

THE NAVAJO NATION

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Vacant, Secretary
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Navajo Nation Labor Commission
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NNLC DECEMBER-22-2019

AMENDING RULES OF PROCEDURES FOR THE NAVAJO NATION LABOR COMMISSION

WHEREAS:

1. The Navajo Nation Labor Commission, (the Commission”) shall have the powers prescribed in the Plan of Operation as well as such additional powers as may be conferred to the Commission by law; and
2. The Commission is the administrative oversight authority of the staff, program budget and Office of Navajo Nation Labor Commission to ensure the duties and responsibilities are in compliance pursuant to 15 N. N. C. § 304; and
3. The Commission is authorized to formulate overall administrative and operating policies pertaining to the function of and all formal substantive action shall be taken by written resolution duly certified by the presiding officer or memorialized by written memorandum setting forth the action taken by the Commission pursuant to 15 N. N. C. § 304; and
4. The Commission conducts quasi-judicial administrative hearings in accordance to Navajo Preference in Employment Act, 15 N. N. C. § 301 and § 601 et. seq.; and
5. The Commission has reviewed and determined a need to amend the current amended rules (April 28, 2016) to be in compliance with Resolution of the Navajo Nation Council, CMA-13-16, amending The Navajo Preference In Employment

Act at 15 N.N.C. § 604, 611 and 614. The Commission affixed the revised Rules of Procedures for the Navajo Nation Labor Commission and should be formally adopted. The same will be distributed to members of the Navajo Nation Bar Association.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Commission hereby adopts and amends the Amended Rules of Procedure for The Navajo Nation Labor Commission herein annexed as Exhibit "A".
2. The amended rules shall become effective on the ____ day of _____, 2020 at 5:00 p.m.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Commission at a duly called meeting at Navajo Nation Labor Commission Conference Room at Window Rock, Navajo Nation, Arizona at which a quorum was present and the same was passed by a vote of _ in favor, _opposed and __abstention on this ____ day of _____, 2020.

Nona L. Etsitty, Chairperson
Navajo Nation Labor Commission

Motion by
Second by

AMENDED RULES OF PROCEDURE FOR THE NAVAJO NATION LABOR COMMISSION

1. **APPLICABILITY:** These rules shall apply to all proceedings before the Navajo Nation Labor Commission ("Commission") pursuant to the Navajo Preference in Employment Act ("NPEA") 15 N.N.C. §301 and §601 et. seq. These rules shall be cited as LCRP.

2. **PARTIES:** The Office of Navajo Labor Relations ("ONLR") or the individual filing the complaint is the Petitioner and the person alleged to have committed the violations of NPEA is the Respondent. Petitioner *pro se* or with counsel, shall be present at all stages of the proceedings. Respondent shall have a representative(s) present at all stages of the proceedings who has the authority to negotiate and approve a settlement agreement. Respondent shall be represented by a NNBA member in good standing.

3. **INITIATION OF PROCEEDINGS:** Commission proceedings shall be initiated when Petitioner files a written complaint pursuant to 15 N.N.C. §610(J). A non-refundable filing fee of \$25.00 made payable to the Navajo Nation is required to initiate the processing of the complaint. The filing fee may be waived upon a written request to the Commission.

4. **REQUEST FOR PRELIMINARY INJUNCTION:** Petitioner must file an ONLR Charge prior to filing a Petition for Preliminary Injunction for preliminary relief or other equitable relief pursuant to 15 N.N.C. §610(K). ~~This petition shall meet the recognized requirements for an injunction. The moving party must show that he/she: (1) has a protectable interest, (2) has a high likelihood of success on the merits, (3) that irreparable injury, loss, or injury is likely to occur if the preliminary injunction is not issued, (4) that the threatened injury, loss or damage is substantial in nature, and (5) does not have an adequate remedy at law.~~

Petitioner shall serve the petition for preliminary injunction by personal service on the Respondent within 5 (five) days of filing the petition with the Commission. Petitioner shall submit an affidavit attesting that personal service has been executed. If personal service cannot be executed within five (5) days, Petitioner may serve Respondent by certified mail, return receipt requested.

