



October 27, 2017

MEMORANDUM

TO : Tom Platero, Executive Director
Office of Legislative Services

FROM : 
Levon B. Henry, Chief Legislative Counsel
Office of Legislative Counsel

RE : CO-60-17 – Enacted by Statute

On October 17, 2017 the Navajo Nation Council considered and passed Resolution CO-60-17, *Amending “The Navajo Preference in Employment Act” at 15 N.N.C. §§ 603, 604(B)(8) to Provide For The Addition of Program Managers of The Executive Branch as a Class of Employees Exempt From the Just Cause Provisions of The Act.* The Speaker of the Navajo Nation Council certified the resolution on October 27, 2017. On that same day, the Office of the President and Vice-President received the resolution for the President’s consideration. 10 days later on November 6, 2017, the Office of the President and Vice-President returned the resolution to the Office of Legislative Services. Neither the Navajo Nation President nor the Vice-President signed the resolution.

Pursuant to 2 N.N.C. § 221(B) “All resolutions that enact new Navajo law or amend existing Navajo law and are adopted by the Navajo Nation Council shall become effective on the day the President of the Navajo Nation signs it into law or the Navajo Nation Council takes action to override the President’s veto...” Resolution CO-60-17 specifically refers to 2 N.N.C. § 221(B). The President’s powers include signing “legislation passed by the Navajo Nation Council into Navajo law within ten calendar days after the certification of the legislation by the Speaker...” 2 N.N.C. 1005(C)(10). “The President’s authority to sign into law or veto legislation shall be deemed waived if not exercised within ten calendar days after certification of the legislation by the Speaker...and the legislation shall be deemed enacted and become effective pursuant to 2 N.N.C. § 221.” 2 N.N.C. § 1005(C)(12).

The Speaker certified Resolution CO-60-17 on October 27 and the President’s office received the resolution on October 27. The 10-day period extended to November 6, 2017. The President did not sign the resolution within the 10-day period. Therefore, by law Resolution CO-60-17 is deemed enacted and considered Navajo Nation law.

cc: Hon. LoRenzo Bates, Speaker, 23rd Navajo Nation Council
Council Delegates, 23rd Navajo Nation Council
Pete Atcitty, Chief of Staff, Legislative Branch

**RESOLUTION OF THE
NAVAJO NATION COUNCIL**

23RD NAVAJO NATION COUNCIL -- Third Year, 2017

AN ACTION

RELATING TO LAW AND ORDER, HEALTH, EDUCATION AND HUMAN SERVICES, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; AMENDING "THE NAVAJO PREFERENCE IN EMPLOYMENT ACT" AT 15 N.N.C. §§ 603, 604 (B) (8) TO PROVIDE FOR THE ADDITION OF PROGRAM MANAGERS OF THE EXECUTIVE BRANCH AS A CLASS OF EMPLOYEES EXEMPT FROM THE JUST CAUSE PROVISIONS OF THE ACT

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law and Order Committee of the Navajo Nation Council, pursuant to 2 N.N.C. 601(B)(14), reviews and makes recommendations to the Navajo Nation Council on proposed amendments to and enactments in the Navajo Nation Code.
- B. The Health, Education and Human Services Committee of the Navajo Nation Council, among other duties and responsibilities, generally oversees the Division of Human Resources within the Navajo Nation. 2 N.N.C. §400(C) (1).
- C. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council. Pursuant to 2 N.N.C. § 164(A) (9), the committee reviews proposed legislation which requires final action by the Navajo Nation Council.
- D. The Navajo Nation Council enacts laws and sets policy for the Navajo Nation. 2 N.N.C. § 102.

SECTION TWO. FINDINGS

- A. Program managers of the Executive Branch of the Navajo Nation perform a crucial role in the implementation, efficiency and effectiveness of the programs of the Navajo Nation in a manner that insures a positive benefit to the Navajo People.
- B. The Navajo Nation Personnel Policies Manual describes the supervisory responsibilities of program managers as follows: "Supervisors are responsible for utilizing and applying the personnel policies consistently in dealing with human

resources issues. They are encouraged to seek advice from Department of Personnel Management and Department of Justice on the interpretation of the Personnel Policies Manual and in addressing employment issues. Supervisors are expected to provide leadership in implementing the policies and to set positive examples for employees. See Navajo Nation Personnel Policies Manual, Section I, A., Amended March 25, 2015.

