

ARTICLE II. DISCRIMINATORY EMPLOYMENT PRACTICES*

Sec. 4-21. -Short Title.

This Article shall be known as the "Mohegan Discriminatory Employment Practices Ordinance ("MDEPO").

(Res. No. 2008-58, 7-2-08; Res. No. TGA 2008-09, 7-2-08)

Sec. 4-22. -Adoption of Mohegan Discriminatory Employment Practices Ordinance.

- (a) *Purpose.* The Mohegan Tribe and its governmental entities, agencies and instrumentalities, including but not limited to, tribal commissions and authorities operating on the Mohegan Reservation, hereby amends the Mohegan Tribal Discriminatory Employment Practices Ordinance. The purpose of this Article is to prohibit discrimination in employment practices where such discrimination is based upon factors specifically identified herein.
- (b) *Authority.* This Article is adopted by the Mohegan Tribal Council pursuant to **Article IX, Sections 2(c), (l), (p) and (t)** of the Constitution of the Mohegan Tribe.
- (c) *Applicability of the Article and Relation to Other Laws:*
 - (1) By adoption of this Article, the Mohegan Tribe exercises its rights of self-government and provides a waiver of its sovereign immunity, subject to the specific limitations set forth herein. The Mohegan Tribe does not consent to the application of any federal statute, law, or regulation that does not expressly apply to it as a federally recognized Indian tribe, nor does the Tribe consent to the application of any State labor or employment law or regulation.
 - (2) The provisions of this Article shall apply to employment by the Tribe, the Mohegan Tribal Gaming Authority, and to tribal entities located in or upon the Mohegan Reservation.

***Editor's note:** Res. Nos. 2008-58 and TGA 2008-09, adopted July 2, 2008, amended the Code by, in effect, repealing former art. II, §§ 4-21--4-29, and adding a new art. II. Former art. II pertained to similar subject matter, and derived from Ord. No. 2002-04, adopted August 14, 2002.

Cross references: See Section 1-222 for severability clause.

- (3) To the extent that the Mohegan Tribal Employment Rights Ordinance ("TERO") conflicts with this Article, the TERO shall be given effect over the provisions of this Article. No provision of this Article shall be construed to interfere with the administration of TERO.

(Res. No. 2008-58, 7-2-08; Res. No. TGA 2008-09, 7-2-08)

Sec. 4-23. -Definitions.

As used in this Article:

Age means at least forty (40) years of age.

Development Period means the ninety-day period that runs from the date the employee commences work for the Employer.

Disability means a mental or physical impairment of which the Employer is aware that substantially impairs one (1) or more of the major life activities of an Applicant or Employee, but shall not include:

- (1) Disorders resulting from current illegal use of drugs; or
- (2) Compulsive gambling, kleptomania or pyromania; or
- (3) Abuse of alcohol at any time in or upon the employee's workplace or the abuse of alcohol which affects the employee's job conduct or performance; or
- (4) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, or other sexual behavior disorder.

Employer means the Mohegan Tribe and its governmental entities, authorities, agencies, and instrumentalities including, but not limited to, the Mohegan Tribal Gaming Authority and other tribal commissions, and authorities operating on the Mohegan Reservation.

Employee means any person who is or became employed by an Employer.

Mohegan Tribe or *Tribe* means the Mohegan Tribe of Indians of Connecticut, a federally recognized American Indian tribe located in the State of Connecticut and its authorities, entities, agencies and instrumentalities.

Reasonable Accommodation means an accommodation to an Applicant's or Employee's religion, or physical or mental disability that is calculated to facilitate an Applicant's or Employee's employment, provided that such accommodation does not place an undue burden on the Employer. The burden may be determined by looking at the cost to the Employer and the impact of the accommodation upon the Employer's operations.

Mohegan Court means the Mohegan Tribal Court or the Mohegan Gaming Disputes Court, as appropriate.

(Res. No. 2008-58, 7-2-08; Res. No. TGA 2008-09, 7-2-08)

Sec. 4-24. -Practices Declared Unlawful.

- (a) It shall be an unlawful employment practice for an employer to discriminate, with respect to hiring, discharging, compensation, benefits, demotion, disciplining, suspending, barring, or layoff, on account of an Applicant's or Employee's:

- (1) Race, gender, color, national origin, pregnancy or related medical condition, age, ancestry, marital status, sexual orientation, military status or genetic information;
- (2) Religion provided that the religious practice may be reasonably accommodated; when a reasonable accommodation is possible;
- (3) Mental or physical disability when reasonable accommodation is available;
- (4) Exercise of rights under this Article, the Mohegan Tribal Workers' Compensation Ordinance, the Mohegan Fair Labor Standards Ordinance, the Mohegan Family Medical Leave Ordinance, the Mohegan Employment Retirement Income Security Ordinance or the Mohegan Labor Relations Ordinance;
- (5) Good faith participation in reporting an Employer's violation of a Mohegan Tribal law or regulation to a Mohegan Tribal governmental or regulatory agency; or
- (6) Participation, when requested by a Mohegan Tribal governmental or regulatory agency, in an investigation or hearing held by such agency.

This Article does not establish a right of action for breach of an express or implied employment contract, wrongful discharge, or discharge in violation of public policy.

(Res. No. 2008-58, 7-2-08; Res. No. TGA 2008-09, 7-2-08; amended Res No. 2010-65, 9-22-10; Res. No. TGA 2010-09)

Sec. 4-25. -Practices That Shall Not Be Declared Unlawful.

