

Band Assembly Bill 20-03-XX-23

A Bill amending and re-enacting Title 15, Chapter 4 of the Mille Lacs Band Statutes (“MLBS”), making comprehensive reforms to the Tribal Employment Rights Office statute.

The District I Representative introduced the following Bill on the XXth day of XXXX, 2023.

BE IT ENACTED BY THE BAND ASSEMBLY OF THE NON-REMOVABLE MILLE LACS BAND OF OJIBWE:

Section 1: Amending and re-enacting Title 15, Chapter 4 – Tribal Employment Rights Office.

CHAPTER 4

TRIBAL EMPLOYMENT RIGHTS OFFICE

SUBCHAPTER 1

GENERAL PROVISIONS

Section

1001. Policy.

1002. Purpose.

1003. Severability.

1004. Definitions.

§ 1001. Policy and Findings.

(a) It is the policy of the Band to provide a preference in employment and contracting to members of the Band and other federally recognized Indian tribes.

(1) This policy applies to employment and contracting by the Band’s government, including all branches, departments, and agencies thereof, by all Band-owned entities while they are engaged in commercial or economic activities on behalf of the Band ~~within the Band’s~~ son or near the Reservation and by all persons and entities doing business with the Band, including subcontractors of persons or entities contracting with the Band, ~~within the Band’s~~ son or near the Reservation.

46 (2) This policy: ~~(A)~~ is intended to further the Band's overriding interests in self-
47 government, self-sufficiency, and economic development; ~~(B) is~~ directed to
48 the participation of the governed in the Band's governing bodies and in its
49 commercial and economic activities; ~~(C) is~~ intended to make the Band's
50 government and its commercial and economic activities more responsive to
51 the needs of its constituents; and ~~(D) is~~ intended to provide for the economic
52 security and employment of members of the Band and of other federally
53 recognized Indian tribes and to overcome the effects of past discrimination
54 against such persons.

55
56 (3) Economic insecurity and unemployment are serious impediments to the
57 health, morale, and welfare of the Band. Employment and contracting
58 opportunities with the Band's government, Corporate Ventures, and with
59 Band-owned entities and other persons and entities doing business with the
60 Band ~~within the Band's~~ son or near the Reservation, are important resources
61 for members of the Band and of other federally recognized Indian tribes, who
62 have historically suffered from discrimination in employment and contracting
63 opportunities. As a result, Indian people living on or near the Band's
64 Reservation have unique and special employment rights under federal law,
65 and the Band is obligated to implement those rights.

66
67 (b) Subject to the policy described in subsection (a) of this section, all employees subject
68 to the Band's jurisdiction are entitled to a workplace environment that prohibits
69 employment discrimination, protects employees' wages, and promotes health and
70 safety.

71
72 (c) The provisions of this chapter are critically important to the health and welfare of
73 members of the Band and of other federally recognized Indian tribes, especially those
74 residing on or near the ~~Band's~~ Reservation. Unemployment and underemployment
75 rates within the boundaries of the ~~Band's~~ Reservation are consistently many times
76 higher than the national and state averages. This pervasive unemployment and
77 underemployment has directly contributed to serious social problems and a lower
78 quality of life for members of the Band and of other federally recognized Indian tribes
79 residing on or near the ~~Band's~~ Reservation and impeded the self-governance
80 objectives of the Band.

81
82 ~~(d)~~ — The Band declares that the public good and the welfare of the Band require the
83 enactment of this chapter, which is enacted pursuant to the Band's inherent sovereign
84 and political powers, in order to increase employment of and the number of
85 businesses owned by members of the Band and of other federally recognized Indian
86 tribes, ~~especially within the Band's Reservation~~, and to protect the workforce rights
87 of Indian and non-Indian employees within the jurisdiction of the Band.

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§ 1002. Purpose.

This chapter is adopted by the ~~Mille Lacs Band of Ojibwe (the Band)~~Band, under its inherent sovereign and political powers, for the following purposes:

- (a) to promulgate Band laws and rules governing employment relations and contracting preference within the Band’s jurisdiction;
- (b) to establish the Band’s Tribal Employment Rights Office (~~TERO~~) in order to enforce the Band’s laws governing employment and contracting preference, and to protect the rights of all members of the Band, members of other federally recognized Indian tribes, and all other employees within the Band’s jurisdiction;
- (c) to increase the employment of members of the Band and of other federally recognized Indian tribes;
- (d) to eradicate employment discrimination, protect employees’ wages, and protect employees’ health and safety within the Band’s jurisdiction;
- (e) to provide a fair, enforceable, and effective system of preferences in contracting and sub-contracting as it relates to the provision of supplies, services, labor, and materials to the Band’s government and to Band-owned entities and other persons or entities doing business with the Band, including subcontractors of persons or entities contracting with the Band, ~~within the Band’s~~son or near the Reservation; and
- ~~(f)~~ —to supersede all other provisions of Band law that are inconsistent with the provisions of this chapter.

§ 1003. Severability.

If any provision of this chapter, or the application thereof to any person, business, corporation, ~~circumstance, or~~ government, including any agency or political subdivision thereof, ~~or~~ ~~circumstance,~~ is held invalid, the invalidity shall not affect any other provision or application of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared severable.

§ 1004. Definitions.

Unless otherwise provided in this section, all words in this chapter shall be construed according to their ordinary meaning. The following terms are defined for purposes of this chapter.

- (a) **“Adverse action”** means an action taken to try to keep an individual from opposing a discriminatory practice or from participating in an employment discrimination proceeding. Adverse actions include termination, refusal to hire, denial of promotion, threats, unjustified negative evaluations, unjustified negative references, increased

- 139 surveillance, or any other action, such as assault or unfounded civil or criminal
140 charge, that are likely to deter reasonable people from pursuing their rights.
141
- 142 (b) **“Band”** means the Mille Lacs Band of Ojibwe, a federally recognized Indian tribe,
143 and includes the Band’s government, including all branches, departments and
144 agencies thereof, ~~and all Band-owned entities while they are engaged in commercial~~
145 ~~or economic activities on behalf of the Band within the Band’s Reservation. For~~
146 ~~purposes of this chapter, the term “Band” does not include Corporate Ventures.~~
147
- 148 (c) **“Commission”** or **“TERO Commission”** means the Commissioner of the Tribal
149 Employee Rights Office.
- 150
151 ~~(d)~~ **“Commission Member”** or **“Member”** means a director serving on the TERO
152 Commission, appointed under § 1011 of this chapter.
153
- 154 ~~(d)(e)~~ **“Compliance plan”** means a document submitted by all covered employers and
155 approved by the TERO Director. The compliance plan describes the necessary
156 qualifications for each position subject to this chapter and further details the steps
157 that covered employers will take to ensure full TERO compliance.
158
- 159 ~~(e)(f)~~ A **“Conflict of Interest”** means a situation that occurs when a TERO Commission
160 Mmember is in a position to influence a decision that may result in a personal gain
161 for that Mmember or for a Mmember of ~~his or her~~ her or his immediate family.
162
- 163 ~~(f)(g)~~ **“Core crew”** means regular, permanent employees in supervisory or other key
164 positions where an employer would face serious financial loss if the positions were
165 filled by persons who had not previously worked for that employer.
166
- 167 ~~(g)(h)~~ **“Corporate Ventures”** means Mille Lacs Corporate Ventures (formerly known as
168 the Corporate Commission of the Mille Lacs Band of Ojibwe) as established by 16
169 MLBS § et seq.
170
- 171 ~~(h)(i)~~ **“Covered employer”** means the Band and any entity, company, contractor, sub-
172 contractor, corporation, or other business doing business on or near the Reservation
173 with the Band, including subcontractors of persons or entities contracting with the
174 Band, ~~within the Band’s Reservation~~ that employs for wages or other remuneration
175 two (2) or more employees. Corporate Ventures is considered a covered employer
176 under this chapter.
177
- 178 ~~(i)(j)~~ **“Days”** means calendar days, including holidays and weekends, unless otherwise
179 indicated.
180
- 181 ~~(j)(k)~~ **“Director”** or **“TERO Director”** means the director of the Band’s Tribal
182 Employment Rights Office.
183
- 184 ~~(k)~~ **“Disability”** means, with respect to an individual, is ÷

