

NORTHERN ARAPAHO CODE

TITLE 5. LABOR

Section:

- 101 Membership or Non-membership in Labor Organizations not a Condition for Employment
- 102 Contract Compliance
- 103 Presumption of At Will Employment
- 104 Remedies and Sanctions
- 105 Employer Immunity from Liability for References Regarding Employee
- 106 Severability
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Section 101 - Membership or Non-membership in Labor Organizations not a Condition for Employment. No person shall be required, as a condition of employment or continuation of employment by or on the lands of the Northern Arapaho Tribe, to:

(a) resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;

(b) become or remain a member of a labor organization;

(c) pay dues, fees, assessments or other charges of any kind or amount to a labor organization;

(d) pay to any charity or other third party, in lieu of such payments any amount equivalent to or a pro-rata portion of dues, fees, assessments or other charges regularly required of members of a labor organization; or

(e) be recommended, approved, referred or cleared through a labor organization.

Comment: This statute is modeled on San Juan Pueblo Ordinance No. 96-63, reviewed and upheld in National Labor Relations Board v. Pueblo of San Juan, 276 F.3d 1186 (10th Cir. 2002).

Section 102 - Contract Compliance. All transactions documents, including without limitation, leases, subleases, contracts, subcontracts, permits, and collective bargaining agreements between employers and labor organizations (herein collectively "transaction documents"), which are entered into by or issued to any employer and which are to be performed on lands of the Northern Arapaho Tribe shall contain a provision pursuant to which the employer and any other contracting party affirmatively agree to strictly abide by all requirements of this Code, Title 5, N.A.C. 101 et seq. With respect to any transaction document which does not contain the foregoing provision, the terms and the requirements of this Code shall constitute affirmative contractual obligations of the contracting parties. To the extent of any inconsistency or conflict between a transaction document and this Code, the provision of the transaction document in question shall be legally invalid and unenforceable and this Code shall prevail and govern the subject of the inconsistency or conflict.

Section 103 - Presumption of At Will Employment. Subject to Section 101 of this Code and in the absence of a job security

provision in an employment contract, employment of an indefinite duration is presumed to be at will and either the employee or the employer may terminate it at any time for any reason or for no reason.

Section 104 - Remedies and Sanctions.

(a) Any person, employer, labor organization or other entity which violates Section 101 of this Code may be subject to one or more of the following remedies or sanctions:

(i) remedial orders for equitable relief including, without limitation, orders requiring hiring, reinstatement, or other injunctive relief, whether temporary or permanent;

(ii) damages for loss of income to a prospective, former or reinstated employee;

(iii) when a party's position is not substantially justified, an award of attorney's fees and costs to the prevailing party; and

(iv) when a party's violation is intentional or malicious, punitive damages.

(b) The Northern Arapaho Tribe may seek and obtain in its own name any of the remedies or sanctions provided in this section for violation of this Code except with respect to damages for loss of income to a prospective, former or reinstated employee.

Section 105 - Employer Immunity from Liability for References Regarding Employee. When requested to provide a reference regarding a former or current employee, an employer acting in good faith is immune from liability for comments or other communication about the employee's job performance. The immunity shall not apply when the reference information supplied was knowingly false or deliberately misleading, was rendered with malicious purpose, or violated any civil rights of the employee.

Comment: This statute is modeled on the New Mexico Code, Section 50-12-1. The immunity provided by this section is not intended to be exclusive of any other immunity which may or may not apply to the communication involved.

Section 106 - Severability. If any provision of this Code, any regulations promulgated hereunder, or any application hereof is held invalid by a court of competent jurisdiction, the valid

provisions of this Code and the valid regulations shall continue in full force and effect.

Section 107 - Effective Date. The provisions of this Code shall be effective on the date of adoption certified by the Northern Arapaho Business Council.

History: 2003. Title 5. Section 101 et seq., Labor, was enacted by the Northern Arapaho Tribe by resolution of the Northern Arapaho Business Council dated July 28, 2003, Resolution No. 2003-8673. A new section 105 was enacted, and former sections 105 and 106 re-numbered, by resolution of the Northern Arapaho Business Council dated June 28, 2010, Resolution No. NABC-2010-101.