

TITLE X – LABOR AND EMPLOYMENT

Labor and Employment Act of 2023

Chapters:

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Chapter 2	Fair Labor Standards
Chapter 3	Recognized Holidays
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Chapter 1 General Provisions.

1.01 Purpose.

The Kiowa Tribe Legislature (“Legislature”) pursuant to its authority under the Constitution of the Kiowa Tribe has established this title to the Kiowa Code to cover the various and complex matters related to labor and employment law on all entities, public and private, operating within the jurisdiction of the Kiowa Tribe. Labor and employment law also impacts the government and its entities, as employer, and its employees. It is the intent of the Legislature that all matters that arise under this title be dealt with in a fair and balanced manner in the best interest of the Tribe, its entities, public and private entities operating on Kiowa Tribe lands, its citizens, its staff and all its employees.

1.02 Incorporation of Existing Labor and Employment Laws.

In adopting this Act, the Legislature hereby affirms and incorporates the following laws into this Title of the Kiowa Code, and authorizes and directs legislative staff to renumber and incorporate them in a uniform and timely manner.

Resolution No. 2017-0014 - Employee Benefits Provider Selection Act
Resolution No. 2018-0002 - Nepotism Act
Resolution No. 2018-0009 - Tribal Member Preference & Indian Preference Act
Resolution No. 2018-0016 - Tribal Employment Rights Act

1.03 Kiowa Tribe as Employer.

All branches of the Kiowa Tribe government, as well as business enterprises of the Tribe, shall create employee policies and procedures consistent with this Act.

Chapter 2 Fair Labor Standards

Sections:

Section 2.01	Purpose, Authority and Intent for this Chapter
Section 2.02	Scope and Jurisdiction of this Chapter
Section 2.03	Definitions for this Chapter
Section 2.04	Minimum Wages
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- Section 2.12 Right to File a Complaint; Available Remedies; Right to Bring a Cause of Action; Form of Complaint
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Section 2.01 Purpose, Authority and Intent for this Chapter

The Tribe, as an exercise of its inherent governmental authority, adopts this Act as a law of the Tribe. The purpose of this Chapter is to ensure that all Employers, as defined in this Chapter, fairly compensate Employees, as defined in this Chapter, in accordance with the values and traditions of the Tribe.

Section 2.02 Scope and Jurisdiction of this Chapter

This Chapter applies to Employers who employ Employees within the Territory of the Tribe. The Courts of the Kiowa Tribe shall have exclusive jurisdiction over any actions under this Chapter.

Section 2.03 Definitions for this Chapter

- A. "Employee" means any person employed by an Employer, excluding:
 - 1. Any person in a position that would be excluded from minimum wage and overtime requirements of this Act; or
 - 2. Appointed or elected public officials of the Tribe, including Executive and Legislative members and appointees, Tribal Court Judges, and the members of any board, commission or regulatory body of the Tribe, appointed by the Chairman and confirmed by the Legislature or elected by the voters of the Tribe.
- B. "Employer" means the Tribe or a business enterprise employing individuals who work within the Tribe's Territory.
- C. "Department of the Tribe's Government" means the operations of the Tribe that fall under the Tribe's Employer Identification Number issued by the Internal Revenue Service.
- D. "Federal Fair Labor Standards Act" or "FLSA" means the Fair Labor Standards Act of 1938, Title 29 of the United States Code, sections 201 et seq., as amended, and regulations adopted by the United States Department of Labor pursuant to the FLSA.
- E. "Tribe" means the Kiowa Tribe.
- F. "Court" or "Courts" means the Courts of the Kiowa Tribe.
- G. "Tribal Entity" means any entity or instrumentality of the Tribe, other than a Department of the Tribe's Government, including any Corporation established pursuant to the Business Code, which possess sovereign immunity from suit.
- H. "Territory" or the "Tribe's Territory" means the territory of the Kiowa Tribe.
- I. "Youth" means a person or persons who is less than 18 years old.

Section 2.04 Minimum Wages

The minimum wage applicable to the Employees of all Employers will be set the Legislature as needed and shall not be less than the minimum wage provided by the Federal Labor Standards Act. Except as otherwise provided in this Chapter, Employers shall pay Employees a minimum wage of _____ per hour.

Section 2.05 Overtime

Except as otherwise provided in this Chapter, Employers shall pay Employees overtime for all hours worked in excess of 40 during each work week, and employees will receive overtime at the rate of one and one-half times the employee's regular rate. Paid leave shall not qualify as time worked for overtime calculation purposes.

Section 2.06 Exemption from Minimum Wages and Overtime

This Act exempts from both minimum wage and overtime pay all Employees employed as bona fide executive, administrative, professional, computer and outside sales employees. An Employee generally must be paid on a salary basis and perform certain types of work that:

- is directly related to the management of his or her employer's business, or
- is directly related to the general business operations of his or her employer or the employer's clients, or
- requires specialized academic training for entry into a professional field, or
- is in the computer field, or
- is making sales away from his or her employer's place of business, or
- is in a recognized field of artistic or creative endeavor.

Section 2.07 Pay Period and Overtime for Employees of Departments of Tribal Government

The regular pay period for Employees of a Department of the Tribe's Government shall be every two weeks. Overtime pay shall be paid to Employees of Departments of the Tribe's Government after **(forty (40) hours of work per week / eighty (80) hours of work within a two (2) week pay period)**, provided, however, that certain Employees may be provided compensation time-off in lieu of overtime pay in accordance with Section 2.09, below.

Section 2.08 Compensation Time Off Option for Specified Positions in Departments of Government

Departments of the Government may offer certain Employees in pre-designated positions the option of receiving compensation time off (at the rate of one and a half hours) in lieu of overtime pay after such Employees have worked eighty (80) hours within a two (2) week pay period if said Employees have seasonally fluctuating workloads.

