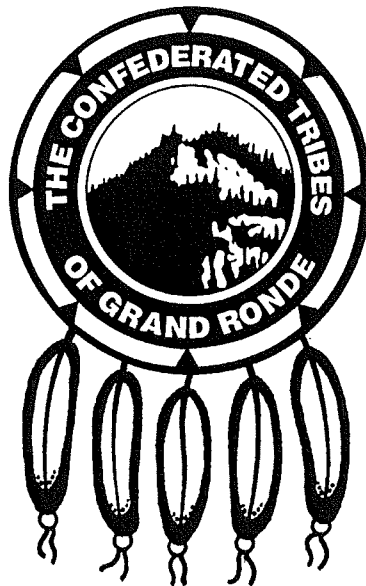


# TRIBAL COURT

## CONFEDERATED TRIBES OF GRAND RONDE EMPLOYMENT ACTION



*These instructions, information and forms are not a complete statement of the law. The Court assumes no responsibility and accepts no liability for actions taken by users of these documents, including reliance on their contents. For legal information, please talk to a lawyer, or visit your local law library.*

**THE CONFEDERATED TRIBES OF THE GRAND RONDE  
COMMUNITY OF OREGON**

**TRIBAL COURT**

**EMPLOYMENT ACTION**

Enclosed are the instructions and forms to contest an employment action in Tribal Court. Read the instructions and the Tribe's Employment Action Review Ordinance carefully to identify what is required. If you have any questions you should contact the **Tribal Court Clerk at (503) 879-2303**.

It is highly recommended that you make copies of the blank forms to assemble the information needed. Once you have all your information, prepare the final documents for filing with the Court.

Contents of Packet:

1. Instructions
2. Forms
  - a. COMPLAINT (FORM 1)
  - b. EXHIBIT "A" – DETAILS OF ACTIONS AND EVENTS (FORM 2)
  - c. EXHIBIT "B" – DETAILED DESCRIPTION OF RELIEF SOUGHT (FORM 3)
  - d. PROOF OF SERVICE [GM OR CEO] (FORM 4)
  - e. PROOF OF SERVICE [TRIBAL ATTORNEYS OFFICE] (FORM 5)
  - f. NOTICE OF DISMISSAL (FORM 6)
3. Tribe's Employment Action Review Ordinance

**IN THE TRIBAL COURT OF THE CONFEDERATED TRIBES OF THE  
GRAND RONDE COMMUNITY OF OREGON**

**FORMS AND INSTRUCTIONS FOR EMPLOYMENT ACTIONS  
(TRIBAL EMPLOYMENT ACTION REVIEW ORDINANCE)**

**WHO CAN FILE AN EMPLOYMENT CASE IN TRIBAL COURT:**

An employee of the Tribe (including any agency or instrumentality of the Tribe such as Spirit Mountain Casino) whether full-time, part-time, temporary, on-call, regular, introduction, or otherwise, who believes they have been subjected to a Wrongful Employment Action may file a written complaint in the Court in accordance with the Employment Action Review Ordinance.

It is important to become familiar with the all the definitions set out in the Employment Action Review Ordinance, specifically “Wrongful Employment Action” and “Final Employment Decision” prior to completing the forms.

**SUMMARY OF PROCESS FOR AN EMPLOYMENT ACTION IN COURT:**

- (1) Employee files Complaint and serves copy of the complaint with all proper parties.
- (2) Within 30 days after being served with the Complaint, the Tribal Attorney’s Office on behalf of the Tribe or Casino files an answer to the complaint or a motion to dismiss the complaint.
  - a. If an answer was filed, the case will be assigned to mediation.
    - i. If mediation is successful, the employee must file a notice of dismissal with the Court.
    - ii. If mediation is not successful, the Court will schedule a pre-hearing conference and the matter will proceed to trial.
  - b. If a Motion to Dismiss was filed, the Employee will have an opportunity to file a response and argue why the case should not be dismissed.
    - i. If the Motion is granted, the matter will be dismissed.
    - ii. If the Motion is denied, the Tribal Attorney’s Office will be directed to file an Answer and the case will proceed as stated above in (2)(a).

**FILING DEADLINES:**

A complaint under the Tribe’s Employment Action Review Ordinance must be filed with the Court within thirty (30) days of the date of the alleged Wrongful Employment Action.

