

**TITLE 22
YAVAPAI-APACHE NATION
TRIBAL EMPLOYMENT RIGHTS OFFICE CODE**

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CHAPTER I. GENERAL PROVISIONS

SECTION A. TITLE

This Code shall be known as the Yavapai-Apache Nation Tribal Employment Rights Code.

SECTION B. PURPOSE

The Yavapai-Apache Nation as a sovereign has the right to regulate employment opportunities on and near its land. This right is protected through this Code.

The purposes of this Code are:

1. To ensure compliance by Covered Employers on and near the Yavapai-Apache Lands with federal and tribal laws that are intended to prevent employment related discrimination against American Indians;
2. To ensure compliance by Covered Employers on the Yavapai-Apache Lands with federal and tribal laws that are intended to give preference and priority in employment, contracting and sub-contracting, and training to American Indians; and
3. To ensure the maximum utilization of American Indian workers in all employment opportunities on and near the Yavapai-Apache Lands.

Use of the term “on and near” the Yavapai-Apache Lands shall be construed to permit Indian preference to the fullest extent permitted under tribal and federal law.

SECTION C. STATEMENT OF POLICY

The Tribal Council of the Yavapai-Apache Nation finds that:

1. Jobs in the private employment sector on and near the Yavapai-Apache Lands are an important resource for Indians residing on and near the Yavapai-Apache Lands and trust lands of the Yavapai-Apache Nation.
2. This Code is consistent with and supplemental to existing federal and tribal law prohibiting employment discrimination against Indians and providing for employment and contract preference to Indian employees and Indian-owned enterprises.
3. Indian unemployment on the Yavapai-Apache Nation continues to be a problem of sufficient magnitude to warrant the enactment and implementation of this Code which is designed to improve employment opportunities for Indians living on and near the Yavapai-Apache Lands and trust lands of the Yavapai- Apache Nation.

SECTION D. DEFINITIONS

1. **CODE** means the Tribal Employment Rights Office Code of the Yavapai-Apache Nation.
2. **COMPLIANCE AGREEMENT** means a written agreement signed by Covered Employers and the Tribal Employment Rights Office in accordance with this Code.

3. COMPLIANCE FEE means a fee approved by the Yavapai- Apache Tribal Council, which fee shall be paid by the Covered Employer prior to commencing work on the Yavapai-Apache Nation Lands.
4. CORE CREW means the essential, permanent employees of a contractor who hold a high level supervisory position or perform a critical function such that the contractor would risk likely financial damage or loss if that employee's task(s) were assigned to a person unknown to the contractor. Core crew members cannot be laborers.
5. COUNCIL means the Yavapai-Apache Tribal Council.
6. COVERED EMPLOYER means any entity employing two (2) or more persons, who during any thirty (30) day consecutive period spend cumulatively forty (40) or more hours performing work within the jurisdiction of the Yavapai-Apache Nation.
7. ENTITY means any person, partnership, corporation, limited liability company, joint venture or any other natural or artificial person or organization.
8. INDIAN (or AMERICAN INDIAN) means any person enrolled in a federally recognized tribe and recognized by the United States pursuant to its trust responsibility to American Indians.
9. INDIAN OWNED BUSINESS means a firm or business that is certified by the TERO Office as eligible for Indian preference under this Code, provided that Indians hold at least fifty percent (50%) ownership interest in such firm or business and exercise majority management control.
10. INDIAN PREFERENCE means a preference for Indians, who meet the minimal qualifications for a position, in all aspects of employment, including but not limited to: hiring, training, promotions, layoffs, terminations, contracting and subcontracting for work within the Yavapai-Apache Nation Lands. Qualified, available Indians shall receive Indian preference according to negotiated Compliance Agreements.
11. LOCATED ON THE YAVAPAI-APACHE LANDS means a Covered Employer, if during any portion of a business enterprise or specific contract or subcontract, maintaining a temporary or permanent office or facility on the Yavapai-Apache lands.
12. NEAR THE YAVAPAI-APACHE LANDS means within reasonable daily commuting distance of Yavapai-Apache Nation lands.
13. SKILLS BANK means a tribal hiring hall that maintains a record of qualified, employable Tribal Members and other American Indians that is to be used by Covered Employers to fill vacancies.
14. TERO means the Yavapai-Apache Nation Tribal Employment Rights Office Code.
15. TERO OFFICE means the Yavapai-Apache Nation Tribal Employment Rights Office or other office or department designated by the Council as such to act as and perform the function of TERO from time to time.