Section 2.09 Youth Work Opportunities; Internships

- 2.09.1 Youth Work Opportunities. It is the public policy of the Tribe to give work opportunities to community member Youth through Youth Career and Employment Programs, based on maturity and not age, and to allow such Youth to participate in the unique cultural activities of the Tribe. Employers employing community member Youth through said Programs shall look to the FLSA for guidance.
- 2.09.2 Internships. It is the public policy of the Tribe to provide opportunities to community members to have internships or apprenticeships with Employers for a variety of reasons, including to provide a support structure to the lives of certain individuals and to allow students and others to gain exposure to professional working environments. Employers using interns or apprentices shall look to the provisions of the FLSA governing interns or apprentices as the law of the Tribe.

Section 2.10 Implementation

Employers subject to the provisions of this Chapter shall develop and adopt policies and procedures to implement the provisions of this Chapter within 90 days of the effective date of this Act.

Section 2.11 Limited Waiver of Sovereign Immunity

The Tribe expressly waives the sovereign immunity of the Tribe, Tribal Entities, and Departments of Tribal Government for suits and process in Court for the limited purpose of enforcing this Chapter and for the purpose of awarding equitable relief and compensatory damages limited to compensation for hours worked or benefits earned and shall not include any award of punitive damages, and shall be done in accordance with the requirements and limits set in the Constitution.

Section 2.12 Right to File a Complaint; Available Remedies; Right to Bring a Cause of Action; Form of Complaint

- 2.12.1 Any Employee who claims that an Employer has violated this Chapter must commence an administrative claim as provided herein within 180 days of the employee's discovery of an alleged violation.
- 2.12.2 Any Employee alleging a violation of this Chapter shall pursue the following administrative remedies for resolution of the claim, in the order listed, before filing an action in the Courts, provided however, that an Employee who claims retaliation may proceed directly to Court:
- A) A written claim filed pursuant to the grievance procedure outlined in the Employer's Personnel Policy Manual.
 - B) In the event there is no Personnel Policy Manual, the Employee shall file a written claim with the Employer's human resources manager and if there is no human resources manager, the Tribe's Human Resources Director. The claim shall be initially reviewed by the Human Resources Manager / Director and the Employee's immediate supervisor for a decision. If the Employee does not agree with the decision, the Employee shall proceed to the next step within 3 business days of receiving the decision.
 - C) If the Employee is not satisfied with the decision in Step 1, the Employee may file a written appeal within 3 business days to the CEO, Chairman, as the case may be. The Human Resources Department shall forward all materials in its possession related to the claim within 7 business days.
 - D) The CEO, Chairman, or other designated official shall hear the appeal.
- 2.12.3 The Employee's claim shall be in writing, and the Employee shall have the right to proceed to the next level of administrative review if the Employee's claim is not resolved at any given level within twenty-one (21) days after the filing of the claim, which shall be deemed a decision of denial. If the Employee's claim is found to have merit, the Employee may be awarded any of the following remedies at any level of the administrative process by a written decision, dated and delivered to the Employee:
- A) A directive to the Employer to cease and desist from engaging in a violation of this Chapter; or
 - B) An award of back payment of overtime or compensation time wrongly withheld; or
 - C) Any other relief that is deemed reasonably necessary to remedy a violation of this Chapter.
 - D) An Employee who remains aggrieved from an alleged violation of this Chapter after completion of all administrative steps under subsection 2.12.2, above, may bring suit in the Courts for a review of their claim.
- 2.12.4 An appeal of an administrative decision under this section filed with the Court shall contain:

- A) The name and address of the Employee;
- B) The name and address of the Employer;
- C) The section of this Chapter that was allegedly violated;
- D) A description of the events and facts that support the Employee's claim, including the impact of the violation on the claimant; and
- E) A request for remedies.

2.12.5 If the Court makes a determination that the Employee has proven that the Employer has violated this Chapter or failed to abide by an award granted to the Employee in the administrative process under subsection 2.12.2, above, the Court may order one or more of the following remedies:

- A) A directive to the Employer to cease and desist from engaging in a violation of this Chapter; or
- B) An award of back payment of overtime or compensation time wrongly withheld; or
- C) Any other relief the court deems reasonably necessary to remedy a violation of this Chapter.

2.12.6 Any judicial complaint brought under this Chapter must be brought within thirty (30) days of the final administrative decision issued under subsection 2.12.2, above.

2.12.7 An Employee who claims that an Employer has retaliated against the Employee for pursuing an administrative decision under subsection 2.12.2, above, or for testifying in any proceeding under this Chapter may bring a claim in Court and upon a finding that the Employee has proven such retaliation, the Court may award such legal and equitable remedies as the Court deems just.

Section 2.14 Severability; Amendments

2.14.1 If any provision of this Chapter is ruled illegal by a court of competent jurisdiction, the remaining provisions of the Chapter shall remain unaffected.

Chapter 3 Recognized Holidays

3.01 Purpose. To define how holidays will be recognized and paid throughout the Kiowa Tribe.

3.02 Holidays. The following holidays are observed by the KT:

1. New Year's Day (January 1st);
2. Martin Luther King Day (third Monday in January);
3. President's Day (third Monday in February);
4. Memorial Day (last Monday in May);
5. Juneteenth Day (June 19th);
6. Kiowa Days (July 2nd, 3rd);
7. Independence Day (July 4th);
8. Labor Day (first Monday in September);
9. Kiowa Chief's Day (first Monday in October);
10. Indigenous People's Day (second Monday in October);
11. Veteran's Day (November 11th);
12. Thanksgiving Holiday (Thanksgiving Thursday);
13. Thanksgiving Holiday (Thanksgiving Friday);
14. Christmas Eve (December 24th); and
15. Christmas Day (December 25th).

A holiday falling on a Saturday shall be observed on the preceding Friday.

A holiday falling on a Sunday shall be observed on the following Monday.

