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CHAPTER 41
TRIBAL EMPLOYMENT RIGHTS

41-1.01 **Name**

This Chapter will be known as the “Tribal Employment Rights”, also commonly known as the “Tribal Employment Rights Ordinance” (T.E.R.O.).

41-2.01 **Purpose**

The purpose of this Chapter is to assist in and require fair employment of Indians on or near the Coeur d’Alene Reservation and to prevent discrimination against Indians in any employment practices by employers on or near the Reservation. The Tribal Employment Rights Board will govern and establish rules, regulations and policies. The Board’s responsibility and authority are to ensure on or near the Reservation compliance with this Chapter.

41-3.01 **Statement of Purpose**

As a guide to the interpretations and application of this Chapter, the public policy of the Coeur d’Alene Tribe is declared to be as follows:

Like land, water and minerals; jobs, contracts and subcontracts in the private sector on or near our Reservation are important resources for Indian people. Indians must protect their rights and obtain their share of workforce opportunity, as they become available. Indians have unique and special employment, subcontract and contract rights and the Coeur d’Alene Tribal government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indian people. Indians are also entitled to the protection of the laws that the federal government has adopted to combat employment discrimination, and the Tribal government can and should play a role in the enforcement of those laws. The Coeur d’Alene Tribe believes it is important to establish an employment rights program and office in order to use the aforementioned laws and powers to increase employment of Indian workers and businesses and to eradicate discrimination against Indians.

41-4.01 **Consistent with Congressional Action**

Nothing contained in this Chapter will supersede or be inconsistent with Federal Law on Equal Employment Opportunity, namely;

(A) Federal Laws:

1. Title VII of the Civil Rights Act prohibits preferential employment on the basis of race, color, sex, national origin, and religion. However, Title VII contains a special exemption, which makes Indian Preference permissible. Section 703 (i) of the 1964 Civil Rights Act states “[N]othing contained in this title will apply to any business or enterprise on or near an Indian

Reservation with regard to any publicly announced employment practices of such business or enterprise under which a preferential treatment is given to any individual because he or she is Indian.”

2. The Office of Federal Contract Compliance Programs Executive Order 11246 issued in 1977 states: “Work on or near Indian Reservation. It shall not be a violation of the equal opportunity clause for construction or non-construction to extend publicly announced preference in employment to Indians living on or near an Indian reservation. The use of the word “near” would include all that area where a person seeking employment, could reasonably be expected to commute to and from in the course of a work day. Contractors or subcontractors extending such a preference will not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such preference will not excuse a contractor from complying with the other requirement contained in this chapter.”

(B) Congressional Endorsement:

The United States Congress justifies that the Indian tribe’s power to impose preferential requirements on the grounds that “[T] his exemption is consistent with the Federal Government’s policy of encouraging Indian employment and with the special legal position of Indians.”

41-5.01 **Definitions of Important Terms and Words**

- (A) Agent. An employee or individual authorized to act on behalf of the Board and this representative authorized by the Board to direct and enforce the T.E.R.O. The primary agent for the Board shall be the T.E.R.O. Manager.
- (B) Business for Profit. Shall mean any business, enterprise or operation, which is not considered a nonprofit or not-for-profit organization by the IRS.
- (C) Chairperson. Shall mean the Chairperson of the Coeur d’Alene Tribal Employment Rights Board
- (D) Board. Shall mean the Coeur d’Alene Tribal Employment Rights Board.
- (E) Board Member. Shall mean a Member of the Coeur d’Alene Tribal Employment Rights Board
- (F) Core Crew. Shall mean a member of a contractor’s or subcontractor’s crew who is a regular, permanent employee and is in a supervisory or other key position such that the employer would face a serious financial loss or unacceptable risk if that position were filled by a person who had not previously worked for that contractor or subcontractor.

- (G) Council. Will mean the Tribal Council of the Coeur d'Alene Tribe.
- (H) Direct Federal Contracts. A direct federal contract is a contract let by a Federal agency directly to a general or prime contractor.
- (I) EEOC. Shall mean the Equal Employment Opportunity Commission of the United States.
- (J) Employer. Shall mean any person, company, contractor, subcontractor or other entity located or engaged in work on or near the Coeur d'Alene Reservation.
- (K) Engaged in Work On or Near the Reservation. An employer is "engaged in work on or near the Reservation" when an employer is engaging in construction work within boundaries of the Reservation, or when work is commenced or continued within commuting distance. Near the Reservation will be defined as within a 30-mile radius of existing Reservation boundary lines.
- (L) Entity. Means any person, partnership, corporation, joint venture, government, governmental enterprise, or other organizations. The term ENTITY is intended to be as broad and encompassing as possible to ensure the Chapter's coverage over all employment and contract activities within the Tribe's jurisdiction, and the term will be so interpreted by the Board, Tribal Council and the Tribal Court.
- (M) Federally Funded Contracts. A federally funded contract is one in which the Federal Government has contracted or granted funds to an entity which, in turn, awards the prime contract.
- (N) For the Benefit of Indians. Work to be performed under a Federal or Federally funded contract on and near the Coeur d'Alene Reservation can be the primary source of assistance for Tribal and community economic development by providing career development, training opportunities, and small business support. If and when it is determined as a "benefit for Indians", either by the Tribal government or Board the Manager will be authorized to enter into negotiations for Project Labor Agreements (PLA) with Federal, State, Tribal, and local agencies that will include but not be limited to review projects for:
1. The utilization of Tribal resources.
 2. Contracting/subcontracting technical assistance from various programs within the Tribal organization.
 3. Effective utilization and protection of Tribal natural resources.
 4. Equipment or supplies.
 5. The utilization of Indian preference contractors, subcontractors.
 6. The utilization of Indian preference building suppliers.
 7. The coordination and implementation of T.E.R.O.
 8. Negotiate Union Labor Agreements, if desired.

