

**Tribal Employment Rights
Ordinance Of
The Kickapoo Tribe in Kansas
Revision I, August 15, 2003**

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CHAPTER 1- DECLARATION OF POLICY

The Kickapoo Tribe in Kansas believes that it is of crucial importance to create employment and training opportunities for their own members and for other Indians, and to attempt to eliminate employment discrimination against Indian people. An integral part of attaining this goal is constituted by the structuring of employment and training opportunities within the lands, territories and boundaries of the Kickapoo Tribe in Kansas, so as to provide for the hiring of Indians who are qualified and for the training of Indians in those areas in which there is not a sufficient number of qualified Indians to meet the employment opportunities. In addition, the policy of Indian preference will be implemented and adhered to in contracting and subcontracting, in accordance with the applicable provisions set forth in this Ordinance, in any and all supplementary ... ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission, in an effort to promote Tribal and individual economic development.

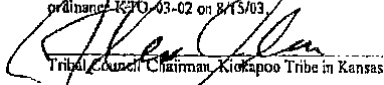
There exists substantial legal support for the policy of Indian preference in employment in federal statutory and regulatory law, of which following represent only a few examples.

Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) generally prohibits discriminatory practices in a number of elements of employment on the basis of race, color, religion, sex, or national origin. However, 42 U.S.C. 2000c-2(i) entitled "Preferential treatment to Indians living on or near reservations") provides a specific exemption from such general prohibition, as follows:

Nothing contained in this title (42 U.S.C. 2000e et seq.) shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) provides, in part that all federal contracts or subcontracts with or federal grants or sub grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible, (j) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises (25 U.S.C. 450e(b)).

This ordinance approved by Tribal Council action
of the Kickapoo Tribe in Kansas ordained by
ordinance KTC-03-02 on 8/15/03.


Tribal Council Chairman, Kickapoo Tribe in Kansas

25 C.F.R. 271.44 sets forth the federal regulations implementing the provisions of the above-identified section of the Indian Self-Determination Act, requiring, to the greatest extent feasible, that preference be given to Indians in employment and training and to Indian organizations and Indian-owned economic enterprises in the award of contracts and subcontracts.

The regulations promulgated by the Office of Federal Contract Compliance Programs provides, at 41 C.F.R. 60-1.5(a) (6), a specific exemption in the context of Indian preference, as follows:

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

Nothing contained in this Ordinance shall, in any manner or to any extent, violate or undermine any federal requirements relative to equal employment opportunities.

CHAPTER 2 - SHORT TITLE

This ordinance shall be known and cited as the Kickapoo Tribal Employment Rights Ordinance.

CHAPTER 3 - AUTHORITY

Article IV, Section A1 et, Seq; Article V, Section I and Section 2 of the Constitution of the Kickapoo Tribe of the Kickapoo Reservation (formally approved by the Secretary of the Interior) authorize and empower the Tribal Council to enact and implement the provisions set forth in this Ordinance.

CHAPTER 4 - DEFINITION OF TERMS

For the purposes of this Ordinance, the term:

- A. *CERTIFIED INDIAN-OWNED FIRM OR ENTITY - shall mean and include any commercial, industrial, or other business firm or entity in which fifty-one percent (51%) or more of the ownership is held by and fifty-one percent (51%) or more of the actual management and control is exercised by an Indian or Indians which percentages shall be certified by the TERO Commission.*
- B. *CERTIFIED KICKAPOO-OWNED FIRM OR ENTITY - shall mean and include any commercial, industrial, or other business firm or entity in which fifty-one percent (51%) or more of the ownership is held by and fifty-one percent (51%) or more of the actual management and control is exercised by a duly enrolled member of the Kickapoo Tribe in Kansas which percentages shall be certified by the TERO Commission.*
- C. *CHAIRMAN - shall mean the Chairman of the Kickapoo Tribe Tribal Employment Rights Commission.*
- D. *COMMERCE - shall mean and include all trades, traffic, distribution, communications, transportation, provisions of services, manufacturing, production, agricultural production, building, maintenance, construction, banking, mining, and energy resources production.*
- E. *COMMISSION - shall mean the Kickapoo Tribe Tribal Employment Rights Commission as established by this ordinance.*
- E. *COMMISSIONER - shall mean a member of the Kickapoo Tribe Tribal Employment Rights Commission.*
- G. *CONTRACT AND/OR SUB CONTRACT- are intended to be interpreted broadly and shall apply to all contracts, whether written or oral, including, but not limited to, contract for construction, supply materials, services, and equipment.*
- H. *COVERED EMPLOYER -shall mean and include any employer, including the Kickapoo Tribe in Kansas and all it's enterprises, departments and programs, who employs two or more employees within the lands, territories and boundaries of the Kickapoo Tribe in Kansas and/or who's contract is for \$10,000 or more.*
- I. *DIRECTOR- shall mean the Director of the Tribal Employment Rights Office.*