3.03 Holiday Pay. Employers subject to this Act shall develop policies and procedures for compensating employees for Holidays within ninety (90) days this Act is passed.

Chapter 4 Integrity of Laws Provisions

Sections:

Section 4.01	Findings for this Chapter
Section 4.02	Purpose for this Chapter
Section 4.03	Scope and Jurisdiction for this Chapter
Section 4.04	Definitions for this Chapter
Section 4.05	Prohibition of Employer Testimony and Documents Disclosure in External Proceedings When Employees Fail to Exhaust Tribal Remedies
Section 4.06	Actions for Injunctive Relief to Prevent Disclosures
Section 4.07	Authority of the Court to Resolve Jurisdictional Disputes

Section 4.01 Findings for this Chapter

- 4.01.1 The Legislature has enacted Chapter 2 of this Act as a law of the Tribe.
- 4.01.2 In providing for procedures, rights, and remedies for Employer and Employees under Chapter 2, including those afforded through actions in Court, the Legislature has carefully considered (and continues to consider) the values and interests of the Tribe in order to establish fair processes, rights, and remedies for the parties and interests at stake. This has included careful consideration of:
 - A) The time, costs, and inconvenience of parties and witnesses involved in proceedings to resolve controversies or to establish rights and remedies provided by Chapter 2 of this Title;
 - B) The need to protect the Tribe and its Entities from undue burdens from litigation, while according fair treatment to Employees within those operations; and
 - C) Methods to resolve disputes through early settlement, including mediation.
- 4.01.3 The integrity of Chapter 2 of this title is threatened if parties bypass the procedures, rights, and remedies established therein and seek, instead, to invoke procedures or remedies outside of the Tribe's law and jurisdiction for controversies that Chapter 2 of this title is designed to address and resolve in accordance with the unique public policies of the Tribe. Investigations or proceedings directed at Employers, apart from those provided for by Chapter 2 of this Title, which seek to address controversies or rights covered by that Chapter, require the expenditure of time and resources to the detriment of those involved and, in many instances, to the Tribe or its Entities.

Section 4.02 Purpose

The purpose of this Chapter is to protect the integrity of the procedures, rights, and remedies established by Chapter 2 of this Act as described in the foregoing findings.

Section 4.03 Scope; Jurisdiction

This Chapter applies to Employers who employ Employees within the Territory of the Tribe. The Court shall have exclusive jurisdiction over any actions under this Chapter.

Section 4.04 Definitions

The definitions set forth in Chapter 2 of this title shall apply to the terms used in this Chapter unless the context clearly indicates otherwise.

Section 4.05 Prohibition of Employer Testimony and Documents Disclosure in External Proceedings When Employees Fail to Exhaust Tribal Remedies.

4.05.1 Employers are prohibited from giving testimony or witness statements of any kind or producing documents or other information of any kind in response to requests or subpoenas issued by outside authorities, other than those authorities expressly granted powers under Chapter 2 of this Title, engaged in investigations or proceedings on behalf of current or former Employees, when such Employees have failed to exhaust their remedies provided by any provisions of Chapter 2 of this Act.

4.05.2 Examples of failure to exhaust remedies. For the purposes of subsection 4.05.1, above, Employees shall be deemed to have "failed to exhaust their remedies provided by any provisions of Chapter 2 of this Act" if they have failed to exhaust the procedures, rights, remedies, and appeals (including opportunities to challenge jurisdiction) available under Chapter 2 of this Act or the procedures of the Court, and have, instead, invoked investigations or proceedings outside of those authorized by Chapter 2 of this Title to:

- A) Address controversies or rights covered by this Act, such as unfair labor practices and proceedings for enforcement of the Tribe's wages and hours laws this Act, or
- B) Challenge the assertion of jurisdiction under Chapter 2 of this Title.

Section 4.06 Actions for Injunctive Relief to Prevent Disclosures.

The Court shall have authority to grant preliminary and permanent injunctions, upon motion to prevent Employer disclosures in violation of subsection 4.05, above, and the sovereign immunity of Employers from such actions is hereby waived for the sole purpose of granting non-monetary equitable relief..

Section 4.07 Authority of the Court to Resolve Jurisdictional Disputes.

In any case or proceeding commenced under Chapter 2 of this title, where the regulatory or adjudicatory jurisdiction of the Tribe or the Court is called into question, the Court shall have authority to address the jurisdictional question by means of a declaratory judgment.

Chapter 5 Prevailing Wage

Sections:

Section 5.01	Title of Chapter
Section 5.02	Purpose and Authority of Chapter
Section 5.03	Scope
Section 5.04	Definitions
Section 5.05	Payment of Prevailing Wage Required
Section 5.06	Determination of Prevailing Wage
Section 5.07	Employer Requirements
Section 5.08	Court Action and Remedies
Section 5.09	Sovereign Immunity

Section 5.01 Title of Chapter

This Chapter shall be known and may be cited as the Kiowa Tribe Prevailing Wage Act.

Section 5.02 Purpose and Authority of Chapter

The purpose of this Chapter is to codify the Tribe's authority to determine area prevailing wages to the extent not in violation of federal law so that the federal Davis-Bacon Act (40 U.S.C. § 3141 et seq.) area prevailing wage determinations will not apply to a Covered Agreement, as defined below.

Section 5.03 Scope

This Chapter shall cover construction projects funded under programs of the Federal Government that would normally be covered by the Federal Davis-Bacon Act.

