

HANNAHVILLE INDIAN COMMUNITY
TITLE V, CHAPTER 3
RIGHT TO WORK CODE

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**HANNAHVILLE INDIAN COMMUNITY
TITLE V, CHAPTER 3
RIGHT TO WORK CODE**

5.3.100 Short Title

This Code shall be known as the Hannahville Indian Community Right to Work Code, or the Right to Work Code.

5.3.101 Authority; Purpose; Jurisdiction; Findings

- (1) Authority. The Hannahville Indian Community Tribal Council, the governing body of the Tribe, enacts this code governing employment and labor on its tribal lands pursuant to Article V of the Constitution and Bylaws of the Hannahville Indian Community and its inherent sovereign authority to govern activities on tribal lands, whether the activities are of tribal members, descendants, other Indians, or non-Indians, and whether based on consensual relationships with the Tribe or conduct which impacts and affects the health, safety, political and economic integrity of the Tribe and the tribal community, including members, employees, vendors, patrons and others who enter tribal lands.
- (2) Purpose. The purpose of this legislation is to ensure that all persons on tribal lands have the right to work and pursue employment without the restraints of mandatory affiliation with, membership in, or payment of dues, fees, or assessments to a labor organization.
- (3) Jurisdiction. The legislative and judicial jurisdiction of the Hannahville Indian Community shall extend to all lands as defined by section 5.3.102 subsections (6) and (7) including, without limitation, all persons, agencies, associations, committees, corporations, plans, organizations, or other legally cognizable entities that are present or do business on tribal lands.
- (4) Findings. The Hannahville Indian Community (the “Tribe”), through its Tribal Council, and pursuant to the Constitution and Bylaws of the Hannahville Indian Community Article V, and the Tribe’s inherent sovereignty, has enacted codes and drafted policies to govern employment relationships within its formally defined reservation, its after-acquired lands held in trust for the Hannahville Indian Community, and its after-acquired lands for which it has applied for trust status, and, to the extent permissible by federal law, its fee lands , whether or not it has applied for trust status, together also known as its jurisdictional lands or tribal lands.
 - (a) Right to Work; Best Interests of Employees. The Tribal Council now finds that it is in the best interests of all employees who work for employers, including, but not limited to the Tribe as an employer, within the fore-mentioned tribal lands to have the right to choose their work and to work and not be prohibited from working based upon requirements of membership in, affiliation with, or financial support of a labor organization.

- (b) Non-Discrimination. Employees shall have the right to work and not be discriminated against due to either membership or non-membership in a labor organization.
- (c) Public Policy of Tribe; Freedom of Choice. It is the public policy of the Tribe that in order to maximize individual freedom of choice and enhance an employment atmosphere conducive to economic growth, the right of persons to work on tribal lands shall not be denied or hindered based upon membership in, affiliation with, or financial support of a labor organization.
- (d) Inherent Authority of Tribe to Exclude. The Tribe has inherent authority to exclude persons from tribal lands and to place conditions on entry, continued presence, and on conduct.
- (e) National Labor Relations Act; Not Applicable To Tribe. The Tribe finds that the National Labor Relations Act, (the “NLRA”), 29 USCA § 150 *et seq.*, does not apply to it as a sovereign tribal government, there being no explicit waiver of the sovereign immunity of the Tribe, and given the significant impact its application would have on the Tribe’s exercise of sovereignty, including the numerous codes and policies which it has adopted that currently govern employment on tribal lands. However, given the uncertain climate of the issue before the courts, even if a court were to determine that the NLRA applies to the Tribe as an employer, it would not preempt the Tribe’s right to enact this code providing that all employees on tribal lands, whether or not working for the Tribe as an employer, have the right to work and are not required to affiliate with, join, or financially support a labor organization.

5.3.102 Definitions

- (1) Employee: Any person employed by an employer.
- (2) Employer: Any person, firm, agent, association, corporation, tribe, or other entity acting or operating in or upon tribal lands that directly or indirectly employs one or more employees to perform work.
- (3) Jurisdiction: The legislative and judicial jurisdiction of the Hannahville Indian Community that extends to all lands as defined by subsections (6) and (7) of this section and, without limitation, to all persons, agencies, associations, committees, corporations, plans, organizations, or other legally cognizable entities that are present or do business on tribal lands.
- (4) Labor Organization: Any association, committee, organization, agency or group of employees or plan, in which employees participate that is organized or exists for the purpose of dealing with or negotiating with an employer or employers concerning any matter related to employment, including, without limitation, hours of employment,

wages, rates of pay, working conditions, health or other benefits, compensation in any form, or grievances.