- J. *EEOC- shall mean the Equal Employment Opportunity Commission of the United States.*
- K. *EMPLOYEE- shall mean and include any currently working employee, any Applicant for employment, and any employee whose work has ceased as a consequence of, or in connection with, any current labor dispute or as a result of unfair labor practices and who has not secured any alternative regular and substantially equivalent employment; however, the term shall not mean and include any individual employed in the domestic services with any family or person at his/her name, or any individual employed by any other individual who is not an "employer, " as such term is defined hereinafter.*
- L. *EMPLOYEE ON THE KICKAPOO RESERVATION-shall mean and include any employee who, in a non-supervisory or non-managerial position, spends in excess of one-tenth (1/10) of his/her working hours per month or per pay period, whichever is the more brief, on the Kickapoo Reservation; the term shall also mean and include any employee who, in a supervisory managerial position, spends in excess of one-twentieth (1/20) of his/her working hours per month or per pay period, whichever is the more brief on the Kickapoo Reservation.*
- M. *EMPLOYER - shall mean and include, but not be limited to any person or entity who engages in commerce through compensated agents or servants, or who is hired in pursuant to contracts for services, within the lands territories and boundaries of the Kickapoo Tribe in Kansas entity acting in the capacity of a contractor or subcontractor of an employer, directly or indirectly; however, the term shall not mean and include the United State or any wholly-owned government corporation or any state or political sub-division thereof, but shall mean and include any independent contractors and subcontractors or the United States or of any wholly-owned government corporation or of any state or of any political subdivision thereof.*
- N. *ENTITY - shall mean any person, partnership, corporation, joint venture, Government, governmental enterprise or any other natural person or organization. The term entity is intended to be interpreted broadly to provide for maximum coverage in this definition.*
- O. *HARASSMENT- is to annoy persistently by acts that are willful disruptive. These acts can be both words or actions, and maybe communicated directly or indirectly. These acts may also be communicated in written form or any other audio/video format.*
- P. *INDIAN - shall mean and include any individual who is duly enrolled member of any federally recognized Indian Tribe, Band or Nation.*

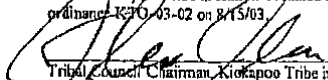
- Q. INDIAN PREFERENCE - shall generally mean that Indians residing within the lands, territories and boundaries of the Kickapoo Tribe in Kansas, without regard to tribal affiliation, shall be given preference over non-resident Indians in employment, training, contracting, and subcontracting, and that Indians, whether resident or non-resident, shall be given preference over non-Indians in employment, training, contracting and subcontracting.*
- R. INDIAN TRIBE - shall mean and include any Indian Tribe, Band, or Nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indian because of their status as Indians.*
- S. KICKAPOO DESCENDANT- shall mean a person who is not an enrolled member of any Kickapoo Band but can provide proper evidence of lineage to an enrolled member of any Kickapoo Band.*
- T LANDS, TERRITORIES, AND BOUNDARIES OF THE KICKAPOO TRIBE IN KANSAS- shall mean the Kickapoo Reservation as defined in article one of the Constitution and By-Laws of the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas and any and all lands owned by the Tribe wherever located.*
- U. NON CERTIFIED INDIAN OWNED FIRM OR ENTITY -shall mean and include any commercial, industrial or other business firm or entity in which less than fifty-one percent (51%) of the ownership is held by and less than fifty-one percent (51%) of the actual management and control is exercised by an Indian or Indians.*
- V. NONRESIDENT INDIAN (OR INDIAN NOT RESIDING WITHIN THE LANDS, TERRITORIES AND BOUNDARIES OF THE KICKAPOO TRIBE IN KANSAS) - shall mean and include any Indian who is not a "resident Indian," as such term is defined hereinbefore,*
- W. NOTICE - (as required to be given to unnamed parties to an action and to all interested persons no parties to an action, and in all instances where in a specific person is not addressed) shall be sufficient if such notice is published in a news publication serving the geographic area of the Kickapoo Reservation or posted in a public place within the lands, territories and boundaries of the Kickapoo Tribe in Kansas.*
- X OFCCP - shall mean the Office of Federal Contract Compliance Programs of the United States,*
- Y. PERSON - shall mean any human individual, male or female,*

