



## Legislation Text

File #: CNCA-40, Version: 2

### TITLE 40 LABOR AND EMPLOYMENT (INCLUDES 2016 POCKET PART)

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#### CHAPTER 1 GENERAL PROVISIONS

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##### § 101. Short title

This Act shall be known and may be cited as the Cherokee Nation Employment Rights Act.

**Source.** LA 38-05, eff. November 17, 2005.

##### History

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

Indians 223, 224. Westlaw Topic No. 209.

##### § 102. Purpose

##### Library References

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

The purpose of this Title is to encourage employment of Indians and to assist in and require the fair employment of Indians and to prevent discrimination against Indians in the employment practices of

employers who are doing business with the Cherokee Nation in Cherokee Nation Indian Country or in such jurisdiction as is provided in a cooperative agreement between the Cherokee Nation and another government.

## 40 CNCA § 102

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Source. LA 38-05, eff. November 17, 2005.

#### History

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

#### Library References

Indians 223, 224. Westlaw Topic No. 209.

## § 103. Definitions

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

**A. “Administration”** shall mean the Executive Branch of the Cherokee Nation as provided in the Cherokee Nation Constitution.

**B. “Cherokee Nation Indian Country”** shall mean the territorial boundaries of the Cherokee Nation as defined within the Cherokee Nation 1999 Constitution, Article II.

**C. “Cherokee Nation Government”** shall mean the officials and employees of the Cherokee Nation and its programs or commissions wherever located. **“Cherokee Nation”** shall mean the government of Cherokee citizens, authorized by the Act of Union of 1839.

**D. “Contractor”** shall mean any person, company or other entity engaged in work with the Cherokee Nation, its entities or wholly-owned corporations. The term **“contractor”** includes Cherokee Nation, its entities and wholly-owned corporations, and includes contractors, and subcontractors thereof. This term shall not include federal, state, or county government agencies to the extent prohibited by federal or state law.

**E. “Core crew”** shall mean an owner of the firm, or an employee of a company who is in a supervisory or other key position such that the employer would face a serious financial damage or loss if that position were filled by a person who had not previously worked for the employer, contractor or subcontractor.

**F. “Council”** shall mean the Tribal Council of the Cherokee Nation as established pursuant to the Cherokee Nation Constitution.

**G. “Debarment List”** shall be a list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.

**H. “EEOC”** shall mean the Equal Employment Opportunity Commission of the United States.

**I. “Emergency”** means any condition that places an extreme physical or emotional condition or financial burden on a Cherokee Citizen. (After all reasonable efforts have been made to contact a TERO Vendor).

**J. “Employer”** shall mean (i) Cherokee Nation, its entities and wholly-owned corporations, (ii) any person, company, contractor, subcontractor or other entity engaged in work on a Project with the Cherokee Nation, its entities or wholly-owned corporations or (iii) any person or entity employing two or more persons located within Cherokee Nation Indian Country that has applied for or received certification with the TERO Office. The term **“Employer”** shall not include companies that are engaged in government contracting or other

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activities where the application of this law may violate applicable federal or state laws.

**K. “Engaged in work”.** An employer is “engaged in work” if, during any portion of a business enterprise or specific project, contract or subcontract, the employer performs work under contract with the Cherokee Nation, its entities and wholly-owned corporations and/or the work is performed on Cherokee Nation Indian Country.

**L. Reserved**

**M. “Indian”** shall mean a person who is a member of a federally recognized Indian tribe.

**N. “Indian organization”** shall mean the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. § 1451).

**O. “Indian-owned economic enterprise”** shall mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than fifty-one percent (51%) of the enterprise, and the ownership shall encompass active operation and control of the enterprise. No Business that is more than forty-nine percent (49%) owned by a trust shall be included.

**P. “Indian Tribe”** means an Indian Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. § 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**Q. “Locally Owned”** means a business that has its headquarters and majority of its employees residing within the jurisdictional boundaries of the Cherokee Nation, as described in Article II of the Cherokee Constitution, or counties contiguous to those boundaries.

**R. “Located within Cherokee Nation Indian Country”.** An employer is “located within Cherokee Nation Indian Country” if, during and in connection with any portion of a business enterprise or specific project, contract or subcontract, the employer maintains a temporary or permanent office or facility on or performs work on Cherokee Nation Indian Country.

**S. “Major Cherokee Employer”** shall mean an Indian owned business that employs at least fifty (50) Cherokee Citizens as either part of the core crew or project crew, or has at least seventy-five percent (75%) of its workforce comprised of Cherokee Citizens as certified by the TERO. A business may be certified as Indian Owned, major Cherokee Employer, or both.