- C. In order to hold program managers of each division within the Navajo Nation government accountable for the performance of their respective programs, there is a current need to make all program managers within the Executive Branch of the Navajo Nation professional at-will employees.
- D. The definition of at-will employee is when, "a supervisor can discharge an employee under this employment status for any reason at all or no reason at all, with or without notice; and the employee can leave (resign) at any time for any or no reason at all, with or without notice." See Navajo Nation Personnel Policies Manual, Section XXI, Amended April 12, 2016.
- E. The definition of "program manager" is "...anyone who has the authority to hire, terminate, discipline, or otherwise initiate personnel action. It is also intended to include all supervisors at higher levels, i.e. Department Managers, division directors." See Navajo Nation Personnel Policies Manual, Section XXI, Amended April 12, 2016.
- F. It is in the best interest of the Navajo Nation in order to improve overall program efficiency, effectiveness and accountability that all program managers serve at the pleasure of Navajo Nation Executive Branch Division Directors.
- G. It is in the best interest of the Navajo Nation to amend the Navajo Preference in Employment Act, at 15 N.N.C. §§ 603, 604 (B) (8), to provide that all program managers of the Navajo Nation Executive Branch be exempt from the just cause provisions of the Navajo Preference in Employment Act.

SECTION THREE. AMENDING TITLE 15

The Navajo Nation amends the Navajo Preference in Employment Act, at 15 N.N.C. §§ 603, 604 (B) (8) as follows:

THE NAVAJO NATION CODE ANNOTATED
TITLE 15. LABOR
CHAPTER 7. NAVAJO PREFERENCE IN EMPLOYMENT ACT

§ 603. Definitions

- A. The term "Commission" shall mean the Navajo Nation Labor Commission.
- B. The term "employment" shall include, but is not limited to, the recruitment, hiring, promotion, transfer, training, upgrading, reduction-in-force, retention, and recall of employees.
- C. The term "employer" shall include all persons, firms, associations, corporations, and the Navajo Nation and all of its agencies and instrumentalities, who engage the services of any person for compensation, whether as employee, agent, or servant.
- D. The term "Navajo" means any enrolled member of the Navajo Nation.
- E. The term "ONLR" means the Office of Navajo Labor Relations.
- F. The term "probable cause" shall mean a reasonable ground for belief in the existence of facts warranting the proceedings complained of.
- G. The term "territorial jurisdiction" means the territorial jurisdiction of the Navajo Nation as defined in 7 N.N.C. § 254.
- H. The term "counsel" or "legal counsel" shall mean: (a) a person who is an active member in good standing of the Navajo Nation Bar Association and duly authorized to practice law in the courts of the Navajo Nation; and (b) for the sole purpose of co-counseling in association with a person described in Clause (a), an attorney duly authorized, currently licensed and in good standing to practice law in any state of the United States who has, pursuant to written request demonstrating the foregoing qualifications and good cause, obtained written approval of the Commission to appear and participate as co-counsel in a particular Commission proceeding.

- I. The term "necessary qualifications" shall mean those job-related qualifications which are essential to the performance of the basic responsibilities designated for each employment position including any essential qualifications concerning education, training and job-related experience, but excluding any qualifications relating to ability or aptitude to perform responsibilities in other employment positions. Demonstrated ability to perform essential and basic responsibilities shall be deemed satisfaction of necessary qualifications.
- J. The term "qualifications" shall include the ability to speak and/or understand the Navajo language and familiarity with Navajo culture, customs and traditions.
- K. The term "person" shall include individuals; labor organizations; tribal, federal, state and local governments, their agencies, subdivisions, instrumentalities and enterprises; and private and public, profit and non-profit, entities of all kinds having recognized legal capacity or authority to act, whether organized as corporations, partnerships, associations, committees, or in any other form.
- L. The term "employee" means an individual employed by an employer.
- M. The term "employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to obtain for employees opportunities to work for an employer.
- N. The term "labor organization" or "union" means an organization in which employees participate or by which employees are represented and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms and conditions of employment, including a national or international labor organization and any subordinate conference, general committee, joint or system board, or joint council.
- O. The term "petitioner" means a person who files a complaint seeking to initiate a Commission proceeding under the Act.
- P. The term "respondent" means the person against whom a complaint is filed by a petitioner.
- Q. The term "Act" means the Navajo Preference in Employment Act.

