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The Chippewa Cree Tribe of the Rocky Boy's Reservation

Phone: (406) 395-4478 or 4210 - Finance Office
(406) 395-4282 or 4321 - Business Committee

31 Agency Square
Box Elder, Montana 59521

A RESOLUTION

NO. 17-2-17

HEREBY AMENDING TITLE XI, THE CHIPPEWA CREE TRIBAL CODE, CHAPTER 1, EMPLOYEE RIGHTS TO INCORPORATE ALL PROPOSED CHANGES SUBMITTED BY THE DIRECTOR OF THE CHIPPEWA CREE TRIBAL TERO DEPARTMENT.

WHEREAS, the Chippewa Cree Business Committee is the governing body of the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation by the authority of the Constitution and By-Laws of the Chippewa Cree Tribe approved on the 23rd day of November, 1935, and:

WHEREAS, pursuant to their inherent sovereignty and Constitution and By-Laws of the Chippewa Cree Tribe, the Chippewa Cree Tribal Business Committee is charged with the duty to promote and protect the health, security and welfare of the Tribe, and:

WHEREAS, the Chippewa Cree Business Committee understands that the changes aim to create a greater consistency and clarity within Title XI, Chapter 1 of the Chippewa Cree Tribal Law and Order Code and provide enhanced procedures to further jobs in businesses and other economic opportunities on or near the Rocky Boy's Indian Reservation, and:

WHEREAS, the Chippewa Cree Business Committee further understand the importance of establishing resources to which Natives have unique preferential rights and therefore, to implement the unique employment rights of Natives, established a Tribal Employment, and:

WHEREAS, the Chippewa Cree Business Committee affirms that all resolutions, or parts of the same, that are inconsistent with the provisions of this resolution, are hereby repealed to the extent of such inconsistency, now:

THEREFORE BE IT RESOLVED, the Chippewa Cree Business Committee hereby amends XI, the Chippewa Cree Tribal Code, Chapter 1- Employee Rights all proposed changes submitted by the Director of the Chippewa Cree Tribal Employment Rights Office ("TERO") Department.

BE IT FINALLY RESOLVED, that the newly revised Title XI the Chippewa Cree Tribal Code, Chapter 1- Employee Rights is hereinafter attached, the amendments shall have an effective date of November 2, 2017.

CERTIFICATION

I, THE UNDERSIGNED, AS SECRETARY/TREASURER OF THE BUSINESS COMMITTEE FOR THE CHIPPEWA CREE TRIBE, HEREBY CERTIFY THAT THE BUSINESS COMMITTEE IS COMPOSED OF NINE MEMBERS, OF WHOM Eight MEMBERS CONSTITUTING A QUORUM WERE PRESENT AT A MEETING, DULY AND REGULARLY CALLED, NOTICED, CONVENED AND HELD ON THE 2ND DAY OF NOVEMBER, 2017, AND THAT THE FOREGOING RESOLUTION WAS FULLY ADOPTED AT SUCH A MEETING BY THE VOTE OF seven (7) MEMBERS FOR AND zero (0) MEMBERS AGAINST AND zero MEMBERS ABSTAINED, AND THAT THIS RESOLUTION HAS NOT BEEN RESCINDED OR AMENDED IN ANY WAY.


Chairman, Business Committee


Secretary/Treasurer

REVIEWED
BY CCT-OAC

TRIBAL EMPLOYMENT RIGHTS CODE
(Revised on November 2, 2017)

TITLE XI

CHAPTER 1 – Tribal Employment Rights

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The CCT Title VI, Chapter 1, Employee Rights approved as a 1st Reading on May 4, 2017 during the monthly Business Committee Meeting. The CCT Title VI, Chapter 1, Employee Rights approved as a 2nd Reading on June 1, 2017 during the monthly Business Committee Meeting. The CCT Title VI, Chapter 1, Employee Rights approved as a 3rd Reading on July 13, 2017 during the monthly Business Committee Meeting. Passed by Resolution No. 133-17 with an effective date of November 2, 2017.

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Part 1. General Provisions

11-1-101. Introduction.

