

Patterson
V Joe
A Professional Corporation
Attorney at Law



April 25, 2001

FILE

Gary Nelson
Kayenta Township Commission
P. O. Box 1088
Kayenta, Arizona 86033

Re: Contract Form and Personnel Policy

Dear Mr. Nelson:

Enclosed is the contract form for the Town Manager and the Personnel Policies and Procedure manual. Both documents have the changes requested by the Commission. Please make copies of both enclosures for each Commission member.

There is one issue that I need to alert the Commission members to be aware. When I last met with the Commission, the Commission requested that they have the option of hearing grievance appeals, appointing a hearing officer to hear the matter, resolve the matter informally, or appoint a grievance committee to hear the appeal. I do not believe we discussed what happens after the hearing officer or the grievance committee hears and decides the matter. The way I have drafted the PPP manual now is that once the hearing officer or grievance committee decides the matter, the matter is final for the KTC. Another option would be to allow the hearing officer or grievance committee to make a recommendation to the Commission and the Commission could then adopt or modify that recommendation as its final decision. Please let me know whether the current version is acceptable or whether a different version is needed.

If you have any questions, please call or write.

Sincerely,

PATTERSON V. JOE, P. C.

A handwritten signature in cursive script that reads "Patterson V. Joe".

Patterson V. Joe

Enclosures

KAYENTA TOWNSHIP OFFICE
PERSONNEL POLICIES
AND PROCEDURES

KAYENTA TOWNSHIP OFFICE
PO Box 1088
Kayenta, Arizona 86033

May 6, 2001

Personnel Policies and Procedures of Kayenta Township Office

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A. The Kayenta Township is an equal opportunity employer subject to the Navajo Nation Preference in Employment Act and the Navajo Business Preference Act. With respect thereto it is the policy of the Kayenta Township that all applications for employment will be considered; that all persons employed, including management staff, professionals, technicians, and all others, will be treated equally in the course of employment without regard to race; color; religion; sex; national origin; age or handicap. Such action includes, but is not limited to, the following: employment, promotion, demotion, transfer, layoff, terminations, recruitment, recruitment advertising, rates of pay, other forms of compensation, selection for training, and all Township sponsored social and recreational programs.

B. It is the basic responsibility of all staff to conform to both the letter and spirit of all related civil rights guidelines, including the 1968 Indian Civil Rights; the Navajo Nation Bill of Rights; and any other applicable federal or tribal law applicable thereby. It is the primary responsibility of the Township Manager (or his designee) to develop, coordinate, and monitor the equal employment opportunity programs, including the affirmative action plan for the Township. It is the responsibility of the Township manager to provide the supportive personnel function, including the maintenance of appropriate records to execute the equal employment opportunity programs.

C. Employment at Kayenta Township is subject to the Immigration Reform and Control Act of 1986. All employees are required to fully comply with each such provision thereof unless exempted therein.

D. Exempt employees are those executive, professional, administrative and certain groups of Township employees who are exempt from coverage under the Fair Labor Standards Act (FLSA). The following Township employees are considered exempt employees:

1. Town Manager
2. Consultants

E. Pay structures are different for regular or full time employees and salaried exempted employees.

F. Regular employees shall be defined as non-exempt salaried employees.

G. Full time employees shall be defined as employees who are regularly employed on a regular schedule and working at least 2000 hours or more per year.

II. Age Discrimination in Employment

A. The Age Discrimination Employment Act promotes the employment of older workers based on ability rather than age; prohibits arbitrary age discrimination in employment and helps employers and employees find ways to meet problems arising from the impact of age on employment.

B. The law protects individuals age 40 and above from age discrimination by private employers with twenty or more employees. It is against the law for an employer:

1. To refuse to hire, or to terminate, or otherwise discriminate against an individual in terms of compensation or conditions of employment due to age:

2. To limit or classify employees so that an individual is deprived of employment opportunities, or his employee status adversely affected because of age; and
3. To reduce the wage rate of any employee in order to comply with the Act.

C. The prohibition against discrimination because of age does not apply:

1. When the age is a bona fide occupational qualification reasonably necessary for the job;
2. When the differentiation is based on reasonable factors other than age;
3. When the differentiation is caused by terms of an established seniority system for benefit plans; and,
4. When the discharge or discipline of an individual is for just cause.

III. Part-Time/Temporary Employees

- A. An employee is considered a part-time employee if he or she is engaged in a position that does not require a scheduled week of at least 40 hours.
- B. Part-time employees are eligible for benefits available to regular employees following the completion of their introductory period.
- C. An employee is considered a temporary employee if he or she is engaged for a specific length of time to complete a short-term project or as a replacement for an employee who is temporarily absent. Temporary employees do not qualify for benefits available to regular employees.

IV. Travel and Entertainment

- A. The Kayenta Township (hereinafter KTC) will reimburse employees for all authorized out-of-pocket expenses. The Employee must fill out an expense form and submit it with the authorizing supervisor's written approval. It is the employee's department supervisor's responsibility to ascertain the justification for any claim for out of pocket expenses, with final approval vested in the Town Manager.
- B. Expense vouchers must be submitted within three days after the Employee incurs the expense.

V. Retirement

- A. The Kayenta Township Commission matches the contribution of the Employee's Social Security contribution, thereby sharing equally with the cost of this government required retirement program. No other or further retirement benefit or program is available as a result of any employment with the Kayenta Township Commission.

VI. Vacations/Annual/Sick Leave

- A. Regular or Full Time employees shall be entitled to annual leave or sick leave.
- B. Salaried exempt employees shall be entitled to only annual vacation.
- C. After ten (10) months of continuous employment, a regular employee is entitled to use one week annual leave (40 hours) vacation to be taken during a period mutually agreeable with the employee and their immediate supervisor.
- D. Annual leave is accumulated at the rate of four (4) hours per pay period. An employee cannot use Annual leave until he or she satisfactorily completes the probationary period
- E. Annual leave/vacation must be taken during a period mutually agreeable with the employee and their immediate supervisor.
- F. Employees of Kayenta Township are eligible for leave pursuant to the Family and Medical Leave Act of 1993.

