

Pawnee Nation of Oklahoma

Description of TERO Compliance Requirements

PROJECT INFORMATION	
PROJECT NAME:	PROJECT NUMBER (OFFICE USE ONLY):
COMPANY NAME:	COMPANY REPRESENTATIVE:

The Employer is hereby notified that no construction activity shall commence until a written plan for contractor compliance with American Indian Preference laws has been agreed to. All covered employers, for all employment occurring within the territorial jurisdiction of the Pawnee Nation, are hereby required to give "Indian Preference" to qualified Native Americans, in all hiring, promotion, training, pay, benefits, and other terms and conditions of employment. Employers shall comply with all rules, regulations, and guidelines applicable to Indian preference and approved by the Pawnee Nation Tribal Employment Rights Commission. The Indian Preference law requirements contained herein shall apply to all direct employment by the Pawnee Nation or by federal, state, or other governments or their subdivision. It also shall apply to all contractors or grantees of such governments and to all Pawnee Nation's enterprises, and to all commercial enterprises operated by such government.

Section 01 Purpose

The purpose of the Pawnee Nation Tribal Employment Rights Act is to assist in and require the fair employment of Native Americans, to create employment and training opportunities for members of the Pawnee Nation and other Native Americans, and to prevent discrimination against Native Americans in the employment the employment practices of employers who are conducting business within the territorial jurisdiction of the Pawnee Nation of Oklahoma.

Section 02 Description of TERO Compliance Requirements

- Employment Requirements:** Pursuant to the Pawnee Nation TERO Ordinance, all employers are hereby required to give preference to Native Americans in contracting, subcontracting, hiring, promotion, training and all other aspects of employment as defined in TERO Ordinance Law (Act). 95-49. The goal is to be 100% Native Preference employment (excluding core crew) in each job classification if qualified Native Americans are reasonably available. TERO understands this is not always possible, TERO will establish numerical hiring goals and timetables specifying the maximum number of Native Americans an employer must hire by craft and skill level. It will be up to TERO to determine approval. Any employers engaged in work out of compliance with the established hiring goals shall constitute grounds



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for a "Notice of Violation" and possible sanctions against the employer, upon onsite inspections. All Core Crew and Key Employees who will be utilized on this project must be identified in this TERO Compliance Plan.

- a. **Core Crew Employee** is one who; (a) is and has been on the employers or subcontractors annual payroll for no less than one year, (the fact that an employee has worked for the employer on a previous project shall not qualify that employee as a Core Crew employee), (b) is an owner of the firm, (c) is necessary if there are unique or specialized qualifications that are essential for the operation of the business. All core crew positions must be approved in advance by TERO. A certified payroll shall be submitted to the TERO office to verify compliance during the project's scope.
- b. **Hiring** the employer agrees to utilize TERO to fill their manpower request and must provide a minimum of forty-eight (48) hours' notice and a job description on the manpower needs to the TERO office. The TERO staff will attempt to accommodate the employer in the timeliest manner matching the specified needs with a TERO referral that meets the minimum of qualifications. TERO will certify in writing when a qualified TERO referral is not available.
- c. **Man Power Request** Provides a space for the employer to give a brief job summary, including company name, address, and phone number, position title/classification, start date, start time, rate of pay anticipated length of employment, who to see, etc. (See Attachment B).
- d. **TERO Dispatching** All TERO referrals or "Dispatches" will be made from Hiring Hall listings of Local Native American Workforces. The hiring hall lists contain names of unemployed Native American workers who have indicated that they are available for work and their skill level. Once a name is taken from the Hiring Hall List, the individual's name will be provided to the employer. If that worker possesses the minimum threshold of qualification, then they are referred for the opportunity. All TERO referrals will report to work with a TERO Dispatch form in hand, unless a copy has been faxed/ mailed/hand-delivered prior to the referral's first day of work.
 - i. Contractor must provide a 5.18% worker's comp fee and the TERO worker salary to be paid by the contractor based on the reimbursement by invoice through the TERO office for projects lasting less than sixty (60) days.
- e. **Local Native American Workforce:** Is defined as, an enrolled Native American worker who is a resident in the Pawnee Nation Jurisdiction or its immediate exterior boundaries.
- f. **Hiring Hall:** The PNTERO is authorized to establish a hiring hall or skills bank and impose a requirement that no covered employer may hire a non-Native until the PNTERO hiring hall or bank has certified that no qualified Natives are not available to fill the vacancy, with first preference in referral to Natives. The employer may not employ a non-local Native or non-Native until the employer has given the PNTERO 48 hours to locate and refer a qualified Native, whenever an opening is available. The main TERO Hiring Hall is located at the Pawnee Nation Housing Community Center; 551 Harrison St. Pawnee, OK 74058.
- g. **Training:** Employers, subject to the provisions of the Pawnee Nation Tribal Employment Rights Act herein, shall establish, or participate in such training programs, as the Commission deems necessary to increase the pool of Natives eligible for employment



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within or outside the territorial jurisdiction of the Pawnee Nation.