The Chippewa Cree Tribe enacts this Chapter (hereafter the "Code") pursuant to its inherent sovereign powers to create law that promote unique employment and contracting preference that provide Native American and Tribal member preference, on Indian lands within the jurisdiction of the Chippewa Cree Tribe.

Under this Code, the Tribal Employment Rights Office (hereafter "TERO") operates as an employment hiring agency. TERO provides preferential employee dispatch, referral services and skills training. TERO also has the authority to regulate and enforce preference in employment, contracting, and economic development opportunities under this Code.

This Code repeals and replaces Chippewa Cree Tribal Employment Rights Ordinance Nos. 2-86, and all ordinances and resolutions, or parts of the same that are inconsistent with the provisions of this Code.

11-1-102. Glossary.

This glossary has the definitions of the terms as they apply to the provisions of this Code. Any word or term not defined in this section shall be used with the meaning of common or standard use as determined by a current edition of Webster's Dictionary.

- (1) "Agency" shall mean the main business organization; that may or may not have subdivisions or subsidiaries.
- (2) "Business Committee" means the governing body of the Chippewa Cree Tribe that consists of nine elected Tribal member officials.
- (3) "Business" means a company or other organization that buys and sells goods, makes products, or provides services.
- (4) "Business necessity" means necessary job duties pertaining to industry standards or a legitimate business requirement that is necessary to perform certain work or complete a job.
- (5) "Certification," as it pertains in this Code, means certifying that a business has a minimum percentage of Native American ownership to qualify as a NAOB.

The CCT Title VI, Chapter 1, Employee Rights approved as a 1st Reading on May 4, 2017 during the monthly Business Committee Meeting. The CCT Title VI, Chapter 1, Employee Rights approved as a 2nd Reading on June 1, 2017 during the monthly Business Committee Meeting. The CCT Title VI, Chapter 1, Employee Rights approved as a 3rd Reading on July 13, 2017 during the monthly Business Committee Meeting. Passed by Resolution No. 133-17 with an effective date of November 2, 2017.

- (6) "Change order" means proposed changes in a contract outside the scope of work.
- (7) "Committee" means a member of the TERO Sub-Committee.
- (8) "Company" shall mean business, corporation, or firm that is engaged in business.
- (9) "Compliance plan" means a binding agreement between the contractor and TERO.
- (10) "Compliance Officer" means a TERO representative who enforces TERO Codes, rules and regulations.
- (11) "Contract" means a formal legal binding agreement between two parties outlining deliverables and responsibilities.
- (12) "Contracting agency" means the main organization or owner that is offering a contract and is responsible for compliance with the provisions of this Code.
- (13) "Contractor" means organization or individual that contracts with another organization to perform work.
- (14) "Court" means the Chippewa Cree Tribe Tribal Court.
- (15) "Decertification" means the un-certifying of a NAOB by the Committee; removing the business off the NAOB registry, and denying preference.
- (16) "Director" means the Director of TERO Department.
- (17) "Dispatch" means a TERO document that is given to an individual when they are sent out for employment at a job site or company.
- (18) "Due process" means the right to defend yourself against allegations through a fair non-biased process.
- (19) "EEOC" means the Equal Employment Opportunities Committee.
- (20) "Employee" means a person who works for another for payment or other compensation. For the purposes of this Code, an employee is not an independent contractor. An employee may also be referred to as a "worker" in this Code.
- (21) "Employer" means any individual, business, company, entity, contractor or subcontractor employing one or more persons.
- (22) "Employment discrimination" means discrimination on the basis of protected category that affects the terms, conditions and privileges of employment.
- (23) "Entities" shall mean subsidiaries or subdivisions of an organization or agency.
- (24) "Front" means a business that claims to be eligible for certification but is not in fact legitimately owned and controlled by a Native American.

