

# **THE KLAMATH TRIBES**

## **BACKGROUND AND CHARACTER INVESTIGATION POLICY & STANDARD OPERATING PROCEDURE**

REVISION – 05/22/2019

## Section 1: General Policy

### 1.1 General Policy

The Klamath Tribes will not employ individuals or allow individuals to volunteer, for positions that are subject to this policy, who do not meet the minimum standards of character.

The procedures set forth in the policy for conducting background investigations and adjudication will be used to determine suitability for employment in child care/contact positions and those positions deemed by The Klamath Tribes to be sensitive.

### 1.2 Definitions

The following definitions apply to all sections of this policy:

- 1.2.1 Child** means a person who is unmarried and has not attained 18 years of age.
- 1.2.2 Child Care Services** includes child protective services, health care, mental health care, child care, foster care, residential care, educational services, recreational or rehabilitative programs, detention, correctional, and treatment services.
- 1.2.3 Crimes Against Persons** means a crime that has as an element involving the use, attempted use, or threatened use of physical force or other abuse of a person and includes, but is not limited to, homicide; assault; kidnapping; false imprisonment; reckless endangerment; robbery; rape; sexual assault, molestation, exploitation, contact, or prostitution; and other sexual offenses. In determining whether a crime falls within this category, the applicable Federal, State, or Tribal law under which the individual was convicted or pleaded guilty or *nolo contendere* shall be controlling.
- 1.2.4 Crimes of Violence** means a crime that has an element involving the use, attempted use, or threatened use of physical force against the person or property of another, or any other crime that is a felony and that, by its nature, involves substantial risk that physical force against the person or property of another may be used in the course of committing a crime. In determining whether a crime falls within this category, reference may be made to the applicable Federal, State, or Tribal law under which the individual was convicted or pleaded guilty of *nolo contendere*.
- 1.2.5 Employ / Employed / Employment** means the hiring or holding of a position covered by this policy by an individual, as defined in Section 1.2.6, provided, however, the use of one of these terms in this policy does not imply or indicate that a person is or is not an "employee" of The Klamath Tribes.
- 1.2.6 Individual** means a person who applies for or holds a position covered by this policy and includes, but is not limited to, the following:
- Employees of The Klamath Tribes regardless of classification, including but not limited to temporary duty personnel, regular, contract, call-in, and other temporary personnel.

- Persons who perform services for or under the supervision of The Klamath Tribes.
- Persons who contract with The Klamath Tribes to perform services in The Klamath Tribes facilities.
- Persons who volunteer to perform services for The Klamath Tribes.

**1.2.7 Offenses Against Children** means any felonious or misdemeanor crime under Federal, State, or Tribal law committed against a victim who has not attained 18 years of age. In determining whether a crime falls within this category, the applicable Federal, State or Tribal law under which the individual was convicted or pleaded guilty or *nolo contendere* (i.e., "no contest") shall be controlling.

**1.2.8 Regular Contact With or Control Over a Child** means responsibility for a child within the scope of the individual's duties and responsibilities or contact with a child on a recurring and foreseeable basis who:

- Treats, cares for, or works with children in the course of performing their job duties or responsibilities;
- Directly exercises control over or oversight of children as part of their job duties or responsibilities.

**1.2.9 Sensitive Position** any position designated by The Klamath Tribes to be responsible for a high level of sensitive information; or public trust.

## **Section 2: Applicability**

### **2.1 Child Care/Control Applicability**

Tribes who receive Federal funds are required to adopt a policy governing background investigations for employees who have contact with children under two Federal Laws: the Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. 3207; and the Crime Control Act, Public Law 101-647. All persons holding child care/contact positions require a P.L. 101-630 approved background investigation.

This policy, procedures and standards apply to all individuals who apply for, are being transferred to, promoted to, or hold the following positions:

- Positions that require regular contact with or control over children, as determined by The Klamath Tribes' position description.
- Positions classified by The Klamath Tribes as involving child care services.

### **2.2 General Applicability**

The Klamath Tribes require background investigations for all individuals who hold positions identified by The Klamath Tribes as sensitive positions. Persons holding positions deemed as sensitive will require the type of background investigation designated for the position.

