

INTRODUCTION, TRIBAL & FEDERAL
INDIAN PREFERENCE EMPLOYMENT LAW
&
THE TERO PROGRAM



TRIBAL EMPLOYMENT LAW

THE TERO ORDINANCE

Sovereignty based legislation enacted by Tribal Governments to protect the rights of Indian people to preference in employment, contracting, sub-contraction and in all aspects of employment on reservations.



WHAT IS TERO?

Stands for Tribal Employments Rights Ordinance or office. The ordinance created an enforcement program which is called the TERO Office. The program is responsible for ensuring compliance with all TERO (ordinance) requirements.



WHAT IS THE PURPOSE OF THE TERO PROGRAM?

- Purpose: To ensure Indian people receive their rightful share of jobs & other economic opportunities and to work to remove barriers to employment.
- To administer and enforce the TERO Ordinance.

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- WHAT IS LEGAL BASIS FOR TERO?
 - Inherent Tribal Sovereignty: Tribes have power to exercise authority over its members and to regulate all economic activity within its territories.
 - TERO legal authority is established in Ordinance by Tribal Council to ensure compliance.
 - TERO required Indian preference is consistent with federal and case law.

WHAT DOES THE TERO ORDINANCE DO?

- Sets Conditions
- Establishes Authority
- Assigns Responsibility
- Delineates Sanctions for Violations of Law
- Provides Due Process
- Imposes Tax or Fee
- Authorizes Strategic Alliances & Partnering

WHY WAS TERO ENACTED?

- To address unemployment, poverty, etc;
- To ensure employer compliance with TERO;
- To eliminate discriminatory and other barriers;
- Bottom line intent: Maximize tribal member access to employment and business opportunities.