Kayenta Township shall comply with the federal Family and Medical Leave Act of 1993. The purpose of the Act is to provide eligible employees with 12 workweeks of leave without pay for family and serious medical reasons without losing their jobs.

Eligible employees may be granted leave for the period of disability, up to a maximum of 12 work weeks of leave during any 12 month period for any of the following reasons:

- (1) The birth and care of a son or daughter of the employee;
- (2) The adoptive or foster care placement of a son or daughter with the employee;
- (3) The care for a serious health condition of a spouse, son, daughter, or parent of the employee. The son or daughter must be under the age of 18, unless incapacitated.
- (4) A serious health condition that makes the employee unable to perform his or her job function.

Employees must be employed by Kayenta Township Commission for at least 12 months and work for at least 1,250 hours during the previous 12 months to be eligible for leave under the above policy. Employees should ask the Town Manager for further assistance in determining his or her eligibility status.

For purposes of this policy, employees affected by pregnancy, child birth, or related medical conditions shall be treated the same for receipt of medical leave benefits as all other employees entitled to such benefits.

As soon as eligible employees become aware of a need for a medical leave of absence, they should request leave from their supervisor. If leave is foreseeable based on an expected birth or placement of a child, the employee is required to submit their notice 30 days prior to the first day of leave. Otherwise, the employee is required to submit such notice as soon as possible. A leave for planned medical treatment should be scheduled so as to not unduly disrupts the activities of the Kayenta Township.

A physician's statement must be provided verifying a serious health condition and its beginning and expected ending dates. Employees returning from medical leave associated with a serious health condition of the employee must provide a physician's verification of their fitness to return to work. A physician's statement may be required to verify an employee's need to care for the son, daughter, spouse, or parent and an estimate of the amount of time the employee is needed for that care.

The Supervisor may require an employee to substitute any accrued paid leave available to the employee.

- (a). For a leave associated with pregnancy, childbirth, or related conditions, the Supervisor may require employees to use any accrued paid vacation or personal leave available to the employee.
- (b). For a leave associated with other medical conditions, the Supervisor may require employees to use any accrued paid vacation or sick leave available to the employee.

Subject to the terms, conditions, and limitations of the applicable plans, Kayenta Township will continue to provide health insurance benefits for the full period of the medical leave.

Employees who sustain work-related injuries are eligible for medical leave of absence for the period of disability in accordance with all applicable laws covering occupational disabilities.

Benefit accruals, such as vacation, sick leave, or holiday benefits, will be suspended during the leave and will resume upon return to active employment. If an employee fails to report to work promptly at the end of the medical leave Kayenta Township Commission will assume that the employee has abandoned his/her position, being cause for termination as specified at XXV herein

G. Annual leave/vacations must be taken in the year earned and may not be accumulated. No leave may be carried forward into the next year of employment or otherwise accumulated or bargained.

H. Extra wage payments are not made in lieu of time off; the annual leave/vacation is without compensation only if the employee has previously exhausted his/her annual leave, and otherwise is with pay; and if such annual leave/vacation is not used in the year earned, it shall be determined forfeited without compensation or other offset, unless the employee's request for leave or vacation has been denied, then the employee is eligible for compensation in lieu of actual leave or vacation.

I. As to all regular and full time employees sick leave accumulates at the rate of four (4) hours for every thirty-(30) days of employment.

VII. Accrued Vacation Pay

A. Kayenta Township employees who resign or who are terminated are entitled to any unused vacation pay accrued to the date of termination in the same year incurred provided the employee is:

1. A regular or full time employee working a regular schedule of 40 hours per week.
 2. Has a minimum of six (6) months continuous service with Kayenta Township;
- and,
3. In the event of resignation or termination all proceeds due for cause of accrued vacation or leave shall be payable at the next effective pay roll period after the event of either termination or resignation.

VIII. Holiday Pay

A. There are nine (9) recognized days each year which are considered holidays:

1. New Years Day
2. Martin Luther King Birthday
3. Memorial Day
4. Navajo Nation Treaty Day
5. Independence Day
6. Labor Day
7. Veterans Day
8. Thanksgiving Day
9. Christmas Day

B. When a recognized holiday falls on a Saturday or Sunday, it will be observed the preceding Friday or the following Monday, respectively.

C. All employees receive regular pay on these legal holidays whether they are required to

work or not.

D. If an employee must work on a legal holiday, the employee will be compensated at the rate of time and a half.

E. If an employee would prefer compensatory time off in lieu of holiday pay, the employee must check with his or her supervisor for the regulations governing compensatory time, and receive prior written approval for such arrangement prior to the particular holiday.

IX. Workers Compensation Insurance

A. Employer carries Workers Compensation Insurance on all of its employees. This affords protection to each employee in the event of an on-the-job accident.

B. The cost of this coverage is borne entirely by Employer.

X. Unemployment Insurance

A. The employer pays one hundred percent (100%) of the unemployment insurance on all its employees.

B. Unemployment Insurance protects each employee in the event of any loss of employment for which the employee had no fault, and meet such other eligibility requirements as determined by the Department of Economic Security.

XI. Office Hours and Work Schedules

A. Employer regular business office hours are 8 AM to 5 PM Monday through Friday. All employees are to be at their duty station at 8 AM to 5 PM except during their lunch break or other approved breaks.

B. Full time employees are scheduled to work a forty-hour week.

C. Overtime, when necessary and authorized by the supervisor, will be paid after 80 hours during any single pay period, or for more than 40 hours in any single workweek consisting of a five day period.

XII. Leave of Absence

A. Only the Town Manager may grant a leave of absence, with or without pay, to full-time employees after three months of continuous employment for justifiable reasons such as jury duty, maternity, family emergencies, and/or military duty.

B. Leave shall be granted pursuant to the Family Medical Leave Act.

A leave of absence with or without pay may also be granted for all classes of employees if there is a grave illness or worse in the employees immediate family (mother/father/brother/sister/child-immediate in-law).

XIII. Deductions

A. Certain deductions, required by law, will be made from all paychecks.

B. The Employer does not guarantee the payment of any debts owing by any employee to any creditor under any circumstance.

XIV. Federal Income Tax Withholding

A. As specified by federal law the Employer is required to withhold federal income tax at specified rates from all pay to employees. Rates for such withholding are determined by salary levels and exceptions to which the employee is entitled to and as declared by the employee.

