

# KETCHIKAN INDIAN CORPORATION

## ORDINANCE 9: TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO)

AS APPROVED BY THE TRIBAL COUNCIL ON APRIL 20, 1998

1. The Ketchikan Indian Corporation does hereby establish the Ketchikan Indian Corporation Tribal Employment Rights Office, hereinafter called "Office" as an independent office of the Ketchikan Indian Corporation, reporting through monthly written reports, occasional verbal reports and through proper lines of authority.
2. The Tribal Employment Rights Officer (TERO) shall have the authority necessary to carry out the purpose of the Office. The Office shall have the authority to issue rules, regulations, and guidelines to implement the employment rights requirements imposed by this ordinance and to take other such actions as are necessary for the fair and vigorous implementation of this ordinance.
3. In implementing the requirements of this Ordinance, the Tribal Employment Rights Office is authorized to:
  - 3.1 Require an Indian Preference plan that sets numerical goals and timetables that explicitly require Employer/Contractors to hire and train a specific number of Tribal members.
  - 3.2 Require covered employers to submit to review by the TERO their job descriptions and qualifications, also the personnel procedures that tend to disqualify Indian applicants.
  - 3.3 Set up a hiring hall system to refer applicants to employers by trade and skill level.
  - 3.4 Set up a "trainee" list as part of the hiring hall list that will make available to employers a pool of Tribal members that are partially skilled and may require further training to make them more qualified.
  - 3.5 Make every effort to implement and monitor for compliance the directives set forth by the following legislation- setting the parameters of Indian Preference.
  - 3.6 An employment rights fee, to raise revenue for the operation of the TERO Office, is hereby imposed as follows:
    - 3.6.1 Every covered construction contractor with the contract of \$100,000.00 or more shall pay a one-time fee of one percent (1%) of the total amount of the contract. The fee may be paid in installments over the length of the contract.
    - 3.6.2 Every employer, other than construction contractors, with twenty (20) or more employees, or gross sales of \$100,000.00 or more, shall pay an annual fee of one percent (1%) of the annual payroll of that employer. This fee shall not apply to educational, health, governmental or nonprofit employers.
    - 3.6.3 Such fees shall be paid to the Tribal government and shall be placed in a special account to be used to meet the operating costs of the TERO Office. The Office shall be responsible for collecting said fees and is authorized to establish such rules and regulations as are necessary to insure a fair and timely fee collection process. An employer or contractor who fails to pay the required fee shall be subject to the sanctions provided for in Section 14 of the Ordinance. The TERO Office is authorized to develop a program to rebate some or all of the fees paid by an employer who is found to

be in compliance with the requirements imposed by this Ordinance and making substantial effort to employ, train, and promote Natives.

4. (Sources of Authority)

**4.1 Indian Self-Determination and Education Assistance Act**, section 7(b):

**4.1.1** As applied to the NEW Housing and Urban Development Indian Preference Policy, effective 09/26/84, and

**4.1.2** As applied to NEW Bureau of Indian Affairs directive on "Preference Status for Indian/Alaska Native Persons and Economic Enterprises as Bureau Contractors" under the Acquisition and Assistance Agreement Instruction 84-1.

**4.1.3** As applied to ILLS Indian Preference regulations.

**4.2 Title VII of the 1964 Civil Rights Act** (as enforced by the Equal Employment Opportunity Commission).

**4.3 Executive Order 11246** (September 24, 1965). *(Full copy available upon request)*

**4.3.1** Bans federal contractors and subcontractors from discrimination against employees and applicants for employment because of their race, color, religion, sex, ornational origin.

**4.3.2** Requires federal contractors to practice affirmative action that is to go beyond refraining from discriminatory practices/policies by taking positive, result-oriented steps toward the elimination of employment barriers to minorities and women.

**4.3.3** Special Coverage of Indian Preference Under Executive Order 11245:Work on or near reservations. **It** shall not be a violation of the equal opportunity clause for a construction or non construction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a workday. Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a contractor from complying with the other requirements contained in this chapter.

