



# TRIBAL EMPLOYMENT RIGHTS OFFICE ORDINANCE

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## Title 2

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## **TRIBAL EMPLOYMENT RIGHTS OFFICE ORDINANCE**

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## 1. GENERAL PROVISIONS

### 1.1 Title

This Ordinance shall be known as the Tribal Employment Rights Ordinance.

### 1.2 Purpose

The purposes of this Ordinance are:

- 1.2.1. To ensure compliance by employers on Pueblo of Acoma lands with federal and tribal laws that are intended to prevent employment related discrimination against Native American Indians;
- 1.2.2. To ensure compliance by employers on Pueblo of Acoma lands with federal and tribal laws that are intended to give preference in employment, contracting and sub-contracting, and training to Native American Indians; and
- 1.2.3. To ensure the maximum utilization of Native American Indian workers in all employment opportunities on and near Pueblo of Acoma lands.

### 1.3. Statement of Policy

- 1.3.1. Jobs in the private employment sector on and near the Pueblo of Acoma are an important resource for Native American Indians residing on and near the reservation.
- 1.3.2. This Ordinance is consistent and supplemental to existing federal and tribal law prohibiting employment discrimination against Native American Indians and providing employment and contract preference to Native American Indian employees and Native American Indian-owned enterprises.
- 1.3.3. Native American Indian unemployment on the Pueblo of Acoma continues to be a problem of sufficient magnitude to warrant the enactment and implementation of this Ordinance which is designed to improve employment opportunities for Native American Indians living on and near the reservation.

### 1.4 Jurisdiction

- 1.4.1. This Ordinance shall apply to all employers located or engaged in business on Pueblo of Acoma lands. It shall not apply to any direct employment by the Pueblo of Acoma.
- 1.4.2. This Ordinance is not intended to preempt or interfere with the rights or obligations set forth in the Pueblo's Personnel Policies and Procedures. The Pueblo of Acoma is not subject to the provisions of this Ordinance.
- 1.4.3. Contract disputes are contractual and will not be within TERO's scope of work or cause for contractor operation shutdown. Contract disputes shall

be resolved through specified contract procedures for such disputes or through a court of competent jurisdiction.

1.5. Definitions:

- 1.5.1. “Compliance Agreement” means a certification signed by an employer and the Tribal Employment Rights Office (TERO), setting forth how each employer will meet “In Preference” hiring goals and that they will comply fully with the TERO Ordinance. The "Compliance Agreement" must be executed prior to commencement of any portion of a contract or sub-contract within Pueblo of Acoma lands.
- 1.5.2. “Core Crew” mean the essential, permanent employees of employer. The employees must have been regular employees for at least six (6) months. "Core Crew" requests must be submitted in writing with rationale for each position before start of any project work, and approved by TERO Program Manager.
- 1.5.3. “Council” means the Pueblo of Acoma Tribal Council.
- 1.5.4. “Employer” means any person, company, contractor, subcontractor or other entity located or engaged in work on Pueblo of Acoma lands. The term "employer" shall include contractors and subcontractors of state, county, tribal and all governmental agencies. The term shall not mean or include the Pueblo of Acoma when they are employers.
- 1.5.5. “Engaged in Work on Pueblo Land” means that during any portion of a business enterprise or specific project, contract or subcontract, an Employer or any of his employees spends time performing work within the exterior boundaries of the Pueblo.
- 1.5.6. “Native American Indian” means any person enrolled in a federally recognized tribe and recognized by the United States pursuant to its trust responsibility to Native American Indians.
- 1.5.7. “Native American Indian Owned Business” means a business that is at least 51 % operated and controlled by a Native American Indian.
- 1.5.8. “Native American Indian Preference” means a preference for Native American Indians in all aspects of employment, including but not limited to: hiring, training, promotions, layoffs, contracting and subcontracting for work within the Pueblo of Acoma lands. Qualified, available Native American Indians shall receive Native American Indian Preference according to negotiated Compliance Plans.
- 1.5.9. “Located on Pueblo of Acoma Lands” means that during any portion of a business enterprise or specific contract or subcontract, an employer maintains a temporary or permanent office or facility within the exterior boundaries of the Pueblo of Acoma.
- 1.5.10. “Near the Pueblo” means within reasonable daily commuting distance of the Pueblo.
- 1.5.11. “Office” means the Acoma Tribal Employment Rights Office.

