime, federally indicted, the subject of an arrest warrant, or arrested for a crime (excluding minor traffic violations, minor infractions, and non-violent misdemeanors that do

not involve driving while intoxicated (“DWI”) or driving under the influence (“DUI”), drugs, theft, embezzlement, forgery, or fraud) shall report such incident to their immediate supervisor or Department Director within seventy-two (72) hours of the employee being arrested or becoming aware of a criminal charge, federal indictment, or arrest warrant. After receiving such report, the supervisor or Department Director must inform HR that the employee has been charged with a crime, federally indicted, arrested, or had an arrest warrant issued against them.

2. Examples of minor traffic violations include, but are not limited to, expired parking meter citations, failure to wear a seat belt, or speeding violations not classified as reckless driving or drag racing. Minor infractions are petty offenses that are typically punishable by fines, but not jail time (e.g., littering, jaywalking, hunting without a license, trespass, disturbing the peace, public intoxication, minor in possession, etc.).
3. Employees serving in a law enforcement position are required to report all arrests and minor infractions.
4. A report made under this Policy is in addition to, and does not replace, the requirement that a Tribal employee notify their supervisor if said employee is unable to report for work.

B. Failure to Report

The failure of an employee, supervisor, or Department Director to report:

1. a criminal charge, federal indictment, arrest warrant, or arrest in accordance with this Policy will result in said employee, supervisor, or Department Director immediately being placed on suspension; or
2. a conviction in accordance with this Policy will result in will result HR recommending immediate termination of employment to the Tribal Business Council.

C. Absences

Any employee absence resulting from an arrest or criminal charge (e.g., serving time in jail, attending court proceedings, etc.) shall be governed by and construed in accordance with the Tribe’s Employment Policies and Procedures Chapter 2 – Employment (see Section 2.10 – Work Time/Hours Worked), Chapter 4 – Leave and Benefits, Chapter 6 – Separation from Employment (see Section 6.1 – Employee Resignation), Chapter 7 – Employee Discipline, and any other applicable Tribal policy. Notably, pursuant to Chapter 6, an employee who is absent from work for three (3) consecutive days without providing proper notification or submitting a request for leave to their supervisor shall be deemed as having involuntarily resigned from employment and the employee may be terminated from their position with the Tribe.

D. Disciplinary Action

1. Excluding the exception addressed below for federal indictments for certain crimes, an employee who receives a criminal charge, federal indictment, arrest warrant, or arrest will not automatically be subject to disciplinary action. Rather, upon receiving such information, the Human Resources Department (“HR”) will perform an investigation of the allegations giving rise to the charge, etc. After completing the investigation, the applicable program Director, Chief Executive Officer (“CEO”), and HR Director (unless the conduct of the program Director, CEO, or HR Director is at issue) will determine whether some form of disciplinary action is warranted, up to and including termination.
2. Any employee federally-indicted for a crime enumerated under the Major Crimes Act, 18 U.S.C. § 1153, or charged with any white-collar felony shall automatically and immediately be placed on Class I suspension as provided at subsection IV.C.1 below. Such crimes under the Major Crimes Act include murder, manslaughter, kidnapping, maiming, a felony under 18 U.S.C. § 109A (i.e., sexual abuse), incest, a felony assault under 18 U.S.C. § 113 (e.g., assault with intent to commit murder or assault with a dangerous weapon), an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under 18 U.S.C. § 661 (i.e., larceny). White collar felonies include such crimes as embezzlement, fraud, securities fraud, corporate fraud, money laundering, tax evasion, and forgery.
3. An individual who fails to disclose a criminal charge, federal indictment, arrest warrant, arrest, and/or conviction in violation of this Policy, or fails to provide accurate details to HR, will automatically be subject to disciplinary action up to, and including, termination of employment, as provided in section IV.A.1 above. Additionally, a supervisor or Department Director who is made aware of an employee’s criminal charge, federal indictment, arrest, arrest warrant, and/or conviction and fails to disclose such information to HR is in violation of this Policy and may be subject to disciplinary action as provided in section IV.A.1 above.
4. Political appointees will be disciplined in accordance with this Policy at the discretion of their appointing Tribal Business Council Representative.

E. Suspensions

1. An employee who receives a criminal charge or is arrested shall be subject to a non-disciplinary or disciplinary suspension. A suspension due to a criminal charge, federal indictment, arrest warrant, or arrest shall be classified as non-disciplinary during the period in which HR gathers information to verify the details of the employee’s criminal charge, etc.

Thereafter, the suspension shall be classified as a disciplinary suspension.

2. Employees suspended under this Policy, excluding employees in federally-funded positions, shall be subject to a Class-II suspension. A Class-II suspension is a suspension without pay during which an employee may use accrued annual leave and compensatory leave, but shall not accrue additional sick or annual leave.
3. Any employee in a federally-funded position suspended under this Policy, if such funding requirements prohibit the use of any leave while on suspension, shall be subject to a Class-I suspension, only. Any affiliate suspended pursuant to this Policy who does not accrue leave is subject to Class-I Suspension, only. A Class-I Suspension is a suspension without pay during which the individual may not use or accrue leave.
4. Unless otherwise specified by the Tribal Business Council, suspensions under this Policy shall not exceed six (6) months in length. Thereafter, such suspended employee will not be eligible for reinstatement in accordance with Section VI hereinbelow.

F. Leave Accrual/Insurance/Length of Service

1. During the period of suspension due to an arrest, arrest warrant, or criminal charge or indictment, an employee will not accrue sick or annual leave. A suspended employee will continue to accrue time in service as an employee with the Tribe. Such suspended employee may retain any insurance coverages they maintain through the Tribe, provided the employee makes arrangements with the Finance Department to pay the portion of the policy premium(s) which would otherwise be withheld from the employee's paycheck. Should the employee fail to make such arrangements, they will be ineligible to retain said insurance coverage(s) through the Tribe.
2. During the time of suspension, an employee is still subject to the terms and conditions of employment as an employee of the Tribe, and any additional charges, related or unrelated to the matter triggering suspension, will result in additional disciplinary action, up to and including termination.

IV. CONVICTIONS

A. Reporting

1. A Tribal employee shall notify the HR within one (1) business day of the outcome of a criminal case resulting in a conviction. This includes when a guilty verdict is reached by the court, or when a guilty or nolo contendere (no contest) plea is accepted by the court. Employees are required to report convictions occurring during employment even if the underlying crime

occurred prior to employment. Failure to report a conviction will result in appropriate disciplinary action, up to and including termination of employment.

2. HR will consider the information provided by the employee and any other relevant facts and circumstances that are available. In consultation with the employee's program Director and the CEO, HR shall make a determination of what, if any, action should be taken regarding the employee's employment status, up to and including making a recommendation of employment termination to the Tribal Business Council. An employee may also be subject to disciplinary action for violations of Tribal policies and procedures or reasons independent of this Policy (e.g., inability to perform essential duties as a result of conviction or probation restrictions, such as loss of driver's license, etc.).

B. Termination

If a Tribal employee is convicted of a criminal offense while employed with the Tribe and the employee does not submit a voluntary resignation letter to their supervisor prior to expiration of the reporting requirement, he or she may be terminated and, if terminated, may be ineligible for rehire. The ultimate disposition of the issue will depend upon the nature of the offense and the employee's work duties. Any disciplinary action taken must be supported by available information coming from witnesses, police, or court records. All actions taken under this policy should be in consultation with the applicable program Director, CEO, HR Director, and Tribal Business Council.

V. ACQUITTALS/DISMISSALS

- A. If the criminal charge, federal indictment, arrest warrant, or arrest ultimately results in a complete acquittal or dismissal of all charges, or if all criminal charges are dropped, absent any other Tribal policy violations which affect the employee's employment status, the employee may be reinstated to their position with the Tribe in accordance with Section V.B below. Additionally, the suspension will be reclassified as non-disciplinary and the employee's personnel file will be amended to reflect the same.

B. Reinstatement Following Acquittal/Dismissal

1. An employee coming off of a Class-I or Class-II suspension may be reinstated to their original position with the Tribe following an acquittal or dismissal of charges at the discretion of the CEO, upon consultation with the Tribal Business Council, HR Director, and program Director of the suspended employee. Such employee may be returned to the same position, or to an equivalent position with equivalent benefits, pay, and terms of employment, subject to availability of such position. Reinstatement to a position with the Tribe is in no way guaranteed, and such reinstatement

depends upon several factors to be taken into account by the CEO when determining an employee's reinstatement eligibility.

2. An employee who is reinstated following a suspension may be required to complete a Performance Improvement Plan.

VI. NO APPEAL OF DISCIPLINARY ACTION

Any disciplinary action(s) implemented under this Policy are not subject to the Tribe's Complaints, Grievances, and Appeals Policies and Procedures. Consequently, any final disciplinary actions imposed in accordance with this Policy are not appealable.

MANDAN, HIDATSA AND ARIKARA NATION



APPENDIX E EMPLOYMENT POLICIES AND PROCEDURES

TRIBAL LAW ENFORCEMENT OFFICER MISCONDUCT INVESTIGATIONS POLICY

Adopted April 8, 2004, pursuant to Resolution 04-45BRP by the MHA Tribal Business Council
Revised July 1, 2025 pursuant to Resolution 25-183-FWF by the MHA Tribal Business Council

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I. GENERAL POLICY

It is the policy of the Three Affiliated Tribes (“Tribe” or “Tribal”) to protect the integrity of the Tribe and safety of its members when a Tribal law enforcement or corrections officer (“LEO”) is accused of misconduct, while also providing LEOs officers the opportunity to dispute such accusations in accordance with available methods. This Tribal Law Enforcement Officer Misconduct Investigations Policy (“Policy”) outlines the process the Tribe follows when it receives notice of an investigation into, or concerns about, LEO misconduct.

II. APPLICABILITY

This Policy shall apply to all Tribal law enforcement and corrections officers, which, for purposes of this Policy, includes all full-time, part-time, on-leave, and suspended LEOs. This Policy shall also apply to all Tribal employees responsible for carrying out duties related to LEO misconduct investigations. The provisions of this Policy are in addition to all other applicable Tribal policies and procedures. The term “employee” in this shall Policy to refer to employees, political appointees, and affiliates unless otherwise specified.

III. DEFINITIONS

- A. Background Adjudication. An independent comprehensive evaluation of all the relevant information, favorable or unfavorable, using a set of pre-described standards of background investigation findings. For purposes of this Policy, Background Adjudications include only those investigations of current LEOs which are required to be conducted every five (5) years.
- B. Brady/Giglio Material. Actions or statements constituting misconduct by an LEO that could compromise their credibility or tend to exculpate a criminal defendant, and which prosecution is legally required to disclose to the defense in a criminal case. Such information can result in the loss of what would otherwise have been a strong case as it can be used to impeach the credibility of prosecution witnesses.
- C. Handbook. Where applicable, the BIA-Office of Justice Services Law Enforcement Handbook 3rd Edition, which the Tribe’s Law Enforcement Department and adheres to; and the BIA-Office of Justice Services Division of Operations Corrections Handbook 1st Edition, which the Tribe’s Corrections Department adheres to.
- D. Internal Affairs Investigation (“Investigation”). For purposes of this Policy, Internal Affairs Investigations shall refer to Bureau of Indian Affairs Office of Justice Services (“BIA-OJS”) Internal Affairs Division investigations into possible misconduct and/or criminal activity by LEOs or other Tribal law enforcement employee.