## **FORMS IN PACKET:**

- |   |          |
|---|----------|
| (1) COMPLAINT   | (FORM 1) |
| (2) EXHIBIT "A" DETAILS OF ACTIONS AND EVENTS         | (FORM 2) |
| (3) EXHIBIT "B" DETAILED DESCRIPTION OF RELIEF SOUGHT | (FORM 3) |
| (4) PROOF OF SERVICE (GM OR CEO)                      | (FORM 4) |
| (5) PROOF OF SERVICE (TRIBAL ATTORNEY)                | (FORM 5) |
| (6) NOTICE OF DISMISSAL                               | (FORM 6) |

## **FEES:**

This packet and forms are provided at no cost to the Plaintiff/Employee. The Court filing fee for an Employment Complaint is \$80.00.

## **LEGAL REPRESENTATION:**

If you have acquired representation by an attorney, the attorney must notify the Tribal Court in writing. All attorneys appearing before the Tribal Court must be members of the Tribal Court Bar. A waiver process is available under Tribal Law in the Tribal Court Ordinance. Contact the Court for additional information and requirements.

## **INSTRUCTIONS**

Please read all instructions carefully. These are legal documents that must not contain mistakes. Do not alter the documents.

### **Step 1: COMPLETING THE COMPLAINT AND EXHIBITS:**

- A. Fill out the COMPLAINT (Form 1).
- B. Complete EXHIBIT "A" – DETAILS OF ACTIONS AND EVENTS (Form 2) by specifying facts that if true, would constitute a Wrongful Employment Action. Be as specific as possible. You may use Form 2 provided, or type up the details on a separate sheet of paper, however be sure the document is clearly marked EXHIBIT "A".
- C. Complete EXHIBIT "B" – DETAILED DESCRIPTION OF RELIEF SOUGHT (Form 3). Be specific about what you are requesting from the Court. You may use Form 3 provided, or type up the description on a separate sheet of paper, however be sure the document is clearly marked EXHIBIT "B".
- D. The entire complaint must be complete including the exhibits, before it can be accepted by the Court for filing. Please type or print on all documents.

Step 2:

**FILING YOUR COMPLAINT:**

If the COMPLAINT and EXHIBITS are complete, you are now ready to file your action with the Tribal Court. **The Tribal Court does not accept filings by facsimile and does not have a system to accept filings electronically or by email. All documents must be presented to the Court for filing by mail or in person.**

A. **BY MAIL:** Make three (3) copies of the completed COMPLAINT and both EXHIBITS. You will need one copy to serve on the General Manager/Chief Executive Officer, one to serve on the Tribal Attorney, and one for your records. Mail the completed original of the COMPLAINT and the attached EXHIBITS **and** the filing fee of \$80.00 to the Tribal Court at 9615 Grand Ronde Road, Grand Ronde, OR 97347. Documents accepted for filing by the Court are stamped filed on the day of receipt. When accepted for filing, a case number will be assigned to your case. You may contact the Court to verify receipt and obtain your case number.

B. **IN PERSON:** Bring your completed original COMPLAINT and the attached EXHIBITS **and** the filing fee of \$80.00 to the Tribal Court for filing. The Court Clerk's Office is open from 8:00 a.m. to 5:00 p.m. Monday thru Friday, excluding the lunch hour from 12:00 p.m. to 1:00 p.m. and all Tribal holidays. The Clerk's office will mark the document received and will review the document to determine if it meets the minimum requirements for filing. When accepted for filing, a case number will be assigned to your appeal. Obtain three (3) copies of the filed COMPLAINT and both EXHIBITS from the Tribal Court.

Step 3:

**SERVING THE COMPLAINT AND FILING THE PROOFS OF SERVICE:**

**You now need to decide which method of service you will be using to serve the Tribe's General Manager/Chief Executive Officer and Tribal Attorney with a copy of the COMPLAINT and the attached EXHIBITS. Below are some options for service.**

**Personal Service:** The person who performs personal service must complete the proof of service form. PROOF OF SERVICE (GENERAL MANAGER/CHIEF EXECUTIVE OFFICER) (Form 4) and PROOF OF SERVICE (TRIBAL ATTORNEY) (Form 5) are enclosed for your convenience.