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- 185 (l) — a physical or mental impairment that substantially limits one (1) or more major life
186 activities of such individual;
- 187 (m) —
- 188 (n) — a record of such an impairment; or
- 189 (o) —
- 190 (p) — the state of being regarded ~~as having to have~~ such an impairment.
- 191 (q) —
- 192 An impairment does not have to be permanent to rise to the level of a disability.
193 Temporary impairments that take significantly longer than normal to heal, long-term
194 impairments, or potentially long-term impairments of indefinite duration may be
195 disabilities if they are severe.
- 196
- 197 (r) — ~~“EEOC” means the federal Equal Employment Opportunity Commission.~~
- 198
- 199 (s)(1) ~~“Elected o~~**fficials**” means the Mille Lacs Band Chief Executive, Secretary-
200 Treasurer, and District Representatives.
- 201
- 202 (t)(m) ~~“Immediate f~~**Family**” ~~includes means~~ a person’s spouse, a person’s biological or
203 adopted child, a member of a person’s household, and a person’s mother, father, and
204 ~~sister, and brothers~~siblings.
- 205
- 206 (u)(n) ~~“Indian”~~ **“Indian”** means a member of a federally recognized Indian tribe.
- 207
- 208 (v)(o) ~~“Indian c~~**ertified e**~~ntity”~~ means an entity, certified by the TERO Commission,
209 in which ~~fifty-one percent (51% percent)~~ or more of the ownership interests are held
210 by one (1) or more Indians and in which daily management and control is provided
211 by one (1) or more Indians.
- 212
- 213 (w)(p) ~~“On or near”~~ “On or near” means all lands within 100 miles of the Reservation.
- 214
- 215 (x)(q) ~~“Reservation”~~ **“Reservation”** means all lands within the exterior boundaries of the Mille Lacs
216 ~~Indian-Band~~ Reservation as established by the Treaty of 1855, 10 Stat. 1165, all
217 lands held in trust by the United States for the benefit of the Minnesota Chippewa
218 Tribe, the Band or individual members of the Band, which are subject to the
219 jurisdiction of the Band, and all lands owned by the Band which are located within
220 one of the districts designated in 2 MLBS § 11.
- 221
- 222 (y) — ~~“TERO”~~ **“TERO”** means the Band’s Tribal Employment Rights Office established by this
223 chapter.
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SUBCHAPTER 2

ADMINISTRATION; MILLE LACS BAND OF OJIBWE TRIBAL
EMPLOYMENT RIGHTS OFFICE

Section

1011. TERO Commission and Recusal of Commission Members.

1012. Powers and Duties of the TERO Commission, ~~and~~; Compensation.

1013. Tribal Employment Rights Office; Director.

1014. Powers and Duties of TERO Director.

1015. Intergovernmental Relationships.

§ 1011. TERO Commission and Recusal of Commission Members.

- (a) **TERO Commission Members.** The ~~TERO shall be managed by the~~ TERO Commission ~~shall provide oversight of the TERO in accordance with this chapter.~~ At all times there shall be at least one (1) ~~commission M~~member on the Commission from each Band district established by 2 MLBS § 11. The Commission shall consist of seven (7) ~~commission M~~members as appointed under paragraph (1) below.

~~(1) **Appointment Process; Terms; Oath of Office.** Each member shall be appointed using the following process: The elected officials shall each nominate two (2) individuals and submit their names to the Mille Laes Band Parliamentarian. The Chief Executive and Secretary Treasurer of the Band shall each nominate two (2) additional individuals and submit their names to the Mille Lacs Band Parliamentarian. Within ten (10) calendar days after receipt of the nominations, the elected officials shall convene and vote on one (1) of the two (2) nominees submitted from each elected official to be a member of the Commission. Members appointed by the Chief Executive and District I Representative shall serve until December 1, 2018, and Members appointed by the Secretary Treasurer, District II Representative, and District III Representative shall serve until December 31, 2020. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.~~

~~(i) The Chief Executive shall nominate two (2) individuals and submit their names to the Secretary-Treasurer. Within fifteen (15) business days after receipt of the nominations by the Secretary-Treasurer, the Secretary-Treasurer shall ratify one (1) of the two (2) nominees to be a Member of the Commission. Such Member shall serve until December 31, 2026 Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.~~

~~(ii) The District I Representative shall nominate two (2) individuals and submit their names to the Chief Executive. Within fifteen (15) business days after receipt of the nominations by the Chief Executive,~~

277 the Chief Executive shall ratify one (1) of the two (2) nominees to be a
278 Member of the Commission. Such Members shall serve until
279 December 31, 2026. Any subsequent appointment, other than to fill a
280 vacancy that occurs prior to the end of a term, shall be for four (4)
281 years.

283 (iii) The District II and III Representatives shall each nominate two (2)
284 individuals and submit their names to the Chief Executive. Within
285 fifteen (15) business days after receipt of the nominations by the Chief
286 Executive, the Chief Executive shall ratify one (1) of the two (2)
287 nominees submitted by each Representative to be a Member of the
288 Commission. Such Members shall serve until December 31, 2024. Any
289 subsequent appointment, other than to fill a vacancy that occurs prior
290 to the end of a term, shall be for four (4) years.

292 (iv) The Secretary-Treasurer shall nominate two (2) individuals and submit
293 their names to the Chief Executive. Within fifteen (15) business days
294 after receipt of the nominations by the Chief Executive, the Chief
295 Executive shall ratify one (1) of the two (2) nominees to be a Member
296 of the Commission. Such Member shall serve until December 31,
297 2024. Any subsequent appointment, other than to fill a vacancy that
298 occurs prior to the end of a term, shall be for four (4) years.

300 (v) The Chief Executive shall nominate two (2) additional individuals and
301 submit their names to the Band Assembly. Within fifteen (15) business
302 days after receipt of the nominations by the Band Assembly, the Band
303 Assembly shall ratify one (1) of the two (2) nominees to be a Member
304 of the Commission. Such Member shall serve until December 31,
305 2026. Any subsequent appointment, other than to fill a vacancy that
306 occurs prior to the end of a term, shall be for four (4) years.

308 (vi) The Secretary-Treasurer shall nominate two (2) additional individuals
309 and submit their names to the Band Assembly. Within fifteen (15)
310 business days after receipt of the nominations by the Band Assembly,
311 the Band Assembly shall ratify one (1) of the two (2) nominees to be a
312 Member of the Commission. Such Member shall serve until December
313 31, 2024. Any subsequent appointment, other than to fill a vacancy
314 that occurs prior to the end of a term, shall be for four (4) years.

316 (+)(vii) Members currently serving on the Commission who have been
317 appointed by the Chief Executive and the District I Representative
318 shall remain in their positions until December 31, 2026. Members
319 currently serving on the Commission who have been appointed by the
320 Secretary-Treasurer or the District II and III Representatives shall
321 remain in their positions until December 31, 2024.

323 (viii) If the Chief Executive or the Secretary-Treasurer does not ratify one
324 from any of the nominations sent to them within the time prescribed,
325 then the Band Assembly shall select such Member by majority vote.

327 (ix) All vacancies shall be filled in a manner consistent with subsections (i)
328 through (viii) above. If any elected official does not submit a
329 nomination within thirty (30) calendar days after a vacancy has
330 occurred, then the Band Assembly shall nominate two (2) individuals
331 by majority vote and submit their names to the Chief Executive for
332 ratification to the Commission. If the position being filled under this
333 subsection is a District Representative-appointed position, then the
334 position shall be filled by an individual from the respective district. If
335 the Chief Executive does not ratify one of the two (2) nominations
336 within fifteen (15) business days, then the nominee shall be deemed
337 ratified.

339 ~~(ii)~~(x) No Member shall take office until swearing to the oath of office
340 pursuant to 2 MLBS § 8.

341
342 (2) **Qualifications.** Commissioners shall be public officials subject to the ~~Mille~~
343 ~~Laes-Band's Title 6~~ Ethics Code ~~in 6 MLBS §§ 1151-1163~~. At least three (3)
344 of the Commissioners shall have education or experience in one (1) or more of
345 the following areas:

- 346
347 (i) human resources;
348
349 (ii) tribal employment rights;
350
351 (iii) construction management;
352
353 (iv) regulatory enforcement; or
354
355 (v) auditing or investigations.

356
357 ~~(3)~~ **Officers.** The TERO Commission Members shall select a Chairperson, Vice-
358 Chairperson, and Secretary at the first meeting of the Commission, and
359 annually thereafter. The Chairperson shall preside at all meetings of the
360 Commission and shall be authorized to sign required documents in
361 accordance with the powers of the Commission.

362
363 (b) Recusal of Commission Members. When confronted with a conflict of interest,
364 TERO Commission Members shall announce the nature of the conflict and recuse
365 themselves from any corresponding vote.