IV. PROCESS

A. Internal Affairs Investigation

When the Tribe receives communications from the BIA-OJS that it is conducting an Investigation into alleged LEO misconduct, the Tribe will do the following:

1. Immediately, and in no more than three (3) business days, provide a copy of such notice to the LEO that is the subject of the Investigation, the Human Resources Department, and to the Chief Executive Officer. The initial notice that an Investigation is being conducted is directed to the Tribe's designated contact, which is generally the Chief of Police. As such, upon receipt of such initial notice, the Chief of Police, or other designated contact, is responsible for carrying out the requirements of this section IV.A.1.
2. Immediately place the LEO on administrative restriction or paid, Class III suspension, at the discretion of the Chief of Police and Tribal Business Council ("TBC") depending on the severity of the allegations that are the subject of the investigation, pending the completion of the Investigation, so as to prevent additional potential infractions by the LEO and to minimize the Tribe's potential risk of liability. The administrative restriction or Class III suspension shall remain in place until the Tribe receives notice of a final Investigation finding.
3. Encourage the LEO to cooperate with the BIA-OJS work to clear up any potential adverse findings, if possible.
4. Promptly comply with all BIA-OJS requests for information and interviews related to the subject of the investigation.
5. Notify the Tribal Court of the pending Investigation concern(s).
6. Upon notice from the BIA-OJS that:
 - a. the allegations of the Investigation were not sustained, were unfounded, or the LEO was exonerated, the LEO shall be reinstated to their original position and duties performed prior to initiation of the Investigation.
 - b. the Investigation revealed sufficient evidence to justify a reasonable conclusion that the accused LEO committed the misconduct alleged, the LEO shall be appropriately disciplined the accordance with the Handbook guidelines.

B. Brady/Giglio Material Concerns

When the Tribe receives communications from a United States Attorney or Assistant United States Attorney (collectively referred to herein as “AUSA”) expressing concerns about and/or requesting information about the conduct of an LEO that may constitute Brady/Giglio Material, or requesting an LEO’s personnel file to complete a Brady/Giglio review for an upcoming case, the Tribe will do the following:

1. Immediately, and in no more than three (3) business days, provide a copy of such letter to the LEO whose conduct is at issue, the Human Resources Department, and to the Chief Executive Officer. The initial inquiry into the LEO’s conduct or notice that an LEO’s conduct has been found to constitute Brady/Giglio Material is directed to the Tribe’s designated contact, which is generally the Chief of Police. As such, upon receipt of such inquiry or notice, the Chief of Police, or other designated contact, is responsible for carrying out the requirements of this section IV.B.1.
2. If the AUSA expresses concerns that the LEOs conduct constitutes Brady/Giglio Material concerns, immediately place the LEO on administrative restriction or paid, Class III suspension, at the discretion of the Chief of Police and TBC depending on the severity of the concerns expressed, pending a final Brady/Giglio Material determination letter so as to prevent additional potential infractions by the LEO and to minimize the Tribe’s potential risk of liability. The administrative restriction or Class III suspension shall remain in place until the Tribe receives a final Brady/Giglio Material determination letter.
3. Encourage the LEO to cooperate with the AUSA and work to clear up any potential adverse determination, if possible.
4. Promptly comply with all AUSA requests for information and interviews related to the subject of the investigation.
5. Notify the Tribal Court of any AUSA Brady/Giglio Material concern(s).
6. Upon notice from the AUSA that:
 - a. the information disclosed does not constitute Brady/Giglio Material, the Tribe shall return the LEO to their original position and duties performed prior to initiation of the Investigation.
 - b. the information disclosed constitutes Brady/Giglio Material which the AUSA must disclose to defense attorneys in cases where the LEO participated or in which the AUSA anticipates calling the LEO to testify as a trial witness, the Tribe shall (1) place the LEO in a non-managerial administrative position, or recommend termination,

at the discretion of the Chief of Police and TBC depending on the severity of the Brady/Giglio Material, and (2) notify the Tribal Court of the LEO's Brady/Giglio status.

C. Background Adjudication

When the Tribe is informed by the company it utilizes for Background Adjudications ("Background Company"), prior to the final adjudication, that the LEOs background contained unfavorable information, the Tribe will do the following:

1. Depending on the severity of the subject of the investigation, and at the discretion of the Chief of Police and TBC, immediately place the LEO on administrative restriction or paid, Class III suspension, pending a final Background Adjudication to minimize the Tribe's potential risk of liability. The administrative restriction or Class III suspension shall remain in place until the Tribe receives notice of a final Background Adjudication from the Background Company.
2. Encourage the LEO to cooperate with the Background Company and work to clear up any potentially unfavorable information, if possible.
3. Promptly comply with all Background Company requests for information and interviews to complete the Background Adjudication.
4. Upon notice from the Background Company that:
 - a. the Background Adjudication did not reveal any unfavorable information, the Tribe shall reinstate the LEO to their original position and duties performed prior to the Background Company informing the Tribe of potentially unfavorable information.
 - b. the Background Adjudication revealed unfavorable information, the Tribe shall place the LEO in a non-managerial administrative position, or recommend termination, at the discretion of the Chief of Police and TBC depending on the severity of the Background Adjudication Findings.

V. DISCIPLINARY ACTION

Failure on the part of applicable employees tasked with performing certain tasks under this Policy may result in disciplinary action, up to and including termination, and civil and/or criminal charges provided by law. Tribal political appointees are subject to Tribal disciplinary action at the discretion of the appointing Tribal Business Council representative and/or the Tribal Business Council.

VI. NO APPEAL OF DISCIPLINARY ACTION

Any disciplinary action(s) implemented under this Policy against an LEO are not subject to the Tribe's Reports, Grievances, and Appeals Policies and Procedures. Consequently, any final disciplinary actions imposed in accordance with this Policy are not appealable.

MANDAN, HIDATSA AND ARIKARA NATION



APPENDIX F EMPLOYMENT POLICIES AND PROCEDURES

BACKGROUND CHECK POLICY

Adopted April 8, 2004, pursuant to Resolution 04-45BRP by the MHA Tribal Business Council
Revised July 1, 2025 pursuant to Resolution 25-183-FWF by the MHA Tribal Business Council

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I. PURPOSE

It is the policy of the Mandan, Hidatsa and Arikara Nation (“Tribe” or “Tribal” or “MHA Nation”) to perform pre-employment and recurrent background checks. This Employment Background Check Policy (“Policy”) is established to promote a safe and secure work environment, to provide for the safety of children, vulnerable adults, and community members, to ensure individuals hired by the Tribe are well qualified and have undergone a verification of personal character and suitability. The purpose of performing these checks is to determine and/or confirm the qualifications and suitability of applicants and employees for the particular position for which they are being considered based on job descriptions, funding, and applicable laws.

II. APPLICABILITY

This Policy applies to all candidates seeking employment with a Tribal Department or entity as well as current Tribal employees.

III. POLICY

- A. The Tribe reserves the right to check the employment references of all applicants. The process is intended to help the Tribe to evaluate the candidate’s suitability for hire. All offers of employment are contingent upon successful completion of the applicable background checks.
- B. Any misrepresentations, falsifications, or omissions in any employment information may result in disqualification from further consideration for employment for six months from the date the findings were made. Candidates who fail to disclose accurate and complete information regarding any substantial history of criminal convictions may not be considered suitable for hire. The Tribe will also comply with all applicable Tribal, state, and federal laws to ensure candidates are not discriminated against because of a history of criminal convictions.
- C. **The Tribe does not automatically disqualify any person from hiring or promotion due to a criminal record (with the exception of certain convictions for federally-funded positions and positions involving contact with or control over Indian children).**
- D. The Tribe will perform pre-employment background checks on all applicants for employment. Additional background checks may be performed if an employee changes positions, or when required by federal regulations, if such background checks have not previously been completed.
- E. The results of pre-employment background checks are confidential and are to be shared on a strict “need to know” basis.

IV. PROCEDURES

- A. The components of each individual's background check will depend on their position designation. Depending on the particular position, the Tribe currently performs identity and address related searches; various types of criminal history searches (including Federal Bureau of Investigation Name and Fingerprint records searches and sexual offender searches) background checks; driving record verification; education verification; prior employment and professional license verification, etc. A list of Tribal positions and the required employment background check for those positions will be maintained by the Human Resource Department and may be made available upon request.
- B. All applicants and/or employees will be required to sign appropriate authorizations and consents prior to the performance of any background checks.
- C. Individuals are expected to provide accurate and complete information and to not omit material information needed to adequately complete the required background checks. The Tribe relies on the accuracy of information on the employment application and other data developed through the hiring process and subsequent employment. The results of a background check will only be used for the purpose of determining an individual's suitability for employment and shall be kept strictly confidential.
- D. All job offers are conditioned upon satisfactory completion of the pre-employment background checks with consideration of funding source for the position.
- E. Prior to taking any action against an individual following an adverse background check finding, appropriate pre-adverse and adverse action notices will be sent to the individual together with the contents of the background check results considered adverse.
- F. All individuals shall be reviewed on a case-by-case basis and employment/placement decisions will be made with respect to the whole person, including the results of any employment background checks.
- G. In accordance with the requirements of OMB Circular No. A-130 and 40 U.S.C. § 1441 (b), the MHA Nation is responsible for reducing the risk and magnitude of harm that could result from loss, misuse and unauthorized access of information regarding Tribal and individual Indian trust resources.
 - 1. The MHA Nation Human Resources Office shall conduct a background check and character investigation of Tribal employees who manage, control, process, maintain and access automated information technology, individual Indian and Tribal trust resources and/or related trust records. The Tribe shall require satisfactory screening and background investigation,

- including fingerprinting, prior to granting access to trust information to any employee.
2. The MHA Nation shall not employ any individual in a position where the individual manages, controls, processes, maintains, and accesses automated information technology, individual Indian and Tribal trust resources and/or related trust records, if the individual has been convicted of criminal and/or immoral conduct, abuse of fiduciary trust, bribery, embezzlement, grand larceny, grand theft, mail theft, burglary, robbery, perjury, employment misconduct and/or negligence, disruptive and/or violent conduct, firearms and weapons violations, or drug felony within the preceding thirty-six (36) months.
- H. All employees shall be subject to a background check as to whether they have any outstanding warrants (from any jurisdiction). Outstanding warrants shall disqualify an individual from employment until the warrants are cleared. The warrant background check shall be performed in addition to any other background checks required.
- I. For conduct identified in the Indian Child Protection and Family Violence Prevention Act, as amended, the Tribe will deny employment or dismiss an employee who does not meet the suitability criteria established for positions having regular contact or control over Indian children. For all other circumstances, the relevance conduct identified through a particular employment background check to an individual's eligibility for employment will be based on the following:
1. The nature and seriousness of the conduct in question;
 2. The recency and circumstances surrounding the conduct in question;
 3. The age of the individual at the time of the incident;
 4. Societal conditions that may have contributed to the nature of the conduct;
 5. The probability that the individual will continue the type of behavior in question; and,
 6. The individual's commitment to rehabilitation and a change in the behavior in question.
- J. Having adverse information, including a criminal history or conviction, does not automatically preclude a candidate's eligibility for employment (with the exception certain convictions for federally funded positions and positions involving contact with or control over Indian children). A Suitability Ranking Chart be utilized to assist in making suitability determinations.