- (O) Indian. Shall mean any person that is an enrolled member of a Federally recognized tribe.
- (P) Indian Preference Contractor or Subcontractor. Contractor or subcontractor that is 51% or more Indian owned, controlled and managed is eligible for status as an Indian Preference Contractor. Preference guidelines will follow as stated in this Chapter with additional justification based on Reservation or community involvement. It will be under the discretion of the T.E.R.O. Chairperson or Manager to verify and validate all Indian Preference Contractors.
- (Q) Indian Owned Business. Shall mean a business entity of which at least 51% is actively owned, operated and managed by an Indian or Indians.
- (R) Indian Preference Applicant. Shall mean any person recognized as an enrolled member of a Federally recognized Tribe.
- (S) Local Indian or Local Indian Owned Business. Indian preference applicants or Indian owned businesses having social and economic ties to the Coeur d'Alene Tribe with a primary place of residence or business on the Coeur d'Alene Reservation which is owned by a Coeur d'Alene Tribal member or other Indian living on or near the Reservation.
- (T) Located on the Reservation. An employer located on the Reservation during any portion of a business enterprise or specific project, contract or subcontract, or within a 30 mile radius of Reservation boundaries.
- (U) OFCCP. Shall mean the Office of Federal Contract Compliance Programs of the United States.
- (V) Prime Contractor. A prime contractor is the prime/general construction, forestry, or mining contractor with responsibility for all phases of construction or similar contracts.
- (W) Reservation. Shall mean the Coeur d'Alene Reservation, and includes all lands, Indian and non-Indian, within the exterior boundaries of the Coeur d'Alene Reservation including but not limited to any trust lands under jurisdiction of the Coeur d'Alene Tribe.
- (X) Secretary. Shall mean the Secretary of Interior or his/her authorized representatives.
- (Y) Subcontract. A subcontract is any contract let out by a prime contractor to subcontractors for supplies or work on any prime contract, regardless of tier.
- (Z) Tribal Council. Shall mean the Tribal Council of the Coeur d'Alene Tribe.

(AA) Tribal Member. Shall mean any person who is an enrolled member of the Coeur d'Alene Tribe.

(BB) Tribe. Shall mean the Coeur d'Alene Tribe.

41-6.01 **Appointment of Board Members**

The Tribal Employment Rights Board shall be comprised of five members and one alternate appointed by the Tribal Council.

41-7.01 **Terms of Office of Board Members**

The members of the Board shall be appointed for a term of three (3) years. The Council will fill each vacancy by appointing a new member or reinstating the member whose term is expiring. The alternate will replace any member who is removed or for some other reason cannot fulfill his/her term. The alternate will also sit in place of any member of the Board who is absent, but whose presence is required to create a quorum.

41-8.01 **Removal from Office**

Any Board Member can be removed from office by vote of Tribal Council.

41-9.01 **Vacancy and Interim Appointment**

If a Board Member dies, resigns, or is removed from office, a vacancy on the Board shall be created automatically and the alternate shall fill the term. If the alternate is not available, the vacancy shall be filled by a temporary appointment made by the Tribal Council.

41-10.01 **Chairperson**

T.E.R.O. Board members shall elect the Chairperson on an annual basis. The Chairperson shall preside at all formal and informal meetings and hearings of the full Board.

41-11.01 **Duties of The Board**

The Board or its authorized representative(s) shall administer the Employment Rights Program of the Coeur d'Alene Tribe in accordance with this Chapter and will adopt bylaws under which it will operate internally.

41-12.01 **Powers of the Board**

The Board or its authorized representative shall have the power:

- (A) To make recommendations to Tribal Council when hiring or replacing Board members.

- (B) To establish rules and regulations governing all activities of the Manager that will be consistent with the existing Chapter. Tribal Council must approve any changes before implementation.
- (C) To make recommendations to the Tribal Council on amendments to the Chapter.
- (D) To make recommendations to the T.E.R.O. Manager to expend funds appropriated by the Tribal Council for the Tribal Employment Rights Program and to administer additional fees provided by T.E.R.O. Fees collected from contractors/employers from contracts provided herein.
- (E) To review whether to enter into Union Labor Agreements.
- (F) To facilitate and hold hearings and to subpoena witnesses and documents in accordance with this Tribal Chapter.
- (G) To take such other actions consistent with this Chapter as is necessary to achieve the purpose and objectives of the Tribal Employment Rights Office.
- (H) The Board, including any of its agents, employees or delegates, will retain all rights and privileges of sovereign immunity of the Coeur d'Alene Tribe.

41-13.01 **Directive to the Board**

- (A) In establishing and maintaining the numerical goals provided for in this Chapter. The Board and Manager will monitor numerical quotas and implement these training privileges, whenever practical, and will consult with affected employers so as to consider their input and recommendations.
- (B) The Board shall hold such formal and informal meetings and regulate procedure, as it deems necessary in order to carry out effectively its duties and powers under this Chapter.
- (C) The Board shall attempt whenever possible to administer this Chapter and execute its power under consensus vote. If a consensus cannot be achieved, then the T.E.R.O. Chairperson must make the deciding vote. An affirmative vote of at least three (3) Board Members is required to render approval of any effective decision or action.
- (D) All written agreements or plans, directives, orders, complaints, and appeals which the Board is authorized or required to issue or file hereunder will bear the signature of at least two Board Members.

41-14.01 **Appointment and Removal of Employment Rights Manager**

The Council through Tribal administration will appoint the Manager to serve on a full-time basis as the staff manager for the Board. The Council and Tribal administration may consider Board recommendations concerning appointment and removal of the Manager.

