

An Act Amended by
LA # 38-05

Enrolled
Legislative Act 29 -88

AN ACT RELATING TO CHEROKEE NATION OF OKLAHOMA
LAW REGARDING THE EMPLOYMENT RIGHTS ORDINANCE;
DELETING; ADDING NEW ITEMS; AND DECLARING
AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Subchapter 2
definitions

Section 15-2-20 Chairman

"Chairman" shall mean the chairman of the Cherokee Nation
Employment Rights Commission Committee.

Section 15-2-21 Commission-Committee

"Commission"- "Committee" shall mean the Cherokee Nation of
Oklahoma Employment Rights Commission Committee which, until changed
by the Tribal Council, will be comprised of the Employment and
Training-Committee members of the Cherokee Tribal Council.

Section 15-2-22 Council

"Council" shall mean a commissioner member of the Cherokee
Nation Employment Rights Commission Committee.

Section 15-2-23 Commissioner Committee Member

"Commissioner" "Committee member" shall mean a commissioner
Committee Member of the Cherokee Nation Employment Rights Commission
Committee.

Section 15-2-24. TERO Committee Staff

"TERO Committee Staff" shall mean employees assigned to
the TERO Office under the Employment and Training Department or
otherwise specified by the Administration and approved by the
council.

Section 15-2-245 EEOC

"EEOC" shall mean the Equal Employment Opportunity
Commission of the United States.

Section 15-2-256 Employer

"Employer" shall mean any person, company, contractor,
subcontractor or other entity located or engaged in work with the
Cherokee Nation employing two or more persons. The term "employer"
excludes federal, state and county government agencies but includes
agencies, contractors, and subcontractors of all other agencies.

Section 15-2-267 Engaged in work

An employer is "engaged in work" if during any portion of a
business enterprise or specific project, contract or subcontract, he
or any of his employees spends a majority of his time performing work
under contract with the Cherokee Nation of Oklahoma and the work is
performed on tribal lands.

Section 15-2-278. HRC

"HRC" shall mean the Human Rights Commission of the State
of Oklahoma

Section 15-2-29. Indian

"Indian" shall mean any person recognized as an Indian by the United States pursuant to its trust responsibility to American Indians.

Section 15-2-30 Indian Owned Business

"Indian-owned business" shall mean a business entity of which at least 51% is owned by Indians.

(1) The firm or joint venture must be 51% or more Indian owned. The applicant must demonstrate the following:

(a) Formal Ownership

That an Indian or Indians owns 51% or more of the partnership coporation, joint venture, or other arrangement for which the applications is being submitted. Such ownership must be embodied in the firm's organic documents, such as its stock ownership, or partnership agreement. Ownership included: (1) financial ownership - i.e., Indian(s) own 51% or more of the assets and equipment, will receive 51% or more of the firm's assets upon dissolution, and receive 51% or more of the profits and (2) control - i.e., the Indian(s) 51% or more ownership provides him or her with majority of voting rights or other decisional mechanism and that all decisions of the firm are to be made by majority vote except where otherwise required by law:

(b) Value

The Indian owner(s) provided real value for him or her 51% or more ownership by providing capital, equipment, real property or similar assets commensurate with the value of his or her ownership share directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Indian owner of the firm or an immediate relation thereof, or nay smilar arrangement unless a convencing showing can be made that the Indian owner(s) brought such special skills, marketing connections, or similar benefits to the firm that there is a good reason to believe the arrangement would have been entered into even if there were not an Indian preference program in existence.

(c) Profit

The Indian owner(s) receives 51% or more of all profits. If there is any provision that gives the non-Indian owner a great share of the profits in whatever form and under whatever name, such as through management fee, equipment rental fees, bonus tied to profits or other vehicles, certification will be denied. Salary scales will be reviewed to ensure the relative salaries being paid Indian and non-Indian owners are consistent with the skills of the parties and are not being used to circumvent the requirement that Indian owners receive 51% or more of the profits.

(2) The firm must be under significant Indian management and control. The firm must be able to deomonstrate that:

(a) Unitary Firms (non-Joint Ventures)

One or more of the Indian owners must be substantially involved, as a senior level official, in the day-to-day management of the firm as his or her primary employment activity. The Indian owner does not have to be the "Chief Executive Officer." However, he or she must through prior experience or training, have substantial occupational ties to the area of business in which the firm

is engaged such that he or she: (1) is qualified to serve in the senior level position: and (2) is sufficiently knowledgeable about the firm's activities to be accountable to the Cherokee Nation of Oklahoma for the firm's activities. This provision may be waived when: (1) the firm is 100% Indian owned and the Chief Executive Officer is the spouse and/or parent of the owner(s), the family lives on or near the reservation and the majority of employees are Indian; or (2) the firm is modeled on a publicly-held corporation such that it is owned by 10 or more persons, is at least 51% Indian owned, the Chief Executive Officer and the Highest-salaried employee in the firm is/are Indian and a majority of the employees are Indian.