16. TERO OFFICER means the individual, committee or department appointed by the Council from time to time to administer the TERO as set forth herein. The Council may appoint and remove the TERO Officer by Council Resolution.
17. TRIBAL MEMBERS means those persons enrolled in the Yavapai-Apache Nation.
18. TRIBAL PREFERENCE means a preference for Tribal Members who meet the minimal qualifications for a position, in all aspects of employment, including but not limited to hiring, training, promotion, layoffs, terminations, contracting and subcontracting, for work within the Yavapai-Apache Nation Lands. Qualified, available Tribal Members shall receive Tribal Preference, where allowed by law, according to negotiated Compliance Agreements.
19. TRIBAL COURT means the Yavapai-Apache Nation Tribal Court as established in the Yavapai- Apache Code, Chapter 3 Court Code.
20. YAVAPAI-APACHE LANDS means all lands within the territorial jurisdiction of the Yavapai- Apache Nation as that term is defined in Article I of the Nation's Constitution.

CHAPTER II. TRIBAL EMPLOYMENT RIGHTS OFFICE

SECTION A. TERO OFFICE

The Nation has established a TERO Office to implement the provisions of this Code. The TERO Office shall have such staff as is necessary to operate the TERO Office.

The TERO Office shall be subject to an annual budget approved by the Council each fiscal year.

SECTION B. TERO OFFICER/DUTIES AND RESPONSIBILITIES

The Nation has delegated primary responsibility for running the TERO Office to the TERO Officer who shall be responsible for administering and ensuring compliance with the provisions of this Code. The TERO Officer shall report to the Human Resources Director of the Nation, or such other person as the Council shall direct.

The TERO Officer shall have the authority to:

1. Negotiate Compliance Agreements with Covered Employers before allowing such Covered Employers to commence work within the jurisdiction of the Nation;
2. Take on-site visits and investigate potential violations of this Code;
3. Impose penalties, within limits or schedules approved by the Council, on Covered Employers who violate the provisions of the Code;
4. Develop and promulgate regulations necessary to implement the provisions of this Code, subject to approval of the Council;
5. Develop and impose numerical hiring goals and timetables that reflect the available American Indian labor pool and other employment opportunities for each craft and skill category;

6. Require Covered Employers that have established training or apprentice programs to provide preference to American Indians or Tribal Members, as applicable;
7. Establish and maintain a tribal hiring hall that maintains a record of qualified, employable Tribal Members and other American Indians that is to be used by Covered Employers to fill vacancies;
8. Prohibit any Covered Employer from imposing employment qualification criteria that serve as barriers to American Indian employment unless the Covered Employer can demonstrate that such criteria are required by business necessity;
9. Work cooperatively with other tribal programs, i.e. job training programs, to establish counseling and support programs for Tribal Members workers to assist them in retaining employment;
10. Enter into cooperative agreements with federal and state agencies to minimize employment discrimination on the Yavapai-Apache Lands, to promote American Indian Preference in hiring, training, and contracting and to otherwise ensure compliance with this Code;
11. To obtain from Covered Employers subject to this Code certified payroll reports (“Certified Payroll Reports”) that contain information relevant to the TERO Officer’s enforcement authority herein.
12. To assess fees on Covered Employers, subject to the limits or schedules set forth in this Code or approved by the Council, to support the operations of the Tribal Employment Rights Office, including the authority to inquire about and obtain information necessary to make a determination on the source of funding for Covered Contracts as provided in Chapter III, Section J of this Code;
13. To carry out the day-to-day operations of the TERO, to enforce this Code and such other authority as is necessary to the efficient administration of this Code.

The TERO Officer shall not have the authority to waive sovereign immunity on behalf of the Yavapai-Apache Nation or any Yavapai-Apache Nation departments or entities.

All acts taken by the TERO Officer, the Nation, the Tribal Council, or any employee in furtherance of this Ordinance are taken in their official capacities.

CHAPTER III. TRIBAL EMPLOYMENT RIGHTS PROGRAM

SECTION A. SCOPE

All Covered Employers shall give preference to American Indians in hiring, promotion, training, and all other aspects of employment, contracting and subcontracting, and business opportunities, and shall comply with the terms of this Code and its implementing regulations and any Compliance Agreement(s) executed under this Code.

SECTION B. COMPLIANCE AGREEMENT

Each Covered Employer shall be required to meet with the TERO Officer at the TERO Office and negotiate and execute a "Compliance Agreement" which sets forth the Covered Employer's goals and objectives under this TERO Code. At a minimum, Compliance Agreements will include periodic reporting requirements and shall be reviewed annually and revised as necessary.

With respect to contractors and subcontractors, a list of proposed Core Crew members and their titles and responsibilities shall be provided and periodically reviewed and revised as necessary.