Section 5.04 Definitions

1. "Covered Agreement" means any contract or agreement using federal funds obtained by the Tribe for construction that would normally be covered under the Davis-Bacon Act;
2. "Legislature" shall mean the Legislature of the Tribe;
3. "Construction" includes alteration, maintenance or repair, including, but not limited to, painting and decorating of buildings;
4. "Contractor" means anyone who is awarded a contract or agreement using federal funds subject to the Davis-Bacon Act, or is otherwise subject to the Davis-Bacon Act;
5. "Davis-Bacon Act" means 40 U.S.C. § 3141 et seq., as amended from time-to-time;
6. "Prevailing Wage(s)" shall mean the wages, as determined by the Legislature, prevailing on lands within the Tribe's Reservation and jurisdiction or the Tribe's service area for each existing and future categories of employees including, but not limited to: architects, technicians, engineers, draftsmen, laborers, mechanics, contractors, and subcontractors. The above list of employees requiring payment of Prevailing Wages does not apply to any unpaid volunteer, intern or any volunteer who receives a nominal fee, expenses, or reasonable benefits and who is not otherwise employed at any time in the construction, including construction of affordable housing projects;
7. "Subcontractor" means anyone who is awarded a portion of a contract using federal funds by a general or prime contractor, or is otherwise subject to the Davis-Bacon Act;
8. "Tribe" means the Kiowa Tribe; and
9. "Court" shall mean Courts of the Kiowa Tribe.

Section 5.05 Payment of Prevailing Wage Required

Any agreement for construction projects, funded by programs of the federal government, to which the Davis- Bacon Act would normally apply, shall contain a provision requiring not less than Prevailing Wages, as determined by the Tribe, to be paid to the Contractor, Subcontractor, or other covered employees.

Section 5.06 Determination of Prevailing Wage

- 5.06.1 The Tribe may periodically undertake or commission a wage survey to determine the Prevailing Wage as follows:
- A) The Tribe shall obtain wage rates from available sources of each class of profession or trade and shall establish the Prevailing Wages that are comparable to survey data;
 - B) The Tribe shall retain, for not less than three years, the survey report and the wage rates reported by each source;
 - C) Wage rates shall include the base hourly rate and may include the value of benefits paid to or on behalf of employees based upon eligibility; and
 - D) Any survey commissioned by the Council, or its designee, of Prevailing Wages shall contain a list of each covered class of profession, trade and trainees and the hourly rate for each and the dates the data was collected for the schedule of Prevailing Wages.
- 5.06.2 The Legislature may delegate the conducting and establishment of the schedule of Prevailing Wages under this Chapter to any outside agency, or agency of the Tribe,.

Section 5.07 Employer Requirements

- 5.07.1 A Covered Agreement for construction using federal funds shall contain a provision requiring not less than Prevailing Wages, as determined by the Tribe. Each employer, including the Tribe, its departments and programs, Contractors, and Subcontractors, shall pay Prevailing Wages and shall maintain certified payroll records reporting the hourly rates paid to each employee. Any employee falling under a Covered Agreement shall be entitled to inspect and obtain a copy of their certified payroll record during regular office hours;
- 5.07.2 The Tribe shall provide every potential employer to be subject to a Covered Agreement, at the time bids or proposals are solicited, with a copy of the most current schedule of Prevailing Wages; and
- 5.07.3 At all times each employer under a Covered Agreement shall post at the job site and its principal office a copy of the schedule of Prevailing Wages furnished by the Tribe.

Section 5.08 Court Action and Remedies

- 5.08.1 Any Covered Agreement may contain a provision stating the remedies for failure to pay Prevailing Wages ("Wage Penalty") or failing to maintain records ("Records Penalty");
- 5.08.2 Any adversely affected employee covered under this Chapter, may bring an action in Court against any covered employer to recover the amount of the Wage or Records Penalty and may receive reasonable attorney's fees under this Chapter. A decision of the Court may be appealed to the Supreme Court to the extent otherwise allowed under the laws of the Tribe. There shall not be a right of appeal to any other court nor is a cause of action created hereby for a proceeding in any other court, proceeding or tribunal;

5.08.03 No action under this Chapter shall be allowed more than two (2) years after the date such wages became due and payable under a Covered Agreement; and

5.08.04 Any adversely affected employee covered under this Chapter shall first be required to exhaust all administrative remedies prior to bringing an action in Court under this Chapter.

Section 5.09 Sovereign Immunity

This Chapter provides only those remedies and damages identified above and none other. Its provisions shall not be construed or interpreted to grant jurisdiction to any other court, except the Courts of the Kiowa Tribe, over the Tribe or over individuals acting in their official capacity. Nothing in this Chapter shall be construed to be a waiver of any sovereign immunity except as specifically and expressly provided in this Chapter and other titles of the Kiowa Code. Nothing herein shall act to waive sovereign immunity for injunctive or declaratory relief nor for monetary damages or penalties, however characterized or described, beyond reasonable attorney's fees and recovery against the employer, without any interest or penalties, of the Wage Penalty as defined above.

Chapter 6 Family Medical Leave Protection

Sections:

Section 6.01	Purpose; Authority and Intent
Section 6.02	Scope; Jurisdiction
Section 6.03	Family Medical Leave Requirement
Section 6.06	Definitions
Section 6.07	Employee Benefits Protection
Section 6.08	Effect on Existing Employee Benefits
Section 6.09	Prohibited Acts
Section 6.10	Implementation
Section 6.11	Limited Waiver of Sovereign Immunity
Section 6.12	Right to File a Complaint; Available Remedies; Right to Bring a Cause of Action; Form of Complaint
Section 6.13	Effective Date; Severability; Amendments

Section 6.01 Purpose; Authority and Intent

The purpose of this Chapter is to entitle eligible Employees to take reasonable leave for medical reasons and to accomplish this purpose in a manner that accommodates the legitimate interests of Employers in accordance with the values and traditions of the Tribe.

Section 6.02 Scope; Jurisdiction

This Chapter applies to Employers who employ Employees within the Territory of the Tribe. The Court shall have exclusive jurisdiction over any actions under this Chapter.

