

**[DRAFT – FOR PUBLIC COMMENT]**

**HO-CHUNK NATION CODE (HCC)  
TITLE 6 – PERSONNEL, EMPLOYMENT AND LABOR CODE  
SECTION 5 – EMPLOYMENT RELATIONS ACT OF 2004  
SUBSECTION 3 – RIGHT TO WORK**

**ENACTED BY LEGISLATURE: October 16, 2001**

**CITE AS: 6 HCC § 5-3**

*The Ho-Chunk Nation Right to Work law was adopted by the Legislature and made part of the Nation's Employment Relations Act (ERA) in Chapter I.*

**1. Purpose and Authority.**

As a function of its sovereignty and its inherent right to self-governance, including the right of exclusion of persons from its territory, the Ho-Chunk Nation hereby enacts this Tribal Right to Work law to regulate employment-related activities on the Nation's lands and to establish for employees the rights, under tribal law, that are generally available elsewhere throughout the United States to employees as they relate to union workplace activity and the right to work.

**2. Findings of the Ho-Chunk Nation Legislature.**

- (a) The Ho-Chunk Nation possesses the inherent power to exclude persons from Tribal lands, which includes the lesser power to place conditions upon entry, on continued presence, or on conduct on Tribal lands as recognized by the United States Supreme court in *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982);
- (b) Tribal enterprises and commercial activity are directly related to tribal self-sufficiency, tribal economic development and strong tribal government;
- (c) Consistent with tribal and federal law, certain tribal commercial activities are to be protected as an important means of generating tribal revenue, without which basic governmental functions such as providing emergency and police services, educational, health care and other essential services would be severely impaired, if not stopped entirely;
- (d) No person or entity may enter Ho-Chunk lands in order to conduct labor organizing activities with employers who have lawfully entered Tribal lands, without the authorization of the Tribe;
- (e) The unauthorized entry of entities and persons on Ho-Chunk lands threatens the political integrity, economic security and health, safety and welfare of the Tribe and its members;

(f) The individual freedom of choice in the pursuit of employment on Tribal lands should be encouraged, both as a matter of public policy and Tribal law; and

(g) The right to work shall not be subject to undue restraint, coercion, or infringement based upon membership in, affiliation with, or financial support of a labor organization, or upon the refusal to join, affiliate with, or financially or otherwise support a labor organization.

### **3. Definitions.**

(a) "Business agent" means any person who acts or attempts to act for or on behalf of any labor organization in:

1 The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization;

2 Soliciting or receiving from any employer any right or privilege for employees;

(b) "Employer" means any person, firm, association, corporation and other business entity lawfully operating within the jurisdiction of the Ho-Chunk Nation.

(c) "Labor organization" means any organization of employees organized for the purpose of dealing with employers concerning hours of employment, rates of pay, working conditions, or grievances of any kind relating to employment and desiring to operate within the jurisdiction of the Ho-Chunk Nation. The Tribal Employment Rights Commission is not considered to be a labor organization for purposes of this Article.

(d) "Legislature" means the Ho-Chunk Nation Legislature, the governing body of the Nation.

(e) "Nation" means Ho-Chunk Nation, a federally recognized Indian tribe.

### **4. Employee Rights**

(1) No person shall be required, as a condition of employment or continuation of employment on tribal lands, 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; or

(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.

(2) Strike or picketing for illegal purpose.

Any strike or picketing to force or induce an employer to make an agreement orally or in writing in violation of this law is illegal.

(3) Prohibition of threatened or actual interference with a person, his or her family or property to compel him to join labor organization, strike or leave employment.

It is illegal for an employee, labor organization, or officer, agent or member thereof, by any threatened or actual interference with the person, his immediate family or his property, to compel or attempt to compel such person to join a labor organization, to strike against his will or to leave his employment.

(4) Prohibition of Conspiracy to induce persons to refuse to work with persons not members of labor organization.

A combination or conspiracy by two or more persons to cause the discharge of any person or to cause him/her to be denied employment because he/she is not a member of a labor organization by inducing or attempting to induce any other person to refuse to work with such person, is illegal.

(5) Enforcement.

Any agreement by any employer which violates any act prohibited by the laws of the Nation shall be deemed to be null and void and of no force or effect. Any labor organization which seeks to include provisions contrary to the Nation's law in a labor agreement, and any employer who agrees to such provision, shall be subject to a civil penalty not to exceed \$1,000.00 for each violation, in addition to any other damages, which may be awarded by the Nation's Tribal Court. The Nation and any employee shall have standing to bring an action in the Nation's Tribal Court to enforce the provisions of this part f., but nothing herein shall be construed as a waiver of the sovereign immunity of the Nation or its entities.

(6) Notwithstanding any other provision of law to the contrary, any person injured or threatened with injury by an act declared illegal by this part f. shall be entitled to injunctive, declaratory and monetary relief from the Nation's Tribal Court, including the Nation itself, provided that the Nation, its entities or officials and employees retain sovereign immunity from suit.