V. INDIVIDUALS IN POSITIONS INVOLVING CHILDREN OR VULNERABLE ADULTS

A. INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PROTECTION ACT

The Indian Child Protection and Family Violence Protection Act, as amended, requires that tribes and tribal organizations receiving federal funds under the Indian Self-Determination and Education Assistance Act conduct national criminal background investigations of prospective employees who will occupy positions having regular contact or control over Indian children. Specifically, the Indian Child Protection and Family Violence Protection Act, 25 U.S.C. § 3207(c), requires that Tribes or tribal organizations to:

1. Conduct an investigation of the character of each individual who is employed, or is being considered for employment, in a position that involves regular contact with, or control over, Indian children;
2. Establish minimum standards of character no less stringent than those listed in 25 CFR § 63.12, which shall ensure that none of the individuals appointed to positions involving regular contact with, or control over, Indian children, have been found guilty of or entered a plea of nolo contendere (no contest) or guilty to, any felonious offense, or any of two or more misdemeanor offenses, under federal, state, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children; and
3. Employ individuals in those positions only if the individuals meet standards of character such standards of character as set forth in subsection (2) above.

B. CRIME CONTROL ACT OF 1990

1. The Crime Control Act of 1990 requires background investigations of “individuals involved with the provision to children under the age of 18 of child care services.” Child care services is defined by the Crime Control Act as “child protective services (includ[ing] the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional or treatment services.”
2. The Crime Control Act further mandates:
 - a. All existing and newly-hired employees undergo a criminal history background check within prescribed time limits;
 - b. Employment applications contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so requiring a description and disposition of the arrest or charge;

- c. Obtain signature of the employee or prospective employee indicating that the employee or prospective employee has been notified of the employer's obligation to require a record check as a condition of employment and the employee's right to obtain a copy of the criminal history report made available to the employing organization and the right to challenge the accuracy and completeness of any information contained in the report; and
 - d. The results of the background check shall be communicated to the employing organization.
- 3. Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be grounds for denying employment or for dismissal of an employee involved in the provision to children under the age of eighteen (18) of childcare services. Conviction of a crime other than a sex crime may also be considered if it bears on an individual's fitness to have responsibility for the safety and well-being of children.

C. VAPS AND CPS CHECKS

- 1. Individuals applying for positions that involve, or have the potential to involve, control over or contact with children and/or vulnerable adults must undergo a Vulnerable Adult Protective Services ("VAPS") and/or Child Protective Services ("CPS") check. A VAPS check involves a Department of Health and Human Services record check of the applicant for any pending allegations or substantiated findings of vulnerable adult neglect, abuse, or financial exploitation. A CPS check involves a search of the applicable Federal, state, and local child abuse and neglect central registries for any pending investigations or substantiated findings of any child abuse or neglect by the applicant. A non-exhaustive list of the positions that require a VAPS and/or CPS check will be maintained by the Human Resource Department and may be made available upon request.
- 2. All applicants or employees seeking employment in such positions will be required to sign the appropriate authorizations and consents prior to the Tribe performing any VAPS or CPS background checks. The results of such checks will remain strictly confidential and shall be used only for the purposes of determining eligibility for the applicable position.

VI. LAW ENFORCEMENT

All Law Enforcement entities are required to complete background investigations for each officer. Such background investigations shall be conducted by the Tribe's Law Enforcement Specialist. The Law Enforcement entities shall otherwise follow the general hiring policies and procedures that apply to all other Tribal programs and Departments.

VII. ADJUDICATIONS

A. PURPOSE

The Office of Background Investigations strives to ensure that MHA Nation employees are provided with a work environment that minimizes risk to the health and safety of its employees, volunteers, interns, program participants, and to protect the MHA Nation's funds, properties, and other assets. The mission statement of the Office of Background Investigations is:

"Together we strive for a safer tomorrow."

B. POLICY

The policy of the MHA Nation is to promote a safe and secure work environment, to provide for the safety of MHA Nation employees, volunteers, interns, and programs participants and to protect the Nation's funds, property, and other assets by obtaining and adjudicating background checks on those positions designated as sensitive. This Policy shall be implemented in a manner that protects individual's rights to privacy. Consistent with the provisions of applicable laws and policies, the MHA Nation shall not discriminate against any applicant or employee.

C. REQUIRED DOCUMENTATION FOR BACKGROUND ADJUDICATIONS

1. By the Program:

- a. Background Check Request Form
- b. Position Designation
 - i. Background Type
 - A. Basic Preliminary
 - B. Segment
 - C. Contract
 - D. LOCUM
 - E. Student
 - ii. Adjudication Type
 - A. Law Enforcement
 - B. Child Care
 - C. Vulnerable Adult
 - D. Child Care Public Trust
 - E. Public Trust
 - F. Lived Experience

2. By the Applicant/Employee:

- a. Completed MHA Consent Form (authorization for release of information)
- b. Copy of Driver's License/ State ID
- c. Copy of Social Security Card
- d. Copy of Proof of Tribal Enrollment
- e. Complete Application w/supporting documents.

D. POSITION DESIGNATION

1. Vulnerable Adult & Child Care Background Criteria

a. Mandated Regulations

- i. Public Law 101-630, 25 U.S.C. § 3201 *et seq.* - Indian Child Protection and Family Violence Prevention Act – Character Investigations, as amended.
- ii. Code of Federal Regulations 25 Part 63 – Indian Child Protection and Family Violence Prevention
- iii. Public Law 101-647, Sec. 231 - Crime Control Act of 1990, Employee Background Checks

b. Investigation Requirements

The following information must be investigated and/or verified in the course of an employment background check for positions involving contact with or control over vulnerable adults or children:

- i. Local law enforcement checks: Search of all residences and places of work listed by the subject utilizing the National Criminal, State, Federal Court, all County OR County/local search, Tribal Court search (when applicable);
- ii. State criminal history repository: Criminal history search in all states of previous residences and places of work, listed by subject
- iii. Child Protection Services: CPS search of all tribal reservations lived and worked for the last 10 years.
- iv. FBI Fingerprint check results: FBI fingerprint check for results of lifetime searches
- v. Motor Vehicle Records Check: Verification through state MVD.
- vi. Employment Verification: (Inquiries conducted for the last 5 years of employment). All employers listed in the subject's employment history must be contacted to verify employment. If employment is unable to be verified, documentation must be included to show that the attempt to verify employment.
- vii. Employee Supervisor Interview: Conduct interviews for all employers listed in the subject's employment history, or documentation showing three attempts were made to conduct the interview.
- viii. Education Verification: (if applicable, highest degree claimed) or documentation showing verification was made.
- ix. Personal References: At least three personal references.

2. Public Trust Background Criteria

a. Mandated Regulations

Department of the Interior: Department Manual. Part 441: Personnel Security and Suitability Requirements. Chapter 5: Suitability and Security Screening and Adjudication. 441 DM 5.

b. Investigation Requirements

The following information must be investigated and/or verified in the course of an employment background check for positions of public trust:

- i. Local law enforcement checks for: Search of all residences and places of work listed by subject for the last 5 years at the National Criminal, State, Federal Court, all County OR County/local search, Tribal Court search (when applicable).
- ii. State criminal history repository: Criminal history search in all states of residences and places of work listed by subject for the last 5 years.
- iii. FBI Fingerprint check results: (high public trust) Results from a minimum of the last six months.
- iv. Motor Vehicle Records Check: Verification through state MVD.
- v. Employment Verification: (Inquiries conducted for the last 5 years of employment). All employers listed in the subject's employment history must be contacted to verify employment. If employment is unable to be verified, documentation must be included to show that the attempt to verify employment.
- vi. Employee Supervisor Interview: Conduct interviews for all employers listed in the subject's employment history, or documentation showing three attempts were made to conduct the interview.
- vii. Personal References: At least three personal references.
- viii. Education Verification: (if applicable, highest degree claimed) or documentation showing
- ix. verification was made.
- x. Personal Subject Interview: Documentation that the subject of the investigation was interviewed by the investigator and information listed in questionnaire was reviewed; and when applicable, all derogatory issues were addressed during the interview.
- xi. Credit Report: (results from a minimum of last six months).

3. Law Enforcement Background Criteria

a. Mandated Regulations

- i. Public Law 101-630 - Indian Child Protection and Family Violence Prevention Act – Character Investigations, as amended
- ii. Code of Federal Regulations 25 Part 63 –Indian Child Protection and Family Violence Prevention
- iii. Public Law 101-647 - Crime Control Act of 1990, Employee Background Checks
- iv. 18 United States Code 922- Unlawful Acts Under the Gun Control Act
- v. Executive Order 12968 Adjudication Standards

b. Investigation Requirements

The following information must be investigated and/or verified in the course of an employment background check for law enforcement positions:

- i. Local Law Enforcement Checks For: Search of all residences and places of work listed by subject for the last 10 years at the National Criminal (NCII/III), Federal Court, all County OR County/local search, Tribal Court search (when applicable).
- ii. State Criminal History Repository: Criminal history search in all states of residences and places of work listed by subject for the last 10 years.
- iii. Child Protection Services: CPS search for all tribal reservations lived and worked for the last 10 years.
- iv. FBI Fingerprint Check Results: Results from a minimum of the last six months.
- v. Civil Records Checks: state and/or County civil records search (inquiries should be for all residences or places of work listed by subject for the last 10 years) AND Credit Report (results from a minimum of last six months).
- vi. Employment Verification: (Inquiries conducted for the last 10 years of employment). All employers listed in the subject's employment history must be contacted to verify employment. If employment is unable to be verified, documentation must be included to show that the attempt to verify employment.
- vii. Employee Supervisor Interview: Conduct interviews for all employers listed in the subject's employment history, or documentation showing three attempts were made to conduct the interview.

- viii. Education Verification: (if applicable, highest degree claimed) or documentation showing verification was made.
- ix. Personal Subject Interview: Documentation that the subject of the investigation was interviewed by the investigator and information listed in questionnaire was reviewed; and when applicable, all derogatory issues were addressed during the interview.
- x. Personal and Developed References: At least two personal references and two self-developed references interviewed.
- xi. Sex Offender Registry check: Sex offender registry search for all states of residence and places of work listed by the subject
- xii. Residence Verification: Verification through social security trace or verification through a field investigator.
- xiii. Motor Vehicle Records Check: Verification through state MVD.
- xiv. Internal Affairs Search: For any identified law enforcement current and former employers.
- xv. BIA OJS Internal Affairs Search: Will be completed by MHA Nation – Human Resources or contract background company.