R. The term "program manager" shall be as defined in The Navajo Nation Personnel Policies Manual.

§ 604. Navajo employment preference

* * * *

B. Specific requirements for Navajo preference:

1. All employers shall include and specify a Navajo employment preference policy statement in all job announcements and advertisements and employer policies covered by this Act.
2. All employers shall post in a conspicuous place on its premises for its employees and applicants a Navajo preference policy notice prepared by ONLR.
3. Any seniority system of an employer shall be subject to this Act and all other labor laws of the Navajo Nation. Such a seniority system shall not operate to defeat nor prevent the application of the Act, provided, however, that nothing in this Act shall be interpreted as invalidating an otherwise lawful and bona fide seniority system which is used as a selection or retention criterion with respect to any employment opportunity where the pool of applicants or candidates is exclusively composed of Navajos or of non-Navajos.
4. The Navajo Nation when contracting with the federal or state governments or one of its entities shall include provisions for Navajo preference in all phases of employment as provided herein. When contracting with any federal agency, the term Indian preference may be substituted for Navajo preference for federal purposes, provided that any such voluntary substitution shall not be construed as an implicit or express waiver of any provision of the Act nor a concession by the Navajo Nation that this Act is not fully applicable to the federal contract as a matter of law.
5. All employers shall utilize Navajo Nation employment sources and job services for employee recruitment and referrals, provided, however, that employers do not have the foregoing obligations in the event a Navajo is

selected for the employment opportunity who is a current employee of the employer.

6. All employers shall advertise and announce all job vacancies in at least one newspaper and radio station serving the Navajo Nation, provided, however, that employers do not have the foregoing obligations in the event a Navajo is selected for the employment opportunity who is a current employee of the employer.
7. All employers shall use non-discriminatory job qualifications and selection criteria in employment.
8. All employers shall not penalize, discipline, discharge nor take any adverse action against any Navajo employee without just cause. A written notification to the employee citing such cause for any of the above actions is required in all cases. Provided, that this Subsection shall not apply to Division Directors, program managers of the Executive Branch and Legislative Branch or to other employees and officials of the Navajo Nation who serve, pursuant to a specific provision of the Navajo Nation Code, at the pleasure of the Navajo Nation Council, the standing committees of the Navajo Nation Council, the President of the Navajo Nation, the Speaker of the Navajo Nation Council, the Chief Justice of the Navajo Nation, or those persons employed pursuant to 2 N.N.C. §§ 281(C) and 1009.
9. All employers shall maintain a safe and clean working environment and provide employment conditions which are free of prejudice, intimidation and harassment.
10. Training shall be an integral part of the specific affirmative action plans or activities for Navajo preference in employment.
11. An employer-sponsored cross-cultural program shall be an essential part of the affirmative action plans required under the Act. Such program shall primarily focus on the education of non-Navajo employees, including management and supervisory personnel, regarding the cultural and religious traditions or beliefs of Navajos and their relationship to the development of employment policies which accommodate such traditions and beliefs. The cross-cultural program shall be developed and implemented through a process which involves the

substantial and continuing participation of an employer's Navajo employees, or representative Navajo employees.

12. No fringe benefit plan addressing medical or other benefits, sick leave program or any other personnel policy of an employer, including policies jointly maintained by an employer and associated labor organization, shall discriminate against Navajos in terms or coverage as a result of Navajo cultural or religious traditions or beliefs. To the maximum extent feasible, all of the foregoing policies shall accommodate and recognize in coverage such Navajo traditions and beliefs.

* * * *

SECTION FOUR. CODIFICATION

The provisions of the Act 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 FIVE. SAVING CLAUSE

Should any provision of this Act 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, the remainder of the Act shall remain the law of the Navajo Nation.

SECTION SIX. EFFECTIVE DATE

The provisions of this Act shall become effective in accord with 2 N.N.C. § 221(B) and shall be applicable to all program manager positions as they become vacant because of retirement, resignation, termination, promotion, layoff and transfer other than to acting status as determined by the Department of Personnel Management or a year from the date upon which it receives the signature of the President of the Navajo 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 08 in favor and 07 opposed, this 17TH day of October 2017.



LoRenzo C. Bates, Speaker
Navajo Nation Council

Oct. 27. 2017

Date

Motion: Honorable Lee Jack, Sr.
Second: Honorable Otto Tso

Speaker Bates not voting

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 _____ 2017.

Russell Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(11), on this _____ day of _____ 2017 for reason(s) expressed in the attached letter to the Speaker

Russell Begaye, President
Navajo Nation

NAVAJO NATION

RCS# 849

NNC Fall Session

10/17/2017

06:50:27 PM

Amd# to Amd#

Legislation No. 0101-17

PASSED

MOT Jack

Amending "The Navajo Preference

SEC Tso

in Employment Act"

Yea : 8

Nay : 7

Not Voting : 8

Yea : 8

Begay, K
Chee

Damon
Jack

Phelps
Slim

Tso
Witherspoon

Nay : 7

Begay, S
BeGaye, N

Brown
Crotty

Perry
Shepherd

Smith

Not Voting : 8

Bates
Begay, NM
Bennett

Daniels
Filfred

Hale
Pete

Tsosie
Yazzie