

Excerpt From Ordinance Of Tulalip Tribes

have serious consequences for the employee involved, but it may affect the entire organization as well. Harassment on the basis of sex constitutes discrimination and is, therefore, a violation of the code of conduct of the Human Resources Plan of the Tulalip Tribes of the Tulalip Reservation.

Sexual harassment does not refer to occasional compliments of a socially acceptable nature. Rather, it refers to unwelcome, deliberate or repeated unsolicited verbal comments, gestures or physical contact of a sexual nature. Such unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating hostile, or offensive working environment.

XII.B. Discipline

Any employee who is found to have sexually harassed another employee or who, during the working hours of that employee, is found to have sexually harassed another person, shall be immediately suspended from work without pay for five working days (ma). Any employee who is found to have sexually harassed any person within three years of being suspended from Tribal employment for sexual harassment, shall be immediately terminated from employment (ma).

Any employee who is found to have sexually harassed another employee by touching or who, during the working hours of that employment, is found to have sexually harassed another person by touching, shall be immediately terminated from employment (ma).

XII.C. Procedure

Any employee who is subjected to sexual harassment or intimidation or who believes that a violation of this policy has occurred should follow the grievance procedures as set out in the policies and procedures manual. The department shall immediately engage in a prompt investigation and substantiate the claim and determine whether remedial action or suspension or termination is appropriate. All such complaints shall be treated in the strictest of confidence and the employment record regarding the investigation sealed.

CHAPTER XIII. RECORDS MANAGEMENT AND PERSONNEL*

XIII.A. Records Management

It is the policy of the Tulalip Tribes that all records relating to an individual when employed by the

Tribes as a full-time, part-time or temporary employee shall be confidential and not disclosed to any person, entity, or governmental agency without the consent of the employee involved, or unless specifically allowed by Tribal law.

It is the purpose of this section to implement this policy by providing specific procedures for the disclosure of information relating to Tribal employees and penalties for the violation of this section and the privacy rights of affected employees.

1. Definitions

- a. "Employee", as used in this section, shall mean any person working for the Tribes in any capacity including as a volunteer, whether full-time, part-time or temporary.
- b. "Employment Records" shall mean any writing, tape, copy, or other memorialization of whatever kind or nature maintained, obtained or generated while an employee is working for the Tribes and that relates to the employment of the employee and which includes but is not limited to resumes, health records, warning notices, disciplinary actions, evaluations, recommendations, retirement records, per capita holds, garnishments, vacation and sick leave, hours, wages, withholding, earnings, dependents, marital status, employment applications, previous Tribal employment and terminations.
- c. "Custodian" shall mean the employee's supervisor, the human resources department, and accounting (including payroll) department.
- d. "Tribes" or "Tulalip Tribes" shall mean the Tulalip Tribes of the Tulalip Reservation, Washington.
- e. "Disclosure" or "To Disclose" shall mean the intentional transmittal of any employment record or part thereof to any individual, entity or governmental entity, or the intentional leaving of any employment record or part thereof in such a manner or place that it is likely to be obtained by an individual, entity or governmental agency.

2. Duty Not to Disclose

No employee of the Tribes shall disclose any employment record relating to a present or past employee of the Tribes without the prior written consent of the employee to whom the record applies, unless otherwise allowed under this ordinance (ma).

3. Exception to the Rule Against Disclosure

It shall be lawful for an employee of the Tribes to disclose an employment record to the following:

- a. A custodian as defined herein.

- b. The C.E.O. when necessary for the C.E.O. to carry out his or her responsibilities including but not limited to: the duty of supervisor, discipline, investigation of violations of this plan, grievance matters, and financial and grant accountability.
- c. The Tribal police or other police agencies having jurisdiction when in conjunction with an ongoing criminal investigation and the holder of an employment record is served with a subpoena signed by the Tulalip Tribal court judge requiring the transmittal of the employment record. In cases where the Tribal police or other police agency with jurisdiction believe that public filing of a request for a subpoena would compromise an ongoing investigation, the police may request that the Tribal court consider the requested subpoena in camera, without public filing.
- d. Any other individual, entity or governmental agency when the disclosure is allowed by an order of the Tulalip Tribal court.
- e. The United States when required by the Internal Revenue Code the specific requirements of a grant or grant application or other specific federal law made applicable to Indian tribes.
- f. The Office of the Reservation Attorney or other attorney representing the Tribes when the attorney is acting to advise the C.E.O. or any department head or supervisor.
- g. **For records of Casino (TGO) employment only, the Director of the Tulalip Gaming Agency (TGA) and any TGA inspectors which the Director has designated, through current, public, written, standing order of the Director, to have access to the (TGO) employment records of (TGO) employees only; when it is necessary to use such records in the course of a bonafide investigation pursuant to Tribal Gaming Regulation 6; provided that such records shall be kept in strictest confidence as defined in 84, XIII.A.2, by the designated inspectors and used only under the terms of Regulation 6.040(1) (2) (3), as amended.**

Section XIII.A.3.g. added on October 7, 1995, by Resolution #95-160. Approved by the Secretary of Interior on June 30, 1997.