B. At the beginning of employment, an employee is asked to complete an IRS form W-4, listing his or her social security number, and the number of exemptions claimed for deduction purposes.

- C. The more exemptions claimed the less that will be deducted. The less that is deducted the more potential is that a balance will be due for tax payment at the end of the tax year.
- D. The employee is exclusively responsible for all taxes due on income taxes as may be applicable, and that liability of the KTC will be limited to the actual amount withheld.

XV. Probationary Period

- A. The first 90 days of any current employment with KTC in any one particular position is considered a probationary period.
- B. This provides the employer a chance to find out if he or she is comfortable with an employee's work and enables KTC to determine if you are suited for the responsibilities and duties for which the employee has been assigned.
- C. Upon successful completion of the introductory period an employee is eligible to receive all employee benefits for and otherwise provided for herein.
- D. Upon completion of the probationary period by part-time employees they are eligible to receive all employee benefits as provided for herein, but without contribution, matching or otherwise of the Employer, and limited to those same benefits available to regular employees only, and at their sole cost and expense by their own election except as to FICA; SUTA; Workers Compensation, which is as otherwise provided herein.

XVI. Performance Appraisals

- A. The performance of each employee of the KTC will be evaluated and reviewed every twelve months.
- B. At that time, an employee will have the opportunity to discuss with his or her supervisor their achievement and problems, if any.
- C. The Performance Appraisal interview should be an active and productive dialogue of mutual benefit to both the employee and the KTC.
- D. Based on this Performance Appraisal interview a written evaluation of employee performance will be prepared along with a statement of goals for the next twelve months. The Performance Appraisal will be prepared by the Supervisor conducting and supervising the interview and delivered to the Town Manager for final evaluation.
- E. Also based on this performance Appraisal interview a written evaluation of the supervisor will be prepared along with a statement of goals for the next twelve months. This Performance Appraisal will be prepared by the employee being interviewed by the Supervisor conducting and supervising the interview and delivered to the Town Manager for final evaluation.
- F. The Town Manager will be evaluated by the Kayenta Township Commission every six months. Upon the expiration of the Town Manager's contract, the commission will consider the option to renew or not to renew the contract.

XVII. Salary Review

- A. The Salary rate each employee of the KTC shall be reviewed annually from the date of original continuous employment.
- B. Changes in salary rates, subject to budgetary limits, are made on an individual basis dependent upon ability and performance as determined on the profitability of the business operations of Employer.
- C. Employee, either regular or full time, may from time to time have differing hours of employment. Employees may have other than a regular 40-work week. Overtime shall only be paid for hours in excess of 40-hour week only.

XVIII. Promotions

A. It is the policy of KTC to encourage advancement and to give just consideration to its employees when vacancies arise. Promotions will be made on the basis of merit, competence and service, as provided in the Navajo Preference in Employment Act.

XIX. Personal Business

A. During the hours Employees work for KTC, the Employee is not to engage in any business not directly related to the operations and business of the KTC.

B. Employees shall not use telephones, supplies, or equipment for purposes other than the purpose of business activities of KTC without specific approval of their immediate supervisor.

C. Employees are expected to conduct themselves with appropriate discretion and to not conduct personal business during office and/or business hours.

D. If personal telephone calls are necessary during working hours, they should be kept short, and to a minimum. Any personal long distance calls must be charged to appropriate billing other than to the Employer.

XX. Visitors

A. KTC welcome visitors during regular office hours, however, such visitation dictates the following restrictions.

1. All visitors shall remain in the reception area until the person they have come to see is available.

2. No visitor shall be allowed to move about the township office unescorted.

XXI. Housekeeping

A. Since many visitors and clients come into the primary places of business of the employer on a daily basis it is important to keep the facilities in a neat and attractive appearance. All employees shall secure their work areas before leaving for the day. All computers; typewriters; copier; other electronic equipment, excepting equipment in continuous use, are to be covered with appropriate dust covers; and all materials returned to their appropriate places, including filing and/or storage of working materials.

XXII. The Telephone

A. The most common professional link between the public and the Employer is the telephone. When any employee answers the telephone that employee represents the KTC. Therefore each employee is expected to be:

1. Prompt in answering any incoming call;
2. Courteous and Respectful - Yes Sir/No Sir; Yes Ma'am; No Ma'am; etc.
3. Identify self and their department at the outset;
4. interested and attentive in the inquiry of the caller;
5. and helpful to the needs of the caller.

B. An employee is to use their best judgment in indicating the whereabouts of an absent person. Sometimes the stock replies of "Mr. Yazzie is not in his office at the present ...or...Mr. Yazzie is out of town..." can be abrupt and unconvincing--particularly if you know the caller or whom he or she represents, and you may prefer, and it would be better, to respond to the effect that "Mr. Yazzie is attending a meeting of the Economic Development Committee, and he will be back on Thursday. May I help you, or may I take a message."

C. If an employee can't help the caller, he or she should determine whether or not someone else can;

D. An employee should offer to personally take a message if no one else can be of help to the caller. An employee must be accurate, and always indicate the time and date of the message along with the caller's name and any comments or messages conveyed;

E. An employee must keep a record of any long distance calls made or received collect if collect calls are authorized;

F. Employees must not release home phone numbers without prior consent of the individual;

G. Any complaints regarding Township business should be referred to the Town Manager.

H. In dealing with one's own staff, clients, and the public, KTC encourages that all employees of KTC be cordial, courteous, and helpful.

XXIII. Grievances

A. **Policy.** It is the policy of the Kayenta Township Commission that any employment shall be construed in accord with the statutory laws of the Navajo Nation as herein set forth. If authorized, any suit against KTC shall be made before the Navajo Nation Courts that shall have sole and exclusive jurisdiction over any disputes arising hereunder or herein. Any employee aggrieved over any decision regarding employment must first exhaust the administrative grievance process and remedies provided herein prior to the seeking of administrative or judicial relief otherwise. Should any Employee have a problem connected with their work, they should discuss it with their supervisor. If he or she is dissatisfied with the results, the employee should bring the grievance to the Town Manager. If the employee is dissatisfied with the results at that point, the employee should bring the grievance to the Kayenta Township Commissions. Employees are assured of a fair hearing and a complete discussion of any complaint.

