

HANNAHVILLE INDIAN COMMUNITY
TRIBAL EMPLOYMENT RIGHTS ORDINANCE

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TITLE V, CHAPTER 1

HANNAHVILLE INDIAN COMMUNITY TRIBAL EMPLOYMENT RIGHTS ORDINANCE

5.1.100 Title

This Ordinance shall be known as "The Hannahville Indian Community Tribal Employment Rights Ordinance" or "TERO."

5.1.101 Intent and Purpose; Social and Economic Benefits; Health, Safety and Welfare.

- (1) Intent and Purpose. The Tribal Council desires that Indian and tribal preferences be observed by all persons with whom it has an employment or contractual relationship. However, it is not intended that an administrative review should be conducted whenever a selection for employment is made among similarly qualified candidates who are protected by the preference.
- (2) Social and Economic Benefits. This ordinance is enacted to enhance to the fullest extent possible, the social and economic benefits of tribal membership, including membership in other federally recognized Indian tribes, by extending to tribal members, certain descendants and other Indians the highest priority in employment in the governmental activities, agencies and enterprises of the Tribe. Further, by this enactment, the Tribal Council recognizes its particular responsibilities toward the well being of its tribal members.
- (3) Health, Safety and Welfare. The Tribal Council finds that it is essential for the health, safety and welfare of the Tribe to hire individuals best suited to work in any tribal program or tribal enterprise. The Tribal Council also is committed to ensure the highest level of employment to qualified tribal members in tribal programs and tribal enterprises.

5.1.102 Scope and Applicability

- (1) Source of Funding; Location of Work. This Ordinance shall apply to all employment with any of the Hannahville Indian Community agencies, enterprises or programs. Where the work being performed is upon tribal trust or tribal fee-owned lands, or upon roads within or providing access to tribal lands, this Ordinance will apply to major contractors and sub-contractors with the Tribe whose contractual relationship with the Tribe involves payment with, or the expenditure of, tribal funds, federal funds allocated for the benefit of the Tribe, federal pass-through funds available to the Tribe through state or other grant activities, and/or, programs, and where the work being performed provides a direct benefit to the Tribe.

- (2) Employment, Contracting Covered by Preference. The Tribal Council, tribal Boards, Committees, Directors, Managers, Supervisors and other persons participating in decisions relating to hiring, promotion, training, transfers, overtime, retention, (lay-offs), contracting and subcontracting shall, to the maximum extent practicable, give preference to qualified Indian-owned enterprises, to tribal members and descendants of the Hannahville Indian Community, and, where required by federal law, to other Indians who are members of other federally recognized Indian tribes and their eligible descendants. Specifications in regard to those protected by the preferences and the priority in which the preferences are to be given, absent prohibitions by applicable law are to be found in §§ 5.1.105 and 5.1.106 of this Ordinance.
- (3) Limitations. Preferences shall not be applied in the following circumstances:
 - (a) Violations of applicable law. Where it would violate provisions of the tribal Constitution, other tribal law or policy, including, but not limited to, the Hannahville Indian Community Drug and Alcohol Policy, or other applicable federal, tribal, or state law or regulation, these priorities shall not be applied. Specifically, where federal or other funding sources require that Indian preference be applied, tribal preference shall not be applied. However, Indian preference recruiting efforts may be targeted toward those eligible persons living on or near the Hannahville Indian Community tribal lands.

5.1.103 Definitions

As used in this Ordinance, the following definitions shall apply:

- (1) Employment - work of any type or kind for which a worker receives monetary compensation through the Tribe, its agencies, enterprises or tribally authorized programs. Work includes full time, part-time, regular, consultant and other major contractual services. If a temporary position later leads to a regular full time employment position of the same or another kind, the full time regular position must be advertised and is subject to preference.
- (2) Indian - a person who is a member or a descendant of a federally recognized Indian tribe, band, nation, rancheria, pueblo, colony, or community whose members are recognized by the United States through the Secretary of the Interior as eligible for the special programs and services provided by the Secretary to Indians because of their status as Indians, or an Alaska Native who is one-fourth degree or more Alaska Native blood, and either is, or is descended from, someone on the roll of Alaska Natives prepared pursuant to the Alaska Native Claims Settlement Act of 1971 (43 USCA § 1601, *et seq.*).
- (3) Indian-Owned Enterprise - any business entity (whether or not organized for profit) that is at least 51% owned by one or more Indian(s) or an Indian tribe and

has one or more of its Indian owners involved in daily business management of the enterprise and, if owned for profit, has the majority of its earnings accrue to its Indian owners. Or, the majority of the board of directors or other governing body must be Indian persons for not-for-profit enterprises.

- (4) Qualified - the applicant meets the minimum requirements for a position as they are written and posted in the job description.

5.1.104 Posting of Positions

- (1) Posting. All employment positions with the Hannahville Indian Community shall be posted a minimum of five (5) working days and in conformity with the Policies and Procedures applicable to the entity posting the position.
- (2) Position Requirements.
 - (a) Minimum requirements. The employment position shall contain the minimum education, skills, credentials, training, experience and abilities to adequately do the particular job, unless otherwise approved by the Tribal Council pursuant to resolution. Examples would include, but are not limited to: professional credentialing, licensing, certifications, computer skills, words per minute typed, and the ability to collate data and write required reports.
 - (b) Other desirable qualifications. Other desirable qualifications are those that are beneficial to the employment position. Some of these other desirable qualifications may include skills that can be obtained either with on-the-job training or within a reasonable time after employment has begun. A reasonable time period in which to acquire additional skills or training shall be defined by the employer prior to posting the job description and shall be included in the posting.
- (3) Tribal gaming, and certain other employment postings that involve regular handling of funds and/or regular contact with or control over Indian children, shall be subject to a criminal background investigation and civil records check as prescribed by federal, tribal and applicable state laws. Statutory bars to employment will prohibit an interview being given to some applicants.