**4.3.4** Including all other aspects of Executive Order 11245.

**4.4 Buy Indian Act.**

**4.5 Alaska State Human Rights Law.**

- 4.6** Indian Reorganization Act (IRA) of 1934, as amended for Alaska, 1936.
- 4.7** Indian Civil Rights Act, (ICRA) 1968.
- 4.8** Tribes inherent sovereignty authority.
5. Require specific Indian Preference obligations of covered Employers/Contractors.
- 5.1** Employer/Contractor shall apply hiring of Indian/Alaska Natives in accordance with Section 7(b) of Public Law 93-638, Indian Self-Determination Act.
6. Training: All Employer/Contractor(s), as requested by the Office, shall participate in training programs to assist Indians to become qualified in the various job classifications used by the Employer/Contractor. Employers engaged in construction shall employ the maximum number of trainees/apprentices possible. The ratio of trainees to fully qualified workers shall be set by the TERO after discussions with the Employer/Contractor. For construction projects, the number shall be no less than the minimum ratio established by the Department of Labor. All trainees or apprentices shall be Indians.
7. Unions: Unions shall be expected to adhere to the requirements under 7(b) of P. L. 93-638, Indian Self-Determination Act.
- If Section 7(b) of 93-638 is not applicable, the TERO office will enter into agreement to insure union compliance with this ordinance.
8. Counseling and Support Programs: The Office, in conjunction with other Tribal and Federal Offices will provide counseling and other support services to Indians employed by covered employers to assist such Indians to retain employment.
9. Preference in Subcontracting to Tribal and Indian Owned Economic Enterprise: Covered Employer/Contractors shall be in accordance with P. L. 93-638 Section 7(b) regarding subcontracting.
10. Lay Off or RIFS: In all lay off and Reductions in Force (RIF), no Indian worker shall be terminated if a non-Indian worker in the craft is still employed providing the Indian is equally or more qualified than the non-Indian. The non-Indian shall be terminated first as long as an Indian meets the threshold qualifications for the job. Furthermore, if the employer lays off by crews, qualified Indians shall be transferred to crews that will be retained so long as there (I.e. non-Indians in the same craft employed elsewhere on the job).
11. Supervisory Positions: The Employer/Contractor shall give preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. For all supervisory positions filled by non-Indians, the employer shall file a report with the Office stating what Indians, if any, applied for the job, the reasons they were not given the job, and what efforts were made to inform Indian workers about the opportunity.
12. Reporting and On-Site Inspections: Employers shall submit reports and other information as

requested by the Office. Employees of the Office shall have the right to make on-site inspections during regular working hours in order to monitor an employer's compliance with these Guidelines. Employees of the Office shall have the right to inspect and copy all relevant records of any employer or any signatory union, contractor or subcontractor, to speak with workers on the site, and engage in similar investigative activities. All information collected by the Office shall be kept "Confidential."

13. **Compliance and Hearing Procedures:** If the Office believes that an employer (including a subcontractor) has failed to comply with any of the requirements set out in these guidelines, the Office shall so notify the employer in writing, specifying in detail the alleged violation. The employer shall then be entitled to a hearing before the Office and appropriate Tribal Council Committee. 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 the employer has complied with the requirements of these Ordinance guidelines or that the employer made a best effort to do so and therefore should not be subject to sanctions.

The Office shall have the right to subpoena witnesses and documents, to put witnesses under oath, to call witnesses and present evidence and to take necessary steps to insure a fair and complete hearing. On the basis of the evidence presented at the hearing and the information collected, the Office and appropriate Tribal Council Committee shall determine whether or not the employer complied with its Indian Preference requirements. If it is determined that the employer is out of compliance and has not made a best effort to comply, the Office with Tribal Council Committee recommendation shall impose one or more of the sanctions provided in this Ordinance. The Office shall direct the employer to take such corrective action as is necessary to remedy any harm done to the Tribe or to the individual Indians by the employer's noncompliance. The Office shall send written notice of the decision to the employer.