B. **Grievance Procedure.** The following steps shall constitute the procedure to be followed for grievances brought by employees of KTC. This procedure is not limited to grievances brought by an employee who wishes to contest or appeal any personnel action taken against them. The grievance procedures are intended as a means to safeguard employee's interest and employment and to protect an employee against arbitrary acts by a supervisor. When an employee seeks to lodge a complaint about a personnel action, the actions of other employees, or working conditions, the employee should file the complaint with his or her supervisor, then the Town Manager, and if still not satisfied with the results, the employee may request a review by the Commission. The following procedures will apply to all such employee grievances:

1. Presentation by an employee of a written grievance statement to the employee's immediate supervisor. The statement shall be submitted no later than three working days after the employee is notified in writing of the personnel action giving rise to the grievance. Any grievance submitted to anyone else other than the immediate supervisor will be automatically rejected and returned to the employee and may be grounds for appropriate disciplinary action.

2. Upon receipt of the employee's grievance the supervisor shall convene a meeting with the employee. The meeting shall be conducted and a written decision will be issued upon completion of the meeting and no later than three working days after receiving the grievance statement. The supervisor shall submit the written decision to the employee and the Town Manger.

- D. An employee should offer to personally take a message if no one else can be of help to the caller. An employee must be accurate, and always indicate the time and date of the message along with the caller's name and any comments or messages conveyed;
- E. An employee must keep a record of any long distance calls made or received collect if collect calls are authorized;
- F. Employees must not release home phone numbers without prior consent of the individual;
- G. Any complaints regarding Township business should be referred to the Town Manager.
- H. In dealing with one's own staff, clients, and the public, KTC encourages that all employees of KTC be cordial, courteous, and helpful.

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2. Upon receipt of the employee's grievance the supervisor shall convene a meeting with the employee. The meeting shall be conducted and a written decision will be issued upon completion of the meeting and no later than three working days after receiving the grievance statement. The supervisor shall submit the written decision to the employee and the Town Manger.

3. If the employee is dissatisfied with the decision of the supervisor, the employee may appeal the decision by submitting a written appeal to the Town Manager. Such grievance appeal shall be made no later than three working days after the employee receives the supervisor's decision. If the Town Manager is the immediate supervisor for the grieving employee, the employee may proceed directly to five below and appeal to the Commission.

4. Upon receipt of the appeal, the Town Manger shall convene a meeting with the aggrieved employee. The employee has the right to request that the immediate supervisor not be present at such a meeting. The decision to exclude the immediate supervisor shall be exclusively at the discretion of the Town Manager. The Town Manager shall make a decision in writing and submit it to the employee, the employee's immediate supervisor and the Commissions. The employee meeting with the Town Manager shall be conducted and a decision will be issued no later than three working days after the Town Manager's receipt of the appeal, unless the meeting is postponed for good cause and then no later than ten days.

This is an administrative review process, not a trial and does not require an in person defense by the supervisor for any action taken. This does not also bar taking the information of the immediate supervisor in a different setting. For example, it would be extremely difficult to raise an issue of sexual misconduct or harassment by the immediate supervisor if alleged by an employee were the supervisor to be present. Again, discretion is the guide.

5. The employee shall have the right to appeal the Town Manager's decision further to the Kayenta Town Commission for final action. Upon receipt of the employee's written appeal, the Commission shall review the employee's file and the Town Manager's decision. The Commission may then agree to hear the matter itself at a formal hearing as set forth below, appoint an independent Hearing Officer to hear the matter, resolve the matter informally with the employee, or appoint a three member grievance committee that consists of one Commission member and two other KTC employees (one shall be selected by the employee and the other to be selected by the Town Manger). If the Commission chooses to employ the services of a Hearing Officer, such Hearing Officer shall be an impartial and unbiased duly sworn Court Commissioner drawn from the Commissioner Pool of any judicial district of the Navajo Nation or other appropriate member of the Navajo Nation Bar Association. The fees associated with the services of the Hearing Officer shall be shared equally between the Aggrieved Employee and KTC.

6. In the event that an appeal is made to the Commission, the employee shall deliver his or her appeal in writing to the Kayenta Township Commission no later than three working days after receiving the Town Manager's decision. Both sides shall be provided opportunities to state their case. Upon completion of the meeting or hearing, the Commissions, Independent Hearing Officer, or Grievance Committee shall go into executive session, reach a decision, and issue within five working days a written form of the decision to the Town Manager, the employee, and the employee's personnel file. The decision of the Commission, Independent Hearing Officer, or Grievance Committee shall be final.

C. Hearing Procedures. All hearings in the Grievance Process shall be conducted before the Commission, a Grievance Committee, or an independent Hearing Officer ("Hearing Tribunal") and shall be recorded by regular or audio/video equipment for preservation of the hearing record.

1. The proceedings will commence with the Introduction of the proceedings by the the Hearing Tribunal. The Hearing Tribunal shall conduct the Grievance Hearing by the following procedure.

2. A list of proposed witnesses and exhibits shall be provided to the Hearing Tribunal and the other party no later than two full workdays before the hearing date. Such witnesses, if they are employees of the KTC, shall be made available for the proceedings by the KTC. Any other witnesses will be the responsibility of the party seeking their appearance to insure their appearance. The list will indicate the name of the witness or exhibit, and the scope and content of the anticipated testimony of the witness or exhibit for each witness or exhibit.

3. A continuance of the Proceedings may be granted for good cause. In the event of any continuance of any proceeding before any Hearing Officer where such Hearing Officer has appeared for the scheduled hearing, the party seeking a continuance shall be solely responsible for any costs of appearance of the said Hearing Officer for that continued hearing.

4. If the proceedings are to commence, the Hearing Tribunal shall initiate the proceedings. The parties shall introduce their witnesses. The Hearing Tribunal will place all the witnesses under oath to tell the truth in the said proceedings, including the Initiating and Aggrieved Employee, and thereafter the witness(es), but for the initiating employee and the aggrieved employee, will be excused from the hearing room. The witnesses will be admonished not to discuss their testimony before the Hearing Tribunal among themselves or with others, nor allow others to discuss such matters with them. Employees will be excused to their work places until their testimony is requested. All other witnesses will be excused to beyond the range of hearing of any testimony being taken by the Hearing Tribunal.

