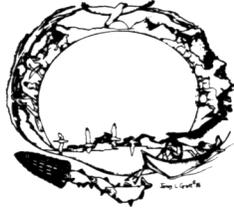


# Sample TERO Ordinance

Draft of November 12, 2001



**TANANA CHIEFS CONFERENCE, INC.**  
122 FIRST AVENUE  
FAIRBANKS, ALASKA 99701-4897

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## TRIBAL EMPLOYMENT RIGHTS ORDINANCE - TERO

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### **Section 1. Purpose and Authority**

The purpose of this Ordinance is to promote the self-sufficiency of the Tribe, its members and families, and for other area residents of \_\_\_\_\_. This Ordinance provides guidance for assisting in the fair employment of \_\_\_\_\_ tribal members and others residing in \_\_\_\_\_, and for preventing discrimination against \_\_\_\_\_ tribal members in the employment, promotion, and training practices of those who employ in and near the Village of \_\_\_\_\_. In carrying out these purposes, the Tribal Council shall oversee employment activities according to this Ordinance. The Tribe exercises its authority to implement this Ordinance under its inherent sovereign powers as a federally

recognized tribe, under the authority of the \_\_\_\_\_ Tribal Constitution and under any specifically delegated powers by the U.S. Congress where applicable.

## **Section 2. Definitions**

In this Ordinance, the following words and phrases shall have the following meanings unless otherwise specified:

**“Council”** means the \_\_\_\_\_ Tribal Council.

**"Employer"** means any person, government, company, contractor, subcontractor or other entity located or engaged in work in and around \_\_\_\_\_, employing two or more persons. **[Note: tribes may or may not want to include the following language:** The Tribe is included in the definition of employer, and may only be excluded on a case-by-case basis when the Council specifically finds it to be in the best interest of the Tribe to hire, promote, or train persons outside of the guidelines established in this ordinance.]

**"Engaged in work within the village of"** means an employer engaged in any portion of a business enterprise or specific project, contract or subcontract, when the employer or any of his employees spend a majority of their time performing work in or near \_\_\_\_\_ on a continuing basis.

**“In or near \_\_\_\_\_ “** means employment of any sort in the village itself, or within reasonable commuting distance of the village.

**“Residing in or near”** means persons who live in the village site or persons who live within a reasonable commuting distance from the village.

“**TERO fee**” means a fee collected by the Tribe from employers engaged in work in \_\_\_\_\_ and collected under a cooperative agreement. The fee shall be used by the Tribe for employment services such as recruiting, screening, referral, training, compliance, and counseling or for other public services if it is determined to be in the best interest of the Tribe.

“**Tribal members**” are those persons enrolled or who are eligible for enrollment into the \_\_\_\_\_ Tribe.

### **Section 3. Tribal Council Powers and Responsibilities**

The Tribal Council shall have the following powers and responsibilities in implementing this Ordinance:

- A. To delegate the specific oversight of the day-to-day implementation of this ordinance. Such delegation shall be specific as to what authority is being delegated and to whom. Any person to whom TERO duties are assigned shall report back to the Council on a regular basis or upon a specific Council request. **[This may be more specific, such as a specific delegation to the tribal administrator with a list of authorizations. The more specific this section is, the more stable the system will be.]**
- B. To take necessary action for fair implementation of this Ordinance including consulting and making agreements with employers and conducting on-site inspections and investigations during working hours.
- C. To consult with the Tanana Chiefs Conference, Inc. **[or some other entity the tribe works with]** TERO Officer regarding implementation and enforcement of this Ordinance.

- D. To negotiate labor agreements with employers, to discuss potential violations of such agreements among the Council, and to negotiate with employers to correct the violation. If there is a person with delegated authority to handle the implementation of this ordinance, that person shall be present at such negotiations. If this negotiation fails to result in a remedy satisfactory to the Council, the Council may refer the alleged violation to \_\_\_\_\_ **[ Options: to the tribal court if it is a separate body, to an inter tribal court if there is one, or to a special appellate board (e.g. each side gets to select 3 persons and one person chosen at random, or 7 members are chosen at random off a list of adult residents, etc.)]** , or to whatever board is agreed upon in specific employment cooperative agreements.
- E. To negotiate labor agreements with Unions. **[Note: tribes may want to require referendum votes to tribal members on such agreements, or put other stipulations on the council in regards to such agreements.]**
- F. To obtain and disperse funding from federal and state governments, cooperative TERO fees, and other sources to use for support of employment activities.
- G. To use the Tribal Council office as a tribal hiring hall, when no other hiring hall agreement exists.
- H. To establish employment counseling programs to assist tribal members in obtaining and retaining employment.
- I. To establish reasonable hiring goals for the \_\_\_\_\_ tribal members.
- J. To enter into cooperative agreements with federal and state employment rights agencies to eliminate hiring discrimination against \_\_\_\_\_ tribal members.