Every Compliance Agreement shall incorporate numerical goals based upon the TERO Officer's surveys of the available American Indian work force and of applicable projected employment opportunities on the Yavapai-Apache Lands.

No Covered Employer who intends to engage in temporary business on the Yavapai-Apache Lands shall commence work until a Compliance Agreement has been negotiated and signed by both the TERO Officer and the Covered Employer or Covered Employer's representative. A Covered Employer who has established a permanent place of business on the Yavapai-Apache Lands shall negotiate and execute a Compliance Agreement within thirty (30) days from the date the Covered Employer receives notification from the TERO Officer that a Compliance Agreement is required.

Any violation of an executed Compliance Agreement shall be a violation of this Code.

SECTION C. JOB QUALIFICATIONS AND PERSONNEL REQUIREMENTS

A Covered Employer shall not use qualification criteria or other personnel requirements that serve as barriers to American Indian employment unless the Covered Employer is able to demonstrate that such criteria or requirements are required by business necessity. EEOC Guidelines shall be adopted on these matters to the extent that they are appropriate. The TERO Officer shall be guided by the guidelines but shall have the authority to impose additional requirements that are necessary in order to address employment barriers that are unique to American Indians.

Any Covered Employer who has a drug/alcohol policy may impose such requirements on employees referred by the TERO Office to the extent such requirements do not conflict with any Yavapai-Apache Nation tribal laws, regulations, or policies or procedures.

SECTION D. TERO SKILLS BANK

1. The TERO Officer shall establish and maintain a TERO Skills Bank to assist Covered Employers in placing qualified American Indians in job positions.
2. A Covered Employer shall not hire a non-American Indian in violation of the Compliance Agreement until the TERO Officer has certified within a reasonable time that no qualified American Indian is available to fill the vacancy. For purposes of this section, "reasonable time" shall be defined as follows:
 - (a) Construction jobs-the TERO Officer shall have forty-eight (48) hours from time of notice of manpower needs, to refer a qualified American Indian from the TERO Skills Bank;

- (b) All other employment-the TERO Officer shall have five (5) working days to refer a qualified American Indian from the TERO Skills Bank.

The TERO Officer may grant a waiver of a time period upon a showing by the Covered Employer that such time period imposes an undue burden upon the Covered Employer or his business.

SECTION E. TRAINING

1. The TERO Officer shall identify training programs necessary in order to increase the pool of qualified American Indians for employment on the Yavapai-Apache Lands.
2. The TERO Officer may seek out grants for the purposes of establishing training programs to assist American Indians in acquiring skills for employment.
3. The TERO Officer may initiate and sponsor training programs for Covered Employers to participate in, or the TERO Officer may work with Covered Employers to establish and sponsor their own training programs to assist American Indians to become qualified in the various job classifications used by Covered Employers.

SECTION F. UNIONS

Covered Employers with collective bargaining agreements with a union are responsible for informing such unions of this Code and TERO rules and regulations. Unions will give absolute preference to American Indians in job referrals regardless of which referral list they are on. Temporary Work Permits will be granted American Indians who do not wish to join a union. Nothing herein shall constitute official tribal recognition of any union or tribal endorsement of any union activities on the Yavapai-Apache Lands.

SECTION G. CONTRACTORS AND SUBCONTRACTORS

The Indian Preference requirements contained herein shall apply to all contractors and subcontractors of a Covered Employer. The Covered Employer shall have the initial and primary responsibility for ensuring that all contractors and subcontractors comply with these requirements and both the Covered Employer and his contractors and subcontractors shall be subject to the penalties set forth herein for failure to comply with the Code requirements.

SECTION H. PREFERENCE IN CONTRACTING AND SUBCONTRACTING

Irrespective of the qualifications of any non-Indian contractor or subcontractor, any American Indian contractor or subcontractor who demonstrates the minimum qualifications to perform a contract on the Yavapai-Apache lands and is certified by the TERO Office shall be given preference by the entity awarding such contract or subcontract by using the following priorities subject to federal laws:

1. Certified Yavapai-Apache firms whose principal place of business is located on the Yavapai-Apache Lands;
2. Certified Yavapai-Apache firms whose principal place of business is not located on the Yavapai- Apache Lands;

3. Certified American Indian owned firms;
4. Non-certified firms with some American Indian ownership;
5. All other firms.

The TERO Officer shall maintain a list of American Indian-owned businesses which list shall be supplied to the Covered Employers upon request.

SECTION I. PROMOTIONS AND LAYOFFS

Each Covered Employer shall to the extent permitted under federal law, give American Indians preferential consideration for all promotion opportunities and shall encourage American Indians to seek such opportunities.