Section 6.03 Family Medical Leave Requirement

- 6.03.1 Leave Requirement - Every Employee (1) who has been employed by the same Employer for at least 12 consecutive months and (2) who has worked for such employer for at least 1,250 hours of service during the previous 12 months is entitled to up to 12 work weeks of unpaid Family Medical Leave in the 12-month period designated by the Employer.
- 6.03.2 An eligible Employee who is the spouse, son, daughter, parent, or next of kin of a covered service-member shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the service-member with a serious injury or illness, as defined in Section 6.03.3, below. The leave described in this paragraph shall only be available during a single 12-month period.
- 6.03.3 Authorized Reasons for Tribal Family Medical Leave - Eligible Employees may use Family Medical Leave for one or more of the following reasons:
 - A) Because of the birth of a son or daughter of the Employee, in order to care for such son or daughter;
 - B) Because of the placement of a son or daughter with the employee for adoption or foster care;
 - C) In order to care for the spouse, or a son, daughter, or parent, of the Employee, if such spouse, son, daughter, or parent has a serious health condition;
 - D) Because of a serious health condition that makes the Employee unable to perform their job functions;
 - E) Because of any qualifying exigency, arising out of the fact that the spouse, or a son, daughter, or parent of the Employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the U.S Armed Forces; or

F) To care for a covered service-member with a serious injury or illness if the Employee is the spouse, son, daughter, parent, or next of kin of the covered service-member.

6.03.4 The entitlement to leave under subparagraphs A) and B), above, for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement. The right to take leave under this Chapter applies equally to male and female Employees. Thus, a father, as well as a mother, can take family leave for the birth, placement for adoption, or foster care of a child provided that they are “caring” for the child.

6.03.5 Nature of Leave Requirement - Family Medical Leave granted under this Chapter is unpaid leave. An eligible Employee may elect, or an employer may require the employee, to substitute any accrued paid time off (including vacation leave, sick leave, medical leave bank, extended illness bank, and floating holidays) of the Employee for leave provided under this section.

6.03.6 Conditions - The following conditions apply to Family Medical Leave granted under this section:

A) Notice. The Employee must give at least 30 calendar days’ notice of the intended date upon which the medical leave will commence and terminate, unless prevented by a medical emergency from giving that notice. Where it is not possible for an Employee to provide 30 calendar days’ notice, the Employee must provide notice to the employer as soon as possible.

The following requirements shall apply with regard to the Employee’s notice:

1. The Employee’s notice shall specify the reasons for the requested leave, shall state the anticipated duration of the leave, and shall state the anticipated start date of the leave;
2. The Employee’s notice shall be directed to Human Resources Department; and
3. In any case in which the leave is due to the covered active duty of a family member, the Employee shall provide such notice as soon as possible;

B) Certification. The employer may require that requests for leave for the Employee’s own serious health condition or to care for a family member’s serious health condition be supported by a certification issued by a health care provider. The health care provider shall not have a familial relationship with the Employee or have a close working relationship with the Employee as determined at the discretion of the Human Resources Director. The employer may also require that an Employee’s leave because of a qualifying exigency or to care for a covered service-member with a serious injury or illness be supported by a certification.

Upon request of the employer, the Employee shall provide, in a timely manner, a certification containing all the following information:

1. The date on which the serious health condition commenced;
2. The probable duration of the condition;
3. The appropriate medical facts within the knowledge of the health care provider regarding the condition;
4. For purposes of leave to care for a family member, (i) a statement that the eligible Employee is needed to care for the son, daughter, spouse, or parent and (ii) an estimate of the amount of time that such Employee is needed to care for the son, daughter, spouse, or parent; and

5. For purposes of leave for the Employee's own serious health condition, a statement that the Employee is unable to perform the functions of the position of the Employee;
 6. In the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, (i) the dates on which such treatment is expected to be given and (ii) the duration of such treatment;
 7. In the case of certification for intermittent leave, or leave on a reduced leave schedule, for the Employee's own serious health condition, (i) a statement that the particular leave schedule is medically necessary and (ii) the expected duration of the leave schedule;
 8. In the case of certification for intermittent leave, or leave on a reduced leave schedule, for the Employee to care for another with a serious health condition, (i) a statement that the particular leave schedule is necessary for the care of the son, daughter, parent, or spouse with the condition, or (ii) a statement that the leave will assist in their recovery, and the expected duration of the leave schedule; and
 9. In the case of leave taken to care for a covered service-member, a certification completed by an authorized health care provider of the covered service-member (Department of Defense provider, Veterans Affairs provider, TRICARE provider), (i) a statement as to whether the injury or illness was incurred in the line of duty on active duty, (ii) the approximate date on which the serious injury or illness commenced, or was aggravated, and its probable duration, (iii) a statement or description of appropriate medical facts regarding the health condition for which Family Medical Leave is requested, (iv) information sufficient to establish that the covered service-member is in need of care;
 10. In the case of leave taken because of a qualifying exigency, (i) a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered activity status, and the dates of the military member's covered active duty service, and (ii) a signed certification from the Employee setting forth:
 - the facts regarding the qualifying exigency for which leave is requested,
 - the approximate date on which the qualifying exigency commenced or will commence,
 - the beginning and end dates for such leave,
 - if leave will be taken intermittently, an estimate of the frequency and duration of the qualifying exigency,
 - if the qualifying exigency involves meeting with a third party, appropriate contact information for the individual with whom the Employee is meeting and a brief description of the purpose of the meeting, and
 - if the qualifying exigency involves rest and recuperation leave, a copy of the military orders, which indicates that the military member has been granted such leave and the dates of the leave.
 11. If an Employee fails to provide the required certification, or fails to cure any defects (incomplete or vague entries) in a required certification within 7 calendar days after notice by the Employer of such defects, then the Employer shall be authorized to deny the leave request made by the Employee.
- C) Second Opinions. In any case in which the Employer has a reasonable basis to doubt the validity of the medical certification provided, the Employer may require, at its own expense, that the Employee obtain the opinion of a second health care provider designated or approved by the Employer concerning any information certified under subsection 2. of this section for such leave. A health care provider designated or approved under this subsection 3. shall not be employed on

a regular basis by the Employer. In the event that the second opinion differs from the opinion in the original certification, the Employer and Employee shall jointly designate a third health care provider to provide a third opinion, which opinion shall be considered final and binding on the Employee and the Employer.