**Certified Mail:** Use Certified Mail, Return Receipt Requested, to send the COMPLAINT and attached EXHIBITS to the General Manager/Chief Executive Officer and Tribal Attorney. You must complete the proper proof of service form. PROOF OF SERVICE (GENERAL MANAGER/CHIEF EXECUTIVE OFFICER) (Form 4) and PROOF OF SERVICE (TRIBAL ATTORNEY) (Form 5) are enclosed for your convenience.

**The Tribal Court has adopted the Federal Rules of Civil Procedure and does not accept filings by facsimile. The Court does not have a system to accept filings electronically or by email.** The proofs of service must be mailed to the Court or delivered to the Court Clerk's Office in person.

Step 4: **FILING OF ANSWER OR MOTION TO DISMISS:** Within thirty (30) days after being served with the Complaint, the Tribal Attorney, on behalf of the Tribe or Casino, will file with the Tribal Court an ANSWER or a MOTION TO DISMISS. The ANSWER or MOTION TO DISMISS will be filed with the Court and you (or your attorney if you have one) will receive a copy.

- a. If the Tribal Attorney files a MOTION TO DISMISS, you (or your attorney on your behalf) may file a RESPONSE TO THE MOTION TO DISMISS. The RESPONSE TO THE MOTION TO DISMISS must be filed with the Tribal Court within fourteen (14) days after your received service of the Motion. You can file your Response in person or by mail. You must also serve a copy of the Response on the Tribal Attorneys Office and send a proof of service to the Court. If you would like to request a hearing regarding the Motion to Dismiss, the request should be contained within your Response.

Step 5: **MEDIATION:** If the Tribal Attorney files an ANSWER, the matter will be assigned to a Court Appointed Mediator within five (5) business days. The mediator will contact you and arrange for a mediation session within twenty (20) days from the date the case was assigned to the mediator.

- a. If mediation is successful in resolving the complaint, you (or your attorney on your behalf) shall file a NOTICE OF DISMISSAL (Form 6) following the execution of any settlement agreement. You must also serve the NOTICE OF DISMISSAL on the Tribal Attorneys Office and file A Proof of Service with the Court.

- b. If you and your employer are unable to resolve the Complaint, the Court will schedule a Pre-Hearing Conference to schedule the hearing on the Complaint.

Step 6: **PRE-HEARING CONFERENCE:** At the date set for a Pre-Hearing Conference the Judge, the Tribal Attorney and you or your attorney will attempt to narrow the issues to be addressed at a hearing on the Complaint, address discovery matters, and set a date for the hearing on the Petition.

Step 7: **HEARING ON COMPLAINT:** The date of the Hearing on the Complaint shall not be more than forty-five (45) days after the mediator provides notice to the Court that the matter did not settle. The Hearing will be conducted by a Judge of the Tribal Court without a jury. You as the employee and Tribe/Casino shall have the right to be represented by an attorney, to present and cross-examine witnesses, and to present evidence that is relevant to the claims. At the conclusion of the Hearing, the Judge will consider all the evidence presented and issue an Order. You (or your attorney on your behalf) and the Tribe/Casino will receive a copy of the Order.

**IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE COURT AT 503-879-2303 OR COURT@GRANDRONDE.ORG.**

**The Tribe's Ordinances and Constitution are available on the Tribe's website at [www.grandronde.org/archives](http://www.grandronde.org/archives).**

1 **FORM 1**

2 **IN THE TRIBAL COURT FOR THE CONFEDERATED TRIBES**

3 **OF THE GRAND RONDE COMMUNITY OF OREGON**

4 **In The Matter of:** ) Case No.: \_\_\_\_\_  
5 )  
6 \_\_\_\_\_, ) **COMPLAINT**  
Employee/Plaintiff. )  
7 )  
8 vs. )  
9 \_\_\_\_\_, )  
Employer/Defendant. )  
10 \_\_\_\_\_ )

11 1. This action arises under the Confederated Tribes of Grand Ronde Employment Action  
12 Review Ordinance, Chapter 301.

13 2. Plaintiff is or was an employee of \_\_\_\_\_  
14 from \_\_\_\_\_ to \_\_\_\_\_.

15 3. Plaintiff was employed as \_\_\_\_\_.