In all layoffs and reductions in force, no American Indian worker shall be terminated if a non-American Indian worker in the same job classification is still employed. The non-American Indian shall be terminated first if the American Indian possesses threshold qualifications for the job classification. If a Covered Employer lays off workers by crew, all qualified American Indian workers shall be transferred to crews to be retained so long as non-American Indians in the same job classification are employed elsewhere on the job site. Exceptions may be non-American Indians hired as “Core Crew”, according to negotiated Compliance Agreements.

SECTION J. TERO COMPLIANCE FEES

The TERO Officer shall assess and collect a Compliance Fee based upon the following schedule.

1. Except as provided below, every contractor with a Covered Contract shall pay a Compliance Fee approved by the Yavapai- Apache Tribal Council, which Compliance Fee shall be paid by the Covered Employer prior to commencing work on the Yavapai- Apache Nation Lands. As of date of this Ordinance, the Compliance Fee is equal to two percent (2%) of the total amount of the contract and Covered Contracts are those that are in the sum of ten thousand dollars (\$10,000) or more.
2. The Compliance Fee shall not be assessed or collected from educational organizations, recognized religious organizations, health organizations, governments, governmental departments or entities, utilities franchised by the Yavapai-Apache Nation, non-profit organizations as owners of projects on Yavapai-Apache Lands, or from Covered Employers with Covered Contracts that are primarily compensated (more than fifty percent (50%)) with tribal, federal or state governmental funds or nonprofit funds. In no event shall Compliance Fees be assessed against the Yavapai-Apache Nation, Yavapai-Apache Nation departments or entities, or Yavapai-Apache Nation enrolled Tribal Members as owners of projects on Yavapai-Apache Lands.
3. Except as otherwise directed in the budgets approved by the Yavapai-Apache Tribal Council, Compliance Fees shall be used for the TERO operating budget, and the percentage may be adjusted by the Tribal Council as often as annually to remain relatively consistent with the national average.

4. The TERO Officer shall receive a copy of each Compliance Fee payment. The TERO Officer shall be responsible for collecting the fees and may establish such regulations as are necessary to ensure a fair and timely fee collection process.

SECTION K. ON SITE INSPECTIONS

The TERO Officer shall have the authority to make on-site inspections during regular working hours in order to monitor a Covered Employer's adherence to the terms of this Code and the Covered Employer's Compliance Agreement. The TERO Officer shall have the right to inspect and copy all relevant records of a Covered Employer, of any signatory union, or subcontractor of a Covered Employer, and shall have the right to speak to workers and to conduct an investigation on the job site. All information collected by the TERO Officer shall be kept confidential unless disclosure is necessary or ordered as part of any federal or tribal judicial or administrative proceeding.

SECTION L. TRIBAL PREFERENCE

Tribal preference is a form of Indian Preference which gives special preference in employment to members of the Nation. Tribal preference is permitted by the sovereign power of the Yavapai-Apache Nation, except where specifically prohibited by federal law. The order of Tribal preference is:

1. Enrolled members of the Yavapai-Apache Nation
2. Enrolled members of other federally recognized Native American Tribes
3. All others

Anyone claiming Tribal preference must show a valid Tribal Identification Card.

CHAPTER IV. ENFORCEMENT PROCEDURES

SECTION A. INVESTIGATION BY THE TERO OFFICER

Any person who believes that a Covered Employer has failed to comply with the Code, or who believes that a person has been discriminated against by a Covered Employer because he/she is an American Indian, may file a complaint with the TERO Office. The complainant shall be responsible for providing the TERO Office with evidence of the discrimination practices. Upon receipt of a complainant, the TERO Officer shall conduct a prompt and thorough investigation of the charge. The TERO Officer may also initiate an investigation when the Officer has cause to believe a violation has occurred.

SECTION B. INFORMAL SETTLEMENT/VOLUNTARY COMPLIANCE

Upon establishing that there are reasonable grounds to support the claim, the TERO Officer shall attempt to achieve an informal settlement of the matter.

The TERO Officer shall document the settlement in the Covered Employer's file and provide a copy to all parties.

SECTION C. ISSUANCE OF WRITTEN WARNINGS/CITATIONS

1. If an informal settlement cannot be achieved, the TERO Officer shall issue a written warning to the Covered Employer. This warning shall specify the nature of the violation and direct that the violation be corrected within three (3) business days or sooner where warranted.
2. If the violation is not corrected within the time specified, the TERO Officer shall issue a citation to the Covered Employer which shall:
 - (a) Be in writing and in the name of the Yavapai-Apache Nation;
 - (b) State the name of the violator;
 - (c) Bear the signature of the TERO Officer or his authorized representative;
 - (d) Identify the specific provisions of this TERO Code or Compliance Agreement which has been violated;
 - (e) State a brief summary of facts constituting the violation; and
 - (f) State a time and place the Covered Employer must appear to answer to the violation at the TERO Officer Hearing.

