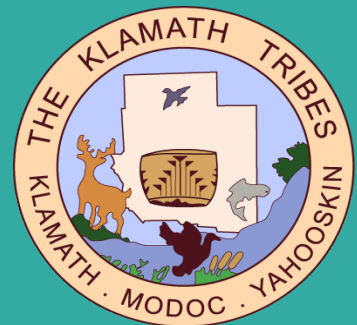

Tribal **E**mployments **R**ights **O**ffice (**TERO**)

QUICK REFERENCE GUIDE

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The Klamath Tribes

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TERO QUICK REFERENCE GUIDE

In the exercise of their sovereign authority, Indian Tribes have the right to regulate and control the employment practices of all employers conducting business on their reservations. In addition, under federal law, Indian people have unique and special employment rights that allow Tribal Nations to establish employment preference requirements to employers both on, and under certain circumstance, near their reservations.

To ensure that individual Tribal members and other Indians fully benefit from these authorities and laws, The Klamath Tribes has enacted a Tribal Employment Rights Ordinance that requires all employers including Tribal government, Tribal businesses, and contractors that perform work on the Reservation, to provide Indian preference in employment, and Indian preference in contracting and subcontracting.

FREQUENTLY ASKED QUESTIONS WHAT IS TERO?

TERO stands for Tribal Employment Rights Ordinance or Office. The TERO Ordinance require that all employers, which includes Klamath Tribes Tribal Government, along with those who are engaged in operating a business on the Reservation, give preference to qualified Tribal members and other Indians in all aspects of employment, contracting and other business activities. The TERO Office (or Program) was established and empowered to implement and enforce the provisions of the Tribal Employment Rights Ordinance and monitor its effectiveness. The TERO Program obtains guidance from a TERO Commission which reports to the Klamath Tribes Tribal Council

WHY WAS THE TERO ORDINANCE ENACTED?

- To address unemployment and underemployment that exists on and near the Reservation;
- To eliminate barriers Tribal members face while seeking employment and business opportunities on or near reservations;
- To ensure that a legal structure was in place to ensure that Tribal members receive their rightful entitlements as intended under the concept in Indian preference.

WHAT IS THE PURPOSE OF THE TERO PROGRAM?

The primary purpose of the TERO program is to establish administrative resources, processes, and procedures to implement the TERO Ordinance. To fulfill this purpose the TERO Program focuses on assisting and providing guidance to Tribal employers so that they can meet the expectations set forth in the Ordinance. The TERO Program and Commission provide Tribal leadership with recommendations to policy that will serve to enhance the effectiveness of the Ordinance. The Program monitors employer performance in how they employ, train, develop, and promote Tribal members and other Indians and in how they contract and subcontract work on the reservation. When necessary, the Program will exercise its authority to enforce Tribal and Indian preference compliance by conducting investigations and serving notice of violations of the Ordinance. Contractors in violation of TERO may also become subject to sanctions and fines.

WHAT IS TRIBAL AND INDIAN PREFERENCE?

Tribal and Indian preference refers to the practice of providing qualified employment applicants first opportunity to available positions and once in the workforce, as employees of covered employers, to first opportunity to career advancement opportunities. Tribal preference policy is used in all Tribal hiring and is provided to enrolled members of the Klamath Tribes. Tribal members receive preference in employment, training, career advancement, and contracting, as these opportunities become available in Tribal Government and Tribal businesses on the reservation. Indian preference is provided to individuals that are enrolled members of a federally recognized Indian tribe. Indian preference is applied only after other Tribal preference hiring criteria is first exercised. Indian preference also is applied to federally funded construction contracts which do not allow application of Tribal preference.

WHAT IS THE TERO SKILLS BANK?

TERO manages a list of eligible, qualified, Tribal members and other Indians that have submitted applications. Applicants become eligible, based on a skills assessment, primarily for assignments on construction or maintenance projects. The “skills bank” data base is used to match applicant skills to the job requests made to TERO. These assignments may either shortterm or long-term employment opportunities. Also, TERO applicants that possess skills that match other available non-construction employment opportunities will be provided notice from TERO of the opening and have an opportunity to apply for the position through the employer’s normal hiring process.

WHAT TRAINING OPPORTUNITIES ARE AVAILABLE?

For careers in the construction trades TERO coordinates with contractors, State of Oregon BOLI, and other construction trades training providers. TERO ensures that Tribal members are afforded opportunities to obtain specialized training that provides them with the potential to advance from apprentice to journey level work.