A hearing shall be held within fifteen (15) business days of the filing of proof that the petition for preliminary injunction has been served on Respondent.

5. **CONTENTS OF COMPLAINT:** The Complaint must be in writing, doubled spaced, and shall not exceed ten (10) pages. The Complaint shall contain:

- (a) a statement that Petitioner is authorized to file the complaint under the terms and conditions prescribed in 15 N.N.C. §610(J)(1)(a)-(c);
- (b) a statement that Petitioner:(1) is an enrolled member of the Navajo Nation; (2) is married to an enrolled member of the Navajo Nation and meets the conditions prescribed in 15 N.N.C. §614. ~~or, (3) is eligible to file the complaint pursuant to *Staff Relief vs. Polacca*, 8 Nav. R. 49 (Nav. Sup. Ct. 2000).~~
- (c) Petitioner and Respondent's valid mailing address and telephone numbers. All mail sent to the parties at the address(es) provided shall be deemed served upon mailing. If Respondent is a corporation, Petitioner shall provide the name and address of the corporation's registered agent to insure that Respondent receives notice of the filing of the Complaint.
- (d) the identification of the person(s) alleged to have violated the NPEA;
- (e) the date(s) on which the violations occurred, or where such acts are of a continuing nature, the period of time when the acts occurred;
- (f) a statement of the facts constituting the alleged violation(s);
- (g) **all Section 604(B)(9) allegations of hostile work environment, harassment, humiliation, or intimidation shall be specifically plead and shall include specific name(s), date(s),place, and a brief description of the event(s);**
- (h) the relief sought by Petitioner.
- (i) a signed and dated copy of the Charge filed with ONLR must be attached to the complaint.

6. **FILING AND SERVICE OF DOCUMENTS COMPLAINT:** T h e

Complaint may be filed in person at the Commission office located off Morgan Boulevard, Training Center, Window Rock, Navajo Nation, Arizona or by certified mail, addressed to: Post Office Box 3450, Window Rock, Arizona 86515. Petitioner shall serve her/ his Complaint on Respondent in person or by or by certified mail. A certificate of service shall be filed with the Commission and served on the parties. All other documents may be sent by First Class mail to the address listed above. Only those documents consisting of ten (10) pages or less may be filed by facsimile at (928) 871-7415. Parties will pay \$2.00 per page for each faxed document that exceeds ten (10) pages. The Petitioner shall file on (1) original Complaint and eleven (11) copies. A Notice of Hearing, a copy of the Complaint, and these Rules will be sent by certified mail to the parties or counsel of record. If the notice by certified mail is not delivered or if Respondent refuses to accept notice, Petitioner will be responsible for effecting personal service on the Respondent

7. — ~~NOTICE OF HEARING:~~ A hearing shall be scheduled within sixty (60) calendar days of filing the complaint, but a hearing need not be held within sixty (60) calendar days of the filing of the complaint. *Dikon Navajo Westerner v. Jensen*, 8 Nav. R. 28, 36 (Nav. Sup. Ct. 2000). A notice of hearing, a copy of the complaint, and these rules will be sent by certified mail to the parties or counsel of record. Petitioner may personally serve the complaint on a Respondent Corporation to insure that proper notice has occurred.

~~NOTE: The Commission is only obligated to send a copy of the complaint and notice of hearing to the Respondent upon the initial filing of the complaint. If the notice by certified mail is not delivered to the Respondent for any reason, Petitioner will be responsible for effecting service on the Respondent~~

8. 7. SERVICE; FILING OTHER OF SUBSEQUENT PLEADINGS AND PAPERS:

- (a) Except as otherwise required in these rules, every pleading, motion or other papers filed after the original complaint shall be served by the filer upon all the parties or counsel of record within three (3) business days of filing said documents with the Commission. All pleadings and every paper filed with the Commission shall contain a certificate of service showing the date and manner of service.