- h. **Layoff** TERO referred workers will have priority in all work opportunities. In the event that a lay-off becomes necessary, a Native worker with skills, equal to a waived employee, and in some cases key employee, will be retained. Daily TERO monitoring and a review of weekly certified payroll reports will be made to assure that opportunities are not being eliminated by revising the duties of Core Crew, Key Personnel or Waived Employees.
- i. **Disciplinary Action** Employers must report any disciplinary action taken against a TERO referred worker in written form, providing name, date of incident(s), individual(s) involved, names of witnesses, location of incident, etc. Any disciplinary action taken against a Native American worker will be kept on record at TERO.
- j. **Termination** Employers must discuss termination of a Native American worker with TERO prior to final action. A paper trail leading up to termination must be handed in for review. In instances of deliberate acts of safety violation, damage to property, or act of violence, the employer shall have the right to dismiss the employee immediately. Failure to provide TERO with notice of impending termination for other matters may result in a violation of this agreement.
- k. **Employer Policies** The employer must submit a copy of their employee policies prior to the commencement of work activity for TERO review and approval. In case of any conflict or dispute between company policies and with TERO requirements, Pawnee Nation Tribal Law will have primacy. An employer may be required to demonstrate that a challenged employment practice is job-related for the position in question and consistent with business necessity.
- l. **Drug Testing** Employment must be offered prior to requiring a “pre-employment” drug test. The TERO must be notified and provided a copy of the employer’s pre-employment drug testing policies. Documentation must be provided that all core crew and key employees have complied with the drug testing requirements prior to the commencement of their work activity on this project.
- m. **Safety Plan** All Construction Employers shall provide a written Safety Plan as part of their Compliance Plan. The Safety Plan shall provide for the protection of health and environment of employees and other persons and prevent damage to property, materials, equipment, and the physical environment. The safety plan shall include a description of how accidents will be prevented and a complete procedure for what the Construction Employer and employees shall do if an accident or injury does occur.

2. **Reporting Requirements:**
- a. **Monthly Reports** The General Contractor of the project is required to submit monthly reports to the TERO Director that includes but not limited to Number of Native Americans employed, Number of hours they worked for each job classification, a record of persons hired, fired, or promoted during the reporting period, and a statement regarding compliance with the hiring goals set forth in the plan.
- b. **Wages** The prime contractor and their subcontractor(s) must submit a table of wage to be paid. TERO referrals must receive pay equal to the employer’s core crew and waived workers performing the same duties/job descriptions. Each work must receive a paycheck with an explanation of workweek, payroll number, regular and over-time hours, and all deductions taken. The company will pay General Laborer positions according to the



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approved Project Wage Scale and the pay scale equal to that utilized for permanent/annual employees.

- c. **Certified Payroll Reports** All contractors and subcontractors must submit a weekly-certified payroll report. Certified payroll reports submitted to the contracting agency will not satisfy this requirement. Payroll reports must contain the name, address, social security number, classification/title, hourly rate, over-time rate, number of regular and over-time hours worked that pay period and deductions for each worker the employee has on the project. Failure to submit certified payroll reports on a weekly/timely basis will constitute grounds for a “violation” and possible sanctions against the employer.
- d. **Payroll Deductions** No payroll deductions indirectly or directly will be taken from the full wages earned, other than permissible deductions outlined in the United States Federal Labor and Standards Act (FLSA) and this TERO Agreement.
- e. **Pay Day Schedules** TERO workers will receive their pay on the same day as the employer’s core crew and key employees. All employees must receive their paycheck for the previous week’s work hours no later than the close of the workday every Thursday or Friday; whichever may be the last working day of the week for the employer.
- f. **Distribution of Payroll** checks must not be distributed to anyone other than the worker for whom the check is made out to. Unless the worker has given written permission to release their check to specifically named individual.
- g. **Show up Time** will be determined by PNTERO on a case-by-case basis. Failure to provide adequate notice of the cancellation of the workday may require the employer to pay show up time.
- h. **Underutilized Workers** shall be defined as a worker who is used on an on-call or part-time basis. To address the need to earn a livable wage, an underutilized worker will receive a minimum of two (2) work hours per day when called to report to work.