16 4. Attached as Exhibit A is the detail of events and actions that constitute a wrongful  
17 employment action.

18 5. Attached as Exhibit B is the detailed description of the relief I am seeking from the  
19 Court.

20 DATED, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

21 \_\_\_\_\_  
22 Plaintiff's Signature

\_\_\_\_\_   
Print Name

23 \_\_\_\_\_  
24 Mailing Address

\_\_\_\_\_   
City, State, Zip Code

25 \_\_\_\_\_  
26 Telephone or Contact Telephone Number

\_\_\_\_\_   
Email Address







1 **FORM 4**

2 **IN THE TRIBAL COURT OF THE CONFEDERATED TRIBES OF THE**  
3 **GRAND RONDE COMMUNITY OF OREGON**

4  
5 **In The Matter of:** ) Case No.: \_\_\_\_\_  
6 )  
7 \_\_\_\_\_, ) **PROOF OF SERVICE**  
8 Employee/Plaintiff. ) **[GENERAL MANAGER OR**  
9 vs. ) **CHIEF EXECUTIVE OFFICER]**  
10 \_\_\_\_\_, )  
11 Employer/Defendant. )  
12 \_\_\_\_\_ )

12 I, \_\_\_\_\_, of \_\_\_\_\_,  
13 (Print Name of Server) (Address)  
14 \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
(City) (State) (Zip Code) (Phone number)

14 certify that I served true copies of this **COMPLAINT AND EXHIBITS**  
15 dated \_\_\_\_\_, \_\_\_\_, 20\_\_\_\_, upon the  General Manager of the Confederated  
16 Tribes of Grand Ronde or  Chief Executive Officer of \_\_\_\_\_.

17 (Check One of the Following)

18 a. \_\_\_\_\_ I personally served copies of the above named document at: (Name and Address of Place  
19 Served) \_\_\_\_\_

20 b. \_\_\_\_\_ I sent a copy of the above named document certified mail, return receipt requested to  
21 (Address the document was mailed to.) \_\_\_\_\_

22 Date Service was executed: \_\_\_\_\_

23 I declare under penalty of perjury that the foregoing information contained in this Proof  
24 of Service is true and correct.

25 \_\_\_\_\_  
(Signature of Server)

1 **FORM 5**

2 **IN THE TRIBAL COURT OF THE CONFEDERATED TRIBES OF THE**  
3 **GRAND RONDE COMMUNITY OF OREGON**

4  
5 **In The Matter of:** ) Case No.: \_\_\_\_\_  
6 )  
7 \_\_\_\_\_, ) **PROOF OF SERVICE**  
8 Employee/Plaintiff. ) **[TRIBAL ATTORNEYS OFFICE]**  
9 vs. )  
10 \_\_\_\_\_, )  
11 Employer/Defendant. )

12 I, \_\_\_\_\_, of \_\_\_\_\_,  
13 (Print Name of Server) (Address)  
14 \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
(City) (State) (Zip Code) (Phone number)

15 certify that I served true copies of this **COMPLAINT AND EXHIBITS**  
16 dated \_\_\_\_\_, \_\_\_\_, 20 \_\_\_\_, upon the Office of the Tribal Attorney for the  
17 Confederated Tribes of Grand Ronde.

18 (Check One of the Following)

19 a. \_\_\_\_\_ I personally served copies of the above named document at: (Name and Address of Place  
20 Served) \_\_\_\_\_

21 b. \_\_\_\_\_ I sent a copy of the above named document certified mail, return receipt requested to

22 (Address the document was mailed to.)

23 Date Service was executed: \_\_\_\_\_

24 I declare under penalty of perjury that the foregoing information contained in this Proof  
25 of Service is true and correct.

26 \_\_\_\_\_  
(Signature of Server)

1 **FORM 6**

2 **IN THE TRIBAL COURT FOR THE CONFEDERATED TRIBES**  
3 **OF THE GRAND RONDE COMMUNITY OF OREGON**

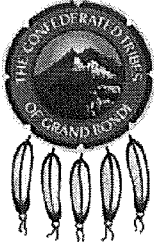
4 **In The Matter of:** ) Case No.: \_\_\_\_\_  
5 )  
6 \_\_\_\_\_, ) **NOTICE OF DISMISSAL**  
7 Employee/Plaintiff. )  
8 vs. )  
9 \_\_\_\_\_, )  
10 Employer/Defendant. )

11 Pursuant to the Confederated Tribes of Grand Ronde Employment Action Review Ordinance,  
12 Chapter 307, Section (d)(2)(C), Plaintiff hereby files this notice of dismissal in this matter. The  
13 parties have met through mediation and have resolved the complaint.