- K. To work with each employer in or near \_\_\_\_\_ to negotiate with and establish the maximum tribal and Alaska Native preference as possible.
- L. To negotiate with employers and the federal and state governments to establish or participate in reasonable job training programs that will increase the number of tribal members eligible for employment in \_\_\_\_\_ .
- M. To negotiate with employers to give preference to tribal and other Native-owned businesses in the award of contracts and/or subcontracts, subject to Council approval.

**Section 4. Tribal Employment Preferences in or near \_\_\_\_\_**

- A. Tribal policy for hiring, promotions, and training qualified persons in or near the Village of \_\_\_\_\_ shall be according to the following prioritization:

**[NOTE: the following list may be rearranged or changed according to the tribe's wishes.]**

1. To enrolled tribal members residing in or near \_\_\_\_\_.
  2. To enrolled tribal members regardless where they reside.
  3. To Alaska Native persons residing in or near \_\_\_\_\_.
  4. To Alaska Native persons regardless of where they reside.
  5. To Non-Native persons married to tribal members.
  6. To Non-Native persons who reside in \_\_\_\_\_ .
- B. **Layoffs** : Tribal policy for layoffs shall be in prioritized in the reverse order.
  - C. **Tribal hire, promotion, and training:** The \_\_\_\_\_ Tribe shall hire, promote, and train according to this prioritization list unless a specific finding is made that it

is in the best interest of the Tribe to not comply with this list. The best interest finding shall be specific, and supported by at least a majority of the Tribal Council.

- D. Preference in special cases:** When funding sources do not allow a tribal preference, preference shall be given to Alaska Native people residing in or near \_\_\_\_\_, a second hiring priority shall be given to other Alaska Natives, and a third priority to Non-Natives residing in or near \_\_\_\_\_.

## **Section 5. Cooperative Labor Agreements**

The Tribal Council shall pursue cooperative agreements with employers engaging in work in or near \_\_\_\_\_ to give preference according to the priority list in Section 4 (A) of this Ordinance, in hiring, recall, promotion, and training and all other aspects of employment, contracting or subcontracting. No labor agreement shall be interpreted to have the effect of limiting the applicability of the employment preference priorities in that Section or as effecting the sovereign immunity of the Tribe, except for limited waivers that may be specifically contained in an agreement. The purposes of such agreements shall include but be limited to:

- A. Promoting economic self-sufficiency for the Tribe, its members and families, and other area residents through increased access to employment and training opportunities
- B. Establishing portability, continuity, and sustainability of fringe benefit programs for tribal members, their families, and other area residents
- C. Providing greater access to quality training and worker education programs
- D. Providing continuity in on the job training activities

- E. Promoting quality employment opportunities with reliable and reasonable compensation for tribal members, their families, and other area residents
- F. Improving the quality and productivity of the local labor force available to the Tribe and other area employers and project owners for work at projects, tribal operations, and businesses
- G. Improving the representation and enforcement capabilities of the Tribe's TERO efforts
- H. Providing employers with ready access to quality local labor for rural projects
- I. Eliminating discrimination through job qualification criteria or personnel requirements which bar tribal members from employment unless such criteria is by business necessity
- J. Increasing notification of employment openings in the Village
- K. Arranging for and collecting negotiated TERO fees when appropriate

## **Section 6. Tribal Council Employment Procedures**

The Tribal Council shall follow the employment preference outlined in Section 4(A) of this ordinance except when it is specifically found to be in the best interest of the Tribe to hire, promote, or train persons outside of the guidelines established in this Ordinance. The best interest finding shall be specific, noted in writing, and adopted by an affirmative vote of a majority of the full Tribal Council. Additionally, the Council shall:

- A. **List of qualified tribal workers and other workers in the Village:** The Tribal Council shall maintain lists and information on the available tribal work force in the

Village. The Council shall give such relevant information to employers and potential employers in or near \_\_\_\_\_ .