(b) Joint Venture

In addition to the above requirement on management and control, a joint venture will be required to demonstrate that the Indian firm is, in fact, the controlling partner in the joint venture. The venture will be required to demonstrate that the Indian partner has the experience and expertise to manage the entire operation and that the non-Indian partner is providing specialized or limited resources or expertise to the venture and is not the manager in fact.

Section 15-2-301. Located on the Cherokee Nation

An employer is "located on the Cherokee Nation" if during any portion of a business enterprise or specific project, contract or subcontract, he maintains a temporary or permanent office or facility on tribal lands.

Section 15-2-312. OFCCP

"OFCCP" shall mean the Office of Federal Contract Compliance Programs of the United States.

Section 15-2-323. Secretary

"Secretary" shall mean the Secretary of the Interior or his duly authorized representatives.

Section 15-2-334. Tribal Lands

"Tribal Lands" refer to all land either held in trust for the Cherokee nation by the United States or land held in fee simple by the Cherokee Nation.

Section 15-2-345. Tribal Member; member

"Tribal member" or "member" shall mean any person who is a duly enrolled member of the Cherokee Indian Tribe, unless the context clearly indicates otherwise.

Section 15-2-356. Tribe

"Tribe" shall mean the Cherokee Nation of Oklahoma.

Section 15-2-37. Core Crew

"Core Crew" shall mean a member of a contractor or subcontractor's crew who is a regular, permanent employee or is in a supervisory or other key position such that the employer would face a serious financial loss of that position were filled by a person who had not previously worked for the contractor or subcontractor.

Subchapter 3
Employment Rights ~~Commission~~ Committee

Section 15-2-50. Establishment

There is hereby established a Cherokee Nation of Oklahoma Rights ~~Commission~~ Committee which is appointed by the establishment of standing committees. CNCA Section 6-2-2 Membership.

Section 15-2-51. Duties generally

The ~~commission~~ committee shall administer the employment rights program of the Cherokee Nation of Oklahoma in accordance with this chapter.

Section 15-2-52. Powers generally

The ~~commission~~ TERO Committee shall have the power to review for compliance:

~~(1) To hire and fire commission employees and to pay salaries pursuant to a salary schedule established by the Council.~~

(1) To operate consistent with the provisions of this act and to develop rules and regulations governing pertinent activities of TERO.

~~(2) To establish rules and regulations governing all activities of the commission.~~

(2) To obtain funding from federal, state or other sources to supplement Council appropriations as delegated by the Administration.

~~(3) To expend funds appropriated by the Council for the Cherokee Nation tribal rights program.~~

(3) To establish numerical hiring goals and timetables specifying the minimum number of Indians an employer must hire by craft or skill level.

~~(4) To obtain funding from federal, state or other sources to supplement Council appropriations.~~

(4) To require employers to establish or participate in job training programs as the committee deems necessary to increase the pool of Indians eligible for employment.

~~(5) To establish numerical hiring goals and timetables specifying the minimum number of Indians an employer must hire by craft or skill level.~~

(5) To establish and administer a tribal job bank and require employers to use it.

~~(6) To require employers to establish or participate in job training programs as the commission deems necessary to increase the pool of Indians eligible for employment.~~

(6) To prohibit employers from using job qualifications criteria or personnel requirements that may bar Indians from employment unless such criteria or requirements are required by business necessity. Commission regulations may adopt EEOC guidelines or may adopt additional requirements to eliminate employment barriers unique to Indians in Indian Country.

(7) To establish and administer a tribal job bank and require employers to use it.

(7) To enter into agreements with the unions to insure union compliance with this chapter.

~~(8) To prohibit employers from using job qualifications criteria or personnel requirements that may bar Indians from employment unless such criteria or requirements are required by business necessity. Commission regulations may adopt EEOC guidelines or may adopt additional requirements to eliminate employment barriers unique to Indians in Indian Country.~~

(8) To require employers to give preference to tribal and other Indian-owned businesses in the award of contracts and subcontracts.

(9) To enter into agreements with the unions to insure union compliance with this chapter.