- h. **The Compliance Manager when necessary to carry out his or her responsibilities including, but not limited to, the duty of supervisor, discipline, investigation of violations of this plan, and grievance matters.**

Section XIII.A.3.h. added on June 7, 1997, by Resolution #97-119. Approved by the Secretary of Interior on June 30, 1997.

- i. **The Board of Directors and the Executive staff, provided that this disclosure shall be limited to publication in a confidential budget to be reviewed only by the Board and Executive staff of the annual salary for each and every tribal job position or job title, and further provided that this disclosure shall not include the name of any tribal employee.**

Section XIII.A.3.i. added on March 3, 2001, by Resolution #01-093. Approved by the Secretary of Interior March 23, 2001.

4. Duty to Notify

- a. Except as provided in XIII.A.3.c., and 4.d., any time that disclosure is made pursuant to this section, the person making the disclosure shall within five (5) working days notify the employee whose records were disclosed of the disclosure, identifying the person to whom the disclosure was made, and the justification for the disclosure.
- b. The notification requirement set out in XIII.A., 4., b., shall not apply to certain disclosures made in the regular course of business in order to facilitate the preparation of payroll, the computation of employee benefits, routinely required by the Internal Revenue Service, or in response to an in camera subpoena.

5. Penalties

- a. The knowing and intentional disclosure of any employment record in violation of this Ordinance by an employee other than a member of the Board of Directors shall be considered a serious offense under this Ordinance, subjecting the offending employee to those sanctions set out herein (ma).
- b. The knowing and intentional disclosure of any employment record in violation of this Ordinance by a member of the Board of Directors shall be deemed gross misconduct under Section 2 of Article V of the Tribal Constitution, and shall subject the offending Board member to the sanctions set out in the Constitution.

6. Special Grievance Procedure

- a. Any current or past employee of the Tribes who believes that employment records relating to him or her were disclosed in violation of this section may request that the C.E.O. investigate the allegation of improper disclosure. At the close of the investigation the C.E.O. shall report in writing to the employee, or former employee, any conclusion with respect to the alleged improper disclosure, and what action, if any, is to be taken. Provided, when the alleged improper disclosure is against the C.E.O., the office of the reservation attorney shall undertake this investigation.
- b. There shall be no appeal from the decision of the C.E.O. or the office of the reservation attorney, as the case may be. Provided, nothing herein shall affect whatever legal or equitable rights might be available under Tribal law, if any, to the person who alleges the improper disclosure.
- c. The procedures set out in this subsection shall not apply to allegations of improper disclosure by members of the Board. Such allegations shall be referred for investigation to the Board to be resolved pursuant to the Constitution and Bylaws for the Tulalip Tribes of Washington.

7. Required Disclosure

- a. When not otherwise allowed under this section, an employee may be required to disclose employment records in conjunction with a grievance or disciplinary action filed by or against an employee, application for employment at the Tribes, or promotion.
- b. To the extent that an employee fails to consent to the disclosure of employment records, the Tribes may deny the grievance, affirm the disciplinary action, or refuse to hire, promote or transfer the employee. Provided, the employee shall retain all rights otherwise available, if any, to challenge the action of the Tribes under Tribal law, and may there prove by clear and convincing evidence that the required disclosure was not reasonably related to the action then being considered by the Tribes.

8. Sovereign Immunity

Nothing in this section shall waive the sovereign immunity of the Tulalip Tribes, or the immunity of any employee, agent, attorney or Board member from suit or the imposition of any judgment. Provided, that to the extent any separate Tribal law has, or may in the future waive the sovereign immunity of the Tribes or any of its employees, agents, or attorneys, nothing in this section shall modify or limit any waiver found in such separate Tribal law.

XIII.B. Other Personnel Records

1. Applications for employment for persons not hired: All applications shall be maintained for three (3) years as a future recruitment source and evidence that the Tribes used fair selection procedures that may be required to show compliance with the federal civil rights legislation.
2. Time and attendance and leave records: Time and attendance records shall be kept for all employees and shall be maintained for three (3) years. Records shall also be kept of annual and sick leave and compensatory time earned and used. These will be kept in the payroll records section of the accounting office.

XIII.C. Privacy Act

The Privacy Act (5 U.S.C. 552a) provisions when they apply to federal records in Tribal custody will be strictly be observed and implemented by the Tulalip Tribes.