- (5) Person: Any individual, person, association, committee, organization, agency, partnership or group, including, without limitation, legal representatives, trustees, a labor organization, or other legally cognizable entity.
- (6) Reservation: The lands acquired pursuant to the Act of June 30, 1913 (38 Stat. 102) and subsequently acquired lands held in trust for the Hannahville Indian Community, its after-acquired lands for which it has applied for trust status, and, to the extent permissible by federal law, its fee lands whether or not it has applied for trust status, together also known as its jurisdictional lands or tribal lands.
- (7) Tribal Lands: The lands acquired pursuant to the Act of June 30, 1913 (38 Stat. 102) and subsequently acquired lands held in trust for the Hannahville Indian Community, its after-acquired lands for which it has applied for trust status, and, to the extent permissible by federal law, its fee lands whether or not it has applied for trust status, together known as its reservation, jurisdictional lands or tribal lands.
- (8) Tribe: The Hannahville Indian Community, including, without limitation, any agency, subdivision, health clinic, social services or mental health facility, enterprise, tribal corporation, federally chartered corporation, school, arm or department owned or operated by the Hannahville Indian Community; **except that**, any legal entity organized by the Tribe under the law of any state with a principal place of business located off tribal land shall not come within this definition.
- (9) Union Dues: Monthly or other periodic membership dues, fees, assessments or other charges of any kind, or amounts or their equivalents paid or payable, directly or indirectly, to a labor organization or its agents, including, without limitation, payments to any charity or other third party in lieu of such payments to a labor organization, or any amount equivalent to a pro-rata portion of such dues, fees, assessments or other charges regularly required of members of a labor organization.

5.3.103 Right to Work; Illegal Agreements; Dues, Voluntary Payroll Withholding; Employer Discrimination, Retaliation; Labor Organization, Coercion

- (1) Right to Work. No person shall be required to do any of the following in order to obtain employment, or as a condition of, or continuation of employment, on tribal lands:
 - (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, be affiliated with a labor organization, or be recommended, approved, referred or cleared through a labor organization; or

- (c) Pay union dues as defined in this Code.
- (2) Illegal Agreements. Any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and any employer that requires the employees of such employer to obtain or maintain membership in any labor organization or to pay union dues as defined in this Code, or otherwise violates the rights of employees as provided in this Code, is against the public policy of this Tribe, is an illegal combination or conspiracy in restraint of trade, and is hereby declared to be null and void and of no legal effect.
 - (3) Dues, Voluntary Payroll Withholding. No employer shall deduct labor organization dues, charges, fees, contributions fines or assessments from an employee's earnings, wages or compensation, unless the employer has first received a written order or consent signed and delivered by the employee. The order or consent shall be terminable at any time by the employee by first giving notice in writing 30 days before the employee desires to terminate the order or consent.
 - (4) Employer Discrimination, Retaliation, Prohibition. No employer shall discriminate or retaliate against any employee on the basis of an employee's decision to participate or refrain from participating in any labor organization.
 - (5) Labor Organization, Coercion, Prohibition. No person, labor organization, officer, or member of a labor organization, or employer or its agent or representative, shall in any manner attempt to or actually, coerce, compel, threaten or intimidate any person, employer, employee, prospective employee or any family member of the foregoing, to induce an employee to join, affiliate with, or financially support a labor organization, or to refrain from so doing, or to forfeit any rights guaranteed under this Code.

5.3.104 Jurisdiction; Limited Waiver of Sovereign Immunity

- (1) Tribal Court Jurisdiction. The Hannahville Indian Community Tribal Court shall have jurisdiction over all causes of action alleging violations of this Code. The court shall appoint a Special Master with substantial experience in labor relations, labor law, federal Indian law, and the laws of this tribe to determine all matters in regard to this Code. The Special Master shall be an attorney at law, and shall be in good standing before the bar of the state in which he or she is licensed.
- (2) Limited Waiver of Sovereignty. The Hannahville Indian Community expressly waives its sovereign immunity from suit to allow claims alleging violations of this Code against the Tribe. **Provided, however,** that this waiver shall not be construed as a waiver of the sovereign immunity of the Tribe in state or federal court, or in any other forum. **Provided further,** that this waiver shall not be construed nor shall such grant be deemed a consent by the Community to the levy of any judgment, lien, or attachment upon the trust or other property of the Community other than upon income or chattels specifically pledged or assigned.

5.3.105 Complaint; Time Bar; Civil Remedies

- (1) Complaint Required. Any claim of violation of this Code shall be commenced by filing a complaint in the Tribal Court, alleging with specificity the nature of the alleged violation. The complaint must be filed within 180 days of the alleged violation forming the basis of the claim or it shall be time-barred.
- (2) Injunction. Any person threatened or injured as a result of any violation or threatened violation of the provisions of this Code may file a motion with the Tribal Court for injunctive relief. The Court shall grant the motion only if the Court is persuaded that the alleged or threatened violation will result in undue and irreparable harm if the motion is not granted.
- (3) Claim; Specificity of Allegations. The complaint filed shall state with specificity the nature of the allegations and the evidence to be presented, and shall include any damages sought that reasonably result from the violation, the amounts of which shall be specifically proven, but shall not include attorney's fees.

5.3.106 Severability

If any provision of this Code, or its application to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect the remaining provisions or applications of this Code, and the same shall continue in full force and effect.