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368

369 § 1012. Powers and Duties of the TERO Commission, ~~and~~; Compensation.
370

371 (a) The TERO Commission has the full power, jurisdiction, and authority:
372

373 (1) to take all actions necessary and appropriate to implement the provisions of
374 this chapter;

375
376 ~~(4)~~(2) to interpret this chapter and any rules, regulations, or guidelines adopted
377 hereunder;

378
379 ~~(2)~~(3) to approve or reject any and all rules, regulations, and guidelines formulated
380 by the Director to carry out the provisions of this chapter and to approve or
381 reject the amendment or rescission of any such rules, regulations, or
382 guidelines, provided that, except when an emergency exists, the TERO
383 Commission shall provide the public an opportunity to comment at a meeting
384 of the TERO Commission before approving any such rules, regulations, or
385 guidelines or amendments or ~~recessions~~rescissions thereof;
386

387 (4) to approve or reject the use of TERO funds through the approval of the
388 TERO budget, with ratification by the Band Assembly and Chief Executive
389 under 3 MLBS § 21, and any subsequent amendments or modifications that
390 may be required to carry out the provisions of this chapter;
391

392 (5) to conduct hearings in accordance with such rules of practice and procedure
393 as may be adopted by the TERO Commission after providing the public an
394 opportunity to comment ~~on them~~ at a meeting of the TERO Commission;
395

396 ~~(3)~~(6) to order any relief or sanctions authorized by this chapter, and to petition the
397 ~~Mille Laes~~ Band's Court of Central Jurisdiction for such orders to enforce the
398 decisions of the TERO Commission and any sanctions imposed by the TERO
399 Commission, if necessary;
400

401 ~~(4)~~(7) to make recommendations to the Band Assembly ~~on~~regarding amendments
402 to this chapter;
403

404 ~~(5)~~(8) to establish a system for certifying firms as Indian-~~O~~wned bBusinesses or
405 ~~Mille Laes~~ Band-~~o~~wned businesses;
406

407 ~~(6)~~(9) to maintain a list of certified bBusinesses;
408

409 ~~(7)~~(10) to assist enrolled Band mMembers in obtaining certification;
410

411 ~~(8)~~(11) to coordinate training and mentorship programs for enrolled Band mMembers
412 and Indians;
413

414 ~~(9)~~(12) to monitor all contracting activities on Band ~~I~~ands in consultation with the
415 elected officials;

416
417 ~~(10)~~(13) to inform the Band ~~g~~overnment, Band ~~e~~ntities, ~~e~~mployers, and
418 ~~c~~ontractors and assist in presentations to the public on the requirements of
419 this chapter with respect to Indian employment and contact preference
420 requirements;

421
422 ~~(11)~~(14) to oversee the ~~c~~ertified ~~b~~usinesses receiving invitations to bid on
423 contracts;

424
425 ~~(12)~~(15) to establish a Band labor surplus pool and refer ~~enrolled~~ Band ~~m~~embers
426 and other Indians to an ~~e~~mployer or ~~c~~ontractor for employment
427 considerations;

428
429 ~~(13)~~(16) to assist procurement officers or delegated agents in the designation of
430 contracts appropriate for the set aside program;

431
432 ~~(14)~~(17) to develop and maintain an audit and reporting system which measures
433 the effectiveness of ~~the Indian Preference Policy~~this chapter in meeting its
434 employment preference goals and objectives;

435
436 ~~(15)~~(18) to establish procedures for TERO's regulatory proceedings;

437
438 ~~(16)~~(19) to establish procedures, forms, and policies necessary to carry out the
439 purposes of the chapter; and

440
441 ~~(17)~~(20) to enforce any employment and procurement laws, policies, and
442 procedures in accordance with this chapter.

443
444 ~~(b)~~ — **Compensation.** Commission ~~M~~embers may receive a stipend for ~~their~~
445 services attendance at regular and special meetings at a rate established by the Band
446 Assembly in the amount of \$400.00 per meeting, but payment of such stipend shall be
447 limited to two (2) meetings per month. Commission ~~ers~~ ~~Members~~ shall be reimbursed
448 for actual expenses incurred on Commission business, including necessary travel
449 expenses, in a manner consistent with applicable Band policies and procedures.
450 Compensation for the attendance of trainings and conferences shall be considered a
451 separate meeting for each day.

452
453
454 **§ 1013. Tribal Employment Rights Office; Director.**

455
456 There is hereby established the Tribal Employment Rights Office as an agency of ~~the Mille Laes~~
457 ~~Band of Ojibwe~~ government ~~the Tribal Employment Rights Office (also known as "TERO").~~
458 The TERO Director ~~of the TERO~~ shall be an employee of the TERO under the direct

459 supervision of the TERO Commission and shall have the powers and duties prescribed in § 1014
460 of this ~~sub~~chapter.

461

462

463 **§ 1014. Powers and Duties of TERO Director.**

464

465 The Director shall have the following powers and duties:

466

467 (a) to formulate, amend, and rescind regulations, rules, and guidelines necessary to carry
468 out the provisions of this chapter, subject to the approval of the ~~Board~~Commission;

469

470 (b) to implement and enforce the provisions of this chapter, as well as any properly
471 adopted regulations, rules, guidelines, and orders;

472

473 (c) to hire staff, expend designated funds from ~~an approved~~ budget approved by the
474 TERO Commission, with ratification by the Band Assembly and Chief Executive
475 under 3 MLBS § 21, and obtain and expend funding from federal, state, and other
476 sources;

477

478 (d) to maintain a list of current ~~c~~Covered ~~e~~Employers, current employer permits and
479 work permits issued, and current Indian ~~c~~Certified ~~e~~Entities;

480

481 ~~(e)~~ to maintain a record of all contracting projects subject to this chapter and the TERO
482 fees assessed for each project;

483

484 ~~(e)(f)~~ to approve or deny compliance plans submitted by covered employers;

485

486 ~~(f)(g)~~ to process applications for certification of Indian ~~c~~Certified ~~e~~Entities by the
487 ~~Board~~Commission;

488

489 ~~(g)(h)~~ to grant TERO permits and collect TERO fees as authorized by this chapter;

490

491 ~~(h)(i)~~ to establish training and workforce development programs, in conjunction with ~~the~~
492 ~~Mille Laesother~~ Band ~~Department of Labor~~programs, for Band members and other
493 Indians to assist them in obtaining and retaining employment;

494

495 ~~(i)(j)~~ to process applications for and maintain a list of Band members and other Indians
496 living on or near the Reservation who are available for employment and to assist
497 such persons with job placement; and

498

499 ~~(j)~~ to contract with federal and state entities for the provision of additional job
500 procurement services and funding consistent with the purposes of this chapter.

501

502

503

504

505 § 1015. Intergovernmental Relationships.

506
507 The TERO Commission, acting through the Director, is authorized, ~~with the written concurrence~~
508 ~~of the Commissioner of Administration,~~ to enter into cooperative relationships with federal
509 employment rights agencies, ~~such as including but not limited to~~ the EEOC federal Equal
510 Employment Opportunity Commission and the Office of Federal Contract Compliance
511 Programs ~~(OFCCP)~~, and with state employment rights agencies, such as the Human Rights
512 Commission, in order to eliminate discrimination against Indians on and off the Reservation, as
513 well as to develop training programs for Indians. The Director may also, ~~with the written~~
514 ~~concurrence of the Commissioner of Administration,~~ enter into cooperative relationships with
515 federal agencies, including but not limited to the Bureau of Indian Affairs, the Department of
516 Labor, the Federal Highway Administration, and the Internal Revenue Service, in order to
517 implement any federal employment or other workforce rights, authorities, or requirements as
518 such agency may lawfully delegate to the Band.
519

520
521
522 **SUBCHAPTER 3**

523
524 **INDIAN PREFERENCE IN EMPLOYMENT AND CONTRACTING**

525
526 **Section**

527 **1021. Indian Preference in Employment.**

528 **1022. Covered Employer's Responsibilities.**

529 **1023. Core Crew.**

530 **1024. Indian Preference in Contracting.**

531 **1025. Indian Certified Entities.**

532 **1026. Applicability of Indian Preference in Contracting.**

533 **1027. Other Preferences to be Consistent.**

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535
536 **§ 1021. Indian Preference in Employment.**

537
538 (a) All covered employers shall give preference to Indians living on or near the
539 Reservation in the hiring, promotion, training, and all other aspects of employment
540 ~~within the boundaries of~~ on or near the Reservation, provided that these individuals
541 have the necessary qualifications. The priority for Indian preference is as follows:

- 542
543 (1) ~~Mille Laes~~ Band mMember;
- 544
545 (2) member of another federally recognized Indian ~~t~~Tribe; and
- 546
547 (3) all others.
- 548

549 (b) Every covered employer shall encourage Indians to seek ~~promotional~~ opportunities
550 for promotion. For every opening in a supervisory position, the employer shall
551 inform Indian workers about the position and encourage them to apply.
552

553 ~~(e)~~ — No covered employer shall be permitted to maintain a position that no employment
554 opportunities exist in the fulfillment of any said contract in order to evade the
555 provisions of this section. The covered employer shall develop a goal statement
556 which is subject to advance approval by the TERO Director prior to the
557 commencement of any work. Additionally, no goal statement shall be approved
558 which contains less than ~~fifty percent (50% percent)~~ for each construction operation
559 in Indian employment opportunities pursuant to any contract.
560
561

562 **§ 1022. Covered Employer’s Responsibilities.**
563

564 (a) Covered employers shall notify the TERO Director of openings in employment
565 positions subject to this chapter and provide job descriptions for such openings at or
566 before the time ~~at in~~ which they advertise the openings. Job descriptions shall not be
567 written in a way to unnecessarily exclude Band members or other Indians from
568 employment.
569

570 (b) All covered employers shall define in writing the necessary qualifications for each
571 employment position in their work force that is subject to this chapter, which shall be
572 provided to the ~~director~~ TERO Director as part of their compliance plans and to
573 applicants upon request.
574

575 (c) All covered employers shall comply with this chapter, all rules and regulations
576 relating to it, and all guidelines and orders of the ~~director~~ TERO Director.
577

578 (d) The requirements in this chapter shall not apply to any direct employment by the
579 ~~f~~ederal or a state government or their agencies or subdivisions. However, such
580 requirements shall apply to all contractors or grantees of such governments and to all
581 commercial enterprises operated by such governments when they are doing business
582 ~~with the Band within~~ on or near the Reservation.
583

584 (e) Covered employers shall include and specify an Indian employment preference
585 policy statement in all job announcements and advertisements and all employer
586 policies that are subject to this chapter.
587

588 (f) Covered employers shall post in a conspicuous place on their premises for their
589 employees and applicants an Indian preference policy notice prepared or approved
590 by the TERO Director.
591

592 (g) Covered employers, except for construction contractors, shall ~~advertise and~~
593 ~~announce~~ notify the TERO Director of all openings in employment positions subject
594 to this chapter for publication on the ~~Mille Laes~~-Band website. Construction

595 contractors, prior to starting work within the Reservation, shall provide a ~~TERO~~
596 ~~c~~Compliance ~~p~~Plan for the project to the TERO ~~D~~irector.