**B. Tribal policy on hiring preferences :** The Council shall notify all employers and potential employers in or near \_\_\_\_\_ of the tribal policy on hiring preferences outlined in Section 4(A) of this Ordinance.

**C. Nepotism and Favoritism:** Tribal Council members shall not participate in hiring or other employment decisions involving their immediate family members or exert excessive influence or favoritism to pressure other tribal officials to alter decisions concerning employment or other benefits for their immediate family members. "Immediate family members" include spouses and significant others, children, parents, grandparents, and grandchildren. **[This list could be modified to fit the particular village].**

## **Section 7. Grievances, Disputes, and Complaint Procedures**

Grievances, disputes, and complaints concerning employment issues for tribal employees working in or near \_\_\_\_\_ shall be heard by the \_\_\_\_\_ Tribal Court, unless the circumstances fall specifically under applicable federal or state law which provides state or federal remedies. **[If the tribe doesn't have a tribal court, or if the tribal court is the same as the tribal council, another dispute resolution mechanism the tribe may be established here.]** Procedures for grievances, disputes, and complaints concerning employment issues under tribal cooperative labor agreements shall be contained in such agreements.

**Sample Tribal Ordinance**

ALASKA NATIVE PREFERENCE FOR  
CONTRACTING AND  
SUBCONTRACTING

**Section 1. Purpose** .....

**Section 2. Application of this Chapter** .....

**Section 3. Definitions** .....

**Section 4. Alaska Native Contract Subcontract Preference**.....

**Section 1. Purpose**

The purpose of this Chapter is to provide tribal policy on preference of Alaska Native bidders on all contracts and subcontracts that take place in or near \_\_\_\_\_ .

**Section 2. Application of this Chapter**

It is the Tribe's policy that the Alaska Native bidder preference applies to:

1. All contracts and subcontracts which are not direct federal and federally funded contracts; and,
  
2. All contracts which are federally funded; and,

3. All subcontracts on direct federal contracts which are for the benefit of Alaska Natives and which therefore are covered by Section 7(b) of the Indian Self-Determination Act (P.L. 93-638, 25 U.S.C. Sec. 450 E(b)).

### **Section 3. Definitions**

In this Chapter, the following phrases have the following meaning unless otherwise specified:

**"Alaska Native Contractor"** means a contractor that is 51% or more Alaska Native owned and controlled. The Council reserves the right to require such proof as it deems necessary to substantiate that a firm actually is 51% or more owned and controlled.

**"For the benefit of Alaska Natives"** means work performed under a federal or federally funded contract for the benefit of Alaska Natives if the work provided to Alaska Natives are in addition to any incidental benefits which might occur to the general public.

**"Prime and subcontractor"** A prime contractor is the entity responsible for a project and the subcontractor is responsible for a contract let by a prime contractor or its subcontractors for supplies or work on prime contracts, regardless of tier.

### **Section 4. Alaska Native Contract and Subcontract Preference**

It is the policy of the Tribe that prime contracts and/or subcontracts that are awarded in or near \_\_\_\_\_ comply with the following :

- A. If the party requesting bids has reason to believe that two or more qualified Alaska Native firms will bid, then the invitation for bids shall be restricted to qualified Alaska Native contractors and Indian organizations.
  
- B. If there are less than two Alaska Native contractors bidding, the invitation for bids shall be open competition to Alaska Native and non-Native contractors alike.

In the case of A, the lowest bidding, qualified Alaska Native contractor shall be awarded the contract and/or the subcontract. In the case of B, the lowest bidding, qualified Alaska Native contractor shall be awarded if:

- 1. The lowest bidding, qualified Alaska Native contractor is within budgetary limits established for the specific project; and,
  
- 2. The lowest bidding, qualified Alaska Native contractor is not more than a fixed percentage higher than the total bid price of the lowest bid from other qualified bidders. The fixed percentage is determined as follows:

When the lowest bid in dollars is:

<u>At Least</u>	<u>But Less Than</u>	<u>Percentage of Bid</u>
000,000	100,000	10%
100,000	200,000	9%
200,000	300,000	8%
300,000	400,000	7%
400,000	500,000	6%
500,000	1 Million	5%
1 Million	2 Million	4%
2 Million	4 Million	3%
4 Million	7 Million	2%
7 Million	or more	1%