

## COMMITTEE REPORT

Human Resources Committee  
Affiliated Tribes of Northwest Indians  
2014 Mid-Year Convention

Great Wolf Lodge-Chehalis  
Grand Mound, WA

**Monday, May 5, 2014**

### **Committee Discussion:**

Presented a brief review of the Committee Chair Meeting.

Shared the request of the Executive Board to provide a first draft of written protocols for Committee Chairs.

Items to be included but not limited to:

- Election Procedures- Committee members are responsible to elect Committee Chairs who are experts in their field and have experience within Indian Country.
- Chair's responsibilities:
  - Submit the Committee Agenda by deadlines and keep topics relevant to current issues in your field.
  - Invite appropriate Speakers/Trainings
  - Ensure meetings are held at every conference- make alternate arrangements if they are unable to attend
  - Submit Committee Report for every Conference
  - Track Committee Resolutions by utilizing the Resolution Tracker
  - Act as the voice of the Committee to ensure their ideas are shared with ATNI
  - Communicate with the Committee throughout the year to ensure that ideas and projects are continued and completed.
  - Conduct themselves at all times in a manner that is appropriate for an elected position with the ATNI organization
- Committee Member Responsibilities:
  - Attend meetings at conferences
  - Participate in discussions while remaining calm, respectful and professional
  - Provide topic ideas relevant to Committee
  - Communicate with Committee members throughout the year to share subject matter and track relevant issues

### **Presentation by Darnell Commodore: Conducting Reviews on 401K Plans**

Darnell is a Lummi Tribal member who owns Commodore Assets Management.

- Discussed importance of reviewing and evaluating your 401K Plans
- Defined key items to identify:
  - Fees- who are you paying fees and what is the amount? Broker? Advisor?
  - Funds-how are your plan funds disbursed? How are your funds performing?
  - Employee Engagement-are your employees active participates if not, WHY?

Tuesday, May 7, 2014

Attendance: 15 participants with 6 Tribes represented

**Guest Speaker: Hot Topics on HR- Social Media, Confidentiality, Mental Health and NeuroScience!**

Sevilla Rhoads, Attorney for GSB Law

Topic One: Social Media and Technology

What do we do when an employee posts something offensive on Social Media?

Simple Answer-The same thing you would do if they were standing on the corner yelling the same thing!

Why?

Regardless of the mode of communication, you are disciplining for the conduct/behavior not the post itself.

The trend of employers implementing social media policies has come to an end. As current legal cases have thrown out many social media policies stating that the policies are not applicable as technology changes too fast and specific policies are not relevant.

Answer- to have a general statement policy regarding your communications policy and insert the phrase that "this applies to modes of social media"

Other issues with technology that employers are facing are:

Determining Work time when Employees are constantly connected

Employees using personal electronic devices

Data ownership

Data breach

Topic Two: Confidentiality

We believe that pay rates, employment agreements and Funding Report information are protected as confidential. However, recent case law is changing and in some cases we cannot hold the employees accountable for disclosure of confidential information. Here are some scenarios:

Employees post online that they hate their work...their boss and state how stupid they are.

Can you believe that we may not be able to discipline them for that?...Wait..what?

YES...it's true! But how can that be?

Casino Tribes and Major Enterprises should pay special attention as the NLRB is still trying to assert jurisdiction in these areas by stating that we cannot have rules/policies that prohibit concerted activity.

What is **concerted activity**?

"Generally, this requires two or more employees acting together to improve wages or working conditions, but the action of a single employee may be considered concerted if he or she involves co-workers before acting, or acts on behalf of others." (NLRB.gov)

Simply put...case law has determined that in some situations the actions of an employee are protected if the intent or issue was derived from a longing to correct an issue that they felt was unjust. And unfortunately in some case the employees were protected despite breaking rules/policies of the employer.

This makes it difficult for us as we have policies in place that prohibit employees from disclosing their pay rates as it is considered confidential. We have to consider this policy when it pertains to our enterprises NOT our GOVERNMENT functions.

An Employee releases a report that was meant for a funding agency.

Again, we may not be able to discipline for that. Why?

**False Claim Act**- allows for an individual employee to have protections when reporting to a funding agency that there is a discrepancy in reporting- does not matter if it was intentional or innocent mistake.

Why is this a concern? This particular type of claim is on the rise, as employees who make the reports and the issue is substantiated, the employer must pay back the funds to the agency and the reporting employee will collect 30% of those funds.

TOPIC THREE: Mental Health Accommodations

A Mental Health issue is considered a disability and must be offered the same provisions as any other physical disability. This issue has come to the fore front as employees have been terminated for behavioral issues at work and then informed their employers after the fact that they have depression or have been diagnosed as Bipolar.

What safety measures can we take?

When dealing with a disciplinary issue, ALWAYS meet with the employee first to ask "Is there any reason that you failed to adhere to the policy?" This provides the employee the opportunity to disclose and protects the employer from a claim after the event. Also it is important to add the topic to your Discrimination/Harassment trainings to ensure managers and employees know what to look for in their programs.

Topic Four: NeuroScience in HR?

This is a fairly new scientific method that measures a person's unconscious bias- the Implicit Association Test. This test has been used to determine if people have an unconscious bias towards those of different races, ethnicities and ages. In a recent case, this science was part of testimony to try and prove that a Hiring Manager had an unconscious bias against women. The claim stated that they did not get the job because the manager had an unconscious bias against women. This is particularly scary as this is very hard to defend because this test is measuring the unintentional. We will continue to monitor this to see how this will impact HR.

**No resolutions to be ADOPTED AND RECOMMENDED TO GENERAL ASSEMBLY  
COMMITTEE – NO ITEMS TABLED**

Minutes/Report submitted by: Heather Greene-Committee Chair