597
598 (h) Covered employers shall use non-discriminatory job qualifications and selection
599 criteria in filling employment positions subject to the requirements of this chapter.
600 No covered employer shall use any job qualification criteria that serve as barriers to
601 Indian preference in employment, ~~unless the covered employer can demonstrate that~~
602 ~~such criteria or requirements are required by business necessity.~~

603
604 (i) Regardless of the qualifications of any non-Indian applicant, any Indian who
605 demonstrates the necessary qualifications for an employment position subject to this
606 chapter:

607
608 (1) shall be selected by covered employers in the case of hiring, promotion,
609 transfer, upgrading, recall, and other employment opportunities with respect
610 to such position; and

611
612 ~~(2)~~ shall be retained by covered employers in the case of a reduction in force
613 affecting a certain class of positions until all non-Indians employed in that
614 class of positions are laid-off.

615
616
617 **§ 1023. Core Crew.**

618
619 (a) Covered employers, may, if necessary, designate a core crew, which is exempt from
620 the Indian preference requirements of this chapter.

621
622 (b) If a core crew is necessary, such core crew shall not exceed ~~twenty-five percent~~
623 ~~(25%)~~ percent of the total employees of the project ~~or/~~ jobsite, except as otherwise
624 provided in subsection (c) of this section.

625
626 ~~(c)~~ The ~~director-TERO Director~~ may, at ~~his or her~~ ~~her or his~~ discretion, grant a covered
627 employer a larger core crew designation upon a satisfactory demonstration by the
628 covered employer that a larger core crew is necessary due to unique or specialized
629 positions that are essential for the operation of the business. A covered employer
630 may appeal the decision of the ~~director-TERO Director~~ to the ~~Board~~TERO
631 Commission.

632
633
634 **§ 1024. Indian-Native Preference in Contracting.**

635
636 (a) To the extent provided in § 1026 of this chapter, all covered employers shall give
637 preference in contracting and subcontracting to Indian certified entities.

638
639 (b) If one (1) or more qualified Indian certified entities submit a bid that is within ten
640 (10%) percent of the lowest competitive bid, the covered employer shall give ~~one of~~

641 the qualified Indian certified entities submitting such a bid the opportunity to
642 negotiate an acceptable bid.

643
644 (c) In accordance with §§ 1012 and 1014 of this chapter, the ~~director~~TERO Director
645 shall formulate and the ~~Board~~Commission shall approve regulations providing
646 guidance on implementing the requirements of this section and for implementing
647 Indian contracting preference when the awarding entity uses a method other than
648 competition to select a contractor.

649
650 (d) Whenever feasible, the covered employer shall submit to the ~~director~~TERO Director,
651 at least thirty (30) days in advance of the deadline for the submission of bids for a
652 contract or subcontract, a list of all related contracts and subcontracts contemplated
653 by the covered employer in order to enable the ~~D~~irector to give Indian ~~c~~ertified
654 ~~e~~ntities the opportunity to prepare bids for such related contracts and subcontracts.

655
656 (e) — Any covered employer or Indian certified entity entering into a contract under the
657 Indian preference provisions of this chapter consents to the jurisdiction of the Band's
658 Court of Central Jurisdiction for purposes of resolving any dispute arising under such
659 contract, provided that nothing in this subsection shall waive the sovereign immunity
660 of the Band.

661
662

663 **§ 1025. Indian Certified Entities.**

664
665 The ~~Board~~TERO Director shall establish for approval by the TERO Commission a system for
666 certifying firms as Indian certified entities. This system shall include detailed provisions to
667 ensure that entities that are not truly 51% ~~percent~~ or more owned by Indians, or in which daily
668 management and control is not provided by Indians, are not granted Indian preference
669 certification.

670
671

672 **§ 1026. Applicability of Indian Preference in Contracting.**

673
674 (a) Except as otherwise provided in this section, the Indian preference in contracting
675 required under § 1024 of this chapter shall apply ~~only~~ to contracts and subcontracts
676 to be performed on or near the Reservation and shall not apply to the delivery of
677 goods from a location outside the Reservation.

678
679 (b) — Notwithstanding any other provision in this chapter, the Indian preference in
680 contracting required under § 1024 of this chapter shall not apply to any contracts or
681 subcontracts where the ~~Board~~TERO Commission determines that application of that
682 preference is specifically prohibited by federal law.

683
684 (e) — The Indian preference in contracting required under § 1024 of this chapter shall not
685 apply to contracts awarded by the federal or a state government or their agencies or
686 subdivisions. However, the Indian preference in contracting required under § 1024 of
687 this chapter shall apply to all subcontracts awarded by a federal or state contractor or

688 grantee that is a covered entity, whether or not the prime contract was subject to that
689 preference, except when the Board determines that application of that preference to
690 that entity is specifically prohibited by federal law.

691
692
693 **§ 1027. Other Preferences to be Consistent.**

694
695 Any provision for Indian preference in employment or contracting contained in any Band
696 policy, including any Corporate Ventures policy ~~of the Corporate Commission~~, must be
697 consistent with the Indian preference in §§ 1021 and 1024, which provide first priority to Mille
698 Laesenrolled Band members, second priority to members of another federally recognized Indian
699 tribe, and third priority to all others.

700
701
702
703 **SUBCHAPTER 4**

704
705 **FEES**

706
707 **Section**

708 **1031. Fees.**

709 **1032. Exempt Employers and Entities.**

710 **1033. Fee Collection and Expenditure.**

711
712
713 **§ 1031. Fees.**

714
715 Except as otherwise provided in § 1032 of this chapter, and ~~except as unless specifically~~
716 prohibited by federal law, the following fees are assessed on covered employers, other than the
717 Band, for the privilege of doing business with the Band or Corporate Ventures ~~within on or near~~
718 the Rreservation and to raise revenue for the operation of the TERO office and the enforcement
719 of this chapter.

- 720
721 (a) Every covered employer, ~~other than the Band~~, that enters into a contract with the
722 Band or Corporate Ventures totaling ~~\$25,000.00~~ \$7,500.00 or more shall pay a one-
723 time project fee of ~~one half percent (0.5%)~~ up to three (3) percent, in accordance
724 with a fee schedule approved by the TERO Commission, which shall be assessed of
725 on the total amount of the contract. The covered employer shall pay the full amount
726 of the fee before commencing work on the Reservation under the contract, provided
727 that the ~~director~~ TERO Director may, for good cause shown by the covered
728 employer, authorize the fee to be paid in installments over the life of the contract,
729 and provided further that if the total amount of the contract is subsequently
730 increased, the covered employer shall pay the additional amount due ~~(0.5% of the~~
731 ~~increased amount of the contract)~~ at the time of the increase. In all cases, the full
732 amount shall be paid by the contractor upon the last pay application. A covered
733 employer ~~other than the Band~~ that enters into a contract with the Band or Corporate

734 Ventures for less than ~~\$25,000.00~~ \$7,500.00 shall pay the ~~0.5%~~ fee on the total
735 amount of the contract if the contract is amended or enlarged to ~~\$25,000.00~~ \$7,500.00
736 or more within one (1) year after it was entered into. The fee imposed by this
737 paragraph does not apply to a covered employer that enters into a subcontract made
738 under a contract with the Band or Corporate Ventures where the fee has been paid on
739 the total amount of such contract.

740
741 ~~(b)~~ — All covered employers ~~other than the Band~~ shall, as a condition of doing business on
742 or near the Reservation under a contract with the Band or Corporate Ventures,
743 consent to the Band entity awarding the contract paying the fee imposed under
744 subsection (a) of this section directly to the TERO prior to the commencement of
745 work under the contract and subtracting the amount of the fee from the payments due
746 to the covered employer under the contract. Prior to making the payment, the Band
747 entity awarding the contract shall provide the contractor with a form prepared by the
748 TERO, in which the contractor grants its consent to the payment of the TERO fee
749 based on the amount it is entitled to receive from the Band entity. A contractor shall
750 not be permitted to commence work on or near the ~~R~~reservation until it has executed
751 this form, provided that this provision shall not apply if the imposition of the fee with
752 respect to the contractor is prohibited by federal law.