- D) **Recertification.** The Employer may require the Employee to obtain re-certifications on a reasonable basis.
- E) **Obligation to Schedule Medical Treatment with Employer's Interests in Mind.** In every case in which the necessity for leave is foreseeable based on planned medical treatment, the Employee shall make a reasonable effort to schedule the treatment so as not to disrupt the operations of the employer. This requirement applies whether the leave is necessary for the Employee's own serious health condition or to care for a family member with a serious health condition.
- F) **Intermittent or Reduced Scheduled Leave.** The following conditions apply to leave taken on an intermittent basis or on a reduced schedule:
 - 1. Leave taken due to the birth of a son or daughter or as a result of placement of a son or daughter with the Employee for adoption or foster care may not be taken by an Employee intermittently or on a reduced leave schedule, unless the Employer agrees;
 - 2. Leave taken due to one's own serious health condition or to care for a family member with a serious health condition may be taken intermittently or on a reduced leave schedule, but only when it is medically necessary as certified by a health care provider;
 - 3. If an Employee requests intermittent leave, or leave on a reduced leave schedule, for any reason specified in subsection B of this section, the Employer may require the Employee to transfer temporarily to an alternative position for which the Employee is qualified if such new position (i) has equivalent pay and benefits and (ii) better accommodates recurring periods of leave than the Employee's regular position; and
 - 4. An Employee who is taking leave on an intermittent basis or on a reduced schedule shall comply with the Employer's usual notice or procedural requirements for calling in absences and requesting leave. For example, an Employer (i) may require an Employee to call in, on a daily or less frequent basis, to speak with a particular individual or (ii) may require an Employee to sign a personal certification verifying that s/he took the leave for the medical reason provided.
- G) **Spouses Employed by the Same Employer.** In any case in which spouses entitled to leave under this Section are employed by the same Employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period if such leave is taken pursuant to Section 6.03.3, subparagraph A or B, or to care for a sick parent or to a combined total of 26 weeks of leave during a 12-month period to care for a covered service-member with a serious injury or illness.
- H) **Employee's Substance Abuse.** Substance abuse may be a serious health condition in certain instances. However, leave under this Chapter may only be taken for treatment for substance abuse by a health care provider. Absence because of the Employee's use of the substance, rather than for treatment, does not qualify for leave under this Chapter. The rules regarding substance abuse at work always apply.
- I) **Employer's Option to Provide Domestic Partner Family Medical Leave.** Any Employer may elect, by policy provided to (and acknowledged by) its employees or by contract with an Employee, to provide Family Medical Leave under this Chapter to care for domestic partners. In that event, such domestic partners shall be treated in the same manner as spouses are treated

under this Chapter. To qualify for domestic partner coverage, an employee must have registered their domestic partnership and the name of their domestic partner with the Human Resources Director (or the equivalent employer representative) with the Employer on such forms or affidavits as may be required by the Employer.

- J) Equal Treatment of Spouses and Domestic Partners Who Work for the Same Employer. The restrictions upon spouses of a single employer shall apply to two employees of a single employer who consider themselves “domestic partners.”

Section 6.06 Definitions

6.06.1 For purposes of this Chapter, the following definitions shall apply:

- A) “Covered active duty or call to covered active duty” means, 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, in the case of a member of the Reserves, duty during the deployment of the member of the Armed Forces to a foreign country under a federal call or order to active duty in support of a contingency operation.
- B) “Covered Service-member” means (i) a current member of the Armed Forces, 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 (ii) a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.
- C) “Covered Veteran” means 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.
- D) “Employee” means any person employed by an Employer.
- E) “Employer” means the Tribe or a Tribal Entity employing individuals who work within the Tribe’s Territory.
- F) “Employment benefits” means all benefits provided or made available to Employees by an Employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an Employer.
- G) “Federal Family Medical Leave Act” or “FMLA” means the Family Medical Leave Act, Title 29 of the United States Code, sections 2601 et seq., as amended, and regulations adopted by the United States Department of Labor pursuant to the FMLA.
- H) "Health care provider" means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the Tribe or any other person capable of providing health care services. For purposes of this Chapter, “others capable of providing health care services” include only:
 - 1. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in a State and by the Tribe and performing within the scope of their practice as defined under State law;
 - 2. Nurse practitioners, nurse mid-wives, clinical social workers and physician assistants who are authorized to practice in a State and by the Tribe and who are performing within the scope of their practice as defined under State law; ; or
 - 3. Any health care provider from whom an Employer or the Employer’s designated Human Resources staff will accept certification of the existence of a serious health condition to substantiate a claim for health benefits.
- I) “Military caregiver leave” means leave taken to care for a covered service-member with a serious injury or illness under this Chapter.
- J) “Parent” means the biological parent of an Employee or an individual who stood in loco parentis to an Employee when the Employee was a son or daughter.