- Z. *RESIDENT INDIAN (OR INDIAN RESIDING WITHIN THE LANDS, TERRITORIES AND BOUNDARIES OF THE KICKAPOO TRIBE IN KANSAS)* - shall mean and include any Indian, without regard to Tribal affiliation, who, on the date which any contract for on-reservation work is let or, in the case of any employment offer made by any employer permanently located on the Reservation, on the date on which any individual employment offer for on-reservation work is made, has been a bona fide resident of the Kickapoo Reservation for a period of not less than sixty (60) days next preceding the date on which such contract is let or employment offer is made.
- AA. *SECRETARY*-shall mean the Secretary of the Interior or his duly authorized representative.
- BB. *TERO* - shall mean the Kickapoo Tribe Tribal Employment Rights Office.
- CC. *TRIBAL AFFILIATION* - Shall mean the particular federally recognized Tribe, Band or Nation an Indian is duly enrolled in.
- DD. *TRIBAL COUNCIL* -shall mean the Tribal Council of the Kickapoo Tribe in Kansas.
- EE. *TRIBAL PREFERENCE* - shall generally mean that enrolled members of the Kickapoo Tribe in Kansas or certified Kansas Kickapoo owned firms, whether resident or non resident of Kansas, shall be given preference as permitted by law over other Indians and non-Indians in employment, training, contracting, and subcontracting; whereas Federal, State and Local Government funds are subject to Indian Preference only and whereas Tribally funded programs, departments and enterprises shall exercise Tribal Preference.
- FF. *UNION (OR LABOR UNION)* - shall mean and include any organization, association, or combination of skilled workers, in which such workers participate and which is organized for such purposes as securing favorable wages, improved labor conditions, and improved hours of labor, and righting grievances brought against employment.
- GG. *TERO ORDINANCE* - shall mean the Kickapoo Tribal Employment Rights Ordinance as enacted and any amendment thereto.

CHAPTER 5 - APPLICABILITY

The provisions set forth in this Ordinance shall apply to any and all lands, territories and boundaries of the Kickapoo Tribe in Kansas, as defined in Article I of the Constitution of the Kickapoo Tribe and to such other lands, within or without such

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Ordinance KTC-03-02 on 8/15/03.


Tribal Council Chairman, Kickapoo Tribe in Kansas

boundaries, as have been or may be hereafter included within and subject to the jurisdiction of the Kickapoo Tribe under any law of the United States, except as otherwise provided by law.

CHAPTER 6- SCOPE OF TRIBAL/ INDIAN PREFERENCE- GENERAL PROVISIONS

All covered employers shall give preference in all aspects of employment to Indian preference eligible individuals. Covered employers shall give preference in the following order:

- (1) KS Kickapoo tribal member;
- (2) Enrolled members of any other Kickapoo Band
- (3) Resident Indian;
- (4) Non-Resident Indian;
- (6) Kickapoo Descendant
- (7) Non-Indian;

(5) (

All entities awarding contracts covered by the terms of this ordinance shall give preference to certified Indian business enterprises. Contract awarding entities shall give preference in the following order:

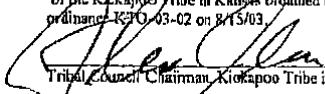
- (1) Certified Kickapoo-owned Firm or Entity; as defined in point B on page 3 of this Ordinance.
- (2) Certified Indian-owned Firm or Entity; as defined in point A, page 3 of this Ordinance.
- (3) Non-Indian owned Firm or Entity;

Native American TERO Certified Businesses that are qualified and come within ten percent (10%) of the lowest bid, will be provided negotiated preference.

CHAPTER 7-TRIBAL EMPLOYMENT RIGHTS OFFICE

The Tribal Employment Rights Office shall be vested with the general authority to implement and enforce the policy of Indian preference in employment and in contracting as established and espoused by the council. The Tribal Employment Rights Office shall have the specific duty and responsibility of engaging in the daily

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Tribal Council Chairman, Kickapoo Tribe in Kansas

implementation of the provisions set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules and regulations, and/or guidelines promulgated by the Commission.

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The supervisory authority over the staff of the Tribal Employment Rights Office shall be vested in the Tribal Employment Rights Director. The Tribal Employment Rights Director shall prepare line item budgets, based upon any and all sources of funding for the operation of the Tribal Employment Rights office, and shall oversee the expenditures of funds there from and may prosecute before the Commission, any and all claims of noncompliance with this Ordinance with any and all supplementary ordinances, or with any and all rules, regulations and/or guidelines promulgated by the Commission.