1.5.12. “Program Manager” means the Program Manager of the Acoma Tribal Employment Rights Office.

1.5.13. “Pueblo” means the Pueblo of Acoma.

1.5.14. “Tribal Court” means the Pueblo of Acoma Tribal Court.

1.5.15. “Wage Scale” means Davis Bacon Wages or Pueblo of Acoma locally prepared wage rates as determined by the TERO office monitored by the Program Manager.

## 2. TRIBAL EMPLOYMENT RIGHTS OFFICE

### 2.1. Program Manager

The Program Manager of the Tribal Employment Rights Office (Office) shall be responsible for administering the provisions of this Ordinance.

### 2.2. General Authority of Program Manager

The Program Manager of the TERO shall have the authority to hire staff, to obtain and expend funds from tribal, federal, state, or other sources to carry out the purposes of this Ordinance, to establish employer record-keeping requirements, and to take such other actions as are necessary for the fair enforcement of this Ordinance.

### 2.3. Specific Authority

The Program Manager shall have the authority to:

2.3.1 Investigate violations of the provisions of this Ordinance;

2.3.2. Impose and enforce penalties on employers who violate the provisions of the Ordinance;

2.3.3. Develop and promulgate regulations necessary to implement the provisions of this Ordinance;

2.3.4. Develop, impose, and enforce numerical hiring goals and timetables that reflect the available Native American Indian labor pool and other employment opportunities for each craft and skill category.

2.3.5. Require employers that have established training or apprentice programs to provide preference to Native American Indians in those programs.

2.3.6. Establish and maintain a tribal office that maintains a record of qualified, employable Native American Indians that is to be used by employers to fill vacancies;

2.3.7. Prohibit any employer from imposing employment qualification criteria that serve as barriers to Native American Indian employment unless the employer can demonstrate that such criteria are bonafide occupational qualifications;

- 2.3.8. To work cooperatively with other tribal programs to establish counseling and support programs for Native American Indian workers to assist them in retaining employment;
- 2.3.9. To enter into cooperative agreements with federal and state agencies, subject to Tribal Council approval, to minimize employment discrimination on the reservation, to promote Native American Indian Preference in hiring, training, and contracting and to otherwise ensure compliance with this Ordinance;
- 2.3.10. To establish an approved wage scale for the Pueblo of Acoma on an annual basis and monitor salaries for compliance to ensure equitable compensation of Native American Indian workers.
- 2.3.11. To monitor salaries to ensure compliance with approved Pueblo of Acoma wage scale;
- 2.3.12. To assess TERO fees on employers to support the operation of the Tribal Employment Rights Office.

### 3. TRIBAL EMPLOYMENT RIGHTS PROGRAM

#### 3.1. Scope

All employers shall give preference to Native American Indians in hiring, promotion, training and all other aspects of employment, contracting and subcontracting, and shall comply with the terms of this Ordinance and its implementing regulations and a Compliance Agreement executed under this Ordinance.

#### 3.2. Compliance Agreement

Each employer shall be required to meet with the Program Manager at the TERO office and negotiate and execute a "Compliance Agreement" which sets forth:

- (a) The minimum number of Native American Indians the employer shall hire during any year that the employer is located or engaged in work on the reservation; numerical goals and timetables for each craft, skill area, job classification, etc., used by the employer including, but not limited to general labor, skilled, administrative, supervisory, and professional categories;
- (b) Wage scale provisions and salary compensation terms;
- (c) Employer shall provide proof of workers compensation insurance;
- (d) The reporting requirements the employer shall provide the Program Manager on issues, including but not limited to the frequency of reports, the number of Native American Indians employed, a record of persons hired, fired or promoted during the reporting period, and an assessment of

how close the employer is to meeting the hiring goals set forth in the Compliance Agreement.

