

RESOLUTION OF THE
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL - Fourth Year, 2014

AN ACT

RELATING TO LAW AND ORDER, HEALTH, EDUCATION AND HUMAN SERVICES, NAABIK'ÍYÁTI' AND NAVAJO NATION COUNCIL; AMENDING NAVAJO PREFERENCE IN EMPLOYMENT ACT AT 15 N.N.C. §§ 605, 610 AND 612; ENACTING NEW SECTION 614; AND REDESIGNATING SECTIONS 615 THROUGH 620

BE IT ENACTED:

Section 1. Findings and Purposes

A. Pursuant to 15 N.N.C. § 602, the purposes of the *Navajo Preference in Employment Act* include providing training and employment opportunities for Navajos and promoting economic development within the Navajo Nation.

B. It is necessary to amend the *Navajo Preference in Employment Act* generally for purposes of ensuring efficiency and economy.

Section 2. Amending Navajo Preference in Employment Act

The Navajo Nation hereby amends the *Navajo Preference in Employment Act* as follows:

§ 605. Reports

Except as otherwise provided herein, Aall employers doing business or engaged in any project or enterprise within the territorial jurisdiction of the Navajo Nation or pursuant to a contract with the Navajo Nation shall submit employment information and reports as required to ONLR. Such reports, in a form acceptable to ONLR, shall include all information necessary and appropriate to determine compliance with the provisions of this Act. All reports shall be filed with ONLR not later than 10 business days after the end of each calendar quarter, provided that ONLR shall have the right to require filing of reports on a weekly or monthly schedule with respect to part-time or full-time temporary employment.

§ 610. Monitoring and enforcement

A. Responsible Agency. Except as otherwise provided herein,
compliance with the Act shall be monitored and enforced by ONLR.

B. Charges.

1. Charging Party. Except as otherwise provided herein,
Any Navajo may file a charge ("Individual Charge") claiming
a violation of his or her rights under the Act. ONLR, on
its own initiative, may file a charge ("ONLR Charge")
claiming a violation of rights under the Act held by
identified Navajos or a class of Navajos, including a claim
that respondent is engaging in a pattern of conduct or
practice in violation of rights guaranteed by the Act. An
Individual Charge and ONLR Charge are collectively referred
to herein as a "Charge".

J. Initiation of Commission Proceedings. Proceedings before the
Commission shall be initiated upon the filing of a written
complaint by a petitioner with the Commission.

1. Complaints shall satisfy each of the following
conditions:

a. The petitioner is authorized to file the Complaint
under the terms and conditions prescribed by this ~~Section~~ Act;

§ 612. Remedies and sanctions

C. The person or party in whose favor a Commission's decision
providing for remedial action is entered shall have the right
to seek legal and/or equitable relief in the District Courts of
the Navajo Nation to enforce the remedial action; provided that
the Commission itself shall have the right to seek legal and/or
equitable relief in the District Courts of the Navajo Nation to
enforce civil fines or sanctions imposed by the Commission
against a person or party. In both instances the Attorney

General of the Navajo Nation shall have an unconditional right to intervene on behalf of the Navajo Nation. ~~Any attempted enforcement of a Commission order or decision directing payment of money by the Navajo Nation or any of its governmental entities shall, with respect to the extent of any liability be governed by the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 et seq., as amended.~~

§ 614. Grievance Procedure For Navajo Nation Government Employees

A. Any employee of the Navajo Nation Executive or Legislative Branch or a non-Local Governance Act Certified Chapter, or applicant for employment with the Navajo Nation Executive or Legislative Branch or non-Local Governance Act Certified Chapter, who alleges a violation of this Act shall file a grievance as provided by the Navajo Nation Personnel Policies Manual. The hearing officer may award the employee or applicant any remedy authorized by Section 612(A) of this Act.

B. Any employee of the Navajo Nation Judicial Branch or an applicant for employment with the Navajo Nation Judicial Branch who alleges a violation of the Act shall file a grievance as provided by the Judicial Branch Employee Policies & Procedures. The hearing board may award the employee or applicant any remedy authorized by Section 612(A) of this Act.