- K) “Qualifying exigencies” has the same meaning as set forth in 29 CFR Section 825.126. Generally speaking, qualifying exigencies are situations justifying leave from work arising out of the foreign deployment of an employee’s spouse, son, daughter, or parent, such as (i) issues arising from a military member’s short notice deployment, (ii) the need to attend military events, (iii) the need to make arrangements for childcare or to transfer a child to a new school or day care, (iv) the need to care for the military member’s parent, (v) the need to make financial and legal arrangements, (vi) the need to attend counseling related to the covered active duty, or (vii) to spend time with the military member who is on a short-term, temporary rest and recuperation leave during deployment.
- L) “Reduced leave schedule” means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an Employee.
- M) “Reserve Components of the U.S. Armed Forces” includes the Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, the Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation.
- N) “Serious Health Condition” means an illness, injury, impairment, or physical or mental condition that involves (1) inpatient care in a hospital, hospice, or residential medical care facility; or (2) continuing treatment by a health care provider.
- O) “Son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is (1) under 18 years of age; or (2) 18 years of age or older and incapable of self-care because of a mental or physical disability.
- P) “Spouse” means a husband or wife, as the case may be, and includes individuals married to a person of the same sex who were legally married in a state that recognizes same-sex marriages.
- Q) “Tribe” means the Kiowa Tribe and any of its departments, commissions, agencies or subdivisions.
- R) “Tribal Court” means the Courts of the Kiowa Tribe.
- S) “Tribal Entity” means any entity or instrumentality of the Tribe, other than a Department of Government, which possesses sovereign immunity from suit.
- T) “Territory” or the “Tribe’s Territory” means the territory under the Tribe’s jurisdiction.
- U) “Unable to Perform the Functions of the Position” means when an Employee is “unable to perform the functions of the position” where the health care provider finds that the Employee is unable to work at all or is unable to perform any one of the essential functions of the Employee’s position with or without a reasonable accommodation.

Section 6.07 Employee Benefits Protection

- 6.07.1 Restoration to position. Except as provided herein, any Employee who exercises the right to Family Medical Leave under this Chapter, on return from such leave, is entitled to be restored by the Employer to the position held by the Employee when the leave commenced or to an equivalent position with equivalent Employee benefits, pay and other terms and conditions of employment. Notwithstanding anything to the contrary contained in this Chapter, an Employer may deny restoration under this section to any Employee if the Employee obtains Family Medical Leave fraudulently, or in the following circumstances:
 - A) If the Employee would not otherwise have been employed at the time reinstatement is requested (for example, if an Employee is laid off, if the Employee’s shift has been eliminated, or if the Employee was hired for a specific term or only to perform work on a discrete project and that term / project has expired or been completed);
 - B) If the Employee is unable to perform an essential function of the position because of a physical or mental condition (including but not limited to the continuation of a serious health condition), either with or without a reasonable accommodation;
 - C) If the Employee fails to provide a requested fitness for duty certification;

D) An Employee is still entitled to request reinstatement at the end of the leave period even if the Employee did not return to work in response to the Employer's notice. The Employer must then determine whether a substantial and grievous economic injury to its operations will result, based on the facts at that time. If the Employer so determines, the Employer shall notify the Employee in writing (in person or by certified mail) of the denial of restoration.

6.07.2 Maintenance of Employee Benefits. During any Family Medical Leave taken under this Chapter, the Employer shall maintain health insurance coverage for the duration of such leave at the level and under the conditions coverage would have been provided if the Employee had continued in employment. The taking of leave pursuant to this Chapter shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. However, nothing in this section shall be construed to entitle any Employee to the accrual of any employment benefits during any period of leave or to any right, benefit, or position of employment except those to which the Employee would have been entitled had the Employee not taken the leave. The Employer may require the Employee to pay the Employee's share of the benefit premium(s).

6.07.3 Return to Work Certification. As a condition of restoration to employment, the Employer may require the Employee to provide a health care provider certification stating that the Employee is able to resume work and perform the essential functions of his/her position. Nothing in this Chapter shall be construed to prohibit an Employer from requiring an Employee on leave to report periodically to the Employer on the status and intention of the Employee to return to work.

Section 6.08 Effect on Existing Employee Benefits

6.08.1 Benefit accrual. The taking of Family Medical Leave under this Chapter shall not result in the loss of any Employee benefit accrued before the date on which the leave commenced. However, an Employee has no greater right to benefits and conditions of employment than if the Employee had been continuously employed during the leave period. In accordance with the policies of the Tribe, Employees who are out on unpaid leave pursuant to this Chapter shall not be entitled to accrue paid time off while on leave.

6.08.2 Limitations. Nothing in this Chapter shall be construed to entitle any restored Employee to the accrual of any seniority or employment benefits during any period of leave or any right, benefit, or position of employment other than any right, benefit, or position to which the Employee would have been entitled had the Employee not taken the leave.

Section 6.09 Prohibited Acts

The following shall be considered prohibited acts for an Employer under this Chapter:

- A) Unlawful interference or denial of rights. An Employer may not interfere with, restrain or deny the exercise of or the attempt to exercise any right provided by this Chapter.
- B) Unlawful discrimination against exercise of rights. An Employer may not discharge or otherwise discriminate against any Employee for exercising any right provided by this Chapter.
- C) Unlawful discrimination against opposition. An Employer may not discriminate or retaliate against any Employee for opposing any practice made unlawful by this Chapter.

Section 6.10 Implementation

Employers subject to the provisions of this Chapter shall develop and adopt, policies and procedures to implement the provisions of this Chapter.

Section 6.11 Limited Waiver of Sovereign Immunity

The Tribe expressly waives the sovereign immunity of the Tribe, Tribal Entities, and Departments of Tribal Government for suits and process in the Tribe's Courts for the limited purpose of enforcing this Chapter and for the purpose of awarding equitable relief and compensatory damages limited to compensation for hours worked or benefits earned and shall not include any award of punitive damages, and shall be done in accordance with the requirements and limits set in the Constitution.