Non-construction training for Tribal members that are in the Tribal workforce is made available through current employer training resources, and for technical certifications and to obtain a degree, through the Klamath Tribes Education Department. TERO requires Tribal employers to provide preference to Tribal employees when training opportunities, meant to provide career development and advancement benefit, are available. Training of employees is contingent on available budget and other programmatic considerations and operational priorities.

WHAT IS A CERTIFIED INDIAN OWNED BUSINESS?

TERO is also responsible for certifying Klamath Tribes Tribal member owned or Indian-owned business (IOB). Certified IOB’s will have a preference that will be applied to Tribal contracting opportunities. To become certified, an IOB would be required to provide financial documents and legal proof of at least 51% Tribal member or Indian ownership in the business. Indian preference is applied to covered employers and requires them to include certified businesses, engaged in the sought after relevant business line, in the solicitation and bid process. Indian preference in contracting shall include contracts for construction services and contracts to supply materials, goods, or services.

ARE INDIAN PREFERENCE AND TERO NEW CONCEPTS?

Indian preference first appeared in Federal regulations in 1834. The first major Indian preference legislation passed by congress was the Buy Indian Act of 1910 which has figured prominently in most related legislation. Tribal Employment Rights Ordinances were initially founded in late 1976 and early 1977. Today there are almost 300 Tribes and Alaska Native Villages covered by TERO Ordinances.

DOES INDIAN PREFERENCE VIOLATE FEDERAL EMPLOYMENT LAW?

There are no federal laws which prohibit Indian Preference. Tribes are exempt from Title VII of the Civil Rights Act and several other federal employment laws. Numerous court cases have upheld this exemption (see Morton v. Mancari). Additionally, court rulings have indicated that Indian preference is a political preference and not a racial preference and as such do not violate the dictates of federal employment law.

IS TRIBAL PREFERENCE LEGAL?

Indian tribes can apply Tribal preference in all aspects of employment to their own business enterprises and construction projects. Tribal preference is not allowed on federal/state contracts or in private employer situations although Indian preference is permissible.

CAN TERO ASSESS FEES?

Most tribes impose a TERO fee on construction contractors doing business on reservations. The fees collected by the TERO are used to finance operational costs and program services. Services include: recruiting, referrals, screening, job counseling, orientations, employee supportive services and training, compliance, investigations, and employer and community awareness education sessions.

WILL TERO FEES INCREASE COST OF PROJECTS?

TERO fees range from ½% of 1% to 4% with a national average of about 2.5%. The much lower TERO fee preempts other taxes on tribal reservation projects and often result in a substantial savings to contractors that perform contracts on the reservation since these projects are void of state and local taxes; most states taxes for example are in the 5-10% range.

HOW DOES TERO ENFORCE THE ORDINANCE?

TERO Director or their designee is charged with conducting investigation to ensure compliance with the TERO Ordinance and to determine whether a covered employer has violated the Ordinance. Investigations may be initiated in response to a complaint or under the TERO Director's own initiative. When findings from the investigation indicate that a violation of the TERO Ordinance has occurred, the TERO Director may take any steps necessary to resolve the violation that the Director deems appropriate and are authorized by the Ordinance. A good faith effort will be made to reach an informal settlement of the violation with the covered employer.

CAN TERO IMPOSE CORECTIVE ACTIONS, PENALTIES, OR SANCTIONS?

If a violation of the TERO Ordinance has occurred a covered employer, other than a Tribal employer, may be subject to any of the following: 1) a civil fine in an amount not to exceed \$1,000 per violation per day; 2) an order that the employer make payment of back pay or other damages to any aggrieved party; 3) deny the covered employer the right to commence business on the Tribe's Reservation; 4) order the covered employer to hire, promote, or train a TERO preference individual or IOB; 5) order the covered employer to dismiss any employees hired in violation of this Ordinance; 6) order a percentage of lost profits (contract price less estimated expenses, materials and labor costs); or 7) suspend the covered employer's business activity on the Tribe's Reservation.

The TERO departments mission is “To create a highly skilled workforce of federally recognized tribal members who provide a variety of skilled labor services, creating economic betterment opportunities for our Tribal Community at large using a culturally informed and sensitive approach while capitalizing on and strengthening the inherent sovereignty of the Klamath Tribes.”