- (a) It shall not be unlawful or considered employment discrimination, if the employment practice:
 - (1) Constitutes a legitimate implementation by the Employer of a bonafide occupational qualification or need, including but not limited to the need to maintain work schedules and work standards; or
 - (2) Was a result of a legitimate, nondiscriminatory business decision; or
 - (3) Implements the provisions of any Mohegan Tribal law including, but not limited to TERO regarding preferences in employment, including, but not limited to recruiting, hiring, training, and promotions for members of the Mohegan Tribe or other Native Americans as defined in TERO, or
 - (4) Constitutes implementation by the Employer of a bona fide seniority system or a bona fide job classification for compensation, rights, and/or benefits; or

- (5) Would have occurred notwithstanding any discriminatory employment practice; or
- (6) Is facially neutral and only has the impact or deleterious effect onto a class of individuals who are otherwise protected under this Article.

(Res. No. 2008-58, 7-2-08; Res. No. TGA 2008-09, 7-2-08)

Sec. 4-26. -Records.

Every Employer subject to any provision of this Article or of any order issued under this Article shall make, keep, and preserve such records of the Applicant or Employee, including, but not limited to employment applications, job descriptions, employee evaluations, employee reprimands, employee awards, employee attendance records and other conditions and practices of employment maintained by it. Employment applications shall be maintained for one (1) year and all other such records shall be maintained for seven (7) years.

(Res. No. 2008-58, 7-2-08; Res. No. TGA 2008-09, 7-2-08)

Sec. 4-27. -Complaint Process.

- (a) *Filing of Complaint.* Any person who is either an Applicant or an Employee, as defined in this Article, and who believes that he/she has been the victim of discrimination made unlawful under this Article, may file a complaint with the appropriate Mohegan Court. Such complaint must be filed on such forms as may be provided by the Mohegan Court and shall conform to such procedural requirements as the Mohegan Courts may establish.
- (b) *Time Limits.* Any complaint filed under this Article shall be filed within ninety (90) days after the occurrence of the event out of which the complaint arises, or within ninety (90) days after the Applicant or Employee first knew or, through the exercise of reasonable diligence should have known, of the occurrence or event out of which such complaint arises. A complaint that is not timely filed shall be dismissed and no other remedy shall be available. Internal procedures offered by Employer Human Resource Departments for employee grievances do not extend the time for filing a Complaint under this Article.
- (c) *Property Right.* Nothing in this Article is intended to establish a property right in an employee's continued employment.
- (d) *Burden of Proof at Trial.* Each complaint that is eligible for trial under this Article shall receive a trial de novo. A complainant proceeding under this Article shall be required to prove the elements of his or her complaint by a preponderance of the evidence; and similarly the Employer shall be required to prove any affirmative defense by a preponderance of the evidence.
- (e) *Remedies.*

- (1) If the Court finds that the complainant has proved employment discrimination under this Article by a preponderance of the evidence and that the Employer has not proved any affirmative defense to the complaint, the Court may order the following remedies only:
 - (i) One (1) year of lost wages, subject to reduction by any amounts earned or received as unemployment compensation by the employee in the one-year period following loss or denial of employment;
 - (ii) Attorney's fees that shall not exceed one-third (1/3) of the lost wage award; and/or
 - (iii) Reinstatement or instatement of the Applicant or Employee, either into the position that is the subject of the litigation or into a comparable position for which the Applicant or Employee is qualified and that is reasonably equivalent in status and compensation. as determined by the Court.
- (2) The remedies specifically enumerated with this Section shall be the sole and exclusive remedies for a violation of this Article.

(Res. No. 2008-58, 7-2-08; Res. No. TGA 2008-09, 7-2-08)

Sec. 4-28. -Sovereign Immunity.

- (a) Limited Waiver of Sovereign Immunity. The Mohegan Tribe expressly waives its sovereign immunity from suit, but solely to permit an Applicant or Employee to bring an action in a Mohegan Court, for violations of this Article seeking only the remedies contained in Section 4-27 of this Article, provided that any such suit shall be brought no later than ninety (90) days after the occurrence of the event out of which the complaint arises, or within ninety (90) days after the Applicant or Employee first knew or, through the exercise of reasonable diligence should have known, of the occurrence or event out of which such complaint arises. This limited waiver shall not be construed as a waiver of the sovereign immunity of the Mohegan Tribe or a consent to suit in state or federal court, or in any other forum. This limited waiver shall not be construed nor shall such grant be deemed consent by the Mohegan Tribe to the levy of any judgment, lien, or attachment upon the trust or other property of the Mohegan Tribe.
- (b) Nothing in this Article waives the sovereign immunity of the Mohegan Tribe or the Mohegan Tribal Gaming Authority except to the limited extent and for the limited purposes expressly set forth in Section 4-27 of this Article.
- (c) The sovereign immunity of the Mohegan Tribe shall attach to the actions of the Mohegan Tribe; the Mohegan Tribal Gaming Authority; the Director of Human Resources; any Department Head; and any individual acting on behalf of the Mohegan Tribe, the Mohegan Tribal Gaming Authority or any of their affiliated

governmental entities and such immunity shall be binding upon all employees and applicants for employment to whom this Article applies.

(Res. No. 2008-58, 7-2-08; Res. No. TGA 2008-09, 7-2-08)

Sec. 4-29. -Effective Date.

This law shall be applicable to all claims accrued subsequent to enactment.

(Res. No. 2008-58, 7-2-08; Res. No. TGA 2008-09, 7-2-08)

Sec. 4-30. -Severability.

If any provision of this Article 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 Article, and the same shall continue in full force and effect.

(Res. No. 2008-58, 7-2-08; Res. No. TGA 2008-09, 7-2-08)

Secs. 4-31—4-50. -Reserved.