14 DATED, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

15 \_\_\_\_\_  
16 Signature of Plaintiff or Legal  
17 Representative.

18 \_\_\_\_\_  
19 Printed Name of Plaintiff or Legal  
20 Representative



DATE ORIGINALLY ADOPTED: 03/25/98  
SUBJECT: Judicial  
DATES AMENDED: 04/29/98; 06/11/14  
RESOLUTIONS: 032-98; 126-14

**THE CONFEDERATED TRIBES OF THE  
GRAND RONDE COMMUNITY OF OREGON**

**CHAPTER 307  
EMPLOYMENT ACTION REVIEW ORDINANCE**

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**THE CONFEDERATED TRIBES OF THE  
GRAND RONDE COMMUNITY OF OREGON**

**Chapter 307  
Employment Action Review Ordinance**

(a) FINDINGS AND PURPOSE.

(1) The Tribal Council finds that employment opportunities provided by the Confederated Tribes of the Grand Ronde Community, including agencies and instrumentalities of the Tribe, promote the health, safety, welfare and economic security for employees of the Tribe and their families.

(2) The Tribal Council finds that Spirit Mountain Gaming, Inc., the Grand Ronde Food and Fuel Company, and the Grand Ronde Tribal Housing Authority are agencies and instrumentalities of the Tribe.

(3) The Tribal Council finds that employees of Spirit Mountain Gaming, Inc., the Grand Ronde Food and Fuel Company, and the Grand Ronde Tribal Housing Authority are employees of the Tribe.

(4) The Tribal Council recognizes and finds that the Tribe and agencies and instrumentalities of the Tribe have sovereign immunity from suit in Tribal Court and all other courts and administrative proceedings, except to the extent such immunity has been clearly and expressly waived either by the Tribal Council or by Congress.

(5) The Tribal Council finds that sovereign immunity bars suit against the Tribe and agencies and instrumentalities of the Tribe by Tribal employees in matters relating to the terms and conditions of employment, except to the extent such immunity has been clearly and expressly waived by the Tribal Council or Congress.

(6) The Tribal Council finds that sovereign immunity serves an important function in preserving the Tribal Council's ability to manage limited Tribal resources so that the Tribe can provide governmental services and take other action to promote the health, safety, welfare, and economic security for the benefit of Tribal members, Tribal employees, and residents of and visitors to the Grand Ronde Indian Reservation.

(7) The Tribal Council finds that the remedy provided to Tribal employees by this Ordinance for adjudication in Tribal Court of certain employment claims will enhance the employment relationship between the Tribe and Tribal employees, consistent with the Tribal Council's responsibility to manage Tribal resources in order to provide governmental services and to promote the health, safety, welfare, and economic security for the benefit of Tribal employees and residents of and visitors to the Grand Ronde Indian Reservation.

(8) The Tribal Council declares that the purpose of this Ordinance is to enhance the employment relationship between the Tribe and Tribal employees consistent with the Tribal Council's responsibility to manage Tribal resources in order to provide governmental services and to promote the health, safety, welfare, and economic security for the benefit of Tribal employees and residents of and visitors to the Grand Ronde Indian Reservation.

(b) DEFINITIONS.

(1) "Day" means calendar day. Whenever a deadline falls on a weekend or holiday observed by the Tribal Court, the deadline shall be extended to the next work day of the Tribal Court.

(2) "Decisionmaker" means (A) the General Manager or any board, officer, employee, or agent of the Tribe, including any agency or instrumentality of the Tribe other than a Tribal Governmental Corporation, to whom authority has been delegated to make a Final Employment Decision, and (B) the General Manager or Chief Executive Officer of a Tribal Governmental Corporation or any board, officer, employee, or agent of a Tribal Governmental Corporation to whom authority has been delegated by a Tribal Governmental Corporation to make a Final Employment Decision.