41-15.01 **Duties and Powers of the Manager**

The Manager will be subject to the day-to-day supervision and direction of the Human Resources Director in the performance of his/her duties and will be subject to Tribal Policies and Procedures. Policy and general guidance regarding T.E.R.O. implementation is to be provided by the Board, with ultimate T.E.R.O. policies to be established by Tribal Council. Routine or administrative correspondence is delegated to the Manager subject to the above supervision with some policy guidance at limited times by the Board, and will include but is not limited to the following:

- (A) To obtain funding from Federal, State or other sources to supplement Tribal Council appropriations.
- (B) To establish numerical hiring goals and timetables specifying the minimum number of Indians an employer must hire for each trade and skill level.
- (C) To require employers to establish or participate in On the Job Training (OJT) Programs.
- (D) To establish and administer the T.E.R.O. Compliance Office and require employer(s) to utilize the facilities.
- (E) To prohibit employers from using job qualifications, criteria or personnel requirements that may bar Indians from fair and equal employment rights unless such criteria or requirements are bona fide and necessary occupational qualifications. The Board can format regulations to adopt EEOC guidelines or additional requirements to eliminate employment barriers unique to Indians and the Reservation.
- (F) To require employers to give preference to Indian workforce and to require Indian preference in awarding of contracts and subcontracts.
- (G) To establish counseling programs to assist Indians in obtaining and retaining employment.
- (H) To require employers to submit reports and take all action deemed necessary by the Board or the Manager for fair and vigorous implementation of this Chapter.

- (I) To consider entering into cooperative agreements with Federal employment rights agencies such as EEOC and OFCCP to eliminate discrimination against Indians both on and off the Reservation.

41-16.01 Coverage and Scope

- (A) All employers are required to give preference to Indians in hiring, promotion training and all other aspects of employment. Contracting of Indian Preference Contractors must comply with rules and regulations of this Chapter and of the Board the foregoing shall apply to all employers located or engaged in work on the Reservation.
- (B) The foregoing requirements shall apply only to an employer located or engaged in work while on or near the Reservation. When an employer has previously agreed in a contract, lease or other document to give preference to Indians, this Chapter and authorized Board rules, regulations and directives will define the specific minimum obligations of the employer pursuant to such written agreement.

41-17.01 Contractors and Subcontractor

The Indian Preference requirements contained in this Chapter shall be binding on all contractors and subcontractors of employers, regardless of tier, and will be deemed part of any contract and subcontract specification. The employer shall have the initial and primary responsibility for ensuring that all contractors and subcontractors comply with these requirements.

41-18.01 Minimum Numerical Goals and Time Tables for Indian Employment

- (A) The Board or the Manager may establish the minimum number of Indians each employer must employ on his/her work force during any year that he or she or any of his/her employees are engaged in work on or near the Reservation. Availability of numerical goals may be set for each craft, skill, job classification, etc., used by the employer and will include, but not be limited to administrative, supervisory and professional categories. All numerical quotas can be negotiated between employer and T.E.R.O. Manager. The goals will be expressed in terms of man hours/day of Indian employment as a percentage of the total man-hours worked by the employer's work force in the job classification involved.
- (B) For both new and existing employers, the goal will be reviewed by the Board at least annually and will be revised as necessary to reflect changes in number of Indians available or changes in employer hiring plans.
- (C) Each employer will submit a semiannual report to the Manager indicating the number of Indians in his/her work force, how close he or she is meeting his/her goals, all persons hired or fired during the last six (6) months, the job positions involved, and other information required by the Board.

41-19.01 **Training**

Employers may be required by the Board to participate in training programs to assist Indians to become more qualified in the various job classification or trades used by the employer. This ratio of OJTP trainees can be adjusted and shall be set by the Board after consultation with Manager and employers.

41-20.01 **Training Administrative Fee**

Every construction, forestry or mining employer that is a Prime Contractor on the Reservation with a contract of \$50,000.00 or more will pay a training fee of .05% of the total contract dollar amount. This fee is included in a total fee of 2%. This revenue will be used for training for the T.E.R.O. applicants and placed in T.E.R.O. budget as training appropriations funding.

41-21.01 **Job Qualifications and Personnel Requirements**

Employers are prohibited from using job qualification criteria or personnel requirements to limit Indian employment unless such criteria or requirements are a business necessity and are bona fide occupational qualifications for employment as listed in the Dictionary of Occupational Titles or unless they are unemployable for other reasons.

- (A) Employers whom employ more than two employees may designate key personnel who are regular, permanent employees in a supervisory or other key position.
- (B) At no time will core crew and/or key personnel displace Indian preference employee(s) and/or potential Indian preference employee(s) by performing work outside their normal classification.

41-22.01 **T.E.R.O. Compliance Officer**

The Board will establish and administer a T.E.R.O. Compliance Officer to assist the Manager and employers in placing Indian preference employees in job positions. If the Manager determines that he/she cannot fill a work order from hiring all applicants or referrals, then the Manager must specify this in writing and release the employer, so the employer can recruit and hire workers from whatever process he/she chooses, as long as he/she complies with the Equal Opportunity Act in all hiring practices pertaining to his/her operation or contract.

41-23.01 **Layoffs and/or Termination**

In making any layoffs and reductions in force, all employers will maintain required ratios of Indian Preference Employees. Furthermore, no Employer will terminate or layoff any Indian preference employee who is employed pursuant to this Chapter without good cause for such termination. *Good cause for termination* will be defined as: "Failure to adequately act pertaining to employment according to the reasonable policies and procedures of the employer or any act which puts the employer or other employees in an unsafe position in the course of employment."