- (25) "General contractor" means an organization or individual that contracts with another for the construction of a building, road or other facility.
- (26) "Jurisdiction of TERO" means the power, right, or authority to interpret, apply and enforce the provisions of this Code within the boundaries of the Rocky Boy's Indian Reservation and on Tribal projects that are located off Reservation.
- (27) "NAHASDA" means Native American Housing Assistance and Self-Determination Act that is a Federal law.
- (28) "NAOB" means Native American owned business that has been certified by TERO.
- (29) "NAOB registry" means list of Native American owned businesses that have been certified by TERO.
- (30) "Native American" means any person who is a member of a federally and/ or State recognized Indian tribe, nation, or band, including members of Canadian Indian Tribes.
- (31) "OFCCP" means the Office of Federal Contract Compliance Programs.
- (32) "Personnel or human resource (HR) policies" means policies that govern the internal personnel policies of its employees.
- (33) "Preferred or preference employees" means employees who receive preference under the tier categories.
- (34) "Qualified/technically qualified" means a company or person who, by possession of a recognized degree, certificate, or professional standing, or who has sufficient knowledge, training, experience, and has successfully demonstrated his ability to perform or complete the work, or the project.
- (35) "Reservation" means all lands and waters within the exterior boundaries of the Rocky Boy's Indian Reservation or within the jurisdiction of the Chippewa Cree Tribe.
- (36) "Retaliation" means to hurt somebody in return or deliberately harm somebody in response or revenge or reciprocate for a harm or perceived harm that another person has done. Retaliation occurs when an employer or individual takes an adverse action against another individual.
- (37) "Spouse" means a legally married husband or wife, or a legal domestic partner, but does not include a person separate or apart and who has filed in an appropriate court a petition for legal separation or dissolution of marriage or domestic partnership.
- (38) "Subcontractor" means an individual or business that signs a contract to perform part or all of the obligations of another's contract.
- (39) "Suspend" means the suspension of a NAOB by the Committee.
- (40) "TERO" means Tribal Employment Rights Office.

- (41) "Tribal entity" means an entity, subdivision or business that is owned by or is under the direction of the Tribe.
- (42) "Tribal member" means any person who is an enrolled member of the Chippewa Cree Tribe.
- (43) "Tribe" means the Chippewa Cree Tribe.
- (44) "Unions" means an organization that represents a group of individuals in a specific trade.
- (45) "Violation" means noncompliance with requirements or violating prohibited activities in this Code.

11-1-103. Purpose.

The purpose of this Code is:

- (1) To promulgate laws and rules for governing preference in employment and contracting within Tribal jurisdiction.
- (2) To assist with compliance under this Code and enforce the laws governing employment preference and contracting preference.
- (3) To provide a fair, enforceable, and effective system for contracting, subcontracting and purchasing supplies, services, labor and materials, where any part of the work will be performed on the Reservation or on Tribal projects off the Reservation.
- (4) To require contractors to utilize TERO dispatch in hiring within the boundaries of the Reservation or on Tribal projects off the Reservation.
- (5) To require a 5 percent TERO fee on the total aggregate cost of all construction projects or construction contracts with total aggregate price of \$5,000 or more.

11-1-104. Notification.

TERO shall make good faith efforts to educate all employees, employers, contractors, and the public on TERO and employment, hiring and preference laws. All contracting agencies and entities are required to notify contractors/subcontractors of their obligations under this Code. Failure to receive notification, or ignorance of law, is not a defense in any enforcement action under this Code.

11-1-105. TERO Sub-Committee.

The TERO Sub-Committee is the administrative body of five members who are elected by the Chippewa Cree Tribal Council, and shall serve under the guidance of the Chippewa Cree Tribe Business Committee (hereafter "Business Committee").

11-1-106. Powers of the TERO Sub-Committee.

The TERO Sub-Committee has the power, jurisdiction, and authority to:

- (1) Take all appropriate actions necessary to implement the provisions of this Code.
- (2) Provide policy oversight and policy direction to the TERO Director.

The CCT Title VI, Chapter 1, Employee Rights approved as a 1st Reading on May 4, 2017 during the monthly Business Committee Meeting. The CCT Title VI, Chapter 1, Employee Rights approved as a 2nd Reading on June 1, 2017 during the monthly Business Committee Meeting. The CCT Title VI, Chapter 1, Employee Rights approved as a 3rd Reading on July 13, 2017 during the monthly Business Committee Meeting. Passed by Resolution No. 133-17 with an effective date of November 2, 2017.