5. The Initiating Employee shall provide his or her Opening Statement as to the Matter Aggrieved

6. The Aggrieved Employees shall provide his or her Opening Statement as to the Matter Aggrieved

7. The Initiating Employee shall have the Burden of Proof to prove the just cause of the Matter Aggrieved and shall to that end be allowed to provide testimony of him/herself, or any other witness having relevant information to the subject matter aggrieved, and to present documentary and other physical evidence as to the matter aggrieved as may be available, and not subject to reasonable question as to authenticity or accuracy. The hearing procedure for the Initiating Employee shall be as follows:

- (a). The Initiating Employee shall call his or her witness(es) in the sequence stated in the List of Witnesses provided. Such witnesses shall have been previously placed under oath to tell the truth.
- (b). Direct Examination of Witnesses - Shall be conducted by the Initiating Employee
- (c). Cross-Examination of Witnesses - Shall be conducted by the Aggrieved Employee.
- (e). Redirect Examination of Witness - Shall be conducted by the Initiating Party followed by Re - Cross by the Aggrieved Employee if appropriate.
- (f). The Commission or Hearing Officer may ask their own questions at any point in the proceedings without interruption by the party employees or other participants

to the proceedings.

8. The Aggrieved Party shall have the duty to go forward in defense to the Matter Aggrieved to demonstrate the lack of just cause of the Matter Aggrieved, and shall to that end be allowed to provide testimony of him/herself, or any other witness(es) having relevant information to the subject matter aggrieved, and to present documentary and other physical evidence as to the matter aggrieved as may be available, and not subject to reasonable question as to authenticity or accuracy

9. The Aggrieved Employee shall call his or her witnesses in the sequence stated in the List of Witnesses provided. Such witnesses shall have been previously placed under oath to tell the truth. The hearing procedure for the Aggrieved Employee shall be as follows:

- (a). The Aggrieved Employee shall call his or her witness(es) in the sequence stated in the List of Witnesses provided. Such witnesses shall have been previously placed under oath to tell the truth.
- (b). Direct Examination of Witnesses - by the Aggrieved Employee
- (c). Cross Examination of Witnesses - by the Initiating Employee
- (d). Redirect Examination of Witnesses - by Aggrieved Employee with Re-Cross by Initiating Employee if appropriate.
- (e). The Hearing Tribunal may ask their own questions at any point in the proceedings without interruption by the party employees or other participants to the proceedings.

10. After the conclusion of testimony and the introduction of all exhibits, the Initiating Employee shall provide his or her Closing Statement followed by the Closing Statement of the Aggrieved Employee.

11. Following the taking of Testimony and after having received the evidence presented, and after the closing arguments of the party employees, the Hearing Tribunal may adjourn the proceedings. Thereafter, the Hearing Tribunal shall consider the testimony and evidence before it for the purposes of preparing a written decision, or in the alternative may issue an oral determination at the conclusion of the proceedings followed by the written decision within five working days.

D. **Legal Representation.** Either party may be represented by legal counsel licensed by the Navajo Nation Bar Association and in good standing to practice law within the territorial jurisdiction of the Navajo Nation. KTC will not be represented by counsel unless the Aggrieved Employee is represented by counsel, and then only at the election of KTC and not automatically, and the KTC shall otherwise be represented by the Initiating Employee.

XXIV. Nature of Employment

- A. A probationary period is a training and getting acquainted period. At any time during the course of the probationary period if it appears that the employment of the employee is not beneficial to both parties, then the employer has the right to terminate the employee at any time without just cause.
- B. Completion of the probationary period does not entitle the employee to any right of

continued employment.

C. At any time in the course of the employment of the employee following completion of the probationary period, if it appears to either the Employee or the Employer, that the employment of the employee is not beneficial to both parties, then either employee may resign or the employer has the right to terminate the employee at any time for just cause.

D. The contents of this policy are presented as a matter of information only. The contents do not describe condition of employment nor does this policy constitute a contract for employment.

E. None of the benefits or policies entitle an employee to be or remain employed by the KTC.

F. Except for the Town Manager and consultants who may agree by contract to do otherwise, each employee, by attesting to having received and reviewed these personnel policies and procedures, and by their attesting thereto, agree that their employment can be terminated at any time with just cause, and with prior written notice from the KTC.

XXV. EMPLOYEE DISCIPLINE

A. SEXUAL HARASSMENT

1. It is the policy of the Commission to provide a working environment free of sexual harassment in any form.

(a). It is against the policies of the Commission for any employee or Commissioner, male or female, to subject any employee to sexual harassment.

(b). "Sexual harassment" as used herein includes the following conduct:

(1). Making unwelcome sexual advances, requests for sexual favors or other visual, verbal or physical conduct of a sexual nature, a condition of an employee's employment, or

(2). making submission to or rejections of such conduct the basis for employment decisions affecting the employee, or

(3). harassment which has the purpose of unreasonably interfering with the employee's work performance or creating an intimidating, hostile, or offensive working environment.

(c) Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is not welcomed, that is personally offensive, that fails to respect the rights of others, that lowers morale, and that therefore, interferes with work effectiveness.

(d) Sexual harassment may take different forms. One specific form is the demand for sexual favors. Other forms of harassment include:

(1) Verbal: Sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, threat, and insults.