**T. “Nation”** shall mean the Cherokee Nation.

**U. “OFCCP”** shall mean the Office of Federal Contract Compliance Programs of the United States.

**V. “One Stop Business Center”** means a centralized location where Cherokee Owned businesses can obtain information regarding procurements, training, and financing.

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**W. “Secretary”** shall mean the United States Secretary of the Interior or his or her duly authorized representatives.

**X. “Tribal Citizen”** shall mean any person who is a duly enrolled member of the Cherokee Nation.

**Y. “TERO”** shall mean the Tribal Employment Rights Office.

**Z. “TERO Staff”** shall mean employees assigned to the TERO Office by the Executive Branch of the Cherokee Nation.

**AA. “Project”** shall mean any construction, alteration, or repair of buildings or structures performed for Cherokee Nation or its entities.

### History

**Source.** LA 38-05, eff. November 17, 2005.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

**Amended.** LA 05-16, eff. April 21, 2016.

**Amended.** LA 17-16, eff. July 13, 2016.

### Cross References

Indian preference requirements generally, see 40 CNCA § 301.

Tribal Employment Rights Office-Establishment, authority and duties, see 40 CNCA § 201.

## § 104. Time computation

In computing any period of time prescribed or allowed by this Title, the day of the act, default, or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Cherokee Nation or any other day when the receiving office does not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Cherokee Nation, or any other day, when the receiving office does not remain open for public business until 4:00 p.m. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays as defined by the Cherokee Nation or any other day when the receiving office does not remain open for public business until 4:00 p.m., shall be excluded in the computation.

### History

**Source.** LA 38-05, eff. November 17, 2005.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

### Library References

Time 9(1).

Westlaw Topic No. 378.

C.J.S. Time §§ 16 to 23, 25 to 26.

## § 105. Notification of prospective and current employers of obligations and rules, regulations and orders

A. The TERO shall notify all employers of this Title and of the employer's obligation to comply herewith. All bid announcements issued by any tribal, federal, state, or other private or public entity shall contain a statement that the

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successful bidder will be obligated to comply with this Title and all rules, regulations and orders of the TERO.

B. All Cherokee Nation agencies responsible for issuing business permits for activities within the Cherokee Nation or otherwise engaged in activities involving contact with prospective employers within the Cherokee Nation shall be responsible for advising such prospective employers of their obligations under this Title and rules, regulations and orders of the TERO.

C. The TERO shall send a copy of this Title to every employer doing business with the Cherokee Nation.

**Source.** LA 38-05, eff. November 17, 2005.

#### History

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

#### Library References

Indians 223, 224. Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

### § 106. Filing of reports, etc.-Inspections and investigations-Inspection and copying of records

A. Employers shall submit reports and other information requested by the TERO.

B. The TERO and its representatives shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with this Title and the rules, regulations, and orders of the TERO.

C. The TERO 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.

#### History

**Source.** LA 38-05, eff. November 17, 2005.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

Indians 223, 224. Westlaw Topic No. 209.

Indians 224. Westlaw Topic No. 209.

### § 107. Applicability

#### Library References

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

#### Library References

The provisions of this Act shall not apply nor shall compliance be required to the extent such application or compliance may violate applicable federal or state laws. The provisions of this Act shall not apply if such compliance would create a default of a contract by the Cherokee Nation or its entities.

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Source. LA 01-14, eff. March 21, 2014.

#### History

Indians 224. Westlaw Topic No. 209.

#### Library References

## CHAPTER 2

### TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO)

#### Section

- 201. Tribal Employment Rights Office-Establishment, authority and duties
- 202. Adoption of rules, regulations, policies and guidelines

#### **§ 201. Tribal Employment Rights Office-Establishment, authority and duties**

There is hereby recognized the Tribal Employment Rights Office (hereinafter referred to as the "TERO"). The TERO shall administer the employment rights program of the Cherokee Nation in accordance with this Title.

The TERO shall have the authority:

1. To operate consistent with the provisions of this Title and to develop rules and regulations governing activities of TERO. The TERO may adopt EEOC guidelines or may adopt other requirements to eliminate employment barriers unique to Indians in Indian Country;
2. To obtain funding from federal, state and other sources to supplement Council appropriations as delegated by the Administration;
3. To negotiate cooperative agreements with federal, state, local, and other authorities on matters dealing with employment rights and TERO activities and to operate pursuant to finalized cooperative agreements and/or memoranda of understanding or agreement;
4. To use the information, facilities, personnel, and other resources of federal, state, and local agencies, as allowed by those agencies, as well as any and all Cherokee Nation departments;
5. To require employers to establish or participate in job training programs as the TERO deems necessary to increase the pool of Indians eligible for employment;
6. To establish and administer a tribal job bank and require employers to use it;
7. To prohibit employers from using job-qualification criteria or personnel requirements that may bar Indians from employment unless such criteria or requirements are required by business necessity;
8. To engage in the process of certifying businesses as "Indian-owned economic enterprises" and determine whether businesses may be given Indian preference. No business that is more than forty-nine percent (49%) owned by a trust shall be certified;
9. To direct inspections of regulated sites and determine compliance with rules, regulations, and/or contract requirements. A "regulated site" shall be any site where an employer is engaged in work as defined by this Act;
10. To negotiate agreements with unions to insure union compliance with this Title;

