

FOND DU LAC ORDINANCE #12/94, AS AMENDED

TRIBAL EMPLOYMENT RIGHTS

Adopted by Resolution #1197/94 of the Fond du Lac Reservation Business Committee on May 24, 1994.

Amended by Ordinance #05/96, adopted by Resolution #1151/96 of the Fond du Lac Reservation Business Committee on May 30, 1996.

Amended by Ordinance #02/98, adopted by Resolution #1067/98 of the Fond du Lac Reservation Business Committee on March 19, 1998.

Amended by Resolution #1004/17 of the Fond du Lac Reservation Business Committee on January 11, 2017.

Amended by Resolution #1042/17 of the Fond du Lac Reservation Business Committee on February 9, 2017.

Amended by Resolution #1287/18 of the Fond du Lac Reservation Business Committee on October 31, 2018.

FOND DU LAC ORDINANCE #12/94, as amended

TRIBAL EMPLOYMENT RIGHTS

SECTION 101 AUTHORITY

This Ordinance is enacted pursuant to the inherent sovereign authority of the Fond du Lac Reservation Business Committee, as the governing body of the Fond du Lac Band of Lake Superior Chippewa, as granted by Article VI of the Revised Constitution of the Minnesota Chippewa Tribe, and as recognized by the United States under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, Section 7(b) of the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. § 450e, and Section 703(i) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(i).

SECTION 102 DECLARATION OF POLICY

The Reservation Business Committee recognizes that the membership of the Fond du Lac Band of Lake Superior Chippewa is the most important resource of the Band, and that the Reservation Business Committee has a commensurate obligation to create employment and training opportunities for members of the Band and their families, and to eradicate discrimination against Band members and other Indian persons within the Band's regulatory jurisdiction. The Reservation Business Committee further recognizes that meaningful self-determination for the Band can only be realized through the maximum participation by the members of the Band in the employment opportunities arising on or near the Fond du Lac Reservation. Towards these purposes, the Reservation Business Committee declares it to be the policy of the Band to promote the social and economic development of the Band and its members through the implementation of the standards set forth in this Ordinance for employment on or near the Fond du Lac Reservation, and as a condition to all contracts to which the Band is a party.

SECTION 103 DEFINITIONS

- (a) "Band" shall mean the Fond du Lac Band of Lake Superior Chippewa.
- (b) "Contractor" shall mean any business, person, or government entity that has entered into a contract for the provision of goods or services on or near the Fond du Lac Reservation or with the Band or any subdivision or enterprise of the Band.

- (c) “Core crew” shall mean a member of a contractor or subcontractor's crew who is a regular, permanent employee, and in a supervisory position or other key position, such that the employer would face a serious financial loss if the position was filled by another person who had not previously worked for the contractor or subcontractor.
- (d) “Covered” shall mean any entity, company, contractor, subcontractor, corporation, or other business entity doing business on the Fond du Lac Reservation.
- (e) “Employee” shall mean any person who is retained by an employer for compensation.
- (f) “Employer” shall mean any person or business having five (5) or more employees or contractors within the Fond du Lac Reservation, and includes the government and subdivisions of the Band.
- (g) “Fond du Lac Reservation” shall mean all lands within the exterior boundaries of the Reservation and all trust lands held by the United States for the Fond du Lac Band of Lake Superior Chippewa.
- (h) “Indian” shall mean any person who is enrolled in a federally-recognized Indian tribe.
- (i) “Person” shall include any natural person and any partnership, association, corporation, legal representative, trustee or receiver.
- (j) “Qualification” shall mean a demonstrated ability to perform the terms of employment or a contract and may include evaluation of prior performance, safety records, prior or pending litigation or complaints regarding performance, financial stability, or similar factors that are directly relevant to a bidder's ability to perform satisfactorily. Indian status is not a qualification. Union membership is not a qualification.
- (k) “Registrar” shall mean the Registrar of the Fond du Lac Band of Lake Superior Chippewa.
- (l) “Reservation Business Committee” or “RBC” shall mean the governing body of the Fond du Lac Band of Lake Superior Chippewa.

- (m) “Tribal Employment Rights Office” (TERO) shall mean the office and personnel designated by the Reservation Business Committee to promote employment opportunities for Indian persons on the Fond du Lac Reservation.
- (n) “Reasonable commuting distance” shall mean that distance that a person seeking employment could reasonably commute to and from work, and for the purposes of this Ordinance shall mean 60 miles one way.