- (3) Review policies, rules or regulations that may be in conflict with the provisions of this Code and make amendment recommendations to the Business Committee for approval.
- (4) Hold hearings and appeals in accordance with the provisions of this Code.
- (5) Assist in presentations to educate the public on Native American employment and business preferential requirements.
- (6) Conduct hearings, order any relief or sanctions that are necessary and appropriate to enforce this Code.
- (7) Review and recommend the annual TERO budget for Business Committee approval.

11-1-107. Authority and responsibilities of TERO.

The TERO Department shall carry out the day-to-day administrative operations to enforce this Code. The authority and duties shall include, but are not limited to, the following:

- (1) Implement and enforce the provisions of this Code.
- (2) Administer the TERO program and budget.
- (3) Recommend regulations, amendments and agreements.
- (4) Develop, implement and enforce policies and procedures.
- (5) Investigate and process complaints alleging violations of this Code to provide due process.
- (6) The Director shall represent TERO at all applicable meetings, TERO Sub-Committee hearings and Chippewa Cree Tribal Court proceedings.
- (7) Coordinate and provide reports for the TERO Sub-Committee meetings.
- (8) Negotiate with contractors regarding their workforce requirements and TERO fee payment schedule.
- (9) Provide education and training options, eliminate barriers to employment, and enhance employment opportunities for Native Americans.
- (10) The TERO staff shall report administratively in accordance with the organizational chart, as approved by the Business Committee.

11-1-108. Inter-governmental relationships.

EEOC/OFCCP. The TERO Director, with approval from the Business Committee, is authorized to enter into cooperative relationships with Federal employment rights agencies, such as, but not limited to, Equal Employment Opportunity Committee (EEOC) and the Office of Federal Contract Compliance Program (OFCCP). The purpose of entering into these agreements is to prevent discrimination in the workplace. Nothing in these agreements supersedes the authority of the TERO Director and/or staff to investigate, act, or refer complaints to the appropriate agency.

Part 2. Native American preference – Employment

11-1-201. Preference provisions.

All contractors, businesses and employers operating within the boundaries of the Reservation, or on Tribal projects off the Reservation, shall give preference in hiring, promotion, training, layoffs, recall, and all other aspects of employment, unless other contractual agreements or Federal requirements restrict the preference specified below.

Preference shall be given in the order listed below:

- (1) Enrolled members of the Chippewa Cree Tribe and/ or business firms owned and operated by enrolled members of the Chippewa Cree Tribe.
- (2) Spouses, parents, biological child (ern), of an enrolled member of the Chippewa Cree Tribe.
- (3) Other Natives/Indians, which shall mean any member of a federally and/ or State recognized Indian tribe, nation or band, including members of Canadian Indian Tribes.
- (4) Spouse, parents, biological child (ern), of an enrolled member of a federally and/ or State recognized Indian tribe, nation or band, including members of Canadian Indian Tribes.
- (5) Other.

11-1-202. Exclusions.

(1) Homeowners that are building their own home are excluded from the construction contracting requirement. The definition of “home” as it applies in this section is defined as the main residence of an individual.

(2) Tribal, Federal and State projects where the work is performed by their regular permanent workforce are exempt from TERO requirements. However, TERO requirements shall apply to any work within these contracts that is contracted out.

(3) Indian preference is waived in limited circumstances if approved by the TERO Sub-Committee and ratified by the Business Committee through Resolution.

(4) Other laws requiring the filing of a vacancy without regard to Indian preference.

Part 3. Native American preference – Contracting

11-1-301. Preference provisions.

All businesses that advertise or solicit bids for projects, contracts, subcontracts, including written contracts to provide material, goods or services (procurement) shall give preference to qualified businesses listed on the TERO NAOB registry. Preference may be restricted or limited as required and/or allowed under this Code.

Preference shall be given in the order listed below:

- (1) NABO certified by TERO set forth in Part 2 as 100% Indian owned controlled by qualified Indians in the preference order set forth in Part 4.

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(2) NAOB certified by TERO set forth in Part 2 as 51% or more Indian owned controlled by qualified Indians in the preference order set forth in Part 4.

(3) The Indian Preference requirements contained in this Ordinance shall be binding on all contractors and subcontractors of covered employers and will be deemed to be part of and incorporated into any contract or subcontract covered by this Ordinance.