11. To require employers/contractors to follow the preferences as required in 40 CNCA § 301;

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12. To establish counseling programs to assist Indians in obtaining and retaining employment;
13. To require employers to submit reports and take all actions deemed necessary by the TERO for the fair and vigorous implementation of this Act;
14. To enter into cooperative agreements with employment rights agencies such as EEOC, HRC, and OFCCP to eliminate adverse discrimination against Indians;
15. To take such actions as are necessary to achieve the purposes and objectives of the Cherokee Nation employment rights program established in this Title;
16. To publish a listing of certified "Indian-owned economic enterprises";
17. To review and propose changes to this Title and related regulations as necessary;
18. To participate and cooperate in appeal hearings in accordance with this chapter;
19. To register and keep file of records and complaints concerning certified, Indian-owned economic enterprises and with individuals and companies doing business with the Cherokee Nation;
20. To assess an employment rights fee of one-half of one percent (0.5%) on all covered contracts, which shall mean any contract executed by a contractor as defined in 40 CNCA § 103.
21. To issue and assess fees for work permits which must be obtained for all non-Indian employees of an employer:
  - a. Any employer, as defined in this Act shall be required to pay a fee of not less than Twenty-Five Dollars per employee per day for non-Indian employees hired for a project or hired after the effective date of Legislative Act 30-12 (September 12, 2012) if the employer is the Cherokee Nation or its entities.
  - b. Each such employer shall be required to submit a core crew list to the TERO.
  - c. Once the core crew list is submitted the TERO will confirm the core crew members the vendor has listed and those employees shall not be exempt from the requirement to obtain a work permit but no fee will be due for the core crew employees.
  - d. If the TERO has identified Indians that can be used for non-Indian employees it shall submit the name to the employer for consideration of replacement of the non-Indian employees. Failure to hire the qualified Indians submitted by TERO will result in termination of the employer's contract with the Cherokee Nation or its entities.
  - e. The TERO is also authorized to administer other fees and penalties as provided in this Act.
  - f. An employer is exempt from the assessment of a fee or penalties as provided in this Act if the employer can prove to the TERO that the employer followed the preferences under this Act through posting of a job announcement twice, employer submits job descriptions to TERO for qualified Indians, and through proof that no Indian applicant was qualified or no Indian applied.

### TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO)

### 40 CNCA § 203

**Source.** LA 38-05, eff. November 17, 2005.

#### History

**Amended.** LA 05-16, eff. April 21, 2016.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

**Amended.** LA 17-16, eff. July 13, 2016.

Indians 223, 224, 413. Westlaw Topic No. 209.

### Library References

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 151 to 180.

### § 202. Adoption of rules, regulations, policies and guidelines

The TERO and its staff shall, with all reasonable speed, adopt detailed rules, regulations, policies and guidelines to fully implement this Title and the purposes and responsibilities of the TERO.

#### History

**Source.** LA 38-05, eff. November 17, 2005.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

### Library References

Indians 223, 224, 412. Westlaw Topic No. 209.

### § 203. Funds

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 151 to 180.

All funds from employer fees and other sources collected by the TERO shall be tribal funds and be allocated to job training programs developed by the TERO staff and approved by the Council.

#### History

**Source.** LA 38-05, eff. November 17, 2005.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

## CHAPTER 3 PREFERENCE IN EMPLOYMENT

### Section

- 301. Indian preference requirements generally
- 302. Indian preference in contracting and subcontracting
- 303. Preference in promotions
- 304. Preference in employment of students
- 305. Reserved for future use
- 306. Participation in training programs by employers
- 307. Establishment by TERO staff of counseling and other support programs-Cooper- ation by employers
- 308. Use of job qualification criteria and personnel requirements by employers
- 309. Implementation of layoffs and reductions in force by employers
- 310. Duties of contractors and subcontractors-Liability of employers for violations by contractors and subcontractors
- 311. Establishment and administration of job bank-Recruitment and hiring of person- nel by employers
- 312. Prohibition on brokering and fronting services

### Cross References

Tax on domestic corporations and business organizations, see 68 CNCA § 1203. Tax on foreign corporations and business organizations, see 68 CNCA § 1204.

