



PUEBLO OF ISLETA

P.O. BOX 1270
ISLETA, NM 87022

Resolution No. 2016-376

Enacting the Pueblo of Isleta Fair Labor Standards Ordinance

The following resolution was passed at a duly called meeting of the Tribal Council of the Pueblo of Isleta:

WHEREAS, the Pueblo of Isleta (the "Pueblo") is a federally-recognized tribe that acts through its governing body, the Tribal Council, which is charged with decision-making in all matters relative to the resources of the Pueblo and the general welfare of the Pueblo and its members;

WHEREAS, the Pueblo has rights of inherent sovereignty and exclusion;

WHEREAS, Article V, Section 2(e) of the Pueblo's Constitution authorizes the Tribal Council to enact ordinances to protect the peace, safety, property, health, and general welfare of the members of the Pueblo;

WHEREAS, the Tribal Council desires fair treatment of employees in the workplace and seeks to ensure the proper regulation of the Pueblo's relationship with all employees of the Pueblo government and Pueblo owned businesses;

WHEREAS, the Tribal Council finds that the enactment of the attached Fair Labor Standards Ordinance to be in the best interests of the Pueblo and its members and employees;

WHEREAS, the Tribal Council desires to exercise the Pueblo's inherent sovereignty and right of exclusion by enacting the attached Fair Labor Standards Ordinance; and

WHEREAS, the attached Fair Labor Standards Ordinance shall supersede the fair labor provisions of the Pueblo of Isleta Labor and Employment Relations Ordinance, Resolution No. 2010-096.

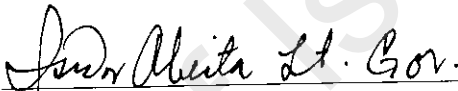
NOW, THEREFORE, BE IT RESOLVED that the Tribal Council hereby enacts the attached Fair Labor Standards Ordinance to become effective as of the date of this Resolution.

BE IT FURTHER RESOLVED that the Tribal Council hereby repeals the Pueblo of Isleta Labor and Employment Relations Ordinance, Resolution No. 2010-096, which shall no longer have any force or effect.

CERTIFICATION

The undersigned do hereby certify that the foregoing Resolution was passed at a duly called meeting of the Tribal Council of the Pueblo of Isleta, held on the 1st day of September, 2016, at which time a quorum was present, with 7 voting for, 0 opposing, and 0 abstaining.


Verna Teller, Tribal Council President


E. Paul Torres, Governor

ATTEST:


Ulysses Abeita, Tribal Council Secretary

Fair Labor Standards Ordinance

Section 1 Findings & Purpose.

- (a) The Tribal Council of the Pueblo of Isleta finds that—
- (1) All employees of the Pueblo of Isleta, its agencies, businesses, and entities, are entitled to fair wage and hour standards under the laws of the Pueblo of Isleta; and
 - (2) It is the intent of the Tribal Council to provide all employees of the Pueblo of Isleta, its agencies, businesses, and entities, with fair wage and hour standards, which are consistent with the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, as amended, notwithstanding that it is the position of the Pueblo of Isleta that the FLSA does not apply to it as a federally recognized Indian tribe.

Section 2 Definitions.

- (a) For the purpose of this Ordinance—
- (1) “employee” means an individual employed by the Pueblo of Isleta or any agency, business, or entity of the Pueblo of Isleta;
 - (2) “employer” means the Pueblo of Isleta or any agency, business, or entity of the Pueblo of Isleta;
 - (3) “Tribal Council” means the Tribal Council of the Pueblo of Isleta;
 - (4) “Human Resources Department” means the Human Resources Department of the Pueblo of Isleta, or the Human Resources Department of a business or entity of the Pueblo of Isleta, as the case may be;
 - (5) “Board” means the Employee Grievance Review Board, established pursuant to Tribal Council Resolution No. 2001-13, as amended by Tribal Council Resolution No. 2010-061; and
 - (6) “Pueblo” means the Pueblo of Isleta.
- (b) Except as otherwise defined or provided in this Ordinance, any term used in this Ordinance shall be interpreted in accordance with, and have the meaning assigned to it by the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, as amended, and the regulations and guidance issued thereunder.

Section 3 Minimum wage.

