



NNAHRA
NATIONAL NATIVE AMERICAN HUMAN RESOURCES ASSOCIATION

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Gender in the Workplace

A Practical Approach

Agenda

- Is the tribal employer an equal opportunity employer?
- If yes, what law applies?
- As an equal opportunity employer, what do the words sex and gender mean?

Richard McGee
richard@richardmcgeelaw.com
richardmcgeelaw.com
612-812-9673

Effective Practices for Addressing Discrimination & Harassment in the Tribal Workplace (2022)

- *101 Everyone Should Know About Tribal Employment (Xlibris 2020)*
- *Drafting Tribal Employment Laws & Handbooks (Xlibris 2020)*
 - *A Guide to Tribal Employment (Xlibris 2008)*

In its policy manual the ABC Tribe states that it is an equal opportunity employer:

The ABC Tribe does not utilize age, race, sex, creed, religion, color, national origin, sexual orientation, pregnancy, veteran, military status or physical or mental disability when making employment related decisions.

Does state law control that list? Does state law apply?

Do federal employment laws control that list? Do federal employment laws apply to tribes?

No: Title VII of the Civil Rights Act of 1964 (race, religion, national origin and sex) and the Americans with Disabilities Act (disability).

Under the *Bostock* decisions, sex means male, female, sexual orientation, gender identity and gender expression. In defining what sex means, *Bostock* interpreted the word sex under Title VII but Title VII does not apply to tribal employers. Therefore, the ABC Tribe can interpret the word sex above to be limited to male and female or expansively to include other traits or characteristics.

Beyond sex, what does age mean? Disability?

Is the ABC Tribe's protected class list aligned with tribal law?

What ingredients influence the decision?

Can the ABC Tribe be a preference employer and an equal opportunity employer? Said another way, is preference a race based decision?

Is gender protection a right? If it is a right there should be an employer and/or tribal remedy?

If gender is not a right, can the employer still respect an employee's requests?

Practical considerations

- Discipline and dead names
- Bathrooms
- Legal names in personnel files, benefits forms and gaming licenses.
- Freedom of speech in the workplace versus policies that define professionalism.
- Religious beliefs intersecting with the expanded definition of gender.
- Pronouns
- The learning curve

Q&A