E. DATABASES SEARCHED AND INVESTIGATION PROCESS

1. Basic Preliminary Searches

- a. Department of Motor Vehicles
- b. Residential
- c. Social Security Number Trace with Residence
- d. Tribal Search
- e. Child Protection Services Search
- f. Nationwide Criminal Search
- g. County/Local Criminal Search
- h. State Repository /Online Search
- i. Federal Criminal Records Search
- j. International Criminal Records Search
- k. Sex Offender Registry Search

2. Investigation and Adjudication

- a. A background investigation consists of obtaining lifetime traffic and criminal history reports from the federal, state, local (county/municipal), and tribal jurisdictions. In addition, other negative information may be considered from the FBI fingerprint report and Motor Vehicle Departments.

- b. Investigation. Each case file consists of all required reports and shall be thoroughly investigated by obtaining proper court dispositions and other relevant information, if applicable.
- c. Adjudication. All case files shall be thoroughly analyzed to determine and adjudicate whether any offenses may negatively affect the individual's fitness to occupy a sensitive position. Depending upon the information revealed from the required reports, a suitability assessment may be applied.
- d. Determination Notice. Upon the completion of the adjudication process, a determination notice shall be issued to the individual, the respective program, and Human Resources Department informing the individual received a favorable or unfavorable recommendation.

3. Finger Printing

MHA Nation – Human Resources uses a fingerprint machine that records your fingerprints and send them directly to the FBI. The results are sent back to the backgrounds staff.

F. BACKGROUND CHECK PROCESS

1. Preliminary

- a. Request received from interested Department
- b. Print off Release of Information form (if completed), if form is not complete, inform HR staff and notify interested Department to complete form. Will not enter information for background screening until form is completed.
- c. Enter requested information to background screening company.
- d. If the individual was enrolled and/or worked on another tribe/province – conduct additional searches.
- e. After all search criteria is complete, make determination as to employment eligibility
- f. If determination is unfavorable, inform the individual and Department, he/she has 30 days to get supporting documents to possibly explain any findings. (if applicable)
- g. If the findings are of a serious manner, the adjudication shall be unfavorable and sent to the Department point of contact.
- h. If favorable, acknowledgment form sent to hiring Department.

2. Adjudication

- a. Identify if requested position is Vulnerable Adult (VA), Child Care (CC), Public Trust (PT), Child Care/Public Trust (CC/PT) or Law Enforcement (LE)

- b. Review submitted questionnaire for any missing information
- c. If complete, proceed with entering requested information to background screening company.
- d. If fingerprints are done through hard copy, those are then sent to background screening company (2–3-day delivery) FEDEX/UPS or USPS
- e. Adjudication turnaround time varies
- f. If the findings are unfavorable, the individual will be given their due process to refute or explain any information that was found during the investigation process. The Office of Background Investigations will review any supporting documents should the unfavorable adjudication stand, we will inform the individual and Department with unfavorable determination letter.
- g. If the findings are favorable, the adjudication certificate, suitability letter and updated acknowledgment form are sent to the employee and Department point of contact.

VIII. RECORD RETENTION

1. All pre-employment, change in position, and renewal background checks shall be retained for five (5) years after the background check findings are documented. If a no-hire decision is made, such background check records shall be retained for six (6) months thereafter. With the exception of Law Enforcement positions, for individuals ultimately employed with the Tribe, such records shall be retained for five (5) years after the employee's employment with the Tribe ends. Law enforcement records shall only be retained for a period of two (2) years after the employee's employment with the Tribe ends.
2. After the retention period has lapsed, the Tribe will securely dispose of any background check results report and relevant information gathered from it.

IX. SEEKING EXPUNGEMENT OF CRIMINAL RECORDS

An individual whose criminal history record contains a Tribal Class II misdemeanor offense (excluding offenses involving domestic violence, Class A or Class I misdemeanors, or any felony) which has been entered on the Tribal Court record for at least seven (7) years may petition the Tribal Court to expunge such conviction from the individual's criminal record in accordance with the process set forth in Title I of the Tribal Code.

X. DISCLAIMERS

1. It is not the purpose of this Policy to provide detailed information or descriptions of searches and/or suitability criteria for each background check that can be performed. Nor is it the purpose of this Policy to provide detailed information on how to make a final decision regarding the results of background checks. Every

case must be decided on its own merits subject to the Tribe's requirement that all individuals be treated equally and consistently.

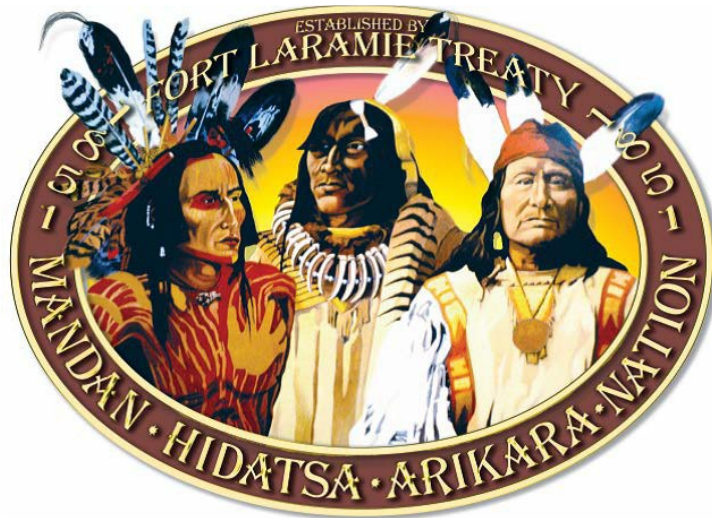
2. This Policy does not limit the Tribe's right to hire, re-assign, discipline, or terminate an individual. This policy does not create a contract of employment. All employment is at will unless contract or law applies to the contrary.

XI. REFERENCES

A. This policy contains references to the following:

1. Indian Child Protection and Family Violence Prevention Act, as amended (Public Law 101-630; codified in 25 United States Code § 3207) and Sec. 814. Technical Amendment to the Indian Child Protection and Family Violence Prevention Act.
2. 25 Code of Federal Regulations Part 63, Implementation of the Indian Child Protection and Family Violence Prevention Act.
3. Crime Control Act Of 1990 - Subchapter V – Child Care Worker Employee Background Checks (Public Law 101-647; codified in 42 United States Code 13041).
4. Title I of the Tribal Code.

MANDAN, HIDATSA AND ARIKARA NATION



APPENDIX G PERSONNEL POLICIES AND PROCEDURES

LIVED EXPERIENCE POLICY AND PROCEDURES

Adopted April 8, 2004, pursuant to Resolution 04-45BRP by the MHA Tribal Business Council
Revised July 1, 2025 pursuant to Resolution 25-183-FWF by the MHA Tribal Business Council

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I. GENERAL POLICY

- A. The Mandan, Hidatsa and Arikara Nation (“Tribe” or “MHA Nation”) is committed to hiring qualified individuals with Lived Experience to fill positions involving work with individuals with substance use and mental health disorders in order to contribute to the overall success of such individuals. The Tribe is aware that those with Lived Experience are increasingly employed in a range of clinical settings to assist others with substance use and mental health disorders to achieve better outcomes with their own recovery. In this sense, the Tribe recognizes that individuals with Lived Experience can make significant contributions to the health and wellbeing of its membership. The Tribe is also aware that individuals with Lived Experience may have criminal backgrounds due to previous substance abuse and related mental health issues and may not pass a standard employment background check. In such case, the process outlined in this Lived Experience Hiring Policy and Procedures (“Policy”) should be followed.
- B. **NOTE: The Tribe does not automatically disqualify any person from employment eligibility due to a criminal record (with the exception of certain convictions as listed herein, for certain positions that are federally funded, positions covered under 42 CFR Part 136.401, and for positions involving regular contact with or control over Indian children). Please refer to the Tribe’s Background Check Policy and Hiring Policy for additional information.**

II. APPLICABILITY

This Policy shall be followed by current and potential Tribal employees of the Good Road Recovery Center and affiliated Recovery Programs (with the exception of federally funded programs), which, for purposes of the Policy, includes all employees, including full-time, part-time, political appointees and affiliates. Affiliates are unpaid volunteers and paid. The provisions of this Policy are in addition to all other applicable Tribal policies and procedures, such as the Background Check Policy, Hiring Policy, Drug and Alcohol Use Policy, and Vehicle Use Policy. The term “employee” shall be used throughout this Policy to refer to employees, political appointees, and affiliates unless otherwise specified.

III. DEFINITIONS

- A. Child Abuse Offense is an offense that is committed against a child, a minor under the age of eighteen (18), by any person, including an individual responsible for the child’s care and supervision, that causes the child physical pain or injury. A child has been abused when a caregiver inflicts or allows to be inflicted upon the child a bodily injury, including unreasonably severe corporal punishment or striking, shaking, or throwing the child. Intentional deliberate assaults such as burning, biting, cutting, and twisting, etc. are also included.

- B. Child Neglect Offense is an offense resulting from the action or inaction of a person responsible for a child's welfare that results in the child not receiving proper care for their physical, mental, or emotional health. Neglect includes inadequate supervision, inadequate physical environment, inadequate nutrition, or inadequate clothing or hygiene. Medical or educational neglect and psychological maltreatment are also forms of neglect, as are exposing children to alcohol or drugs in their environment or before birth, abandoning a child, or placing a child for care or adoption outside of what the law allows. Other forms of neglect are general neglect (i.e. impaired caregiver unable to meet a child's basic needs or perceive danger to the child, driving under the influence of substance with a child in the vehicle, etc.) and failing to protect a child from other people who may harm them.
- C. Child Predator Offense is an offense that is committed against a minor or is an attempt or conspiracy to commit an offense against a minor and is comparable or more severe than one of the following federal crimes: aggravated sexual abuse, sexual abuse, or abusive sexual contact against a minor under the age of thirteen (13).
- D. Lived Experience refers to an individual's personal experience struggling with mental health, psychological trauma, or substance abuse disorder ("SUD"). A person with Lived Experience is trained or can be trained to support others who struggle with mental health, psychological trauma, or SUD. Lived Experience provides individuals with a certain expertise that professional training cannot replicate. An applicant for a Tribal position with Lived Experience must meet the following minimum qualifications:
1. Is in recovery from mental illness and/or SUD;
 2. Is eighteen (18) years of age or older;
 3. Has at least (6) months of sobriety prior to applying for a given position *by the disposition charge date or sobriety date*.
 4. Is committed to helping others; and
 5. Is willing to publicly identify as a person living in recovery for the purpose of educating, role modeling, and providing hope to others about the reality of recovery.
- E. Sobriety means the act of not drinking alcohol, using illegal substances, or misusing/abusing legal substances. Sobriety is the condition of not having any measurable levels of effects from alcohol or other drugs in a person's system. Sobriety is also considered to be the natural state of a healthy human being at birth. For the purposes of this Policy, an applicant must have at least (6) months of sobriety prior to applying for a given position *by the disposition or sobriety date*. Some positions may require a longer period of sobriety.