11-1-302. Exclusions.

(1) TERO NAOB registry is waived in limited circumstances if approved by the TERO Sub-Committee and ratified by the Business Committee through Resolution.

(2) Other laws requiring the solicitation of a business without regard to the TERO NAOB registry.

11-1-303. Compliance responsibility.

All entities and/or persons engaged directly or indirectly in contracting are responsible to ensure that their contractors and subcontractors are in compliance with this Code.

11-1-304. Compliance plan.

All owners or contracting agencies and contractors shall be required to submit a TERO compliance plan within a minimum of 72 hours prior to commencing any work on the Reservation or on Tribal projects off the Reservation. No work shall commence until the compliance plan is approved by TERO.

11-1-305. Contractor job qualifications and requirements.

A contractor/subcontractor shall not create excessive and unnecessary or excessive job skill qualifications/requirements on TERO preference applicants, unless required by business necessity as determined by TERO. TERO shall make a final determination on excessive and unnecessary job skill qualification, and require changes if necessary.

11-1-306. Workforce.

(1) In accordance with the construction compliance plan, each contractor/subcontractor shall negotiate TERO preference hiring goals to maximize preference for positions outlined in the compliance plan.

(2) Employers shall give preference at all times so long as the worker is qualified. TERO may require a non-TERO worker be replaced if there is a qualified TERO worker available.

(3) TERO reserves the right to negotiate up to 100 percent TERO hiring goals specifying the number of TERO workers the employer shall hire by craft and skill level.

(4) Employers must contact TERO for employee dispatch 72 hours prior to commencing work to negotiate the workforce and to find qualified workers. If no TERO workers are available, the business may recruit from other resources. After receiving adequate justification, TERO will review and make a determination on a case-by-case basis to either approve or deny any exception from this requirement.

(5) Prior to commencing work on the Rocky Boy's Indian Reservation, a prospective employer and all contractors and subcontractors shall identify permanent and key employees.

(a) A permanent employee is one who is and has been on the employers' or contractors' annual payroll for a period of one year continuously, working in a regular position for the employer, or is an owner of the firm. An employee who is hired on a project by project basis shall not be considered a permanent employee.

(b) A key employee is one who is in a top supervisory position or performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the employer. An employee who is hired on a project by project basis may be considered a key employee so long as they are in a top supervisory position or perform a critical function.

(c) TERO will review permanent and key employees on a case-by-case basis to ensure no actions were taken to circumvent the requirements of this section.

(d) Nonpreferred permanent and key employee(s) shall not exceed 20 percent of the workforce. Permanent and key employees are subject to TERO approval and TERO may require a position to be opened up to all preference workers.

(6) TERO preference employees shall not be laid off where non-TERO preference employees are still working. If the employer lays off employees by crews, classifications or other categories, qualified TERO preference employees shall be transferred to crews or positions that will be retained. This section does not apply to key or permanent employees.

11-1-307. Compliance monitoring.

All entities engaged in any aspect of business within the TERO jurisdiction shall submit reports and other information, including but not limited to contract documents, TERO approved certified payroll and personnel records, if requested by TERO. TERO shall have the right to make on-site inspections in order to monitor an entity's compliance.

11-1-308. Prohibited activities.

Contractors/subcontractors shall not:

- (1) Submit false or fraudulent information to TERO or a Tribal agency.
- (2) Knowingly make a false statement, whether by affidavit, verified statement, report, or other representation to a Tribal official or employee as it relates to contracting under this Code.
- (3) Operate as a front or pass through company.
- (4) Prevent or interfere with a contractor's or subcontractor's compliance with this Code.
- (5) This list is not exhaustive and violations of any other provision in this Code shall be deemed a prohibited activity, and contractors/subcontractors who engage in prohibited activities, or commit any other violation in this Code.

11-1-309. TERO fee.

(1) The TERO fee is assessed for the privilege of conducting business on the Reservation or on Tribal projects off the Reservation and for the cost of assistance and enforcement under this Code.

(2) Every construction project or construction contract with total aggregate price of \$5,000 or more will be assessed a TERO fee of 5 percent of the total gross contract price.

