

# EEOC - Tribal Relations



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# Topics of Discussion

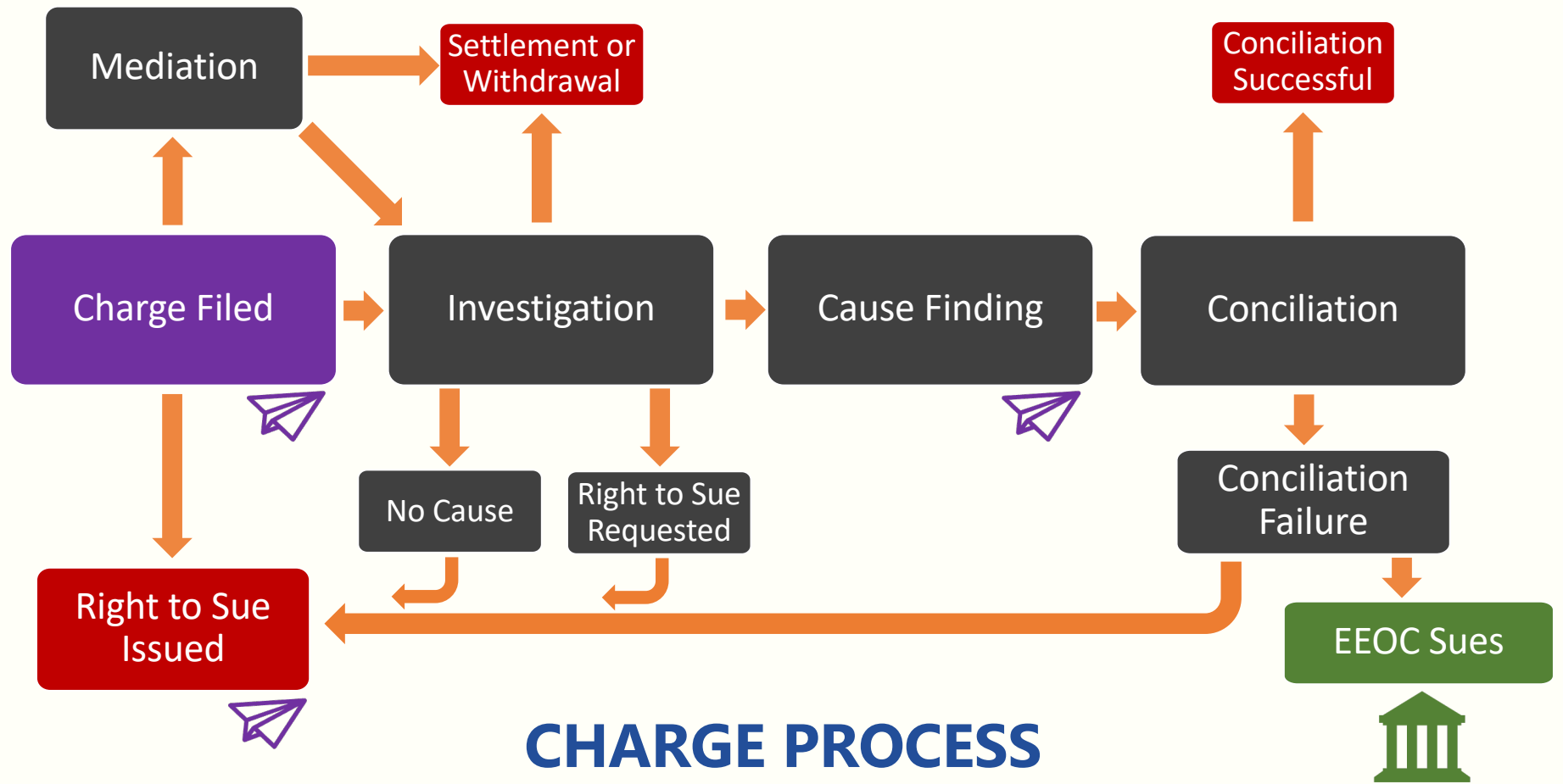
- ▶ Overview of EEOC Process
- ▶ Jurisdiction
- ▶ EEOC-TERO Relationship
- ▶ Tribal Consultations & Collaboration
- ▶ Issues & Challenges
- ▶ Selected Lawsuits on behalf of Native Americans



## OVERVIEW - EEOC

- ▶ A neutral fact-finding agency
- ▶ EEOC's vision:
  - Respectful and inclusive workplaces with equal employment opportunity for all
- ▶ EEOC's mission:
  - Prevent and remedy unlawful employment discrimination and advance equal opportunity for all in the workplace.