- F. Violent Crimes means an offense that has as an element of the use, attempted use, or threatened use of physical force against a person or the property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

IV. BACKGROUND PROCEDURE

Requests are made to the Tribe's Human Resources Department ("HR") for individuals with Lived Experience who have criminal records and, as a result, may not pass a standard employment background check. An applicant may be considered as a candidate for a Tribal position if the individual:

- A. Submits completed employment application to Human Resources.
- B. Submits to and passes drug testing.
- C. Agrees to random drug testing at a higher frequency than provided in the Tribe's Alcohol and Drug Policy.
- D. Submits to a background investigation and to an investigative questionnaire with an authorization for release of information.
- E. Provides proof of rehabilitation, including treatment modalities and term of sobriety (support letters)
- F. Submits fingerprints to the Tribe's Background Department.
- G. Signs a background acknowledgment statement.
- H. Possesses and can demonstrate Lived Experience
 - 1. An applicant will not be disqualified from employment based upon a background history that includes prior convictions or substantiated misconduct with the exception of the following disqualifiers:
 - a. Sexual Offenses. Any lifetime misdemeanor or felony convictions for sexual offenses
 - b. Violent Crimes. Two misdemeanors or one felony violent crime convictions over the individual's lifetime
 - c. Child Predator Offenses. Any child predator offense convictions, whether misdemeanor or felony
 - 2. An applicant must have at least six (6) months of sobriety prior to applying for a given position unless a longer period of time is specified in the job announcement or job description.
 - 3. An applicant's background investigation must not have any drug related charges within the **six (6) months** from the *disposition charge or sobriety date whichever comes first*. Some positions may require a longer period.

4. If an applicant is currently on parole and/or probation status, they will not be disqualified unless they are not in compliance with the requirements of their parole or probation.
 5. An applicant cannot have pending charges with no outcome by a court or pending court proceedings. If the applicant is awaiting sentencing, the background adjudication may proceed.
- I. Agrees, in writing, to follow the applicable employee code of conduct.
 - J. Agrees to and takes part in applicable training and/or orientation. Required training includes training in areas in which stringent confidentiality standards are applied and must be maintained.

V. INTERVIEW PROCESS

- A. The hiring manager will screen applications and resumes prior to scheduling interviews. Initial interviews are conducted by the MHA Recovery Services/Good Road Recovery Center team using behavior-based interview questions and a structured interview process. Candidate interview forms will be completed after each interview and retained with the application.
- B. The Personnel Hiring Committee will notify HR of its selection. The Personnel Hiring Committee will also notify HR of the applicants not selected and the reasons for not selecting them. Upon receipt of the information, HR will notify applicants of the outcome of the selection process.

VI. REFERENCE CHECKS

The Personnel Hiring Committee will conduct professional reference checks and employment verification on the top candidates based on the results of the candidate evaluation forms completed by the interviewers. A minimum of three (3) professional references are required from each candidate.

For positions that involve regular contact with or control over Native American Children, the stringent character standards of Indian Child Protection and Family Violence Prevention Act, Public Law (Pub. L) 101-630, 104 Stat. 4544, 25 U.S.C. 3201-3211, shall apply.

MANDAN, HIDATSA AND ARIKARA NATION



APPENDIX H EMPLOYMENT POLICIES AND PROCEDURES

FAMILY MEDICAL LEAVE POLICY

Adopted April 8, 2004, pursuant to Resolution 04-45BRP by the MHA Tribal Business Council
Revised July 1, 2025 pursuant to Resolution 25-183-FWF by the MHA Tribal Business Council

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I. PURPOSE

The Mandan, Hidatsa and Arikara Nation (“Tribe” or “MHA Nation”) is committed to meeting or exceeding the standards for Family and Medical Leave (“FML”) provided under the Family and Medical Leave Act (“FMLA”). The FMLA is a federal law that requires employers to provide employees with job-protected unpaid leave for certain qualified medical and family reasons. While Native American tribes are not required to comply with the FMLA, the Tribe has instituted the provisions in this section to provide its employees with family and medical leave that are in line with or beyond FMLA standards.

II. DEFINITIONS

Unless otherwise specified, the terms in this Policy shall have the same meaning as those terms currently defined at 25 CFR Part 825, including:

- A. Additional activities. To address other events which arise out of the military member’s covered active duty or call to covered active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.
- B. Childcare and school activities. For the purposes of leave for childcare and school activities listed in (i) through (iv) of this paragraph, a child of the military member must be the military member’s biological, adopted, or foster child, stepchild, legal ward, or child for whom the military member stands *in loco parentis* (in the place of a parent), who is either under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability at the time that FML leave is to commence. As with all instances of qualifying exigency leave, the military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.
 - 1. To arrange for alternative childcare for a child of the military member when the covered active duty or call to covered active duty status of the military member necessitates a change in the existing childcare arrangement;
 - 2. To provide childcare for a child of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;
 - 3. To enroll in or transfer to a new school or day care facility a child of the military member when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and
 - 4. To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member.

- C. Counseling. To attend counseling provided by someone other than a health care provider, for oneself, for the military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the military member, or a child for whom the military member stands *in loco parentis* (in the place of a parent), who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FML is to commence, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member.
- D. Covered active duty or call to covered active-duty status.
1. In the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and,
 2. In the case of a member of the Reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to: Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into Federal service in certain circumstances; chapter 15 of Title 10 of the United States Code, which authorizes calling the National Guard and state military into Federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation.
- E. Covered servicemember.
1. A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
 2. A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

- F. Covered veteran. An individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the 5-year period prior to the first date the eligible employee takes FML to care for the covered veteran.
- G. Financial and legal arrangements.
1. To make or update financial or legal arrangements to address the military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and
 2. To act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the military member's covered active duty status.
- H. Leave because of a qualifying exigency. Leave taken by an eligible employee while the employee's spouse, son, daughter, or parent (the military member or member) is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty). The reasons for which an employee may take leave because of a qualifying exigency are divided into nine general categories: short notice deployment; military events and related activities, childcare and school activities; parental care; financial and legal arrangements; counseling; rest and recuperation; post deployment activities; and additional activities.
- I. Military events and related activities.
1. To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of the military member; and
 2. To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of the military member.
- J. Next of kin of a covered servicemember. The nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FML. When no such designation is made, and there are multiple family members

with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FML to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin.

- K. Parent. Parent means a biological, adoptive, step, or foster father or mother, or any other individual who stood *in loco parentis* (in the place of a parent) to the employee when the employee was a son or daughter as defined in paragraph (r) of this section. This term does not include parents "in law."
- L. Parental care. For purposes of leave for parental care listed in (1) through (4) of this paragraph, the parent of the military member must be incapable of self-care and must be the military member's biological, adoptive, step or foster father or mother, or any other individual who stood *in loco parentis* (in the place of a parent) to the military member when the member was under 18 years of age. A parent who is incapable of self-care means that the parent requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living. Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc. As with all instances of qualifying exigency leave, the military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.
1. To arrange for alternative care for a parent of the military member when the parent is incapable of self-care and the covered active duty or call to covered active duty status of the military member necessitates a change in the existing care arrangement for the parent;
 2. To provide care for a parent of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the parent is incapable of self-care and the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;
 3. To admit to or transfer to a care facility a parent of the military member when admittance or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and
 4. To attend meetings with staff at a care facility, such as meetings with hospice or social service providers for a parent of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member but not for routine or regular meetings.
- M. Post-deployment activities.
1. To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period

of 90 days following the termination of the military member's covered active duty status; and

2. To address issues that arise from the death of the military member while on covered active duty status, such as meeting and recovering the body of the military member, making funeral arrangements, and attending funeral services.

N. Rest and recuperation.

1. To spend time with the military member who is on short-term, temporary, rest and recuperation leave during the period of deployment;
2. Leave taken for this purpose can be used for a period of 15 calendar days beginning on the date the military member commences each instance of rest and recuperation leave.

O. Serious health condition. An illness, injury, impairment or physical or mental condition that involves inpatient care as defined in 25 C.F.R. § 825.114 or continuing treatment by a health care provider as defined in 25 C.F.R. § 825.115. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of 25 C.F.R. § 825.113 are met.

P. Serious injury or illness.

1. In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, serious injury or illness means an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank; or rating; and,
2. In the case of a covered veteran, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:
 - a. a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or
 - b. a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such

VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

- c. a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or
- d. an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Q. Short-notice deployment.

- 1. To address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty seven or less calendar days prior to the date of deployment;
- 2. Leave taken for this purpose can be used for a period of seven calendar days beginning on the date the military member is notified of an impending call or order to covered active duty.

R. Son or daughter. A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* (in the place of a parent), who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FML is to commence.

S. Spouse. A husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:

- 1. Was entered into in a State that recognizes such marriages; or
- 2. If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

III. GENERAL FAMILY AND MEDICAL LEAVE

A. ELIGIBILITY

- 1. Consistent with the Family and Medical Leave Act, all full and part-time employees who have been employed by the Tribe for at least 12 months and have worked a minimum of 1,250 hours during the immediately preceding 12 months are eligible for a leave of absence under this Policy.

2. Employees who have been employed with the Tribe for at least 12 months and have worked at least 1,250 hours during the 12 months immediately preceding commencement of leave will be eligible for up to 12 (480 hours) of unpaid leave during a rolling 12-month period for any of the following reasons:
 - a. The birth of the employee's child and bonding with the newborn child;
 - b. Placement of a child with the employee for adoption or foster care and bonding with the newly placed child;
 - c. To care for the employee's spouse, child, or parent with a serious health condition; or
 - d. A serious health condition rendering the employee unable to perform their job duties.
3. An employee who is on a disciplinary suspension, or on suspension pending the outcome of an investigation that may result in disciplinary action, is ineligible take FML. However, once the suspension is lifted, if the need to take FML still exists, the employee may apply to do so at that time.
4. The 12-month period is determined on a rolling basis, measured backward from the date an employee uses any FML. Under this method, each time an employee uses FML, the remaining leave entitlement is the balance of the allotted 12 weeks that have not been used during the immediately preceding 12 months.

B. SPOUSAL COMBINED LIMITATION

1. Tribal employees eligible for FML who are spouses are limited to a combined total of 12 workweeks of unpaid leave in a 12-month period for the following qualifying reasons:
 - a. The birth of the employee's child and bonding with the newborn child;
 - b. Placement of a child with the employee for adoption or foster care; and
 - c. To care for the employee's parent with a serious health condition.
2. For example:
 - Incident 1: A married couple that works for the Tribe are expecting the birth of a new child. The wife takes 2 weeks of FML at the end of her pregnancy for preeclampsia. Because this leave is for a serious health condition (pregnancy complications), and not for bonding with a new child, these 2 weeks of FML do not count toward the couple's combined 12 weeks. Therefore, the couple's combined leave remains at 12 weeks. (Total FML weeks remaining:

Couple- 12, Wife- 10, Husband- 12).