The Tribal Employment Rights Director, in conjunction with the staff within the Office, shall have the following authority, duties, and responsibilities:

- A. To develop and maintain in updated status a register setting forth the names of Indian-owned firms certified for Indian preference by the Commission, together with an identification of the respective areas of work in which such firms are considered qualified.
- B. To develop and maintain a plan for coordination with the Horton Agency, Bureau of Indian Affairs in disseminating the certification register to all appropriate covered employers.
- C. To develop and maintain a plan for the dissemination of this Ordinance of any and all supplementary ordinances, and of any and all rules, regulations, and/or guidelines promulgated by the TERO Commission, to all covered employers and to all governmental entities letting contracts within the lands, territories and boundaries of the Kickapoo Tribe in Kansas.
- D. To ensure compliance by, and administer sanctions to, covered employers with any and all reporting requirements as prescribed by this Ordinance, by and all supplementary ordinances, and by any and all rules, regulations, and/or guidelines promulgated by the TERO Commission.
- E. To enter into formal negotiations with representatives of any covered employer in an effort to resolve, on an informal, voluntary basis, any claim of noncompliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, or in any and all rules and regulations, and/or guidelines promulgated by the TERO Commission.
- F. To inspect any and all information non-privileged information (i.e. certified payroll, employment files, and any other information needed to certify a business as Indian owned) set forth in the books and records maintained by any covered employer for the purpose of ensuring continued compliance

thereby with the requirements set forth in this Ordinance, in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission.

- G. To conduct on-site inspections at any time during the actual operation of the business of any covered employer for the purpose of monitoring, compliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations and/or guidelines promulgated by the TERO Commission, and to speak with any contractor, subcontractor, or employee on-site, so long as such conversation does not significantly interfere with the operation of the business.
- H. To review applications for Indian preference certification (together with any and all supporting documentation), conduct whatever investigations are deemed necessary and/or requisite relative to any applicant's qualifications, and submit to the Commission a written analysis and recommended disposition of each such application.
- I. To initiate proceedings before the Commission for the purpose of suspending or revoking the Indian preference certification of a firm when changed circumstances so warrant.
- J. To monitor and ensure the collection from covered employers of the appropriate employment rights fees for the purpose of providing fiscal support for the operation of the Tribal Employment Rights Office.
- K. To secure additional funding from alternate sources (e.g. federal and/or state funding sources, private foundations, and public agencies), if necessary for the continued adequate functioning of the Tribal Employment Rights Offices.
- L. To implement and maintain a skills bank, from which covered employers, shall select and employ qualified Indians to fill employment positions.
- M. To establish minimum numerical hiring goals and timetables setting forth the minimum number of qualified Indians a covered employer must employ within its work force, during any year, by craft, skill area, or job classification.
- N. To require covered employers to establish and maintain job training or apprenticeship programs for the purpose of assisting Indians to become qualified in the various crafts skill areas, or job classifications used by such employers and of increasing the pool of Indians qualified to engage in various employment position available on the Kickapoo Reservation.
- O. To prohibit covered employers from instituting and utilizing job qualification criteria and/or personnel requirements, which, in effect, serve as barriers to employment of Indians, unless such criteria and/or requirements can be demonstrated to be required by business necessity.

- P. To enter into negotiated agreements with labor union for the purpose of ensuring union compliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission.
- Q. To work in conjunction (and possible enter into cooperative agreements) with federal agencies whose regulations provide for the policy of Indian preference in employment and in contracting (e.g. EEOC and OFCCP), for the purpose of attempting to coordinate the respective Indian preference requirements, monitoring efforts, and sanctioning activities to the extent possible.
- R. To assume the full power and authority of the Tribal Employment Rights Commission in emergency situations or under exigent circumstances (e.g. immediate action must be taken and/or a decision made so as to prevent further substantial harm resulting from certain noncompliance or it is impossible to secure a quorum of the members of the Commission); provided, however, that any such action taken and/or decision made by the TERO Director shall be deemed temporary, pending review thereof and a determination thereon by the Commission within a period not to exceed thirty (30) days from the date on which such action was taken and/or decision made.
- S. To take such other actions and engage in such other activities as are deemed necessary to achieve the purposes and objections inherent in the policy of Indian preference in employment and in contracting.

CHAPTER 8 - TRIBAL EMPLOYMENT RIGHTS COMMISSION

As the governing body of the Kickapoo Tribe, the Tribal Council hereby delegates to the Tribal Employment Rights Commission all of its constitutional authority and power to implement the federally recognized policy of Indian preference in employment and contracting.

The Commission shall be constituted by five (5) members, each shall be formally appointed by the Tribal Council. One (1) of the five (5) members of the commission shall be a member of the Tribal Council. The Tribal Council representative shall be appointed by the Council annually or as they deem necessary. The commission shall designate one of such commissioners as commission chairman and vice chairman. The vice chairman will preside in the absence of chairman. In the absence of both the chairman and vice chairman, the remaining three commissioners shall designate a temporary chairman. Presiding official shall only vote in the event of a tie. To ensure continuity, the commissioners' terms shall be staggered. The Tribal Council, in 2003, shall appoint one (1) tribal council member to the commission and two (2) regular members to four-year terms, and the remaining two (2) members to three-year terms. Thereafter, all commissioners shall be appointed to four-year terms, except the Tribal Council member

commission position. Three (3) commissioners shall constitute a quorum to transact business. Members of the Commission may be removed for cause by a three-fourths (3/4) vote of the members of the Tribal Council. When a vacancy occurs in the commission, the remaining members may exercise all the powers of the commission until the vacancy is filled. Vacancies in the Commission may be filled by appointment by the Tribal Chairman with the advice and consent of the Tribal Council.