### § 301. Indian preference requirements generally

A. All employers are required to give preference to Cherokee Nation Citizens first, then Cherokees from the two other federally recognized Cherokee Tribes, and then members of other federally recognized tribes in hiring, promotion, training, and all other aspects of employment, contracting, or subcontracting, unless such preference would subject the employer to a violation of a federal or state law applicable to that employer, and must comply with this Title and the rules, regulations and orders of the TERO.

1. The Cherokee Nation government is an **“employer”** for the purposes of this Title and any of its business entities, subject to the exceptions listed in 40 CNCA § 103(J), shall be an **“employer”** for the purpose of this Title.
2. If potential contractors are otherwise equally qualified to complete the relevant contract work and respective bids are otherwise equal, the Cherokee Nation, its entities and wholly owned corporations shall apply a preference as set forth in subparagraph d (i) (ii) (iii) (iv) hereinbelow for economic enterprises in procurement and contracting. Exceptions to this requirement shall be permitted when no Indian-owned economic enterprise is readily available as designated by TERO; when applicable federal or state law does not permit such a preference; when other governmental entity contracts (including, but not limited to, VA or GSA contracts) are available; when more favorable pricing may be obtained; when the order meets the requirements of the Sole Source Request as defined in Acquisition Policy and Procedure; when the contract price is below Five Thousand Dollars (\$5,000.00) or in an emergency situation as determined by the Principal Chief.

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- a. Primary preference shall be given to certified “Indian-owned businesses” where the majority owner(s) are Cherokee citizens,
- b. Second preference to other certified “Indian-owned businesses” and,
- c. A business may be certified as both an “Indian-owned” and “major Cherokee employer” business. In this case, such dually certified business would receive preference over other Indian-owned businesses within categories a and b above.
- d. Preference shall be given in the following order:
  - i. First Preference shall be given to Cherokee-owned businesses that are major Cherokee employers;
  - ii. Second Preference shall go to Cherokee-owned businesses;
  - iii. Third Preference shall go to businesses that are certified as Indian-owned and that are major Cherokee employers;
  - iv. Final Preference shall go to those businesses that are certified as Indian-owned.
3. Following the preferences in paragraph 2 above, the procurement offices of the Nation shall develop policies to administer to “Locally-owned businesses” as defined herein. In no instance shall this preference degrade or supersede Indian preference.
4. Any contract awarded to a general contractor may be subcontracted, provided that the Indian preference requirements herein apply unless applicable federal or state law prevents the Indian preference application, regardless of the level of subcontracting activity. Failure to apply Indian preference to subcontracts shall be deemed by TERO a violation of this Act, unless applicable federal or state law prevents the application of an Indian preference. The contractor/employer have the burden of proving to TERO that federal or state law applies to that contractor/employer and prevents the Indian preference application.
5. The Cherokee Nation Administration may create procurement and contracting policies and procedures for application of said preference. The Cherokee Nation procurement and/or contracting offices shall maintain a list of entities which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws and shall also maintain a list of entities which have provided good performance and satisfactory work and have engaged in compliant behavior with contract provisions, rules, regulations or laws.
6. Nothing shall require the Cherokee Nation to contract with or hire any Indian-owned economic

enterprises which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. The Cherokee Nation procurement and/or contracting offices may maintain a list of entities which have previously provided poor performance or unsatisfactory work or which have engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.

B. In accordance with paragraph 5 of subsection (A) of this section the procurement offices of the Nation and its entities shall maintain a “Debarment

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List” which shall be a list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. The procurement offices shall develop policies and procedures to define poor performance of a contractor/employer. Documentation of poor performance must be available and provided to the contractor upon request. The procurement offices shall forward the names of any certified Indian-owned businesses determined to have poor performances to both the TERO and to the One Stop Business Center for Technical Assistance and Improvement.

1. Debarment list, Annual Certification; in compiling the debarment list required by this section, the TERO shall require, on an annual basis, employers who employ twenty-five (25) employees or more to certify that they are in compliance with applicable state federal and tribal labor and employment laws. Nothing herein shall impose any new obligation on any employer to comply with said labor and employment laws.

2. The period of debarment by the TERO shall be for a period of no less than two (2) years.

C. In accordance with 40 CNCA § 502, the TERO shall address complaints of violations the Act or TERO Rules. Should there be any unresolved violations by Departments of the Nation or its Business Entities, the TERO shall issue reports of non-compliance to the Principal Chief, Tribal Council and applicable Boards of Directors.

**Source.** LA 38-05, eff. November 17, 2005.

### History

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

### Cross References

Tribal Employment Rights Office-Establishment, authority and duties, see 40 CNCA § 201.

Indians 223, 224. Westlaw Topic No. 209.

### Library References

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

## § 302. Indian preference in contracting and subcontracting

In the award of contracts or subcontracts, employers shall give preference to Indian organizations and to Indian-owned economic enterprises as defined in this Title, unless such preference would be a violation of applicable federal law. The TERO staff shall maintain and publish a list of Indian organizations and Indian-

owned economic enterprises which shall be supplied to the employers for their use.