The employer in determining layoffs shall apply the layoffs in a reasonable and fair fashion. Furthermore, layoffs should only occur when there is not adequate work to keep all employees on the job, adverse weather conditions, building material or supplies are inadequate and when funding shortage necessitates reduction in the work force. Where practical, employer and Manager will determine sequence of layoff, for Indian Preference percentage ratio.

41-24.01 **Promotion**

Every employer shall in accordance with required ratios give Indians preferential consideration for all promotion opportunities and will encourage Indians to seek such opportunities.

41-25.01 **Summer Students**

Employers shall give Indian students preferential consideration for summer student employment. The employer will make every effort to promote after school, summer and vacation employment for Indian students.

41-26.01 **Indian Preference Requirements in Awarding Contracts and Subcontracts**

The Board endorses and encourages an Indian Business Program that promotes and facilitates the success of Indian owned businesses.

- (A) Employers shall give preference in the award of contracts to Indian owned businesses. These rules and regulations apply to all construction, maintenance, and natural resources contracts that take place on or near the Coeur d'Alene Reservation. A contract or subcontract taking place "on or near the Coeur d'Alene Reservation" means 51% or more of the work under contract or subcontract is to be performed within Reservation boundaries, and/or 51% of the unfinished product or by-products comes from within Reservation boundaries.
- (B) Any business or Indian owned business may bid as a supplier, prime contractor or subcontractor on the Reservation, but shall not submit bids for a subcontract or to be supplier if bidding on the prime contract and shall sign a non-collusive statement for each.
- (C) The T.E.R.O. Compliance Officer shall maintain a list of Indian Preference Contractors and Indian-owned businesses. This list shall be provided and supplied to the employers for their use. On all contracts of \$50,000.00 or over, employers shall provide an approved INDIAN CONTRACTING UTILIZATION PLAN which shall conform to the Indian Preference Contracting/Subcontracting rules and regulations contained in this Chapter and must provide documentation as to:

- 1. How Indian and Indian preference bids were solicited; and

2. Who was awarded the contract; and
 3. Why each contractor was awarded said contract.
- (D) On all contracts \$50,000.00 or over, no employer may commence work on the Coeur d’Alene Reservation until is has submitted a Board approved INDIAN CONTRACTING UTILIZATION PLAN setting forth how the employer intends to meet the requirements of this Chapter.
- (E) Employers on or near the Coeur d’Alene Reservation shall comply with these requirements when awarding prime contracts and subcontracts.
1. If the entity asking for bids has reason to believe that three (3) or more qualified Indian firms will bid, then the Invitation for bids shall be restricted to qualified Indian-owned enterprises and Indian organizations.
 2. If there are less than three (3) Indian bidders then the Invitation for Bids shall be open competition to Indian and non-Indian firms alike.
- (F) In the case of (1) above, the lowest qualified Indian Preference bidder shall be awarded the contract or subcontract, if within budgetary limits of the contract or within the fixed percentage as outlined below. In the case of (2) above, the lowest Indian bidder shall be awarded if:
1. The lowest responsible Indian Preference bidder is within budgetary limits established for the specific project or component of the project; and
 2. The lowest responsible Indian Preference bidder is not more than a fixed percentage higher than the total bid price of the lowest responsive bid from any qualified bidder. The fixed percentage is determined as follows:

When the lowest responsive bid is:

<u>At Least</u>	<u>But less than</u>	<u>Percentage of Bid</u>
\$ 51,000	\$200,000	10%
\$201,000	\$300,000	09%
\$301,000	\$400,000	08%
\$401,000	\$500,000	07%
\$501,000	\$1 million	06%
\$1 million	\$1.5 million	05%

<u>At Least</u>	<u>Continued... But less than</u>	<u>Percentage of Bid</u>
1.6 million	2.0 million	04%
2.1 million	2.6 million	03%
2.7 million	3.0 million	02%
3.1 million	3.6 million	01%
3.7 million	4.0 million	01%

- (G) If Indian Preference Contractor is awarded bid and needs to subcontract out, he/she must contact T.E.R.O. Office for Indian Preference Contractor(s) list.
- (H) Any contractor or subcontractor failing to provide an Indian Contracting Utilization plan shall be placed in violation status of this Chapter and subject to the sanctions as provided for in this Chapter

41-27.01 Burden of Proof

In any hearing before the Board where the issue is employer compliance with any of the requirements as stated in this Chapter, the burden of proof shall be on the employer to show compliance.

41-28.01 Compliance Plans

Every employer of two or more employees and every contractor or subcontractor obtaining a contract or subcontract of \$50,000 or more on or near the Reservation will abide by the T.E.R.O. Chapter and submit a completed Compliance Plan for reviewing by the Manager and then to Board for final approval. Every contractor and subcontractor with contracts below \$50,000 will also be required to abide by T.E.R.O. Chapter and submit a Compliance Plan to be approved by the T.E.R.O. Manager but will not be required to pay the 2% fee. Each employer will set forth how the employer will meet the goal of 100% Indian labor and numerical employment in each job classification and other obligations. All plans must have final approval by the Board and the Manager within thirty (30) days of initial submission request. No employer will commence work until it has submitted a Compliance Plan and the Plan has been approved.

41-29.01 Compliance Plan for New Employers

- (A) Existing employers who are located or engaged in work on or near the Reservation after the effective date of this Chapter shall submit a Compliance Plan or must revise their existing Compliance Plan.