Members of the Commission may be removed for cause by a three-fourths (3/4) vote of the members of the Tribal Council.

No members of the Commission shall receive a stipend while on duty for the Kickapoo Tribe in Kansas.

The Tribal Employment Rights Commission shall be vested with the general authority to implement the policy of Indian preference in employment and in contracting as established and espoused by the Tribal Council. The Commission shall have the following specific authority, duties, and responsibilities:

- A. To establish and implement rules and regulations governing all activities and procedures of the Commission.
- B. To issue rules, regulations, and guidelines deemed necessary to fully implement the provisions set forth in this Ordinance and those set forth in any and all supplementary ordinances.
- C. To meet with the TERO Director and staff members on a monthly basis for the purpose of securing updates relative to the operation of the TERO Office.
- D. To hold formal hearings, notices thereof, and subpoena witnesses and documents in accordance with the hearing procedures set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission.
- E. To impose any sanctions and grant any relief as authorized and prescribed by this Ordinance and by any and all supplementary ordinances, rules and regulations.
- F. To require any covered employer to pursue whatever corrective actions are deemed necessary for such employer to come into compliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and/or in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission.
- G. To take such other actions and engage in such other activities as are deemed necessary to achieve the purposes and objectives inherent in the policy of Indian preference in employment and in contracting.

In the event that, at any hearing before the Commission, the members of the Commission should determine that a potential conflict of interest exists between a member or members of such body and a hearing participant or participants, any such member or member of the Commission shall be disqualified from any participation in such hearing and shall not be present there at.

CHAPTER 9 - EMPLOYMENT RIGHTS FEE

Pursuant to their Constitutional and federally recognized power and authority, the Kickapoo Tribe hereby imposes an Employment Rights Fee on certain covered employers, for the partial purpose of deriving a source of revenue for the administration and operation of the Tribal Employment Rights Office, an instrumentality and agency of the government of the Kickapoo Tribe.

Each covered employer, irrespective of whether its principal place of business is located within or without the lands, territories and boundaries of the Kickapoo Tribe in Kansas, who engages in business, in the capacity of a prime contractor or subcontractor, in the area of mineral exploration, mineral development, or construction (including but not limited to, residential, commercial, industrial, highway, and bridges), shall be liable for payment of an Employment Rights Fee in the amount of two percent (2%) of the total gross contract price per each contract of \$10,000 or more entered into. If the employer initially enters into a contract/project or subcontract of less than \$10,000, but subsequently increases costs, resulting the total amount of the contract/project or subcontract being \$10,000 or more, the two percent (2%) fee shall apply to the total amount of the contract/project or subcontract. Also, the two percent (2%) fee shall apply to any additional subsequent increases or overruns to any contract/project or subcontract once the \$10,000 threshold has been met. Such fee may be paid in installments over the period of performance of the contract.

Fifty percent (50%) of the amount paid by the covered employer as the amount owed for the Employment Rights Fee shall be paid in the Accounting Department of the Kickapoo Tribe, and shall be deposited by such office in a special account, the funds from which account shall be used for the administration and operation of the Tribal Employment Rights Office. The remaining fifty percent (50%) of the amount paid in the Accounting Department of the Kickapoo Tribe shall be deposited in the general account of the Kickapoo Tribe to be used for general governmental purposes. The TERO Director and staff members within the TERO shall have the duty and authority to collect such fees and to establish such rules and regulations, subject to the approval of and adoption by the Tribal Employment Rights Commission, as are deemed necessary so as to ensure an equitable and timely fee collection procedure. Any prime contractor or subcontractor liable for payment of such fee, who failed to make payment of the required fee in a timely manner, as presented by the rules and regulations established by the TERO, shall be subject to one or more of the sanctions prescribed by and set forth in

Chapter 11 of this ordinance, as imposed by the Tribal Employment Rights Commission upon formal hearing.

CHAPTER 10 - COMPLAINT AND HEARING PROCEDURE ^I

Any person, including covered employers, employees, contractors, subcontractors, and the TERO Director, who believes that any other person has failed to comply with any requirements set forth in this Ordinance, amendments hereto, or any and all rules, regulations, promulgated by the TERO Commission, shall file a written complaint with the TERO Office, stating the factual basis of the alleged noncompliance.