(a) TERO fee of 5 percent shall be broken down accordingly: The TERO Director shall develop a spending plan of the 3 percent fee; the Finance Department shall develop a spending plan of the remaining 2 percent fee used to handle administrative affairs.

(3) The contracting agency or general contractor shall be the responsible party for paying the entire TERO fee for the project.

(4) Upon completion of the compliance plan, the TERO Department may invoice the general contractor or contracting agency for the TERO fee with payment due within 14 days of the invoice. Lack of an invoice shall not relieve any obligation to pay the required fee. The TERO fee shall be paid in full, prior to commencement of any work. However, where good cause is shown, TERO may authorize installment payments to be paid over the course of the contract.

(5) Fee collection enforcement and property seizure provisions shall be pursuant to enforcement provisions in Part 5 of this Chapter.

(6) The 5 percent TERO fee may be waived in limited circumstances if approved by the TERO Sub-Committee and ratified by the Business Committee through Resolution.

11-1-310. Change order fee assessment.

If for any reason the cost of the project increases or decreases, the contracting agency or general contractor shall notify TERO of this change and any additional TERO fee shall be assessed and paid or refunded.

11-1-311. Construction trade unions.

Nothing herein shall constitute Chippewa Cree Tribe recognition of any union or endorsement of any union activity, and unions have no jurisdiction or authority over any activities operated pursuant to the sovereign authority of the Chippewa Cree Tribal Government. An employer, contractor or subcontractor having a collective bargaining agreement with one or more labor unions must obtain written agreement from said unions indicating that they will comply with this Code, and the rules, regulations and orders of the TERO Representative. Until such agreement is filed with the TERO Representative, the employer shall not commence work on the Rocky Boy's Indian Reservation.

11-1-312. Monitoring responsibilities.

Each contracting agency shall be responsible for monitoring and enforcing preference implementation in contracting, employment, and training by its contractors and subcontractors. Should incidents of noncompliance be found to exist, the agency or contractor shall take appropriate remedial action.

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Part 4. Certification of Native American Owned Business (NAOB)

11-1-401. TERO NAOB certification.

An applicant seeking to be TERO certified for preference in contracting shall submit a complete certification application, along with the following documents:

- (1) Documentation of membership of a federally and/ or State recognized Indian tribe, nation or band, including members of Canadian Indian Tribes, and corporations and proof of at least 51 percent Native ownership.
- (2) Business license certifications, business structure documents (sole proprietor, partnerships, incorporations, LLC), insurance and bonding capabilities.
- (3) TERO shall require all other necessary licensing documentation specific for the service provided as determined by TERO.
- (4) TERO reserves the right to exempt certain requirements if deemed not necessary for the type of service provided.
- (5) (Industry Standards) Portfolio that includes proof of the experience and staff expertise in the specific field listed, resume of jobs completed, and references.
- (6) Any other documentation or pertinent information required by TERO. TERO shall have sole discretion in determining licensing requirements under this section.
- (7) TERO shall require that each NAOB maintain and provide a Federal tax ID number to TERO and separate Chippewa Cree business licenses for each separate business as required by TERO. TERO shall require each separate business to meet all NAOB certification requirements in this section.
- (8) All NAOBs shall report any changes of ownership or control status within 14 days after such changes have occurred. If at any time Native American ownership drops below 51 percent TERO reserves the right to decertify the company.
- (9) The TERO Department shall review the status of all certified NAOBs on an annual basis. Each NAOB shall update their information annually. Failure to provide information pursuant to these requirements shall constitute grounds to be decertified and taken off the NAOB registry.

11-1-402. Appeal of denied certification.

Denial of NAOB certification by the TERO Department may be appealed to the TERO Sub-Committee. The written appeal must be received by TERO within 14 days of the denial notice. The TERO Sub-Committee's decision is final and cannot be further appealed.

A firm that has been denied certification may not re-apply for a period of time as determined by the TERO Sub-Committee Committee on a case-by-case basis.

11-1-403. Decertification.

A NAOB is subject to decertification if the business engaged in prohibited activities or has changed its ownership and control so that it no longer meets the requirements for certification. Failure to notify TERO of changes in ownership, control, or operations shall also be grounds for decertification.