- (B) Each new employer shall meet with the Manager as soon as possible prior to actually beginning work and shall furnish the Manager with a precise list of the number and kinds of employees he/she expects to employ and any special factors or circumstances the employer wishes to present. At this time the Manager and employer may work together and format a neutral, negotiated Compliance Plan. The Board will determine final approval.
- (C) Every plan will establish the goal of 100% Indian Labor force and numerical employment in each job classification when:
 1. Qualified Indians are reasonably available when the Plan is adopted to fill all job positions anticipated by the new employer in the job classification; or
 2. Qualified Indians can reasonably be expected to become available from training programs or other sources to fill all such positions during the one-year period of the plan.
- (D) If qualified Indians are not available, then Plans may provide for goals of less than 100% Indian labor and employment in affected job classifications. If for some reason the Indian Preference work force is unavailable and the T.E.R.O. Manager cannot fill the work order then, with signature approval from the Manager, the employer may hire from an outside resources.

41-30.01 Compliance Plan for Existing Employers

- (A) Employers who are located on or are engaged in work on or near the Reservation prior to the effective date of this Chapter shall establish hiring and employment goals for new employees by establishing a new Compliance Plan.
- (B) After due notice, each existing employer shall meet with the Manager, as required, and shall furnish a reasonably specific list of the number and kinds of new employees he/she expects to employ in the ensuing year. The Manager and the employer shall conclude a new percentage goal ratio after considering any special factors or circumstances the employer wishes to present.
- (C) Compliance Plans for existing employers shall establish the goals of 100% Indian employment for new hiring in each job classification if qualified Indians can reasonably be expected to become available to fill such new positions during the duration of the Plan. If qualified Indians are not available, the Plans may provide for goals of less than 100% Indian Labor and employment in affected job skills or classifications.

41-31.01 **Revision of Compliance Plans: Semiannual Employer Reports**

- (A) Each employer with a Compliance Plan shall submit semiannual reports to the Manager, or other report as otherwise directed by the Board, on a form provided indicating:
1. The number of Indians in his/her work force.
 - a. Training program for updating Indian workforce.
 - b. Additional needs that will benefit Indian workforce.
 2. How close he/she is to meeting his/her goals.
 3. The number of persons hired or terminated for the last six months and the affected job positions; and
 4. Any other information specified by the Board and reasonably necessary to monitor the employer's efforts to abide by the Compliance Plan.
- (B) The Manager shall meet with each new and existing employer to review the goals of every Compliance Plan. Any plan may be revised at any time after meetings between the Manager and employer when necessary to reflect changes in the number of qualified Indians available or changes in employer hiring practices.

41-32.01 **Final Approval of Compliance Plans**

The Board must approve each Compliance Plan or revision before the Plan becomes effective.

41-33.01 **Noncompliance or Violations**

If any employer fails or refuses to comply with the Compliance Plan requirements herein or with the terms of its Compliance Plan, as written, such noncompliance shall be deemed a violation of this Chapter and subject to sanctions provided for in this Chapter.

41-34.01 **Recognition of Unions**

Nothing herein or any activity by the Board or the Manager authorized hereby shall constitute official Tribal recognition of any union or Tribal endorsement of any union activities on the Reservation.

41-35.01 **Notice**

If a hearing is requested by the Board, the Manager, an individual, or an employer pursuant to this Section, the Strike: Commission Insert: Board shall cause a written notice of

hearing to be served upon all concerned parties stating the nature of the hearing and the evidence to be presented. The notice shall advise such parties of the alleged violation, their required presence or the presence of a representative on their behalf, their right to be present at the hearing, and to present testimony of witnesses or other evidence, and to be advised by counsel at their own expense.

41-36.01 Complaints

- (A) Complaints Regarding Violations. Any affected individual, employer, entity, organization or interested party that believes any covered employer or its agents has violated or is in violation of this Chapter or any rules or regulations issued pursuant to it may file a complaint with the Manager, a Board Member, or the Board's authorized agent. The complaint shall be in writing and shall provide such information as is necessary to enable the Manager to carry out an investigation. The Manager shall investigate every complaint filed. If upon investigation, the Manager has reason to believe a violation has occurred, the Manager shall proceed pursuant to the provisions provided for in this Chapter. Within 20 days after receipt of the complaint, and on a regular basis thereafter, the Manager shall provide the complaining party with a written report on the status of the complaint.
- (B) Time and Place of Filing Complaints. Complaints filed under subsection (A) above shall be filed by the charging party with the Board or its authorized agent within seven (7) working days after the alleged unlawful violation(s) occurred or seven working days after the charging party learned of the alleged unlawful violation(s), but no complaint shall be accepted after seven (7) days from the date of alleged violation or occurrence. The complaint shall include the date, place and circumstances of the alleged unlawful violation(s) and shall be served by the charging party upon the person(s) against whom the charge(s) are made within 10 days thereafter.
- (C) Complaints Regarding Administrative Act of T.E.R.O. Manager. Any individual employer, employee or other party may challenge any action of the Manager by filing a written complaint with the Manager, the Board, or its authorized agent within five (5) days from said action and requesting a hearing thereon. The Board shall review the complaint within 10 days and may, at their discretion, set a hearing date.
- (D) Service of Complaints. Service may be made by registered mail or hand delivery with a receipt.

41-37.01 Investigations

On its own initiative or pursuant to any complaint, the Board or the Manager may make an investigation on or near the Coeur d' Alene Reservation. If the Manager or Board Members deem it appropriate and necessary to determine whether any provision of this Chapter or any rules, regulations or orders hereunder have been violated, then an investigation may occur.

- (A) The Manager or his/her duly authorized delegate may enter, during business hours, the place of business or employment of any employer he/she deems necessary to monitor compliance within the requirements of this Chapter or any rule or orders hereunder.
- (B) The Manager or his/her delegate shall bear and show official identification adequate to identify them as authorized agents of the Board to make such investigation.
- (C) In any hearing before the Board, where the issue of employer being put in “out of compliance” status, it will be the employer’s responsibility to demonstrate compliance.

