

Frequently Asked Questions

WHAT IS TERO?

Tero stands for Tribal Employment Rights Ordinance or Office. TERO Ordinances require that all employers engaged in business on reservations give preference to qualified Indians in all aspects of employment, contracting, and all other business or economic development activities.

WHY WAS THE TERO ORDINANCE ENACTED?

- ✓ To address the deplorable rate of poverty, unemployment and underemployment that exists among native people living on reservations.
- ✓ To eliminate discriminatory and other historical barriers tribal members face while seeking employment and business opportunities on or near reservations.
- ✓ To ensure that tribal members receive their rightful entitlements as intended under the concept of Indian Preference.

WHAT DOES THE TERO ORDINANCE DO?

- ✓ **SETS CONDITIONS:** Mandates the tribal requirements for Indian preference that all covered employers must comply with in order to be eligible to perform work on reservation.
- ✓ **ESTABLISHES AUTHORITY:** Empowers the TERO Commission & Staff with sufficient authority to fully enforce all provisions of the TERO Ordinance.
- ✓ **PROVIDES DUE PROCESS OF LAW:** It provides principles of legal fairness to all parties involved in compliance or violation dispute issues.

WHAT IS THE PURPOSE OF THE TERO PROGRAM?

The primary purpose of the TERO Program is to enforce tribal law in order to insure that Indian/Native people gain their rightful share to employment, training, contracting, subcontracting, and all other economic opportunities on or near the reservation.

WHAT IS INDIAN PREFERENCE?

Indian Preference is a unique right that tribal members have that entitles them to first consideration to all employment, training, contracting and subcontracting and business opportunities that exist on and in some cases near reservations.

IS TRIBAL PREFERENCE LEGAL?

Tribal Preference is not allowed on federal/state contracts or in private employer situations. Many tribes have tribal preferences in their TERO Ordinances that are not consistent federal law and therefore not allowed on any federally funded or assisted contracts. Tribes can however, apply tribal preference in all aspects of employment to their own business enterprises and construction contracts. Tribal Preference is also allowed on tribal Public Law 93-638 contracts.

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 rulings 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 does not violate the dictates of federal employment law.

WHAT ARE THE BASIC TERO REQUIREMENTS?

ALL covered employers operating a business within the tribal jurisdiction are required to provide Indian preference in employment, training, contracting, subcontracting, and all other aspects of economic development activities. Below several specific examples employers are required to comply with:

- ✓ Submit an acceptable compliance plan detailing the steps they will take to ensure compliance with the TERO Ordinance.
- ✓ Utilize the TERO Skills Bank for all referrals and consider Indian applicants before interviewing or hiring non-Indian.
- ✓ Eliminate all extraneous job qualification criteria or personnel requirements which may act as barriers to Indian employment. EEOC guidelines on legal BFOQs are used by TERO.
- ✓ All employers who have collective bargaining agreements with one or more unions, must secure a written agreement from them indicating they will comply with TERO.
- ✓ Agree to acknowledge and respect tribal religious beliefs and cultural differences and to cooperate with TERO to provide fair and reasonable accommodations.

ARE THERE EXEMPTIONS TO TERO REQUIREMENTS?

Yes. There are several exemptions. Most TERO Ordinances exempt direct employment by the Tribe, Federal, State or other governmental and their subdivisions, non-profit corporations, churches, schools etc. ***However, all contractors working for these entities regardless of the source of funding are covered by the TERO Requirements.*** At the individual level, the only exemption allowed is for the employer's "core crew or key person" which is defined as: "a member of a contractor's or subcontractor's crew who is a regular, permanent employee and is a supervisor or other key position such that the employer would face a serious financial loss if that position were filled by a person who had not previously worked for the contractor"

ARE TERO FEES LEGAL?

Yes. Tribal authority to tax is equal to that of any other government. TERO Fees are a valuable source for financing tribal governmental operations.