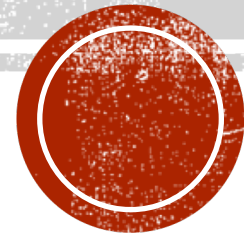




# **TRIBAL OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION ORDINANCE**

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# OBJECTIVE

- Understand Safety and Health in Indian Country
- Role of TERO on Indian lands
- Role of WPO within Construction Projects
- Essential elements of Worker Protection
- Workplace Safety – it's everyone's job





# WHAT IS TERO?

- Tribal Employment Rights Ordinance
- TEROs have been in effect since 80's as a means to further exercise tribal sovereignty
- Goals are to promote Indian Preference in employment and contracting on Indian lands
- Emphasis on qualifying Indian people for contract jobs or direct employment
- Education, collaboration, workforce development, and compliancy are keystones to an effective TERO



# WHAT IS WPO?

Worker Protection Ordinances were introduced in mid 2000's

A. Bridge the gap between tribal labor and tribal law

B. Tribes were urged to decide on a battleground for employment law. OSHA and EEOC were two of those laws.

“federal agencies are looking for opportunities to enforce federal labor laws of general application against tribes. Tribes cannot assert the sovereign immunity defense against the United States; so these cases go forward. The question becomes whether Congress (when silent on the issue) intended such laws to apply to tribes.”

*By Kaighn Smith Jr. and Dawn Sturdevant Baum, Indian Country Today February 2010*

## INDIAN COUNTRY TODAY

### **Smith and Baum: Tribes must decide battleground on employment law**

By Kaighn Smith Jr. and Dawn Sturdevant Baum  
Daily Publisher, Feb 21, 2010  
Daily Update, Feb 12, 2010

There's an old adage that law professors like to use: Bad facts make bad law; in the area of tribal labor and employment law, watch out -- if the facts set up the wrong way, irreparable damage will be done to tribal self-government in this field. This is a problem (or opportunity) for tribal sovereignty in the way that the test case of *Brown v. Board of Education* was for the civil rights movement.

There's been plenty of "bad press" about tribes "getting away with" practices in the workplace that may look wrong to outsiders. The assertion of sovereign immunity against individual employees may exacerbate tensions. In dismissing an action for unpaid wages brought by tribal employees, the Crow Court of Appeals recently warned, "if the tribe does not take steps to enact appropriate waivers of sovereign immunity, we believe it is only a question of when Congress will do it for us." The Crow Tribe later enacted law to protect its workforce.

It's probably more likely that the Supreme Court, not Congress, will decide whether tribes and their enterprises must succumb to federal authority over union rights, age and other discrimination laws, and a host of other federal laws governing employment relations. For now anyway, Congress is distracted by other issues. So what will a case look like that goes up to the high court?

There's an old adage that law professors like to use: Bad facts make bad law; in the area of tribal labor and employment law, watch out.

With non-Indians taking up employment positions in Indian country in droves, federal agencies are looking for opportunities to enforce federal labor laws of general application against tribes. Tribes cannot assert the sovereign immunity defense against the United States; so these cases go forward. The question becomes whether Congress (when silent on the issue) intended such laws to apply to tribes.

The case law on that question is in limbo. There is no consensus across the federal courts on what standard governs the outcome. Some courts say it turns on whether application of the federal law would affect a treaty right or a "purely intramural matter." Others suggest that if application of the law would infringe on established attributes of tribal sovereignty, courts must presume that Congress intended not to apply the law to tribes.



# WHY ARE TERO AND WPO IMPORTANT?

- TERO and WPO work hand-in-hand
- Emphasis is on **qualifying** people for employment
- Understand type, scope and sequence of work
  - a) Tribal governments – office workers, public works, solid waste, environmental waste, healthcare facilities
  - b) Casinos and Hotels – administration workers, food & beverage, housekeepers, facilities operations, public safety
  - c) Enterprise operations – warehousing, fireworks, diesel & fuel, grocery stores



# ESSENTIAL WORKER PROTECTIONS

- Most federal laws are “silent” on its application to tribes – EEOC and OSHA are examples
- This either leaves tribal workforce without coverage or places them at risk and/or tribal liability and sovereignty concerns
- Discrimination, Harassment, Equal Pay, Equal Coverage, Worker Protections, Hazard-free Work Environments, Construction, General Industry
- Having written and promulgated policies, procedures & regulations protects the workforce and lessens the liability
- A Worker Protection Ordinance makes sense.



# **WORKPLACE SAFETY — IT'S EVERYONE'S JOB**

- Shoshone-Bannock Tribes adopts Worker Protection Ordinance, January 2013

- Chapter 7 of the WPO requires

A) Employers to furnish employees with a place and condition of employment that is free from recognized hazards that may cause or are likely to cause death or serious physical harm to the employees, and comply with all occupational safety and health rules promulgated or adopted by the Tribes; and

B) Employees shall comply with all occupational safety and health rules promulgated or adopted by the ordinance that are applicable to the actions and conduct of the employee.

- Shoshone-Bannocks WPO looks to OSHA for guidance



# TRIBAL SAFETY PERSONNEL

- Shoshone-Bannocks have 2 tribal safety personnel
- Required to become OSHA Outreach Trainers
- Conduct initial review of Safety Plans or Policies, make recommendations where necessary
- Collaborate with Safety Officers to complete a Contractor Safety & Health Agreement
- Conduct inspections, offer training, make site visits





# AGREEMENTS ARE ROOTED IN COMPLIANCE PLANS

- Parties agree to adhere to TERO and WPO through a negotiated compliance plan
- The plan entails:
  - a) Anticipated Start Date, Projected End Date
  - b) Scope and Sequence of Work
  - c) Location of Work
  - d) Positions involved in Work
  - e) Minimum Qualifications or BFOQ for Workers
  - f) Safety Plan or Policy identifying Job Specific Hazards
  - g) Worker's Compensation Coverage
  - h) Dual Consent



# **ATTACHMENTS**

- **TERO Sample Contractor Plan**
- **Contractor Safety & Health Agreement**



# QUESTIONS / COMMENTS / SUGGESTIONS

- Denell Broncho, TERO Director
- Lenora Lavatta, Compliance Officer/Apprenticeship Coordinator
- Rick Edmo, Tribal Safety Officer
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