SECTION 104 INDIAN PREFERENCE IN HIRING, TRAINING, AND PROMOTION BY EMPLOYERS ON THE FOND DU LAC RESERVATION

- (a) All employers on the Fond du Lac Reservation shall give preference to Indian persons who apply for employment or are employed by an employer in hiring, training opportunities, and promotion when an Indian applicant or employee is similarly qualified for the position for which such hiring, training, or promotion is undertaken.
- (b) All employers on the Fond du Lac Reservation shall either register position openings with the Tribal Employment Rights Office, or shall publicly post such openings at the Administrative Center of the Fond du Lac Reservation, both at 1720 Big Lake Road, Cloquet, Minnesota, except that the Reservation Business Committee may by motion waive such posting where it has determined that a member of the Fond du Lac Band of Lake Superior Chippewa is qualified for such position and where such waiver is not otherwise prohibited by law. Waivers by the Reservation Business Committee under this section are nondelegable and shall be limited to the particular position opening and shall not extend to any other position or opening.

SECTION 105 INDIAN PREFERENCE BY CONTRACTORS

All contractors, as defined in Section 103(b) of this Ordinance, shall give preference to Indian persons who apply for employment or are employed by the contractor in hiring, training opportunities, and promotions when such Indian applicants or employees are similarly qualified for the position for which such hiring, training, or promotion is undertaken. The following procedures shall be observed by all contractors involving employment within the meaning of this Ordinance, regardless of whether such performance occurs on or off the Fond du Lac Reservation:

- (a) Compliance Plan. Prior to the performance of a contract, the contractor shall file a detailed compliance plan with the TERO that shall include a listing of all core crew positions and non-core crew positions to be used in the performance of the

contract, and that shall also include a written acknowledgement by the contractor of its responsibilities under this Ordinance. Compliance plans should include minimum percentages of Indians employees pursuant to Section 106(f).

(b) Posting of Positions. All positions other than core crew positions shall be posted by the contractor with the TERO at least one week prior to the commencement of performance of the contract or as soon as such positions become open. Postings shall include the following:

- (1) Position title;
- (2) Qualifications;
- (3) Dates and place of employment; and
- (4) Rate of pay and fringe benefits.

The qualifications for such position shall be interpreted in a manner consistent with the definition of “qualification” under Section 103(j) of this Ordinance.

(c) Referral of Applicants by TERO. The TERO shall, within 72 hours of the posting of a position by a contractor, either refer a qualified Indian person or persons to the contractor for such position or notify the contractor that the TERO officer is unaware of any qualified Indian available for such position at that time.

(d) Contractor Notification of TERO. Following referral by the TERO, the contractor shall notify the TERO of the applicant's status through the “Fond du Lac Employment Referral Form.” The TERO and the contractor shall attempt to resolve any dispute as to the qualifications or suitability of the applicant for the position at this stage. If they are unable to come to a mutually acceptable resolution, the TERO may initiate enforcement action pursuant to Section 110 of this Ordinance.

(e) Reductions in the Work Force. When a contractor undertakes a reduction in the workforce, a non-Indian employee shall be laid off first when that employee is similarly employed and similarly qualified as an Indian employee.

(f) Reporting Requirements of Contractors. All contractors shall be responsible for filing the following information with the TERO in a timely manner:

- (1) Monthly Utilization Report;
- (2) Verification of Employment;
- (3) Rehire list(s);
- (4) Weekly Foreman's Personnel Count; and
- (5) Layoff notices, which shall include the reasons therefore.

SECTION 106

TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO)

The TERO shall be the administrative agency of the RBC for the purposes of implementing the Indian preference policies set forth in this Ordinance, and shall be vested with the following authority and responsibilities:

- (a) To disseminate this Ordinance and develop and administer such forms and procedures as necessary for the achievement of the purposes set forth in this Ordinance.
- (b) To ensure compliance with the requirements of this Ordinance by all employers and contractors working on the Fond du Lac Reservation or performing work for the Band.
- (c) To represent the RBC in negotiations with employers and contractors towards the purpose of achieving compliance with the requirements of this Ordinance.
- (d) To conduct on-site inspections at any time during which employers or contractors are conducting business that is subject to the requirements of this Ordinance. Whenever possible, such inspections shall be conducted in a manner that minimizes interference with the conduct of such business.
- (e) To establish a registration system for applicants and develop a job skills bank to facilitate referrals and advocacy consistent with the purposes of this Ordinance.
- (f) To establish hiring goals and timetables setting forth the minimum number of Indian employees and timetables for employers and contractors to come into compliance with those numbers.
- (g) To ensure that compliance plans are explained to and achieved by contractors in the performance of contracts with the Band or any subdivision or enterprise of the Band. If compliance is not achieved, to follow the enforcement protocol described in Section 110 of this Ordinance.
- (h) To encourage and assist employers and contractors in establishing and maintaining job training and apprenticeship programs towards the promotion of Indians in various trades or job classifications used by such employers or contractors, for the purpose of increasing the human resources of the Band.
- (i) To prevent employers from using unnecessary job qualification criteria that create barriers to the employment, training, or promotion of Indians.