- 3.2.1. The numerical goals set forth in the Compliance Agreement shall be based upon surveys of the available Native American Indian work force and of projected employment opportunities on the reservation.
- 3.2.2. Compliance Agreements shall be reviewed at least annually and revised as necessary to reflect changes in the number of Native American Indians available or changes in employer hiring plans.
- 3.2.3. No employer who intends to engage in temporary business on Pueblo land shall commence work on the reservation until a Compliance Agreement has been negotiated and signed by both the Program Manager and the employer representative. An employer who has established a permanent place of business on Pueblo land shall negotiate and execute a Compliance Agreement within 30 days from the date the employer receives notification from the Program Manager that a Compliance Agreement is required.
- 3.2.4. Any violation of an executed Compliance Agreement shall be a violation of this Ordinance.
- 3.2.5. When the TERO Office is closed and a Native American Indian worker is unable to continue working, emergency hires will be allowed, but such hires will be hired for a maximum of 3 days only.

### 3.3. Job Qualifications and Personnel Requirements

An employer shall not use qualification criteria or other personnel requirements that serve as barriers to Native American Indian employment unless the employer is able to demonstrate that such criteria or requirements are required by bonafide occupational qualifications.

### 3.4. Program Manager

- 3.4.1. The Program Manager shall establish and maintain an office to assist employers in placing qualified Native American Indians in job positions.
- 3.4.2. An employer shall not hire a non-Native American Indian in violation of the Compliance Agreement until the Program Manager has certified within a reasonable time that no qualified Native American Indian is available to fill the vacancy. For purposes of this section, "reasonable time" shall be defined as follows:
  - (a) Construction jobs: the Program manager shall have 48 hours from time of notice of manpower needs to locate and refer a qualified Native American Indian;
  - (b) All other employment: the Program manager shall have 5 working days to locate and refer a qualified Native American Indian.

The Program Manager may grant a waiver of a time period upon a showing by the employer that such time period imposes an undue burden upon the employer or his business.

3.5. Training

3.5.1. The Program Manager shall identify training programs necessary in order to increase the pool of qualified Native American Indians for employment on Pueblo land.

3.5.2. The Program Manager may initiate and sponsor training programs for employers to participate in, or the Program Manager may work with employers to establish and sponsor their own training programs to assist Native American Indians to become qualified in the various job classifications used by employers.

3.5.3. The ratio of Native American Indian trainees to fully qualified workers shall be negotiated as part of the Compliance Agreement. For construction projects, the number of Native American Indian trainees shall be no less than the minimum ratio established by the United States Department of Labor.

3.6. Unions

Employers with collective bargaining agreements with a union are responsible for informing such unions of this Ordinance and TERO rules and regulations. Unions will give preference to Native American Indians in job referrals regardless of which referral list they are on. Temporary Work Permits will be granted to Native American Indians who do not wish to join a union. Nothing herein shall constitute official tribal recognition of any union or tribal endorsement of any union activities on Pueblo of Acoma lands.

3.7. Contractors & Subcontractors

The Native American Indian Preference requirements contained herein shall apply to all contractors and subcontractors of an employer. The employer shall have the initial and primary responsibility for ensuring that all contractors and subcontractors comply with these requirements and both the employer and his contractors and subcontractors shall be subject to the penalties set forth herein for failure to comply with the Ordinance requirements.

3.8. Preference in Contracting and Subcontracting

Each employer shall give preference to tribal-owned or Native American Indian-owned businesses in the award of contracts or subcontracts, subject to federal laws. The Program Manager shall maintain a list of tribal-owned and Native American Indian-owned businesses which shall be supplied to the employers upon request. Native American Indian owned business shall be certified by the Tribe.

3.9. Layoffs

In all layoffs and reductions in force, no Native American Indian worker shall be terminated if a non-Native American Indian worker in the same job classification



is still employed. The non-Native American Indian shall be terminated first if the Native American Indian possesses threshold qualifications for the job classification. If an employer lays off workers by crews, all qualified Native American Indian workers shall be transferred to crews to be retained so long as non-Native American Indians in the same job classification are employed elsewhere on the job site. Exceptions may be non-Native American Indians hired as "Core Crew" according to negotiated Compliance Agreements.

