



Mashpee Wampanoag Tribe TERO Office
483 Great Neck Rd, South, Mashpee, MA 02649
Phone (508) 477-0208 Ext. 175 Fax (774)361-6033

PROJECT INFORMATION

Project Name: _____ **Project #** _____

Location: _____

Project Funding Tribal Department Contact: _____

Project Contractor: _____

Project Architect: _____

Contractor is: Prime _____ **General Contractor** _____ **Sub – Contractor** _____

Union ___ **Non – Union** ___

Company: _____

Complete Address: _____

Contact Person: _____ **Title:** _____

Phone: _____ **Fax:** _____ **Cell:** _____

Insurance Company: _____ **Policy:** _____

Expiration Date: _____

Is Construction Schedule / Business Plan on file with Tribal Council and / or Tribal Department?
Yes _____ No _____

Total Contract Amount: _____ **Total TERO Fees Charged:** _____ **TERO Rcvd:** _____



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TERO CONTRACTOR COMPLIANCE PLAN

Revised 2022

DEFINITIONS: Please refer to the TERO Ordinance 2014-ORD-003

SAFETY OF ALL WORKERS

Employers must ensure a safe environment for all employees while on Tribal Lands. Promoting workplace safety maintains safe and productive workforce. It is vital to ensure that there is awareness of OSHA and those rules and regulations are being adhered to.

Working environment shall be free of harassment, intimidation and coercion at all sites in all facilities at which the employees are assigned to work. Contractors / sub-contractors must ensure that all supervisors are aware of and are carrying-out their obligation under this subsection to all employees on Tribal Lands.

CONTRACTING AND SUB-CONTRACTING AND TERO HIRING HALL

The contractor shall use the TERO Hiring Hall for all employment opportunities not authorized under the key and core crew exemption and/or waived employees.

Contractors shall give preference to TERO Certified Indian Business with respect to all subcontracting opportunities. Requesting sub-contractors and individual from the Hiring Hall shall use the same process:

- The contractor shall contact the TERO office using the authorized form giving 72 hours' notice of request for sub-contract / request for worker.

- Contractors will adhere to the Native American preference when selecting a sub-contractor.
- Contractors must provide a written justification of Native American Sub-Contractors not used.
- In a time issue situation TERO may accept verbal justification with written justification to follow.
- TERO will provide the contractor with a list of available and interested person's individual workers / sub-contractors.
- Contractor must contact all persons on list before offering an individual a position and justify why others were not selected.
- If TERO is unable to accommodate contractor need, TERO will issue a "Hire as Needed" for those requested positions.

TRAINING

All training opportunities must be identified and treated through the same process as the hiring hall process.

FRINGE BENEFITS

All fringe benefits must be paid in cash unless the worker is a union member. TERO referrals will not be required to join a union to procure or retain employment.

PAY DAY

TERO workers will receive their pay on the same day as the employer's core crew and key employees.

LAY OFFS

TERO referred workers will have priority in all work opportunities. In the event that a lay-off becomes necessary, an Indian worker with skills, equal to a waived employee, and in some cases a key employee, that Indian worker will be retained.

DISCIPLINARY ACTION

Employers are required to report any disciplinary action taken against a TERO worker in written form describing the incident, location and witnesses. TERO will provide guidance and counseling if necessary and assist to secure action is taken to resolve the issue.

TERMINATIONS

All terminations, other than those of a completed project, must be brought to the attention of the TERO Office prior to final action. TERO requires resolution, restitution if possible and or relief if relevant.

RELIGIOUS ACCOMODATIONS

In concurrence with the Native American Indian Religious Freedom Act, the employer agrees to provide reasonable accommodation to any Native American who wishes to exercise their rights under the Act. TERO will assist the employer with a temporary worker if requested.

NATIVE AMERICAN HOLIDAYS

The employer should acknowledge and respect Native American Holidays and discuss and arrangement with TERO workers wishing to celebrate and acknowledge that holiday if they so choose.

TRIBAL FUNERALS

Due to the uniqueness of the Native American Extended Families funeral attendance time may not fall under most employer bereavement policies and employers may have to adapt to accommodate TERO workers wishing to attend such funeral.

COMPLAINTS

Any TERO worker or Tribal sub-contractor can bring a notification of violation or complaint to the attention of TERO without fear of retaliation. All complaints will be investigated by the TERO Office or a TERO appointed representative.