TERO LEGAL FRAMEWORK & TOOLS

Tribal Law

Federal IP Laws

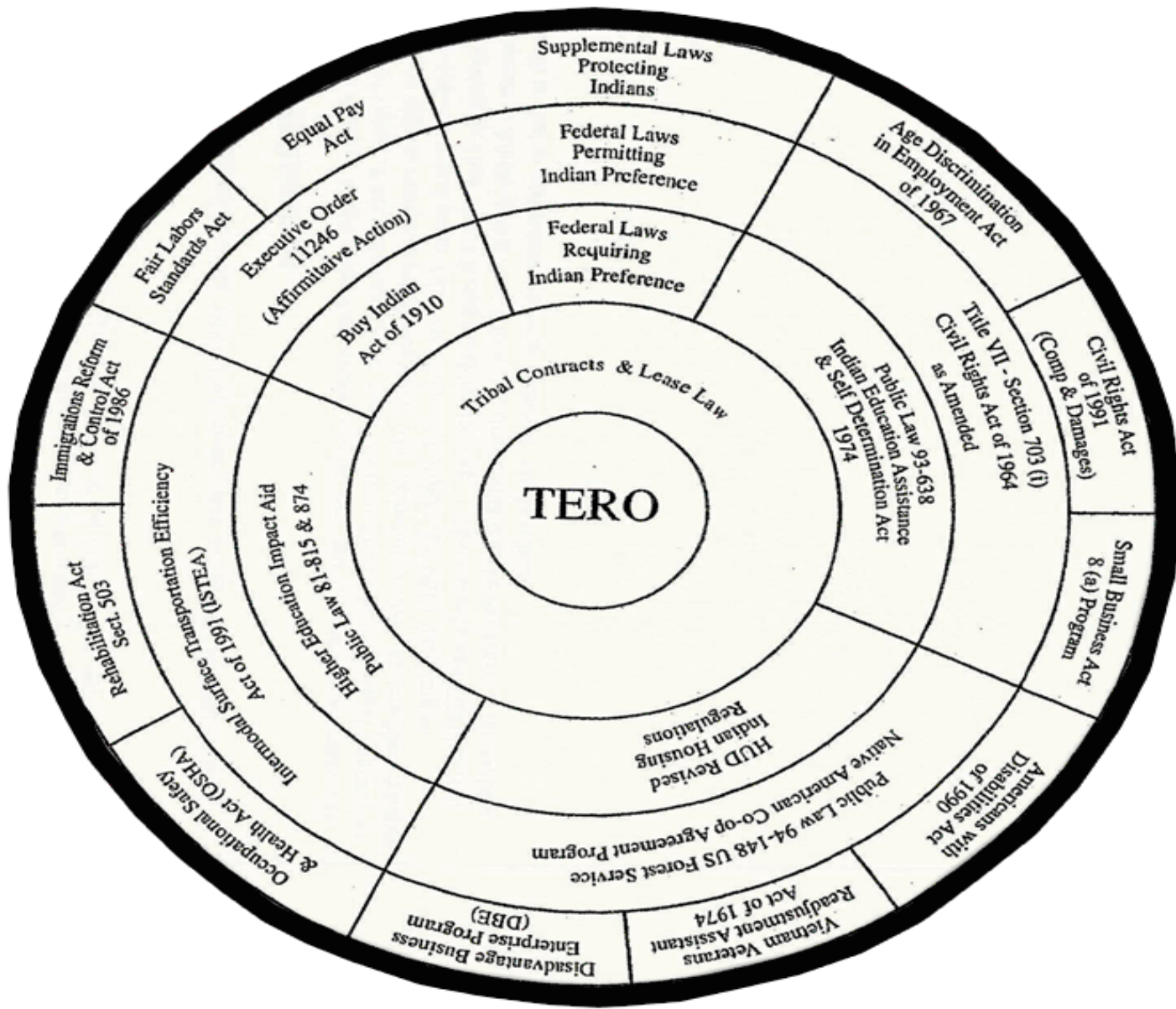
Contract Law

Compliance Plans

Tribal Labor Agreements

State EEO Laws

Internal Employer EEO Policies





WHAT ARE BASIC TERO REQUIREMENTS?

Preference is required in all aspects of employment including:

Employment
Training
Promotions
Transfers
Part-Time

Shift Differential
Last in Lay-Offs
1st in recalls
Contracting
Sub-contracting

- * Purchase of Products, Materials & Services
- ** Tribe may have a preference priority hiring order.

TERO COMPLIANCE PLAN

8 KEY ELEMENTS OF A GOOD COMPLIANCE

1. Delineates the employer's legal responsibilities;
2. Defines Skills Bank Requirements;
3. Provides for reasonable cultural, religious and traditional accommodations;
4. Sets tribal wage rates and certified payroll requirements;
5. States the TERO Fees/Tax and collection schedules;

TERO COMPLIANCE PLAN (Continued)

5. Articulates Tribe's no tolerance policies regarding use of derogatory or offensive terms toward Indian people or the tribe;
6. Establishes conditions for union compliance & special negotiated Tribal labor agreements. (Agreement is legally binding document);
7. Sets jurisdiction and methods for dispute resolution.
8. Sets core crew criteria (requires employer Core crew list).

TERO / EEOC CONTRACTS

- Government to Government agreement;
- Authorize TERO to take Title VII Charges;
- 30 days to conciliate then defer to EEOC
- Fixed contracts of \$25,000
- Annual professional training
- T/A assistance on request

TRIBAL WORKFORCE PROTECTION ACT

BEYOND INDIAN PREFERENCE

WHAT IS A TRIBAL PROTECTION ACT?

- Sovereignty based legislation enacted by Tribal Governments to protect their expanding and diverse workforce from all forms of discrimination and to create a safe, healthy and non-hostile work environment for their native and non-native workforce on the reservation.
- * Key Point 1: Act provides all tribal employees with the same basic employment protections that federal And state governments provide.

PART TWO
MOST ASKED QUESTIONS ABOUT TERO

TERO COMPLIANCE PLAN

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EXEMPTIONS TO TERO REQUIREMENTS?

- Yes. Most TERO Ordinances exempt direct employment by:
 - Tribal Entities, i.e., Casinos, other programs etc.
 - Federal/State agencies (subdivisions);
 - Non-profits;
 - Core-crew (key people) * See handbook for definition.
- ** Vital note: Contractors operating a contract let by any of the above...are not exempt from TERO

WHAT IS ELIGABILITY CRITERIA FOR IP TERO CERTIFICATION?

- To be eligible for IP, contractors must:
 - Be 51% Indian owned, operated & controlled.
 - Must be able to submit competitive bid;
 - Meet quality standards;
 - Meet quantity needs;
 - Meet normally accepted responsive bidder qualifications.

CONTRACT LAW

DEFINITION OF A CONTRACT



A contract is legally binding and enforceable binding agreement between two or more parties,



TRIBAL LABOR AGREEMENTS

WHAT ARE TRIBAL LABOR AGREEMENTS

6 Key elements of Tribal labor agreements:

1. Union recognition of Tribal Sovereignty;
2. Union Agreement to TERO requirements;
3. Establishes Union / Tribal TERO Liaison
4. Is Project Specific
5. Establishes Career Training Path
6. Contains Dispute Resolution Provisions



TRIBAL WORKFORCE PROTECTION ACT

WHAT:

Sovereignty-based legislation enacted by Tribal Governments to protect their diverse workforces from discrimination, harassment & disparate treatment based on race, color, gender, sexual preference, religion, national origin, or tribal affiliation.

TRIBAL WORKFORCE PROTECTION ACT

WHY NEEDED:

Tribes as sovereign governments are exempt from:

- Title VII of the 1964 Civil Rights Act
- Americans With Disabilities Act
- Equal Pay Act
- Americans With Disabilities Act
- Section 503 of the Rehabilitation Act
- Viet Nam Era Veterans Readjustment & Assistance Act
- Occupational Safety & Health Act
- Executive Order 11246 (Affirmative Action)

TRIBAL WORKFORCE PROTECTION ACT

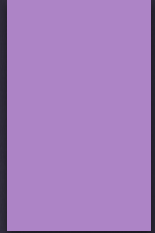
BEYOND PREFERENCE

WHAT DOES ACT DO?