- (j) To work in conjunction with federal and state agencies in their implementation of federal Indian preference policies, and to recommend the appropriate cooperative arrangements to the RBC.
- (k) To eliminate unlawful employment discrimination against Indian people on or near the Fond du Lac Reservation and to serve as an advocate for employment opportunities for individual Indians as necessary, provided that such activities shall not interfere or infringe upon the sovereign authority of the Band, as identified by the RBC.

SECTION 107 COMPLAINTS

Any person who believes that an employer has violated any of the requirements of this Ordinance, or regulations issued pursuant to it, may file a complaint with the TERO Officer. The complaint must be in writing and provide such information as necessary to enable the TERO Officer to carry out an investigation, and shall specify the relief sought. The TERO Officer shall investigate every complaint filed pursuant to this section. If, upon investigation, the TERO Officer has reason to believe that a violation of this Ordinance has occurred, the Officer shall proceed with Section 108 of this Ordinance. Within 20 days after receipt of the complaint, and on a regular basis thereafter until the issue has been resolved, the TERO Officer shall provide the complaining party with a written report on the status of the complaint.

SECTION 108 INVESTIGATIONS

The TERO Officer, or any field compliance officer designated by the TERO Officer, shall conduct investigations as deemed necessary to determine whether any employer has violated this Ordinance, or to aid in clarifying rules, regulations, and guidelines hereunder. The TERO Officer or designee may enter, during business hours, the place of business or employment of any relevant employer for the purpose of such investigations, and may require the employer or entity to submit such reports as the Officer deems necessary to monitor compliance with the requirements of this Ordinance.

SECTION 109 AUTHORITY TO REQUIRE TESTIMONY AND THE PRODUCTION OF RECORDS

For the purpose of investigations or hearings that, in the opinion of the TERO Officer, are necessary and proper for the enforcement of this Ordinance, the TERO Officer or any field compliance officer designated by the TERO Officer may administer oaths or affirmations, subpoena witnesses, take evidence, and require, by citation, the production of books, papers,

contracts, agreements or other documents, records or information that the TERO Officer deems relevant or material to the inquiry.

SECTION 110 ENFORCEMENT

- (a) Notice. When, after conducting an investigation initiated by a complaint pursuant to Section 107 or a self-initiated investigation conducted pursuant to Section 108, the TERO Officer has reason to believe a violation of this Ordinance or regulations issued pursuant to it has occurred, the TERO Officer shall notify the employer in writing, specifying the alleged violations. The TERO officer may withhold the name(s) of the complaining party if there is reason to believe such party shall be subject to reprisal or retaliation. The TERO Officer shall seek to achieve an informal settlement of the alleged violation. If unable to do so, the Officer shall issue a formal notice of non-compliance pursuant to Subsection (b) of this Section.

- (b) Content of Notice. The notice of non-compliance shall set forth the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the employer with a reasonable time to comply, which shall be at least five (5) days from the date of receipt of such notice, unless the TERO Officer has reason to believe irreparable harm will occur during that period.

- (c) Resolution of Alleged Violations Involving the Band as Employer. Where the RBC, its subdivisions, or any business owned by the Band receives a notice of non-compliance issued under Subsection (a) of this Section, such notice shall be served upon the Executive Director of the Band, who shall (1) seek an informal resolution of the dispute or, if an informal resolution is not achievable, (2) bring the matter before the RBC in Executive Session for resolution. The RBC has the option to require the TERO Officer to be present for discussion of the matter. The decision of the RBC in such matters shall be final.

- (d) Hearing when the Band is not the Employer. If the employer charged with a violation of this Ordinance fails or refuses to comply, the employer may request a hearing before the TERO Officer, which shall be held no sooner than five (5) days and no later than thirty (30) days after the date for compliance set forth in the TERO Officer's notification to the employer, unless an expedited hearing is deemed necessary by the TERO Officer to avoid irreparable harm. If an employer fails or refuses to comply and does not request a hearing within thirty (30) days of the date they received the notice of violation, the TERO Officer may proceed pursuant to Subsection (f) of this Section.

