



Legislation Text

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An Act

Legislative Act 13-04

A LEGISLATIVE ACT KNOWN AS "THE PUBLIC INTEGRITY AND WHISTLEBLOWER PROTECTION ACT"

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This Act shall be known as the "Public Integrity and Whistleblower Protection Act of 2004" and codified as Title 28, Section of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to afford protections against retaliation or reprisal of employees and other officials and to supplement the Cherokee Nation Ethics in Government Act set forth in 28 CNCA 1-5.

Section 3. Definitions

(a) "Employer" means the Cherokee Nation and the public body defined herein.

(b) "Employer" also means any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly on behalf of the Cherokee Nation, and shall also include any public or privately owned corporation that provides goods or services as a result of contractual relations with the Cherokee Nation. It applies to all branches of the Cherokee Nation Government, and or any Corporation, Commission, Board, or any other political subdivision of the Nation; it includes any Cherokee Nation authority, commission, or board or any other agency or instrumentality thereof. Employer shall also include agents, contractors or subcontractors of an employer.

(c) "Employee" means any individual who performs services for or under the control and direction of an employer for wages or other remuneration. Employee shall also include applicants for employment, former employees or an authorized representative of an employee.

(d) "Official" means any elected or appointed individual who performs duties for any public body defined under \diamond 3 (e), the next paragraph, whether or not the individual official receives any wages, stipends, travel for per diem or any other form of compensation for the performance of such duties.

(e) "Public body" means the government (and) of the Cherokee Nation:

(1) the Legislative, the Council of the Cherokee Nation and their employees,

(2) the Judiciary, the Judicial Appeals Tribunal and the District Courts of the Nation and their employees,

(3) the Executive, the Principal and Deputy Principal Chiefs offices, and any

organizational unit of the Executive including regulatory and non-regulatory Commissions and Boards organized and approved by the Council of the Cherokee and their officials and employees;

(4) Any Corporation or Commission organized for profit or non-profit purposes that is owned or organized in whole or part by the Cherokee Nation.

(f) "Supervisor" means any individual with an employer's organization who has the authority to direct and control the work performance of the affected employee or who has authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains.

(g) "Retaliatory action" means the discharge, suspension, demotion, harassment, blacklisting or the refusal to hire an employee, or other adverse employment action taken against an employee in the terms and conditions of employment, or other actions which interfere with an employee's ability to engage in protected activity set forth in \diamond 4, as a result of the employee's engagement in a protected activity.

Section 4. Protected activity An employer shall not take any retaliatory action against an employee because the employee does any of the following:

(a) Discloses, threatens to disclose or is about to disclose to a supervisor or to a public body, an activity, policy or practice of the employer, a co-employee or another employer, that the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law

(b) Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law by the employer or another employer;

(c) Discloses, threatens to disclose or is about to disclose to a supervisor or to a public body or any law enforcement agency, an activity, policy or practice of the employer, a co- employee or another employer, that the employee reasonably believes is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment;

(d) Assists, or participates in a proceeding to enforce the provisions of this law; or

(e) Objects to, opposes or refuses to participate in any activity, policy or practice which the employee reasonably believes:

(1) is in violation of a law, or a rule or regulation promulgated pursuant to law;

(2) is fraudulent or criminal; or

(3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

Section 5. Forum.

Upon a violation of any of the provisions of this act, an aggrieved employee or former employee may, within one year, institute a civil action in the District Court of the Cherokee Nation. Upon the application of any party, a trial shall be directed to try the validity of any claim under this act specified in the suit.

Section 6. Burden of proof.

A violation of this statute has occurred only if the employee demonstrates, by a preponderance of the evidence, that any behavior described in ¶ 4 was a contributing factor in the retaliatory action alleged in the complaint by the employee. However, relief may not be ordered under ¶ 6 if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action (retaliatory action) in the absence of such behavior.

Section 7. Remedies, injunctive relief, costs and attorney's fees:

Any employee or official who alleges that "protected activity" has been violated by an employer covered under the provisions of this act may apply to the district court of the Cherokee Nation for either or both a declaratory judgment and injunctive relief to enforce the provisions. The court may order equitable relief as it considers appropriate and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists. The court shall also, where appropriate, order:

- (a) An injunction to restrain continued violation of this act;
- (b) The reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position;
- (c) The reinstatement of full fringe benefits and seniority rights;
- (d) The compensation for lost wages, benefits and other remuneration;
- (e) The payment by the employer of reasonable costs, expert witness and attorney's fees; and
- (f) Compensatory or exemplary damages.

Section 8. Posting

An employer shall conspicuously display notices of its employees' protections and obligations under this act.

Section 9. Malicious Violation of Employee Rights is a Crime Against Public Justice

Any supervisor, official or employee who maliciously retaliates or takes reprisal action against another employee or official for performance covered under "protected activities" in violation of this act is guilty of a crime.

Section 10. Preemption

Nothing in this act shall be deemed to diminish the rights, privileges, or remedies of any employee under any other federal or State law or regulation or under any collective bargaining agreement or employment contract. No employee may waive through a private contract any right set forth in this statute, except as set forth in ¶ 9, and no employee may be compelled to adjudicate his or her rights under this statute pursuant to a collective bargaining agreement or any other arbitration agreement.

Section 11. Settlement

The rights afforded employees under this statute may not be waived or modified, except through a court approved settlement agreement reached with the voluntary participation and consent of the employee and employer. An employer may not require an employee to waive, as a condition of settlement, his or her right to reasonably engage in conduct protected under ¶ 3 of this statute.

Section 12. Provisions as cumulative

The provisions of this Act shall be cumulative to existing law. Section 13. 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 14. 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 after its passage and approval.

Enacted by the Council of the Cherokee Nation on the 12th day of April, 2004.

Joe Grayson, Jr. President Council of the Cherokee Nation

ATTEST: Bill John Baker, Secretary Council of the Cherokee Nation

Approved and signed by the Principal Chief this 19th day of APRIL, 2004.

ATTEST: Callie Catcher, Secretary-Treasurer Cherokee Nation

YEAS AND NAYS AS RECORDED:

Bill John Baker	YEA	Melvina Shotpouch		YEA
Audra Smoke-Connor	YEA	Meredith Frailey	YEA	
S. Joe Crittenden	YEA	John F. Keener	YEA	
Jackie Bob Martin	YEA	Cara Cowan		YEA
Phyllis Yargee	YEA	Buel Anglen		YEA
David W. Thornton, Sr.	YEA	William G. "Bill" Johnson	YEA	
Don Garvin		YEA Charles "Chuck" Hoskin		YEA
Linda Hughes-O'Leary	YEA			