753
754
755 **§ 1032. Exempt Employers and Entities.**

756
757 The fees imposed in § 1031 of this chapter shall not be collected where applicable provisions of
758 a federal contract or grant prohibit the collection of such fees.

759
760
761 **§ 1033. Fee Collection and Expenditure.**

762
763 (a) ~~The TERO fees shall be collected by the director pursuant to TERO regulations.~~ The
764 TERO fees shall be ~~paid over to automatically withheld by~~ the Band's Office of
765 Management and Budget ~~(OMB)~~ and ~~shall be~~ credited to the TERO account. These
766 funds shall be expended solely by the TERO, pursuant to a duly approved budget in
767 order to carry out the purposes of this chapter.

768
769 ~~(b)~~ — The TERO ~~Office~~ Director, ~~in conjunction with the Band's Department of Labor,~~
770 shall prepare a quarterly report as to all employment and training expenditures. The
771 report shall be made available to the ~~legislative branch and executive branch~~ Band
772 Assembly, Chief Executive, and TERO Commission each calendar quarter.

SUBCHAPTER 5

COMPLIANCE PLAN, NOTICE, AND CONTRACTS

Section

1041. Compliance Plan.

1042. Notice to Proposed Contractors and Subcontractors.

1043. Contract Language Imposing TERO Requirements.

1044. Model Language.

1045. TERO Approval of Notices of Contracts and Awarded by Covered Entities.

§ 1041. Compliance Plan.

- (a) All covered employers, other than the Band, shall, no less than ten (10) business days prior to commencing business on the ~~R~~reservation, prepare and submit to the ~~director~~ TERO Director for her or his approval a plan setting out how the employer will comply with the requirements of this chapter and its implementing regulations regarding Indian employment and Indian contracting preference. A Band-owned entity shall, no less than ten (10) business days prior to entering into a contract with a non-Band contractor to be performed on the ~~R~~reservation, prepare and submit to the director for her or his approval a plan setting out how the Band-owned entity will comply with the requirements of this chapter and its implementing regulations regarding Indian employment and Indian contracting preference in connection with such contract. A covered employer already doing business on the ~~R~~reservation on the effective date of this chapter that has not prepared a compliance plan that has been approved by the ~~director~~ TERO Director under this section shall come into compliance with the requirements of this section within thirty (30) business days of the effective date of this chapter.
- (b) The payroll records of all covered employers other than the Band shall be submitted to the ~~director~~ TERO Director within thirty (30) days of his or her request. Any covered employer required to submit a certified payroll pursuant to federal law under the Davis-Bacon Act shall submit a copy of this certified payroll record to the ~~director~~ TERO Director.
- (e) — All covered employers other than the Band are required to report relevant changes regarding their employees and employment positions to the ~~director~~ TERO Director when they submit the payroll records to the ~~director~~ TERO Director under subsection (b) of this section, including but not limited to new positions, terminations, layoffs, promotions, and retirements.

826 § 1042. Notice to Proposed Contractors and Subcontractors.
827

828 (a) Any covered employer, when issuing a notice of a proposed contract to be awarded
829 by it, shall include provisions in the notice that inform a prospective contractor about
830 the requirements established by this chapter.
831

832 ~~(b)~~—Any covered employer, when issuing a notice of a proposed subcontract to be
833 awarded by it, shall include provisions in the notice that inform any prospective
834 subcontractor about the requirements established by this chapter.
835

836
837 § 1043. Contract Language Imposing TERO Requirements.
838

839 Any covered employer, when awarding a contract or subcontract, shall include provisions that
840 impose the requirements of this chapter on the contractor or subcontractor, such that the legal
841 document will fully bind the party to comply with the requirements of this chapter.
842

843
844 § 1044. Model Language.
845

846 In order to implement the requirements of §§ 1042 and 1043 of this chapter, the ~~director-TERO~~
847 Director shall provide to the covered employer:

848
849 (a) model language that shall be included in the notice to prospective contractors and
850 subcontractors, informing them of the requirements established by this chapter; and
851

852 ~~(b)~~—model language to be included in each contract and subcontract, imposing the
853 requirements set out in this chapter as terms of the contract.
854

855
856 § 1045. TERO Approval of Notices of Contracts and Contracts Awarded by Covered
857 Employers.
858

859 Each covered employer, prior to issuing notice of a contract to prospective contractors or
860 subcontractors and prior to awarding a contract or subcontract, shall submit the proposed notice
861 and, contract or subcontract to the ~~director-TERO~~ Director for approval.
862

863
864
865 **SUBCHAPTER 6**

866
867 **PROHIBITION OF EMPLOYMENT DISCRIMINATION**
868

869 Section

870 **1051. Prohibited Discrimination.**

871 **1052. Religious Accommodation.**

872 **1053. Discrimination ~~B~~ased on Disability.**

873 **1054. Discrimination ~~B~~ased on Pregnancy.**

874 **1055. Harassment.**

875 **1056. Retaliation.**

876 **§ 1051. Prohibited Discrimination.**

877

878 Except as necessary to comply with the Indian employment preferences in subchapter 3 of this
879 chapter, it shall be unlawful for a covered employer to do any of the following acts wholly or
880 partially based on the actual or perceived race, color, religion, national origin, sex, age, sexual
881 orientation, or political affiliation of any individual, unless such characteristic is a bona fide
882 occupational qualification:

883

884 (a) fail or refuse to hire, or discharge, any individual, or otherwise discriminate against
885 any individual, with respect to ~~his or her~~ or his compensation, terms and
886 conditions, or privileges of employment, including promotion;

887

888 (b) discriminate in recruiting individuals for employment; ~~;~~ or

889

890 ~~(e)~~ —limit, segregate, or classify employees in any way that would tend to deprive them of
891 employment opportunities.

892

893

894 **§ 1052. Religious Accommodation.**

895

896 It shall be an unlawful discriminatory practice for a covered employer to refuse to make a
897 reasonable accommodation for an employee's religious or spiritual observance, unless doing so
898 would cause undue hardship to the employer as determined by the TERO. A reasonable
899 religious accommodation is any adjustment to the work environment that will allow the
900 employee to practice ~~his or her~~ or his religion, such as flexible scheduling, voluntary
901 substitutions or swaps, job reassignments, and lateral transfers, if approved by the authorized
902 supervisor in accordance with the Band's Personnel Policy Manual. An accommodation would
903 cause an employer undue hardship when ~~it~~ the accommodation would require more than
904 ordinary administrative costs, diminish efficiency in other jobs, infringe on other employees' job
905 rights or benefits, impair workplace safety, cause co-workers to carry the accommodated
906 employee's share of potentially hazardous or burdensome work, or conflict with another
907 applicable law or regulation.

908

909

910 **§ 1053. Discrimination ~~B~~ased on Disability.**

911

912 (a) It shall be unlawful for a covered employer to discriminate in any aspect of
913 employment against a qualified individual with a disability because of that disability.
914 However, it is not unlawful for a covered employer to use employment qualification
915 standards, tests, or selection criteria that are job-related and consistent with business
916 necessity that make an individual with a disability ineligible for an employment
917 position where the individual could not perform the job even with reasonable

918 accommodation. Nothing in this section shall prohibit a covered employer from
919 refusing to hire an individual with a disability for or from discharging such an
920 individual from an employment position if the individual, because of the disability, is
921 unable to perform the duties of the position, would perform the duties in a manner
922 that would endanger the health and safety of the individual or others, or is unable to
923 be at or go to or from the place at which the position is located.

924
925 (b) Subject to the provisions of subsection (c) of this section, a reasonable
926 accommodation for an individual's disability may include but is not limited to
927 making facilities readily accessible to and usable by disabled persons, job
928 restructuring, modifying work schedules, reassignment to a vacant position,
929 acquisition or modification of equipment or devices, and the provision of aides on a
930 temporary or periodic basis.

931
932 (c) An accommodation is not required if it would impose an undue hardship on the
933 employer's operation. In determining whether an undue hardship exists, ~~employers~~
934 TERO may consider:

- 935
936 (1) the overall size of the business or organization with respect to the number of
937 employees and the number and type of facilities;
938
939 (2) the type of the operation, including the composition and structure of the work
940 force, and the number of employees at the location where the employment
941 would occur;
942
943 (3) the nature and cost of the accommodation;
944
945 (4) the reasonable ability to finance the accommodation at each site of business;
946 and
947
948 (5) documented good-faith efforts to explore less restrictive or less expensive
949 alternatives, including consultation with the disabled person or with
950 knowledgeable disabled persons or organizations.