3. **RELIGIOUS ACCOMMODATION** Employers shall make a reasonable accommodation to the religious beliefs of Native workers in accordance with Pawnee Nation’s HR Policy and Procedures.
4. **Employment Rights Fee.** An Employment Rights Fee is necessary to raise revenue for the operation of the PNTERO and is hereby authorized to be imposed by the Employment Rights Office.
 - a. Every covered employer or entity with a construction contract, oil and gas contract, or a cattle processing facility in the sum of \$1,000 or more shall pay a fee of the total amount of the contract i.e., equipment, labor, materials and operations, and any increase of the contract/project or sub- contract amount. If the employer or entity initially enters into a contract/project or subcontract of less than \$1,000 but subsequently increases costs to \$1,000 or more the fee shall apply to the total amount including increases. The employer or entity, prior to commencing work in the Pawnee Nation’s territorial jurisdiction, shall pay such fee. However, where good cause is shown, the Director may authorize a construction contractor to pay said fee in installments over the course of the contract.
5. **TERO FEE** will be the following:
 - a. \$0 – \$1,000: n/a
 - b. \$1,001 – \$99,999: 5%



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c. \$100,000 – \$999,999:	4%
d. \$1,000,000 – \$9,999,999:	3%
e. \$10,000,000 – \$15,000,000:	2%
f. \$15,000,000+:	1%

- i. Compliance fees must be paid by the Employer prior to commencing work on PNTERO jurisdiction lands.
- ii. The Director has the authority to negotiate alternative compliance fees of projects that partially overlap PNTERO jurisdiction lands per a memorandum of understanding (MOU). All MOU's are subject to approval by the TERO Director and TERO Commissioners, with final approval and implementation coming from the Pawnee Business Council.
- iii. Any construction projects utilizing Pawnee Nation funds shall not be assessed any fee. However, **Tribal projects shall be required to maintain a compliance plan with the PNTERO.** Federal funds being administered by Pawnee Nation shall be assessed fees and follow the compliance plan.

6. **PROJECT MONITORING** Employers shall submit reports and other information requested by the TERO Director. The Director and its representative shall have the right to make on-site inspections at any time to monitor any employer's compliance plan with the Pawnee Nation Employment Rights Act and rules, regulations and orders of the PNTERO. The Director shall have the right to inspect and copy all relevant records of any employer, or any signatory union or subcontractor, and shall have a right to speak to workers and conduct investigations on job sites.

7. **COMPLAINTS**

- a. Parties Entitled to File Complaints. The following shall have a right to file a complaint with the PNTERO:
 - i. Director. If the Director has cause to believe that employer, contractor, subcontractor, or union has failed to comply with the Pawnee Nation Tribal Employment Rights Act or any rules, regulations or orders of the commission, the Director may file a complaint for the employee and notify such party/entity of the alleged violations and begin the investigation process in pursuant to *Section 25 and 26* as defined in TERO Ordinance Law (Act) 95-49.
 - ii. Individual Native. If any Native believes that an employer has failed to comply with the Pawnee Nation Tribal Employment Rights Act or rules, regulations or orders of the Commission, or believes he/she has been discriminated against by an employer because he/she is a Native or their employment rights have been violated, he/she may file a complaint with the Director within seventy-two (72) hours specifying the alleged violation. If any employer fires, lays off, or penalizes in retaliation to the Native employee for utilizing the individual complaint procedure, or any other rights provided herein, the employer shall be subject to the penalties provided in Section 27 in TERO Ordinance Law (ACT) 95-49.
 - iii. Employer or Union Complaint Procedure. If an employer or union believes that any provision of the Pawnee Nation Tribal Employment Rights Act or any rules, regulations or orders of the Commission is illegal or erroneous, it may file a complaint with the



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Commission specifying the alleged illegality or error.

8. FAILURE TO COMPLETE COMPLIANCE PLAN

- Failure to obtain or adhere to the terms of approved compliance plan, or knowingly supply false or misleading information to the PNTERO shall be subject to the non-complying party to monetary penalties of a \$1,000.00 per violation, per day.
- If TERO client is not being utilized, the project shall be shut down until all parts of the compliance plan is being utilized.
- Construction contractors engaged in work without an approved compliance plan shall be required to stop all work and fined \$1,000 per day until an acceptable plan is agreed upon and submitted to the PNTERO.

**NOTICE - This information is only a portion of the 2020 TERO Ordinance
LAW (ACT) NO. 95-49/ Resolution #20-76**

For further information, refer to the Pawnee Nation TERO Ordinance Law (ACT) NO. 95-49.

By signing below, you certify you have read and understand the Employment Requirements and agree to all the terms and conditions described above in the description of TERO compliance requirements.

Signature: _____ Date: _____
Company, Authorized Official

Signature: _____ Date: _____
TERO, Authorized Official



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