This policy, procedures, and standards apply to all individuals who apply for, are being transferred to, promoted to, or hold a sensitive position that meets one or more of the following criteria:

- Full-Time Employees
- Part-Time Employees
- Temporary employees (including short-term)
- Volunteer/Community Service Workers
- Employees under interim assignment
- Contracted workers

## 2.3 List of Covered Positions

The Klamath Tribes' Human Resources Department will maintain a current list of all positions to which **Section 2** of this policy applies. The list of positions will be periodically updated at The Klamath Tribes' discretion.

## Section 3: Initiate a Background Investigation

### 3.1 When to Conduct an Investigation

Every individual who applies for or holds a position under **Section 2** of this policy must submit to a background investigation as a condition of employment with The Klamath Tribes including:

**3.1.1 Potential new hires** into positions covered under this policy as part of the preliminary hiring process.

**3.1.2 Regular hire employees** who are transferring/promoting to another position when one or more of the following applies:

- The previous position did not require a background investigation.
- The previous position required a different level of adjudication than the proposed position.

**3.1.3 Current temporary employees** transferring to a new temporary assignment or regular hire status, when one or more of the following applies:

- The previously held temporary position did not require a background investigation.
- The previous position required a different level of adjudication than the proposed position.

**3.1.4 Rehired temporary employees** when one or more of the following applies:

- The previously held temporary position did not require a background investigation.
- The last day worked is more than 3 months from the start of the proposed position.
- The previous position required a different level of adjudication than the proposed position.

**3.1.5 Current employees** a background investigation will be carried out under any of the following circumstances:

- An arrest, charge, or conviction that could potentially effect a background investigation.
- Position duties change, requiring a background investigation that was not previously required or requires a different level of adjudication.
- A background investigation was not completed at the time of position assignment.

**3.1.6 Vendors or contractors** whose services would fall under **Section 2** of this policy, or when otherwise requested by the hiring department, a background investigation will be carried out following the procedures used for temporary employees.

**3.1.7 Volunteers** whose services fall under **Section 2** of this policy:

- At the initiation of each event.
- When the last day worked or volunteered exceeds 3 months from the start of the proposed event.

## **Section 4: Responsibility**

The Human Resource Department is responsible for ensuring individuals covered under this policy complete the required background investigation process and maintaining this information in a secured confidential, locked file.

The Klamath Tribes may conduct its own background investigation or may request an outside agency conduct the background investigation on The Klamath Tribes' behalf and provide The Klamath Tribes with the results of the investigation.

## **Section 5: Process for Conducting Background Investigations**

The following process will apply:

### **5.1 Position Descriptions**

Position descriptions and vacancy announcements shall contain an express statement that individuals must meet minimum standards of character and what type of background investigation will be conducted.

### **5.2 Application for Employment forms**

#### **5.2.1 Applications**

All individuals who apply for positions must fill out a Tribal application for employment form.

- The employment application will state that the performance of a background

investigation and determination that the individual meets the eligibility criteria of this policy may be conditions of employment.

- The employment application form must state that the application is being signed under penalty of perjury and acknowledge that knowingly falsifying or concealing a material fact is a felony that may result in fines up to \$10,000 and/or five years imprisonment, and is grounds for denying employment.

### **5.3 Notification and Acknowledgement**

Before a background investigation is conducted, The Klamath Tribes Human Resource Department will obtain from the applicant or employee a signed *Background Authorization for Release of Information* form.

### **5.4 Required Background Investigation Information**

The background investigation shall include the following information:

- A fingerprint check through the Criminal Justice Information Services Division of the Oregon State Police, which includes Federal Bureau of Investigation (FBI) information. Fingerprinting requirement is applicable to those positions falling under Section 2.1 (child care/control).
- Inquiries to Federal, State and Tribal law enforcement agencies for the previous ten years for all current and former residences.
- Consideration of the individual's fitness for employment and trustworthiness through inquiries with places of employment and education.
- Consideration of the individual's fitness for employment and trustworthiness through inquiries with the individual's character references.

### **5.5 Minimum Standards of Character**

The minimum standards of character are a benchmark of moral, ethical, and emotional strengths established by character traits and past conduct to ensure that the individual is competent to complete his or her position responsibilities without harm to children, staff, or clients of the Tribes, and to protect the Tribes' interests.