5.1.105 Indian Preference

Where Indian preference is required, the Community will attempt to interview and select from among all qualified Indians who properly apply.

5.1.106 Tribal Preference Priorities

Where tribal funds are involved and except where Indian preference is required, or where tribal preference is otherwise prohibited by applicable law, the following priorities shall be applied as required by § 5.1.102 of this Ordinance.

- (1) Qualified enrolled member of the Hannahville Indian Community.
- (2) Qualified descendent of an enrolled member of the Hannahville Indian Community who is eligible for federally contracted program services because of his or her status as an Indian through BIA or IHS Self-Determination Act programs or other federal programs.
- (3) Qualified legally married Indian spouse of an enrolled member of the Hannahville Indian Community.
- (4) Qualified Indian enrolled in another federally recognized Indian tribe.
- (5) Qualified descendent of an Indian enrolled in another tribe who is eligible for federally contracted program services because of his or her status as an Indian through BIA or IHS Self-Determination Act programs or other federal programs.
- (6) Qualified members of State-recognized Tribes in the State of Michigan.
- (7) Qualified Non-Indian.

5.1.107 Application of Priorities and Construction

Preference status shall be one significant factor in any employment decision that will be weighed along with other qualifications that an applicant may have, including transferable skills gained through work or life experience.

- (1) Disclaimer. This Ordinance shall not be construed to mean that persons protected by the preference are guaranteed employment based on preference status and minimum qualifications only, nor are they guaranteed continued employment if they fail to perform at a satisfactory level.

5.1.108 Decision Contrary to Preference

Where a qualified person protected by the preference has applied and an employment decision is made that is contrary to the preference as required by this Ordinance, the committee or person responsible for the decision shall:

- (1) Within 3 working days, prepare a written statement listing the reasons why the preference was not applied; and

- (2) Forward a copy of the signed written statement to the Tribal Chairperson's office where it shall be held in confidence on file. All committee members who participated in the adverse employment decision shall sign the statement. Absent a request for administrative review, no further action will be taken.

5.1.109 Request for Administrative Review; Violation; Corrective Action.

A person who believes he or she has been subjected to an adverse employment decision in violation of this Ordinance shall have the right to administrative review by the Tribal Council in the following manner:

- (1) Request for Administrative Review. A written request for administrative review must be made along with proof of preference status and the reasons that the applicant believes that there was a violation of the Ordinance. This request shall be delivered to the Human Resources Department within 5 working days of notification of the adverse decision.
 - (a) No Review. No review will be granted where Indian preference was required, qualified Indian candidates were interviewed, and the person is requesting review on the basis of tribal preference, or where former applicants cannot show that persons protected by the preference were not qualified.
- (2) Human Resources Action. The Human Resources Department shall refer all requests for review to the Tribal Chairperson within 5 working days of receipt unless there is no basis for review.
- (3) Tribal Chairperson Action. If a basis for administrative review exists, the Tribal Chairperson shall, within 20 working days convene the Tribal Council, the committee and/or, decision maker(s), and the applicant, to conduct a hearing to review the request.
 - (a) Record of Hearing. All hearings shall be conducted on the record, but may proceed in closed session. Both the applicant and the committee shall be allowed to fully state their respective positions. All evidence and testimony shall take place within the presence of both the applicant and the committee. The Tribal Council may make its final deliberations outside the presence of the parties.
 - (b) Statement of findings. The Tribal Council shall specifically state the facts and the law relied upon in reaching its decision. In reaching a decision the Council may consider the credentials, experience, minimum requirements, desirable qualifications, and testing that was conducted during the application and interview process for all employment candidates, along with any other reliable information that relates to issues being considered. This

decision shall be considered final. Issues considered appropriate for review are, but are not limited to, the following:

- [1] Whether or not Indian or tribal preference were required.
- [2] If testing was conducted, were all applicants similarly tested and were the circumstances and location under which the tests were conducted substantially similar?
- [3] If tribal preference was required, was the proper priority applied among similarly qualified applicants?

- (c) Corrective action. In the event that the Tribal Council finds that this Ordinance has been inappropriately disregarded, the Tribal Council may impose appropriate corrective action upon the committee or individuals found to be responsible. It is not contemplated that the Tribal Council will award a the position to a particular candidate unless that applicant was the only minimally qualified protected applicant, but may remand the case back to the Human Resources Department for further consideration, including re-advertisement, or the selection of another candidate who meets the qualifications.

5.1.110 Severability

Should any provision of this Ordinance be determined to be invalid by a court of competent jurisdiction, the invalid provision shall be severed and the remainder of this Ordinance shall be given full force and effect.

5.1.111 Repealer

Upon adoption of the amendments to this Ordinance, all inconsistent previously enacted legislation is hereby repealed.

5.1.112 Effective Date

Upon adoption, all provisions of this Ordinance shall be given immediate effect and shall apply to all pending employment decisions.

This Ordinance was amended on 5/3/04 by the Tribal Council pursuant to Resolution #050304-A. Further amended on 3/02/2009 by the Tribal Council in regular session by a vote of 8 yes, 1 no, 1 abstaining.