C. Any party to the grievance may appeal a final decision of the hearing officer or hearing board to the Navajo Nation Supreme Court within ten (10) calendar days of receipt of the decision. The employee or applicant shall file a notice of appeal with the Navajo Nation Supreme Court and the hearing officer or hearing board.

D. Transcripts and record for appeals.

1. If considered necessary, the party appealing a decision shall file a transcript of the proceeding with the Navajo Nation Supreme Court within thirty (30) calendar days from the filing of the notice of appeal.

2. If a transcript is considered unnecessary, within ten (10) calendar days of the filing of the notice of appeal, the party appealing a decision shall give notice to the Navajo Nation Supreme Court and the appellee that the appellant will not file a transcript

3. If the appellant fails to file a transcript or notice that the appellant will not file a transcript within the required time, the Navajo Nation Supreme Court shall dismiss the appeal.

4. The hearing officer or hearing board shall submit the record of the proceeding within ten (10) calendar days of the filing of the notice of appeal. Failure of the hearing officer or hearing board to file the record within that time period shall not be grounds for dismissal of the appeal.

E. The Navajo Nation Supreme Court shall review and decide the appeal within thirty (30) days of the filing of the transcript or the notice that appellant will not file a transcript. If a decision within that time is not feasible, at the request of a party or by its own order, the Navajo Nation Supreme Court may extend that time up to sixty (60) days. The Navajo Nation Supreme Court shall create expedited rules of appellate procedure to decide the appeal within the required time period.

F. Remedies; enforcement of awards.

1. If the employee or applicant prevails on his or her grievance, and the Navajo Nation program does not appeal the decision, the program and Navajo Nation Controller shall pay the monetary remedies awarded within thirty (30) calendar days of receipt of the final decision of the hearing officer or board.

2. If the hearing officer or board directs reinstatement of the employee to his or her position or directs the hiring of the applicant for employment, and the Navajo Nation program does not appeal the decision, the program shall initiate the processing of all documentation necessary to reinstate the employee or hire the applicant within ten (10) calendar days of the decision.

3. The filing of an appeal by the Navajo Nation program under Subsection (C) shall automatically stay the payment of monetary remedies or the remedies of reinstatement or hire pending the decision by the Navajo Nation Supreme Court.

However, any monetary remedy, such as back-pay, will continue to accrue until the decision is issued, unless otherwise ordered by the Supreme Court. If the employee or applicant prevails on appeal, the Navajo Nation program will fulfill the award within the time periods set out in Subsections (1) and (2), calculated from the date of receipt of the Navajo Nation Supreme Court's decision.

4. If the Navajo Nation program fails to perform its obligations within the time periods in Subsections (1) through (3), the employee or applicant may file an action under Section 554(G) of the Navajo Sovereign Immunity Act to enforce the award. If the employee or applicant prevails in that action, he or she may receive the original award of the hearing officer or board and any additional relief authorized by 1 N.N.C. § 554(G)(1).

G. The remedies set forth in this Section are the exclusive remedies for employees of or applicants for employment with the Navajo Nation Executive, Legislative, and Judicial Branches and non-Local Governance Certified Chapters for violations of the Act. ONLR and the Commission shall have no jurisdiction over alleged violations of the Act by the Navajo Nation Executive, Legislative or Judicial Branch or non-Local Governance Certified Chapters.

§ 614 615 . Non-Navajo spouses

§ 615 616. Polygraph test

§ 616 617. Rules and regulations

§ 617 618. Prior inconsistent law repealed

§ 618 619. Effective date and amendment of the Act

§ 619 620. Severability of the Act

Section 3. Effective date

The amendments enacted herein shall be effective on January 1, 2015, pursuant to 2 N.N.C. §221.

Section 4. Codification

The provisions of these amendments which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

Section 5. Savings Clause

Should any provision of these amendments be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those provisions which are not determined invalid shall remain the law of the Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 13 in favor and 0 opposed, this 23rd day of October 2014.



LoRenzo Bates, Pro Tem Speaker
Navajo Nation Council

Nov. 7, 2014
Date

Motion: Honorable Russell Begaye
Second: Honorable Lorenzo Curley

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this _____ day of NOV 17 2014 2014.



Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), this _____ day of _____ 2014, for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President
Navajo Nation