- Incident 2: In the same 12-month period, the husband takes 3 weeks of FML to care for his father, who was injured in a car accident. Because this leave is to care for the husband's parent, this counts toward the couple's combined leave, resulting in a remaining balance of 9 weeks of combined FML leave. (Total FML weeks remaining: Couple- 9, Wife- 10, Husband- 9).
- Incident 3: Upon the birth of the couple's child, the wife takes 6 weeks of maternity leave in the same 12-month period. Because this is to care for a new child, this counts towards the couple's combined FML, which leaves a remaining balance of 3 weeks of combined FML leave for the couple. (Total FML weeks remaining: Couple- 3, Wife- 4, Husband- 9).
- Incident 4: In the same 12-month period, the wife's mother falls ill and she must sit bedside with her because the mother requires constant supervision. The wife is only allowed 3 weeks to care for her mother because that is the only combined FML remaining. (Total FML weeks remaining: Couple- 0, Wife- 1, Husband- 9).
- Although the couple has exhausted their combined FML leave to bond with their new child or care for their parents during this FML year, the wife still has 1 week remaining for her own serious health condition or to care for her spouse or child with a serious health condition, and the husband has 9 weeks remaining for the same purposes in the 12-month period.

	<u>Combined</u>	<u>Wife</u>	<u>Husband</u>
Starting Balance	12	12	12
Incident 1	-	-2	-
Remaining Balance	12	10	12
Incident 2	-3	-	-3
Remaining Balance	9	10	9
Incident 3	-6	-6	-
Remaining Balance	3	4	9
Incident 4	-3	-3	-
Remaining Balance	0	1	9

IV. EXTENDED FAMILY AND MEDICAL LEAVE

- A. Under certain extenuating circumstances, and at the discretion of the employee's supervisor and director, the Chief Executive Officer, and the Human Resources Director, an employee may be granted extended unpaid FML—for a personal serious health condition only—that is beyond twelve (12) weeks during a twelve (12) month period. Extensions shall not be granted for any reason other than when necessary due to the employee's own serious health condition. Extended FML shall not exceed six (6) months, including the initial twelve (12) weeks. Circumstance that will be considered for extended FML are as follows:
2. When the employee provides written documentation from their doctor indicating:
 1. that the employee is unable to return to work after the allotted twelve (12) weeks of FML due to mental or physical constraints;
 2. that the employee **will** be able to return to work following an extension of FML;
 3. the date the employee may return to work; and
 3. When granting the employee extended FML does not place an undue burden on the Tribe.

V. MILITARY CAREGIVER AND EXIGENCY LEAVE

A. MILITARY CAREGIVER LEAVE

1. The Tribe provides Military Caregiver Leave (“MCL”) to employees eligible for FML. MCL allows up to 26 weeks of unpaid leave in a single 12-month period (commencing on the date the employee first takes the leave) to an eligible employee who is the spouse, son or daughter, parent, or next of kin of a covered servicemember to provide care for the covered servicemember suffering from a serious injury or illness. The 26 weeks of MCL is inclusive of the 12 weeks of leave already provided under general FML (i.e., an employee who has used 12 weeks of general FML is only entitled to 14 weeks of MCL). If an eligible employee does not take all of their 26 weeks of MCL entitlement to care for a covered servicemember during the single 12-month period, the remaining MCL time to care for the covered military member is forfeited.
2. The 26-week entitlement is to be applied as a per-covered servicemember, per-injury or illness basis. Therefore, an eligible employee may be entitled to take more than one period of 26 weeks of MCL if the leave is to care for different covered servicemembers or to care for the same covered servicemember with a subsequent serious injury or illness.
3. Although MCL is unpaid, the employee may use available paid leave accumulations to remain in pay status for all or part of the absence. The employee may choose to exhaust available annual and sick leave or go on leave without pay to care for a covered servicemember. Donated leave may be applied to an employee’s MCL.

B. QUALIFYING EXIGENCY LEAVE

1. The Tribe provides Qualifying Exigency Leave (“QEL”) to employees eligible for FML. QEL allows up to 12 weeks of leave because of a qualifying exigency to be granted to an eligible employee who is the spouse, son, daughter, parent or next of kin of a military member who is: placed on covered active duty or call to covered active duty status; or has been notified of an impending order to covered active duty or call to covered active duty status, so that the eligible employee may attend to qualifying exigencies.
2. Qualifying exigencies include: short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post deployment activities, parental care, additional activities.

3. The twelve (12) weeks of QEL is not in addition to the twelve (12) weeks of leave available for general FML purposes. Although QEL is unpaid, the employee may use available annual and sick leave accumulations to remain in pay status for all or part of the absence or go on leave without pay. Donated leave may be applied to an employee's QEL.

VI. PROCEDURE

A. REQUEST SUBMISSION

Requests for FML, MCL, and QEL must be submitted on forms provided by the Human Resources Department with adequate documentation regarding the condition or circumstance authorizing the leave. Employees will be allowed at least fifteen (15) days from the date requested (unless it is not feasible despite the employee's diligent, good faith efforts) to provide the information or certification necessary to be approved for FML, MCL, or QEL. Supervisors and directors must follow applicable Human Resources Department and Payroll Department processes to qualify, begin, and end an employee's FML, MCL, or QEL. Failure by a supervisor or director to do so may jeopardize an employee's ability to utilize such leave and may result in disciplinary action to the supervisor or director. For more information, please contact the Human Resources Department.

B. EMPLOYEE CONDUCT ON FML, MCL, AND QEL

Employees must comply with all applicable Tribal policies and procedures while on FML, MCL, and QEL. An employee on who violates any Tribal policies and procedures while on such leave will be subject to disciplinary action.

C. REINSTATEMENT/INABILITY TO RETURN TO ORIGINAL POSITION

1. The Tribe adheres to the following general rule regarding reinstatement as it applies to an employee coming off of FML, MCL, or QEL: An employee returning from FML, MCL, or QEL is entitled to be returned:
 - a. to the same position the employee held when leave commenced; or
 - b. to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An equivalent position is one which has substantially similar duties, responsibilities, skill requirements, effort, pay, and authority.
2. If an employee is deemed unfit by the employee's doctor to return to their originally held position, the Tribe will do its best, within reason, to place the employee in an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. In any instance, the Tribe is not required to reinstate or place an employee in the same or an equivalent position, as applicable, if doing so would place an undue burden on the Tribe.

MANDAN, HIDATSA AND ARIKARA NATION



APPENDIX I EMPLOYMENT POLICIES AND PROCEDURES

FITNESS FOR DUTY POLICY

Adopted April 8, 2004, pursuant to Resolution 04-45BRP by the MHA Tribal Business Council
Revised July 1, 2025 pursuant to Resolution 25-183-FWF by the MHA Tribal Business Council

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I. PURPOSE

- A. The Mandan, Hidatsa and Arikara Nation (“Tribe” or MHA Nation”) is committed to ensuring that employees are always fit for duty prior to and during employment, while also respecting employee privacy. This Policy requires that all employees be fit for duty when they are working. The Tribe may require an employee to undergo a Fitness for Duty Evaluation when it is job-related and consistent with business necessity. An evaluation is job-related and consistent with business necessity when the Tribe has a reasonable belief that: (1) the employee’s ability to perform their essential job functions is or will be impaired by a medical condition; or (2) the employee will pose a direct threat due to a medical condition.
- B. An employee is fit for duty when they are able to perform their essential job functions, with or without reasonable accommodation, in a manner that does not pose a direct threat. A direct threat is a significant risk of substantial harm to the employee or others that cannot be eliminated or reduced by reasonable accommodation. An employee’s essential job functions are the fundamental duties of the position or the primary reasons the position exists. For all Tribal positions, regular attendance, ability to work without disruption to the workplace, and ability to comply with applicable conduct standards are essential job functions. This Policy describes the circumstances under which the Tribe may evaluate an employee’s fitness for duty, provide the procedures for those evaluations, and safeguard employee privacy related to those evaluations.

II. PROCEDURE

All forms referenced in this Policy can be obtained from the Human Resources Department.

A. REPORTING FITNESS FOR DUTY CONCERNS

- 1. An employee who observes behavior or learns information that suggests an employee is not fit for duty should report such behavior to that employee’s supervisor/director. If an employee is concerned that their own supervisor/director is not fit for duty, the employee should report such behavior to the next level of supervisor or directly to the Human Resources Department.
- 2. If an employee believes they, themselves, are not fit for duty, they should discuss their concerns with their supervisor/director or may request to meet with the Tribe’s Benefits Specialist to discuss options for potential accommodation and/or leave.
- 3. Filing deliberately false or misleading information with the intention to harass, or otherwise abusing of the Fitness for Duty reporting process will be considered unacceptable conduct and may be subject to disciplinary action, up to and including termination in accordance with applicable employee disciplinary policies.

4. Fitness for duty concerns can be reported to the employee at issue's supervisor or director, or to the Human Resources Department directly if the employee at issue is the reporting employee's director, using the Fitness for Duty Reporting Concerns Form available in the Human Resource Department offices. Supervisors and directors who receive such reports must immediately provide a copy to the Human Resources Department.

B. WHO MAY REQUEST A FITNESS FOR DUTY EVALUATION

A supervisor or director, the CEO, or a Tribal Business Council Representative may request a Fitness for Duty Evaluation when they have a reasonable belief, based on firsthand knowledge or information provided to them on a Fitness for Duty Reporting Concerns Form that the employee's ability to perform their essential job functions will be impaired by a medical condition or that the employee poses a direct threat due to a medical condition.

C. REQUESTING AN EVALUATION

The written request should include the following information:

1. A summary of the objective evidence supporting the reasonable belief that the employee:
 - a. Has impairment of performance of essential job functions caused by the medical condition; or
 - b. Poses a direct threat.
2. The name(s) and contact information for the individual(s) providing the objective information supporting the reasonable belief; and
3. If the request is based on impairment of performance of essential job functions, a summary of the relevant essential job function(s).
4. For requests based on impairment of performance, a copy of the employee's job description should be included.

D. REQUIRING A FITNESS FOR DUTY EVALUATION

1. Work Assignments Pending Evaluation
 - a. Before or after a determination that an evaluation is required, the Tribe may place the employee on paid administrative leave pending the results of the evaluation.
 - b. When the evaluation is required to determine an employee's ability to perform their essential job function(s), the Tribe may, in its discretion, temporarily reassign the employee to other duties pending the results of the evaluation. A partial temporary reassignment to other duties may be combined with partial paid administrative leave.

