

An Act

Legislative Act 03 – 10

AN ACT RELATING TO EMPLOYEES OF THE CHEROKEE NATION OR ITS WHOLLY OWNED CORPORATIONS; TERMINATION APPEALS PROCEDURES AND EMPLOYEE BACK PAY ACT OF 2005; PROVIDING FOR SEVERABILITY AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the “Employee Appeal Act of 2009” and codified in Title _____ Section _____ of the Cherokee Nation Code Annotated (CNCA).

Section 2. Purpose

The purpose of this Act is to provide legislative authority for the award of back pay, costs and attorney fees to employees who are reinstated to their positions after administrative and/or judicial procedures are followed.

Section 3. Legislative History

Title 51 of the Cherokee Nation Code Annotated, Article V, Section 7 of the Cherokee Legislative Act 12-96, 20-96.

Section 4. Definitions

For the Purposes of this Act:

- A. “Employee” shall mean a person who has been directly employed by the Cherokee Nation or its entities and corporations on a regular full-time basis for at least one continuous year immediately prior to termination of employment, but shall not include employees who have limited term contracts, employment agreements, or are considered independent contractors. For purposes of employee termination appeals under this Act this term shall not include employees of specialized authorities and entities created by the legislature, such as, but not limited to, the Arkansas Riverbed Trust Authority.
- B. The “Nation” means the Cherokee Nation.
- C. “Back Pay,” means the amount of wages denied an employee from the time of discharge until reinstatement in accordance with administrative and/or judicial procedures available to employees under Cherokee Nation laws and Constitution.

D. "Cost and Attorney Fees" means the costs associated with the filing and maintaining the cause of action which includes reasonable attorney fees.

Section 5. Substantive Provisions

Amend Title 51 § 1029 of the Cherokee Nation Code Annotated:

Remedies for termination without cause:

- A. If the termination is overturned based on a finding that the termination was without cause by unappealed decision of the Cherokee Nation Appeals Review Board or by a final decision of the Judicial Appeals Tribunal, the Former Employee shall be immediately restored to employment in the same or similar job position, with pay no less than the pay received at the time of termination, and with benefits and back pay retroactive to the date of the termination; and the employee's personnel records adjusted as may be consistent with the action of the Cherokee Nation Administrative Appeals Board or Cherokee Nation Courts. The remedies provided herein shall be exclusive, and the Cherokee Nation expressly declines to waive sovereign immunity as to suit for the recovery of any form of damages or other type or relief other than the relief set forth herein. All remedies listed herein shall be available to employees of corporations owned by the Cherokee Nation, if said employee is successful in overturning a termination as provided through the applicable termination appeals process for that corporation.
- B. Prevailing parties may be awarded costs and reasonable attorney fees as determined by the appropriate Board or Court.

Section 6. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 7. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

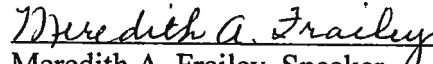
Section 8. Emergency Declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this Act shall take effect and be in full force upon its approval and signatures.


Section 9. Effective Date

This act shall become effective _____, 2010, in accordance with the Cherokee Nation Constitution.


Enacted by the Council of the Cherokee Nation on the 11th day of January, 2010.


Meredith A. Frailey, Speaker
Council of the Cherokee Nation


ATTEST:


Don Garvin, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 15th day of JANUARY, 2010.


Chadwick Smith, Principal-Chief
Cherokee Nation

ATTEST:


Melanie Knight, Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Tina Glory Jordan	<u>Yea</u>	Meredith A. Frailey	<u>Yea</u>
Bill John Baker	<u>Yea</u>	Chris Soap	<u>Yea</u>
Joe Crittenden	<u>Yea</u>	Cara Cowan Watts	<u>Yea</u>
Jodie Fishinghawk	<u>Yea</u>	Buel Anglen	<u>Yea</u>
Janelle Lattimore Fullbright	<u>Yea</u>	Bradley Cobb	<u>Nay</u>
David W. Thornton, Sr.	<u>Yea</u>	Charles Hoskin, Jr.	<u>Yea</u>
Don Garvin	<u>Yea</u>	Julia Coates	<u>Yea</u>
Harley L. Buzzard	<u>Yea</u>	Jack D. Baker	<u>Yea</u>
Curtis G. Snell	<u>Yea</u>		