(9) To establish counseling programs to assist Indians in obtaining and retaining employment

~~(10) - To require employer to give preference to tribal and other Indian owned businesses in the award of contracts and subcontracts.~~

(10) To hold hearings and to subpoena request documents in accordance with the chapter.

~~(11) - To establish counseling programs to assist Indians in obtaining and retaining employment.~~

(11) To require employers to submit reports and take all actions deemed necessary by the Committee for the fair and vigorous implementation of this chapter.

~~(12) - To hold hearings and to request documents in accordance with this chapter.~~

(12) To enter into cooperative agreements with federal employment rights agencies such as EEOC and OFCCP to eliminate discrimination against Indians on Tribal lands.

~~(13) - To require employers to submit reports and take all actions deemed necessary by the commission for the fair and vigorous implementation of this chapter.~~

(13) To take such other actions as are necessary to achieve the purpose and objectives of the Cherokee Nation Employment Rights program established in this chapter

Section 15-2-53. Adoption of rules, regulations, policies and guidelines

When the Committee is appointed and organized it shall with all reasonable speed adopt, with the final approval of the Council, detailed rules, regulations, policies and guidelines to fully implement this chapter and the purposes and responsibilities of the Committee.

Cross Reference

Penalties for violation of rules, regulations and orders, see CNCA s 15-2-140

Section 15-2-54 Funds

All funds from employer fees and other sources

Subchapter 4

Indian Employment Rights, Requirements and Program Generally

Cross Reference

Complaints and hearings thereon, see CNCA S 15-20-120 et seq.
Enforcement and remedies, see CNCA S 15-2-140 et seq.
Uniform collective bargaining agreements, see CNCA S 15-2-100 et seq.

Section 15-2-70 Indian Preference Requirements Generally

(a) All employers are required to give preference to Indians in hiring, promotion, training, and all other aspects of employment, contracting or subcontracting, and must comply with this chapter and the rules, regulations and orders of the ~~Commission-Committee~~.

(b) The above requirements shall apply to an employer, including subcontractor, engaged in work by contract or otherwise with the Cherokee Nation of Oklahoma.

Section 15-2-71 Preference in contracting and Subcontracting

Employers shall give preference in the award of contracts or subcontracts to tribally owned and Indian-owned businesses. The TERO staff shall maintain a list of tribally owned and Indian-owned businesses which shall be supplied to the employers for their use.

Section 15-2-72. Preference in promotions

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

Section 15-2-73. Preference in employment of students

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

Section 15-2-74. Establishment and review of numerical goals for Indian employment generally.

(a) ~~The Commission-TERO Staff~~ may establish the minimum number of Indians each employer must employ on his work force during any year that he or any of his employees are located or engaged in work within the jurisdiction of the Cherokee Nation of Oklahoma. Numerical goals may be set for each craft, skill, job classification, etc., used by the employer and shall include, but not be limited to, administrative, supervisory and professional categories. The goals shall be expressed in terms of man-hours 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 goals shall be reviewed by the TERO Staff at least annually and shall be revised as necessary to reflect changes in the number of Indians available or changes in employer hiring plans. Each employer shall be requested to submit a monthly report to the TERO Staff on a form provided by the commission-Committee Staff, indicating the number of Indians in his work force, how close he is to meeting his goals, all persons hired or fired during the month, the job positions involved, and other information required by the commission-Committee TERO Office.

Section 15-2-75. Participation in training programs by employers

Employers may be required by the ~~commission~~ committee to participate in training programs to assist Indians to become qualified in the various job classifications used by the employer. The ratio of Indian trainees to fully qualified workers shall be set by the ~~commission~~ TERO Office after consultation with the employer.

Section 15-2-76. Use of job qualification criteria and personnel requirements of employers.

Employers are prohibited from using job qualification criteria or personnel requirements which bar Indians from employment, unless such criteria or requirements are required by business necessity.

Section 15-2-77. Implementation of layoffs and reductions in force by employers.

In all layoffs and reductions in force, employers shall maintain the required ratios of Indian employees.

Section 15-2-78. Duties of contractors and subcontractors; liability of employers for violations of this chapter by contractors and subcontractors.

The Indian preference requirements contained in this chapter shall be binding on all contractors and subcontractors of employers, regardless of tier,, and shall be deemed a part of all contract and subcontract specifications. The employer shall be subject to penalties provided herein for violation of this chapter if the contractor or subcontractor fails to comply.