(b) Additional Time After Service by Mail. Whenever a party is required to do some act or take some proceedings within a prescribed time after the service of a notice or other paper upon him and the notice or paper is served by mail, five (5) days shall be added to the prescribed time.

(c) Proposed exhibits shall be filed with the Commission and served on the opposing party, no later than ten (10) business days prior to the initial hearing. **Exhibits filed by facsimile will not be accepted.** Petitioner's exhibits shall be marked in alphabetical order. Respondent's exhibits shall be marked in numerical order. ~~All Exhibits in excess of ten (10) or more must~~ shall be tabbed and indexed. ~~and put in a 3-ring binder. Acceptance of~~ Supplemental exhibits filed less than ten (10) business days prior to the hearing is discretionary may be admitted upon stipulation of the parties.

(d) The parties shall file their list of witnesses along with their address, phone number, and e-mail address, no later than ten (10) business days prior to the hearing.

(e) The parties shall file ~~one (1) original and eight (8) copies of the Complaint;~~ twelve (12) copies of all pleadings, exhibits, and written documents with the Commission. The parties, need only file one copy of subpoenas or proposed order(s).

(f) All motions, briefs, or memorandums must be answered within ten (10) calendar days after receipt by a party. Application of this rule may vary depending on whether a party is represented by counsel.

(g) The Commission may impose sanction(s) when a party fails to comply with any of the provisions prescribed by this rule.

9. 8. TIME: In computing time under these rules, by order of the Commission, or as mandated by the NPEA, the date of the act, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a holiday, in which event, the period runs until the end of the next business day which is not a Saturday, Sunday or a holiday.

10. 9. CONTINUANCE OF HEARING DATE: A hearing may be extended upon a written request showing good cause. The moving party shall indicate whether the opposing party has consented to the continuance and how much additional time is needed. A request for a continuance must be made ten (10) business days prior to the hearing date. Thereafter, no requests for continuances shall be considered, unless there is a showing of exigent or unforeseeable circumstances.

11. 10. ANSWER: The Respondent shall file an Answer ~~to the complaint~~ within twenty (20) calendar days after receipt of the ~~notice of hearing~~ Complaint. The Answer shall be limited to five (5) pages. ~~NOTE: A Respondent who files a motion to dismiss for lack of jurisdiction is not required to file an Answer until ten (10) days after the Commission rules on the motion to dismiss. When a motion to dismiss is filed on any other grounds (except for a motion to dismiss for lack of subject matter jurisdiction), an Answer must be filed within the time prescribed above (20 days).~~

12. 11. AMENDMENTS: An amended complaint may be filed before an Answer is served on Petitioner. An amended Answer may be filed twenty (20) calendar days after the Answer has been served on Petitioner. Otherwise, a complaint or Answer may only be amended by leave of the Commission or by written consent of the adverse party. Leave to amend shall be freely given when justice requires. Respondent shall file an Answer to an amended complaint within 15 (fifteen) calendar days of being served with the amended complaint.

13. 12. DEFAULT JUDGMENT:

(a) Upon Respondent's failure to file a timely Answer, the party entitled to a default determination shall: (1) file a motion for an entry of default showing that the opposing party is in default and attaching proof of service of the complaint; (2) give notice of the motion for entry of default to the party claimed to be in default by certified mail.

(b) An entry of default shall not be made until ten (10) calendar days after the filing and receipt of the notification of motion for entry of default judgment by the opposing party who is allegedly in default. A default shall not be entered if the party claimed to be in default pleads or otherwise defends as provided by

these rules prior to the expiration of ten (10) calendar days from the filing and notification of the motion for entry of default. A judgment by default may be issued after an entry of default has been entered by the Commission.