**Source.** LA 38-05, eff. November 17, 2005.

#### History

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

## PREFERENCE IN EMPLOYMENT

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Indians 223, 224. Westlaw Topic No. 209.

#### Library References

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

### § 303. Preference in promotions

Every employer shall, in accordance with TERO regulations, give Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. Preference will apply as follows (unless federal or state law applicable to that employer prevents such a preference):

1. Primary preference to Cherokee Nation citizens;
2. Second preference to other Indians.

#### History

**Source.** LA 38-05, eff. November 17, 2005.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

#### Library References

Indians 223, 224. Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

### § 304. 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.

#### History

**Source.** LA 38-05, eff. November 17, 2005.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

### Library References

Indians 223, 224. Westlaw Topic No. 209.

## § 305. Reserved

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

## § 306. Participation in training programs by employers

Employers may be required by the TERO 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 TERO after consultation with the employer.

### History

**Source.** LA 38-05, eff. November 17, 2005.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

### Library References

Indians 223, 224. Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

## 40 CNCA § 307

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## § 307. Establishment by TERO staff of counseling and other support programs-Cooperation by employers

The TERO may establish counseling and other support programs to assist Indians in obtaining and retaining employment. Every employer shall be required to cooperate with the TERO regarding such counseling and support programs.

**Source.** LA 38-05, eff. November 17, 2005.

### History

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

### Library References

Indians 223, 224. Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

## § 308. Use of job qualification criteria and personnel requirements by 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.

### History

**Source.** LA 38-05, eff. November 17, 2005.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

### Library References

Indians 223, 224. Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

## § 309. Implementation of layoffs and reductions in force by employers

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

**Source.** LA 38-05, eff. November 17, 2005.

### History

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

### Library References

Indians 223, 224. Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

## § 310. Duties of contractors and subcontractors-Liabilities of employers for violations of by contractors and subcontractors

The Indian preference requirements contained in this Title shall be binding on all contractors and subcontractors doing projects for employers (unless applicable federal or state law prevents such a preference), regardless of tier, as referenced in 40 CNCA § 301(A)(2), and shall be deemed a part of all contract and subcontract specifications. Any violation of this Act by a contractor or

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subcontractor of an employer shall subject the contractor or subcontractor to penalties even if the contract does not contain the Indian preference requirement, unless applicable federal or state law prevents such a preference.

### History

**Source.** LA 38-05, eff. November 17, 2005.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

### Library References

Indians 223, 224. Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

### § 311. Establishment and administration of job bank-Recruitment and hiring of personnel by employers

The TERO may establish and administer a job bank to assist employers in placing Indians in job positions. An employer may recruit and hire workers from whatever sources are available and by whatever process the employer chooses, as long as the employer complies with this Title and Indian job preference regulations and agreements pertaining to the employer.

#### History

**Source.** LA 38-05, eff. November 17, 2005.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

#### Library References

Indians 223, 224. Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

### § 312. Prohibition on brokering and fronting services

No Indian entity shall represent that it is exercising management control of a project in order to qualify for Indian preference in the award of said contract or sub-contract when in fact such management control is exercised by a non- Indian entity such that the Indian entity is acting as front or brokering out services.

**Source.** LA 38-05, eff. November 17, 2005.

#### History

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

#### Library References

Indians 223, 224. Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

## CHAPTER 4 UNION AGREEMENTS

### Section

401. Duties of unions generally

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403. Model union agreement

404. Recognition of unions or endorsement of union activities

## § 401. Duties of unions generally

Every union with a collective bargaining agreement with an employer must file a written agreement stating that the union will comply with this Title and rules, regulations and orders of the TERO. Until such agreement is filed with the TERO, the employer may not commence work within the Cherokee Nation Indian Country.

**Source.** LA 38-05, eff. November 17, 2005.

### History

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

### Library References

Indians 223, 224. Westlaw Topic No. 209.

## § 402. Contents of union agreements

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

Every union agreement with an employer or filed with the 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 TERO staff. The union will cooperate with the TERO in all respects and assist in the compliance with and enforcement of this Title and related regulations and agreements.
3. Training programs. The union will establish a journeyman upgrade and advanced apprenticeship program.
4. Temporary work permits. The union will grant temporary work permits to Indians who do not wish to join the union.

### History

**Source.** LA 38-05, eff. November 17, 2005.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

### Library References

Indians 223, 224. Westlaw Topic No. 209.

## § 403. Model union agreement

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

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

### UNION AGREEMENTS

### 40 CNCA § 404

**Source.** LA 38-05, eff. November 17, 2005.

## History

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

## Library References

Indians 223, 224. Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

## § 404. Recognition of unions or endorsement of union activities

A. Nothing herein, or any activity by the TERO authorized hereby, shall constitute official Cherokee Nation recognition of any union or endorsement of any union activities within the Cherokee Nation. Nothing herein bars any employer, Cherokee Nation or its entities, from recognizing any union.