Section 15-2-79. Establishment and administration by commission of job bank; recruitment and hiring of personnel by employers

The ~~commission~~ TERO staff shall establish and administer a Job Bank to assist the ~~commission~~ committee and employers in placing Indians in job positions. An employer may recruit and hire workers from whatever sources are available to him and by whatever process he chooses, as long as he complies with this chapter and Indian job preference regulations and agreements pertaining to his operation.

Section 15-2-80. Establishment by ~~commission~~ TERO Staff of counseling and other support programs; cooperation with ~~commission~~ committee by employers

The ~~commission~~ TERO Staff will establish counseling and other support programs to assist Indians to obtain and retain employment. Every employer shall be required to cooperate with the ~~commission~~ committee regarding such counseling and support programs.

Section 15-2-81. Burden of proof as to compliance with requirements of subchapter.

In any hearing before the ~~commission~~ committee where the issue is compliance by an employer with any of the requirements and provisions of this subchapter, the burden of proof shall be on the employer rather than on the employee or other complainant to show said compliance.

SUBCHAPTER 5 - UNION COLLECTIVE BARGAINING AGREEMENTS

Section 15-2-100. Duties of unions generally

employer must file a written agreement stating that the union will comply with this chapter and rules, regulations and orders of the Cherokee Nation. Until such agreements are filed with ~~commission committee~~, the employer may not commence work within the Cherokee Nation.

Section 15-2-101. Contents of union agreements

Every union agreement with an employer or filed with the ~~commission committee~~ must provide:

(1) Indian Preference. The union will give preference to Indians in job referrals regardless of which union referral list they are on.

(2) Cooperation with the ~~commission-TERO staff~~. The union will cooperate with the ~~commission committee~~ in all aspects and assist in the compliance with, and enforcement of, this chapter and related regulations and agreements.

~~(3) Registration. The union will establish a mechanism allowing Indians to register for job referral lists by telephone or mail.~~

~~(4)~~ (3) Training Programs. The union will establish a journeyman upgrade and advanced apprenticeship program.

~~(5)~~ (4) Temporary Work Permits. The union will with every extent feasible grant temporary work permits to Indians who do not wish to join the union.

Section 15-2-102. Model union agreement

The ~~commission committee~~ staff will provide a model union agreement for use by all unions who have collective bargaining agreements with any employer.

Section 15-2-103. Recognition of unions or endorsement of union activities.

Nothing herein or any activity by the ~~commission committee~~ authorized hereby shall constitute official tribal recognition of any union or tribal endorsement of any union activities within the Cherokee Nation of Oklahoma.

Section 15-2-104. Burden of proof as to compliance with requirements of subchapter

In any hearing before the ~~commission committee~~ where the issue is compliance by an employer with any of the requirements and provisions of this subchapter, the burden of proof shall be on the employer rather than on the employee or other complainant to show said compliance.

SUBCHAPTER 6 - Complaints and hearings

Section 15-2-120. Filing of complaints by ~~commission committee~~ and proceedings thereon generally

If the ~~commission committee~~ has cause to believe that an employer, contractor, subcontractor, or union has failed to comply with this chapter or any rules, regulations or orders of the ~~commission committee~~, it may file a complaint and notify such party of the alleged violations. The ~~commission committee~~ will attempt to achieve an informal settlement of the matter, but if an informal settlement cannot be achieved, the ~~commission committee~~ may request a hearing upon the matter pursuant to section 15-2-123 of this Code.

Section 15-2-21. Filing of complaints by Indians and proceedings thereon generally; penalties for retaliatory actions by employers against employees filing complaints

(a) If any Indian believes that an employer has failed to comply with this chapter or rules, regulations or orders of the commission, committee, or believes he has been discriminated against by an employer because he is an Indian, he may file a complaint with the commission committee specifying the alleged violation. Upon receipt of the complaint, the commission committee shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the individual or commission committee may request a hearing upon the matter pursuant to section 15-2-123 of this Code.

(b) If any employer fires, lays off, or penalizes in any manner, any Indian employee for utilizing the individual complaint procedure, or any other right provided herein, the employer shall be subject to the penalties provided in section 15-2-140 of this Code.

Section 15-2-122. Filing of complaints by employers or unions and proceedings thereon generally

If an employer or union believes that any provision of this chapter or any rules, regulation or order of the commission committee is illegal or erroneous, it may file a complaint with the commission committee staff specifying the alleged illegality or error. Upon receipt of the complaint, the commission committee shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the employer, union or commission committee may request a hearing upon the matter pursuant to section 15-2-123 of this Code.