### 3.10. Promotion

Each employer shall give Native American Indians preferential consideration for all promotion opportunities and shall encourage Native American Indians to seek such opportunities. For each promotion or supervisory position filled by a non-Native American Indian, the employer shall file a report with the Program Manager stating what efforts were made to inform Native American Indian workers about the position, what Native American Indians, if any, applied for the position and if a Native American Indian was not chosen, the reasons therefore.

### 3.11. Compliance Fees

The Program manager shall assess and collect a Compliance Fee based upon the following schedule:

- 3.11.1. Every employer with a contract to be performed on Pueblo land in the sum of ten thousand dollars (\$10,000) or more shall pay a compliance fee of one and one half percent (1.5 %) of the total amount of the contract. Such fee shall be paid by the employer prior to commencing work on Pueblo of Acoma lands.
- 3.11.2 Compliance Fees shall be used for the TERO Office operating budget and the percentage shall be reviewed and may be adjusted annually to remain consistent with the national average. The Compliance Fees program shall go through the Pueblos' Annual Budget Process.
- 3.11.3 The Compliance Fee shall only be assessed against those employers who engage in contract work or establish their business on the reservation after the enactment of this Ordinance. This fee shall not be assessed or collected from religious and non-profit employers. The Program Manager shall be responsible for collecting the fees and may establish regulations as are necessary to insure a fair and timely fee collection process. Projects beginning off and ending on, or beginning on and ending off the reservation will be considered one hundred percent on-reservation, thus subject to the full Compliance Fee. However, if fifty percent (50%) or more of the work is off-reservation, the Program Manager is authorized to negotiate an appropriate Compliance Fee.

### 3.12. On Site Inspections

The Program Manager shall have the authority to make on- site inspections during regular working hours in order to monitor an employer's adherence to the terms of this Ordinance and the employer's Compliance Agreement. The Program Manager shall have the right to inspect and copy all relevant records of an employer, of any signatory union or subcontractor of an employer, and shall have the right to speak to workers and to conduct an investigation on the job site. All information

collected by the Program Manager shall be kept confidential unless disclosure is necessary or ordered as part of any federal or tribal judicial or administrative proceeding.

#### 4. VIOLATION PROCEDURES

##### 4.1. Investigation by the Program Manager

Whenever a violation of this Ordinance or an Agreement negotiated hereunder has been alleged and is brought to the attention of the Program Manager, the Program Manager shall initiate and complete a prompt and thorough investigation of the alleged violation. The Program Manager shall seek to achieve an informal settlement of the alleged violation, with a written report of findings.

##### 4.2. Issuance of Citation

4.2.1. If the Program Manager determines that a violation of the Ordinance or an Agreement negotiated hereunder exists, and an informal settlement cannot be achieved, the Program Manager shall issue a warning to the employer. This warning shall specify the nature of the violation and direct that the violation be corrected within three (3) days or sooner where warranted.

4.2.2. If the violation is not corrected within the time specified, the Program Manager shall issue a citation to the employer which shall:

- (a) Be in writing and in the name of the Pueblo;
- (b) State the name of the violator;
- (c) Bear the signature of the Program Manager or his authorized representative;
- (d) State the name and section number of the Ordinance provision or Agreement violated;
- (e) State a brief summary of facts constituting the violation; and
- (f) State a time and place the employer must appear to answer to the violation at a Program Manager Hearing.

##### 4.3. Tribal Court Hearing

The employer shall be entitled to a hearing before the Tribal Court no later than 10 working days after receipt of a Citation. Hearing procedures shall comply with the requirements of due process, but will not be bound by the formal rules of evidence. The employer shall be entitled to present evidence and to call witnesses to demonstrate that the employer has complied with the requirements of this Ordinance or that the employer made a best effort to do so and therefore should not be subject to sanctions. On the basis of evidence presented at the hearing, and the information collected by the Office, the Tribal Court shall determine whether or not the employer complied with this Ordinance.

If the Tribal Court determines that the employer is out of compliance and has not made a best effort to comply, the Tribal Court shall impose one or more of the

sanctions provided for in the Ordinance, as appropriate, and shall order the employer to take such corrective action as is necessary to remedy any harm done to the Tribe or individual Native American Indians by the employer's non-compliance. The Tribal Court shall send written notice to all parties within ten (10) working days after its decision in the matter.