# How to Start EEOC Process

- ▶ EEOC Public Online Portal [publicportal.eeoc.gov](http://publicportal.eeoc.gov)
- ▶ No Computer or Internet Access?
  - Call EEOC toll-free at 1-800-669-4000
  - Send Pre-Charge Inquiry Form by mail/fax or drop-off at local EEOC office
  - Local TERO may be able to assist
- ▶ Interpreters and Language Assistance available
- ▶ TTY ☐1-800-669-6820☐
- ▶ ASL Video Phone ☐1-844-234-5122☐



# EEOC's Mediation Program

- ▶ Free
- ▶ Voluntary
- ▶ Fair and Neutral Process
- ▶ Confidential
- ▶ Informal
- ▶ Efficient



## EEOC's Investigation

- ▶ Respondent "Employer" may be asked to provide a Statement of Position regarding alleged discrimination
- ▶ Witness Interviews may be conducted
- ▶ Determine whether further investigation needed
- ▶ May review employment records such as time cards, evaluations, disciplinary notes, job description, etc.



## Possible Outcomes of EEOC's Investigation

### ▶ **Settlement**

**Some cases are settled before EEOC makes a determination**

### ▶ **Determination**

- EEOC unable to find law violated
  - Dismissal and Notice of Right to Sue
- EEOC finds law violated
  - EEOC will attempt to reach a voluntary settlement with employer  
□ Conciliation □





# Jurisdiction Questions



## Who are covered employers?

- ▶ Private sector companies with 15 or more employees
- ▶ Private sector companies with 20 or more employees [ADEA-age]
- ▶ State and local governments [Not Federal Agencies/different process]
- ▶ Employment agencies
- ▶ Labor organizations [Unions]



## Who is not covered by EEOC laws?

- ▶ Native American/Alaska Native Tribes
- ▶ People not employed by the employer [e.g. independent contractor]
- ▶ Private membership clubs
- ▶ Public International Organization [e.g. UN, IMF, World Bank, etc.]



## What laws are enforced by the EEOC?

- ▶ Title VII of the Civil Rights Act [Title VII]
- ▶ Age Discrimination in Employment Act [ADEA]
- ▶ Pregnancy Discrimination Act [PDA]
- ▶ Pregnant Workers Fairness Act [PWFA]\*
- ▶ Equal Pay Act [EPA]
- ▶ Americans with Disabilities Act [ADA]; Rehabilitation Act
- ▶ Genetic Information Nondiscrimination Act [GINA]



## What are the protected categories/types of discrimination?

- ▶ Race
- ▶ Color
- ▶ National origin
- ▶ Religion
- ▶ Age [40 and over]
- ▶ Disability
- ▶ Sex
  - Gender identity
  - Sexual orientation
  - Pregnancy and related conditions
- ▶ Genetic information



## Does EEOC have Jurisdiction on Reservation/Tribal Lands?

- ▶ The EEOC has jurisdiction over private “non-tribal” employers operating on a reservation or that contract with a Tribe, depending on the size of the employer:
  - ▶ Equal Pay Act “EPA” - at least one employee
  - ▶ Title VII, ADA, PDA, PWFA, and/or GINA - at least 15 employees
  - ▶ ADEA - at least 20 employees
- ▶ The EEOC may have jurisdiction over ADEA and EPA charges against federally recognized Tribes, absent infringement on treaty rights or Tribal sovereignty, but it may not have jurisdiction under other EEOC-enforced laws.



## Does EEOC have Jurisdiction over a business owned by a Tribe?

- ▶ The EEOC may have jurisdiction over a business that is owned by a Tribe, but not integrated with and controlled by the Tribe, and that is not performing essentially governmental functions on behalf of the Tribe.



## Scenario 1:

Elsa Herrera is a 65 year-old nurse working for a Tribally owned hospital located on the reservation. Ms. Herrera has been working for the hospital for over 30 years and was recently informed that her employment would be ending. She learned that, of the personnel who were to be terminated, all were over the age of 55. Ms. Herrera complained to the Human Resources Director and was told that the hospital was just downsizing.





## **Business on or near an American Indian Reservation**

- ▶ A business or enterprise on or near an Indian reservation may give preferential treatment to a Native American living on or near a reservation with respect to a publicly announced employment practice.
- ▶ Employment practices in which preferential treatment may be given include hiring, promotion, transfer, reinstatement, and reduction in force.
- ▶ To satisfy the public announcement requirement, the business must disclose that preferential treatment will be given with respect to a particular employment practice.



## Scenario 2:

- ▶ George Begay, 35 year-old Native American male, works for the electric company located near the reservation. Mr. Begay's co-workers routinely make inappropriate comments about his cultural traditions including his hair length and tribal practices. His co-workers often make derogatory comments to Mr. Begay which are based on myths, fears and stereotypes. Mr. Begay has advised his co-workers to knock it off several times. The co-workers state they are just joking and like him; however, the inappropriate comments, slurs and stereotypes continued to occur. Mr. Begay finally had enough and complained to his boss, Jack Smith.