2. Notice to Employee

- a. The Department Director will notify the employee in writing that they are required to undergo an evaluation. The written notice will include the following information:
 - i. A summary of the employee's conduct supporting the evaluation;
 - ii. Whether the evaluation will address the employee's ability to perform their essential job function(s) or a potential direct threat;
 - iii. Whether the employee will be placed on paid administrative leave or temporarily reassigned;
 - iv. The date by which the evaluation must be completed; and
 - v. Consequences for failure to complete the evaluation.
- b. The employee will also be provided a copy of the questions to be posed to the healthcare professional. These questions may be provided after the employee receives the written notice but prior to the evaluation.
- c. Upon receipt of the written notice, the employee is required to complete a Tribal Health Care Provider Release form providing the name and contact information of the employee's health care provider who will be conducting the evaluation and allowing the Human Resources Director to provide the necessary evaluation materials to, and receive the completed evaluation materials from, the health care provider.

E. FITNESS FOR DUTY EVALUATION

1. Health Care Professional

- a. The evaluation may be conducted by the employee's health care provider or, in the Tribe's discretion, a health care professional of the Tribe's choice. In all cases, the evaluation must be conducted by an appropriate health care professional who has expertise in the employee's specific condition and can provide medical information that allows the Tribe to determine the effects of the condition on the employee's ability to perform their job without posing a direct threat.
- b. If the Tribe chooses the health care professional, the Tribe will pay all costs associated with the evaluation. If the employee's own provider conducts the evaluation and the Tribe determines that it needs additional information, the Tribe may require the employee to be evaluated by a health care professional of the Tribe's choice.

If an additional evaluation is required and results in conflicting medical information, the Tribe will consider the following factors in evaluating the determination of the health care professionals:

- i. The area of expertise of each health care professional who has provided information.
- ii. The kind of information each health care professional has about the essential job functions and the work environment in which they are performed.
- iii. Whether a particular opinion is based on speculation or on current, objectively verifiable information about the risks associated with a particular condition; and
- iv. Whether the medical opinion is contradicted by information known to or observed by the Tribe (e.g., information about the employee's actual experience in the job in question or on previous similar jobs).

2. Scope of the Evaluation

The evaluation will be limited to determining whether the employee can perform their essential job function(s) or whether they pose a direct threat. The Human Resources Department, in consultation with the employee's supervisor and/or director, will provide the employee's job description or a statement of the employee's essential job functions, and a description of the circumstances leading to the evaluation to the established provider completing the evaluation.

3. Results of the Evaluation

- a. Upon completion of the evaluation, the health care professional will be asked to respond to the questions and to complete a Fitness for Duty Evaluation Form. In the Fitness for Duty Evaluation Form, the health care professional should select one of the following results of the Evaluation:
 - i. **Is Fit for Duty:** The employee is medically able to perform their essential job functions without accommodation and/or the employee does not pose a direct threat.
 - ii. **Can be Fit for Duty:** The employee is medically able to perform their essential job functions with accommodations, does not pose a direct threat if provided accommodations, and/or can perform their essential job functions and/or not pose a direct threat if they satisfy other requirements.
 - iii. **Is Not Fit for Duty:** The employee is not able to perform their essential job functions with or without accommodation and/or the employee poses a direct threat.

- b. The responses to the questions and the Fitness for Duty Evaluation Form should be submitted by the health care provider to the Human Resources Department. The Human Resources Department will review the Evaluation results and, determine whether an additional healthcare professional opinion is necessary.

4. Post-Evaluation

- a. If the employee is fit for duty, the employee will be allowed to return to work within three (3) business days.
- b. If the employee can be fit for duty, the employee will be referred to the Human Resources Director to determine what reasonable accommodations can be provided or to identify other requirements needed to make the employee fit for duty. The employee will be allowed to return to work upon establishment of reasonable accommodation and/or other requirements. If the Tribe determines that accommodations cannot reasonably be provided or if the requested accommodations would impose an undue hardship on the Tribe, the employee is not fit for duty.
- c. If the employee is not fit for duty, the employee will not be allowed to return to work. The Human Resources Director will discuss options for voluntary separation from the Tribe with the employee. If the employee declines to seek a voluntary separation from the Tribe, the employee may be involuntarily separated from the Tribe, consistent with the Tribe's applicable policies and procedures.

5. Failure to Comply

An employee who fails to undergo the evaluation as directed or fails to adhere to any condition(s) of employment established as a result of the evaluation, including failing to engage with any process to determine what accommodations or requirements may make the employee fit for duty, may not be allowed to return to work and may be subject to disciplinary action, up to and including separation from the Tribe, consistent with the Tribe's applicable policies and procedures.

III. APPEALS

Employees may have an option to appeal the requirement of an evaluation or any employment action resulting from the results of the evaluation in accordance with the Tribe's Complaints, Grievances, and Appeals Policy and Procedures.

MANDAN, HIDATSA AND ARIKARA NATION



APPENDIX J EMPLOYMENT POLICIES AND PROCEDURES

INJURIES AND ACCIDENTS POLICY

Adopted April 8, 2004, pursuant to Resolution 04-45BRP by the MHA Tribal Business Council
Revised July 1, 2025 pursuant to Resolution 25-183-FWF by the MHA Tribal Business Council

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I. POLICY

The Mandan, Hidatsa and Arkara Nation (“Tribe” or “MHA Nation”) is committed to providing a safe work environment by adopting the North Dakota Workforce Safety and Insurance policy guidelines and procedures. All employees, as of the first day of employment with the Tribe, are covered for bodily injuries when the accident and bodily injury occur during their regular duties or on official travel. Job-related injuries and illnesses, regardless of severity, should be reported immediately and within 24 hours from the time of the injury to the department Director and Human Resource Department. If the injured employee is not available for their input, the form can be completed by the supervisor or Human Resources Representative.

II. PURPOSE

- A. The purpose of this Policy is to describe the workplace accident and injury policy and procedures, to investigate claims of injury and accident, to ensure a safe work environment, and to take corrective action if applicable.
- B. This Policy outlines clear steps for immediate emergency care, reporting the injury to the appropriate authorities, conducting a thorough investigation, and ensuring the injured employee receives the necessary medical attention and support for a safe return to work. The Tribe may request a Return-to-Work release from medical providers. WSI may require other forms to be completed by the employee and the employee’s provider.

III. DEFINITIONS

- A. Accidents. A specific occurrence, neither expected nor intended, which causes bodily injury to an employee and arises under circumstances constituting a compensable injury.
- B. Bodily Injury or Injury. An actual physical injury to the body that arises by accident under circumstances that constitute a compensable injury . Injuries due to a repetitive or cumulative trauma may be deemed compensable if the condition is established to be solely related to the employment with the Tribe and if the employee has no history of a preexisting condition, as established by medical evidence.
- C. Capability Assessment. At each medical appointment, the provider will complete a Capability Assessment Form that the employee will need to submit to their supervisor and Human Resources.
- D. Compensation Premium. WSI uses your payroll reports to calculate your workers' compensation premium. The premium is calculated by applying the rate for a class of employment to the amount of taxable payroll in that classification. If you have several classifications, your premium is the sum-total of all classifications. The

maximum taxable payroll for each worker is capped at 70% of the state's average annual wage. This amount is commonly referred to as the "wage cap." The average annual wage cap becomes effective on July 1 of each year.

- E. Classification Rates. Some classes of employment are inherently more hazardous than others, and WSI's rate class system reflects that risk. Based on the risk, each class of employment is assigned a classification. In turn, each classification is assigned a rate. These rates reflect factors such as occupational risk, medical costs, and benefit levels.
- F. Dependent Child:
 - 1. A child under the age of 18 residing in the injured worker's household or a child for whom the injured worker has a legal obligation to support;
 - 2. A child between the ages of 18 and 23 who is a full-time student and dependent upon the injured worker for support;
 - 3. A child aged 18 and older who is incapable of self-support and who is dependent upon the injured worker for support.
- G. Nurse Case Manager. Registered nurses are located at medical facilities throughout North Dakota to coordinate care for injured employees and promote return to work. They are assigned upon request by the employer of WSI Claims Adjuster.
- H. Workforce Safety & Insurance (WSI). WSI is the sole provider and administrator of workers' compensation in North Dakota. WSI is an exclusive employer-financed, no-fault insurance system covering workplace injuries, illnesses, and death. North Dakota law does not allow private insurers to underwrite workers' compensation insurance in North Dakota.

IV. EMPLOYEE RESPONSIBILITIES

- A. Employees are required to obey safety rules, exercise caution in work areas and to report immediately any unsafe conditions to the Safety Officer and Human Resource Department.
- B. Accidents resulting in an injury of any nature must be reported immediately by the employee to their department and Human Resources the same day the incident occurred. If the employee is unable to report the incident, due to situations beyond their control, the supervisor or witness of said incident may report to the department and Human Resources. If said injury is not reported within 24 hours, the employee could be denied WSI benefits.

- C. Reporting injuries when medical treatment is not required:
 - 1. Form SFN2828 First Report of Injury (FROI) shall be completed and submitted to Human Resources and kept on file. Employee may be required by WSI to complete a Capability Assessment form C96a.
- D. Reporting injuries when medical treatment is required (to include life-threatening injuries):
 - 1. Call 911 immediately. Employee or witness of injury will report incident immediately to Human Resources and Department Director. The FROI must also be completed and submitted to Human Resources.
 - 2. If employee is not released to return to work immediately – The employee is eligible for FMLA (attached WHD Fact Sheet #28P). The medical provider will notify the employee if they cannot return to work for five (5) or more consecutive workdays. The employee may be eligible for Wage-Loss Benefits.

V. EMPLOYER RESPONSIBILITIES

- A. The Tribe hereby adopts and complies to the North Dakota's Workers' Compensation law as stated with limited exceptions as exercised by the Three Affiliated Tribes. Workforce Safety insurance is applicable to all employees including full-time, part-time, seasonal, and occasional workers before employees begin working. It is unlawful to deduct any portion of the premium from wages or salary of any employee. No agreement by an employee to waive rights to compensation under Title 65 of the North Dakota Century Code shall be valid.
- B. An employer may not employ any person or receive the fruits of the labor of any person, in a hazardous employment as defined in this title, without first applying for Workforce Safety and Insurance coverage for the protection of employees by notifying the organization of the intended employment, the nature of the intended employment, and the estimated payroll expenditure for the coming 12-month period.
- C. When Human Resources receives the FROI, it must be submitted to WSI within 7 days of receiving the notice of injury. When WSI receives the FROI from the medical provider, they may waive the employer's section and process the claim without the employer's verification. The employer will receive notification directly from WSI regarding the claim.

VI. WAGE LOSS BENEFITS

A. There are three (3) types of wage-loss benefits.

1. Temporary total disability: If your disability is total, but only temporary, AND your medical provider has taken you off work for 5 or more consecutive days, you may be paid a TTD wage-loss benefit. Additionally, you may receive up to \$15/week for each dependent child you support.
2. Temporary partial disability: If your wages are reduced because of a physical limitation related to your injury, you may be paid a TPD wage-loss benefit. TPD benefits end when your wages return to at least 90% of your gross weekly pre-injury wages. TPD benefits can only be paid up to 5 years for those suffering a loss of earnings capacity on/after July 1, 1991.
3. Permanent total disability: This benefit is for workers who are totally disabled and unable to return to work of any kind, as defined by North Dakota statute. To determine whether PTD is appropriate, WSI must consider the following factors: nature of injury, degree of physical impairment, education, work history, wage-earning capacity, and potential for vocational rehabilitation.