B. Neither the TERO, including any employer or agent thereof, nor any Cherokee Nation entity, shall engage in any activity constituting opposition to or endorsement of any union activities among employees of any employer covered by this Act. Nothing herein shall restrain any elected official of the Cherokee Nation from endorsing or opposing such union activities.

C. Any prohibition against endorsement of any union activities in this section shall not include the provision of any assistance to any Cherokee Nation citizen to utilize any apprentice or job training program operated by any union or union-affiliated entity.

**Source.** LA 38-05, eff. November 17, 2005.

## History

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

## Library References

Indians 223, 224. Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

# CHAPTER 5 COMPLAINTS AND HEARINGS

## Section

501. Filing of complaints by TERO and proceedings thereon generally

502. Filing of complaints by Indians and proceedings thereon generally-Penalties for retaliatory actions by employers against employees filing complaints

503. Reserved

504. Notice of hearings

505. Conduct of hearings

### § 501. Filing of complaints by TERO and proceedings thereon generally

If the TERO staff has cause to believe that an employer, contractor, subcontractor, or union has failed to comply with this Title or any rules, regulations or orders of the TERO, it may file a complaint with the TERO Director and notify such party of the alleged violations. The TERO Director will attempt to achieve an informal settlement of the matter, but if an informal settlement cannot be achieved, the TERO may impose penalties as provided in 40 CNCA § 601. Should any entity fail to comply with orders of the TERO, the TERO may pursue a civil legal action against the entity in the Cherokee Nation District Court.

**Source.** LA 38-05, eff. November 17, 2005.

#### History

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

#### Library References

Indians 416, 417, 422, 433.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### § 502. 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 Title or rules, regulations or orders of the TERO, or if the Indian believes he or she has been adversely discriminated against by an employer because he or she is Indian, the Indian may file a complaint with the TERO specifying the alleged violation. Upon receipt of the complaint, the TERO shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the individual or TERO may take further action as provided for by law.

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 40 CNCA § 601.

C. Nothing in this Title shall prohibit the aggrieved Indian from pursuing from the employer other remedies available by law.

#### COMPLAINTS & HEARINGS

#### 40 CNCA § 505

**Source.** LA 38-05, eff. November 17, 2005.

#### History

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

#### Cross References

Indian preference requirements generally, see 40 CNCA § 301.

### Library References

Indians 411, 417, 423. Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

## § 503. Reserved

## § 504. Notice of hearings

A. The Administrative Appeals Board, as established pursuant to 51 CNCA § 1001 et seq. shall have the power and duty to hear employer appeals of TERO decisions denying certification of the employer as an Indian-owned economic enterprise. The Administrative Appeals Board shall have the power to either affirm or reverse the TERO Certification decision, but will not have the power to award any other form of remedy in the cases brought to this Title.

B. The Administrative Appeals Board shall have the power to create rules as may be necessary to perform the duties and functions delegated to the Administrative Appeals Board herein.

C. If a hearing is requested by the Board, 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.

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

### History

**Source.** LA 38-05, eff. November 17, 2005.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

### Library References

Indians 419. Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

## § 505. Conduct of hearings

If any employer or person feels aggrieved by a decision made by the TERO they may appeal that decision to the Administrative Appeals Board. The Administrative Appeals Board shall hold a hearing in accordance with this Act and will either confirm or deny the TERO decision.

1. Hearings shall be governed by the following rules and procedure:

## 40 CNCA § 505

### LABOR & EMPLOYMENT

- a. All parties may present testimony of witnesses and other evidence and may be represented by counsel at their expense.
- b. The Board may have the advice and assistance at the hearing of counsel provided by the Nation.
- c. The Chairman of the Board or the Vice-Chairman shall preside and the Board shall proceed to ascertain the facts in a reasonable and orderly fashion.
- d. The hearing may be adjourned, postponed and continued at the discretion of the Board.

2. At the final close of the hearings, the Board may take immediate action or take the matter under advisement.
3. The Board shall notify all parties forty-five (45) days after the last hearing of its decision in the matter.
4. The Board shall conclude this process within ninety (90) days of the request for a hearing.