(2) Non-Verbal: Sexually suggestive objects or pictures, derogatory posters, cartoons or drawings, graphic commentaries, suggestive or

- insulting sounds, leering, whistling, obscene gestures.
- (3). Physical: Unwanted physical contact, including touching, pinching, brushing the body, coerced sexual intercourse, assault.
 - (4). Other: Making or threatening reprisals as a result of a negative response to sexual harassment.
- (e) Sexual harassment may be overt or subtle. Some behavior that is appropriate in a social setting may not be appropriate in the workplace. But whatever form it takes, verbal, non-verbal or physical, sexual harassment can be insulting and demeaning to the recipient or other employees and cannot be tolerated in the workplace.
 - (f) Sexual harassment by an employee, manager, supervisor, Commissioner or non-employee will not be tolerated. All employees, managers and non-supervisors alike, are expected to comply with this policy and take appropriate measures to ensure that such conduct does not occur.
 - (g) Appropriate disciplinary action will be taken against any employee who violates this policy against sexual harassment.
 - (h) Any employee who believes he or she has been the subject of sexual harassment should report the alleged act immediately to his or her supervisor, manager, the Human Resources Manager or to the Town Manager. If the allegation involves the Town Manager, the employee shall report the incident or incidents to the Commission. Employees may not allow an inappropriate situation to continue by not reporting it, regardless of who is creating that situation. No employee is exempt from this policy.
 - (i). All complaints will be handled in a timely and confidential manner, although confidentiality cannot be guaranteed. In no event will the Commission release information concerning a complaint to third parties nor will anyone within the Commission office who is not involved be permitted to discuss the subject outside the investigation. The purpose of this provision is to protect the confidentiality of the employee who files a complaint, to encourage the reporting of any incidents of sexual harassment, and to protect the reputation of any employee wrongfully charged with sexual harassment.
 - (j). In response to every complaint, the Commission or Town Manager will take prompt investigatory action, and the corrective and preventative actions where necessary. Employees who in good faith bring complaints to the attention of the Commission or Town Manager and/or participate in investigations regarding such complaints will not be retaliated against in any way.

2. Sexual Harassment Notice: The following notice shall be posted in the Commission's work places in a prominent place.

a. Sexual Harassment in any form will not be tolerated at the Kayenta Township Commission. Every individual is entitled to a working environment that is neither threatening nor hostile to that individual.

b. In case any employee believes sexual harassment has taken place, the employee is to immediately report the situation to his or her immediate supervisor, the Human Resources Manager, the Town Manager, or the Commission. Such reports will be processed in an expedient confidential manner.

B. DISCIPLINARY ACTION

1. Employees are subject to disciplinary action for unsatisfactory job performance, misconduct, and violation of the law or personnel policies, safety, and drug and alcohol testing policies. The immediate supervisor or Town Manager shall conduct a thorough investigation of all the aggravating or mitigating factors to determine the level of disciplinary action. The investigation shall include an interview with the employee, at which time the employee shall be given the opportunity to provide an explanation and identify favorable evidence and witnesses.

2. The Table of Penalties shall guide disciplinary action, however, more severe penalties may be imposed where warranted.

3. Notice of disciplinary action should be hand delivered whenever practical or sent by certified mail. Notice by certified mail shall be effective upon delivery of notice by the U.S. Postal Service.

4. Contents of Disciplinary Notice. The disciplinary notice shall be in writing, directed to the employee, and shall contain:

(a). An appropriate identification of the party, including position title, and department.

(b). The date(s) on which the unsatisfactory performance, violation or misconduct occurred, or where such acts are of a continuing nature and are the basis for the disciplinary action, and the period of time when the acts occurred.

(c). If referenced in the Table of Penalties, specify the nature of the misconduct committed and the applicable penalty.

(d). A clear and concise statement of the facts supporting the disciplinary notice, including witnesses interviewed, documents reviewed, and the applicable provisions of the personnel policy, safety manual, drug and alcohol testing policies and procedures, or laws violated, and whether the misconduct is simple, serious, or aggravated as defined herein.

(e). A clear and concise statement of the disciplinary action or penalty imposed, using the Table of Penalties as a guide, and including a statement of the mitigating and aggravating circumstances supporting such action.

(f). An explanation of the employee's right to appeal the disciplinary action pursuant to XXIII B, Grievance Procedure.

(g). In addition to imposing a penalty for misconduct, a supervisor may impose

disciplinary probation.

C. DISCIPLINARY DISCHARGE

1. Any employee is subject to disciplinary discharge by his or her immediate supervisor, or the Town Manager.

2. The Commission recognizes that there are certain types of employee misconduct that are serious enough to justify termination of employment based on a single violation. A supervisor shall notify the employee in writing, of the discharge and the specific reasons for discharge and shall include the requirements of XXV B, Disciplinary Action.

3. Employees discharged for misconduct shall not be eligible for re-employment for at least three years.

D. INVESTIGATIVE RELIEF OF DUTY

1. An immediate supervisor may place an employee on Relief of Duty with pay to investigate alleged misconduct sufficiently serious to bar an employee from the premises to protect persons or KTC resources. Such relief exceeding ten (10) working days must be supported by a written recommendation of the supervisor and approved by the Town Manager.

2. Immediate written notice shall be given to the employee of relief of duty, its duration, and specific reasons therefore. The employee shall be required to leave the premises immediately. Prior to placing an employee on relief of duty for investigative purposes, the supervisor shall meet with the employee to discuss the reasons for and scope of the investigation.

3. Upon conclusion of the investigation or the end of the relief period (whichever occurs first), and if no disciplinary action is taken, the employee shall be allowed to return to work.

4. Where disciplinary action is deemed necessary, it shall be taken in conformance with the appropriate provisions of XXV B, Disciplinary Action.

E. GUIDANCE FOR USE OF TABLE OF PENALTIES

1. The Table of Penalties is a listing of standard penalties for some of the most frequently committed violations. The Table is intended to be used to determine appropriate penalties for misconduct and to assure consistency of penalties for like violations. The Nature of Misconduct section sets forth general category of violations and is not intended neither to be all-inclusive nor to address every disciplinary situation.

2. The Table does not preclude exercise of supervisory judgement in imposing penalties for misconduct, as mitigating or aggravating circumstances may warrant lesser or more severe penalties than called for in the Table, however, deviation from the standard penalty will require written justification. Violations need not be identical in order to support progressively

more severe disciplinary action. For example, an employee who has received a warning for unauthorized absence can receive a reprimand for sleeping on duty, and possibly be suspended or removed for a third violation unrelated to the two previous violations. Likewise, when a combination or series of violations have been committed, a greater penalty than is listed for a single violation is appropriate.