(3) "Employee" means an employee, whether full-time, part-time, temporary, on-call, regular, introductory, or otherwise, of the Tribe, including any agency and instrumentality of the Tribe.

(4) "Employer" means the Tribe as defined herein.

(5) "Employee Benefits" means vacation, sick leave, medical or other insurance coverage, or other employment benefits provided to an Employee by the Tribe, but the term Employee Benefits as used in this Ordinance does not include claims for retirement, worker's compensation, or unemployment compensation.

(6) "Employee Handbook" means a handbook and/or manual published by an Employer containing information about the Employer's workplace rules, policies, and/or procedures.

(7) "Established Policies and Procedures" means the non-discretionary policies and procedures published in the Employer's Employee Handbook, any written amendments thereto, and any other written personnel policy adopted by the Employer addressing terms and conditions of employment.

(8) "File," "Filed," or "Filing" means to physically place in the possession of the Tribal Court. Filing is not effective upon mailing or other means of delivery until a complete copy of the document to be filed actually is received in full by the Tribal Court.



- (9) “Final Employment Decision” means a final determination relating to the terms and conditions of employment, other than claims for worker’s compensation or unemployment compensation, made by a Decisionmaker. No action or decision shall be deemed a Final Employment Decision under this Ordinance until and unless the affected Employee has exhausted all available avenues of informal resolution through the supervisory chain. A Final Employment Decision shall include a notice to the affected employee of a right to file a complaint under this Ordinance within thirty (30) days of the date of the Final Employment Decision, but only on the grounds that the Final Employment Decision was a Wrongful Employment Action.
- (10) “Office of Tribal Attorney” means the department of the Tribe so designated.
- (11) “Tribal Court” means the Grand Ronde Tribal Court established pursuant to Article IV of the Constitution of the Confederated Tribes of the Grand Ronde Community of Oregon.
- (12) “Tribal Council” means the branch of the Tribe designated by that name in Article II of the Constitution of the Confederated Tribes of the Grand Ronde Community of Oregon.
- (13) “Tribal Governmental Corporation” means any Corporation chartered by the Tribal Council which is wholly owned by the Tribe, including any subsidiary or subdivision of a Tribal Governmental Corporation that is chartered by the Tribal Council and wholly owned by a Tribal Governmental Corporation. Tribal Governmental Corporations are agencies and instrumentalities of the Tribe. The term Tribal Governmental Corporation includes but is not limited to the Grand Ronde Food and Fuel Company and Spirit Mountain Gaming, Inc.
- (14) “Tribal law” means the Constitution of the Confederated Tribes of the Grand Ronde Community of Oregon, initiatives and referendums adopted by members of the Tribe in accordance with the Constitution of the Tribe, ordinances and other legislative enactments adopted by the Tribal Council, and common law of the Tribal Court.
- (15) “Tribe” means the Confederated Tribes of the Grand Ronde Community of Oregon, including all agencies, departments, offices, divisions, commissions, authorities, corporations, instrumentalities or other entities of the Tribe, except that corporations chartered under the law of any State shall not be included in the term Tribe under this Ordinance.
- (16) “Wrongful Employment Action” means a Final Employment Decision that is in violation of: (1) applicable law, (2) the Employer’s written employment contract with the Employee, or (3) the Employer’s non-discretionary Established Policies and Procedures.

(c) LIMITED WAIVER OF SOVEREIGN IMMUNITY.

(1) Absent applicable law to the contrary and except as provided in Subsection (c)(8) below, the sovereign immunity of the Tribe and its agencies and instrumentalities shall continue except that such immunity is hereby expressly waived to permit Wrongful Employment Action claims to be brought against them exclusively in the Tribal Court by an aggrieved Employee or former Employee in accordance with the timelines and procedures established by this Ordinance.

(2) The timelines and procedures set forth in this Ordinance are integral parts of the limited waiver of sovereign immunity provided by this Ordinance and shall be strictly and narrowly construed.