Upon the filing of any such complaint, the TERO Director shall forthwith direct written notice of the alleged noncompliance to the person against whom the allegation of noncompliance has been made. Within a period of three (3) days (exclusive of weekends, tribal and legal holidays) from the date of receipt of such notice, the person against whom the complaint has been filed and the TERO Office shall attempt to achieve a voluntary, informal resolution of the matter through negotiation. In the event that no such resolution has been achieved at the termination of such three (3) day period, the TERO Office shall forthwith notify the Commission and request that it set a date for a formal hearing on the matter within a period of five (5) business days from the date of such notification.

Upon its receipt of such request for hearing, the Commission shall forthwith direct to (1) the person against whom the allegation of noncompliance has been made, (2) the complaint, (3) the TERO Director, and (4) any and all other identified interested person, written notice of such hearing, wherein is set forth the date, time, and location of such hearing. In addition, such notice shall advise each interested person (1) the nature of the hearing, (2) the right to be present at and participate in the hearing, (3) the right to present the testimony of witnesses and documentary evidence and to cross-examine witnesses, and (4) the right to be represented by counsel at his/her/its own expense. On its own initiative, or upon the request of any person so notified of such hearing, the Commission shall subpoena identified witnesses and documents and/or records.

At all hearings before the Commission, the following rules of procedure shall be recognized and adhered to:

- A. Each notified interested person shall have the right to be present at and participate in the hearing.
- B. Each such person shall have the right to present relevant sworn testimony and documentary evidence.
- C. Each such person shall have the right to call witnesses on his/her/its own behalf and to cross-examine witnesses called by any other hearing participant.
- D. Each such person shall have the right to be represented by counsel at his/her/its own expense.

- E. The Chairman of the Commission or a member thereof appointed by Chairman shall preside over the proceedings.
- F. Neither the formal rules of evidence nor any formal rules of procedures need be observed, but the Commission shall proceed to ascertain the facts inherent in the matter in a reasonable and orderly manner.
- G. A complete transcript of the proceedings shall be made and maintained by the commission.
- H. The proceedings may be continued at the discretion of the Commission, should it deem such action advisable.
- I. Any matter to be proven must be so done to the satisfaction of the Commission by a preponderance of the evidence.
- J. At the termination of the proceedings, the Commission, within its discretion, may either render an immediate determination or take the matter under advisement and issue its decision no later than three (3) days from the date of the hearing (exclusive of weekends, tribal and legal holidays).

Within a period not to exceed three (3) days from the date of the hearing (exclusive of weekends, tribal and legal holidays), the Commission shall issue its written decision and order, setting forth the specific ground therefore and shall direct a copy thereof to each notified interested person who was present at and participated in the hearing. Should the Commission determine that the person against whom the complaint was brought did fail to comply with any requirement(s) set forth in this Ordinance, any and amendments hereto, or any and all rules, regulations, promulgated by the TERO Commission, the Commission shall impose one or a combination of the sanctions set forth in Chapter 11 of this ordinance and shall order such person to take such corrective actions as are deemed necessary to remedy any harm caused by the noncompliance at issue. The decision of the Commission shall be final and binding upon all parties.

CHAPTER 11 - SANCTIONS

Any one or combination of the following sanctions shall be imposed by the Commission upon its determination that a person has failed to comply with any requirements set forth in this Ordinance, any amendments hereto, or any and all rules, regulations, or guidelines promulgated by the TERO Commission.

- A. Imposition of a civil monetary fine not to exceed the amount of Five Thousand and 00/100 Dollars (\$5,000.00) per violation. Each day of noncompliance constitutes a separate violation.

- A. Suspension or termination of the person's current conduct of business within the exterior boundaries of the Kickapoo Reservation. Upon termination, such person be granted a reasonable amount of time to remove its equipment and other property located on tribal lands.
- B. Prohibition of the non-complying person's engaging in the future conduct of business within the lands, territories and boundaries of the Kickapoo Tribe in Kansas for a definite or indefinite period.
- C. Monetary provisions, back pay, or other appropriate relief as, and for damages to compensate any person harmed as a result of the noncompliance.
- D. Order the immediate termination by the covered employer of any individual(s) hired in violation of any TERO ordinance requirements.
- E. Order the immediate recession of any contract(s) and/or entered into by the covered employer in violation of any TERO ordinance requirements.
- F. Order the employment, promotion, and training by the covered employer of any Indian individual(s) adversely affected by the noncompliance with any TERO ordinance requirements.
- G. Re-order the award of a contract or sub contract by a covered employer to the firm adversely affected by the noncompliance with any TERO ordinance requirements according to the standard outlined in Chapter 6.
- H. Order the covered employer to implement changes in its policies, procedures, or conduct as are necessary to secure compliance with TERO ordinance requirements.
- I. An order attaching or seizing the equipment and property of the covered employer for any of the monetary sanctions imposed under this Chapter or the fees assessed pursuant to Chapter 9.
- J. Such other and further relief or sanctions as the Commission deem just, proper and necessary to correct the TERO ordinance violation(s).