3. The Table lists only formal disciplinary actions (i.e., those, which become a matter of record in the employee's official personnel folder). Oral warnings, counseling letters, and similar actions are considered informal disciplinary actions that may be more appropriate for correcting minor violations. Although oral or written counseling are not considered disciplinary actions, such counseling may be considered when assessing the appropriate penalty for a particular offense.

4. The Table does not cover all violations for which disciplinary penalties may be imposed. Removal action will be taken whenever required by law or regulation or whenever warranted by the facts in the individual case. Normally, progressively more severe penalties will be administered, unless the aggravating circumstances warrant immediate termination.

5. To determine mitigating circumstances, a supervisor shall consider the employee's excellent work performance, recognition for outstanding work, contributions to the KTC, lack of disciplinary record, degree of fault of the employee, willingness of the employee to accept responsibility for the misconduct, and other similar factors favorable to the employee.

6. To determine aggravating circumstances, a supervisor shall consider the employee's work performance, prior misconduct, injury or property damage resulting from misconduct, exposure of the KTC to liability, affect on morale of employees, breach of ethical responsibilities, whether the misconduct is unlawful, and other factors making misconduct more injurious to the KTC. As an example, willful misconduct or intent to harm another are aggravating circumstances that will require consideration of the maximum penalty.

F. TABLE OF PENALTIES

<u>NATURE OF MISCONDUCT</u>	<u>DEGREE OF MISCONDUCT</u>		
	<u>SIMPLE</u>	<u>SERIOUS</u>	<u>AGGRAVATED</u>
1. Unexcused tardiness, absence; leaving the job to which assigned during work hours without permission or before the end of duty.	Written Reprimand	5 Day Suspension	Termination
2. Misuse of leave; failure to request leave in advance; excessive unscheduled absences; failure to provide acceptable medical certification to justify medical leave requests.	Written Reprimand	5 Day Suspension	Termination
3. Loafing, willful idleness, waste of time; taking excessive long breaks.	Written Reprimand	5 Day Suspension	Termination

<u>NATURE OF MISCONDUCT</u>	<u>SIMPLE</u>	<u>SERIOUS</u>	<u>AGGRAVATED</u>
4. Unprofessional or discourteous conduct toward supervisors, workers or the public; Use of foul language; angry outbursts; disrespectful comments; provoking quarrels; inappropriate remarks; use of abusive language or offensive language; quarreling or inciting to quarrel.	Written Reprimand	5 Day Suspension	Termination
5. Insubordination, refusal to comply with proper orders or disregard of directives or regulations. Refusing to do assigned work; failure to do assigned work; carelessness in performing assigned work.	Written Reprimand	10 Day Suspension	Termination
6. Physical fighting, threatening bodily harm, physical resistance to responsible authority; creating a disturbance, engaging in dangerous horseplay.	Written Reprimand	10 Day Suspension	Termination
7. Reporting for duty or being on duty while under the influence of alcohol or drugs; consumption of alcohol while on duty.	Not Applicable	10 Day Suspension	Termination
8. Sale or transfer of drugs, alcohol or other controlled substances on Commission premises or during duty hours.	Not Applicable	Not Applicable	Termination
9. Violation of the Commission's Drug Free Workplace Policy including possession or use of illegal drugs, positive drug or alcohol test results, refusal to cooperate, falsifying or tampering with specimen for drug testing, or other violations of the Drug and Alcohol Testing Policies and Procedures.	Not Applicable	10 Day Suspension	Termination
10. Damaging or destroying Commission property including, but not limited to, computers, facsimile machines, telephones, copying machines, tools, desks, office furniture, lights, vehicles; misusing such Commission property.	Written Reprimand	5 Day Suspension	Termination
11. Using a Commission vehicle, including automobiles, boats, snow machines, heavy equipment, etc., for personal business or unauthorized purposes.	Written Reprimand	10 Day Suspension	Termination
12. Failure to comply with environmental, health & safety rules and regulations.	5 Day Suspension	15 Day Suspension	Termination
13. Failure to observe safety rules, signs or practices, including failure to use safety equipment such as seat belts, eye protection devices, hard hats,	5 Day Suspension	15 Day Suspension	Termination

<u>NATURE OF MISCONDUCT</u>	<u>SIMPLE</u>	<u>SERIOUS</u>	<u>AGGRAVATED</u>
protective hearing devices and failure to report personal injury or accident.			
14. Putting oneself or others at risk through careless use of Commission equipment such as machine tools, printing equipment, motor vehicles, safety equipment, or other devices.	Not Applicable	15 Day Suspension	Termination
15. Violating traffic regulations or Reckless driving; or improper operation of a motor vehicle.	Written Reprimand	5 Day Suspension	Termination
16. Taking Commission equipment; taking Commission funds; using a co-worker's personal property without permission; taking money from another; stealing; improper acceptance of reimbursement for such things as per diem, mileage and airplane tickets; using a Commission credit card for personal purchases.	Written Reprimand	10 Day Suspension	Termination
17. Sexual Harassment.	Written Reprimand	10 Day Suspension	Termination
18. Making irresponsible or disrespectful statements against other employees, supervisors, other officials or subordinates.	Written Reprimand	10 Day Suspension	Termination
19. Violations of ethic rules and statutes; accepting gifts or gratuities from individuals or firms doing business with or having contractual relations with the KTC.	Written Reprimand	10 Day Suspension	Termination
20. Violations of Navajo Nation and Federal criminal statutes, (where there is a connection between the employee's criminal activity, personal performance of the efficiency of Commission operations).	Not Applicable	Not Applicable	Termination
21. Falsification, misrepresentation, or concealment of material fact in connection with work, or in any record or investigation or other proper proceeding, including financial records, travel vouchers, time and attendance records.	5 Day Suspension	10 Day Suspension	Termination
22. Falsification, misrepresentation or omission of fact in connection with application for employment or other personal history record:			
(a) With respect to a material fact or point which would have		10 Day Suspension	Termination

NATURE OF MISCONDUCT	SIMPLE	SERIOUS	AGGRAVATED
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adversely affected selection for appointment.