(3) The remedies under this Ordinance upon a determination by the Tribal Court that a Wrongful Employment Action has occurred shall be limited, as appropriate, to one or more of the following:

(A) An order that the Employer cease and desist from the Wrongful Employment Action(s) specified in the order;

(B) An order reinstating the Employee with or without back pay and/or payment of back Employee Benefits, or if reinstatement is not appropriate, payment of back pay and Employee Benefits alone. For purposes of calculating back pay, the Court may include average tips;

(C) Non-monetary relief (e.g., expungement of the adverse employment action from the personnel file) reasonably necessary to remedy the Wrongful Employment Action; provided that an Employer shall not be required to revise its organizational or salary structure, promote an Employee, endorse an Employee, or make any organizational changes beyond restoring the Employee to his/her former employment status;

(D) Economic damages in an amount not to exceed \$20,000; or

(E) Reasonable and customary attorney's fees as determined by the Court, but not to exceed \$20,000.

(4) No rule of law shall be applied under this Ordinance imposing absolute or strict liability, punitive damages, or exemplary damages; nor shall any award be made under this Ordinance for pain and suffering, mental anguish or suffering, or consequential damages.

(5) This Ordinance does not waive the sovereign immunity of officers, employees, or agents of the Tribe or officers, employees, or agents of any agency or instrumentality of the Tribe.

(6) This Ordinance does not waive the sovereign immunity of the Tribe or any agency, department, office, division, commission, authority, corporation, instrumentality, or other entity of the Tribe except as expressly provided in this Ordinance.

(7) This Ordinance provides the exclusive remedy for claims relating to the terms and conditions of employment between the Tribe or any agency and instrumentality of the Tribe, other than claims relating to worker's compensation and unemployment compensation.

(8) This Ordinance does not waive sovereign immunity for claims arising under the Tribal Employment Rights Ordinance. The Tribal Employment Rights Ordinance provides the exclusive remedy for claims arising under that Ordinance.

(d) WRONGFUL EMPLOYMENT ACTION PROCEEDINGS.

(1) Complaint.

(A) An Employee who believes they have been subjected to a Wrongful Employment Action may file a written complaint in the Tribal Court pursuant to this Ordinance. An aggrieved Employee may not use any other procedure to seek judicial relief for a Wrongful Employment Action, even though another procedure for judicial relief may be provided by another provision of Tribal law of general application.

(B) The complaint must be filed with the Tribal Court within thirty (30) days of the date of the alleged Wrongful Employment Action.

(C) The complaint shall allege facts, which if true, would constitute a Wrongful Employment Action by the Employer, and shall specify the relief requested.

(D) Once the complaint is filed with the Tribal Court, the aggrieved Employee shall serve copies of the complaint on (A) the General Manager of the Tribe, or where the complaint relates to a Wrongful Employment Action by a Tribal Governmental Corporation, then in that event, upon the General Manager or Chief Executive Officer of the Tribal Governmental Corporation, and (B) the Office of Tribal Attorney. Service may be made by personal service or by certified mail with return receipt requested. Where service is by certified mail, return receipt requested, service shall be deemed effective on the day of such mailing.

(E) Absent applicable law to the contrary, the timely filing of a complaint alleging a Wrongful Employment Action shall not stay enforcement or effectiveness of an employment action.

(F) Within thirty (30) days after being served with a complaint, the Employer shall file one of the following responses with the Tribal Court and serve a copy on the Employee:

- (i) A motion to dismiss the complaint on jurisdictional or other appropriate grounds; or
- (ii) An answer to the complaint.

If the response is an answer to the complaint, the Tribal Court shall refer the matter to mediation as provided in Subsection (d)(2) below. If the response is a motion to dismiss the complaint, the Tribal Court shall rule on the motion after considering any response, reply, and/or oral argument. If the Court's ruling does not dispose of the case, the Court shall direct the Employer to file an answer within twenty (20) days of the Court's ruling.

(2) Court Appointed Mediation.

(A) Within five (5) business days of the filing of an answer by the Employer, the Court shall assign the complaint and answer to a court appointed mediator. Within five (5) business days of the assignment, the mediator shall contact the parties and schedule a date, time, and place for the mediation.

(B) The date of the mediation shall not be more than twenty (20) days from the date the matter was assigned to the mediator. The mediator, in his/her sole discretion, shall determine the best way to fairly conduct the mediation based upon the information presented in the complaint and response, as well as the availability of the parties. Preference, however, shall be given to an in-person meeting with both parties present to discuss the allegations, defenses, and possible avenues for resolution. The mediation conference shall not be open to the public.