Non compliance with any TERO Ordinance requirements means failure of compliance with the TERO Ordinance, the law applicable to Indian Preference,

and any and all of the TERO Commission's orders, rules, regulations, and guidelines.

CHAPTER 12 - EFFECTIVE DATE OF ORDINANCE

This TERO Ordinance shall be effective IO days after notice of passage of the Ordinance by the Tribal Council is posted in the tribal offices and at least three (3) community gathering places. The notice shall be posted by the TERO Office. Copies of the ordinance shall be available at the TERO office for inspection.

This ordinance shall be considered published when the same has been posted as stated above. Documentation of the posting shall be kept at the TERO office. An original of the TERO Ordinance shall be filed with the Secretary of the Tribe and the TERO Office.

CHAPTER 13 - CONFIDENTIALITY OF TERO FILES

All written materials, relating to any covered employer, including certified Indian-owned firms, maintained on file in the TERO Office shall remain strictly confidential. Such written materials shall include, but not be limited to, Indian preference certification, applications and accompanying documentation, financial records, tax records, corporate and other business organic documents, resumes, and financial institution documents. No person other than the TERO Director, TERO staff members, and members of the TERO Commission, shall have any access whatsoever to any such written materials or other information maintained on file in the TERO Office; *provided, however, that an authorized representative or agent of a covered employer shall have the right to secure access, only with written authorization, to the particular file so maintained on such covered employer, for the purpose of review and/or photo static copying within the location of the TERO Office (i.e. no file or any written materials maintained therein shall be removed from the location of the TERO Office by any such representative or agent of a covered employer).*

In addition, the TERO Director, staff and Commission shall be obligated to recognize and comply with the policy of such confidentiality in the context of the prohibition against their relating, whether verbally or in a written form, any information whatsoever to any other person relative to such written materials so maintained on file in the TERO Office.

Materials filed with the TERO Office that are public records are not protected from disclosure. Information obtained by the TERO Office as a result of their activities and duties under the TERO Ordinance are not considered public record.

This ordinance approved by Tribal Council action
of the Kickapoo Tribe in Kansas ordained by
ordinance KTO-03-02 on 8/15/03.


Tribal Council Chairman, Kickapoo Tribe in Kansas

CHAPTER 14 - ON-SITE INSPECTIONS

The TERO Staff shall have the right to conduct periodic on-site inspections at any time during the actual operation of the business of any covered employer, in order to monitor compliance with the TERO Ordinance, any order of the Commission, and any and all rules, regulations, or guidelines promulgated by the TERO Commission. During the period of such on-site inspection, such TERO Staff shall have the right to speak with any contractor, subcontractor, or employee working on the site, so long as such conversation does not significantly interfere with the operation of the business. In addition, such TERO Staff shall have the right to inspect any and all records and other written materials maintained on-site by a covered employer. Any and all such written materials so inspected shall be subject to the confidentiality requirements set forth in Chapter 13 of this Ordinance. The TERO Staff shall have the right to copy records inspected for the purposes of enforcing this TERO Ordinance, any order of the Commission, and any and all rules, regulations, or guidelines promulgated by the TERO Commission.

CHAPTER 15 - COMPLIANCE PLAN

Subsequent to the effective date of this Ordinance, the covered employer, who intends to do business within the exterior boundaries of the Kickapoo Reservation, shall not commence the conduct of such business until such time as the covered employer completes a compliance plan for This TERO Ordinance and Indian preference. After such consultation and previous to the commencement of the conduct of business, the compliance plan must be approved by the TERO Director.

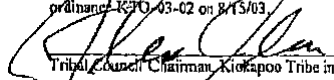
CHAPTER 16 - UNION AGREEMENTS

A covered employer, who intends to enter into a collective bargaining agreement with a labor union, shall ensure that such agreement includes a preference requirements set forth in this TERO Ordinance. Any such collective bargaining agreement shall be approved by the TERO Director.

CHAPTER 17 - ENFORCEMENT OF ORDERS

All orders of the TERO Commission are final orders and are enforceable in the same manner as court orders. The Commission is authorized to enforce its orders by directing the Kickapoo Tribal Police to serve the orders with the same power and authority as court orders.