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| (b) With respect to a less important fact or point which would not have adversely affected selection for appointment. | Written Reprimand | 5 Day Suspension | Termination |
| 23. Failure to safeguard confidential information; disclosing information obtained as a result of employment with the Commission, which is of a confidential nature or which represents a matter of trust; or any other information so obtained that is of such character its disclosure or use would be contrary or harmful to the best interest of the Commission, or the customers being served by it. | 5 Day Suspension | 10 Day Suspension | Termination |
| 24. Failure to respond or cooperate with investigations, or other administrative inquiries; failure to provide requested documents. | Written Reprimand | 5 Day Suspension | Termination |
| 25. Off duty misconduct such that the Employee is unable to fulfill his or her job responsibilities; Off-duty misconduct of such significance that there is adverse affect on the Commission. | Written Reprimand | 10 Day Suspension | Termination |
| 26. Promotion of, participation in, or assistance in operation of organized gambling on duty or on Commission premises. | Written Reprimand | 5 Day Suspension | Termination |
| 27. Neglect of Duty, Failure to complete Performance Evaluations, Unsatisfactory work performance as determined on performance evaluation or otherwise. | Written Reprimand | 10 Day Suspension | Demotion or Termination |
| 28. Maintaining outside employment or business without proper approval. | Written Reprimand | 5 Day Suspension | Termination |
| 29. Concealing, removing, mutilating, obliterating, or destroying Commission records or documents without authorization. | Written Reprimand | 5 Day Suspension | Termination |
| 30. Job Abandonment. | Not Applicable | Not Applicable | Termination |
| 31. Creating discord among fellow employees leading to decreased productivity or a hostile working environment. | Written Reprimand | 10 Day Suspension | Termination |

<u>NATURE OF MISCONDUCT</u>	<u>SIMPLE</u>	<u>SERIOUS</u>	<u>AGGRAVATED</u>
32. Failure to report or maintain valid licensure and/or certifications including notification of traffic offenses or convictions.	Written Reprimand	5 Day Suspension	Termination
33. Failure to comply with or enforce any policy.	Written Reprimand	Up to 15 Day Suspension	Termination
34. Failure to respond to a customer service request while on regular duty.	5 Day Suspension	15 Days Suspension	Termination
35. Failure to comply with computer, e-mail, and communication device policy	Written Reprimand	10 Day Suspension	Termination

XXVI. Navajo Preference in Employment Act Compliance

- A. KTC shall give preference in all employment opportunities to qualified enrolled members of the Navajo Nation Tribe of Indians; Non-Navajos married to members of the Navajo Nation; Non-Navajo Indians, and Non-Indians in that order.
- B. KTC shall include and specify Navajo employment preference in all job announcements and advertisements, and in these Personnel Policies and Procedures.
- C. That these Personnel Policies and Procedures shall be conspicuously and noticeably posted and made available to each Employee individually.
- D. KTC shall utilize any available Navajo Nation employment sources and job services for employee recruitment and referrals if recruitment is not acquired from within the existing employee structure of the Employer.
- E. KTC shall advertise and announce all job vacancies in at least one newspaper and radio station of general circulation serving the Navajo Nation if recruitment is not acquired from within the existing employee structure of the KTC.
- F. KTC shall not penalize, discipline, discharge, nor take any adverse action against any Navajo employee without just cause as specifically set forth in these Personnel Policies and Procedures. A written notification to the employee citing such cause for any of the above action shall be hand delivered to the Employee if the Employee is immediately available, or mailed to the Employee at the last known address of the Employee by Certified Mail/Return Receipt Request. The delivery of the same shall be affected either on the refusal of the Employee to retrieve the mail, or upon the notice of the U.S. Postal Service confirming service. Nothing contained herein shall negate the premise that the Employee is subject to discharge from employment at any time for just cause.
- G. Each employee shall maintain their respective work area in an environment free of hazard, and shall be properly cleaned and maintained as for the purposes intended.
- H. Each employee shall contribute to a working environment and condition which is free of prejudice, intimidation and harassment, in any form or fashion.

I. All employees shall participate in regular and special training as determined appropriate by the KTC.

J. The employer shall provide, and the Employees shall each participate and assist in the implementation of, for instances of having Non-Navajo employee(s), a cross cultural program as required by law, and shall focus on the education of non-Navajo employees, including managers and supervisory personnel, in the following areas of concentration

1. Cultural and religious traditions or beliefs of Navajo and their relationship to the development of employment policies which accommodate such traditions and beliefs.

2. The cross cultural program shall be developed and implemented through a process which involves substantial and continuing participation of the Navajo employees, or representative Navajo employees of the KTC.

K. The Employer, in the event of implementation of any insurance policy for its Employees, will not implement any insurance policy coverage for and on behalf of the Employees that will discriminate against employees who are members of the Navajo Nation, or spouses, or other tribes of Indians. The insurance policy coverage shall include coverage for Navajo and other tribal cultural or religious traditions or beliefs such as the use of the services of medicine people, or associated traditional and cultural services.

L. In any situation of employment, where a Navajo applicant, or Non-Navajo spouse, demonstrates the necessary qualifications for employment, the qualified Navajo applicant, or Non-Navajo spouse, will be selected in the case of hiring, promotion, transfer, upgrading, recall and other employment opportunities with respect to such position.

M. The Employer, in the event of a reduction-in-force affecting any particular class of positions, any Employee who is an enrolled member of the Navajo Nation, or Non-Navajo spouse, shall have priority in position until all non-Navajos employed in that class of positions are laid off. Any Employee who is an enrolled member of the Navajo Nation, or a Non-Navajo spouse who is laid off in compliance with this provision shall have the right to displace a non-Navajo in any other employment position for which the Navajo, or Non-Navajo spouse employee demonstrates the necessary qualifications for.

N. In the event that an applicant pool for any available position or promotion sought to be filled by the KTC is composed exclusively of enrolled members of the Navajo Nation or Non-Navajos married to enrolled members of the Navajo Nation, selection shall be made on the terms of the most qualified candidate for any such position or promotion from such pool.

O. The KTC shall maintain and update annually or as otherwise appropriate to the operations of the Township, the necessary written qualification requirements for each employment position in the work force of the KTC. A copy of any such qualifications shall be provided to any applicant for any such positions as it may occur to be vacant or otherwise subject to hiring or promotion.

P. All applicable work practices shall conform to occupational and safety and health standards imposed by applicable law.