(C) If, through mediation, the parties agree to a resolution of the complaint, the mediator shall notify the Tribal Court that the case has been settled. Upon execution of any settlement agreement, the Employee shall file a notice of dismissal of his/her case. If the parties are unable to resolve the case through mediation, the mediator shall notify the Tribal Court within five (5) business days after the mediation conference that no settlement was reached.

(D) Upon receiving notice that a case has not settled, the Tribal Court shall schedule a pre-hearing conference for the purpose of narrowing the issues to be addressed at a hearing on the complaint, addressing discovery matters, setting the hearing date within the timeframe required in Subsection (d)(4)(A) below, and to otherwise expedite disposition of the proceedings.

(3) Discovery. In order to facilitate timely resolution of employment claims under this Ordinance, discovery shall be limited to the following:

(A) *Initial Disclosures.* Within five (5) business days following the pre-hearing conference, each party shall provide to the other party, or their respective legal counsel, a copy of any documents, records, or other tangible things that the party has in its possession, custody, or control, that it may use to support its claims or defenses, unless the use would be solely for rebuttal purposes. In addition, the Employer shall provide the Employee or his/her attorney with a complete copy of the Employee's personnel file.

(B) *Document Production.* The parties may request production of other non-privileged documents that are directly relevant to the party's claim or defense, provided that the following shall not be subject to production or disclosure:

(i) Investigatory reports (except to the extent relied on by the Employer as the basis of the action at issue);

(ii) Employment information (i.e., personnel file, wages, disciplinary actions) about another employee; or

(iii) Any other confidential documents of the Employer; provided that an Employee may request the Tribal Court judge conduct an in camera review of any documents the Employee believes are directly relevant to the action in dispute to determine whether such documents should be disclosed.

A party shall have ten (10) days to respond to a document request under Subsection (d)(3)(B) above. Unless otherwise ordered by the Court upon a showing of good cause, no requests for documents may be made within ten (10) days of the hearing on the complaint.

(4) Hearing on Complaint.

(A) The Court shall set a date for a hearing on the complaint at the pre-trial conference. The date of the hearing shall be set not be more than forty-five (45) days following the mediator's notice of non-settlement. In order to ensure employment matters are timely addressed, postponements of the hearing date shall be granted only for compelling reasons or with the consent of all parties.

(B) The hearing shall be conducted by a judge of the Tribal Court without a jury. The Complainant and Employer shall have the right to be represented by an attorney, to present and cross-examine witnesses, and to present such other evidence as is relevant to the controversy. Except as otherwise provided in this Ordinance, the hearing shall be conducted in accordance with the rules of Court approved by the Chief Judge of the Tribal Court.

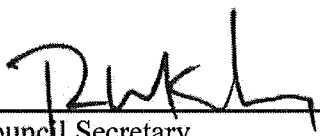
(C) The Employee shall have the burden of proving by a preponderance of the evidence that a Wrongful Employment Action has occurred. Without limiting the appropriate standard of review, the Tribal Court shall give due deference to the rule of non-prejudicial error and matters within the expertise or judgment of the Tribe or any Tribal Governmental Corporation. The Tribal Court shall recognize the right of the Tribe and any Tribal Governmental Corporation to rely upon supervisors and managers to exercise judgment and discretion in making decisions affecting the terms and conditions of employment, including, but not limited to, matters involving employee compensation, training, retention, scheduling, assignment and transfer of responsibilities, promotion, demotion, discipline, suspension, and termination.

(D) The decision of the Tribal Trial Court shall be a final decision for purposes of appeal.

(e) APPLICABLE LAW. Tribal law and applicable federal law apply to the terms and conditions of employment with the Tribe and any Tribal Governmental Corporation, and likewise shall govern all complaints of Wrongful Employment Actions.

(f) SEVERABILITY. If any provision of this Ordinance or application of this Ordinance to any person or circumstance is determined to be invalid, such invalidity shall not affect other provisions or application of this Ordinance to other persons or circumstances which can be given without the invalid provision or application. To this end, the provisions of this Ordinance are declared to be severable.

I certify this to be a true copy of the Confederated Tribes of the Grand Ronde Community of Oregon Employment Action Review Ordinance.

  
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Tribal Council Secretary

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