This ordinance approved by Tribal Council action
of the Kickapoo Tribe in Kansas Ordained by
Ordinance K30-03-02 on 8/15/03


Tribal Council Chairman, Kickapoo Tribe in Kansas

CHAPTER 18- RECOGNITION OF FREEDOM OF RELIGION

A covered employer shall make any reasonable modifications in the operation of its business for the purpose of accommodating the religious beliefs, traditions, and practices of Indian employees and Indian-owned firms in accordance with any relevant guidelines, which may be promulgated by the TERO Commission. Such modifications shall be included in the compliance plan.

CHAPTER 19 - HARASSMENT

No person, including any representative or agent of a covered employer, contractor, subcontractor, or certified Indian-owned firm, shall attempt to or, in fact, harass, intimidate, or retaliate against the TERO Staff or Commission, or any member thereof. Should any person be deemed by the TERO Director to have violated such prohibition against harassment, intimidation, and retaliation, the Director shall forthwith direct to such person's employer, by certified mail, a formal written warning, setting forth a detailed description of the nature of the alleged harassment, intimidation, or retaliation, and a clear admonition that such conduct shall forthwith be discontinued. Should such conduct continue subsequent to the receipt by such employer of the written warning, the TERO Director shall forthwith notify the Commission of the matter and request that a date be set for a formal hearing thereon. Any such hearing shall be conducted in accordance with the rules of procedure prescribed by and set forth in Chapter 10 of this Ordinance. Should the Commission determine that such employer did violate the prohibition against harassment, intimidation, and retaliation, the Commission shall impose against the employer, depending upon the degree of severity of such conduct, any one or combination of the sanctions prescribed by and set forth in Chapter 13 of this Ordinance.

CHAPTER 20 - RULES AND REGULATIONS

Any and all rules, regulations, or guidelines promulgated by the TERO Commission are incorporated and made part hereof after posted in the tribal offices and at least three (3) community gathering places. The notice shall be posted by the TERO Office. Copies of the rules, regulations, or guidelines shall be available at the TERO office for inspection.

The rules, regulations, or guidelines shall be considered published when the same has been posted as stated above. Documentation of the posting shall be kept at the TERO office. The original of the rules, regulations, or guidelines shall be filed with the TERO Office.

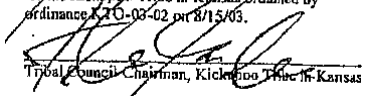
CHAPTER 21 - SEVERABILITY

Should any provision set forth in this Ordinance, or the application thereof to any person or circumstance, be held invalid. by a court of competent jurisdiction the full remainder of such provision, or the application of the provision to another person or circumstance, shall not be affected thereby.

CHAPTER 22 - COVERAGE

This Ordinance shall be applicable to all covered employers whether such person is doing business within the lands, territories, and boundaries of the Kickapoo Tribe in Kansas or the confines of the Kickapoo Reservation as defined under the Treaty of May 18, 1854, and to such other lands as may be hereafter added thereto under any law of the United States, at the time of the effective date hereof or will be so doing business subsequent thereto.

This ordinance approved by Tribal Council action
of the Kickapoo Tribe in Kansas obtained by
ordinance KTO-03-02 per 8/15/03.


Tribal Council Chairman, Kickapoo Tribe in Kansas



Resolution KT 03-73

RESOLUTION

WHEREAS, the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas is organized in accordance with the provisions of the Indian Reorganization Act of June 18, 1934, (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378), and

WHEREAS, the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas is empowered by the Kickapoo Constitution and By-Laws approve by the Secretary of the Interior on February 26, 1937, and

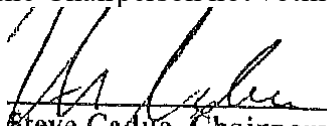
WHEREAS, the governing body of the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas shall be the Kickapoo Tribal Council as authorized under the Kickapoo Constitution and By-Laws in Article III, Section 2, and

WHEREAS, there is a need to revise the Tribal Employment Rights Ordinance (TERO) RES. KT 02-51 of June 6, 2002, to create employment and training opportunities for our tribal members and other Indians, and

THEREFORE, BE IT RESOLVED the Kickapoo Tribe in Kansas adopts the attached revised ordinance entitled the Tribal Employment Rights Ordinance of the Kickapoo Tribe in Kansas, Revision I August 15, 2003 effective September 1, 2003.

CERTIFICATION

The foregoing Tribal Council Resolution was adopted by the Kickapoo Tribal Council in a Special Session called for and by the Tribal Chairperson on this 21st day of August, 2003 at which 5 members were present, constituting the required quorum, with 3 voting for, 0 against, 1 abstaining, with the Chairperson not voting.


Steve Cadue, Chairperson

ATTEST:


Howard Allen, Secretary