(7) Registration of Labor Organizations.

(a) Every labor organization operating within the jurisdiction of the Ho-Chunk Nation shall file a report with the Office of Attorney General for the Nation, on or before 60 days after enactment of this part f. and thereafter on or before December 31 of each year. The report, which shall be filed by the president of the labor organization, shall contain the following information:

1 The name and address of the labor organization;

2 The names and addresses of the president, secretary, treasurer, and business agent of the labor organization;

3 The name and address of the national and/or international organization, if any, with which the labor organization is affiliated;

4 A copy of the collective bargaining agreement(s) between the labor organization and any employer within the jurisdiction of the Ho-Chunk Nation;

5 A copy of the current Constitution and By-laws of the labor organization, as well as any amendments, i.e., the basic written rules governing the organization;

6 Detailed information regarding qualifications for, or restrictions on: membership; levying of assessments; participation in insurance or other benefit plans; authorization for disbursement of labor organization funds; audit of labor organization financial transactions; the calling of regular and special meetings; the selection of officers and stewards and any representatives to other bodies composed of labor organizations' representatives; a specific statement of the manner in which each current officer was elected, appointed, or otherwise selected; discipline or removal of officers or agents for breaches of their trust and a specific statement regarding any past disciplinary action of removal of officers or agents for breach of their trust; impositions of fines, suspensions and expulsions of members including the grounds for such action and any provisions made for notice, hearing, judgment on the evidence, and appeal procedures, along with a detailed statement regarding any imposition of fines, suspensions and expulsions of members including the grounds for such action and any provisions made for notice, hearing, judgment on the evidence, and appeal procedures, along with a detailed statement regarding any imposition of fines, suspensions and expulsions of members in the past calendar year; and

7 A copy of the Labor Organization's Annual Report, as reported to the U.S. Department of Labor.

(b) At the time the report is filed, the labor organization shall pay an annual fee of \$200.00 to the Ho-Chunk Nation.

(c) The president of the labor organization shall file with the Office of Attorney General for the Ho-Chunk Nation a notice of any changes to the information required above within ten (10) days after the changes are made and provide any additional information requested by the Office of Attorney General.

(d) It shall be a violation of this subsection for any labor organization or any person acting on behalf of any labor organization to fail to register or to make any false statements on any reports required to be filed pursuant to this part f.

(8) Registration of business agents.

(a) No person shall act as a business agent of a labor organization within the jurisdiction of the Ho-Chunk Nation unless that person has received a license from the Nation's Legislature.

1 Any person who seeks such a license shall pay a license fee of \$ 200.00, submit a statement signed by the president and the secretary of the labor organization which establishes the individual's authority to act as a business agent for the organization, and agree to undergo a background investigation.

2 No person shall be issued a license to act as a business agent within the jurisdiction of the Ho-Chunk Nation if that person has been convicted of a felony, has been convicted of a misdemeanor involving moral turpitude, is currently facing charges on a felony or on a misdemeanor involving moral turpitude or, based on the background investigation, is deemed by the Legislature to be of questionable moral character.

3 At any time after issuance of the license the Legislature receives reliable information that the licensee should be deprived of his or her license based on the factors stated above, then the Legislature may suspend or revoke the license. The license shall run for the calendar year for which it is issued unless sooner surrendered, suspended, or revoked.

4 All licenses shall expire at midnight on December 31 of each year but may be renewed by the Legislature on a form prescribed by the Legislature for that purpose and upon the payment of an annual renewal fee of \$ 200.00. However, if any license has been surrendered, suspended or revoked during the year, then the applicant must go through the requirements set forth in subsection (a)(1) above

(b) It shall be a violation of the part f. for any person to:

1 Act as a business agent for a labor organization without having obtained a valid license;

2 To act as a business agent of any labor organization without the authority of the labor organization to do so;

3 To make any false statement on any reports required to be filed pursuant to this Article;

4 To make any false statement in an application for a business agent's license.

(9) Penalties. Any person who, directly or indirectly, violates any provision of this Article shall be subject to a fine not exceeding \$1,000.00 for each violation or exclusion from the jurisdiction of the Ho-Chunk Nation, or both.

(10) Civil remedies. Any person injured as a result of any violation or threatened violation of the provisions of this part f. shall be entitled to injunctive, declaratory and monetary relief from the Nation's Tribal Court, including the Nation itself, provided that the Nation, its entities or officials and employees retain sovereign immunity from suit.

(11) Severability. The provisions of this law are hereby declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, then that declaration shall not affect the remaining provisions of this part.

(12) Sovereign immunity. Nothing in this Article shall be construed as waiving the sovereign powers or immunities of Ho-Chunk Nation or its agents, entities, instrumentalities, employees, or officials, nor shall anything in this law be construed as imposing any requirements of the National Labor Relations Act on the Tribe, its agents, entities, instrumentalities, employees, or officials.

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