#### 4.4. Emergency Relief

When the Program Manager determines that a violation has occurred that is of a critical nature requiring immediate remedial action, the Program Manager may issue a citation without delay, stating sanctions to be placed on an employer. An employer shall have the right to appeal to the Acoma Pueblo Tribal Court, any imposition of emergency sanctions on an employer by the Program Manager.

#### 4.5. Individual Complaint Procedure

Any Native American Indian who believes that an employer has failed to comply with the Ordinance or who believes that they have been discriminated against by an employer because they are Native American Indian, may file a complaint with the Program Manager. The complainant shall be responsible for providing the Program Manager with evidence of the discriminatory practices. Upon receipt of a complaint supported by sufficient evidence of discrimination against a Native American Indian complainant, the Program Manager shall conduct an investigation of the charge and shall attempt to achieve an informal settlement of the matter. If voluntary conciliation cannot be achieved, the Program Manager shall file a citation with the Tribal Court which will hold a hearing on the matter, shall make a determination on the validity of the charge, and shall order such relief as is necessary to make whole any Native American Indian who is harmed by the employer's non-compliance or discriminatory behavior. The decision shall be in writing and shall be sent to all parties. In conducting the hearing, the Tribal Court shall have the same powers, and shall be bound by the same hearing requirements as provided in Sections 4.4 and 4.5 of this Chapter.

### 5. PENALTIES

#### 5.1. Penalties for Violation

Any employer who violates this Ordinance or an agreement negotiated hereunder shall be subject to penalties including, but not limited to:

- (a) Denial of the right to commence or continue business on Pueblo lands;
- (b) Suspension of operations on Pueblo lands;
- (c) Payment of back pay and/or damages to compensate any injured party;
- (d) An order to summarily remove employees hired in violation of this Ordinance or Agreement negotiated hereunder;
- (e) Imposition of monetary civil penalties; and
- (f) An order specifying requirements for employment, promotion, and training Native American Indians injured by the violation.

5.2. Monetary Fines

The maximum monetary penalty that may be imposed for a violation is five hundred dollars (\$500). For purposes of the imposition of penalties determined by the Court or sanction by the Program Manager, each day during which a violation exists shall constitute a separate violation.

6. ENFORCEMENT AUTHORITY

6.1. The Program Manager shall be entitled to pursue the enforcement of any order of the Acoma Tribal Court when necessary to collect penalties or to ensure compliance with the terms and conditions of any order issued by the Acoma Tribal Court.

6.2. Any cost associated with the enforcement of such Order issued pursuant to this Ordinance shall be assessed on the employer that is out of compliance. These may include, but not be limited to: document reproduction costs, filing fees, attorney fees and costs incurred by TERO office staff related to securing enforcement of the Order.

6.3. Employers that do not comply with the provisions of this Ordinance, and leave the reservation before enforcement penalties or an order by the Acoma Tribal Court, may be denied the right of contracting or doing further business on Acoma Pueblo lands.

6.4. Jurisdiction

The Acoma Pueblo Tribal Court is hereby granted exclusive jurisdiction to hear, review, and decide any issues regarding implementation, interpretation, or enforcement under this Ordinance. The decision of the Tribal court shall be final and binding.

6.5. Authority

In ruling on matters arising under this Ordinance, the Court shall have the authority to assess and collect civil penalties; to enjoin or mandate actions to enforce the revisions of this Ordinance; and to provide any other relief the Court deems lawful and equitable. Provided that, no money damages may be claimed in any suit against the Tribe, the Tribal Employment Rights Office or its officials engaged in their official duties under this Ordinance.

6.6. Sovereign Immunity

Nothing in this Ordinance shall be construed as a waiver of sovereign immunity of the Pueblo of Acoma, nor of the tribal sovereign immunity possessed by the Tribal Employment Rights Office or its officials engaged in their official duties under this Ordinance. Accordingly, nothing in this Ordinance shall be construed as any authority for a claim for money damages against the Pueblo, the Tribal Employment Rights Office or TERO Officials acting pursuant to their authority under this Ordinance.