Part 5. Enforcement

11-1-501. Due process.

All persons, agencies, departments, entities, and contractors shall have the rights to due process through a fair non-biased process.

11-1-502. Complaint.

(1) An aggrieved party ("complainant") may file a written signed complaint stating the basis for an alleged violation of this Code. The complaint must include a detailed account of the facts with supporting documentation and the remedy that they are seeking. The complaint must be filed at the TERO office within 14 days from the date of the last action or omission upon which the complaint is based. The TERO office shall serve the complaint on the respondent.

11-1-503. TERO jurisdiction determination.

Upon receipt of a complaint, TERO shall conduct a preliminary review to determine if TERO has jurisdiction over the complaint.

11-1-504. Investigations.

The TERO staff shall have full investigative authority as deemed necessary to determine whether a violation of any provision of this Code has occurred or to aid in prescribing rules, regulations, and guidelines hereunder.

All reported incidents shall be investigated under the following guidelines:

- (1) All information shall be kept confidential to the fullest extent possible, unless disclosure is required for further investigation, or during a hearing or appeal.
- (2) TERO will not allow retaliation against any parties that may be included in the investigation or complaint process.
- (3) An employer may not be held liable for such acts of its employees, if the employer is able to establish that they took immediate and appropriate corrective action.
- (4) If a covered employer or contractor refuses to permit TERO staff from entering onto business premises during business hours or from reasonably inspecting or copying documents, the TERO Director may impose a violation with fines.

11-1-505. Complaint process and determination.

(1) Upon determination that TERO has jurisdiction over the matter, TERO staff will meet with the complainant within 7 days of receiving the complaint.

(2) TERO shall attempt to remedy the issue through mediation with both parties within 10 days of first receipt of the complaint. If the parties are unable to resolve the dispute through mediation, TERO shall begin a formal investigation within 7 days of the close of mediation.

(3) During the investigation, TERO shall review all pertinent documentation and any additional information, if any, and shall gather written statements from both parties. The complainant has the burden to prove that a violation of this Code did in fact occur. Both parties shall also have the responsibility to provide all relevant documentation. TERO has 21 days to complete the investigation.

(4) Within 7 days of the completion of the investigation, TERO shall notify the complainant and responding party in writing of the findings and the basis for such findings, and remedies ordered.

(5) If TERO finds insufficient evidence to establish that a violation occurred, the file shall be closed and notice of closure shall be provided to both parties.

11-1-506. Penalties and remedies.

(1) TERO shall have the authority to issue citations with a warning, assess penalties and other remedies. Upon a finding of a violation of this Code, under the direction of the TERO Director, the TERO staff shall have the authority to assess the following penalties and remedies:

- (a) Impose a remedial civil penalty not to exceed \$5,000 per violation;
- (b) Order any employer to remedy the situation;
- (c) Issue a stop work or removal order;
- (d) Order the payment of back pay and/or punitive damages;
- (e) Order the payment of documented lost profits;
- (f) Any other penalties authorized under specific sections of this Code;
- (g) Withhold payment until the violation is remedied;
- (h) Suspension or termination of the contract;
- (i) Debarment from contracting with the Chippewa Cree Tribe for up to one year; debarment for up to three years may be imposed for willful repeated violations. Individuals debarred from contracting may not bid or participate in any Tribal contracts as owners or employees of other companies during the period of debarment;
- (j) Denial of certification;
- (k) Suspension of certification; and/or
- (l) Decertification.

The CCT Title VI, Chapter 1, Employee Rights approved as a 1st Reading on May 4, 2017 during the monthly Business Committee Meeting. The CCT Title VI, Chapter 1, Employee Rights approved as a 2nd Reading on June 1, 2017 during the monthly Business Committee Meeting. The CCT Title VI, Chapter 1, Employee Rights approved as a 3rd Reading on July 13, 2017 during the monthly Business Committee Meeting. Passed by Resolution No. 133-17 with an effective date of November 2, 2017.