(c) This rule does not apply where the Navajo Nation or any public entity, officer, employee or agent of the Navajo Nation is the Respondent. *See* 1 N.N.C. §555(B). ~~Exceptions may apply where the Navajo Nation fails to participate in proceedings or fails to honor orders of the Commission. *Loley v. Dept. of Employment & Training*, 7 Nav. R. 406, 409 (Nav. Sup. Ct. 1999).~~

14. ~~13.~~ SUBPOENAS:

(a) All requests for subpoenas by a party, or on the initiative of the Commission shall be in writing. The Commission may issue a subpoena compelling the disclosure by any person evidence relevant to the complaint, including a subpoena ordering (a) the attendance and testimony of witnesses at a deposition or hearing; (b) responses to written interrogatories; (c) the production of evidence including any relevant documents; and (d) access to evidence for the purpose of examination and copying.

(b) A subpoena is not required to serve interrogatories. A certificate of service must be filed with the Commission before or at the time interrogatories are served. Parties must respond to the requests for interrogatories within twenty (20) calendar days of receipt of the interrogatories. Interrogatories shall be limited to fifteen (15) questions including subparts.

(c) Requests for subpoenas shall be filed no later than fifteen (15) business days prior to a scheduled hearing. The recipient shall have five (5) business days after receipt of the request to object to the subpoena. Upon receipt of the request and response to the subpoena, the Commission shall grant or deny the request for subpoena. The Commission has discretion to grant requests for subpoenas not made within this time period. All discovery must be completed no later than fifteen (15) days prior to the hearing.

(d) The party requesting issuance of subpoenas shall arrange for service. A subpoena compelling the appearance of a witness for a hearing or deposition shall be served by a Navajo Police Officer or by any other person who is not a

party disinterested person who is and not less than 18 years of age, who and shall execute a Return of Service. All other subpoenas may be served by certified mail. A subpoena served by ordinary first class mail or email ~~shall be~~ is invalid. ~~Parties are required to~~ shall confer with each other prior to filing discovery objections or motions to compel discovery.

Commission proceedings are intended to afford parties a prompt, informal and inexpensive process to resolve employment disputes. These proceedings require ~~are~~ lesser formalities than those required by both the Navajo Nation and ~~or~~ federal discovery practice to foster the intent of the NPEA. Parties are strongly urged to refrain from engaging in extensive and costly discovery. ~~Parties are strongly encouraged to initiate discovery as early as possible after an Answer has been filed.~~

15. 14. CONDUCT OF HEARING:

- A. The Chairperson shall preside at the hearing at which a quorum of three (3) members of the Commission are present. The Vice-Chairperson shall serve in the absence of the Chairperson. In the absence of the Chairperson, and Vice-Chairperson, the Secretary shall preside at the hearing.
- B. Either party may file a written motion to disqualify a member of the Commission from hearing a case. The motion must be supported by an affidavit or by relevant, adequate evidence to show that actual bias exists.
- C. A Commissioner shall disclose that she/he has a past or present relationship to a party/witness. If a party objects to that Commissioner's participation, the Commissioner shall consider whether she/he can remain fair and impartial despite the relationship. However, recusal shall not result in losing a quorum so as to deny a party access to a hearing.
- D. The Chairperson of the Commission shall regulate the course of the hearing, shall conduct the hearing in a fair and orderly manner and shall extend to all parties the right to be heard.
- E. Oaths shall be administered by the Clerk of the Commission.

- F. Use of a Navajo interpreter: A certified Navajo interpreter is preferred. The party requesting a Navajo interpreter is responsible for compensating the interpreter and providing notice to the opposing party that he/she intends to use an interpreter.
- G. Representation: Parties shall have the right to appear *pro se* or be represented by counsel who is a member in good standing with the Navajo Nation Bar Association ("NNBA"). Counsel shall file an entry of appearance. A non-resident attorney, who is a member in good standing with any state bar, may participate in one case per year before the Commission by filing a written request to appear and shall associate with a NNBA member.
- Where a Respondent is a corporation it is required to be represented by counsel who is a member of the NNBA in good standing. *Perry v. N.N.L.C. & conc. Utah Nav. Dev. Corp.*, No. SV-CV-50-05, slip op. (Nav. Sup. Ct. Aug. 7, 2007).
- H. The Commission shall not be bound by any formal rules of evidence. The Chairperson may exclude evidence that is irrelevant, immaterial, or unduly repetitious.
- I. Each party may call, examine, and cross examine witnesses. The Commission may question any of the witnesses upon conclusion of their testimony. Either party may question those witnesses regarding only the issues raised by the Commission's inquiry.
- J. Each party shall have an opportunity to give an opening statement prior to the presentation of their case.
- K. Order of Proceedings: The Petitioner has the burden of going forward to prove by a preponderance of the evidence that the Respondent violated the NPEA. After the Petitioner has rested the Respondent may present evidence that shows compliance with the NPEA.
- L. Each party may give closing arguments upon conclusion of presentation