#### **5.5.1 Required Standards**

No individual will be placed in or will be allowed to continue to hold a position covered by **Section 2.1** of this policy if he or she has been found guilty of, or entered a plea of *nolo contendere* (i.e., "no contest") or guilty to, any felonious offense or any two or more misdemeanor offenses under Federal, State or Tribal law involving:

- Crimes of violence.
- Sexual assault, molestation, exploitation, contact or prostitution.
- Crimes against persons.
- Offenses committed against children.

All such convictions or pleas of *nolo contendere* or guilty will be considered in making a determination about suitability for employment unless a pardon, expungement, set aside or other court order reaches the plea of guilty, plea of *nolo contendere*, or the finding of guilt. There is no time limitation; all relevant personal and criminal history will apply, as per federal law.

### **5.5.2 Other Applicable Standards**

An individual shall be denied or terminated from employment with The Klamath Tribes for positions covered in **Section 2.1 and Section 2.2** if the individual meets any of the following criteria:

- The individual made an intentional false statement, deception or fraud in an attempt to obtain employment.
- The individual has refused to cooperate with an investigation.
- The individual's alcohol or substance abuse directly threatens the property or safety of others.
- The individual has illegally used narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation.
- The individual was dismissed or resigned from previous employment with a history of misconduct demonstrating a pattern of violence, intimidation, or harassment.
- The individual has been convicted of a crime that negatively reflects on the fitness for duty or level of responsibility without evidence of substantial rehabilitation.

### **5.5.3 Meeting the Minimum Standards of Character**

The minimum standards of character will be considered met only after the individual has been the subject of a satisfactory background investigation under **Section 6**.

## **Section 6: Adjudication Process**

Adjudication is the process The Klamath Tribes uses to determine suitability for employment. This process assesses the degree of risk the individual brings to the position and certifies that the individual's past conduct will not interfere with performance of duties, pose an immediate or long-term risk for any children, staff, or clients of the Tribes.

### **6.1 Minimum Standards of Character**

### **6.1.1 General Requirements of Adjudication**

Adjudication requires consistency in evaluation to ensure fair judgments are reached. Each case will be judged on its own merits. All available information, favorable and unfavorable, will be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar cases have been handled in the past.

### **6.1.2 Adjudicating Official**

The Klamath Tribes will appoint an Adjudicating Official(s) to conduct the adjudications under this policy. The Adjudicating Official must first have been the subject of a favorable background investigation, be well-qualified and trained, and be thoroughly familiar with all laws, regulations, and criteria involved in making a determination for eligibility.

### **6.1.3 Adjudication of Investigation**

The Adjudicating Official will review the background investigation conducted under **Section 5** to determine character, reputation, and trustworthiness of the individual. At minimum, the review will include:

- A comparison of the information of each investigation form and employment application provided.
- The results of written record searches requested of local law enforcement agencies, former employers, former supervisors, employment references, and schools.
- The results of the fingerprint charts maintained by the Criminal Justice Information Division of the Oregon State Police, with Federal Bureau of Investigation or other law enforcement agencies.
- Any other information obtained through the background investigation, including, character and personal reference checks of the individual.
- An evaluation of position responsibilities.

### **6.1.4 Suitability Factors to Consider**

For positions covered under **Section 2.2** the Adjudicating Official must consider the following:

- The nature and seriousness of the conduct in question.
- The recentness and circumstances surrounding the conduct in question.
- The age of the individual at the time of the incident.
- Societal conditions that may have contributed to the nature of the conduct.
- The probability that the individual will continue the type of behavior in question.
- The individual's commitment to rehabilitation and a change in the behavior in question.



- The position and responsibilities which the individual is being considered for.

#### **6.1.5 Opportunity for Review**

Before the adjudication is final, the individual will be given an opportunity to explain, deny, or refute unfavorable or incorrect information gathered in an investigation.

- The individual will receive a written summary of all derogatory information and be informed of the process for explaining, denying, or refuting unfavorable information.
  - HR will send a letter to the applicant listing the disqualifying crimes/information and offering the applicant a timeframe for responding with verifiable corrections.
- The actual background investigative report shall **not** be released to the individual who is the subject to the background investigation.