B. Termination of Wage-Loss Benefits

Wage loss benefits may be terminated if:

1. Employer offers the employee temporary modified duties
2. Employee receives a medical release to return to regular duties
3. A medical provider determines that the employee has reached maximum medical improvement, and no further treatment is expected to improve the employee's condition.
4. Compensation for permanent or fatal injuries.

MANDAN, HIDATSA AND ARIKARA NATION



APPENDIX K EMPLOYMENT POLICIES AND PROCEDURES

SERVICE ANIMAL POLICY

Adopted April 8, 2004, pursuant to Resolution 04-45BRP by the MHA Tribal Business Council
Revised July 1, 2025 pursuant to Resolution 25-183-FWF by the MHA Tribal Business Council

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I. PURPOSE

The Mandan, Hidatsa and Arikara Nation (“Tribe” or “Tribal” or “MHA Nation”) does not allow pets in the workplace; however, an individual with a disability may request a reasonable accommodation to bring a service animal to work when medically necessary. Procedures for requesting reasonable accommodation are described in this Service Animal Policy.

II. SERVICE ANIMAL; DEFINITION

Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (“PTSD”) during an anxiety attack, or performing other work or tasks. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person’s disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals.

III. REQUEST FOR SERVICE ANIMAL ACCOMMODATION

The MHA Nation will evaluate all requests to bring a service animal into the workplace to determine if the accommodation is reasonable and can be provided without undue hardship. Employees may be asked to bring the service animal to the workplace to demonstrate the animal's training and ability to be in the workplace without disrupting the workplace. If an accommodation is granted to allow a service animal in the workplace, the arrangement may be permitted on a temporary or trial basis.

IV. GENERAL REQUIREMENTS

- A. A service animal must be under the control of its handler. A service animal must be removed from the premises immediately if it behaves in a way that poses a threat to the health and safety of others, has a history of such behavior, or is not under the control of its handler. Permission to bring the animal to work will be revoked when an incidence of such behavior occurs.
- B. Employees with a service animal accommodation must comply with the following requirements:
 - 1. All service animals need to be immunized against rabies and other diseases common to that type of animal. All vaccinations must be current, and animals must be in good health.
 - 2. Service animals must wear an owner identification tag (which includes the name and phone number of the owner) at all times.
 - 3. Animals must be on a leash, harness or other type of restraint at all times, unless the employee is unable to retain an animal on leash due to a disability. In that case, the employee must maintain control of the animal through voice, signal, or other effective controls.

4. The employee must be in full control of the animal at all times. The care and supervision of the animal is solely the responsibility of the employee. The employee is expected to clean and dispose of all animal waste appropriately and also to:
 - a. Inform and certify to HR that their pet is adequately trained;
 - b. Present current documentation of insurance policy that adequately covers their pets for workplace purposes;
 - c. Provide proof that their pets are clean, properly vaccinated and free of parasites;
 - d. Ensure their pet will not cause allergies or other medical problems for their coworkers as this will be deemed disruptive to the workplace; and
 - e. Sign waivers that state their pet's information and the owner's responsibility towards them and the workplace.
- C. The dog breeds listed below are prohibited dogs on the Fort Berthold Reservation and are not allowed to be service animals in the workplace in accordance with Resolution No. 09-003-VJB:
 1. American Pit Bull Terrier, Bullmastiff, Tibetan Mastiff, Neapolitan Mastiff, Mastiff or Rottweiler, as described or registered by the American Dog Breeders Association or the American Kennel Club, or
 2. Any dog that is not registered with the American Kennel Club or the United Kennel Club of the breed either known as Bull Terrier, Staffordshire Bull Terrier, or American Staffordshire, or
 3. Any dog of mixed breed including one or more of the above breeds.

MANDAN, HIDATSA AND ARIKARA NATION



APPENDIX L EMPLOYMENT POLICIES AND PROCEDURES

TRANSFER POLICY

Adopted April 8, 2004, pursuant to Resolution 04-45BRP by the MHA Tribal Business Council
Revised July 1, 2025 pursuant to Resolution 25-183-FWF by the MHA Tribal Business Council

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I. PURPOSE

One of the ways that individuals broaden and deepen their career experience is through professional moves within the Mandan, Hidatsa and Arikara Nation ("Tribe"). A transfer is defined as changing positions through a lateral move, promotion, department change, job change, or demotion. As a result of this change, the employee does not have an interruption or loss of benefits such as insurance, leave accruals, and/or years of service.

A change in job title, reporting structure, change in responsibilities, or any other modification to a current position is not considered a transfer.

II. PROCEDURE

A. ELIGIBILITY

Employees must be a permanent employee and have remained in their current position for at least six months to be eligible for a transfer. The Tribe encourages employees to establish a long-term, stable working relationship with their current position before seeking other career opportunities within the Tribe. Individuals who are not meeting performance expectations must disclose any formal performance actions before being considered eligible to transfer within the Tribe's system.

B. PERFORMANCE CONCERNS

If an employee is unable to adjust to the job requirements of a position or is failing to meet minimum expectations, it may be to the employee's and the Tribe's advantage to attempt to identify other opportunities within the Tribe for consideration. When considering a transfer, it is important that the individual is transferred into a position where he/she has an opportunity to be successful.

C. BEHAVIORAL/CONDUCT CONCERNS

1. Employees with conduct problems are rarely transferred. Behavioral/conduct issues are defined as inappropriate conduct resulting in a Performance Improvement Plan or disciplinary action. The conduct must be formally documented and approval to transfer must be granted by both the leaving and gaining departments, as well as Human Resources. Unless approval is granted, employees involved in disciplinary actions are not eligible for transfer or promotion into a permanent position for the duration of the Performance Improvement Plan or disciplinary action.
2. While on a Performance Improvement Plan or disciplinary action, the employee is required to share with the hiring Director/Manager, prior to the job offer, the content and expectations of the Performance Improvement Plan or disciplinary action. This information may be a deciding factor in the hiring decision.

D. BACKGROUND CHECKS.

Employees transferring or individuals seeking to be rehired will be subject to a work history screening which may also include a background check. The ability to transfer to other areas within the Tribe is contingent upon the background check.

III. TYPES OF TRANSFERS

A. TRIBAL DEPARTMENT EMPLOYEES

1. Lateral Transfer: A lateral transfer is a move to a position with the same or similar job title in the same pay range. Such transfers provide opportunities to work with new colleagues, to master a different range of skills, or to transfer special skills and experience to a new environment. This is not an intra-departmental transfer because it will not be within the same department or program.
2. In-house: Current Tribal employees are given the opportunity to apply for a position within the Tribe before the position is advertised publicly. The period for in-house advertisement will be one week. If the hiring manager/director selects from the in-house applicant pool, the advertisement will be closed and will not be released publicly.
3. Promotion: Refers to upward movement of an employee from his/her current job position to another that is higher pay, responsibility and hierarchy within the Tribe. A move is considered a promotion if it places an individual in a higher pay range, even if the actual salary is not increased.
4. Demotion: Demotions may be proposed for a number of different reasons, including poor employee performance, disciplinary actions, position elimination or organizational restructuring and, at times, an employee-desired reduction in responsibility. Each circumstance should be carefully considered prior to determining that demotion is the appropriate action. A demotion is a reduction of work level, job title, rank, or status, also known as reorganization and/or reassignment.

B. TRIBAL BUSINESS COUNCIL APPOINTEES (SEGMENT STAFF)

1. Tribal Department to Segment: An employee who is employed with a Tribal Department is required to give written notice and closeout completely from the Department they are leaving and prior to beginning appointment duties. Duties, work schedule, rate of pay, term, and benefits are at the discretion of the Tribal Business Council Representative making the appointment, subject to budgetary restraints enacted by the Tribal Business Council and the MHA Nation Personnel Policies and Procedures.
2. Segment to Segment: An appointee may wish to transfer to another Tribal Business Council Representative's staff. In order to do this, the appointee shall give written notice to her/his current supervisor and

closeout completely prior to beginning appointment duties. Duties, work schedule, rate of pay, term, and benefits are at the discretion of the receiving Tribal Business Council Representative, subject to budgetary restraints enacted by the Tribal Business Council and the MHA Nation Personnel Policies and Procedures.

3. Other Job Changes: Employees may move to a position in another department, change career paths (ex. Moving from Health Care to Law Enforcement), or take a job involving less responsibility or pay. These moves are also considered transfers.

IV. PROCESS

- A. Employees may find job opportunities within their own departments or elsewhere within the Tribe. Discussion between the employee and his/her current supervisor regarding career development is encouraged. Career opportunities also may be discussed with the Human Resources staff or the Department/Program for which the employee currently works.
- B. The employee must apply for the transfer opportunity during the job announcement period. The application must be complete to be considered. If the job opportunity requires a background check, the appropriate background questionnaire must be completed as well.
- C. An employee who would like to interview in confidence should discuss their situation in detail with the Human Resources staff and/or the hiring Director/Manager. If confidentiality is advisable, up-to-date references may not be available until the employee is being considered as a final candidate. In the event that current references are needed, the employee must then notify the current supervisor that a reference request is forthcoming.
- D. It is important to note that an employee is expected to continue to perform fully the duties of his or her current position during the period of time needed to secure a new position.
- E. References. The hiring Directors/Managers are required to check the employee's references with the current supervisor for all potential transfers within the Tribe. An in-house transfer applicant must provide a minimum of two references. The hiring Director/Manager shall inform the applicant that references will be checked. Hiring Directors/Managers shall use the same criteria for asking relevant reference questions as they use when conducting interviews with external applicants.
- F. The hiring Director/Manager must notify the Human Resources office of its hiring selection and provide the required documents. The packet must be completed and submitted to Human Resources before the deadline set by HR for the following Tribal Business Council meeting.

- G. Once the Tribal Business Council approves the transfer, the Human Resources staff will notify the hiring Director/Manager via email with a Personnel Action Form (“PAF”). Only upon receipt of the PAF will the hiring Director/Manager complete and route a new Salary Authorization Request (“SAR”).
- H. Transfer dates should be arranged through the cooperation of the two departments involved, with the support of the Human Resources staff as needed. At least two weeks’ notice should be given to the transferring employee’s current department before the date of transfer.

V. EXCEPTIONS TO THE TRANSFER POLICY

Exceptions to the Transfer Policy may be made in order to comply with federal laws. For example, if an appropriate accommodation for a Tribal staff member is to transfer to another department, exceptions may be made regarding eligibility and/or process guidelines. Exceptions to the Transfer Policy must be coordinated with Human Resources and/or the Tribal Business Council.