41-38.01 Hearing Procedure

Hearings shall be governed by the following rules of procedure:

- (A) All parties may present testimony of witnesses and other evidence and may be represented by counsel at their own expense.
- (B) The Board may have the advice and assistance of counsel provided by the Tribe.
- (C) The Chairperson of the Board, or the Vice-Chairperson, shall preside and the Board shall proceed to ascertain the facts in a reasonable and orderly fashion.
- (D) The hearing may be adjourned, postponed or continued at the discretion of the Board.
- (E) At the final close of the hearing, the Board may take immediate action or take the matter under advisement.
- (F) The Board shall notify all parties in writing within thirty (30) days after the sharing of its decision in the matter.
- (G) If any party fails to appear for a hearing then it may be ruled as forfeiture by default.

41-39.01 Power to Require Testimony and Production of Records

The Board Member or the Manager, or any designee, may administer oaths or affirmation, subpoena witnesses, take evidence, and require, by citation, the production of books, papers, contracts, agreements or other documents, records or information which the Manager or the Board deems relevant or material to the inquiry.

- (A) Review of T.E.R.O. Files. The Respondent (the employer or entity against whom a charge has been filed) shall have the right to review the case file of the Manager

by scheduling an appointment with him or her for that purpose during regular working hours at any point after receiving notice of hearing. The Manager may remove any portion of a file to protect what is deemed confidential.

- (B) List of Witnesses. Ten days prior to the hearing (or as soon as possible if the hearing is to be held within 10 working days after notice), the Respondent and the Manager shall submit to the Board Chairperson a list of witnesses he/she intends to call at the hearing, with the approximate length of their testimony, and the general substance of said testimony. It shall indicate any witnesses that must be subpoenaed. The Board shall then cause necessary subpoenas to be issued.
- (C) Expert Witnesses. Any party who intends to present testimony of any expert, on their behalf shall within five (5) days of hearing, provide the Board and the opposing party the name, qualification, and the substance of said expert testimony. Failure to do so shall disqualify such testimony from the hearing.
- (D) Pre-Hearing Interview of Witnesses. The Respondent and the Manager shall have the right to interview the witnesses of the other party prior to the hearing. The Manager's witnesses shall be interviewed in the presence of the Manager or his/her delegate. The Respondent's witness shall be interviewed under such reasonable conditions as are established by the Respondent. Either party may appeal to the Chairperson of the Board if cooperation is not forthcoming on this matter. The Chairperson is empowered to require such steps as are necessary to resolve the problem.
- (E) Production of Documents. The Parties shall provide each other with a list of documents, papers and tangible evidence that is intended to be introduced at the hearing, including a statement regarding the substance and relevance of each. Said documents; papers and tangible evidence shall be made available to one another forthwith, no later than ten (10) days prior to the hearing, or within two (2) days if the hearing date is noticed less than ten (10) days before the hearing. Failure to produce such lists and documents listed within the time prescribed, may render said documents inadmissible at the hearing, on motion of the opposing party and in the Board's discretion.
- (F) Postponements. Any request for a postponement of the hearing must be submitted in writing to the Chairperson of the Board no fewer than three days prior to the hearing. However, if the Manager and Respondent mutually submit a request for a postponement because there is a possibility of settling the matter, the request for a postponement may be submitted at any time prior to hearing.

41-40.01 Conduct of the Hearing

- (A) Presiding Official. As presiding official, the Chairperson or a designated Board Member will control the proceedings. He or she will take whatever action is

necessary to insure an equitable, orderly, and expeditious hearing. Parties will abide by the presiding official's ruling. The presiding official has the authority to:

1. Administer oaths or affirmations;
 2. Regulate the course of the hearings;
 3. Rule on offers of proof;
 4. Limit the number of witnesses when testimony would be unduly repetitious; and
 5. Exclude any person from the hearing for conduct or misbehavior that obstructs the hearing.
- (B) Manager. The Manager may represent the Board on all charges filed by it, even if the charge was initiated by a complaint filed by a private individual.
- (C) Respondent. The Respondent shall be present for the entire hearing and he/she or his/her representative (other than an attorney) shall represent him/her during the proceeding.
- (D) Attorneys. Either party may have an attorney present as an advisor. However, the attorney may not make any presentations, cross-examine witnesses or address the Board.
- (E) Recording of the Hearing. All hearings shall be recorded in full and the Board shall retain the tapes(s) for no less than one year after the hearing. The Respondent shall also be permitted to tape the hearing upon request.
- (F) Prohibition Against Reprisals. All parties shall have a right to testify on their own behalf, without fear of reprisal.
- (G) Starting Time. The hearing shall be open promptly at the time specified by the Board.
- (H) Opening Statements. Both parties will be afforded the opportunity to present opening statements with respect to what they intend to prove at the hearing.
- (I) Order of Proceeding. The Complainant or his/her representative will present his/her case first. The Manager will often be the Complainant in those proceedings.
- (J) Examination and Cross Examination of Witness. Both parties may subpoena and examine friendly and hostile witnesses. Both parties may subpoena and examine witnesses. However, no harassment or efforts to intimidate witnesses shall be permitted. The Board members may examine witnesses at any point in their testimony. The testimony of all witnesses shall be under oath or affirmation.

- (K) Irrelevant Testimony. Parties may object to clearly irrelevant material, but technical objections to testimony as used in a court of law will not be entertained. The Board shall prohibit any testimony that it deems clearly irrelevant in order to keep control of the hearing.
- (L) Written Testimony. Evidence or exhibits may be presented. Written testimony will be admitted into evidence during the hearing only when a witness cannot appear in person. When a party wishes to use the written testimony of a witness who cannot appear, the party must submit, in advance of the hearing, a written explanation for the nonappearance of the witness to the Board. If the Board is satisfied with the explanation, the parties will obtain the testimony by the means of deposition. When, for reasons satisfactory to the Tribal Employment Rights Board, a deposition cannot be used, an affidavit or sworn statement from the witness may be used. A signed, but uncertified statement will not be admitted into evidence.
- (M) Closing Statement. Closing statements for each party will be permitted. The Complainant shall proceed first.
- (N) Audience. The hearing shall be open to the public. However, the Board may remove any person who disrupts the hearing or behaves in an inappropriate manner. Also, the Board may order a hearing closed, if it deems appropriate.