Section 6.12 Right to File a Complaint; Available Remedies; Right to Bring a Cause of Action; Form of Complaint

- 6.12.1 Procedures. The provisions of this Chapter shall be the sole procedures for an Employee seeking recovery for a violation of this Chapter.
- 6.12.2 Administrative Exhaustion. Any Employee who claims that an Employer has violated this Chapter must commence an administrative claim as provided herein within 180 calendar days of the Employee's discovery of an alleged violation. Any Employee alleging a violation of this Chapter shall pursue the following administrative remedies for resolution of the claim, in the order listed, before filing an action in Court:
- A) A written claim filed pursuant to the grievance procedure outlined in the Employer's Personnel Policy Manual.
 - B) In the event there is no Personnel Policy Manual, the Employee shall file a written claim with the Employer's human resources manager and if there is no human resources manager, the Tribe's Human Resources Director. The claim shall be initially reviewed by the Human Resources Manager / Director and the Employee's immediate supervisor for a decision. If the Employee does not agree with the decision, the Employee shall proceed to the next step within 3 business days of receiving the decision.
 - C) If the Employee is not satisfied with the decision in Step 1, the Employee shall file a written appeal within 3 business days to the CEO, Chairman, or his or her designee. The Human Resources Department shall forward all materials in its possession related to the claim within 7 business days.
 - D) The CEO, Chairman, or his or her designee, shall hear the appeal.
- 6.12.3 Administrative Remedies Available. If the Employee's claim is found to have merit, the Employee may be awarded any of the following remedies at any level of the administrative process by a written decision, dated and delivered to the Employee:
- A) A directive to the Employer to cease and desist from engaging in a violation of this Chapter;
 - B) An award of wages, salary, employment benefits, or other compensation denied or lost to such Employee by reason of the violation;
 - C) Any other relief that is deemed reasonably necessary to remedy a violation of this Chapter, including employment, reinstatement, or promotion.
- 6.12.4 An Employee who remains aggrieved from an alleged violation of this Chapter after completion of all administrative steps under subsection 6.12.3, above, may bring suit in Court for a review of their claim.

- 6.12.5 Action in Court. An Employee who remains aggrieved from an alleged violation of this Chapter after completion of all three administrative steps under subsection 6.12.2, above, may bring suit in the Tribe's Court for a review of his or her claim. Any judicial complaint brought under this Chapter must be brought within one (1) year of the final administrative decision issued under subsection 6.12.3, above. An appeal of an administrative decision under this section filed with the Court shall contain:
- A) The name and address of the Employee;
 - B) The name and address of the Employer;
 - C) The section of this Chapter that was allegedly violated;
 - D) A description of the events and facts that support the Employee's claim, including the impact of the violation on the claimant; and
 - E) A request for remedies.
- 6.12.6 If the Court makes a determination that the Employee has proven that the Employer has violated this Chapter or failed to abide by an award granted to the Employee in the administrative process under subsection C., above, the Court may order one or more of the following remedies:
- A) That the Employer must cease and desist from engaging in a violation of this Chapter;
 - B) A directive to the Employer to cease and desist from engaging in a violation of this Chapter;
 - C) An award of wages, salary, employment benefits, or other compensation denied or lost to such Employee by reason of the violation, plus that same amount as a civil penalty;
 - D) Any other relief that is deemed reasonably necessary to remedy a violation of this Chapter, including employment, reinstatement, or promotion.
- 6.12.7 An Employee who claims that that an Employer has retaliated against the Employee for pursuing an administrative decision under subsection 6.12.2, above, or for testifying in any proceeding under this Chapter may bring a claim in Court and upon a finding that the Employee has proven such retaliation, the Court may award such legal and equitable remedies as the Court deems just.

Section 6.13 Effective Date; Severability

- A) The provisions of this Chapter shall take effect ninety (90) calendar days after adoption by the Legislature.
- B) If any provision of this Chapter is ruled illegal by a court of competent jurisdiction, the remaining provisions of the Chapter shall remain unaffected.

Chapter 7 Financial Hardship Programs

Section 7.01 Purpose.

The Tribe recognizes that, on rare occasions, employees and government officials and appointees may have an extraordinary personal financial need that is unable to be met by the traditional finance system. In addition, the Tribe is aware of the predatory nature of some pay day and title loan firms that entrap individuals who turn to those lending sources. As a response to this unmet need, the Tribe authorizes Employers to develop, offer and implement Financial Hardship Programs.

Section 7.02 Types of Financial Hardship Programs.

The Legislature authorizes the following programs: Payroll Advance Program and Financial Hardship Loan Program.

Section 7.03 Minimum Terms and Conditions.

7.03.1 Eligibility. The Tribe may approve loans to regular full-time employees and government officials if the following conditions are met:

- A) All regular full-time employees and elected/appointed officials of the Judicial, Legislative, and Executive branches are eligible to apply for a financial hardship loan after the completion of one year of active employment or service.
- B) Elected and government officials must provide documentation of a true emergency that was not caused by negligence or lack of attention by the employee or government official.
- C) Temporary employees, interns and contractors are not eligible for hardship loans.

7.03.2 Amounts, Repayment Terms.

A) Payroll Advances.

- 1. amount of salary advanced may not exceed the amount of salary due to the employee or official at the time funds are advanced;
- 2. Repayment of the amount advanced must be made in full from the next regularly-processed paycheck.

B) Financial Hardship Loans.

- 1. The minimum amount of the loan is \$500 and the maximum amount is \$8,000 or 10% of the gross annual salary, whichever amount is less.
- 2. Loans must be paid back through payroll deductions.
- 3. The Minimum repayment amount is \$40 per bi-weekly pay period (\$80 per monthly pay period) or 10 percent of base salary per pay period.
- 4. Loans are based on a term of twelve (12) months starting with the employee's next regular payday and are interest free.
- 5. Employees and officials requiring loan terms greater than twelve (12) months will be assessed interest.
- 6. Maximum repayment period is two years.
- 7. The CFO shall set the interest rate, which compounds monthly and is based on the IRS

Applicable Federal Rate (AFR), which is published monthly.

8. Loans requiring repayment periods greater than twelve (12) months must be approved by the Chairman.

7.03.3 Authorization.

All branches of Tribe's government, as well as business enterprises of the Tribe, shall create employee policies and procedures consistent with this Act.