951
952
953 **§ 1054. Discrimination ~~B~~ased on Pregnancy.**

954
955 A covered employer shall treat women affected by pregnancy, childbirth, or related medical
956 conditions the same for all employment-related purposes, including receipt of benefits under
957 fringe benefit programs, as other persons not so affected, but similar in their ability or inability
958 to work. This requirement shall include, but is not limited to, the requirement that a covered
959 employer must treat an employee temporarily unable to perform the functions of her job because
960 of a pregnancy-related condition in the same manner as it treats other temporarily disabled
961 employees.
962
963

964 § 1055. Harassment.

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988

- (a) It shall be unlawful employment discrimination for a covered employer to subject an employee or applicant to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, as well as unwelcome comments, jokes, acts, and other verbal or physical conduct related to race, color, national origin, religion, sex, age, sexual orientation, or disability when:
- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- ~~(b)~~ — A covered employer is responsible for acts of workplace harassment by its employees when the employer, its agents, or its supervisory employees knew of the conduct. A covered employer may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action upon learning of the harassment.

989 § 1056. Retaliation.

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999

A covered employer may not retaliate against an individual for bringing a good-faith claim against the employer for a violation of this chapter, or because the individual opposed a practice he or she believed to violate this chapter or participated in an enforcement proceeding pursuant to subchapter 9 of this chapter. The firing, demoting, harassing, or taking of any other adverse action against an individual shall constitute retaliation within the meaning of this section. Any retaliation in violation of this section is itself a violation of this chapter and is subject to enforcement proceedings pursuant to subchapter 9 of this chapter.

1000
1001 **SUBCHAPTER 7**

1002
1003 **EMPLOYEE WAGE AND HOUR**

1004
1005 **Section**

- 1006 **1061. Minimum Wage.**
1007 **1062. Prevailing Wage.**
1008 **1063. Maximum Hours.**
1009 **1064. Exemptions.**

1010 **1065. Private Right of Action.**

1011 **1066. Statute of Limitations.**

1012 **1067. Guidance.**

1013 **1068. Fringe Benefits.**

1014

1015

1016 **§ 1061. Minimum Wage.**

1017

1018 Any employee who is employed by a covered employer shall be paid an hourly wage of not less
1019 than ~~\$7.50~~\$15.00 per hour, or the current United States ~~Federal-g~~Government's or the Band's
1020 minimum wage requirement, whichever is higher.

1021

1022

1023 **§ 1062. Prevailing Wage.**

1024

1025 All covered employers are required to compensate construction ~~laborers-workers~~ according to
1026 the prevailing wage set by the U.S. Department of Labor according to the Davis-Bacon Act for
1027 the county in which the work shall commence, unless the ~~Board-Commission~~ implements Band
1028 prevailing wage rates by rule, regulation, or guideline, in which case the Band prevailing wage
1029 determination shall apply.

1030

1031

1032 **§ 1063. Maximum Hours.**

1033

1034 No covered employer shall employ any of its employees for a work week longer than forty (40)
1035 hours unless such employee receives compensation for the additional hours at a rate not less
1036 than one and one-half times the regular rate at which the employee is normally compensated.

1037

1038

1039 **§ 1064. Exemptions.**

1040

1041 The provisions of this subchapter shall not apply with respect to any employee employed in a
1042 bona fide executive, administrative, or professional capacity, or any other exemption category in
1043 the Federal Fair Labor Standards Act (FLSA) of 1938, 29 U.S.C., § 213, including all future
1044 amendments thereto, or in regulations implementing that Act as promulgated by the U.S.
1045 Department of Labor.

1046

1047

1048 **§ 1065. Private Right of Action.**

1049

1050 Any individual aggrieved under this subchapter may seek retroactive payment of unpaid
1051 minimum wages or unpaid overtime compensation against a covered employer pursuant to the
1052 enforcement provisions set out in subchapter 9 of this chapter.

1053

1054

1055

1056

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1057 **§ 1066. Statute of Limitations.**

1058
1059 Any action to secure unpaid wages or unpaid overtime compensation must be commenced
1060 within one (1) year after the date on which such wages or overtime compensation should have
1061 been included in an employee’s paycheck, regardless of the date of actual discovery.
1062

1063
1064 **§ 1067. Guidance.**

1065
1066 For the purposes of interpreting this subchapter only, the ~~Board-TERO Commission~~ and the
1067 Band’s Court of Central Jurisdiction may look to the Federal Fair Labor Standards Act (~~FLSA~~)
1068 of 1938, 29 U.S.C., §§ 201-219, its implementing regulations, and related case law for
1069 persuasive guidance, provided that nothing in this section shall be construed as an adoption by
1070 the Band of that Act or its implementing regulations.
1071

1072
1073 **§ 1068. Fringe Benefits.**

1074
1075 A covered employee must give an employee engaged in construction the option of electing to
1076 receive any amount to which he or she is entitled as prevailing wage fringe benefits as a part of
1077 her or his hourly pay unless it is determined that the application of this provision is specifically
1078 prohibited by ~~f~~Federal law. The prevailing wage fringe benefits to which the employee is
1079 entitled shall include, but not be limited to, the fringe benefit determination made by the U.S.
1080 Secretary of Labor pursuant to the ~~Federal~~-Davis Bacon Act or by the ~~Board-TERO Commission~~
1081 pursuant to this chapter. Every covered employer engaged in projects subject to the ~~Federal~~
1082 Davis-Bacon Act shall offer this option to each employee at the time he or she is first employed.
1083

1084
1085
1086 **SUBCHAPTER 8**

1087
1088 **OCCUPATIONAL SAFETY AND HEALTH OF EMPLOYEES**

1089
1090 **Section**

1091 **1071. Duties of Employers and Employees.**

1092 **1072. Adoption of Rules of Federal Occupational Safety and Health Administration.**

1093 **1073. Enforcement.**

1094
1095
1096 **§ 1071. Duties of Employers and Employees.**

- 1097
1098 (a) Each covered employer shall:
- 1099
1100 (1) furnish employees with a place and condition of employment that is free from
1101 recognized hazards that may cause or are likely to cause death or serious
1102 physical harm to the employees; and
1103

Version 2.0

1104 (2) comply with all occupational safety and health rules promulgated or adopted
1105 by the Band pursuant to this subchapter.
1106

1107 (b) Each employee of a covered employer shall comply with all occupational safety and
1108 health rules promulgated or adopted pursuant to this subchapter that are applicable to
1109 the actions and conduct of the employee.
1110

1111
1112 **§ 1072. Adoption of Rules of Federal Occupational Safety and Health Administration.**
1113

1114 The rules and regulations of the Federal Occupational Safety and Health Administration
1115 ("OSHA") of the U.S. Department of Labor, including all future rules or amendments to existing
1116 rules, promulgated pursuant to the authority granted to OSHA by the Occupational Safety and
1117 Health Act of 1975, (29 U.S.C., §§ 651-678) are hereby adopted by the Band and apply to all
1118 covered employers.
1119

1120
1121 **§ 1073. Enforcement.**
1122

1123 (a) The ~~director~~ TERO Director is authorized to enforce the rules adopted in § 1072 of
1124 this chapter pursuant to the enforcement provisions set out in subchapter 9 of this
1125 chapter, to the extent her or his authority has not been preempted by ~~f~~Federal law.
1126

1127 (b) For any employer over whom the ~~director's~~ TERO Director's authority to enforce the
1128 requirements of this subchapter has been preempted by ~~f~~Federal law and for
1129 employers within the ~~R~~eservation who are not subject to the jurisdiction of the
1130 Band, the ~~D~~irector shall work cooperatively with federal and state officials
1131 responsible for enforcing occupational safety and health requirements applicable to
1132 such employers to ensure maximum enforcement.
1133

1134
1135
1136 **SUBCHAPTER 9**
1137

1138 **ENFORCEMENT**
1139

- 1140 **Section**
1141 **1081. Applicability.**
1142 **1082. Investigations.**
1143 **1083. Complaints.**
1144 **1084. Complaints Against the Band.**
1145 **1085. Resolution of Violations.**
1146 **1086. Hearing Procedures.**
1147 **1087. Sanctions.**
1148 **1088. Appeals.**
1149 **1089. Monitoring and Coordination with other Tribal, State and Federal Laws.**

1150 § 1081. Applicability.

1151
1152 The provisions set out in this subchapter shall be used to enforce the requirements set out in this
1153 chapter, unless a specific enforcement provision is contained in a particular subchapter, in which
1154 case the latter provision shall take priority.

1155
1156
1157 § 1082. Investigations.

1158
1159 (a) On her or his own initiative or on the basis of a complaint filed pursuant to § 1083 or
1160 any other provision of this chapter, the ~~director~~ TERO Director, or any field
1161 compliance officer designated by the ~~director~~ TERO Director, may make such public
1162 or private investigations within ~~the reservation~~ her or his jurisdiction as the ~~D~~irector
1163 deems necessary:

- 1164
1165 (1) to ensure compliance with a provision in this chapter;
1166
1167 (2) to determine whether any covered employer has violated any provision of this
1168 chapter or its implementing regulations; or
1169
1170 (3) to aid in prescribing rules, regulations, or policies hereunder.