41-41.01 **The Decision**

The decision shall be in writing and issued within 30 days after the hearing. The decision shall consist of the following parts, in the following order:

1. The facts as found to be true by the Board;
2. The finding of violation or no violation on each charge along with the legal and factual basis for the finding;
3. The orders and/or sanctions imposed, if any;
4. Information on rights to appeal;
5. Information on the authority of the Board to act if the party fails to comply with its orders or fails to appeal; and
6. The injunctive or bonding requirements, if any, that the Board will seek from the Tribal Court pending the completion of the appeal if an appeal is filed.

41-42.01 **The Record**

The Board shall include in the record copies of all documents and descriptions of information used in arriving at the decision and shall maintain and store said record for a period of one year from the date of decision.

41-43.01 **Finality of the Decision – Appeal**

Decisions of the Board will be effective immediately and final when the time for filing a Notice of Appeal has expired. An aggrieved party may take any appeal to the Coeur d' Alene Tribal Court as provided in this Chapter.

The Board's decision is final and shall be in writing. It shall be served on the charged party by registered mail or in person no later than thirty (30) days after the close of the hearing. Should the party fail to comply immediately with the Board's Order, the Board shall request the Tribal Court, and the Tribal Court shall grant, such injunctive relief as necessary to preserve the rights of the beneficiaries of this Chapter, pending the party's appeal or expiration of the time for appeal.

41-44.01 **Enforcement and Penalties for Violation(s)**

The Manager is authorized to enforce this Chapter and the rules and regulations of the Board. He/she may issue citations to violators and initiate investigations for the purpose of settling disputed violations or formally enforcing this Chapter and the rules and regulations of the Board as follows:

- (A) Informal Settlement. If upon investigation initiated by the filing of a complaint pursuant to this Chapter or on his/her own initiative, the Manager has reason to believe a violation has occurred, the Manager shall issue written notice of violation to the alleged violator. The Manager and the employer shall seek to achieve an informal settlement of the alleged violation immediately. If no settlement can reasonably be made, he/she shall issue a formal Citation and Notice of Non-Compliance.

- (B) Formal Citation and Notice of Non-Compliance. The formal Citation and Notice of Non-Compliance shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. The violator will be allowed five days to comply with said Notice of Non-Compliance and request in writing a hearing before the Board on the matter. This time may be shortened at the Manager's discretion should he/she feel irreparable harm will occur should the violation continue.

If the violator refuses to comply with requirements within the time imposed by the Manager and has not requested a hearing before the Board on the matter pursuant to this Chapter, the Manager may seek to impose one or more penalties below upon said violator. After being fully advised on the matter, the Board may issue an order imposing such penalties it deems necessary.

41-45.01 **Enforcement**

Any employer, contractor, subcontractor or union who is found in violation of this Chapter or rules, regulation or orders of the Board or the Manager shall be subject to below penalties for such violations.

41-46.01 **Penalties**

- (A) Denial of right to commence or continue business on or near the Reservation.
- (B) Suspension of all working operations.
- (C) Payment of back pay and damages to compensate any injured party.
- (D) An order to summarily remove employees hired in violation of this Chapter or rules, regulation or orders of the Board or the Manager.
- (E) Imposition of monetary civil penalties.
- (F) An order requiring changes in procedures and policies necessary to eliminate the violation(s)
- (G) An order requiring employment, promotion and training of the Indians injured by the violation.
- (H) An order making any other provision deemed by the Board necessary to alleviate, eliminate, and compensate for any violation(s).
- (I) Imposition of one-time 10% penalty fee on all amounts due on monetary orders by the Board if not paid by the employer within thirty (30) days of the initial judgment. If said judgments are not paid within sixty (60) days or the initial billing, the employer will be assessed a one-time 30% penalty fee in addition to the 10% referred to above. After sixty (60) days, interest will accrue at the rate of 1% per month on any unpaid balance.
- (J) In enforcement and collection action becomes necessary for any Board order, the Respondent shall pay all attorney fees and costs incurred in such proceedings.
- (K) The maximum penalty, which may be imposed, is \$5,000 for each violation. Each day during which a violation exists shall constitute a separate violation.

41-47.01 **Rights to Appeal**

Any party to a hearing shall have the right to appeal any decision of the Board to the Coeur d'Alene Tribal Court by filing a Notice of Appeal with the said Court within 20 days of the Final Decision of the Board.

41-48.01 **Scope of Review**

The Tribal Court shall uphold the decision of the Board unless it is demonstrated that the decision of the Board is arbitrary, capricious, unsupported by the weight of the evidence or in excess of the authority of the Board.

41-49.01 **Method of Appeal**

The appeal shall be taken by serving a written Notice of Appeal with the Tribal Court, with a copy to the Manager, both within 20 days after the date of the entry of the Board's order. The Notice of Appeal shall:

- (A) Set for the order from which the appeal is taken;
- (B) Specify the grounds upon which reversal, modification or order is sought; and
- (C) Be signed by the appellant.

41-50.01 **Bond on Appeal**

The Manager may petition and, for good cause shown, the Court may order the party requesting a hearing to post a bond sufficient to cover the monetary damages that Board previously assessed against the party. The Court can also issue an additional amount to assure the party's compliance with other sanctions or remedial actions imposed by the Board's order if the Court upholds that order.