(2) If the Director believes that immediate action is necessary to prevent irreparable harm resulting from an alleged violation of this Code, the Director may request the TERO Sub-Committee to issue a temporary order for immediate interim injunctive relief not to exceed 14 days.

(3) All monetary penalties shall be paid within 30 days from date of the citation. If a party fails to file a timely appeal or comply with a TERO order, TERO may petition the Chippewa Cree Tribal Court for an order of enforcement.

11-1-507. Enforcement violation.

The Director shall have authority to seek enforcement in Chippewa Cree Tribal Court, if necessary. The Tribal court shall have jurisdiction over proceedings brought by the Director to enforce TERO orders, and may assess attorney fees and costs, and such other sanctions in addition to those contained in the order, that the court deems just and reasonable.

11-1-508. Appeals to TERO Sub-Committee.

(1) Any party that is dissatisfied or aggrieved by a decision from TERO may file a written appeal to the TERO Sub-Committee within 14 days from the date of receipt of the decision. The appeal notice shall state the reasons for the appeal and shall have a copy of the decision or order attached. If the party fails to respond within the 14 days they shall lose all rights to challenge or appeal, and the decision or order shall be final and be enforced immediately.

(2) The TERO Sub-Committee shall review the files and determine if they will hold a hearing on the case, or if they can decide the case based on the written materials submitted by the TERO and the complainant. If the TERO Sub-Committee determines that a hearing is unnecessary, the TERO Sub-Committee shall issue an order stating the basis for its decision.

11-1-509. Pre-hearing process.

(1) Review of TERO Files. The responding party shall have the right to review the case file of the TERO Department by scheduling a visit during regular working hours at any point after receiving notice of a hearing. However, TERO shall have the right to excise proprietary information, the identity of confidential informants or confidential information from the file.

(2) Continuance. Any party can request a continuance of a TERO hearing. The party must show good cause for continuing the hearing.

11-1-510. TERO Sub-Committee hearing.

TERO Sub-Committee hearings will be closed, unless either party can show good cause to open the procedures to the public.

The roles and responsibilities of the parties are, but not limited to, as listed below:

(1) Parties aggrieved by a TERO order shall have the burden of proof that TERO was incorrect in finding a violation of this Code or the regulations adopted under it, or that any proposed penalty, sanction, award, or required action ordered by TERO is incorrect or unwarranted.

(2) The Chairperson of the TERO Sub-Committee will control the proceedings and shall take whatever action is necessary to ensure an equitable, orderly, and expeditious hearing.

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- (3) TERO staff shall present the requirements of the TERO Code in all TERO Sub-Committee hearings even if the hearing was initiated by a complaint filed by a private individual.
- (4) The respondent shall be present for the entire hearing to represent themselves.
- (5) If either party fails to appear, the TERO Sub-Committee will review all pertinent information and make their decision with the testimony presented.
- (6) In the absence of a quorum at a TERO Sub-Committee hearing, a case will be postponed until a later date.
- (7) All parties shall have a right to testify, without fear of reprisal or retaliation.

11-1-511. TERO Sub-Committee decision.

The TERO Sub-Committee findings shall be in writing and issued within 14 days after the hearing. The decision shall be effective and enforceable immediately.

11-1-512. Appeals to Chippewa Cree Tribal Court.

Any party that is dissatisfied or aggrieved by a final decision of the TERO Sub-Committee may file an appeal to the Chippewa Cree Tribal Court.

11-1-513. Legal representation.

If any party retains an attorney they must give a 14-day notice to TERO of their intent to have legal representation.

11-1-514. Sovereign immunity.

Nothing in this Code is intended to waive or alter the sovereignty of the Chippewa Cree Tribe, Tribal departments, entities or employees acting in their official capacities.

11-1-515. Severability.

If any provision of this Code shall be held to be illegal, void or unenforceable, such provision shall be of no force and effect, but the enforceability of all other provisions of this Code shall be unimpaired. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Code so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

11-1-516. Amendments.

Amendments to this Code will be reviewed and approved first by the TERO Sub-Committee prior to approval and adoption by the Business Committee.

11-1-517. Effective date.

This Code shall be considered as adopted and shall become effective upon approval by the Business Committee through Resolution No. 133-17 on November 2, 2017.

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