

## TITLE 9 - EMPLOYMENT AND CONTRACTING

### CHAPTER 9-1 TRIBAL EMPLOYMENT RIGHTS OFFICE

#### 9-1-1 Purpose

The purposes of this Code are:

- (a) To ensure compliance by employers on the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians' (Tribes) lands with federal and tribal laws that are intended to prevent employment related discrimination against American Indians;
- (b) To ensure compliance by employers on the Tribes' land with federal and tribal laws that are intended to give preference in employment, contracting and sub-contracting and training to American Indians; and
- (c) To ensure the maximum utilization of Indian workers in all employment opportunities within the jurisdiction of the Tribes.

#### 9-1-2 Jurisdiction

- (a) This Code shall apply to all employers located or engaged in business within the jurisdiction of the Tribes. It shall not apply to any direct employment by the Tribes or by federal, state or other governments; however, contractors and subcontractors of these entities shall be subject to the Code.
- (b) This Code is not intended to preempt or interfere with the rights or obligations set forth in the Tribes' Personnel Policies and Procedures. Employees of the Tribes shall be limited to the rights and remedies provided in the duly adopted manuals or procedures enacted by the Tribes for those employees. The Tribes are not subject to the revisions of this Code. This Code shall not apply to or be enforced against Tribal Enterprises. Preference in employment shall be afforded at each Tribal Enterprise in Personnel Manuals developed for each enterprise.
- (c) Contract disputes are contractual and will not be within the Tribal Employment Rights Office 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.

#### 9-1-3 Definitions

- (a) "Tribal Council" means the governing body of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians.

(b) "Compliance Agreement" means a certification signed by employers and the Tribal Employment Rights Office, setting forth how each employer will meet Indian preference hiring goals and that they will comply fully with the Tribal Employment Rights Office (TERO) Code. The "Compliance Agreement" must be executed prior to commencement of any portion of a contract or sub-contract within the jurisdiction of the Tribes.

(c) "Tribes" means the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians.

(d) "Core Crew" means 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 the TERO Program Manager.

(e) "Employer" means any person, company, contractor, subcontractor or other entity located or engaged in work within the jurisdiction of the Tribes. The term "employer" shall include contractors and subcontractors of state, county, tribal and all governmental agencies. The term shall not mean or include the Tribes, federal, state or governmental agencies when they are employers.

(f) "Engaged in Work within the jurisdiction of the Tribes" means an employer during any portion of a business enterprise or specific project, contractor, subcontractor and any of their employee(s) that spends time performing work within the Tribes' lands.

(g) "Indian" means any person enrolled in a federally recognized tribe and recognized by the United States pursuant to its trust responsibility to American Indians.

(h) "Indian Owned Business" means a business that is at least fifty-one percent (51%) operated and controlled by an Indian.

(i) "Indian Preference" means a preference for Indians in all aspects of but not limited to: hiring, training, promotions, layoffs, contracting and subcontracting for work within the jurisdiction of the Tribes. Qualified, available Indians shall receive Indian Preference according to negotiated Compliance Plans.

(j) "Located within the jurisdiction of the Tribes" means an employer, if during any portion of a business enterprise or specific contract or subcontract, who maintains a temporary or permanent office or facility within the lands of the Tribes.

(k) "Near the Tribes' lands" mean jobs within a reasonable daily commuting distance of the land of the Tribes.

(l) "Office" means the Tribes' Tribal Employment Rights Office.

(m) "Program Manager" means the Human Resource Director.

(n) "Tribal Court" means the Tribes' Tribal Court.

9-1-4 Tribal Employment Rights Office

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

(b) 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 Code, to establish employer record-keeping requirements, and to take such other actions as are necessary for the fair and vigorous enforcement of this Code.

(c) The Program Manager shall have the authority to:

- (1) Investigate violations of the provisions of this Code;
- (2) Impose penalties on employers who violate the provisions of the Code;
- (3) Develop and impose numerical hiring goals and timetables that reflect the available Indian labor pool and other employment opportunities for each craft and skill category;
- (4) Require employers that have established training or apprentice programs to provide preference to Indians;
- (5) Establish and maintain a tribal hiring hall that maintains a record of qualified, employable Indians that are to be used by employers to fill vacancies;
- (6) Prohibit any employer from imposing employment qualification criteria that serve as barriers to Indian employment unless the employer can demonstrate that such criteria are required by business necessity;
- (7) To work cooperatively with other tribal programs, i.e., JTPA, to establish counseling and support programs for Indian workers to assist them in retaining employment;
- (8) To enter into cooperative agreements with federal and state agencies to minimize employment discrimination on the reservation, to promote Indian Preference in hiring, training and contracting and to otherwise ensure compliance with this Code;

(9) Through required Payroll Reports, to monitor wage scale and salaries to ensure equitable compensation of Indian workers;

(10) To assess fees on employers to support the operation of the Tribal Employment Rights Office.

9-1-5 Tribal Employment Rights Program

(a) All employers shall give preference to Indians in hiring, promotion, training and all other aspects of employment, contracting and subcontracting, business opportunities and shall comply with the terms of this Code and its implementing regulations and an Compliance Agreement executed under this Code.

(b) 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:

(1) The minimum number of Indians the employer shall hire during any year that the employer is located or engaged in work on the lands of the Tribes; 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;

(2) Wage scale provisions and salary compensation terms;

(3) The reporting requirements the employer shall provide the Program Manager on issues, including but not limited to: the frequency of reports, number of 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.

(4) The numerical goals set forth in the Compliance Agreement shall be based upon surveys of the available Indian workforce and of projected employment opportunities on the lands of the Tribes.

(5) Compliance Agreements shall be reviewed annually and revised as necessary to reflect changes in the number of Indians available or changes in employer hiring plans.

(6) No employer who intends to engage in temporary business on the lands of the Tribes shall commence work 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 the lands of the Tribes shall negotiate and execute

a Compliance Agreement within thirty (30) days from the date the employer receives notification from the Program Manager that a Compliance Agreement is required.

(7) Any violation of an executed Compliance Agreement shall be a violation of this Code.

(8) When the TERO Office is closed and an Indian worker is unable to continue working, emergency hires will be allowed, but such hires will be hired for three (3) days only.

(c) Job Qualifications and Personnel Requirements

An employer shall not use qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the employer is able to demonstrate that such criteria or requirements are required by business necessity. EEOC Guidelines shall be adopted on these matters to the extent that they are appropriate. The Program manager shall be guided by the guidelines but shall have the authority to impose additional requirements that are necessary in order to address employment barriers that are unique to Indians.

(d) Tribal Hiring Hall

(1) The Program Manager shall establish and maintain a hiring hall to assist employers in placing qualified Indians in job positions.

(2) An employer shall not hire a non-Indian in violation of the Compliance Agreement until the Program Manager has certified within a reasonable time that no qualified 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 forty-eight (48) hours from time of notice of manpower needs, to locate and refer a qualified Indian;

(B) All other employment - the Program Manager shall have five (5) working days to locate and refer a qualified Indian.

(3) 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.

(e) Training

(1) The Program Manager shall identify training programs necessary in order to increase the pool of qualified Indians for employment on the reservation.

(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 Indians to become qualified in the various job classifications used by employers.

(3) The ratio of Indian trainees to fully qualified workers shall be negotiated as part of the Compliance Agreement. For construction projects, the number of Indian trainees shall be no less than the minimum ratio established by the Department of Labor.

(f) Unions

Employers with collective bargaining agreements with a union are responsible for informing such unions of this Code and TERO rules and regulations. Unions will give absolute preference to Indians in job referrals regardless of which referral list they are on. Temporary Work Permits will be granted 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 the Tribes' Indian Reservation.

(g) Contractors and Subcontractors

The 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 Code requirements.

(h) Preference in Contracting and Subcontracting

Each employer shall give preference to tribal-owned or 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 Indian-owned businesses which shall be supplied to the employers upon request. Indian owned business shall be certified by the Tribes.

(i) Layoffs

In all layoffs and reductions in force, no Indian worker shall be terminated if a non-Indian worker in the same job classification is still employed. The non-Indian shall be terminated first if the Indian possesses threshold qualifications for the job classification. If an employer lays off workers by crews, all qualified Indian workers shall be transferred to crews to be retained so long as non-Indians in the same job classification are employed elsewhere on the job site. Exceptions may be non-Indians hired as "Core Crew", according to negotiated Compliance Agreements.

(j) Promotion

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

(k) Compliance Fee

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

(A) Every employer with a contract in the sum of ten thousand dollars (\$10,000) or more shall pay a fee of two and one-half percent (2-1/2%) of the total amount of the contract. Such fee shall be paid by the employer prior to commencing work on the Tribes' Reservation.

(B) Each employer with gross sales of ten thousand dollars (\$10,000) or more shall pay an annual fee of two and one-half percent (2-1/2%) of the annual payroll of the employer. Such fee shall be paid quarterly on the tenth (10th) day following the end of each calendar quarter.

(C) Compliance Fees shall be used for TERO operating budget and the percentage shall be adjusted annually to remain consistent with the national average. The Compliance Fees program shall go through the Tribes' annual budget process.

(D) The amount of Compliance Fee shall be at one percent (1%) until December 31, 2002. Effective January 1, 2003, the amount shall be assessed at two and one-half percent (2-1/2%) for all applicable contractors and subcontractors.

(2) 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 Code. This fee shall not be assessed or collected from religious and non-profit employers. The Compliance Fees shall be available to meet the operating costs of the TERO. The Program Manager shall receive a copy of each Compliance Fee payment. The Program Manager shall be responsible for collecting the fees and may establish such 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 (100%) 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.

(l) 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 Code 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.

9-1-6 Violation Procedures

(a) Investigation by the Program Manager

Whenever a violation of this Code 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 provided to the Tribal Council.

(b) Issuance of Citation

(1) If the Program Manager determines that a violation of the Code 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.

(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 Tribes;
- (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 Code 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.

(c) Program Manager Hearing

The employer shall be entitled to a hearing before the Program Manager no later than ten (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 Code 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 Program Manager shall determine whether or not the employer complied with this Code. If the Program Manager determines that the employer is out of compliance and has not made a best effort to comply, the Program Manager shall impose one or more of the sanctions provided for in the Code, as appropriate, and shall order the employer to take such corrective action as is necessary to remedy any harm done to the Tribes or individual Indians by the employer's noncompliance. The Program Manager shall send written notice to all parties within ten (10) days after its decision in the matter.

(d) 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 Tribal Court, any imposition of emergency sanctions on an employer by the Program Manager. The Tribal Court shall schedule a hearing on any appeal of a decision by the Program Manager granting emergency relief pursuant to this subsection within ten (10) working days.

(e) Appeals

Any person adversely affected by a decision of the Program Manager shall have the right to appeal the decision to the Tribal Court in accordance with this Code.

(f) Individual Complaint Procedure

(1) Any Indian who believes that an employer has failed to comply with the Code, or who believes that they have been discriminated against by an employer because they are Indian, may file a complaint with the Office. The complainant shall be responsible for providing the Office with evidence of the discriminatory practices. Upon receipt of a complaint supported by sufficient evidence of discrimination against an Indian complainant, the Office 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 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 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.

(2) In conducting the hearing, the Program Manager shall have the same powers, and shall be bound by the same hearing requirements as provided in (d) and (e) of this chapter.

9-1-7 Penalties

(a) Penalties for Violation

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

- (1) Denial of the right to commence or continue business on the reservation;
- (2) Suspension of operations on the reservation;
- (3) Payment of back pay and/or damages to compensate any injured party;
- (4) An order to summarily remove employees hired in violation of this Code or Agreement negotiated hereunder;
- (5) Imposition of monetary civil penalties; and

(6) An order specifying requirements for employment, promotion and training Indians injured by the violation.

(b) 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.

(c) Enforcement

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

(2) Any cost associated with the enforcement of such Order issued pursuant to this Code 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 staff related to securing enforcement of the Order.

(3) Employers that do not comply with the provisions of this Code, and leave the reservation before enforcement penalties or an order by the Program Manager or the Tribes' Tribal Court, shall be denied the right of contracting or doing further business on the Tribes' Reservation.

9-1-8 Tribal Court Enforcement and Judicial Review

(a) The Program Manager may file a petition in tribal court seeking:

(1) Enforcement of all or part of any order which hasn't been appealed.

(2) Enforcement of all or part of any court order issued on appeal.

(3) The petition shall contain all pertinent facts about the order, including a copy of the order, shall state which parts of the order need to be enforced and against whom, and shall set forth facts to show how the order is not being complied with. The Program Manager shall serve all parties to the proceeding with copies of the petition.

(4) Upon receipt of the petition, the court shall schedule a hearing and subpoena all necessary parties. The hearing shall be held within ten (10) days from the date the petition is filed.

(5) The Program Manager shall have the burden of proving to the court that the court order has not been complied with. The parties to the

hearing on the petition may produce oral testimony or written documentation to support their case.

(6) The court shall render a decision on the petition filed by the Program Manager within fourteen (14) working days and enter whatever order is necessary or appropriate.

(b) The Tribes' Tribal Court is hereby granted exclusive jurisdiction to hear, review, and decide any issues regarding implementation, interpretation, or enforcement appeals under this Code. The decision of the Tribal Court shall be final and binding.

(c) In ruling on matters arising under this Code, the Court shall have the authority to assess and collect civil penalties; to enjoin or mandate actions to enforce the revisions of this Code; 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 Tribes, the Tribal Employment Rights Office or its officials engaged in their official duties under this Code.

(d) The Court shall be responsible for establishing rules and procedures necessary to hear and adjudicate actions brought hereunder.

(e) Ruling on matters arising under this Code, the Tribal Court shall have the authority to assess and collect civil penalties, to enjoin or mandate actions to enforce the provisions of this Code, and to provide any other relief the Tribal Court deems lawful and equitable; provided that nothing in this Code shall be construed as a waiver of the sovereign immunity of the Tribes, nor of the tribal sovereign immunity possessed by the Tribal Employment Rights Office or its officials engaged in their official duties under this Code. Accordingly, nothing in this Code shall be construed as any authority for a claim for money damages against the Tribes, the Tribal Employment Rights Office or TERO Officials acting pursuant to their authority under this Code.

APPENDIX A

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

TRIBAL EMPLOYMENT RIGHTS OFFICE CODE

**LEGISLATIVE HISTORY AND EDITORIAL CHANGES**

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians' Reservation enacted the "Tribal Employment Rights Office" Code, Resolution No. 02-014, Ordinance No. 041, in a regular Tribal Council meeting on January 13, 2002. Vote was 7 (for), 0 (against) and 0 (abstaining).