Section 15-2-123. Notice of hearings

(a) If a hearing is requested by the commission committee, an individual, an employer, or union pursuant to this section, a written notice of the hearing shall be given to all concerned parties, stating the nature of the hearing and the evidence to be presented.

(b) The notice shall advise such parties of their right to be present at the hearing, to present testimony of witnesses and other evidence and to be represented by counsel at their own expense.

Section 15-2-124 Conduct of hearings; decision of matter by commission committee; notification of parties of decision of commission committee staff.

(a) Hearings shall be governed by the following rules or procedure:

(1) All parties may present testimony of witnesses and other evidence and may be represented by counsel at their expense,

(2) The commission committee may have the advice and assistance at the hearing of counsel provided by the tribe.

(3) The chairman of the commission committee or the vice-chairman shall preside and the commission committee shall proceed to ascertain the facts in a reasonable and orderly fashion.

(4) The hearing may be adjourned, postponed and continued at the discretion of the commission committee.

(b) At the final close of the hearings, the

commission-committee may take immediate action or take the matter under advisement.

(c) The commission-committee shall notify all parties 30 45 days after the last hearing of its decision in the matter.

SUB CHAPTER 7 - ENFORCEMENT AND REMEDIES

Section 15-2-140 Penalties for violations of chapter and rules regulations or orders of the commission committee.

(a) Any employer, contractor, subcontractor or union who violates this chapter or rules, regulations or orders of the commission-committee shall be subject to penalties for such violations, including, but not limited to:

(1) Denial of the right to commence or continue business within the lawful jurisdiction of the Cherokee Nation.

(2) Suspension of operations within the lawful jurisdiction of the Cherokee Nation of Oklahoma.

(3) Payment of back pay and damages to compensate any injured party.

(4) An order to summarily remove employees hired in violation of this chapter or rules, regulations and order of the commission-committee.

(5) Imposition of monetary civil penalties.

(6) Prohibition from engaging in future operations within the Cherokee Nation boundaries.

(7) An order requiring employment, promotion and training of Indians injured by the violation.

(8) An order requiring changes in procedures and policies necessary to eliminate the violation.

(9) An order making any other provision deemed by the commission committee necessary to alleviate, eliminate or compensate for any violation.

(b) The maximum penalty which may be imposed is \$500.00 for each violation.

(c) Each day during which a violation exists shall constitute a separate violation.

Section 15-2-141 Appeals from decisions of commission committee.

(a) Any party to a hearing shall have the right to appeal any decision of the commission committee to the Appellate Tribunal of the Cherokee nation of Oklahoma pursuant to the Tribal Constitution.

Section 15-2-142. Notification of prospective and current employers of obligations imposed by chapter and rules, regulations and orders of ~~commission~~ Committee.

(a) The commission committee shall notify all employers of this chapter and their obligations to comply. All bid announcements issued by any tribal, federal, state or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with this chapter and all rules, regulations and orders of the commission committee.

(b) All tribal agencies responsible for issuing business permits for activities within the Cherokee Nation or otherwise engaged in activities involving contract with prospective employers within the Cherokee Nation shall be responsible for advising such prospective employers of their obligations under this chapter and rules, regulations and orders of the commission committee.

(c) The commission committee shall send a copy of this chapter to every employer doing business with the Cherokee Nation.

Section 15-2-143. Consultation with ~~commission committee~~ by new employers as to obligation under this chapter.

As of January 11, 1986, no new employer may do business with the Cherokee Nation until it has consulted with the ~~commission committee~~ for meeting its obligations under this chapter.

Section 15-2-144. Filing of reports and other information employers; conduct of on-site inspections and investigations by ~~commission committee~~; inspection and copying records by commission committee.

(a) Employers shall submit reports, and other information requested by the ~~commission committee~~.

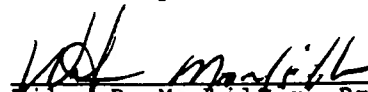
(b) The commission committee and its representative shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with this chapter and rules, regulations and orders of the commission committee.

(c) The commission committee 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.

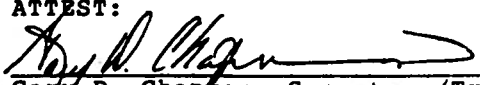
Passed by the Cherokee Nation Tribal Council on this 10th day of Dec. 1988.


John A. Ketcher, President
Cherokee Nation Council

Approved and signed by the Principal Chief this 10th day of Dec. 1988.


Wilma P. Mankiller, Principal Chief
Cherokee Nation of Oklahoma

ATTEST:


Gary D. Chapman, Secretary/Treasurer
of the Cherokee Nation