- (e) Temporary Relief from the Tribal Court. If the party charged with a violation of this Ordinance, other than the RBC, its subdivisions, or any business that is owned by the Fond du Lac Band, requests a hearing pursuant to Subsection (d) of this Section, and the TERO Officer has good cause to believe that there is a danger that the employer requesting the hearing will remove itself or its property from the jurisdiction of the Band prior to the hearing, the TERO Officer may petition the Fond du Lac Tribal Court for such interim and injunctive relief as is appropriate to protect the interests of the parties pending a final resolution of the dispute, and such relief may include a requirement that the employer post a bond in an amount sufficient to cover possible monetary damages that may be assessed against the employer at the hearing. If after obtaining an Order from the Tribal Court the employer fails or refuses to post said bond, the TERO Officer may proceed pursuant to Subsection (f) of this Section.
- (f) Conduct of TERO Hearing. Any hearing held pursuant to Subsection (d) of this Section shall be conducted by the TERO Officer. The TERO Officer shall not be bound by technical rules of evidence in the conduct of hearings under this Ordinance, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the TERO Officer. No stenographic or electronic audio record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of, the party charged.
- (g) TERO Determination. Within ten (10) days following a hearing held by the TERO Officer pursuant to this Section, the TERO Officer shall make a written determination as to whether a violation of this Ordinance has occurred. The determination shall include:
- (1) Findings of fact;
 - (2) A discussion of the relevant provisions of this Ordinance;
 - (3) A conclusion as to whether a violation of this Ordinance has occurred; and
 - (4) The specific relief or remedy required under this Ordinance.

The TERO Officer's determination shall be served upon the employer by certified mail. The TERO Officer's determination shall be final unless appealed to the Fond du Lac Tribal Court pursuant to Section 111 of this Ordinance.

- (h) Prosecution. If an employer has not complied with the determination of the TERO Officer within twenty (20) days of receipt of the TERO Officer's determination, the TERO Officer shall refer the matter to the Legal Department of the Fond du Lac Band for prosecution in Fond du Lac Tribal Court pursuant to this Ordinance. In granting the relief sought, the Tribal Attorney may seek, and the Tribal Court may order, any or all of the following:

- (1) Suspension or Termination of Business Privileges on the Reservation. The Tribal Court may, in its sound discretion, order the suspension or termination of the employer's business operations within the Reservation, and may deny the employer the right to conduct future business within the Reservation. Such Order may include the appropriate direction to the Fond du Lac Registrar to suspend or deny any and all licenses or permits required of the employer under the laws of the Band;
- (2) Imposition of a Civil Fine. The Tribal Court may order the imposition of a civil fine on such employer in an amount not to exceed \$500 for each violation;
- (3) Back Pay. The Tribal Court may order the employer to pay back pay to any person who the Court has determined was denied employment, training opportunity, or promotion in violation of this Ordinance; or
- (4) Other Relief. The Tribal Court may order the employer to take such other action as is necessary to ensure compliance with this Ordinance or to remedy any harm caused by a violation of this Ordinance, consistent with the requirements of this Ordinance, the Revised Constitution of the Minnesota Chippewa Tribe, and the Indian Civil Rights Act, 25 U.S.C. § 1301 et seq.

SECTION 111 APPEALS

- (a) Filing Requirements. An employer that is adversely affected by a determination of the TERO Officer made pursuant to Section 110(g) of this Ordinance may bring an appeal before the Fond du Lac Tribal Court. A Notice of Appeal must be filed with the Tribal Court no later than twenty (20) days after the employer's receipt of a copy of the TERO Officer's determination, and a copy of the Notice must be provided to the TERO Officer.
- (b) Content of a Notice of Appeal. A Notice of Appeal shall include the following:
 - (1) The determination from which the appeal is taken;
 - (2) The specific grounds upon which a reversal or modification of the determination is sought; and
 - (3) The signature of the Appellant.

Once an appeal is filed, the determination of the TERO Officer shall abate pending resolution by the Tribal Court. However, the TERO Officer may petition

and, for good cause shown, the Court may order the Appellant employer to post a bond sufficient to cover monetary damages that the TERO Officer estimates to be directly attributable a violation of this Ordinance, or as deemed necessary by the Court to assure the employer's appearance before the Court.