#### **6.1.6 Review with General Manager**

If there are issues regarding an individual's background, the Adjudicator's area of concern will be discussed with the General Manager to determine relevance to the position.

#### **6.1.7 Final Determination**

The Adjudicating Official will make a final determination regarding whether the individual meets the minimum standards of character set forth in **Section 5.5**. The Adjudicating Official's decision is final, and is not subject to the grievance procedures set out in The Klamath Tribes Personnel Policies and Procedures Manual.

#### **6.1.8 Investigation Information**

- The results of an investigation cannot be used for any purpose other than to determine suitability for holding a position that is subject to this policy.
- Investigative reports will be maintained confidentially and in securely locked files.
- Investigative reports shall be seen only by those officials who, in performing their official duties, need to know the information contained in the report.
- The Klamath Tribes will comply with the privacy requirements of any agency providing background investigations.

## **Section 7: Adjudication Reporting**

Once the background investigation has been conducted under **Section 5** and the adjudication process is complete under **Section 6**, the Adjudicating Officer's final determination will be applied as follows:

- **Suitable for Employment in a Covered Position:** The individual meets the minimum standards of character set forth in **Section 5.5**. Suitability for employment will not necessarily result in the individual being hired or retained for the covered position.
- **Denied Employment in a Covered Position:** The Klamath Tribes must deny employment to, or dismiss the individual when the individual's position is subject to **Section 2** of this policy and adjudication under **Section 6** resulted in the individual failing to meet the minimum standards of character set forth in **Section 5.5**.
- **Place into Another Position:** The Klamath Tribes has the discretion to place an individual who must be removed from a position under this policy into an available position which does not require an investigation or a lower level of adjudication, if a determination has been made through the adjudication process that such placement would not be a risk to the Tribe, and the individual meets the minimum qualifications of the position.

## **Section 8: Conditional Hire**

Under extenuating circumstances, and only with the prior written approval of the General Manager, The Klamath Tribes may offer conditional employment prior to completion of the background investigation. When doing so it must be determined that when children are in the care or under the control of the individual, the individual is within the sight and under the supervision of an employee whom a background investigation has been completed. Continued employment is contingent on the outcome of the background investigation and adjudication.

## **Section 9: Pending or Unresolved Charges**

When an individual who is applying for, or holds, a covered position with The Klamath Tribes is charged with an offense covered by this policy under **Section 2**, and the charge is pending or no disposition has been made by a court, The Klamath Tribes may, in its discretion, do any of the following:

- Deny employment until the charge is resolved.
- Deny the individual any on-the-job contact with children until the charge is resolved.
- Reassign the individual to other duties that do not involve regular contact with children.
- Suspend the individual until the charge is resolved.

## **Section 10: Individuals Posing Unacceptable Risk of Harm**

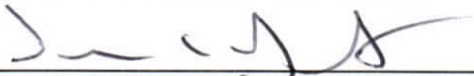
The Klamath Tribes reserves the right to terminate, refuse to hire, transfer, or place conditions

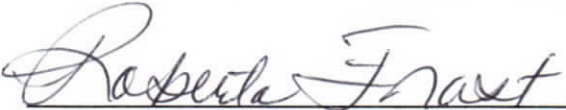
on the employment or activities of any individual The Klamath Tribes' General Manager determines poses an unacceptable risk of harm to any person with whom the individual may have contact with while carrying out duties or responsibilities on behalf of The Klamath Tribes.

Such a determination will be based on the individual's prior misconduct, including but not limited to criminal misconduct that is reported by the individual, discovered through investigation, or otherwise known by the General Manager.

**CERTIFICATION**

We, the undersigned Chairman and Secretary of The Klamath Tribes do hereby certify that at a regularly scheduled Tribal Council meeting held on the 22<sup>nd</sup> day of May, 2019, where a quorum was present, the Tribal Council duly adopted this Policy Revision by a vote of 6 for, 0 opposed, and 1 abstention/s.

  
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Donald C. Gentry, Chairman  
The Klamath Tribes

  
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Roberta Frost, Secretary  
The Klamath Tribes