Any employee shall be paid an hourly wage of not less than the minimum wage as may be established by resolution of the Tribal Council and, in the absence of Tribal Council action to

adopt a higher minimum wage, shall be the federal minimum wage established from time-to-time pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, as amended.

Section 4 Maximum hours.

Except as otherwise provided in this Ordinance, no employer shall employ any of its employees who in any workweek work longer than forty (40) hours unless such employee receives compensation for the employee's work in excess of forty (40) hours at a rate not less than one and one-half times such employee's regular rate of pay.

Section 5 Exemptions.

- (a) Provided such employee performs the applicable primary duty and is paid on the applicable salary basis, Sections 3 and 4 of this Ordinance shall not apply with respect to:
 - (1) any employee employed in a bona fide executive, administrative, or professional capacity, or computer-related occupation, or any other employee exempt from minimum wage and maximum hour requirements under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, as amended.

Section 6 Enforcement; statements of compensation due; statute of limitations.

- (a) Any employer who fails to comply with the terms of this Ordinance shall be responsible to pay to the affected employee the amount of the employee's unpaid minimum wages, or the employee's unpaid overtime compensation, as the case may be.
- (b) Any employee who believes he or she has not received the compensation due to such employee under the terms of this Ordinance may seek retroactive payment of unpaid minimum wages or unpaid overtime compensation from an employer by filing with the applicable Human Resources Department a written statement of compensation due, which describes the basis upon which the employee claims additional compensation is due to such employee under the terms of this Ordinance. Upon considering a statement of compensation due, the Human Resources Department shall, for cause shown, either:
 - (1) deny the claim for failing to show an employer's noncompliance with the terms of this Ordinance; or
 - (2) cause such retroactive payment of unpaid minimum wages or unpaid overtime compensation, as the case may be, to be made to remedy an employer's failure to comply with the terms of this Ordinance.
- (c) A decision by the applicable Human Resources Department under subsection (b) of this Section may be appealed by the affected employee or employer to the Board within ten (10) calendar days after the decision. The Board shall adopt procedures for receiving and deciding such an appeal, subject to approval by the Tribal Council.

- (d) The sole remedy that the Board is authorized to provide upon an appeal taken pursuant to subsection (c) of this Section shall be either to deny the claim for failing to show an employer's noncompliance with the terms of this Ordinance or to order an employer to make retroactive payment of unpaid minimum wages or unpaid overtime compensation, as the case may be, to the affected employee. The Board is not authorized to consider any other claim or provide any other remedy of any nature except as expressly provided in this subsection (d) of this Section.
- (e) Any statement of compensation due for unpaid minimum wages or unpaid overtime compensation shall be forever barred unless filed with the applicable Human Resources Department within two (2) years after the date on which such wages or overtime compensation should have been included in an employee's paycheck, except that a statement of compensation due arising out of a willful failure to comply with this Ordinance may be filed with the applicable Human Resources Department within three (3) years after the date on which such wages or overtime compensation should have been included in an employee's paycheck.

Section 7 Fair Labor Standards Act.

- (a) It is the intent of this Ordinance to provide employees with fair wage and hour standards consistent with the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"), as amended. For the sole purpose of interpreting and enforcing this Ordinance, and to the extent not in conflict with this Ordinance or Pueblo law, an employer, the applicable Human Resources Department, or the Board may consider the FLSA and regulations thereunder and relevant case law, for guidance or for the determination of any matter not provided herein; provided, however, that such federal law shall apply by reference only and shall not constitute a waiver of the Pueblo's sovereign immunity for any claims or process brought under the FLSA.
- (b) Notwithstanding anything to the contrary herein, the Pueblo may provide wage and hour standards applicable to employees of any Pueblo government agency or to employees engaged in fire protection or law enforcement activities consistent with the FLSA.
- (c) Except as expressly provided to the contrary herein, any employer in compliance with the FLSA shall be deemed to be in compliance with this Ordinance.

Section 8 Sovereign Immunity.

Except as expressly provided in Section 6 of this Ordinance for the sole purpose of process before the applicable Human Resources Department or the Board, the Pueblo of Isleta reserves its sovereign immunity from legal process and unconsented suit to the fullest extent permitted by law.

Section 9 Severability.

The provisions of this Ordinance are severable. If any provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of this Ordinance and the application to other persons or circumstances shall not be affected thereby.

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