**Source.** LA 38-05, eff. November 17, 2005.

## History

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

## Library References

Indians 418. Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

# CHAPTER 6 ENFORCEMENT AND REMEDIES

## Section

601. Penalties for violations of Title and rules, regulations or orders of the TERO or Administrative Appeals Board

### **§ 601. Penalties for violations of Title and rules, regulations or orders of the TERO or Administrative Appeals Board**

A. Any employer, contractor, subcontractor or union who violates this Title or rules, regulations or orders of the TERO shall be subject to penalties for the violation, including, but not limited to:

1. Denial of the right to commence or continue business within the jurisdiction of the Cherokee Nation.
2. Suspension of operations within the jurisdiction of the Cherokee Nation.
3. Payment of back pay and damages to compensate any injured party.
4. Reserved for Future Use.
5. Imposition of monetary civil penalties.
6. Prohibition from engaging in future operations with the Cherokee Nation.
7. An order requiring employment, promotion, and training of Indians injured in the violation.
8. An order requiring changes in procedures and policies necessary to eliminate the violation.
9. An order making any other provision deemed necessary to alleviate, eliminate, or compensate for any violation.

B. The maximum monetary penalty which may be imposed is Five Thousand Dollars (\$5,000.00) for each violation. The penalties will be graduated as follows:

1. The first violation will incur a fine of Two Hundred Dollars (\$200.00);
2. The second violation will incur a fine of One Thousand Dollars (\$1,000.00);
3. The third violation will incur a fine of Five Thousand Dollars (\$5,000.00).

C. Each day during which a violation exists shall constitute a separate violation.

D. Monetary penalties assessed by TERO may be tripled if it is shown that the violation occurred egregiously or with reckless or wanton behavior.

E. Attorney fees and cost of pursuing or defending an action of the TERO may be awarded to the prevailing party.

### History

**Source.** LA 38-05, eff. November 17, 2005.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

## 40 CNCA § 601

### LABOR & EMPLOYMENT

#### Cross References

Filing of complaints by Indians and proceedings thereon generally-Penalties for retaliatory actions by employers against employees filing complaints, see 40 CNCA § 502.

Filing of complaints by TERO and proceedings thereon generally, see 40 CNCA § 501.

#### Library References

Indians 423, 660, 661. Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

## CHAPTER 7 APPEALS

### Section

701. Appeals from decisions of Administrative Appeals Board 702. Employee Appeals Board-Change of name

### § 701. Appeals from decisions of Administrative Appeals Board

A. Any party to a hearing shall have the right to appeal any decision of the Board to the District Courts of the Cherokee Nation.

B. Standard Review. The District Court shall review decisions of the Administrative Appeals Board without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the Administrative Appeals Board, not shown in the record, testimony thereon may be taken by the District Court. The District Court, upon request, shall hear oral arguments and receive written briefs.

C. Appeals of the decision of the District Court may be taken in the Supreme Court under the rules and procedures governing civil appeals before that Court.

**Source.** LA 38-05, eff. November 17, 2005.

### History

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

#### Library References

Indians 433, 434, 440, 442.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### § 702. Employee Appeals Board-Change of name

The Employee Appeals Board, as established pursuant to 51 CNCA § 1001 et seq., shall hereinafter be known as the “Administrative Appeals Board”.

#### History

**Source.** LA 38-05, eff. November 17, 2005.

**Amended.** LA 30-12, eff. September 12, 2012.

**Amended.** LA 01-14, eff. March 21, 2014.

## CHAPTER 8 DOMESTIC VIOLENCE

### LEAVE

#### Section

801. Discharges for absence from employment due to domestic violence prohibited 802. Penalty for violation

### § 801. Discharges for absence from employment due to domestic violence prohibited

When an employee demonstrates, either through the filing of criminal or civil proceedings in a court of law or by such other method satisfactory to the employer, that she or he has been the victim of domestic violence and that such violence contributed to her or his absence(s) from work or tardiness at work for a period of up to seven (7) days over the course of a year, it shall be a violation of this chapter for any employer to terminate or otherwise discipline any employee who has missed work or is tardy. In lieu of disciplinary action, the employer shall grant the employee leave, with or without pay, dependent upon the policies of the employer.

**Source.** LA 34-05, eff. November 12, 2005.

#### History

Indians 223, 224. Westlaw Topic No. 209.

### § 802. Penalty for violation

#### Library References

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 161 to 162, 180.

Any employer who willfully violates this chapter shall be subject to a civil penalty of Five Hundred Dollars (\$500.00) payable to the Court in addition to any other remedies the wrongfully discharged employee may have against the employer. Nothing in this section shall preclude a private party from commencing a wrongful termination action against an employer for violation of this chapter.

**Source.** LA 34-05, eff. November 12, 2005.

## History

Indians 535. Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

## Library References

# CHAPTER 9 MINIMUM WAGE

## Section

- 901. Short title
- 902. Purpose
- 903. Definitions
- 904. Minimum wage
- 905. Exemptions

### § 901. Short title

This act shall be known and may be cited as the Cherokee Nation Minimum Wage Act of 2006.

**Source.** LA 33-06, eff. November 20, 2006.

## History

Indians 224. Westlaw Topic No. 209.