- Closes gaps in protection –Tribal Exemptions
- Non-Indian Workforce
- It's good responsive, responsible government
- It strengthen and legitimizes tribal sovereignty
- It reduces the likelihood of federal intrusion into intramural employment matters.
- It reduces the likelihood of union organizing
- It's the right thing to do

TRIBAL WORKFORCE ACT

BEYOND PREFERENCE



BASIC REQUIREMENTS

- Preference
- Prohibits Discrimination (Title VII, age, sex etc.)
- Sexual Harassment
- Wage & Hour
- Safety (TOSA)
- Family Medical Leave



FEDERAL EMPLOYMENT LAWS

PART FOUR

FEDERAL EMPLOYMENT LAW

MAJOR FEDERAL LAWS THAT REQUIRE INDIAN PREFERENCE

INDIAN SELF-DETERMINATION & EDUCATION ASSISTANCE ACT (PL 93-638) SECTION 7b.

Preference required in:

- Employment;
- Training;
- Sub-contracting.
- * Key note: Tribal Preference OK

PART FOUR

FEDERAL EMPLOYMENT LAW (CONTINUED)

Enforcement Authority/Responsibility

- Bureau of Indian Affairs (BIA)
- Indian Health Service (IHS)
- Tribal Housing Authority (IHA)

*Key Point: Tribal Preference allowed under 1990 Amendments

**Ideal TERO /Agency Relationship: Collaboration

FEDERAL EMPLOYMENT LAW

NAHASDA -HUD INDIAN PREFERENCE REGS.

- Housing regulations 1003.510 & PL 93-638 -Section 7b Applies

Preference is required in:

- Employment;
- Training;
- Contracting;
- Sub-contracting.

*Enforcement: Tribal Housing Authority

MAJOR FEDERAL LAWS THAT PERMIT INDIAN PREFERENCE

TITLE VII OF THE CIVIL RIGHTS ACT (1964)

General Provisions:

- Prohibits discrimination on the basis of race, color, religion, sex or national origin.
- Act amended in 1978 to include the Pregnancy Discrimination Act.
- Coverage: All employers with 15 or more employees

TITLE VII of the Civil Rights Act (1964)

COVERAGE:

- Key Points relative Indian Preference 703(i):
 - Indian Preference is not race based...it is based on unique status of Indian people with US GOV
 - Permits Indian Preference - does not require
 - Requires employer to post public announcement
 - Does not allow Tribal Preference
 - Law exempts Tribal governments /enterprises
 - Enforcement : EEOC / Contracted TEROs

TITLE VII of the Civil Rights Act (1964)

- EEOC / TERO CONTRACTS:
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 - Authorize TERO to take Title VII Charges;
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TITLE VII of the Civil Rights Act (1964)

- ❖ SEXUAL HARASSMENT
 - Is described as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

TITLE VII of the Civil Rights Act (1964)



- ❖ A HOSTILE WORKPLACE ENVIRONMENT: Is described as:

“A workplace where an employee work performance is affected because they experience workplace harassment, unwelcome actions, offensive, and intimidating behavior and results in their dreading going to work because of the oppressive and uncomfortable atmosphere created by the harasser”

TITLE VII of the Civil Rights Act (1964)

❖ GENETIC DISCRIMINATION

Under Title II of GINA, it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts employers and other entities covered by Title II from requesting, requiring or purchasing genetic information, and strictly limits the disclosure of genetic information.

EXECUTIVE ORDER 11246

GENERAL PROVISIONS:

- Prohibits Discrimination
- Calls for Affirmative Action

*INDIAN PREFERENCE UNDER EO 11246:

- Allows Indian Preference on or near;
- Prohibits Tribal Preference
- Defines “on or near reservation”
- Enforced by OFCCP

- TERO / OFCCP Relationship
 - 37yrs MOU Partnering Relationship
 - Provides Training T/A & Support

FHWA EMPLOYMENT REGULATIONS & INDIAN PREFERENCE

- FHWA REGULATIONS 23 U.S.C. Section 140(d) – Permits Indian Preference;
 - TITLE VII-Section 703(i) – Permits Indian Preference
 - EXECUTIVE ORDER 11246 – Permits IP on or near reservations.
- * FHWA NOTICE

GENERAL EEO/AFFIRMATIVE ACTION LAW

- ADA—Prohibits discrimination against handicapped;
- FMLA-12 weeks un-paid leave for family illness;
- FLSA-overtime/compensatory time;
- ADEA- Prohibits discrimination against people 40yrs and over;
- EPA-must pay equal pay for equal work
- Davis Bacon Act-Must pay prevailing wage
- OSHA-protects work place safety
- 503 RA-Prohibits discrimination of handicapped and Require reasonable accommodation.