14. **Sanctions:** In the event that an employer is found to be out of compliance with the requirements of these guidelines, the Office shall be entitled to impose any or all of the following sanctions. The Office shall take into consideration mitigating factors as the employer's effort to comply and efforts to remedy any harm done by the noncompliance:

- 14.1** Request the BIA Area Office or appropriate Agency to impose civil monetary fines, commensurate with the monetary value of the violation.
- 14.2** Request the BIA Area Office or appropriate Agency to suspend the employer's operation until corrective action is taken or a plan for corrective action is developed.
- 14.3** Request the BIA Area Office or appropriate Agency to terminate the employer's operation.
- 14.4** Request the BIA Area Office or appropriate Agency to prohibit the employer from engaging in any future operations in the "Revillagigedo Island" area.

- 14.5** Require the employer to remove certain workers and/or hire certain workers.
- 14.6** Require the employer to provide back pay, employment, promotion, training, and/or other relief to Indians who were harmed by the employ's noncompliance.
- 14.7** Require the employer to make such changes in procedures or policies as is necessary in order to comply with these requirements.
15. **Appeals:** The employer shall have the right to appeal any decision of the Office to the Ketchikan Indian Corporation Tribal Council. An appeal must be filed within twenty (20) days after receipt of notice of the Office's decision. The Office shall represent the interest of the Tribe during the appeal.
16. **Individual Complaint Procedures:** Any Indian, group of Indians, or representative of a class of Indians who believe that an employer has failed to comply with these Ordinance guidelines, or who believe that they have been discriminated against by a covered employer, may file a complaint with this Office. Persons may file whether or not they can show they were personally harmed by the employer's noncompliance. Upon receipt of a complaint, 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 Office shall hold a hearing to make a determination with Tribal Council Committee concurrence on the validity of the charge, and shall order such relief as is necessary to make whole any Indian who was harmed by the employer's noncompliance or discriminatory behavior. The decision shall be in writing and shall be sent to all parties.
- Either party shall have the right to appeal the decision of the Office to the Ketchikan Indian Corporation Tribal Council. Such appeal must be filed within 20 days after receipt of the notice from the Office.
17. **Severance:** In the event that a portion of this code is declared invalid, such invalidity shall not affect the remaining portions and to this end, this code shall be considered severable.
18. **Definition of Terms:** In this ordinance, the following words and phrases will have the following meaning unless otherwise specified:
- 18.1 Council:** Means the Tribal Council.
- 18.2 Employer:** Means any person, company, contractor, subcontractor or any other entity located or engaged in work within Ketchikan Indian Corporation Tribal jurisdiction, employing two or more persons.
- 18.3 Engaged in work within the Tribal Jurisdiction:** Means an employer engaged in any portion of a business enterprise or specific project, contract or subcontract, when the employer or any of his employees spend a majority of their time performing work within the

Tribal Jurisdiction on a continuing basis.

- 18.4 TERO Fee:** Means a fee collected by the Tribe from employers engaged in work within the Tribal jurisdiction. The fee shall be used by the Tribe for employment services such as: recruiting, screening, referral, compliance, counseling and training. The fee shall be set according to the provisions of the Ketchikan Indian Corporation Tribe TERO fee ordinance.
- 18.5 Tribal Jurisdiction is the Ketchikan Gateway Borough:** "An area encompassing all those islands bounded on the East, North and West by Behm Canal Behm Narrows and Clarence Strait to its junction with Nichols Passage and on the South by Nichols and Revillagigedo Channel to its Junction with Behm Canal. The designated boundaries extend to the center line of Behm Canal, Behm Narrows, Clarence Strait, Nichols Passage and Revillagigedo Channel and include all the area of Revillagigedo, Gravina, Pennock, Betton, Grant and other Clover Passage and Naha Bay Islands, Hassler, Gedney, Black, Smeaton, Manzanita, Rudyard and Bold Islands, and all other offshore and adjacent islands and inlets thereto, with the exception of the Organized Village of Saxman."