### § 902. Purpose

## Library References

The purpose of this act is to establish a minimum hourly wage for employees of Cherokee Nation and its corporations and entities.

## History

**Source.** LA 33-06, eff. November 20, 2006.

## Library References

Indians 224. Westlaw Topic No. 209.

### § 903. Definitions

A. **“Cherokee Nation”** means all three (3) branches of the government of Cherokee Nation as established by the 1999 Constitution, the seat of which is located at Tahlequah, Oklahoma, and includes all departments, commissions, agencies, and instrumentalities thereof.

B. **“Employ”** means to suffer or permit to work.

C. **“Employee”** means any individual employed by an employer but shall not include:

1. an individual employed on a farm in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wild- life, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment;
2. any individual working as a volunteer;

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### LABOR & EMPLOYMENT

3. any employee of any carrier subject to regulation by Part I of the Interstate Commerce Act (see Revised Title 49, U.S.C.);

4. any employee employed in a bona fide executive, administrative or professional capacity, or in the capacity of outside salesman;

5. any person who is less than eighteen (18) years of age and is not a high school graduate or a graduate of a vocational training program, and any person who is less than twenty-two (22) years of age and who is a student regularly enrolled in a high school, college, university or vocational training program;

6. any person who is working with Cherokee Nation as part of a training program, summer youth program, as an temporary intern, or to receive educational credit; or

7. any individual working as a reserve Marshal.

D. **“Employer”** means Cherokee Nation and any government-owned company.

E. **“Government-owned company”** means any entity which is wholly-owned by Cherokee Nation regardless of location of the entity, or any corporation or entity in which Cherokee Nation owns a controlling interest and which is located within Cherokee Nation jurisdiction.

F. **“Wage”** means compensation due to an employee by reason of his employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges or allowances as may be permitted by law.

### History

**Source.** LA 33-06, eff. November 20, 2006.

## § 904. Minimum wage

A. Every employer shall pay to each of its employees wages at the following rate: not less than Seven Dollars Fifty Cents (\$7.50) per hour beginning with the first full pay period after enactment. Further, there shall be a wage increase beginning at One Dollar (\$1.00) for the wage rate of Six Dollars Fifty Cents (\$6.50) with the One Dollar (\$1.00) wage increase being reduced by One Cent (\$.01) for every Two Cents (\$.02) above the Six Dollars Fifty Cents (\$6.50) wage rate which shall also be effective with the first full pay period after enactment.

B. Every employer shall pay to each of its employees wages at the following rate: not less than Eight Dollars Twenty-five Cents (\$8.25) per hour beginning with the first full pay period after October 1, 2007. Further, there shall be a wage increase beginning at Seventy-five Cents (\$.75) for the wage rate of Seven Dollars Fifty Cents (\$7.50) with the Seventy-five Cents (\$.75) wage increase being reduced by One Cent (\$.01) for every Two Cents (\$.02) above the Seven Dollars Fifty Cents (\$7.50) wage rate which shall also be effective with the first full pay period after October 1, 2007.

C. Every employer shall pay to each of its employees wages at the following rate: not less than Nine Dollars (\$9.00) per hour beginning with the first full pay period after October 1, 2008. Further, there shall be a wage increase beginning at Seventy-five Cents (\$.75) for the wage rate of Eight Dollars

## MINIMUM WAGE

## 40 CNCA § 905

Twenty-five Cents (\$8.25) with the Seventy-five Cents (\$.75) wage increase being reduced by One Cent (\$.01) for every Two Cents (\$.02) above the Eight Dollars Twenty-five Cents (\$8.25) wage rate which shall also be effective with the first full pay period after October 1, 2008.

D. The minimum wage provided for in subsection (A) of this section shall be considered a minimum rate of pay.

E. To compute the minimum wage provided for in subsection (A) of this section, credit toward the minimum wage must be given for any tips or gratuities, meals or lodging received by the employee up to but not exceeding fifty percent (50%) of said wage.

F. Any employer which furnishes uniforms to its employees may take credit against the minimum wage in an amount equal to the reasonable cost of furnishing the uniforms.

G. Nothing in this act shall be construed to prohibit the payment of an hourly rate in excess of Seven Dollars Fifty Cents (\$7.50) per hour.

### History

**Source.** LA 33-06, eff. November 20, 2006.

### Library References

Indians 224. Westlaw Topic No. 209.

## § 905. Exemptions

All employees who are deemed “exempt” from the minimum wage under 29 U.S.C. § 213 and the rules and regulations promulgated pursuant thereto shall be deemed exempt from this act.

**Source.** LA 33-06, eff. November 20, 2006.

### History

Exemptions, see 29 U.S.C. § 213.

Indians 224. Westlaw Topic No. 209.