SECTION D. TERO OFFICER HEARING

The Covered Employer shall be entitled to a hearing before the TERO Officer no later than ten (10) working days after receipt of a citation. Hearing procedures shall comply with the requirements of due process, but will not be bound by the formal rules of evidence. The Covered Employer shall be entitled to present evidence and to call witnesses to demonstrate that the Covered Employer has complied with the requirements of this Code or that the Covered Employer made a best effort to do so and therefore should not be subject to penalties. On the basis of evidence presented at the hearing and the information collected by the Office, the TERO Officer shall determine whether or not the Covered Employer complied with this Code. If the TERO Officer determined that the Covered Employer is out of compliance and has not made a best effort to comply, the TERO Officer shall impose one or more of the penalties provided for in the Code, as appropriate and shall order the Covered Employer to take such corrective action as necessary to remedy any harm done to the Tribe or individual American Indians by the Covered Employer's non-compliance. The TERO Officer shall send written notice to all parties within ten (10) days after his/her decision in the matter.

SECTION E. EMERGENCY RELIEF

When the TERO Officer determines that a violation has occurred that is of a critical nature requiring immediate remedial action, the TERO Officer may issue a citation without delay, stating penalties to be placed on a Covered Employer.

SECTION F. APPEALS

Any person or entity adversely affected by a decision of the TERO Officer shall have the right to appeal the decision to the Yavapai-Apache Tribal Court in accordance with Chapter VI. of this Code.

CHAPTER V. PENALTIES

SECTION A. PENALTIES FOR VIOLATION

Any Covered Employer who violates this Code or a Compliance Agreement negotiated hereunder shall be subject to penalties including, but not limited to:

1. Denial of the right to commence or continue business on the Yavapai-Apache Lands;
2. Suspension of operations on the Yavapai-Apache Lands;
3. Payment of back pay and/or damages to compensate any injured party;
4. An order to summarily remove employees hired in violation of this Code or Compliance Agreement negotiated hereunder;
5. Imposition of monetary civil penalties; and
6. An order specifying requirements for employment, promotion and training Indians injured by the violation.

SECTION B. MONETARY FINES

The maximum monetary penalty that may be imposed for each violation shall be established and may be changed, by the Yavapai-Apache Tribal Council. As of the date of this Ordinance, the maximum monetary penalty per violation is established at five hundred dollars (\$500). For purposes of the imposition of penalties determined by the TERO Officer, each day during which a violation exists shall constitute a separate violation.

SECTION C. ENFORCEMENT

1. The TERO Officer shall be entitled to pursue the enforcement of any Order through the Yavapai-Apache Tribal Court or any other court of competent jurisdiction when necessary to collect penalties or to ensure compliance with the terms and conditions of any order issued by the TERO Officer, the Yavapai-Apache Nation Tribal Court, or any other court of competent jurisdiction.
2. Any cost associated with the enforcement of such Order issued pursuant to this Code shall be assessed on the Covered Employer that is out of compliance. These may include, but are not limited to: document reproduction costs, filing fees, attorney fees and costs incurred by TERO staff related to securing enforcement of the Order.
3. Covered Employers that do not comply with the provisions of this Code and leave the Lands before enforcement penalties or an order by the TERO Officer or the Yavapai-

Apache Nation Tribal Court, shall, in addition to all other remedies at law or in equity, be denied the right of contracting or doing further business on the Yavapai-Apache Lands.

4. The Compliance Agreement shall confirm the Covered Employer's consent to jurisdiction within the Nation as provided herein. The TERO Officer, without waiving remedies or jurisdictional rights hereunder, may also elect to enforce an Order, award, or any provision of this Ordinance, in any court of competent jurisdiction where a defendant may be found.

CHAPTER VI. JUDICIAL REVIEW

Any party dissatisfied with the decision of the TERO Officer may seek judicial review in the Yavapai-Apache Tribal Court. The Court shall uphold the decision of the TERO Officer unless such decision is arbitrary, capricious or in clear violation of existing law.

The Yavapai-Apache Tribal Court is hereby granted exclusive jurisdiction to hear, review and decide any issues regarding implementation, interpretation or enforcement appeals under this Code. The decision of the Tribal Court shall be final and binding.