- (c) Standard of Review. The Tribal court shall uphold the determination of the TERO Officer unless it is demonstrated that the determination of the TERO Officer was arbitrary, capricious, or in excess of the authority of the TERO Officer.
- (d) Reversal or Modification of the TERO Officer's Determination. If the determination of the TERO Officer is reversed or modified, the Tribal Court shall by appropriate order specifically direct the TERO Officer as to further action in the matter, including making and entering any order or orders in connection therewith, and the limitations or conditions to be contained therein.
- (e) Upholding of the TERO Officer's Determination. If the TERO Officer's determination is upheld on appeal, or if no appeal is sought within 20 days from the date of employer's receipt of the TERO Officer's determination, the TERO Officer shall petition the Tribal Court and the Court shall grant such orders as are necessary and appropriate to enforce the determination of the TERO Officer and to impose the appropriate sanctions on the employer.
- (f) Relief. If the TERO Officer's determination is upheld, the Tribal Court may grant such relief as is described under Section 110(h) of this Ordinance.

SECTION 112 CONFISCATION AND SALE

If an employer has failed to comply with an Order of the Tribal Court made pursuant to Section 111 of this Ordinance within thirty (30) days after the issuance of such Order, the Court may Order a duly-appointed law enforcement officer of the Fond du Lac Band to confiscate and hold such property of the employer that is located on the Reservation as is necessary to achieve compliance with the Order of the Court. The Court shall deliver, in person or by certified mail, a notice to the employer informing it of the confiscation and of its right to redeem said property by coming into compliance with the Order outstanding against it. If the employer has not come into compliance with the Order within thirty (30) days after confiscation of its property, the Court shall Order a sale of said property sufficient to pay any outstanding monetary damages and all costs incurred by the Court in the confiscation and sale. Any proceeds remaining shall be returned to the employer.

SECTION 113 COLLECTIVE BARGAINING AGREEMENTS

The Indian preference requirements of this Ordinance shall supersede and preempt any inconsistent provision of a collective bargaining agreement between an employer or contractor and a labor union to the extent that such provision would operate to frustrate the purposes of this Ordinance. In the event that a dispute arises involving this section, the TERO Officer shall attempt to resolve such dispute through negotiation. If such negotiation is unsuccessful, the TERO Officer may refer the matter to the Fond du Lac Tribal Attorney, who may seek the appropriate federal administrative assistance or judicial relief.

SECTION 114 HARASSMENT OF TRIBAL EMPLOYMENT RIGHTS OFFICE STAFF

Any interference with the performance of administrative functions by the staff of the TERO, including harassment, threats, intimidation, or retaliation, shall be subject to applicable criminal or civil actions, including but not limited to referral to the appropriate federal or state agencies and/or the relief prescribed under this Ordinance.

SECTION 115 RECOGNITION OF FREEDOM OF RELIGION AND TRIBAL TRADITIONAL PRACTICES

Each employer or contractor who is subject to the provisions of this Ordinance shall reasonably accommodate the religious or tribal traditional practices of Indian employees.

SECTION 116 TERO FEES

- (a) Contractors: every covered entity with a contract totaling \$1,000 or more and that employs two (2) or more employees for eight (8) or more hours on the Reservation in any calendar week shall pay a one-time project fee of three percent (3%) of the total amount of the contract. Contracts less than \$1,000 that are subsequently amended or enlarged to \$1,000 or more shall pay the 3% project fee on the total amount of the contract. Such fee shall be paid by the entity prior to commencing work on the Reservation. However, where good cause is shown, the TERO Director may authorize the fee to be paid in installments over the course of the work.
- (b) Employers: every covered employer, other than contractors covered under subsection (a) above, with five (5) or more employees working on the Reservation or with gross sales on the Reservation of \$100,000 or more, shall pay a quarterly fee of three percent (3%) of the quarterly payroll of its employees working on the

Reservation. This fee shall be paid within 30 days after the end of each calendar quarter. Band-controlled entities are not required to pay a fee.

- (c) Sliding fee option: The TERO officer may develop a sliding scale fee that reduces the 3% fee based upon the employer or contractor meeting Indian Preference goals. All TERO fee adjustments must be presented to the RBC for approval.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #12/94 was duly presented and amended by Resolution #1287/18 by a vote of 2 for, 0 against, 0 silent, with a quorum of 3 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on October 31, 2018, on the Fond du Lac Reservation.



Kevin R. Dupuis, Chairman



Ferdinand Martineau, Jr., Sec./Treas.