41-51.01 **Purpose and Procedure**

- (A) When a party has failed to pay any monetary damages that it was subject to, and has failed to otherwise comply with an order of the Board within 21 days after its decision, and an appeal has been filed, the Board may petition the Court to order the Tribal police to confiscate, and hold for sale, such property of the party as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance.
- (B) Said petition shall be accompanied by a list of property belonging to the party which the Board has reason to believe is within the jurisdiction of the Tribal Court, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition to be valid, it shall order the Tribal police to deliver in person or by certified mail a notice to the party informing it of the confiscation and of its right to redeem said property by complying with the order outstanding against it.
- (C) If, thirty (30) days after confiscation, the party has still not come into compliance, the Court may order the police to sell said property and proceeds of which shall

be used to pay any outstanding fees and damages and to pay any costs incurred by the Court and police in the confiscation and sale.

41-52.01 **Reporting and On-Site Inspection**

Employers shall submit reports and other information requested by the Board or the Manager. The Manager and his/her representatives shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with this Chapter and rules, regulations and orders of the Board. The Manager and/or his/her representatives shall have the right to inspect and copy all relevant records of any employer, or any signatory union or subcontractor and shall have the right to speak to workers and conduct investigations on job sites. Failure by the employer to comply with this paragraph shall be in violation of the Chapter and is subject to sanctions outlined in this Chapter.

41-53.01 **Board Funds**

All funds from employer fees and other sources collected by the Board, although under the management and control of the T.E.R.O. Manager, will be used only for T.E.R.O. purposes and such funds are subject to the controls, processes, Procedures and Policies of the Finance Department.

41-54.01 **Employment Administrative Fee**

T.E.R.O. fees apply to all construction, timber and mining contracts within Reservation boundaries, subject to exemptions previously discussed. The Manager shall assess employers in order to provide revenue for the operation of the Tribal Employment Rights Office as stated in this Chapter.

However, the Coeur d'Alene Tribe, the State of Idaho, and the Federal Government, along with any subdivision thereof may be excluded from the T.E.R.O. Fee with the approval of the T.E.R.O. Board and final signature approval from Tribal Council.

41-55.01 **Contractors**

Every prime or general contractor obtaining a contract of \$50,000 or more shall pay an Employment Administration Fee equal to 2.0% of the total amount of each contract on the Reservation. For contracts that will be completed on and off of the Reservation, only the work conducted on the Reservation shall be subject to the Employment Administrative Fee. One-half (0.5) percent (%) of the 2.0% will be submitted to the T.E.R.O. training and 1.5% will be submitted into the T.E.R.O. General fund.

41-56.01 **Accounting**

Employment Administrative Fees shall be paid to the Coeur d'Alene Tribe and placed in a special account for use only by the Tribal Employment Rights Office. The Tribal Employment Rights Office is authorized to establish such rules and regulations as are necessary to assure fair

and timely fee collection process. Any employer or contractor who fails to pay the required employment fee shall be subject to sanctions provided for in this Chapter. Contracts completely off of the Reservation will be exempt from the T.E.R.O. fee, but will still be subject to the T.E.R.O. Chapter for employment preference.

41-57.01 **Equal Employment Opportunities**

No employer shall discriminate against any Indian Preference employee or applicant for employment because of color, religion, sex, national origin or age, except as permitted by law, and must assure that advertisements include equal opportunity for access.

41-58.01 **Equal Pay**

Every employer shall be required to provide equal pay to Indian preference employees performing work similar or comparable to other employees or core personnel.

41-59.01 **Federal, State and Local Agencies**

The Board or the Manager may use Federal, State, Local or Tribal agencies in resolving a discrepancy concerning wages and hours worked.

Any employer who is in violation to the above paragraphs shall be subject to the penalties outlined in this Chapter.

41-60.01 **Health, Welfare and Pension Fund Benefits**

Payroll deductions by employers will be permissible for the purpose of providing medical, hospital care, pension, annuities, retirement, death benefits, compensation for injuries, illness, accidents, sickness or disabilities. These deductions are applied to payment of insurance to provide all or any of the foregoing, including unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents will be provided by employer; HOWEVER, the following standards much be met:

- (A) Law may not prohibit the deduction.
- (B) It is either:
 - 1. Voluntarily consented to by employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or
 - 2. Provided for in a bona fide collective bargaining agreement between the contractor and subcontractor or any affiliated person in the form of Board, dividend, or otherwise;

- (C) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of Board, dividend, or otherwise;
- (D) The deduction shall serve the convenience and best interest of the employee.

All CONTRACTORS must provide a health and welfare benefit package plan for all T.E.R.O. referrals workforce consistent with packages provided to other employees, and will be responsible for implementation and assurance of this plan or must provide for the monetary equivalent for such benefits.

41-61.01 **Safety, Health and Environmental Protection**

In project contracts of \$50,000.00 or greater and in which the Board determines the project may have an impact on the Reservation environment, a written plan must be submitted to the Manager. The plan must include an explanation providing for the protection of health and the environment of employees and other persons and prevent damage to property, materials, equipment and the physical environment of the Coeur d'Alene Reservation. Any employer or contractor who fails to provide such plan or failure to follow or carry out such plan shall be deemed in violation of this Chapter and is subject to penalties outlined in this Chapter. This plan will be routed to the Natural Resource Department for review and monitored for compliance.

41-62.01 **Rules and Regulations**

The Board may from time to time adopt detailed rules, regulations, policies and guidelines consistent with and necessary for full implementation of this Chapter.

41-63.01 **Severability**

If any provision of this Chapter, or its application to any person or circumstances is held invalid, the remainder of the Chapter, or the application of the provision to other persons or circumstances is not affected.