# Timeliness

- ▶ Title VII, ADEA, ADA, PDA, PWFA, GINA
  - 300 days for jurisdictions with a Fair Employment Practices Agency [FEPA]
  - 180 days for jurisdictions without a FEPA
  - Have to file with EEOC first before going to federal court
- ▶ EPA
  - Two years or three years if the violation was willful
  - Can go directly to court without first filing EEOC Charge



# History of the EEOC and TERO Relationship.

▶ [TERO History Video](#)



U.S. Equal Employment Opportunity Commission

## EEOC-TERO Relationship



- ▶ The EEOC partners with Tribal Employment Rights Offices (TEROs) to protect the employment rights of Native Americans and Alaska Natives.
- ▶ Overview of historical relationship
- ▶ Contractual Relationship with EEOC
- ▶ EEOC also works with the Council for Tribal Employment Rights (CTER)



# Equal Opportunity for All

- ▶ The EEOC will be a partner in that effort, working with Tribal Nations to identify ways to make real one of the founding principles of the United States – the promise of equal opportunity for all.
  - Charlotte A. Burrows, Chair



# Tribal Consultations & Collaboration



**U.S. Equal Employment Opportunity Commission**

## EEOC's Commitment

- ▶ The EEOC is committed to working with Indian tribes in a manner that respects Tribal self-government and sovereignty, honors Tribal treaty and other rights, and meets the Federal Government's Tribal trust responsibilities.





# Consultation

- ▶ The EEOC in consultation with Native Americans and Alaska Natives seeks to identify ways to provide information and access to our services.



## Joint Efforts

- ▶ The EEOC, jointly with the US Department of Labor, consulted with Tribal Leaders in April 2021, regarding each agency's Tribal Consultation process. As a result of the feedback received from the Tribes, the EEOC developed a Plan of Action for Tribal matters as well as a Tribal Consultation Process, which describes the process for engaging in consultation with the Tribes.



# Employment Discrimination Issues & Challenges

- ▶ EEOC receives and successfully resolves charges of employment discrimination filed by Native Americans and Alaska Natives.



## Examples of Discrimination Issues

- ▶ Native Americans and Alaska Natives experience the same types of employment issues as anyone else. Some examples are:
  - Sexual Harassment, Racial Harassment [Title VII]
  - Domestic Violence, Sexual Assault & Stalking [Title VII and ADA]
  - Unequal Pay [EPA and Title VII]
  - Post-Traumatic Stress Disorder [ADA]
  - Religious Discrimination and Accommodation [Title VII]



# Selected Lawsuits on Behalf of Native Americans and Alaska Natives



**U.S. Equal Employment Opportunity Commission**

- ▶ Plains Pipeline and Copperhead Pipeline Construction [Albuquerque, New Mexico]
  - Settled for \$1.75 million; 16 aggrieved individuals
- ▶ Reliable Nissan [Albuquerque, New Mexico]:
  - Settled for \$205,000 to 14 employees
- ▶ Patterson-UTI Drilling [Denver, Colorado]:
  - Settled for \$14.5 million; class of aggrieved individuals
- ▶ Wisconsin Staffing, Inc. [Rylander, Wisconsin]
  - \$20,000 for 1 employee
- ▶ RD's Drive In [Page, Arizona]
- ▶ South Dakota Dept. Of Social Services [Department of Justice and EEOC]:
  - \$350,000 backpay and other monetary relief to approximately 60 Native American job applicants



## Non-monetary Relief:

In addition to the monetary relief, EEOC obtained corrective and preventative relief in these cases to help ensure the same discrimination doesn't happen again. They included the following:

- ▶ Implementing effective employee complaint procedures;
- ▶ Reporting to EEOC the company's response to any complaints of alleged discrimination;
- ▶ Provide anti-discrimination training to all employees;
- ▶ Conduct stay and exit interviews of Black, Indigenous, People of Color [BIPOC] employees;
- ▶ Implement recruitment strategies nationwide to attract qualified BIPOC employees;
- ▶ Establish a comprehensive employee complaint process; and
- ▶ Display of Notice Concerning Discrimination at the Worksites.



## Resources:

- ▶ Info about EEOC's Tribal Programs at:
  - ▶ <https://www.eeoc.gov/tribal-programs>
- ▶ Info about EEOC's Plan of Action on Tribal Consultations at:
  - ▶ <https://www.eeoc.gov/agency-plan-action-tribal-consultations>
- ▶ Council for Tribal Employment Rights [CTER]
  - ▶ <https://cter-tero.org/>
- ▶ Society of American Indian Government Employees [SAIGE]
  - ▶ <https://saige.org/>
- ▶ National Congress of American Indians [NCAI]
  - ▶ <https://www.ncai.org/>





Questions?



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# Thank You!



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