COMPLAINT INVESTIGATIONS

TERO will investigate all complaints. On-site investigation may be done and will consist of witness interviews, collecting written statements and review of and documenting of supporting evidence. TERO will attempt to make interruption of work activity at a minimum and employees shall not be penalized for time taken to participate in any investigations or retaliated against for participating in the interview.

NON-COMPLIANCE

Employers will receive a Notice to Comply in order to correct the issue. If not corrected employers will receive a chargeable Non-Compliance Notice. If corrective action is not taken the TERO office may levy a civil fine of up to one thousand dollars per violation, per day, may suspend, halt or terminate the conduct of business on Tribal lands and may prohibit future business activities of violator on all Tribal Lands.

APPEALS

Contractors / Sub-Contractors may appeal an adverse decision made by the TERO office to the Tribal Courts in a timely manner (15 to 30 days) and further to Federal Court.

TERO INSPECTIONS

TERO staff may visit the work site at their discretion VIA appointments or not. All visit should not interrupt work and if required only at a minimum necessary.

NOTICE TO PROCEED

Notice to Proceed is required before any contracts begin. Contractors will receive a Notice to Proceed once all TERO requirements are met. Failure to complete a compliance plan will result in a denial of that notice.



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Important Information for Contractors/ Sub-Contractors working on Tribal Lands

Any person or company providing goods, services or contracted agreements on any Tribal lands must provide a Native American preference in hiring and/or sub-contracting.

Here is important information about establishing and operating necessary to maintain TERO compliance.

- ✓ Tribal Lands include all land known as Trust Land in Mashpee, Taunton and or any other land held in trust by the US Government on behalf of the Mashpee Wampanoag Tribe.
- ✓ Employment preference applies to any person providing material or equipment. All contractors / sub-contractors are advised to contact the TERO office to see if a list of Native American owned suppliers are available.
- ✓ All contractors/sub-contractors must utilize the TERO Hiring Hall.
- ✓ All contractors/sub-contractors must notify when of any bids for services to secure Certified Tribal businesses are aware of opportunities through the TERO office.
- ✓ Anyone working on Tribal Land VIA contract is required to be current in legal status, maintain their business for one year and maintain Liability Insurance.

All contracts between the Mashpee Wampanoag Tribe, The Mashpee Wampanoag Gaming Authority or any other Tribal entity requires compliance with the Mashpee Wampanoag TERO Office.

For further information please contact the TERO office at the Mashpee Wampanoag Tribal Government Center.



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WHAT IS TERO?

TERO MISSION STATEMENT

The TERO Office is responsible for the enforcement and administration of the Mashpee Wampanoag Tribal Employment Rights Ordinance 2014-ORD-003. TERO is authorized under Title VII of the 1964 Civil Rights Act Chapter 41 – 4. Section 703 (i). This authorization provides for Indian Preference in employment hiring on or near an Indian Reservation.

The Mashpee Wampanoag TERO office will assist in creating, identifying and connecting qualified Native Americans to employment and enterprise opportunities. TERO will keep Tribal business informed of available contract/sub-contracts within Tribal lands that are potentially available to them, as well as refer qualified individuals over to available jobs on Tribal properties.

Tribal members, individuals and businesses, must be registered with the TERO Hiring Hall to receive Tribal Preference and be referred to available jobs.

For further assistance please contact the TERO Office at the following:

TERO Department
Mashpee Wampanoag Government Center
483 Great Neck Road, South
Mashpee, MA. 02649

Phone
508-477-0208 Ext. 175

Email
Ellen.Sharpe@mwtribe-nsn.gov

Application for Individual Tribal Members

What is TERO?

TERO stands for Tribal Employment Rights Ordinance or Office. TERO Ordinances require that all employers who are engaged in operating a business on reservations give preference to qualified Indians in all aspects of employment, contracting and other business activities. TERO Offices were established and empowered to monitor and enforce the requirements of the tribal employment rights ordinance.

What is the purpose of the TERO program?

The primary purpose of the TERO program is to enforce tribally enacted Indian Preference law to insure that Indian/Alaska Native people gain their rightful share to employment, training, contracting, subcontracting, and business opportunities on and near reservations and native villages.

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 and required under the Tribal and federal Indian preference employment law.

What is the legal basis for TERO?

