

YUROK TRIBE – TERO PROGRAM

Frequently Asked Question

1. WHAT IS THE PURPOSE OF TERO?

To access more employment & training opportunities for Native Americans and their families.
To provide more business & economic opportunities for businesses owned by Native Americans.

2. WHY IS THERE A NEED FOR TERO?

Since unemployment rate in Native communities remains high, Tribes must take strong actions to protect the employment rights of Native American people.

3. WHAT ARE THE BASIC REQUIREMENTS OF TERO?

All employers operating within tribal jurisdiction are required to provide Indian preference in employment, training, contracting, sub-contracting. Following are the major provisions and requirements found in most TERO Ordinances that employers must agree:

- To ensure Native preference, employers need to submit and negotiate a detailed compliance plan of employer workforce needs.
- To utilize the TERO skills banks for all referrals and consider Native applicants before interviewing or hiring any Non-Native worker.
- To negotiate with the TERO Compliance Officer/s the specific number of Natives in each job classification and to cooperate with tribal training programs to hire a certain number of trainees.
- To eliminate all extraneous job qualification criteria or personnel requirements which may act as a barrier to Native employment. TEROs are guided by EEOC guidelines for verifying legitimate Bona-fide Occupational Qualifications (BFOQ's).
- To keep in contact with the TERO office in order to resolve any employee problems and issues.
- To acknowledge and respect tribal religious beliefs and cultural difference and to cooperate with the TERO to provide reasonable accommodations.
- All employers who have collective bargaining agreements with one or more unions must secure a written agreement from their unions indicating that they will comply with TERO.
- The TERO certified worker shall be treated the same as the other employees. There will be a Zero Tolerance to discrimination within the boundaries of the Yurok Tribe.
- The success of TERO programs can be directly attributed to the fact that these programs embody all of the critical elements listed above.

4. WHAT IS A COMPLIANCE PLAN?

Compliance Plan is a written document that provides detailed descriptions of a construction project with all the pertinent information. This is where you list your key personnel and your work force needs. A Key employee is a permanent employee who is in a supervisory or specialized position and without this person you would face a financial loss. This document is then negotiated with a TERO Compliance Officer for approval.

5. WHAT TERO REQUIREMENTS ARE THERE IN CONTRACTING BIDS?

The TERO Office has a Native American Owned Business Registry (NAOB) in which we certify that the companies are owned by Native Americans. The TERO Ordinance requires that you provide the opportunities to every NAOB that is qualified to do the work.

6. IS THERE A DIFFERNECE BETWEEN TRIBAL AND NATIVE AMERICAN PREFERENCE?

Yes, on Tribally funded projects the TERO can require Tribal member preference. This is permissible under Federal law because tribes are exempt from Title VII of the Civil Rights Act, Executive Order 11246 and most other employment rights legislation. Native American

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preference is permissible under some federal laws i.e., Indian Self Determination Act, Buy Indian Act and under most federal laws.

7. WHAT IS THE EXTENT OF TERO JURISDICTION?

A Tribe has the authority to enact and enforce any Indian employment preference law is grounded in its inherent sovereign powers of self-government. This legal doctrine is the most basic principle of Indian law and is supported by a host of Supreme Court decisions. The jurisdiction is legally described or defined by treaty or legislation. The exterior boundaries of the reservation including cede territories and lands where jurisdiction has not been extinguished. TERO has a political preference, not a racial preference and does not violate Title VII or any other Federal Employment Law.

8. WILL TERO INTERRUPT MY DAILY BUSINESS OPERATIONS?

No. Since TERO is pro-active, the compliance plans are signed by TERO and the employer prior to the commencement of work prevents disputes. The Compliance Officers will monitor the TERO requirements by doing onsite compliance visits that would not be detrimental to business operations. TERO can sanction employers for violations which may shut down operations but only in severe disputes and in accordance with the applicable law.

9. DOESN'T TERO DO AWAY WITH THE COMPETITIVE BIDDING PROCESS AND FAIR COMPETITION?

No. It provides preference to bona-fide and qualified Native American businesses on projects on or near the Yurok Tribe. As with employment contracting preference is permissible or required under Federal, Tribal, State or other Local laws. Preference is not provided to the exclusion of other businesses and price & quality are still primary considerations.

10. ARE EMPLOYERS PROTECTED AGAINST UNFAIR TERO VIOLATION CHARGES?

Yes. The first level of protection comes from the TERO Compliance Officer who handles the charge. These officers are trained to deal with facts and merits of the case before making determinations. Beyond the TERO Commission, grievant can seek relief in the Tribal and Federal Courts.

11. WHAT SANCTIONS DO EMPLOYERS FACE FOR VIOLATIONS OF TERO?

Violation of TERO requirements may result in severe sanctions. If the TERO Office determines that employers willfully, and intentionally, breached TERO requirements. The TERO may:

- Deny such party the right to commence business on the reservation.
- Impose a civil fine on such party ranging on most reservations anywhere from \$500.00 to \$5,000.00 per violation.
- Terminate or suspend party's operation and deny them the rights to conduct further business on the reservation.
- Order any party to dismiss any illegally hired Non-Natives, take action to ensure future compliance and to make back payment of any lost wages be paid to the TERO certified Native Americans.

12. CAN SANCTIONS IMPOSED BY THE TERO COMMISSION BE APPEALED?

Yes. Sanctions imposed by the TERO Commission can be appealed in tribal court. Appeals of tribal court decisions can be made to the federal court system. It is important to note that only one appeal to a TERO commission and tribal court decision has ever been appealed to the federal court. The case ended at the Ninth Circuit Court of Appeals and Appellate that upheld the TERO complaint and the Tribal Courts decisions.

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13. ARE TERO FEES LEGAL?

Yes. Tribal authority to access a fee is equal to that of any government. Taxation, licenses & fees are a valuable source for financing Tribal governmental operations. Tribes therefore consider their social and economic needs and priorities and set the TERO requirements to suit them just as National, State, and other units of government do. Many contractors without complaint pay taxes and comply with the governmental requirements of states, counties, etc, but openly oppose doing so with Tribes. This "cultural discrimination" is indicative of the lack of knowledge and acceptance of the sovereign authority of the Tribe. Employers can realize a substantial savings since Tribal taxes or fees pre-empt state or other local taxation on the reservation projects often to the benefit of the employer. The Yurok Tribe TERO fee is 3.00% of total cost on any project over \$2,000. The TERO has the responsibility to ensure due process of the employer under the Tribal ordinance and that only qualified and screened referrals are made to the employer.

14. HOW HAVE VARIOUS FEDERAL, STATE AND OTHER AGENCIES VIEWED TERO IN THEIR OPERATION?

When TERO first appeared in the late seventies there was opposition from some and difference from others. Over the past twenty years a great deal of progress has been made, some by direct legal action but most through pro-active, non-adversarial, synergistic effort. The results are Native American preference and TERO provisions, policies and procedures figure prominently in the following:

- The Civil Rights Handbook
- The Job Training and Partnership Act
- The Small Business Administration 8(a) Program
- Public Law 93-638, The Indian Education Assistance and Self-Determination Act of 1974
- HUD Regulations
- BIA Acquisition Assistance Agreement 84-1
- EEOC/TERO Contracts
- OFCCP Indian Employment Initiative
- FHWA ISTEA "Indians in Highway Construction Initiative"
- Indian Health Service Alaska Native Hiring Agreement
- US DOL/BAT Notice 84-1
- Indian Education Impact and Programs Under PL 81-815 (Construction) and PL 81-874 (OPS/Admin)