1171
1172 (b) Separate from acting on any complaint filed, the ~~director~~ TERO Director shall
1173 conduct regular compliance reviews to ensure that all covered employers are
1174 complying with the requirements of this chapter.

1175
1176 (c) The ~~director~~ TERO Director or any field compliance officer designated by the
1177 ~~D~~irector may, provided they are clearly identified as TERO staff, enter the place of
1178 business or employment of any covered employer for the purpose of an investigation
1179 or compliance review, at said place of business or employment, in a manner
1180 consistent with good safety practices and with the orderly operation of the business
1181 activity. The ~~D~~irector or officer may:

- 1182
1183 (1) interview any employee or agent of the covered employer;
1184
1185 (2) review and copy any documents; and
1186
1187 (3) carry out any other activity the ~~TERO-D~~irector or officer deems necessary to
1188 accomplish the investigation or compliance review, provided that; the
1189 ~~D~~irector or officer shall comply with the requirements of subsection (e) of
1190 this section when reviewing or copying any confidential documents.

1191
1192 (d) For the purpose of investigations, compliance reviews, or hearings, which, in the
1193 opinion of the ~~director~~ TERO Director or the TERO Commission, are necessary and
1194 proper for the enforcement of this chapter, the ~~D~~irector or the ~~C~~hairperson of the
1195 TERO Commission may administer oaths or affirmations, subpoena witnesses, take
1196 evidence, and require the production of books, papers, contracts, agreements, or

- 1197 other documents, records, or information that the ~~D~~irector or the TERO
1198 Commission deems relevant to the inquiry.
1199
- 1200 (e) Any state or federal tax records, trade secrets, or privileged or confidential
1201 commercial, financial, or employment information subpoenaed or otherwise obtained
1202 pursuant to the provisions of this chapter or used at a compliance hearing or
1203 subsequent appeal to the Band’s Court of Central Jurisdiction:
1204
- 1205 (1) shall be regarded as confidential records of the TERO Commission or the
1206 Court;
1207
- 1208 (2) shall not be opened to public inspection;
1209
- 1210 (3) shall be used only by the ~~director~~TERO Director, the TERO Commission, or
1211 parties to a compliance hearing or subsequent appeal to the ~~C~~ourt; and
1212
- 1213 (4) shall be used in a manner that, to the maximum extent possible consistent
1214 with the requirement of fairness to the parties, protects the confidentiality of
1215 the documents.
1216
- 1217 (f) Any person, including but not limited to any employee or official of the Band, who
1218 willfully discloses such confidential records, except as expressly authorized by this
1219 chapter or Court order, may be subject to a civil fine not to exceed \$500.00.
1220
- 1221 ~~(g)~~ Documents obtained from a covered employer under this section shall be returned to
1222 the employer at the conclusion of any investigation, compliance review, or hearing,
1223 including the end of any available appeal period.
1224
1225

1226 **§ 1083. Complaints.**
1227

1228 Any individual, group of individuals, business, or organization that believes any covered
1229 employer, other than the Band, or the ~~D~~irector or other TERO staff, has violated any
1230 requirement imposed by this chapter or any regulation issued pursuant to it, may file a complaint
1231 with the ~~director~~TERO Director or, if the complaint is against the ~~D~~irector or other TERO
1232 staff, may file a complaint with the ~~C~~hairperson of the TERO Commission. The complaint
1233 shall be in writing and shall provide such information as is necessary to enable the ~~D~~irector or
1234 an independent party appointed by the TERO Commission to carry out an investigation. Within
1235 fifteen calendar (15) days after receipt of the complaint, and on a regular basis thereafter, the
1236 ~~D~~irector or the independent party appointed by the TERO Commission shall provide the
1237 complaining party with a written report on the status of the complaint. The ~~D~~irector or the
1238 independent party appointed by the TERO Commission shall, within thirty (30) days of the date
1239 on which a complaint is filed, complete an investigation of the complaint. Upon request, the
1240 TERO Commission may grant the Director or the independent party appointed by the TERO
1241 Commission an extension of no more than thirty (30) days to complete the investigation. If,
1242 upon investigation, the ~~director~~Director or the independent party appointed by the TERO

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1243 Commission has reason to believe a violation has occurred, he or she shall proceed pursuant to
1244 the provisions of this chapter.

1245

1246

1247 § 1084. Complaints Against the Band.

1248

1249 Any individual who believes the Band, including any office, division, branch, ~~subsidiary entity,~~
1250 ~~or commercial enterprise of the Band~~ or agency, other than the TERO Director or other TERO
1251 staff, has violated any requirement imposed by this chapter or any regulation issued pursuant to
1252 it may file a complaint with the TERO Director, but only after the individual has either:

1253

1254 (a) filed a complaint with and exhausted the administrative remedies provided by the
1255 involved office, division, branch, ~~subsidiary entity, or commercial enterprise of the~~
1256 ~~Band~~ or agency; or

1257

1258 (b) filed a complaint with the involved office, division, branch, ~~subsidiary entity, or~~
1259 ~~commercial enterprise or agency~~ of the Band and ~~thirty (30)~~ ~~sixty (60)~~ days have
1260 passed since filing and no meaningful action has been taken on the complaint by that
1261 office, division, ~~subsidiary entity, or commercial enterprise or agency.~~

1262

1263 Upon receiving a complaint that meets the requirements of this section, the Director shall
1264 proceed in the same manner as he would on a complaint filed pursuant to § 1083 of this chapter,
1265 except that the Director and the TERO Commission shall take into consideration any written
1266 decision concerning the complaint issued by the office, division, branch, ~~subsidiary, entity, or~~
1267 ~~commercial enterprise or agency~~ of the Band that is the subject of the complaint.

1268

1269

1270 § 1085. Resolution of Violations.

1271

1272 (a) If, after conducting an investigation or compliance review, the ~~director~~ TERO
1273 Director has reasonable cause to believe a violation of this chapter or any regulation
1274 issued ~~pursuant to it hereunder~~ has occurred, including a failure by a party to comply
1275 with a subpoena or other request during an investigation, the Director shall notify
1276 the covered employer ~~or covered entity~~ in writing, delivered by registered mail or via
1277 a reasonably secure electronic method, such as the email address of the covered
1278 employer on file with the TERO Commission, specifying the alleged violations.

1279

1280 (b) The Director shall make a good-faith effort to achieve an informal settlement of the
1281 alleged violation by meeting with the covered employer and taking other appropriate
1282 action.

1283

1284 (c) If the Director is unable to achieve an informal settlement, he or she shall issue a
1285 formal notice of non-compliance, which shall advise the covered employer of its
1286 right to request a hearing. The formal notice shall set out the nature of the alleged
1287 violation and the steps that must be taken to come into compliance. ~~It~~ The notice
1288 shall provide the covered employer with a reasonable time, which shall not be less

1289 than ten (10) days from the date of service of such notice, to comply. If the ~~D~~irector
1290 has reason to believe that irreparable harm will occur during that period, the Director
1291 may require that compliance occur in less than ten (10) days.
1292

1293 (d) If the covered employer disputes the violation, as provided for in the formal notice,
1294 the covered employer may request a hearing before the TERO Commission, which
1295 shall be held no sooner than five (5) days and no later than thirty (30) days after the
1296 date for compliance set forth in the formal notice. The ~~D~~irector or the covered
1297 employer may ask the TERO Commission to hold the hearing sooner. The TERO
1298 Commission shall grant such a request only upon a showing that an expedited
1299 hearing is necessary to avoid irreparable harm.
1300

1301 (e) If a covered employer fails or refuses to comply and does not request a hearing, the
1302 ~~D~~irector shall request the ~~C~~hairperson ~~of the TERO Commission~~ to convene a
1303 session of the TERO Commission for the purpose of imposing sanctions on the
1304 covered employer. This session shall take place as soon as necessary to avoid
1305 irreparable harm.
1306

1307 ~~(f)~~ If an independent investigator determines the TERO Director or TERO staff may
1308 have violated this chapter, the Chairperson shall convene a meeting of the TERO
1309 Commission to determine the resolving action to be taken by the Director and TERO
1310 staff, and the results thereof shall be reported to the Band Assembly and the Chief
1311 Executive.
1312
1313

1314 **§ 1086. Hearing Procedures.**
1315

1316 (a) Any hearing held pursuant to this chapter shall be conducted by the TERO
1317 Commission. The hearing shall be governed by Robert's Rules of Order, or any other
1318 rules of practice and procedure that are hereafter adopted by the TERO Commission.
1319 ~~The director~~ TERO Director and the covered employer shall have the right to call
1320 and cross examine witnesses, as well as present physical evidence. The TERO
1321 Commission may consider any evidence that it deems relevant to the hearing. The
1322 TERO Commission shall not be bound by technical rules of evidence in the conduct
1323 of hearings under this chapter, and the presence of informality in any proceeding, as
1324 in the manner of taking testimony, shall not invalidate any order, decision, rule, or
1325 regulation made, approved, or confirmed by the TERO Commission. The ~~D~~irector
1326 shall have the burden of proving that the covered employer violated this chapter by a
1327 preponderance of the evidence. An audio recording shall be made of each hearing.
1328 No stenographic record of the proceedings and testimony shall be required except
1329 upon arrangement by, and at the cost of, the covered employer.
1330

1331 (b) The ~~D~~irector shall prosecute the alleged violation on behalf of the TERO. During
1332 the hearing and at all stages of the enforcement process provided for in this chapter,
1333 the ~~D~~irector may be represented by the Band's ~~Solicitor General's Office~~ Office of
1334 the Solicitor General. If the covered employer is an office or subsidiary of the Band

1335 ~~g~~Government and the ~~Band Solicitor General's Office~~Office of the Solicitor General
1336 or the TERO Commission determines ~~it-that representation~~ would create a conflict ~~to~~
1337 ~~represent the director of interest~~, the Solicitor General ~~may~~shall obtain outside legal
1338 counsel for the ~~director~~TERO Director.