A Tribe's authority to enact and enforce an Indian/Native employment preference law is grounded in its inherent sovereign status. This legal doctrine is the most basic principle of Indian law and is supported by a host of Supreme Court decisions. Inherent sovereign powers derive from the principle that certain powers do not necessarily come from delegated powers granted by express acts of Congress, but are inherent powers of a limited sovereign that have never been taken away. Tribes have a basic relationship with the federal government as sovereign powers. This is recognized in both treaties and federal statutes. The sovereignty of tribes has been limited from time to time by treaties and federal legislation; however, what has not been expressly limited remains within tribal sovereignty.

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 reservations.
- **ESTABLISHES AUTHORITY:** Empowers the TERO Commission and Staff with sufficient authority to fully enforce all provisions of TERO ordinance.
- **ASSIGNS RESPONSIBILITY:** Defines and describes the duties and responsibilities of TERO staff and commission.
- **DELINEATES PENALTIES FOR VIOLATIONS:** Clearly spells out penalties employers may face for violations of tribal law.
- **PROVIDES DUE PROCESS:** It provides principles of legal fairness to all parties involved in compliance or violation dispute issue.

What are the characteristics of TERO?

The core characteristics of the program provide additional and valuable insights into why the law and enforcement program are needed and applied. The following are three vital characteristics of TERO.

1. TERO is a true act of self-determination. The decision to enact a Tribal employment rights ordinance is based on each individual tribe's needs and priorities.
2. TERO programs are action orientated. TERO offices are a no-nonsense, hands-on, result-orientated and process driven compliance programs.
3. TEROs are systematically structured programs. Key elements of the structure include:
 - **LEGAL FRAMEWORK:** TERO utilizes a sound and comprehensive framework that encompasses the use of Tribal, Federal, contract and, where applicable, State employment law.

- **ADMINISTRATIVE STRUCTURE:** TERO programs have a well developed administrative structure which utilizes a thorough enforcement process.
- **SYNERGISTIC PARTNERING:** TERO programs apply synergistic partnering principles in relationships with employers in an effort to develop relationships that benefit both parties.

What is Indian preference?

Indian preference is a unique legal 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.

Are Indian preference and TERO new concepts?

The answer to this question is no. Indian preference first appeared in Federal regulations in 1834. Since then most new laws and regulations related to tribes and Indian people include preference provisions. Tribal Employment Rights Ordinances (TEROs) were initially enacted by tribes in late 1976 and early 1977. Today there are almost 300 Tribes and Alaska Native Villages which are covered by TERO ordinances.

Is Indian preference a violation of federal law?

The answer to this question is no. There are no federal laws which prohibit Indian Preference. Tribes are exempt from Title VII of the Civil Rights Act and several other employment laws. Numerous court cases have upheld this exemption (see *Morton v. Mancari* in appendix section on applicability of federal law page #4 of that section). Additionally, court rulings have held that Indian preference is a political preference and not a racial preference and as such do not violate the dictates of federal employment law.

Is Tribal preference legal?

Yes and no. Tribal preference is not allowed on federal/state contracts or in cases where private employer is operating on or near reservations. Many tribes have tribal/village provisions in their TERO ordinances which are not consistent federal law and are therefore not allowed on any federally funded or assisted contracts. Tribes can however, apply tribal preference on all their own businesses and construction projects. Tribal preference is also allowed on tribal P.L. 93-638 contracts.

What is the extent of TERO jurisdiction?

TERO has jurisdiction over all employers operating within the exterior boundaries of the reservation as legally defined by treaty or legislation including ceded lands, territories, and lands where jurisdiction has not been extinguished. TERO jurisdiction covering employers working on fee land projects has been greatly reduced by the Montana v. U.S. A. case.

What is the enforcement approach to TERO?

Most of today's TERO programs utilize a pro-active approach to enforcement. TERO officers attempt to use education and synergistic partnering principles in order to prevent violations of tribal law and generally try to create mutually beneficial relationships with reservation employers.

What are the basic TERO requirements?

All covered employers operating a business within tribal/village jurisdiction are required to provide Indian and Native preference in employment, training, contracting, sub-contracting and in all other aspects of employment. Below are several specific examples employers are required to comply with. Employers must:

- Submit an acceptable compliance plan detailing the steps they will take to ensure compliance with the TERO requirements. Note: TERO compliance plans are closely fashioned after those used by OFCCP for affirmative action compliance.
- Utilize the TERO skills bank for all referrals and consider Indian/ Native applicants before interviewing or hiring non-Indian/ Natives.
- Agree to hire no less than a specific number of Indians/ Natives in each job classification and cooperate (where feasible) with tribal training programs to hire a certain number of trainees.
- Eliminate all extraneous job qualification criteria or personnel requirements which may act as barriers to Indian/ Native employment. EEOC guidelines on legal BFOQs are used by TEROs.
- Agree to acknowledge and respect tribal religious beliefs and cultural differences and to cooperate with TERO to provide reasonable accommodations.
- All contractors claiming preference must file for certification as Indian owned businesses.

Are there exemptions to TERO requirements?

Yes. There are several exemptions. Most TERO ordinances exempt direct employment by the Tribe, Federal, State or other governments and their subdivisions, non-profit corporations, churches, schools etc. However, all contractors regardless of the source of funding are covered by the TERO requirements. At the individual level, the only exemption allowed is for the employers "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."

What are the sanctions for violation of TERO?

Violation of TERO requirements may result in severe sanctions. If it is determined that employers have willfully violated TERO requirements, tribes have the power to:

- Deny such party the right to commence business within the reservation/village.
- Impose a civil fine on such party ranging from \$500 to \$5000. per each violation.
- Terminate or suspend such party's operation and deny them from doing further business within the reservation or village.
- Order the removal of unlawfully hired non-Natives and take action to ensure future compliance. It can also order the back payment of lost wages to aggrieved Natives.

Can TERO requirements be waived?

Yes, but it is not recommended. Some ordinances contain a provision for waivers to be granted by the Tribal Council in certain critical situations. Waivers of this type are made on a project specific basis by the tribal government. Neither the TERO Director nor the Commission can waive any provision of the TERO ordinance unless authorized by the Tribal Council. Waiver of preference requirements or fees can seriously effect the integrity of the TERO ordinance, the fee and the tribal government itself. Additionally, several federal agencies have policies that state that if a tribe does not apply the tax on all covered employers, they will not allow the fee to be charged on projects funded by them.

Are non-Indian employers protected against unfair charges?

Yes. Employers are entitled to due process of law. Their rights are protected by both provisions included in the TERO ordinance and by the enforcement process and procedures use by TERO officers to ensure employer compliance. Both TERO officers and commissions are well trained to investigate and utilize the facts and merits of a case before taking action against an employer. The TERO investigative process is designed to weed out frivolous and capricious charges brought on against employers.

Can sanctions imposed by the TERO Commission be appealed?

Yes. Sanctions imposed on employers by the Commission can be appealed in tribal court. Tribal court decisions can further be appealed to the federal court system.

Are TERO fees/taxes imposed on covered employers?

Most tribes impose a TERO fee on all employers doing business on reservations. The fees collected by the TERO are used to finance operational costs and program services. Services include: recruiting, referrals, screening, job counseling, orientations, employee Support services, compliance, charge processing, investigations and community awareness education sessions. It is not clear if Native Village governments can impose a fee on employers, but many federal agencies have negotiated special contracts with a tribal TERO for the services listed above. The average TERO fee is 2.5{d89c3abfec81c72ca987b4106fb06996da9aaf1639e941a1678546a6ab28b11}.

Are TERO and other Tribal fees/taxes legal?

Yes. Tribal authority to tax is equal to that of any other government. Taxation is a basic right of a sovereign government. The power of Indian tribes to tax has been confirmed by the U.S. Supreme Court in *Merrion v. Jicarilla Apache Tribe* 455 U.S. 130 (1982). Taxation, licenses and other fees are a valuable source for financing tribal governmental operations. TERO programs have the unique ability to generate their own operating income as well as contribute to the general fund of the Tribe.

Are all TERO requirements and fees/taxes the same?

No. There are over 550 (federally recognized) independent tribal nations throughout the United States. While there is much in common between tribes, each is diverse in its own community culture, needs, values, and priorities. Each tribe therefore makes its own legislative decisions to meet their own set of wants and needs.

Will TERO taxes/fees increase cost of projects?

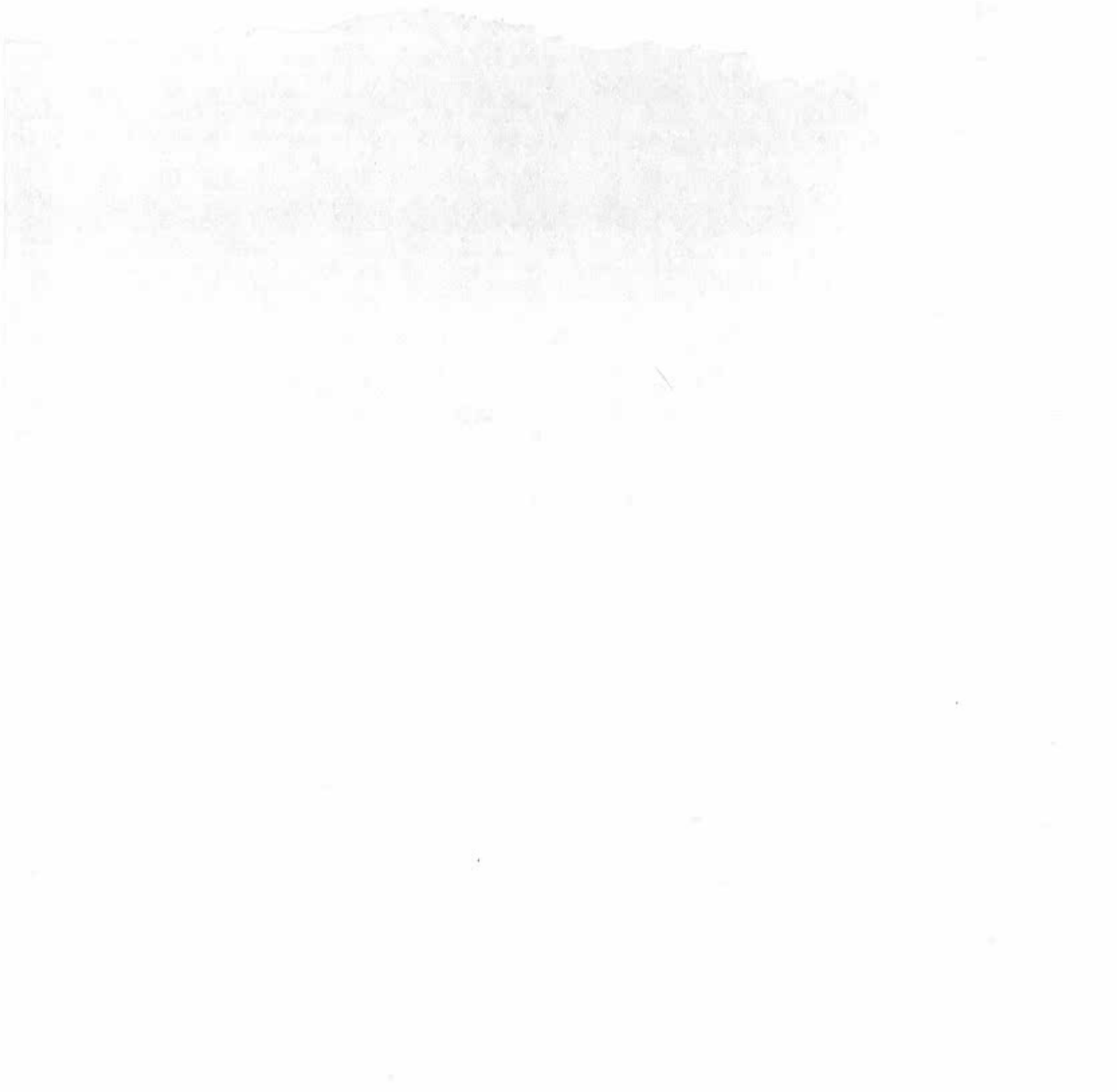
No. TERO fees range from 1{d89c3abfec81c72ca987b4106fb06996da9aaf1639e941a1678546a6ab28b11} to 4{d89c3abfec81c72ca987b4106fb06996da9aaf1639e941a1678546a6ab28b11} with a national average of about 2.5{d89c3abfec81c72ca987b4106fb06996da9aaf1639e941a1678546a6ab28b11}. The much lower Tribal taxes/fees preempt other taxes on tribal reservation projects and often result in a substantial savings to contractors; most states taxes for example are in the 6-10{d89c3abfec81c72ca987b4106fb06996da9aaf1639e941a1678546a6ab28b11} range.

Will TERO interrupt the daily operations of employers?

No. Since TERO programs practice proactive enforcement, the compliance plans signed by the TERO and employer prior to the commencement of work generally prevents disputes. Most TERO ordinances provide for compliance and enforcement visits to work-sites during normal business hours but not to the detriment of operations. A TERO Commission's sanction of an employer for violations of the law could cause delay or shut-down of an employers operation. With this in mind, note that TERO commissions would apply sanctions after all efforts to resolve the case have failed and the most severe circumstances and only in strict accordance with the process of Tribal law.

What other legal tools are used by TERO programs?

TERO programs use a variety of legal tools to ensure that Indian/Native people receive their rightful share of employment and other economic opportunities both on and near reservations and villages. The two illustrations that follow show the various legal tools used by TERO officers. The circle illustration lists laws that range from tribal Indian preference to federal laws which protect against unlawful discrimination. The second chart illustration gives the basic federal laws which permit Indian preference and include special initiatives between the TERO and the federal enforcement agency. See page 19 for graphic on legal TERO framework.



ATTACHMENT B

Core & Key Employees

Requesting Qualified Workers

Notice of Sub-Contractors Opportunity

Request for Waived Employees

IDENTIFICATION of CORE CREW

Core crew employees are defined as one who is an owner of the company, or in a top supervisory or lead position and has been on the employers' contractor's annual payroll for a minimum period of one year continuously. An employee who has never held a supervisory position within the company is not considered a core-crew employee. All claims to possess a "specialized" skill must be submitted with a complete resume of work history and proof of specialized skill such as certificates, licenses etc.

Name	Position/Classification	Specialized License Y / N	Hourly Pay Rate	Length w/Company

IDENTIFICATION OF KEY PERSONNEL

A Key Employee is defined as one who the employer has invested time and cost for such as specialized training. This employee is to perform critical functions in such that the employer would risk financial damage or loss if unable to employ on this project.

Name	Position/Classification	Specialized License Y / N	Hourly Pay Rate	Length w/Company

**Employers who wish to utilize workers that do not meet these definitions must obtain a request in writing and an explanation for which the waiver is sought.*

The TERO Director/ Administrator or Compliance Officer has the right to make on-site inspections and conduct compliance investigations at all sites where employment is taking place under the provision of this compliance agreement plan. Such on-site inspections may be schedule or unscheduled.



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REQUEST FOR QUALIFIED PREFERRED WORKERS

Contractor Name: _____ Job: Project: _____

Contact Person: _____ Primary Contact Number: _____

Secondary Contact Number: _____

Position Requested

_____ # of positions: _____ Rate of Hourly Pay: _____ Benefits: _____

_____ # of positions: _____ Rate of Hourly Pay: _____ Benefits: _____

If benefits are being paid please list: _____

Job location: _____ Length of Job: _____

Does this job require weekends? _____

Does this require any special certifications / licenses? If so, what are they?

Special instructions or requirements? If so, what are they?

Signature of Contractor Representative: _____ Date: _____

Does TERO have qualified referrals? Yes _____ No _____

No Referrals Available – Hired as need:

TERO Authorized Signature: _____ Date: _____
(Signature only required when no referrals are available)



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NOTIFICATION OF SUB-CONTRACTOR BID

Contractor Name: _____ **Job: Project:** _____

Contact Person: _____ **Primary Contact Number:** _____

Secondary Contact Number: _____

Bid request for : _____

Deadline for bid applications: _____

Job location: _____ **Length of Job:** _____

Deadline for job completion? _____

Does this require any special certifications / licenses? If so, what are they?

Special instructions or requirements? If so, what are they?

Signature of Contractor Representative: _____ **Date:** _____

Does TERO have qualified referrals? Yes _____ **No** _____

No Referrals Available – Hired as need:

TERO Authorized Signature: _____ **Date:** _____

(Signature only required when no referrals are available)



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TERO Contractor/Sub-Contractor Requested Waived Employees

Contractor / Sub-Contractor: _____

Requested employees:

NAME: _____ **POSITION:** _____

If this waiver is due to Specialized Licenses/Certification please attach copies of current valid license or certification

TERO will consider such request only in no one in the TERO Hiring Hall holds such license or certification.

TO BE COMPLETED BY TERO OFFICE ONLY

This request is being approved

Approved and effective beginning _____ and ending _____

This request is being denied

Reason for denial is:

Authorized TERO approved by: Printed Name: _____ Signature _____

Completed this _____ day of _____ 20_____

ATTACHMENT C

Employee Adverse Action Forms

Notice to Comply

Non-Compliance Notice

Request for Hearing



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NOTICE TO PROCEED

The attached TERO Compliance Plan and Agreement has been received and is fully acceptable.

On behalf of the TERO Office, it is hereby granted that _____ is
authorized to begin work on the _____ project is hereby granted.

This project being located at: _____

TERO Office Signature: _____ Date _____