~~M.~~ A party may move for a Directed Verdict at the close of the evidence offered by an opponent. A motion for directed verdict shall state specific grounds. The opponent shall have an opportunity to respond to the motion. “Directed Verdict shall be discouraged in favor of a hearing to hear evidence from all parties.” NNC Resolution CMA-13-16, April 6, 2016.

~~N.~~M Motions for Summary Judgment are not allowed.

~~O.~~N The burden of proof ~~shall be~~ is on the Petitioner to show by a preponderance of the evidence that Respondent violated the NPEA.

~~P.~~O In the event a party does not make an appearance on the day set for hearing, the Commission may enter a default determination against the non-appearing party.

~~Q.~~P Witnesses shall be excluded from the hearing room prior to the presentation of their testimony.

~~R.~~Q All hearings are recorded. Any party may request a copy of a recording of the proceedings at their own expense.

~~S.~~R A party may record the proceedings via any electronic audio recording device that does not interfere or obstruct the proceedings. A party may employ a court reporter upon notice to the opposing party. All transcripts generated from the foregoing are unofficial and may not be substituted as an official record of the Commission.

~~T.~~S A remedies hearing may be held. ~~where~~ T the prevailing party seeking remedial relief has the burden of proof to show he/she is entitled to the ~~remedial~~ relief requested. Opposing party ~~will have an opportunity to~~ may respond to the remedial relief requested.

16. 15 SETTLEMENT AGREEMENTS: All settlement agreements executed by the parties or counsel of record shall be submitted in writing as soon as practical. If a settlement agreement is made within five (5) calendar days prior

to the hearing, the terms of the agreement shall be presented at the scheduled hearing, unless otherwise ordered by the Commission. ~~All confidential settlement agreements must be filed with the Commission which will be sealed and will remain unavailable to the public.~~

17: 16 DECISION: The decision shall be reduced to writing, signed by the Chairperson or designee. Copies of the decision shall be sent by certified mail to all parties of record.

18: 17 APPEAL: The decision of the Commission shall be final with a right of appeal to the Navajo Nation Supreme Court. An appeal must be filed with the Navajo Nation Supreme Court within ten (10) calendar days after receipt of the decision. A Notice of Appeal must be filed with the Commission.

19: 18 MODIFICATION: The Commission reserves the right to modify these rules.

20: 19 EFFECTIVE DATE: These Rules shall be in effect on ~~April 28, 2016~~ at 5:00 P.M.

Rules Of Procedures for Proceedings Before the Navajo Nation Labor Commission, *adopted* May 10, 1991. *Amended* January 30, 2001 by Res. NNLC-JAN-74-01. *Amended* October 09, 2001 by Res. NNLC- OCT-78-01. *Amended* October 9, 2001 by Res. NNLC-OCT-78-01. *Amended* October 12, 2005 by Res. NNLC-SEPT-03-05. *Amended* December 19, 2006 by Res. NNLC-DEC-01-06. *Amended* September 25, 2007 by Res. NNLC- SEPT-01-07. *Amended* December 3, 2009 by Res. NNLC-DEC-01-2009. *Amended* October 12, 2011 by Res. NNLC-OCT-01-2011. *Amended* June 28, 2012 by Res. NNLC-JUN-02-2012. *Amended* September 5, 2013 by Res. NNLC-SEPT-02-2013. *Amended* July 21, 2015 by Res. NNLC-JULY-21-2015. *Amended* April 28, 2016 by Res. NNLC-APRIL-28-2016.