1339
1340 (c) The TERO Commission shall sit as an impartial judicial body. The TERO
1341 Commission shall establish procedures and safeguards to ensure that the rights of all
1342 parties are protected and that there is no improper contact or communication between
1343 the TERO Commission and the Director during the hearing phase of the
1344 enforcement process.

1345
1346 (d) If the TERO Commission requires legal assistance during the hearing process, or at
1347 any other phase of the enforcement process, and ~~it-representation by the Office of the~~
1348 Solicitor General would ~~be-create~~ a conflict of interest ~~for the Band Solicitor~~
1349 General's Office to provide such representation., the Solicitor General ~~shall attempt~~
1350 ~~to~~shall retain outside legal counsel.

1351
1352 ~~(d)~~ The TERO Commission reserves the right to obtain outside legal counsel as it deems
1353 appropriate.

1354
1355
1356 **§ 1087. Sanctions.**

1357
1358 (a) If, after a hearing, the TERO Commission determines that the alleged violation of
1359 this chapter or a regulation issued pursuant to it has occurred, and that the party
1360 charged has no adequate defense in law or fact, or if a party was issued a formal
1361 notice of non-compliance and failed to request a hearing, the TERO Commission
1362 may:

1363
1364 (1) deny such party the ability to commence business on lands owned by or for
1365 the benefit of the Band or its members on the Reservation, provided that the
1366 party is not an office, division, branch, ~~subsidiary, entity, or commercial~~
1367 ~~enterprise or agency~~ of the Band;

1368
1369 (2) suspend such party's business activity on lands owned by or for the benefit of
1370 the Band or its members on the Reservation, provided that the party is not an
1371 office, division, branch, ~~subsidiary, entity, or commercial enterprise or~~
1372 ~~agency~~ of the Band;

1373
1374 (3) terminate such party's business activity on lands owned by or for the benefit
1375 of the Band or its members on the Reservation, provided that the party is not
1376 an office, division, branch, ~~subsidiary, entity, or commercial enterprise or~~
1377 ~~agency~~ of the Band;

1378
1379 (4) deny the ability of such party to conduct any further business with the Band
1380 or on lands owned by or on behalf of the Band or its members on the

- 1381 ~~R~~reservation, provided that the party is not an office, division, branch,
1382 ~~subsidiary, entity or commercial enterprise or agency~~ of the Band;
1383
1384 (5) impose a civil fine of up to \$500.00 per violation per day following the date
1385 for compliance;
1386
1387 (6) order such party to make payment of back pay or other damages to any
1388 aggrieved party;
1389
1390 (7) order such party to dismiss any employees hired in violation of the Band's
1391 employment rights requirements;
1392
1393 (8) reimburse any party who improperly paid a TERO fee or overpaid said fee,
1394 but no interest shall be paid in such cases; or
1395
1396 (9) order the party to take such other action as is necessary to ensure compliance
1397 with this chapter or to remedy any harm caused by a violation of this chapter,
1398 consistent with the requirements of the laws of the Band and the Indian Civil
1399 Rights Act, 25 U.S.C., § 1301, et seq.

1400
1401 ~~(b)~~ — The TERO Commission's decision shall be in writing and shall be served on the
1402 charged party by registered mail or in person by an employee of the TERO no later
1403 than thirty (30) days after the close of the hearing. The decision shall contain
1404 findings of fact sufficient to support the TERO Commission's ordered relief, or lack
1405 thereof. Upon a showing by the TERO Director or the charged party that further
1406 delay will cause irreparable harm, the TERO Commission shall issue its decision
1407 within ten (10) days after the close of the hearing. If the party fails to comply with
1408 the TERO Commission's decision within ten (10) days, the Director may file for an
1409 injunction in the Band's Court of Central Jurisdiction. The Court shall grant such
1410 injunctive relief as is necessary to prevent irreparable harm pending an appeal or
1411 expiration of the time for the party to file an appeal.

1412
1413
1414 **§ 1088. Appeals.**
1415

1416 (a) An appeal to the Band's Court of Central Jurisdiction may be taken from any formal
1417 order of the TERO Commission by any party adversely affected thereby, including a
1418 complainant. To take such an appeal, a party must file a notice of appeal in the
1419 Band's Court of Central Jurisdiction and serve a copy of the notice of appeal on the
1420 ~~director~~ TERO Director and any other party to the proceeding no later than twenty
1421 (20) days after the party receives a copy of the TERO Commission's decision.

1422
1423 (b) The notice of appeal shall:

1424
1425 (1) set forth the order from which the appeal is taken;
1426

- 1427 (2) specify the grounds upon which reversal or modification of the order is
1428 sought;
1429
- 1430 (3) be signed by the appellant or her or his legal representative; and
1431
- 1432 (4) comply with any other requirements for actions filed in the Band’s Court of
1433 Central Jurisdiction, as established by ~~that the~~ Ceourt.
1434
- 1435 (c) Except as provided elsewhere in this chapter, the order of the TERO Commission
1436 shall ~~be stayed~~remain in full force and effect pending the determination of the Court
1437 in the absence of an injunction staying the TERO Commissioner’s order. The
1438 ~~director~~TERO Director may petition and, for good cause shown, the Court may
1439 order the party filing the appeal to post a bond sufficient to cover the monetary
1440 damages that the TERO Commission assessed against the party or to assure the
1441 party’s compliance with other sanctions or remedial actions imposed by the TERO
1442 Commission’s order in the event that order is upheld by the Court.
1443
- 1444 (d) The Court shall sit without a jury, confine its review to the Commission record, and
1445 apply an abuse of discretion standard. The filing of briefs and oral argument must be
1446 made in accordance with the Band rules governing civil cases~~review the decision of~~
1447 ~~the TERO Commission de novo~~.
1448
- 1449 (e) The Court may affirm a formal order of the Commission, or it may remand the case
1450 for further proceedings, or reverse the formal order if the substantial rights of the
1451 appealing party have been prejudiced because the formal order is:
1452
- 1453 (1) in excess of the statutory authority or jurisdiction of the Commission;
1454
- 1455 (2) made upon unlawful procedure;
1456
- 1457 (3) unsupported by any evidence; or
1458
- 1459 (4) plainly in error.
1460
- 1461 ~~(e)~~(f) If a party has failed to come into compliance with a decision of the TERO
1462 Commission from which no appeal has been taken, or a decision of the Court, within
1463 twenty (20) days after receipt of notice of such decision, the TERO Director shall
1464 petition the Court and the Court shall grant such orders as are necessary and
1465 appropriate to enforce the orders of the TERO Commission or Court.
1466
- 1467 ~~(f)~~ — If the order of the TERO Commission is reversed or modified, the Court shall
1468 specifically direct the TERO Commission as to further action the TERO Commission
1469 shall take in the matter, including making and entering any order or orders in
1470 connection therewith, and the limitations, or conditions to be contained therein.
1471
1472

1473 § 1089. Monitoring.
1474

1475 If, when carrying out inspections at work sites or otherwise carrying out their responsibilities
1476 under this chapter, the ~~director~~TERO Director or TERO compliance officers have reason to
1477 believe that a requirement of a ~~f~~Tribal, ~~f~~Federal, state, or local law, act, or regulation, other than
1478 the ones included in this chapter, may have been violated by a party, the Director and TERO
1479 compliance officers are authorized to document such possible violations, to report said
1480 violations to the appropriate enforcement agency, and, to the extent that resources permit and
1481 the Director determines it to be appropriate, assist that agency in its attempt to investigate and
1482 cure the possible violation.

Version 2.0

**Ordinance XX-23
(Band Assembly Bill 20-03-XX-22)**

Introduced to the Band Assembly on this
XXX day of [Month] in the year
Two thousand twenty-three.

Passed by the Band Assembly on this
XXX day of [Month] in the year
Two thousand twenty-three.

Sheldon Boyd, Speaker of the Assembly

APPROVED

Date: _____

Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND