

Ordinance 41-22

An Ordinance repealing Subchapter 8 of Chapter 2 of Title 24 – Band Member Legal Services and Chapter 5 of Title 18 – Tribal Employment Rights and reenacting them in Title 15, titled “Independent Agencies.”

The District 1 Representative introduced the following Bill on the 25th day of April, 2022.

IT IS ENACTED BY THE BAND ASSEMBLY OF THE NON-REMOVABLE MILLE LACS BAND OF OJIBWE:

Section 1. Repealing Subchapter 8 of Chapter 2 of Title 24.

Subchapter 8 of Chapter 2 of Title 24 of Mille Lacs Band Statutes, titled “Band Member Legal Services,” is hereby repealed.

Section 2. Repealing Chapter 5 of Title 18.

Chapter 5 of Title 18 of Mille Lacs Band Statutes, titled “Tribal Employment Rights,” is hereby repealed.

Section 3. Reenacting Band Member Legal Services and Tribal Employment Rights Office in Title 15, titled “Independent Agencies.”

TITLE 15 – INDEPENDENT AGENCIES

CHAPTER 3

BAND MEMBER LEGAL SERVICES

Section

- 901. Definitions.**
- 902. Band Member Legal Services.**
- 903. Number and Appointment of Directors.**
- 904. Removal of Directors.**
- 905. Qualifications of Directors.**
- 906. Term of Office.**
- 907. Duties of the Board.**
- 908. Managing Attorney of Band Member Legal Services.**

- 909. **Duties of the Managing Attorney of Band Member Legal Services.**
- 910. **Service Area of Band Member Legal Services.**
- 911. **Limitations on Representation by Band Member Legal Services.**

§ 901. Definitions.

The following terms are defined for the purposes of this chapter:

- (a) **“Board”** means the board of directors of Band Member Legal Services.
- (b) **“Director”** means a member of the board.
- (c) **“Drug crime”** means any federal crime involving the possession or sale of illicit drugs, a state first or second-degree controlled substance crime, or any other crime for the sale of an illicit drug.
- (d) **“Good cause”** means any reason set forth in the personnel policy manual established under 6 MLBS § 1 or any reason recognized under the common law.
- (e) **“Indigent defense services”** means legal representation provided to those individuals who qualify to receive legal representation, whether free or otherwise, under the standards promulgated by the board.
- (f) **“Tribal public defender”** means an attorney employed by or contracted with Band Member Legal Services for the purpose of providing indigent defense services.

§ 902. Band Member Legal Services.

Band Member Legal Services shall be an independent entity established to provide indigent defense services to Band members, whose funding shall be provided by appropriations by the Band Assembly and, to the extent possible, by charitable or grant funds provided by outside entities. Band Member Legal Services shall be under the administrative control of the board.

§ 903. Number and Appointment of Directors.

The board shall consist of five (5) directors, who shall be appointed as follows:

- (a) one (1) director appointed by the District I Representative;
- (b) one (1) director appointed by the District II Representative;

- (c) one (1) director appointed by the District III Representative;
- (d) one (1) director appointed by the Chief Executive; and
- (e) one (1) director appointed by the Chief Justice.

§ 904. Removal of Directors.

Directors may be removed for good cause by the individual by whom the director was appointed to the board. A vacancy caused by removal or for any other reason shall be filled in a timely manner by the relevant appointing individual as identified under § 903.

§ 905. Qualifications of Directors.

Directors must be attorneys licensed to practice law in the State of Minnesota, under the laws of the Band, or both. Directors shall remain in good standing with the bar of the relevant jurisdiction or jurisdictions during their term.

§ 906. Term of Office.

- (a) Initially, the directors appointed under § 903(a) and (b) shall expire on December 31 of 2021 and on this date every three (3) years hence, the term of the directors appointed under § 903(c) and (d) shall expire on December 31 of 2022 and on this date every three (3) years hence, and the term of the director appointed under § 903(e) shall expire on December 31 of 2023 and on this date every three (3) years hence.
- (b) All directors after the initial directors shall serve three (3) year terms. The term of office for directors shall begin on January 1 of the calendar year in which the appointment was due to be made and shall end on December 31 of the final year of the director's three (3) year term.
- (c) Any director appointed to fill a vacancy in the board shall serve until December 31 of the year in which that position on the board would normally be filled. At that time, the term will be completed and the appointing individual shall make an appointment for a full three (3) year term in that position.

§ 907. Duties of the Board.

The board shall have the following duties:

- (a) to develop standards governing the delivery of indigent defense services, including:
 - (1) standards governing eligibility for indigent defense services;
 - (2) standards for maintaining and operating regional tribal public defender officers, if any regional tribal public defender offices are established;
 - (3) standards prescribing minimum experience, training, and other qualifications for tribal public defenders;
 - (4) standards for tribal public defender caseloads;
 - (5) standards for the evaluation of tribal public defenders;
 - (6) standards for independent, competent, and efficient representation of clients whose cases present conflicts of interest; and
 - (7) such other standards as are necessary and appropriate to ensure the delivery of adequate indigent defense services;
- (b) to establish regional tribal public defender offices, if determined to be necessary and appropriate;
- (c) to adopt bylaws; and
- (d) to approve and submit to the Band Assembly a biennial budget request.

§ 908. Managing Attorney of Band Member Legal Services.

The board shall appoint a managing attorney who must be chosen on the basis of relevant training, experience, and such other qualifications considered appropriate. The managing attorney must be an attorney licensed and eligible to practice law in the State of Minnesota or under the laws of the Band. The managing attorney shall serve a two-year term from his or her date of appointment and may be removed prior to completion of his or her term for good cause by a majority vote of the board.

§ 909. Duties of the Managing Attorney of Band Member Legal Services.

The managing attorney shall have the following duties:

- (a) to attend all meetings of the board as a non-voting member;

- (b) to assist the board in developing standards for the delivery of adequate indigent defense services;
- (c) to administer and coordinate delivery of indigent defense services and supervise compliance with board standards;
- (d) to recommend the establishment of regional tribal public defender offices, if determined to be necessary and appropriate;
- (e) to conduct regular training programs for tribal public defenders;
- (f) to hire, subject to policies and procedures established by the board, professional, technical, and support personnel, including attorneys to serve as tribal public defenders, considered reasonably necessary for the efficient delivery of indigent defense services;
- (g) to prepare and submit to the board a proposed annual budget for the provision of indigent defense services;
- (h) to prepare and submit to the board an annual report containing pertinent data on the operations, needs, and costs of Band Member Legal Services and any other information that the board may require;
- (i) to adopt a personnel policy for human resources purposes, which must be approved by the board; and
- (j) to perform other duties as assigned by the board.

§ 910. Service Area of Band Member Legal Services.

Band Member Legal Services shall have a service area including the counties of Aitkin, Crow Wing, Hennepin, Mille Lacs, Morrison, Pine, and Ramsey.

§ 911. Limitations on Representation by Band Member Legal Services.

- (a) Band Member Legal Services may represent Band members in all civil matters in administrative hearings, tribal court, state court, and federal court.
- (b) Band Member Legal Services may represent Band members in criminal matters in tribal court, state court, and federal court, provided that:
 - (1) the charge or charges do not implicate an act against another Band member;

- (2) the representation is in accordance with any standards promulgated by the board; and
- (3) the representation is not for a charge that constitutes a drug crime, unless it is a first-time possession offense that is a charge of second or lesser degree.

CHAPTER 4

TRIBAL EMPLOYMENT RIGHTS OFFICE

<u>Subchapter</u>	<u>Section</u>
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SUBCHAPTER 1

GENERAL PROVISIONS

Section

- 1001. Policy.**
- 1002. Purpose.**
- 1003. Severability.**
- 1004. Definitions.**

§ 1001. Policy and Findings.

- (a) It is the policy of the Band to provide a preference in employment and contracting to members of the Band and other federally recognized Indian tribes.
 - (1) This policy applies to employment and contracting by the Band's government, including all branches, departments and agencies thereof, by all Band-owned entities while they are engaged in commercial or economic activities on behalf of the Band within the Band's Reservation and by all persons and entities

doing business with the Band, including subcontractors of persons or entities contracting with the Band, within the Band's Reservation.

- (2) This policy: (A) is intended to further the Band's overriding interests in self-government, self-sufficiency, and economic development; (B) is directed to the participation of the governed in the Band's governing bodies and in its commercial and economic activities; (C) is intended to make the Band's government and its commercial and economic activities more responsive to the needs of its constituents; and (D) is intended to provide for the economic security and employment of members of the Band and of other federally recognized Indian tribes and to overcome the effects of past discrimination against such persons.
 - (3) Economic insecurity and unemployment are serious impediments to the health, morale, and welfare of the Band. Employment and contracting opportunities with the Band's government and with Band-owned entities and other persons and entities doing business with the Band within the Band's Reservation are important resources for members of the Band and of other federally recognized Indian tribes, who have historically suffered from discrimination in employment and contracting opportunities. As a result, Indian people living on or near the Band's Reservation have unique and special employment rights under federal law, and the Band is obligated to implement those rights.
- (b) Subject to the policy described in subsection (a) of this section, all employees subject to the Band's jurisdiction are entitled to a workplace environment that prohibits employment discrimination, protects employees' wages, and promotes health and safety.
 - (c) The provisions of this chapter are critically important to the health and welfare of members of the Band and of other federally recognized Indian tribes, especially those residing on or near the Band's Reservation. Unemployment and underemployment within the boundaries of the Band's Reservation are consistently many times higher than the national and state average. This pervasive unemployment and underemployment has directly contributed to serious social problems and a lower quality of life for members of the Band and of other federally recognized Indian tribes residing on or near the Band's Reservation and impeded the self-governance objectives of the Band.
 - (d) The Band declares that the public good and the welfare of the Band require the enactment of this chapter, which is enacted pursuant to the Band's inherent sovereign and political powers, in order to increase employment of and the number of businesses owned by members of the Band and of other federally recognized Indian tribes, especially within the Band's Reservation, and to protect the workforce rights of Indian and non-Indian employees within the jurisdiction of the Band.

§ 1002. Purpose.

This chapter is adopted by the Mille Lacs Band of Ojibwe (the Band), under its inherent sovereign and political powers, for the following purposes:

- (a) to promulgate Band laws and rules governing employment relations and contracting preference within the Band's jurisdiction;
- (b) to establish the Band's Tribal Employment Rights Office (TERO) in order to enforce the Band's laws governing employment and contracting preference, and to protect the rights of all members of the Band, members of other federally recognized Indian tribes, and all other employees within the Band's jurisdiction;
- (c) to increase the employment of members of the Band and of other federally recognized Indian tribes;
- (d) to eradicate employment discrimination, protect employees' wages, and protect employees' health and safety within the Band's jurisdiction;
- (e) to provide a fair, enforceable, and effective system of preferences in contracting and sub-contracting as it relates to the provision of supplies, services, labor, and materials to the Band's government and to Band-owned entities and other persons or entities doing business with the Band, including subcontractors of persons or entities contracting with the Band, within the Band's Reservation; and
- (f) to supersede all other provisions of Band law that are inconsistent with the provisions of this chapter.

§ 1003. Severability.

If any provision of this chapter, or the application thereof to any person, business, corporation, government, including any agency or political subdivision thereof, or circumstance, is held invalid, the invalidity shall not affect any other provision or application of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared severable.

§ 1004. Definitions.

- (a) **"Adverse action"** means an action taken to try to keep an individual from opposing a discriminatory practice or from participating in an employment discrimination proceeding. Adverse actions include termination, refusal to hire, denial of promotion, threats, unjustified negative evaluations, unjustified negative references, increased surveillance, or any other action, such as assault or unfounded civil or criminal charge, that are likely to deter reasonable people from pursuing their rights.

- (b) **“Band”** means the Mille Lacs Band of Ojibwe, a federally recognized Indian tribe, and includes the Band’s government, including all branches, departments and agencies thereof, and all Band-owned entities while they are engaged in commercial or economic activities on behalf of the Band within the Band’s Reservation.
- (c) **“Commission”** or **“TERO Commission”** means the Commissioner of the Tribal Employee Rights Office.
- (d) A **“Conflict of Interest”** occurs when a TERO Commission member is in a position to influence a decision that may result in a personal gain for that member or for a member of his or her immediate family.
- (e) **“Core crew”** means regular, permanent employees in supervisory or other key positions where an employer would face serious financial loss if the positions were filled by persons who had not previously worked for that employer.
- (f) **“Covered employer”** means the Band and any entity, company, contractor, sub-contractor, corporation, or other business doing business with the Band, including subcontractors of persons or entities contracting with the Band, within the Band’s Reservation that employs for wages or other remuneration two (2) or more employees.
- (g) **“Days”** means calendar days, including holidays and weekends, unless otherwise indicated.
- (h) **“Director”** means the director of the Band’s Tribal Employment Rights Office.
- (i) **“Disability”** means, with respect to an individual:
 - (1) a physical or mental impairment that substantially limits one (1) or more major life activities of such individual;
 - (2) a record of such an impairment; or
 - (3) being regarded as having such an impairment.

An impairment does not have to be permanent to rise to the level of a disability. Temporary impairments that take significantly longer than normal to heal, long-term impairments, or potentially long-term impairments of indefinite duration may be disabilities if they are severe.
- (j) **“EEOC”** means the federal Equal Employment Opportunity Commission.
- (k) **“Elected Officials”** means the Mille Lacs Band Chief Executive, Secretary-Treasurer, and District Representatives.

- (l) **“Immediate Family”** includes a person’s spouse, a person’s biological or adopted child, a member of a person’s household, and a person’s mother, father, and sister, and brother.
- (m) **“Indian”** means a member of a federally recognized Indian tribe.
- (n) **“Indian Certified Entity”** means an entity, certified by the TERO Commission, in which fifty-one percent (51%) or more of the ownership interests are held by one (1) or more Indians and in which daily management and control is provided by one (1) or more Indians.
- (o) **“Reservation”** means all lands within the exterior boundaries of the Mille Lacs Indian Reservation as established by the Treaty of 1855, 10 Stat. 1165, all lands held in trust by the United States for the benefit of the Minnesota Chippewa Tribe, the Band or individual members of the Band, which are subject to the jurisdiction of the Band, and all lands owned by the Band which are located within one of the districts designated in 2 MLBS § 11.
- (p) **“TERO”** means the Band’s Tribal Employment Rights Office established by this chapter.

SUBCHAPTER 2

ADMINISTRATION; MILLE LACS BAND OF OJIBWE TRIBAL EMPLOYMENT RIGHTS OFFICE

Section

- 1011. TERO Commission and Recusal of Commission Members.**
- 1012. Powers and Duties of the TERO Commission, and Compensation.**
- 1013. Tribal Employment Rights Office; Director.**
- 1014. Powers and Duties of TERO Director.**
- 1015. Intergovernmental Relationships.**

§ 1011. TERO Commission and Recusal of Commission Members.

- (a) **TERO Commission Members.** The TERO shall be managed by the TERO Commission. At all times there shall be at least one (1) commission member on the Commission from each district. The Commission shall consist of seven (7) commission members as appointed under paragraph (1) below.

- (1) **Appointment Process; Terms.** Each member shall be appointed using the following process: The elected officials shall each nominate two (2) individuals and submit their names to the Mille Lacs Band Parliamentarian. The Chief Executive and Secretary-Treasurer of the Band shall each nominate two (2) additional individuals and submit their names to the Mille Lacs Band Parliamentarian. Within ten (10) calendar days after receipt of the nominations, the elected officials shall convene and vote on one (1) of the two (2) nominees submitted from each elected official to be a member of the Commission. Members appointed by the Chief Executive and District 1 Representative shall serve until December 1, 2018, and Members appointed by the Secretary-Treasurer, District II Representative, and District III Representative shall serve until December 31, 2020. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.
- (2) **Qualifications.** Commissioners shall be public officials subject to the Mille Lacs Band Ethics Code in 6 MLBS §§ 1151-1163. At least three (3) of the Commissioners shall have education or experience in one (1) or more of the following areas:
 - (i) human resources;
 - (ii) tribal employment rights;
 - (iii) construction management;
 - (iv) regulatory enforcement; or
 - (v) auditing or investigations.
- (3) **Officers.** The TERO Commission Members shall select a Chair, Vice-Chair, and Secretary at the first meeting of the Commission, and annually thereafter. The Chair shall preside at all meetings of the Commission and shall be authorized to sign required documents in accordance with the powers of the Commission.

§ 1012. Powers and Duties of the TERO Commission, and Compensation.

- (a) The TERO Commission has the full power, jurisdiction, and authority:
 - (1) to take all actions necessary and appropriate to implement the provisions of this chapter;
 - (2) to approve or reject any and all rules, regulations, and guidelines formulated by the director to carry out the provisions of this chapter and to approve or

reject the amendment or rescission of any such rules, regulations, or guidelines, provided that, except when an emergency exists, the TERO Commission shall provide the public an opportunity to comment at a meeting of the TERO Commission before approving any such rules, regulations, or guidelines or amendments or recessions thereof;

- (3) to conduct hearings in accordance with such rules of practice and procedure as may be adopted by the TERO Commission after providing the public an opportunity to comment on them at a meeting of the TERO Commission;
- (4) to order any relief or sanctions authorized by this chapter, and to petition the Mille Lacs Band Court of Central Jurisdiction for such orders to enforce the decisions of the TERO Commission and any sanctions imposed by the TERO Commission, if necessary;
- (5) to make recommendations to the Band Assembly on amendments to this chapter;
- (6) to establish a system for certifying firms as Indian Owned Businesses or Mille Lacs Band Owned businesses;
- (7) to maintain a list of Certified Businesses;
- (8) to assist Band Members in obtaining certification;
- (9) to coordinate training and mentorship programs for Band Members and Indians;
- (10) to monitor all contracting activities on Band Lands in consultation with the elected officials;
- (11) to inform the Band Government, Band Entities, Employers, and Contractors and assist in presentations to the public on the requirements of this chapter with respect to Indian employment and contact preference requirements;
- (12) to oversee the Certified Businesses receiving invitations to bid on contracts;
- (13) to establish a Band labor surplus pool and refer Band Members and other Indians to an Employer or Contractor for employment considerations;
- (14) to assist procurement officers or delegated agents in the designation of contracts appropriate for the set aside program;
- (15) to develop and maintain an audit and reporting system which measures the effectiveness of the Indian Preference Policy in meeting its goals and objectives;

- (16) to establish procedures for TERO's regulatory proceedings;
 - (17) to establish procedures, forms, and policies necessary to carry out the purposes of the chapter; and
 - (18) to enforce any employment and procurement laws, policies, and procedures in accordance with this chapter.
- (b) **Compensation.** Commission members may receive a stipend for their services at a rate established by the Band Assembly. Commissioners shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses in a manner consistent with applicable Band policies and procedures.

§ 1013. Tribal Employment Rights Office; Director.

There is hereby established as an agency of the Mille Lacs Band of Ojibwe government the Tribal Employment Rights Office (also known as "TERO"). The Director of the TERO shall be an employee of the TERO under the direct supervision of the TERO Commission and shall have the powers and duties prescribed in § 1014 of this subchapter.

§ 1014. Powers and Duties of TERO Director.

The Director shall have the following powers and duties:

- (a) to formulate, amend and rescind regulations, rules and guidelines necessary to carry out the provisions of this chapter, subject to the approval of the Board;
- (b) to implement and enforce the provisions of this chapter, as well as any properly adopted regulations, rules, guidelines, and orders;
- (c) to hire staff, expend designated funds from an approved budget, and obtain and expend funding from federal, state, and other sources;
- (d) to maintain a list of current Covered Employers, current employer permits and work permits issued, and current Indian Certified Entities;
- (e) to maintain a record of all contracting projects subject to this chapter and the TERO fees assessed for each project;
- (f) to process applications for certification of Indian Certified Entities by the Board;
- (g) to grant TERO permits and collect TERO fees as authorized by this chapter;

- (h) to establish training and workforce development programs, in conjunction with the Mille Lacs Band Department of Labor, for Band members and other Indians to assist them in obtaining and retaining employment;
- (i) to process applications for and maintain a list of Band members and other Indians living on or near the Reservation who are available for employment and to assist such persons with job placement; and
- (j) to contract with federal and state entities for the provision of additional job procurement services and funding consistent with the purposes of this chapter.

§ 1015. Intergovernmental Relationships.

The TERO, acting through the Director, is authorized, with the written concurrence of the Commissioner of Administration, to enter into cooperative relationships with federal employment rights agencies, such as the EEOC and the Office of Federal Contract Compliance Programs (OFCCP), and with state employment rights agencies, such as the Human Rights Commission, in order to eliminate discrimination against Indians on and off the Reservation, as well as to develop training programs for Indians. The Director may also, with the written concurrence of the Commissioner of Administration, enter into cooperative relationships with federal agencies, including but not limited to the Bureau of Indian Affairs, the Department of Labor, the Federal Highway Administration, and the Internal Revenue Service, in order to implement any federal employment or other workforce rights, authorities, or requirements as such agency may lawfully delegate to the Band.

SUBCHAPTER 3

INDIAN PREFERENCE IN EMPLOYMENT AND CONTRACTING

Section

- 1021. Indian Preference in Employment.**
- 1022. Covered Employer's Responsibilities.**
- 1023. Core Crew.**
- 1024. Indian Preference in Contracting.**
- 1025. Indian Certified Entities.**
- 1026. Applicability of Indian Preference in Contracting.**
- 1027. Other Preferences to be Consistent.**

§ 1021. Indian Preference in Employment.

- (a) All covered employers shall give preference to Indians living on or near the Reservation in the hiring, promotion, training, and all other aspects of employment

within the boundaries of the Reservation, provided that these individuals have the necessary qualifications. The priority for Indian preference is as follows:

- (1) Mille Lacs Band Member;
 - (2) member of another federally recognized Indian Tribe; and
 - (3) all others.
- (b) Every covered employer shall encourage Indians to seek promotional opportunities. For every opening in a supervisory position, the employer shall inform Indian workers about the position and encourage them to apply.
- (c) No covered employer shall be permitted to maintain a position that no employment opportunities exist in the fulfillment of any said contract in order to evade the provisions of this section. The covered employer shall develop a goal statement which is subject to advance approval by the TERO director prior to the commencement of any work. Additionally, no goal statement shall be approved which contains less than fifty percent (50%) for each construction operation in Indian employment opportunities pursuant to any contract.

§ 1022. Covered Employer's Responsibilities.

- (a) Covered employers shall notify the TERO of openings in employment positions subject to this chapter and provide job descriptions for such openings at or before the time at which they advertise the openings. Job descriptions shall not be written in a way to unnecessarily exclude Band members or other Indians from employment.
- (b) All covered employers shall define in writing the necessary qualifications for each employment position in their work force that is subject to this chapter, which shall be provided to the director and applicants upon request.
- (c) All covered employers shall comply with this chapter, all rules and regulations relating to it, and all guidelines and orders of the director.
- (d) The requirements in this chapter shall not apply to any direct employment by the Federal or a state government or their agencies or subdivisions. However, such requirements shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments when they are doing business with the Band within the reservation.
- (e) Covered employers shall include and specify an Indian employment preference policy statement in all job announcements and advertisements and all employer policies that are subject to this chapter.

- (f) Covered employers shall post in a conspicuous place on their premises for their employees and applicants an Indian preference policy notice prepared or approved by the TERO.
- (g) Covered employers, except for construction contractors, shall advertise and announce all openings in employment positions subject to this chapter on the Mille Lacs Band website. Construction contractors, prior to starting work within the Reservation, shall provide a TERO Compliance Plan for the project to the TERO director.
- (h) Covered employers shall use non-discriminatory job qualifications and selection criteria in filling employment positions subject to the requirements of this chapter. No covered employer shall use any job qualification criteria that serve as barriers to Indian preference in employment, unless the covered employer can demonstrate that such criteria or requirements are required by business necessity.
- (i) Regardless of the qualifications of any non-Indian applicant, any Indian who demonstrates the necessary qualifications for an employment position subject to this chapter:
 - (1) shall be selected by covered employers in the case of hiring, promotion, transfer, upgrading, recall, and other employment opportunities with respect to such position; and
 - (2) shall be retained by covered employers in the case of a reduction in force affecting a certain class of positions until all non-Indians employed in that class of positions are laid-off.

§ 1023. Core Crew.

- (a) Covered employers, may, if necessary, designate a core crew, which is exempt from the Indian preference requirements of this chapter.
- (b) If a core crew is necessary, such core crew shall not exceed twenty-five percent (25%) of the total employees of the project/jobsite except as otherwise provided in subsection (c) of this section.
- (c) The director may, at his or her discretion, grant a covered employer a larger core crew designation upon a satisfactory demonstration by the covered employer that a larger core crew is necessary due to unique or specialized positions that are essential for the operation of the business. A covered employer may appeal the decision of the director to the Board.

§ 1024. Indian Preference in Contracting.

- (a) To the extent provided in § 1026 of this chapter, all covered employers shall give preference in contracting and subcontracting to Indian certified entities.
- (b) If one (1) or more qualified Indian certified entities submit a bid that is within ten (10%) percent of the lowest competitive bid, the covered employer shall give one of the qualified Indian certified entities submitting such a bid the opportunity to negotiate an acceptable bid.
- (c) In accordance with §§ 1012 and 1014 of this chapter, the director shall formulate and the Board shall approve regulations providing guidance on implementing the requirements of this section and for implementing Indian contracting preference when the awarding entity uses a method other than competition to select a contractor.
- (d) Whenever feasible, the covered employer shall submit to the director, at least thirty (30) days in advance of the deadline for the submission of bids for a contract or subcontract, a list of all related contracts and subcontracts contemplated by the covered employer in order to enable the director to give Indian Certified Entities the opportunity to prepare bids for such related contracts and subcontracts.
- (e) Any covered employer or Indian certified entity entering into a contract under the Indian preference provisions of this chapter consents to the jurisdiction of the Band's Court of Central Jurisdiction for purposes of resolving any dispute arising under such contract, provided that nothing in this subsection shall waive the sovereign immunity of the Band.

§ 1025. Indian Certified Entities.

The Board shall establish a system for certifying firms as Indian certified entities. This system shall include detailed provisions to ensure that entities that are not truly 51% or more owned by Indians, or in which daily management and control is not provided by Indians, are not granted Indian preference certification.

§ 1026. Applicability of Indian Preference in Contracting.

- (a) Except as otherwise provided in this section, the Indian preference in contracting required under § 1024 of this chapter shall apply only to contracts and subcontracts to be performed on the Reservation and shall not apply to the delivery of goods from a location outside the Reservation.
- (b) Notwithstanding any other provision in this chapter, the Indian preference in contracting required under § 1024 of this chapter shall not apply to any contracts or

subcontracts where the Board determines that application of that preference is specifically prohibited by federal law.

- (c) The Indian preference in contracting required under § 1024 of this chapter shall not apply to contracts awarded by the federal or a state government or their agencies or subdivisions. However, the Indian preference in contracting required under § 1024 of this chapter shall apply to all subcontracts awarded by a federal or state contractor or grantee that is a covered entity, whether or not the prime contract was subject to that preference, except when the Board determines that application of that preference to that entity is specifically prohibited by federal law.

§ 1027. Other Preferences to be Consistent.

Any provision for Indian preference in employment or contracting contained in any Band policy, including any policy of the Corporate Commission, must be consistent with the Indian preference in §§ 1021 and 1024, which provide first priority to Mille Lacs Band members, second priority to members of another federally recognized Indian tribe, and third priority to all others.

SUBCHAPTER 4

FEES

Section

1031. Fees.

1032. Exempt Employers and Entities.

1033. Fee Collection and Expenditure.

§ 1031. Fees.

Except as otherwise provided in § 1032 of this chapter, and except as prohibited by federal law, the following fees are assessed on covered employers, other than the Band, for the privilege of doing business with the Band within the reservation and to raise revenue for the operation of the TERO office and the enforcement of this chapter.

- (a) Every covered employer, other than the Band, that enters into a contract with the Band totaling \$25,000.00 or more shall pay a one-time project fee of one-half percent (0.5%) of the total amount of the contract. The covered employer shall pay the full amount of the fee before commencing work on the Reservation under the contract, provided that the director may, for good cause shown by the covered employer, authorize the fee to be paid in installments over the life of the contract, and provided further that if the total amount of the contract is subsequently

increased, the covered employer shall pay the additional amount due (0.5% of the increased amount of the contract) at the time of the increase. In all cases, the full amount shall be paid by the contractor upon the last pay application. A covered employer other than the Band that enters into a contract with the Band for less than \$25,000.00 shall pay the 0.5% fee on the total amount of the contract if the contract is amended or enlarged to \$25,000.00 or more within one (1) year after it was entered into. The fee imposed by this paragraph does not apply to a covered employer that enters into a subcontract made under a contract with the Band where the fee has been paid on the total amount of such contract.

- (b) All covered employers other than the Band shall, as a condition of doing business on the Reservation under a contract with the Band, consent to the Band entity awarding the contract paying the fee imposed under subsection (a) of this section directly to the TERO prior to the commencement of work under the contract and subtracting the amount of the fee from the payments due to the covered employer under the contract. Prior to making the payment, the Band entity awarding the contract shall provide the contractor with a form prepared by the TERO, in which the contractor grants its consent to the payment of the TERO fee based on the amount it is entitled to receive from the Band entity. A contractor shall not be permitted to commence work on the reservation until it has executed this form, provided that this provision shall not apply if the imposition of the fee with respect to the contractor is prohibited by federal law.

§ 1032. Exempt Employers and Entities.

The fees imposed in § 1031 of this chapter shall not be collected where applicable provisions of a federal contract or grant prohibit the collection of such fees.

§ 1033. Fee Collection and Expenditure.

- (a) The TERO fees shall be collected by the director pursuant to TERO regulations. The fees shall be paid over to the Band's Office of Management and Budget (OMB) and shall be credited to the TERO account. These funds shall be expended solely by the TERO, pursuant to a duly approved budget in order to carry out the purposes of this chapter.
- (b) The TERO Office, in conjunction with the Band's Department of Labor, shall prepare a quarterly report as to all employment and training expenditures. The report shall be made available to the legislative branch and executive branch each calendar quarter.

SUBCHAPTER 5

COMPLIANCE PLAN, NOTICE, AND CONTRACTS

Section

1041. Compliance Plan.

1042. Notice to Proposed Contractors and Subcontractors.

1043. Contract Language Imposing TERO Requirements.

1044. Model Language.

1045. TERO Approval of Notices of Contracts and Awarded by Covered Entities.

§ 1041. Compliance Plan.

- (a) All covered employers, other than the Band, shall, no less than ten (10) business days prior to commencing business on the reservation, prepare and submit to the director for her or his approval a plan setting out how the employer will comply with the requirements of this chapter and its implementing regulations regarding Indian employment and Indian contracting preference. A Band-owned entity shall, no less than ten (10) business days prior to entering into a contract with a non-Band contractor to be performed on the reservation, prepare and submit to the director for her or his approval a plan setting out how the Band-owned entity will comply with the requirements of this chapter and its implementing regulations regarding Indian employment and Indian contracting preference in connection with such contract. A covered employer already doing business on the reservation on the effective date of this chapter that has not prepared a compliance plan that has been approved by the director under this section shall come into compliance with the requirements of this section within thirty (30) business days of the effective date of this chapter.
- (b) The payroll records of all covered employers other than the Band shall be submitted to the director within thirty (30) days of his or her request. Any covered employer required to submit a certified payroll pursuant to federal law under the Davis-Bacon Act shall submit a copy of this certified payroll record to the director.
- (c) All covered employers other than the Band are required to report relevant changes regarding their employees and employment positions to the director when they submit the payroll records to the director under subsection (b) of this section, including but not limited to new positions, terminations, layoffs, promotions, and retirements.

§ 1042. Notice to Proposed Contractors and Subcontractors.

- (a) Any covered employer, when issuing a notice of a proposed contract to be awarded by it, shall include provisions in the notice that inform a prospective contractor about the requirements established by this chapter.

- (b) Any covered employer, when issuing a notice of a proposed subcontract to be awarded by it, shall include provisions in the notice that inform any prospective subcontractor about the requirements established by this chapter.

§ 1043. Contract Language Imposing TERO Requirements.

Any covered employer, when awarding a contract or subcontract, shall include provisions that impose the requirements of this chapter on the contractor or subcontractor, such that the legal document will fully bind the party to comply with the requirements of this chapter.

§ 1044. Model Language.

In order to implement the requirements of §§ 1042 and 1043 of this chapter, the director shall provide to the covered employer:

- (a) model language that shall be included in the notice to prospective contractors and subcontractors, informing them of the requirements established by this chapter; and
- (b) model language to be included in each contract and subcontract, imposing the requirements set out in this chapter as terms of the contract.

§ 1045. TERO Approval of Notices of Contracts and Contracts Awarded by Covered Employers.

Each covered employer, prior to issuing notice of a contract to prospective contractors or subcontractors and prior to awarding a contract or subcontract, shall submit the proposed notice, contract or subcontract to the director for approval.

SUBCHAPTER 6

PROHIBITION OF EMPLOYMENT DISCRIMINATION

Section

1051. Prohibited Discrimination.

1052. Religious Accommodation.

1053. Discrimination based on Disability.

1054. Discrimination based on Pregnancy.

1055. Harassment.

1056. Retaliation.

§ 1051. Prohibited Discrimination.

Except as necessary to comply with the Indian employment preferences in subchapter 3 of this chapter, it shall be unlawful for a covered employer to do any of the following acts wholly or partially based on the actual or perceived race, color, religion, national origin, sex, age, sexual orientation, or political affiliation of any individual, unless such characteristic is a bona fide occupational qualification:

- (a) fail or refuse to hire, or discharge, any individual, or otherwise discriminate against any individual, with respect to his or her compensation, terms and conditions, or privileges of employment, including promotion;
- (b) discriminate in recruiting individuals for employment, or
- (c) limit, segregate, or classify employees in any way that would tend to deprive them of employment opportunities.

§ 1052. Religious Accommodation.

It shall be an unlawful discriminatory practice for a covered employer to refuse to make a reasonable accommodation for an employee's religious or spiritual observance, unless doing so would cause undue hardship to the employer. A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice his or her religion, such as flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers if approved by the authorized supervisor in accordance with the Band's Personnel Policy Manual. An accommodation would cause an employer undue hardship when it would require more than ordinary administrative costs, diminish efficiency in other jobs, infringe on other employees' job rights or benefits, impair workplace safety, cause co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or conflict with another applicable law or regulation.

§ 1053. Discrimination based on Disability.

- (a) It shall be unlawful for a covered employer to discriminate in any aspect of employment against a qualified individual with a disability because of that disability. However, it is not unlawful for a covered employer to use employment qualification standards, tests, or selection criteria that are job related and consistent with business necessity that make an individual with a disability ineligible for an employment position where the individual could not perform the job even with reasonable accommodation. Nothing in this section shall prohibit a covered employer from refusing to hire an individual with a disability for or from discharging such an individual from an employment position if the individual, because of the disability, is unable to perform the duties of the position, would perform the duties in a manner

that would endanger the health and safety of the individual or others, or is unable to be at or go to or from the place at which the position is located.

- (b) Subject to the provisions of subsection (c) of this section, a reasonable accommodation for an individual's disability may include but is not limited to making facilities readily accessible to and usable by disabled persons, job restructuring, modifying work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, and the provision of aides on a temporary or periodic basis.
- (c) An accommodation is not required if it would impose an undue hardship on the employer's operation. In determining whether an undue hardship exists, employers may consider:
 - (1) the overall size of the business or organization with respect to the number of employees and the number and type of facilities;
 - (2) the type of the operation, including the composition and structure of the work force, and the number of employees at the location where the employment would occur;
 - (3) the nature and cost of the accommodation;
 - (4) the reasonable ability to finance the accommodation at each site of business; and
 - (5) documented good faith efforts to explore less restrictive or less expensive alternatives, including consultation with the disabled person or with knowledgeable disabled persons or organizations.

§ 1054. Discrimination based on Pregnancy.

A covered employer shall treat women affected by pregnancy, childbirth, or related medical conditions the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected, but similar in their ability or inability to work. This requirement shall include, but is not limited to, the requirement that a covered employer must treat an employee temporarily unable to perform the functions of her job because of a pregnancy-related condition in the same manner as it treats other temporarily disabled employees.

§ 1055. Harassment.

- (a) It shall be unlawful employment discrimination for a covered employer to subject an employee or applicant to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, as well as unwelcome comments,

jokes, acts, and other verbal or physical conduct related to race, color, national origin, religion, sex, age, sexual orientation, or disability when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- (b) A covered employer is responsible for acts of workplace harassment by its employees when the employer, its agents, or its supervisory employees knew of the conduct. A covered employer may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action upon learning of the harassment.

§ 1056. Retaliation.

A covered employer may not retaliate against an individual for bringing a good-faith claim against the employer for a violation of this chapter or because the individual opposed a practice he or she believed to violate this chapter or participated in an enforcement proceeding pursuant to subchapter 9 of this chapter. The firing, demoting, harassing, or taking of any other adverse action against an individual shall constitute retaliation within the meaning of this section. Any retaliation in violation of this section is itself a violation of this chapter and is subject to enforcement proceedings pursuant to subchapter 9 of this chapter.

SUBCHAPTER 7

EMPLOYEE WAGE AND HOUR

Section

- 1061. Minimum Wage.**
- 1062. Prevailing Wage.**
- 1063. Maximum Hours.**
- 1064. Exemptions.**
- 1065. Private Right of Action.**
- 1066. Statute of Limitations.**
- 1067. Guidance.**
- 1068. Fringe Benefits.**

§ 1061. Minimum Wage.

Any employee who is employed by a covered employer shall be paid an hourly wage of not less than \$7.50 per hour or the current United States Federal Government's minimum wage requirement, whichever is higher.

§ 1062. Prevailing Wage.

All covered employers are required to compensate construction laborers according to the prevailing wage set by the U.S. Department of Labor according to the Davis-Bacon Act for the county in which the work shall commence, unless the Board implements Band prevailing wage rates by rule, regulation, or guideline, in which case the Band prevailing wage determination shall apply.

§ 1063. Maximum Hours.

No covered employer shall employ any of its employees for a work week longer than forty (40) hours unless such employee receives compensation for the additional hours at a rate not less than one and one-half times the regular rate at which the employee is compensated.

§ 1064. Exemptions.

The provisions of this subchapter shall not apply with respect to any employee employed in a bona fide executive, administrative, or professional capacity, or any other exemption category in the Federal Fair Labor Standards Act (FLSA) of 1938, 29 U.S.C., § 213, including all future amendments thereto, or in regulations implementing that Act as promulgated by the U.S. Department of Labor.

§ 1065. Private Right of Action.

Any individual aggrieved under this subchapter may seek retroactive payment of unpaid minimum wages or unpaid overtime compensation against a covered employer pursuant to the enforcement provisions set out in subchapter 9 of this chapter.

§ 1066. Statute of Limitations.

Any action to secure unpaid wages or unpaid overtime compensation must be commenced within one (1) year after the date on which such wages or overtime compensation should have been included in an employee's paycheck, regardless of the date of actual discovery.

§ 1067. Guidance.

For the purposes of interpreting this subchapter only, the Board and the Band's Court of Central Jurisdiction may look to the Federal Fair Labor Standards Act (FLSA) of 1938, 29 U.S.C., §§ 201-219, its implementing regulations, and related case law for persuasive guidance, provided that nothing in this section shall be construed as an adoption by the Band of that Act or its implementing regulations.

§ 1068. Fringe Benefits.

A covered employer must give an employee engaged in construction the option of electing to receive any amount to which he or she is entitled as prevailing wage fringe benefits as a part of her or his hourly pay unless it is determined that the application of this provision is specifically prohibited by Federal law. The prevailing wage fringe benefits to which the employee is entitled shall include, but not be limited to, the fringe benefit determination made by the U.S. Secretary of Labor pursuant to the Federal Davis Bacon Act or by the Board pursuant to this chapter. Every covered employer engaged in projects subject to the Federal Davis-Bacon Act shall offer this option to each employee at the time he or she is first employed.

SUBCHAPTER 8

OCCUPATIONAL SAFETY AND HEALTH OF EMPLOYEES

Section

1071. Duties of Employers and Employees.

1072. Adoption of Rules of Federal Occupational Safety and Health Administration.

1073. Enforcement.

§ 1071. Duties of Employers and Employees.

(a) Each covered employer shall:

- (1) furnish employees with a place and condition of employment that is free from recognized hazards that may cause or are likely to cause death or serious physical harm to the employees; and
- (2) comply with all occupational safety and health rules promulgated or adopted by the Band pursuant to this subchapter.

(b) Each employee of a covered employer shall comply with all occupational safety and health rules promulgated or adopted pursuant to this subchapter that are applicable to the actions and conduct of the employee.

§ 1072. Adoption of Rules of Federal Occupational Safety and Health Administration.

The rules and regulations of the Federal Occupational Safety and Health Administration ("OSHA") of the U.S. Department of Labor, including all future rules or amendments to existing rules, promulgated pursuant to the authority granted to OSHA by the Occupational Safety and Health Act of 1975, (29 U.S.C., §§ 651-678) are hereby adopted by the Band and apply to all covered employers.

§ 1073. Enforcement.

- (a) The director is authorized to enforce the rules adopted in § 1072 of this chapter pursuant to the enforcement provisions set out in subchapter 9 of this chapter, to the extent her or his authority has not been preempted by Federal law.
- (b) For any employer over whom the director's authority to enforce the requirements of this subchapter has been preempted by Federal law and for employers within the reservation who are not subject to the jurisdiction of the Band, the director shall work cooperatively with federal and state officials responsible for enforcing occupational safety and health requirements applicable to such employers to ensure maximum enforcement.

SUBCHAPTER 9

ENFORCEMENT

Section

1081. Applicability.

1082. Investigations.

1083. Complaints.

1084. Complaints Against the Band.

1085. Resolution of Violations.

1086. Hearing Procedures.

1087. Sanctions.

1088. Appeals.

1089. Monitoring and Coordination with other Tribal, State and Federal Laws.

§ 1081. Applicability.

The provisions set out in this subchapter shall be used to enforce the requirements set out in this chapter, unless a specific enforcement provision is contained in a particular subchapter, in which case the latter provision shall take priority.

§ 1082. Investigations.

- (a) On her or his own initiative or on the basis of a complaint filed pursuant to § 1083 or any other provision of this chapter, the director or any field compliance officer designated by the director may make such public or private investigations within the reservation as the director deems necessary:
 - (1) to ensure compliance with a provision in this chapter;
 - (2) to determine whether any covered employer has violated any provision of this chapter or its implementing regulations; or
 - (3) to aid in prescribing rules, regulations, or policies hereunder.
- (b) Separate from acting on any complaint filed, the director shall conduct regular compliance reviews to ensure that all covered employers are complying with the requirements of this chapter.
- (c) The director or any field compliance officer designated by the director may enter the place of business or employment of any covered employer for the purpose of an investigation or compliance review, at said place of business or employment, in a manner consistent with good safety practices and with the orderly operation of the business activity. The director or officer may:
 - (1) interview any employee or agent of the covered employer;
 - (2) review and copy any documents; and
 - (3) carry out any other activity the TERO director or officer deems necessary to accomplish the investigation or compliance review, provided that, the director or officer shall comply with the requirements of subsection (e) of this section when reviewing or copying any confidential documents.
- (d) For the purpose of investigations, compliance reviews, or hearings, which, in the opinion of the director or the TERO Commission, are necessary and proper for the enforcement of this chapter, the director or the chairperson of the TERO Commission may administer oaths or affirmations, subpoena witnesses, take evidence, and require the production of books, papers, contracts, agreements, or other documents, records or information that the director or the TERO Commission deems relevant to the inquiry.
- (e) Any state or federal tax records, trade secrets, or privileged or confidential commercial, financial, or employment information subpoenaed or otherwise obtained pursuant to the provisions of this chapter or used at a compliance hearing or subsequent appeal to the Band's Court of Central Jurisdiction:

- (1) shall be regarded as confidential records of the TERO Commission or the Court;
- (2) shall not be opened to public inspection;
- (3) shall be used only by the director, the TERO Commission, or parties to a compliance hearing or subsequent appeal to the court; and
- (4) shall be used in a manner that, to the maximum extent possible consistent with the requirement of fairness to the parties, protects the confidentiality of the documents.

Any person, including but not limited to any employee or official of the Band, who willfully discloses such confidential records, except as expressly authorized by this chapter or Court order, may be subject to a civil fine not to exceed \$500.00.

- (f) Documents obtained from a covered employer under this section shall be returned to the employer at the conclusion of any investigation, compliance review, or hearing, including the end of any available appeal period.

§ 1083. Complaints.

Any individual, group of individuals, business, or organization that believes any covered employer other than the Band, or the director or other TERO staff, has violated any requirement imposed by this chapter or any regulation issued pursuant to it, may file a complaint with the director or, if the complaint is against the director or other TERO staff, with the chairperson of the TERO Commission. The complaint shall be in writing and shall provide such information as is necessary to enable the director or an independent party appointed by the TERO Commission to carry out an investigation. Within fifteen (15) days after receipt of the complaint, and on a regular basis thereafter, the director or the independent party appointed by the TERO Commission shall provide the complaining party with a written report on the status of the complaint. The director or the independent party appointed by the TERO Commission shall, within thirty (30) days of the date on which a complaint is filed, complete an investigation of the complaint. Upon request, the TERO Commission may grant the Director or the independent party appointed by the TERO Commission an extension of no more than thirty (30) days to complete the investigation. If upon investigation the director or the independent party appointed by the TERO Commission has reason to believe a violation has occurred, he or she shall proceed pursuant to the provisions of this chapter.

§ 1084. Complaints Against the Band.

Any individual who believes the Band, including any office, division, branch, subsidiary entity, or commercial enterprise of the Band, other than the director or other TERO staff, has violated

any requirement imposed by this chapter or any regulation issued pursuant to it may file a complaint with the director, but only after the individual has either:

- (a) filed a complaint with and exhausted the administrative remedies provided by the involved office, division, branch, subsidiary entity, or commercial enterprise of the Band; or
- (b) filed a complaint with the involved office, division, branch, subsidiary entity, or commercial enterprise of the Band and sixty (60) days have passed since filing and no meaningful action has been taken on the complaint by that office, division, subsidiary entity, or commercial enterprise.

Upon receiving a complaint that meets the requirements of this section, the director shall proceed in the same manner as he would on a complaint filed pursuant to § 1083 of this chapter, except that the director and the TERO Commission shall take into consideration any written decision concerning the complaint issued by the office, division, branch, subsidiary, entity, or commercial enterprise of the Band that is the subject of the complaint.

§ 1085. Resolution of Violations.

- (a) If, after conducting an investigation or compliance review, the director has reasonable cause to believe a violation of this chapter or any regulation issued pursuant to it has occurred, including a failure by a party to comply with a subpoena or other request during an investigation, the director shall notify the covered employer or covered entity in writing, delivered by registered mail, specifying the alleged violations.
- (b) The director shall make a good faith effort to achieve an informal settlement of the alleged violation by meeting with the covered employer and taking other appropriate action.
- (c) If the director is unable to achieve an informal settlement, he shall issue a formal notice of non-compliance, which shall advise the covered employer of its right to request a hearing. The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the covered employer with a reasonable time, which shall not be less than ten (10) days from the date of service of such notice, to comply. If the director has reason to believe that irreparable harm will occur during that period, the Director may require that compliance occur in less than ten (10) days.
- (d) If the covered employer disputes the violation, as provided for in the formal notice, the covered employer may request a hearing before the TERO Commission, which shall be held no sooner than five (5) days and no later than thirty (30) days after the date for compliance set forth in the formal notice. The director or the covered employer may ask the TERO Commission to hold the hearing sooner. The TERO

Commission shall grant such a request only upon a showing that an expedited hearing is necessary to avoid irreparable harm.

- (e) If a covered employer fails or refuses to comply and does not request a hearing, the director shall request the chairperson of the TERO Commission to convene a session of the TERO Commission for the purpose of imposing sanctions on the covered employer. This session shall take place as soon as necessary to avoid irreparable harm.

§ 1086. Hearing Procedures.

- (a) Any hearing held pursuant to this chapter shall be conducted by the TERO Commission. The hearing shall be governed by rules of practice and procedure that are adopted by the TERO Commission. The director and the covered employer shall have the right to call and cross examine witnesses, as well as present physical evidence. The TERO Commission may consider any evidence that it deems relevant to the hearing. The TERO Commission shall not be bound by technical rules of evidence in the conduct of hearings under this chapter, and the presence of informality in any proceeding, as in the manner of taking testimony, shall not invalidate any order, decision, rule, or regulation made, approved, or confirmed by the TERO Commission. The director shall have the burden of proving that the covered employer violated this chapter by a preponderance of the evidence. An audio recording shall be made of each hearing. No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of, the covered employer.
- (b) The director shall prosecute the alleged violation on behalf of the TERO. During the hearing and at all stages of the enforcement process provided for in this chapter, the director may be represented by the Band Solicitor General's Office. If the covered employer is an office or subsidiary of the Band Government and the Band Solicitor General's Office determines it would create a conflict to represent the director, the Solicitor General may obtain outside legal counsel for the director.
- (c) The TERO Commission shall sit as an impartial judicial body. The TERO Commission shall establish procedures and safeguards to ensure that the rights of all parties are protected and that there is no improper contact or communication between the TERO Commission and the director during the hearing phase of the enforcement process.
- (d) If the TERO Commission requires legal assistance during the hearing process, or at any other phase of the enforcement process, and it would be a conflict of interest for the Band Solicitor General's Office to provide such representation, the Solicitor General shall attempt to retain outside legal counsel.

§ 1087. Sanctions.

- (a) If, after a hearing, the TERO Commission determines that the alleged violation of this chapter or a regulation issued pursuant to it has occurred, and that the party charged has no adequate defense in law or fact, or if a party was issued a formal notice of noncompliance and failed to request a hearing, the TERO Commission may:
- (1) deny such party the ability to commence business on lands owned by or for the benefit of the Band or its members on the reservation, provided that the party is not an office, division, branch, subsidiary, entity, or commercial enterprise of the Band;
 - (2) suspend such party's business activity on lands owned by or for the benefit of the Band or its members on the reservation, provided that the party is not an office, division, branch, subsidiary, entity, or commercial enterprise of the Band;
 - (3) terminate such party's business activity on lands owned by or for the benefit of the Band or its members on the reservation, provided that the party is not an office, division, branch, subsidiary, entity, or commercial enterprise of the Band;
 - (4) deny the ability of such party to conduct any further business with the Band or on lands owned by or on behalf of the Band or its members on the reservation, provided that the party is not an office, division, branch, subsidiary, entity or commercial enterprise of the Band;
 - (5) impose a civil fine of up to \$500.00 per violation per day following the date for compliance;
 - (6) order such party to make payment of back pay or other damages to any aggrieved party;
 - (7) order such party to dismiss any employees hired in violation of the Band's employment rights requirements;
 - (8) reimburse any party who improperly paid a TERO fee or overpaid said fee, but no interest shall be paid in such cases; or
 - (9) order the party to take such other action as is necessary to ensure compliance with this chapter or to remedy any harm caused by a violation of this chapter, consistent with the requirements of the laws of the Band and the Indian Civil Rights Act, 25 U.S.C., § 1301, *et seq.*

- (b) The TERO Commission's decision shall be in writing and shall be served on the charged party by registered mail or in person by an employee of the TERO no later than thirty (30) days after the close of the hearing. The decision shall contain findings of fact sufficient to support the TERO Commission's ordered relief, or lack thereof. Upon a showing by the Director or the charged party that further delay will cause irreparable harm, the TERO Commission shall issue its decision within ten (10) days after the close of the hearing. If the party fails to comply with the TERO Commission's decision within ten (10) days, the Director may file for an injunction in the Band's Court of Central Jurisdiction. The Court shall grant such injunctive relief as is necessary to prevent irreparable harm pending an appeal or expiration of the time for the party to file an appeal.

§ 1088. Appeals.

- (a) An appeal to the Band's Court of Central Jurisdiction may be taken from any formal order of the TERO Commission by any party adversely affected thereby, including a complainant. To take such an appeal, a party must file a notice of appeal in the Band's Court of Central Jurisdiction and serve a copy of the notice of appeal on the director and any other party to the proceeding no later than twenty (20) days after the party receives a copy of the TERO Commission's decision.
- (b) The notice of appeal shall:
- (1) set forth the order from which the appeal is taken;
 - (2) specify the grounds upon which reversal or modification of the order is sought;
 - (3) be signed by the appellant or his legal representative; and
 - (4) comply with any other requirements for actions filed in the Band's Court of Central Jurisdiction, as established by that court.
- (c) Except as provided elsewhere in this chapter, the order of the TERO Commission shall be stayed pending the determination of the Court. The director may petition and, for good cause shown, the Court may order the party filing the appeal to post a bond sufficient to cover the monetary damages that the TERO Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the TERO Commission's order in the event that order is upheld by the Court.
- (d) The Court shall review the decision of the TERO Commission de novo.
- (e) If a party has failed to come into compliance with a decision of the TERO Commission from which no appeal has been taken or a decision of the Court, within

20 days after receipt of notice of such decision, the Director shall petition the Court and the Court shall grant such orders as are necessary and appropriate to enforce the orders of the TERO Commission or Court.

- (f) If the order of the TERO Commission is reversed or modified, the Court shall specifically direct the TERO Commission as to further action the TERO Commission shall take in the matter, including making and entering any order or orders in connection therewith, and the limitations, or conditions to be contained therein.

§ 1089. Monitoring.

If, when carrying out inspections at work sites or otherwise carrying out their responsibilities under this chapter, the director or TERO compliance officers have reason to believe that a requirement of a Tribal, Federal, state, or local law, act, or regulation, other than the ones included in this chapter, may have been violated by a party, the director and TERO compliance officers are authorized to document such possible violations, to report said violations to the appropriate enforcement agency, and, to the extent that resources permit and the director determines it to be appropriate, assist that agency in its attempt to investigate and cure the possible violation.

**Ordinance 41-22
(Band Assembly Bill 20-01-41-22)**


Introduced to the Band Assembly on this
Twenty-fifth day of April in the year
Two thousand twenty-two.

Passed by the Band Assembly on this
Twenty-fifth day of April in the year
Two thousand twenty-two.


Sheldon Boyd, Speaker of the Assembly

APPROVED

april 30, 2022
Date: May 2, 2022


Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND

