

**JANUARY 2009 CROW TRIBAL LEGISLATURE**

**BILL NO. CLB09-01**

INTRODUCED BY CARL E. VENNE, CHAIRMAN  
CROW TRIBAL EXECUTIVE BRANCH

**A BILL FOR AN ACT ENTITLED:**

**“AN ACT TO ESTABLISH A CROW NATION WORKFORCE PROTECTION ACT”**

WHEREAS, the Crow Nation has the inherent sovereign right to promote, regulate and enforce employment laws for the benefit of its members and all employees within tribal jurisdiction; and

WHEREAS, increased employment and training opportunities for members of the Crow Nation will improve economic conditions on the Crow Reservation and advance important self-governance interests; and

WHEREAS, the Crow Nation has an interest in prohibiting discrimination in employment, protecting employees' wages, providing leave for family, medical, and cultural events, and protecting employees' health and safety; and

WHEREAS, the Crow Nation recognizes the importance of tribal employment, and thereby recognizes the Crow Tribal Employment Rights Office to implement and enforce all tribal employment laws; and

WHEREAS, the interests of the Crow Nation and all employees within tribal jurisdiction will be served by adopting a Workforce Protection Act,

NOW, THEREFORE, BE IT ENACTED BY THE CROW TRIBAL LEGISLATURE:

**Section 1.** That Resolutions 92-27, 2000-52 and CLB02-24 are hereby rescinded.

**Section 2.** That the Act attached hereto and incorporated herein by reference, is approved and shall be codified in the Crow Law and Order Code by adding Title 17, Crow Tribal Self-Government – Employment and Contracting.

**Section 3.** Upon enactment by the Crow Tribal Legislature and approval by the Chairman of the Executive Branch, this Act shall become effective on April 1, 2009.

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## **Title 17. Crow Tribal Self-Government – Employment and Contracting**

### **Chapter 1. General Provisions**

#### **Part 1. Policy, Purpose, and Definitions**

##### 17.1.1.1 Policy.

- A. The Crow Tribe declares that it is the public policy of this Tribe to provide for the economic security and employment of its members and all Indians living on or near the Crow Reservation to the maximum extent possible in order to promote the important interests of self-governance and to preserve and promote the Tribe's unique cultural heritage. Economic insecurity and unemployment are serious impediments to the health, morale, and welfare of the Crow Tribe of Indians. Employment on the Crow Reservation is an important resource for Indian people. Within the Crow Reservation, Indian people have unique and special employment rights. Further, they are entitled to the protection of the laws the federal government has adopted to combat employment discrimination on or near Indian reservations.
- B. All employees subject to the Crow Tribe's jurisdiction are entitled to a workplace environment that prohibits employment discrimination, protects employees' wages, provides leave for family, medical, and cultural events, and protects employees' health and safety.
- C. The provisions of this Act are specifically found to be of an urgent and critically important nature to the health and welfare of the residents of the Crow Reservation. Unemployment and underemployment within the boundaries of the Crow Reservation are consistently many times the national average. This pervasive unemployment and underemployment has directly contributed to serious social problems and a lower quality of life for those residing on or near the Reservation and impede the self-governance objectives of the Tribe.
- D. Consequently, the Crow Tribe declares that the public good and welfare of the Tribe require the enactment of this Workforce Protection Act, enacted pursuant to its inherent sovereign and police powers, in order to increase employment of Indian people and Indian businesses within the Crow Reservation and to protect the workforce rights of Indian and non-Indian employees within the jurisdiction of the Crow Tribe.

##### 17.1.1.2 Purpose.

This Act is adopted by the Crow Tribe of Indians, under its inherent sovereign and political powers, for the following purposes:

- A. To promulgate tribal laws and rules for governing employment relations and contracting preference within tribal jurisdiction;
- B. To establish the Crow Tribal Employment Rights Office in order to use and enforce the laws governing employment and contracting preference, and to protect the rights of all Crow Tribal members and employees within the Tribe's jurisdiction;
- C. To increase the employment of Crow Indians and other Indians;

- D. To eradicate employment discrimination, protect employees' wages, provide leave for family, medical, and cultural events, and protect employees' health and safety within tribal jurisdiction;
- E. To provide a fair, enforceable, and effective system of priorities in contracting or subcontracting , and the provision of supplies, services, labor and materials, where a significant part of the work will be performed on the Crow Reservation or a significant part of the supplies and materials will be furnished to a site on the Crow Reservation; and

17.1.1.3 Severability.

Should any portion of this Act be declared unenforceable by a court having jurisdiction, such action shall not affect the validity and enforceability of the remaining provisions.

17.1.1.4 Definitions.

- A. "Chairman" means the Chairman of the Crow Tribal Executive Branch.
- B. "Commercial Enterprise" includes any activity of any government, including the federal, state, tribal, or local governments (including any activity of the Crow Tribe) that is not a traditional governmental function and any non-governmental economic activity involving the provision of goods or services.
- C. "Commission" means the Crow Tribal Employment Rights Commission established by this Act.
- D. "Covered Employer" or "Employer" means any entity, company, contractor, subcontractor, corporation or other business entity doing business on the Crow Reservation, including the Crow Tribe and its commercial enterprises, that employs for wages or other remuneration two (2) or more employees for eight (8) or more hours in any calendar week. An LLC formed under the Crow LLC Act is deemed a covered employer if it meets the requirements of this definition.
- E. "Covered Entity" means any entity awarded a contract or subcontract to provide supplies, services, labor and materials, in which a significant part of the work to be performed will be performed on the Crow Reservation or a significant part of the supplies and materials to be furnished will be furnished to a site on the Crow Reservation. For purposes of this chapter, significant means more than an incidental or minimal portion of any project, but can be less than a majority of the work or materials or supplies on any one project. An LLC formed under the Crow LLC Act is deemed a covered entity if it meets the requirements of this definition.
- F. "Crow Indian" means any person enrolled as a member of the Crow Tribe.
- G. "Day" means a work day, which excludes Saturdays, Sundays, and Federal holidays.
- H. "Director" means the director of the Crow Tribal Employment Rights Office.
- I. "EEOC" means the federal Equal Employment Opportunity Commission.
- J. "Employee" means any person employed for wages or other remuneration. No immediate relative within the 2<sup>nd</sup> degree of consanguinity or the spouse of any such

immediate relative shall be included for purposes of this Act if such person is employed by an employer whose principal business activity is farming or ranching.

- K. "Entity" means any person, partnership, corporation, joint venture, government, commercial enterprise, or any other natural or artificial person, organization, or association of persons or entities. This term is intended to be as broad and as all-encompassing as possible to ensure the statute's full coverage overall employment and contract activities within the jurisdiction of the Crow Tribe.
- L. "Indian" means a member of a federally recognized Indian tribe.
- M. "Indian Certified Entity" means an entity certified by the Director to be 51% or more owned by one or more Indians and the entity is genuinely controlled by one or more Indians.
- N. "Indian living on or near the reservation" means an Indian who is a member of a federally recognized Indian tribe who is living on or near the Crow Indian Reservation. No person shall be considered an Indian living on or near the reservation unless he or she has a permanent residence on or near the Crow Reservation and has lived on or near the Crow Reservation for at least six (6) months prior to employment on or near the Crow reservation.
- O. "Necessary qualifications" mean those job-related qualifications that are essential for performing the basic responsibilities of the position, including any essential qualifications concerning education, training and job-related experience.
- P. "On or near the reservation" shall mean the distance within and surrounding the Crow Indian Reservation, which a person seeking employment could reasonably be expected to commute for a work day.
- Q. "Qualified" and "Qualified to contract" means a demonstrated ability to perform the terms of a contract and may include evaluation of prior performance, safety records, prior or pending litigation or complaints regarding performance, financial stability, or similar factors which are directly relevant to a bidder's ability to perform satisfactorily.
- R. "Regulations" mean the regulations implementing this Act that are adopted by the Crow Tribal Employment Rights Commission.
- S. "Reservation" shall mean the Crow Indian Reservation and includes all land, Indian and non-Indian, within the exterior boundaries of the Crow Indian Reservation or trust land under the jurisdiction of the Crow Tribe, wherever located.
- T. "TERO" means the Crow Tribal Employment Rights Office.
- U. "Tribe" means the Crow Tribe of Indians.

## **Chapter 2. Crow Tribal Employment Rights Commission**

### **Part 1. Members, Qualifications, Quorum**

- 17.2.1.1 There is hereby created the Crow Tribal Employment Rights Commission ("Commission"), which shall be an independent commission of the Tribe.
- 17.2.1.2 The Commission shall be composed of seven (7) members, one from each district and one at large, nominated by the Chairman and confirmed by the Legislature. The nominated individuals shall meet the ethical standards required for judges of the Crow Tribal Court system and shall have experience or expertise in one or more of the following areas:
1. Business;
  2. Energy Resource Development;
  3. Construction;
  4. Employment;
  5. Financial Management or Law.
- 17.2.1.3 Commissioners shall be appointed for a term of three years; provided that, the appointments to the Commission shall be made in such a manner that their terms shall be staggered, so that the terms of no more than two Commissioners shall terminate in any year.
- 17.2.1.4 The Chairman may remove a member of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.
- 17.2.1.5 The Commission shall designate one of the members of the Commission as chairman and one as vice chairman.
- 17.2.1.6 The Commissioners shall serve until replaced. Vacancies shall be filled in the same manner used to initially appoint and confirm commissioner.
- 17.2.1.7 A majority of the Commission shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining members may exercise all the powers of the Commission until the vacancy is filled.
- 17.2.1.8 Recusal of Commission Members.
- A. For purposes of this section, "immediate family" means brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half-brother, half-sister, or brother, sister, son, daughter, mother or father by adoption.
  - B. No member of the Commission shall participate in any action or decision by the Commission directly involving himself, or a member of his immediate family, or any person, business or other entity of which he or a member of his immediate family is an employee, or in which he or a member of his immediate family has a substantial ownership interest, or with which he or a member of his immediate family has a substantial contractual relationship.
  - C. Nothing in this section shall preclude a Commissioner from participating in any action or decision by the Commission which:
    - (a) Affects a general class of persons, regardless of whether the Commissioner or a member of his immediate family is a member of the affected class;
    - (b) Affects the Tribe, a Tribal enterprise, or a person or entity in a contractual relationship with the Tribe or a Tribal enterprise, regardless of whether the Commissioner is a Tribal member.

- D. A Commissioner may voluntarily recuse himself and decline to participate in any action or decision by the Commission when the Commissioner, in his/her discretion, believes:
  - (a) that he/she cannot act fairly or without bias; or
  - (b) that there would be an appearance that he/she could not act fairly or without bias.

## **Part 2. Powers of the Commission**

- 17.2.2.1 The Commission has the full power, jurisdiction, and authority to:
  - A. Take all actions necessary and appropriate to implement the provisions of this Act.
  - B. Formulate, adopt, amend and rescind rules, regulations and guidelines necessary to carry out the provisions of this Act. Except when an emergency exists, the Commission shall provide the public with a reasonable time for comment before promulgating any final regulations.
  - C. Conduct hearings in accordance with Chapter 13 herein and with such rules of practice and procedure as may be adopted by the Commission.
  - D. Order any relief or sanctions authorized by this Act, and to petition the Crow Tribal Court for such orders as are necessary and appropriate to enforce the decisions of the Commission and any sanctions imposed by the Commission.

## **Chapter 3. Director of the Crow Tribal Employment Rights Office**

### **Part 1. TERO Director**

- 17.3.1.1 There shall be a Director of the TERO, who shall be an employee of the Crow Executive Branch, under the direct supervision of the Crow Tribe's Chief Executive Officer.
- 17.3.1.2 The Chairman of the Crow Tribal Employment Rights Commission shall participate in an advisory capacity in an annual evaluation of the TERO Director. If the Commission believes the Director is failing to properly carry out his responsibilities, it shall notify the Tribal Chairman and the TERO Director in writing.
- 17.3.1.3 The Tribal Chairman shall have the authority to suspend or remove the TERO Director for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance.

### **Part 2. Powers and Duties of TERO Director**

#### **17.3.2.1 Powers and Duties.**

The Director shall have the following powers and duties:

- A. Implement and enforce the provisions of this Act, as well as any properly adopted regulations, rules, guidelines and orders promulgated by the Commission.
- B. Hire staff, expend designated funds from an approved budget, obtain and expend funding from federal, state, and other sources.
- C. Maintain a list of the following: (1) current covered employers and entities, (2) current employer permits and work permits issued, and (3) current Indian Certified Entities. Maintain a record of all contracting projects subject to this Act and the TERO fees assessed for each project.
- D. Determine certification of Indian Certified Entities.
- E. Grant TERO permits and collect TERO fees as authorized by this Act.
- F. Establish training and workforce development programs for tribal members and other Indians to assist them in obtaining and retaining employment.
- G. Maintain a list of tribal members and Indians living on or near the Crow Reservation who are available for employment and assist such persons with job placement.
- H. Contract with federal and/or state entities, with the approval of the Tribal Chairman, for the provision of additional job procurement services and funding consistent with the purposes of this Act.

### **Part 3. Intergovernmental Relationships**

- 17.3.3.1 The TERO, acting through the Director, is authorized to enter into cooperative relationships with federal employment rights agencies, such as the EEOC and the Office of Federal Contract Compliance Programs (OFCCP), and with state employment rights agencies, such as the Human Rights Commission, in order to eliminate discrimination against Indians on and off the Crow Reservation, as well as to develop training programs for Indians. The TERO Director may also enter into cooperative relationships with federal agencies, such as the BIA, HUD, DOL, FHWA, and IHS, in order to implement any federal employment or other workforce rights, authorities, or requirements as such agency may lawfully delegate to the Tribe.

## **Chapter 4. Indian Preference in Employment and Contracting**

### **Part 1. Indian Preference in Employment**

- 17.4.1.1 All covered employers shall give preference to Indians living on or near the Crow Reservation in the hiring, promotion, training, and all other aspects of employment, provided that these individuals have the necessary qualifications. The Crow Tribal government, including all branches, divisions, and subsidiary governmental entities of the Tribe shall give preference to Crow Tribal members in hiring, promotion, training, and all other aspects of employment, provided that the individuals are qualified.
- 17.4.1.1.1 Secondary preference in employment shall be given to military veterans who have received an honorable or general discharge. After the application of Indian preference, or tribal preference for the Crow Tribal government, covered employers shall give preference to veterans in hiring,

promotion, training, and other aspects of employment, provided these individuals have the necessary qualifications. Under no circumstances shall a non-Indian veteran receive preference over an Indian who possesses the necessary qualifications.

- 17.4.1.2 All covered employers shall comply with this statute, all rules and regulations relating to it, and all guidelines and orders of the TERO Director. This statute and its application hereby subject all covered employers to the jurisdiction of the Crow Tribe and constitutes consent to resolution of any dispute pursuant to Chapter 13 herein.
- 17.4.1.3 The requirements in this Part shall not apply to any direct employment by the Federal or State government or their subdivisions. However, it shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments so long as they are subject to the jurisdiction of the Tribe.
- 17.4.1.4 No covered employer shall hire a non-Indian without first providing the TERO with not less than 72 hours to locate and refer a qualified Indian; however, the Commission may, by regulation, provide for a period of less than 72 hours when required by business necessity.
- 17.4.1.5 All covered employers shall establish written necessary qualifications for each employment position in their work force, which shall be provided to the TERO Director and applicants or candidates upon request.
- 17.4.1.6 All covered employers shall include and specify an Indian employment preference policy statement in all job announcements and advertisements and employer policies covered by this Act.
- 17.4.1.7 All covered employers shall post in a conspicuous place on its premises for its employees and applicants an Indian preference policy notice prepared or approved by the TERO.
- 17.4.1.8 Any seniority system of a covered employer shall be subject to this Act. Such a seniority system shall not operate to defeat nor prevent the application of the Act, provided, however, that nothing in this Act shall be interpreted as invalidating an otherwise lawful and bona fide seniority system that is used as a selection or retention criterion with respect to any employment opportunity where the pool of applicants or candidates is exclusively composed of Indians or non-Indians.
- 17.4.1.9 All covered employers, except for construction contractors, shall advertise and announce all job vacancies in at least one newspaper on or near the Crow Reservation. Construction contractors, prior to starting work on the Reservation, shall publish an advertisement in at least one newspaper on or near the Crow Reservation for at least 4 days, which specifies the number of workers by craft they will need and when they estimate they will need these workers.
- 17.4.1.10 All covered employers shall use non-discriminatory job qualifications and selection criteria in employment subject to the requirements of this Act. No employer shall use any job qualification criteria or other personnel requirements that serve as barriers to Indian preference in employment, unless the employer can demonstrate that such criteria or requirements are required by business necessity.
- 17.4.1.11 Irrespective of the qualifications of any non-Indian applicant or candidate, any Indian who lives on or near the reservation who demonstrates the necessary qualifications for an employment position:
- A. Shall be selected by covered employers in the case of hiring, promotion, transfer, upgrading, recall and other employment opportunities with respect to such position; and

- B. Shall be retained by covered employers in the case of a reduction-in-force affecting a certain class of positions until all non-Indians employed in that class of positions are laid-off.

17.4.1.12 Covered employers, may, if necessary, have a core crew, which is exempt from the Indian preference requirements of this Part. A core crew is considered necessary if (1) there are unique or specialized qualifications that are essential for the operation of the business, and (2) it would place an unreasonable burden or cost on the employer to hire individuals other than its core crew. If a core crew is necessary, such core crew shall not exceed five percent (5%) of the total employees of the employer and ten percent (10%) of the total hours of payroll. The TERO Director may, at his or her discretion, grant an employer a larger core crew upon a satisfactory demonstration by the employer that a larger core crew is necessary due to unique or specialized positions that are essential for the operation of the business.

## **Part 2. Indian Preference in Contracting**

- 17.4.2.1 All covered entities who advertise and solicit bids for projects in which a significant portion of the work will be done on or materials will be supplied to a site within the Crow Reservation shall give preference in contracting and subcontracting to Indian Certified Entities. Where a contractor or sub-contractor is selected through a competitive process, the awarding entity shall limit competition to Indian certified firms, provided that a qualified bid is received and the price of the bid is reasonable. The Commission shall issue regulations providing guidance on implementing this requirement and for implementing Indian contracting preference when the awarding entity uses a method other than competition to select a contractor or sub-contractor. Whenever feasible, the covered entity shall submit to the Director, at least six months in advance, a list of all related contracts or subcontracts contemplated to be generated by the covered entity in order to enable the TERO Director to give Indian Certified Entities the opportunity to prepare bids for related contracts and subcontracts.
- 17.4.2.2 The Commission shall establish a system for certifying firms as Indian Certified entities. This system shall include detailed provisions to ensure that front companies or firms that are not truly 51% or more owned and controlled by members of the Crow Tribe or members of other federally-recognized Indian tribes are not granted Indian preference certification.
- 17.4.2.3 The requirements set out in this Part shall apply to contracts awarded directly by the Tribe, its branches, divisions and all subsidiary governmental entities of the Tribe, and any governmental commercial enterprises of the Tribe or its divisions or subsidiaries, except when it is determined that application of these requirements is specifically prohibited by Federal law.
- 17.4.2.4 The requirements set out in this Part shall not apply to contracts awarded by the Federal or State government or their subdivisions. However, they shall apply to all subcontracts awarded by a Federal or State contractor or grantee that is subject to the jurisdiction of the Tribe, whether or not the prime contract was subject to these requirements, except when it is determined that application of these requirements to that entity is specifically prohibited by Federal law.
- 17.4.2.5 All covered entities shall comply with this Act and all the rules and regulations promulgated in connection with this Act, as well as all guidelines and orders of the TERO. Application for or award of any business preference under this statute, as well as contracting with the Crow Tribe, any of its related entities, or a certified entity, subjects the transaction to the jurisdiction of the Crow Tribe and constitutes consent to resolution of any dispute pursuant to Chapter 13 herein.

### **Part 3. Oil and Gas Development**

#### **17.4.3.1 Permanent and Key Employees**

Prior to commencing work on lands over which the Tribe has jurisdiction, a prospective employer engaged in oil and/or gas development and all of its sub-contractors shall identify key employees and permanent employees. Such employees may be employed on the project whether or not they are Indians. A permanent employee is one who is and has been on the employer's or sub-contractor's annual payroll or is the owner of the firm (as opposed to one who is hired on a project-by-project basis). A key employee is one who is in a top supervisory position or who performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the employer. Key employees include superintendents and persons with specialized technical or other skills that are critical to the firm's operation. The fact that an employee has worked for the employer on previous projects shall not, in and of itself, qualify that employee as a key or permanent employee, absent the presence of the other factors set out above. Any employer or sub-contractor that fills vacant employment positions in its organization immediately prior to undertaking work pursuant to a contract to take place on lands over which the Tribe has jurisdiction shall set forth evidence acceptable to the TERO Director that its actions were not intended to circumvent these requirements. Upon the approval of each key or permanent employee requested by the employer, the TERO Director shall issue a permit to that worker pursuant to Section 17.5.1.2.

#### **17.4.3.2 Compliance Plan**

- A. The entity obtaining authorization from the Tribe to engage in oil and/or gas development activities on the reservation shall be responsible for compliance with the applicable provisions of this Act by all of its contractors and subcontractors.
- B. No fewer than 60 days after a covered entity's lease or other authorization to engage in oil and/or gas development has been approved (or within 60 days after enactment of this provision for entities already engaged in oil and/or gas development at the time this provision is enacted), the entity shall meet with the TERO Director to develop a Compliance Plan for the development activity authorized by the lease or other authorizing agreement that is specifically tailored to the unique nature of that oil and/or gas development project, while still maximizing the utilization of Indian workers and Indian-certified firms. In particular, the TERO Director shall provide the entity with the flexibility to select employees and sub-contractors with the specialized professional and technical skills it will need during certain portions of the development project. In return for such flexibility, for those positions or sub-contracts that do not require specialized professional or technical skills, the entity shall agree to employ Indians and Indian-certified firms preferentially for all positions or sub-contracts for which qualified Indians or Indian-certified firms are available and shall also agree to work with the TERO to provide for the training of Indians in those areas in which there presently is not a pool of qualified Indians. The TERO Director shall also take into account the uncertainty in the timing of various developmental activities in the oil and gas development area, since such uncertainty will affect the entity's ability to provide firm times when it will have a need for certain employees or sub-contractors.

#### **17.4.3.3 TERO Fees**

The alternative fee arrangement under Section 17.5.2.1(B.) may apply to entities engaged in oil and/or gas development activities on lands over which the Tribe has jurisdiction depending on the nature of the project.

## Chapter 5. Permits and Fees

### Part 1. Permits

#### 17.5.1.1 Employer Permits.

- A. The Director shall issue an employer's permit to all covered employers who are in good standing, effective for one year from the date of issue, upon payment of an annual fee. The annual fee is \$300 for employers with less than five (5) employees; \$600 for employers with less than ten (10) employees; and \$1,000 for employers with ten (10) or more employees. An employer that is not in good standing with any other federally-recognized Indian tribe, a contractor's association or other professional association to which it has belonged, with any labor union with which it has had a collective bargaining agreement, or is found to be in active or current violation of federal or tribal law, may be refused an employer's permit. Federal, state, and tribal governmental employers are not required to obtain an employer's permit.
- B. All covered employers must hold an employer's permit before they are eligible to do any work or engage in any business activity within the boundaries of the Crow Reservation. Any covered employer that fails to obtain an employer's permit, or whose employer's permit has been revoked, shall be denied the right to conduct any further business or work on the Crow Reservation. The Director shall have the right to enforce the terms of this section in Crow Tribal Court by means of an injunction or other appropriate remedy.
- C. The TERO Director is authorized to refuse to issue an employer's permit or to revoke such a permit if an employer is found to have seriously or repeatedly violated the terms of this Act or any properly adopted rules, regulations, guidelines or orders pursuant thereto.

#### 17.5.1.2 Work Permits.

- A. The Director shall issue annual work permits, effective for one year from the date of issue, to all non-tribal members who are seeking employment or are employed with a covered employer.
- B. The Director is authorized to deny or revoke a work permit to any person who has repeatedly failed and/or refused to comply with this Act and/or any properly adopted rules, regulations, guidelines or orders pursuant thereto.

### Part 2. TERO Fees

#### 17.5.2.1 Fees.

The following fees are assessed for the privilege of conducting business on the Crow Reservation and to raise sufficient revenue for the operation of the TERO office and the enforcement of this Act.

- A. Every covered entity with a contract totaling \$1,000.00 or more shall pay a one-time project fee of three percent (3%) of the total amount of the contract. Contracts less than \$1,000.00 that are subsequently amended or enlarged to \$1,000.00 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 contract.

- B. Where a proposed contract, lease, or sub-contract (or combination thereof) involves a significant, long-term project that will have a sustained positive impact on the economic development of the Crow Tribe, the Director may negotiate alternative fee terms consistent with the policy and purposes of this Act, subject to the approval of the Chairman, and where required, the approval of the Crow Tribal Legislature. Negotiations may take into account the entity's training programs or other capacity building programs for Crow and Indian employees, as well as the projected payroll, the value of projected subcontracts, and other economic benefits that may be realized by the Crow Tribe and its members.
- C. All covered entities who are awarded a contract by the Crow Tribal government, including all branches, offices, division, and subsidiary governmental units of the Tribe, shall as a condition of doing business on the Crow Reservation, grant their consent to the tribal entity awarding the contract to deduct the amount of the TERO fee from the total amount due to the contractor under the contract and to pay the amount directly to the TERO prior to the commencement of work under the contract. Prior to this deduction, the tribal entity awarding the contract shall provide the contractor with a form prepared by the TERO, in which the contractor grants its consent to the deduction of the TERO fee from the amount it is entitled to receive from the tribal entity. A contractor shall not be permitted to commence work on the Crow Reservation until it has executed this form. This provision shall not apply if application of these requirements to a tribal entity is specifically preempted or otherwise prohibited by Federal law.
- D. Every covered employer, other than contractors covered under subsection A, 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 for its employees working on the Reservation. This fee shall be paid within 30 days after the end of each calendar quarter.

### **Part 3. Exempt Employers and Entities**

- 17.5.3.1 The permits and fees imposed in Parts 1 and 2 of this Chapter shall not apply to education, health, religious, governmental, or non-profit entities or employers. However, a reduced contracting fee of 1.5% shall apply to contractors hired by such employers.

### **Part 4. Fee Collection and Expenditure**

#### **17.5.4.1 Fee Collection and Expenditure.**

- A. The TERO fees shall be collected by the TERO Director pursuant to the regulations of the Commission. The fees shall be paid over to the Tribe's finance department and shall be credited to the TERO account up to at least \$250,000.00. These funds shall be expended solely by the TERO, pursuant to a duly approved budget in order to carry out the purposes of this Act.

- B. A matching \$250,000 shall be used for training and workforce development programs. Oversight of all funds will be by the TERO Office. The TERO Office shall prepare a quarterly report as to all training expenditures. The report shall be made available to the Legislative Branch and Executive Branch each calendar quarter.

17.5.4.2 Monthly Statements.

The Tribe's finance department shall provide the TERO Director with a monthly statement that provides the following information:

- A. The total amount of money that was in the TERO account at the beginning of the month;
- B. The TERO fees that were paid into the TERO account during the month, itemized by the name of the payer, the amount paid, and the date of payment;
- C. Any amounts withdrawn from the TERO account during the month; and
- D. The balance in the TERO account at the end of the month.

## **Chapter 6. Compliance Plan, Notice, and Contracts**

### **Part 1. Compliance Plan**

- 17.6.1.1 All covered employers and all covered entities subject to this Act shall, no less than twenty (20) business days prior to commencing business on the Reservation, prepare a plan, acceptable to the TERO Director, setting out how the employer or entity shall comply with the requirements of this Act regarding Indian employment and contract preference and implementing regulations. A covered employer or entity already present on the Reservation on the effective date of this Act that has not prepared a Compliance Plan acceptable to the TERO Director, shall come into compliance with the requirements of this section within sixty (60) days of the effective date of this Act.
- 17.6.1.2 The payroll records of all covered employers and covered entities shall be submitted to the TERO Director on a monthly basis. Any employer required to submit a certified payroll pursuant to federal law under the Davis-Bacon Act or state law under the Little Davis-Bacon Act, shall submit a copy of this certified payroll record to the TERO Director.
- 17.6.1.3 All covered employers and covered entities are required to report relevant changes regarding their employees and employment positions to the TERO Director, including but not limited to, new positions, terminations, layoffs, promotions, and retirements.

### **Part 2. Notice**

17.6.2.1 Notice to Proposed Contractors.

Any office, division, branch, subsidiary entity, or commercial enterprise of the Tribe or any of its subsidiary entities, when issuing a notice of a proposed contract to be awarded by it or a notice involving a proposed lease, right-of-way agreement, or notice of any other proposed action that will create new employment or subcontracting opportunities on the Reservation, shall include provisions in the notice that fully inform the prospective contractor or other entity about the requirements established by the Act.

### **Part 3. Contracts**

#### **17.6.3.1 Contract Language Imposing TERO Requirements.**

Any office, division, branch, subsidiary entity or commercial enterprise of the Tribe or any of its subsidiary entities, when awarding a contract, lease, right-of-way or entering into any other legal agreement with a party that will create new employment or subcontracting opportunities on the Reservation, shall include provisions that impose the requirements of this Act on the contractor, lessee, right-of-way grantee, or other party, such that the legal document will fully bind the party to comply with the requirements of this Act, notwithstanding any future decision by a court that has the effect of eliminating, reducing, or putting into question the Tribe's authority to impose the requirements of this Act on said contractor pursuant to the sovereign authority of the Tribe.

#### **17.6.3.2 Model Language.**

In order to implement the requirements of Parts 2 and 3 of this Chapter, the TERO Director shall provide to the offices, divisions, branches, subsidiary entities and commercial enterprises of the Tribe and its subsidiary entities:

- A. Model language that shall be included in the notice to prospective contractors, lessees, rights-of-way grantee, or other parties who will be engaged in activity that will create new subcontracting or employment opportunities on the Reservation, informing them of the requirements established by this Act; and
- B. Model language to be included in each contract, lease, right-of-way agreement, or other legal document issued by that office, division, branch, subsidiary entity or commercial enterprise of the Tribe and its subsidiary entity, imposing the requirements set out in this Act as terms of the contract, lease, right-of-way agreement or other legal agreement being entered into with the party that will be engaged in activity that will lead to the creation of subcontracting or employment opportunities on the Reservation.

#### **17.6.3.3 TERO Approval of Contracts Awarded by Tribal Entities.**

- A. Each office, division, branch, subsidiary entity or commercial enterprise of the Tribe or any of its subsidiary entities, prior to issuing notice of a contract to prospective contractors or issuing any other notice to prospective employers or entities that will lead to the creation of employment, contracting or subcontracting opportunities on the Reservation, and prior to awarding a contract or entering into any other agreement that will lead to the creation of employment, contracting, or subcontracting opportunities on the Reservation, shall submit the proposed notice or contract to the TERO Director for his approval. The Director shall indicate his approval by signing his name at a place provided for TERO approval on the document at issue.
- B. The TERO Director may petition the Crow Tribal Court to enjoin, upon good cause shown, the issuance or award of any contract or the initiation of any other activity by an office, division, branch, subsidiary entity or commercial enterprise of the Tribe or any of its subsidiary entities that will create employment, contracting, or subcontracting opportunities on the Reservation, which fail to comply with the requirements of this Act.

- C. No employee of the Tribe shall disseminate any written information on the TERO or the Tribe's Indian preference requirements without first obtaining the TERO Director's approval of the document.

17.6.3.4 TERO Assumption of Federal Indian Preference Enforcement.

- A. If the Federal laws or regulations governing any program administered by any office, division, branch, subsidiary entity or commercial enterprise of the Tribe or any of its subsidiary entities authorize a tribe's Indian preference requirements to replace, or permit a tribe to obtain delegated authority to assume responsibility for enforcing, Indian preference requirements established by Federal law or regulations and enforced by a Federal agency, said office, division, branch, subsidiary entity or commercial enterprise of the Tribe or any of its subsidiary entities, shall within 90 days of the effective date of this Act, in coordination with the TERO Director and the Tribe's Office of Legal Counsel, apply for such delegated or replacement authority and request that such delegated or replacement authority be vested in the TERO.
- B. If Federal law authorizes or allows tribal preference instead of Indian preference, the Tribe will apply tribal preference.

**Part 4. Agricultural Leases**

17.6.4.1 Agricultural Leases.

The Bureau of Indian Affairs will be requested to put a notice in all leases of trust land owned by the Crow Tribe or Crow Indian allottees that all persons will be required to fully comply with this Act.

**Chapter 7. Crow Tribal Right to Work Act**

**Part 1. Policy**

- 17.7.1.1 It is hereby declared to be the policy of the Crow Tribe that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization.
- 17.7.1.2 Any agreement between a covered employer and any labor union or labor organization, whereby persons not members of such union or organization are denied the right to work for the employer, or whereby such membership is made a condition of employment, continuation of employment, promotion, or any other benefit by the employer, is hereby declared to be against public policy and in violation of this Act.

**Part 2. Unions**

- 17.7.2.1 No union agreement shall supersede the requirements of this Act and its rules and regulations. Nothing herein shall constitute official recognition by the Tribe of any union or endorsement of any union activities on the reservation.

- 17.7.2.2 Employment rights shall not be abridged or denied on account of membership or non-membership in any labor union or labor organization. Further, the right of employees, by and through a labor organization, to bargain collectively shall not be abridged or denied.
- 17.7.2.3 No person shall be required by a covered employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer.
- 17.7.2.4 No employee shall be required to pay union dues and/or union fees as a condition of obtaining or maintaining employment within the Crow Reservation.
- 17.7.2.5 All covered employers who are subject to union or collective bargaining agreements shall pay wages and salaries to all non-union workers that are not less than union scale.
- 17.7.2.6 Any covered employer, who is subject to a collective bargaining agreement that requires it to pay monies for fringe benefits for its employees into a union fund(s), such as health and pension funds, shall offer any employee who is not a union member, the option of receiving cash wages in lieu of the amount that would otherwise have been placed into the union fund(s) on behalf of that employee.
- 17.7.2.7 Covered employers with collective bargaining agreements with a union are responsible for informing the union of this Act and TERO rules and regulations. Covered employers shall obtain a written agreement, approved by the TERO Director, from each union with which it has a collective bargaining agreement, providing that:
- A. The union shall comply with all Indian preference laws, including this statute, all rules and regulations promulgated pursuant to it, and all guidelines and orders of the TERO;
  - B. The union will give absolute preference to qualified Indians in job referrals from the TERO regardless of the position these individuals may have on any referral list the union may keep; and
  - C. The union will agree that the employer may pay the fringe benefits in cash to any Indian who is not a union member and who chooses not to participate in the union's fringe benefit plan.
- 17.7.2.8 Any future agreements between the TERO, the Tribe, and employers or unions must incorporate by reference the language of this statute and any amendments thereto. Such agreements shall be submitted to the TERO Director and the Tribe's Office of Legal Counsel for review.
- 17.7.2.9 The provisions of this Chapter shall not apply to a Tribal Project Labor Agreement ("TPLA") that is entered into by mutual agreement of the Tribe and a labor union for the purpose of providing valuable union-sponsored training or apprenticeship opportunities; provided, that the Tribal Project Labor Agreement explicitly acknowledges the sovereign authority of the Tribe, and is consistent with the policy and purpose of the Act to increase employment opportunities and skills training available for tribal members.

## **Chapter 8. Prohibition of Employment Discrimination**

### **Part 1. Prohibited Discrimination**

17.8.1.1 Except in furtherance of the provisions requiring employment preference to Crow and other Indians set out in Chapter Four of this Act, or when based upon a bona fide occupational qualification, it shall be an unlawful to do any of the following acts, wholly or partially for a discriminatory reason based on the actual or perceived: race, color, religion, national origin, sex, age, or political affiliation of any individual:

- A. By a covered employer – to fail or refuse to hire, or to discharge, any individual, or otherwise to discriminate against any individual with respect to his or her compensation, terms and condition, or privileges of employment, including promotion, to discriminate in recruiting individuals for employment, or to limit, segregate, or classify his or her employees in any way which would tend to deprive them of employment opportunities;
- B. By a labor organization – to exclude or to expel from its membership, or otherwise to discriminate against, any individual, or to classify, or fail or refuse to refer for employment any individual in any way, which would deprive such individual of employment opportunities, or would limit such employment opportunities, or otherwise adversely affect his or her status as an employee or as an applicant for employment;
- C. By a covered employer or a labor organization – to discriminate against any individual in admission to or the employment in, any program established to provide training or retraining, including on-the-job training.

17.8.1.2 Religious Accommodation.

It shall be an unlawful discriminatory practice for a covered employer to refuse to make a reasonable accommodation for an employee's religious observance by such actions as permitting the employee to make up work time lost due to such observance, unless such an accommodation would cause the employer undue hardship. An accommodation would cause an employer undue hardship when it would cause the employer to incur more than *de minimis* costs.

17.8.1.3 Discrimination based on Pregnancy.

Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected, but similar in their ability or inability to work. This requirement shall include, but is not limited to, the requirement that a covered employer must treat an employee temporarily unable to perform the functions of her job because of a pregnancy-related condition in the same manner as it treats other temporarily disabled employees.

17.8.1.4 Discrimination based on Disability.

- A. It shall be unlawful for a covered employer or labor organization to discriminate in any aspect of employment against a qualified individual with a disability because of that disability. However, covered employers may use qualification standards, tests or selection criteria that are job-related and consistent with business necessity, and such required performance cannot be accomplished by reasonable accommodation. Nothing in this section shall prohibit a covered employer from refusing to hire or from discharging an individual with a disability, if the individual, because of the disability, is unable to perform the duties or would perform the duties in a manner that would endanger the health and safety of the individual or others or is unable to be at, remain at, or go to or from the place where the duties of employment are to be performed.

- B. For purposes of this Section, the term "qualified individual with a disability" shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered employer acts on the basis of such use.
- C. Nothing in Subsection B. shall be construed to exclude as a "qualified individual with a disability" an individual who is engaging in or who has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or who has otherwise been successfully rehabilitated and is no longer engaging in such use.
- D. It shall not be a violation of this section for a covered employer to hold an employee who engages in the illegal use of drugs or excessive use of alcohol to the same qualification standards for employment or job performance and behavior to which that employer holds other employees, even if any unsatisfactory performance or behavior is related to the drug or alcohol use of the employee.

17.8.1.5 Harassment.

- A. It shall be unlawful employment discrimination to subject an employee or applicant to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, as well as unwelcome comments, jokes, acts, and other verbal or physical conduct related to race, color, national origin, religion, age, or disability when:
  - 1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
  - 2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  - 3. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
- B. A covered employer is responsible for acts of workplace harassment by its supervisory employees when the employer, its agents, or its supervisory employees, knew or should have known of the conduct. A covered employer may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action upon learning of the harassment.

17.8.1.6 Political Appointments

Individuals may be selected by tribal officials to serve as political appointments on a non-competitive basis. Political appointments differ from employees in that they serve at the pleasure of the appointing tribal official and may be removed upon notice without violating the provisions of this Chapter. Political appointments shall be limited to cabinet members and committee members of Executive Branch advisory committees, pursuant to Article IV, Section 5 of the 2001 Crow Constitution.

## **Chapter 9. Employee Wage and Hour**

### **Part 1. Minimum Wage and Overtime**

17.9.1.1 Minimum Wage.

- A. Any employee who is employed by a covered employer shall be paid an hourly wage of not less than \$6.55 per hour. Such wage may be changed by a joint action resolution approved by both the Executive and Legislative Branches of the Crow Tribe.
- B. The minimum wage requirement of this Section does not apply to construction projects which require payment of prevailing wage rates as governed by the federal Davis-Bacon Act.

17.9.1.2 Maximum Hours.

- A. No covered employer shall employ any of its employees for a work week longer than forty (40) hours unless such employee receives compensation for the employee's employment in excess of the hours above at a rate not less than one and one-half times the regular rate at which the employee is employed.
- B. If offered by the Crow Tribal government, employees of the Crow Tribal government or any political subdivision of the Crow Tribal government may receive compensatory time off, in lieu of overtime compensation, at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this Chapter.
- C. If compensatory time is offered to employees of the Crow Tribal government or any political subdivision of the Crow Tribal government, any such employee may not accrue more than 480 hours of compensatory time. Any such employee who has accrued 480 hours of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.
- D. Tribal employees who are authorized to accrue compensatory time off may request use of such accrued time, and shall be permitted to use such time within a reasonable period after making the request if the use of compensatory time does not unduly disrupt business operations.

17.9.1.3 Exemptions.

The provisions of this Part shall not apply with respect to any employee employed in a bona fide executive, administrative, or professional capacity, or any other exemption category outlined in the Federal Fair Labor Standards Act ("FLSA") of 1938, Title 29 of the United States Act, section 201 *et seq.*, as amended, and regulations concerning that Act, as promulgated by the U.S. Department of Labor.

17.9.1.4 Private Right of Action.

Any individual aggrieved under this section may seek retroactive payment of unpaid minimum wages or unpaid overtime compensation against a covered employer pursuant to the enforcement provisions set out in Chapter 13 of this Act and, if applicable, subject to the limited waiver of tribal sovereign immunity in Section 17.13.1.2.

17.9.1.5 Statute of Limitations.

Any action to secure unpaid minimum wages or unpaid overtime compensation must be commenced within one (1) year after the date on which such wages or overtime compensation should have been included in an employee's paycheck.

17.9.1.6 Guidance.

For the purposes of interpreting and enforcing this Part only, the TERO Commission and the Crow Tribal Court may look to the Federal FLSA, its regulations, and related case law for guidance; provided however, that nothing in this Section shall be construed as an adoption by the Crow Tribe of the Fair Labor Standards Act of 1938, Title 29 of the United States Act, sections 201 *et seq.*

**Part 2. Minimum Wage and Projects Subject to the Federal Davis-Bacon Act**

17.9.2.1 Tribal Authority over Wage Determinations on NAHASDA Construction Projects.

The Tribe hereby asserts the authority of tribal governments pursuant to Title I, Section 104 of P.L. 104-33 (25 U.S.C. 4114(b)(3)) to establish prevailing wage rates, in lieu of those established by the U.S. Secretary of Labor, for laborers and mechanics employed in the development of affordable housing under the Native American Housing Assistance and Self-Determination Act ("NAHASDA").

17.9.2.2 Wage Determinations.

Except as provided in Section 17.9.2.3, the wages to be paid laborers and mechanics employed in the development of affordable housing under NAHASDA shall be not less than those required by the U.S. Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 3142, *et seq.*) for the locality in which the work is to be performed.

17.9.2.3 Wage Determination for Trainees.

- A. If the TERO Director has certified that an employee is participating in a formal or informal training program that will lead to journeyman status, a covered employer who is engaged in a project under NAHASDA may pay laborers and mechanics who are not certified as journeymen at the wage rate established by the U.S. Department of Labor Davis-Bacon Wage Determination for a trainee at that skill level, or if an employee's skill level has not been rated, a wage that is no less than three-fifths of the minimum wage for a journeyman in that craft as determined by the U.S. Secretary of Labor under the Davis-Bacon Act. Wages are calculated based on the locality in which the work is to be performed, (including any fringe benefit amounts that are included in the wage determination by the U.S. Secretary of Labor).
- B. For NAHASDA construction projects, every covered employer shall employ one trainee for every three journeymen the employer employs in that craft on that project. This provision does not alter the Indian preference requirement under Chapter 4, Part 1 of this Act.

17.9.2.4 Fringe Benefits.

An employee, engaged in construction, shall have the option of electing to receive any amounts included for prevailing wage fringe benefits in the form of a direct cash payment that is to be included in the employee's paycheck, unless it is determined that application of this requirement is specifically prohibited by Federal law. This shall include, but not be limited to, the fringe benefit determination made by the U.S. Secretary of Labor pursuant to the Federal Davis Bacon Act or by the Tribe under Part 2 of this Chapter. Every covered employer engaged in projects subject to the

Federal Davis-Bacon Act shall offer this option to each employee at the time he or she is first employed.

## **Chapter 10. Family, Medical, and Cultural Leave**

### **Part 1. Family, Medical, and Cultural Leave**

#### **17.10.1.1 Family, Medical, Cultural Leave Requirements.**

Every employee who has been employed by the same covered employer for 12 consecutive months is entitled to up to 12 work weeks of family, medical, or cultural leave during a 12-month period. The following conditions apply to the leave granted under this section:

- A. Family, medical, or cultural leave may be granted for the following:
  - 1. the birth and care of a newborn child of an employee;
  - 2. for placement with an employee of a son or daughter for adoption or foster care;
  - 3. to care for an immediate family member (spouse, child, or parent) with a serious health condition;
  - 4. to take medical leave when an employee is unable to work because of a serious health condition; or
  - 5. to attend or participate in a religious or cultural activity or event (such as cultural ceremonies and funerals).
- B. An employee must give at least thirty (30) days notice to the covered employer of the intended date upon which family, medical, or cultural leave will commence and terminate, unless prevented by medical emergency from giving that notice;
- C. The covered employer may require certification from a physician to verify the amount of leave requested by the employee, except that an employee who in good faith relies on treatment by prayer or spiritual means, in accordance with the tenets of a recognized religious or spiritual practice, may submit certification from an accredited practitioner of those healing methods; and
- D. A covered employer and employee may negotiate for more or less leave, but both parties must agree.
- E. Covered employers are responsible for designating an employee's leave as family, medical, or cultural leave pursuant to this Chapter and for providing notice to the employee.

#### **17.10.1.2 Paid and Unpaid Leave.**

Family, medical, or cultural leave granted under this Chapter may consist of paid leave, unpaid leave, or a combination of paid and unpaid leave, determined by the policy and procedure of each covered employer.

#### **17.10.1.3 Employee Benefits Protection.**

- A. Any employee who exercises the right to family, medical, or cultural leave under this Chapter, upon expiration of the leave, is entitled to be restored by the covered employer to the position held by the employee when the leave commenced or to a position with

equivalent seniority status, employee benefits, pay and other terms and conditions of employment. This section does not apply if the employer proves that the employee was not restored as provided in this section because of conditions unrelated to the employee's exercise of rights under this Chapter.

- B. During any family, medical, or cultural leave taken under this Chapter, a covered employer shall make it possible for an employee to continue his/her employee benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.
- C. The taking of family, medical, or cultural leave under this Chapter shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.
- D. Nothing in this Chapter may be construed to affect or diminish the contract rights or seniority status of any other employee of any covered employer.

## **Chapter 11. Occupational Safety and Health**

### **Part 1. Occupational Safety and Health of Employees**

#### 17.11.1.1 Duties of Employers and Employees.

- A. Each covered employer shall:
  - 1. 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;
  - 2. Comply with all occupational safety and health rules promulgated or adopted by the Tribe pursuant to this Chapter.
- B. Each employee shall comply with all occupational safety and health rules promulgated or adopted by this Chapter that are applicable to the actions and conduct of the employee.

#### 17.11.1.2 Adoption of Rules of Federal Occupational Safety and Health Administration.

The rules and regulations of the Federal Occupational Safety and Health Administration ("OSHA") of the United States Department of Labor, including all future rules or amendments to existing rules, promulgated pursuant to the authority granted to OSHA by the Occupational Safety and Health Act of 1975, (29 U.S.C. sections 651 et. seq.) are hereby adopted by the Tribe to the full extent of the Tribe's authority and apply to all covered employers within the Tribe's jurisdiction.

#### 17.11.1.3 Enforcement.

- A. The TERO Director is authorized to enforce the rules adopted in Section 17.11.1.2, pursuant to the enforcement provisions set out in Chapter 13 of this Act, to the extent his or her authority has not been preempted by Federal law.
- B. For any employer over whom the TERO Director's authority to enforce the requirements of this Chapter has been preempted by Federal law, for employers who are not subject to

the jurisdiction of the Tribe, and for employers located outside the boundaries of the Reservation that employ a significant number of tribal members, the TERO Director shall work cooperatively with Federal and State officials responsible for enforcing occupational safety and health requirements over such employers to ensure maximum enforcement.

## **Chapter 12. Mine Safety and Health**

### **Part 1. Mine Safety and Health of Employees**

#### 17.12.1.1 Duties of Employers and Employees.

- A. Each covered employer shall comply with all mine safety and health rules promulgated or adopted by the Tribe pursuant to this Chapter to protect the health and safety of mine workers within tribal jurisdiction.
- B. Each employee shall comply with all mine safety and health rules promulgated or adopted by this Chapter that are applicable to the actions and conduct of the employee.

#### 17.12.1.2 Adoption of Rules of Federal Mine Safety and Health Administration.

The rules and regulations of the Federal Mine Safety and Health Administration ("MSHA") of the United States Department of Labor, including all future rules or amendments to existing rules, promulgated pursuant to the authority granted to MSHA by the Federal Mine Safety and Health Act of 1977 (P.L. 91-173) are hereby adopted by the Tribe to the full extent of the Tribe's authority and apply to all covered employers within the Tribe's jurisdiction.

#### 17.12.1.3 Enforcement.

- A. The TERO Director is authorized to enforce the rules adopted in Section 17.12.1.2, pursuant to the enforcement provisions set out in Chapter 13 of this Act, to the extent his or her authority has not been preempted by Federal law.
- B. For any employer over whom the TERO Director's authority to enforce the requirements of this Chapter has been preempted by Federal law, for employers who are not subject to the jurisdiction of the Tribe, and for employers located outside the boundaries of the Reservation that employ a significant number of tribal members, the TERO Director shall work cooperatively with Federal and State officials responsible for enforcing mine safety and health requirements over such employers to ensure maximum enforcement.

## **Chapter 13. Enforcement**

### **Part 1. General Provisions**

#### 17.13.1.1 Applicability.

The enforcement provisions set out in this Chapter shall be used to enforce the requirements set out in each of the Chapters of this Act, unless a specific enforcement provision is contained in a particular Chapter, in which case the latter provision shall take priority.

17.13.1.2 Limited Waiver of Tribal Sovereign Immunity.

In order to enforce the protections afforded to employees under this Act, the Crow Tribe hereby grants a limited waiver of tribal sovereign immunity from suit to the extent necessary to commence legal action to secure interpretation or enforcement of this Act; provided, however, that (a) this limited waiver applies only to legal action taken to interpret or enforce the provisions of this Act, and shall not under any circumstances apply to any legal or other action taken by any other person or entity; (b) the relief available pursuant to this waiver shall consist of equitable and injunctive relief and monetary damages not to exceed \$5,000; and (c) in no event shall any judgment or other relief awarded pursuant to this waiver result in the encumbrance of any Tribal property or assets. Any such action to enforce the provisions of this Act shall be commenced in Crow Tribal Court. Nothing herein contained is intended to confer any right upon an entity or person who is not covered by this Act.

**Part 2. Compliance and Enforcement Procedures**

17.13.2.1 Investigations.

- A. On his own initiative or on the basis of a complaint filed pursuant to any provision contained in this Act, the TERO Director or any field compliance officer designated by the TERO Director may make such public or private investigations within or without the exterior boundaries of the Reservation as the TERO Director deems necessary to ensure compliance with that provision, to determine whether any covered employer or entity has violated any provision of this Act or its implementing regulations, or to aid in prescribing rules, regulations or policies hereunder.
- B. Separate from acting on any complaint filed, the TERO Director shall conduct regular compliance reviews to ensure that all covered employers and entities are complying with the requirements of this Act.
- C. The TERO Director or any field compliance officer designated by the TERO Director may enter the place of business or employment of any employer or entity for the purpose of such investigation or compliance review. The TERO Director officer may, at said place of business or employment, in a manner consistent with good safety practices and with the orderly operation of the business activity, interview any employee or agent of the covered employer or entity, review and copy any documents, and carry out any other activity the TERO Director or officer deems necessary to the carrying out of the investigation or compliance review; provided that, the TERO Director or officer shall comply with the requirements of subsection E. when reviewing or copying any confidential documents.
- D. For the purpose of investigations, compliance reviews, or hearings which, in the opinion of the TERO Director or the Commission, are necessary and proper for the enforcement of this Act, the TERO Director or the chairman of the Commission may administer oaths or affirmations, subpoena witnesses, take evidence, and require the production of books, papers, contracts, agreements, or other documents, records or information which the TERO Director or the Commission deems relevant or material to the inquiry.
- E. Any State or Federal tax records, trade secrets, privileged, or confidential commercial, financial, or employment information subpoenaed or otherwise obtained pursuant to the provisions of this Act or used in a compliance hearing or subsequent appeal to the Tribal Court: (1) shall be confidential records of the Commission or the Court, (2) shall not be opened to public inspection, (3) shall be used only by the TERO Director, the Commission, parties to a compliance hearing or

subsequent appeal to the court, and (4) such records shall be used in a manner that, to the maximum extent possible consistent with the requirement of fairness to the parties, protects the confidentiality of the documents.

17.13.2.2 Complaints.

Any individual, group of individuals, business or organization that believes any covered employer or entity, (with the exception of any office, division, subsidiary entity or commercial enterprise of the Tribe or any of its subsidiary entities, which are subject to the complaint provisions set out in Section 17.13.2.3), or the TERO Director or staff, has violated any requirement imposed by any part of this Act or regulations issued pursuant to it, may file a complaint with the TERO Director, unless the complaint is against the TERO Director or staff, in which case the complaint shall be filed directly with the chairman of the Commission. The complaint shall be in writing and shall provide such information as is necessary to enable the TERO Director or Commission to carry out an investigation. The TERO Director shall, within 30 days of the date on which a complaint is filed, complete an investigation of the complaint unless the TERO Director requests and is granted an extension by the Commission, which shall be for no more than 30 days. If upon investigation, the TERO Director has reason to believe a violation has occurred, he shall proceed pursuant to the provisions of this Chapter. Within 15 days after receipt of the complaint, and on a regular basis thereafter, the TERO Director shall provide the complaining party with a written report on the status of the complaint. If the complaint is against the TERO Director or staff, the Commission shall appoint an independent party to conduct the investigation and to carry out the responsibilities given to the TERO Director by this Section.

17.13.2.3 Complaints Against Offices, Divisions, Branches, Subsidiary Entities or Commercial Enterprises of the Tribe.

Any individual who believes any office, division, branch, subsidiary entity or commercial enterprise of the Tribe has violated any requirements imposed by this Act or regulation issued pursuant to it regarding employment may file a complaint with the TERO Director only after the individual has either:

- A. filed a complaint with, and exhausted the administrative remedies provided by that office, division, branch, subsidiary entity, or commercial enterprise of the Tribe, or
- B. filed a complaint and 60 days have passed since filing the complaint and no meaningful action has been taken on the complaint by that office, division, subsidiary entity, or commercial enterprise of the Tribe.

Upon receiving a complaint that meets the requirements of this Section, the TERO Director shall proceed in the same manner as he would on a complaint filed pursuant to Section 17.13.2.2, except that the TERO Director and the Commission shall give careful consideration to any written decision on the complaint issued by the office, division, branch, subsidiary entity or commercial enterprise of the Tribe that is the subject of the complaint.

17.13.2.4 Resolution of Violations.

- A. If, after conducting an investigation or compliance review, the TERO Director has reasonable cause to believe a violation of this Act or regulations issued pursuant to it has occurred, (including a failure on the part of a party to comply with a subpoena or other request during the investigation phase), the TERO Director shall notify the covered employer or entity in writing, delivered by registered mail, specifying the alleged

violations. However, the Director may withhold the name(s) of any complaining party if he has reason to believe such party may be subject to retaliation.

- B. The TERO Director shall make a good faith effort to achieve an informal settlement of the alleged violation by meeting with the covered employer or entity and taking other appropriate action.
- C. If the TERO Director is unable to achieve an informal settlement, he shall issue a formal notice of non-compliance, which shall also advise the covered employer or entity of its right to request a hearing. The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the covered employer or entity with a reasonable time, which shall not be less than five (5) days from the date of receipt of such notice, to comply. If the TERO Director has reason to believe that irreparable harm will occur during that period, the Director may require that compliance occur in less than five (5) days.
- D. If the party fails or refuses to comply, as provided for in the formal notice, the party may request a hearing before the Commission, which shall be held no sooner than five (5) days and no later than 30 days after the date for compliance set forth in the formal notice, unless an expedited hearing is deemed necessary by the Commission to avoid irreparable harm or is requested by the party and good cause is shown.
- E. If a party fails or refuses to comply and does not request a hearing, the TERO Director shall request the chairman of the Commission to convene a session of the Commission for the purpose of imposing sanctions on the party.
- F. Notwithstanding the other provisions of this Section, if the TERO Director has good cause to believe that immediate remedial action is necessary to prevent irreparable harm, which shall include, but is not limited to: loss of employment, contracting, or subcontracting opportunities, or dangers to employees from unsafe practices, the TERO Director may require that the party come into compliance immediately or that the party immediately enter into a written agreement to come into compliance pursuant to a schedule acceptable to the Director. In such cases, if the party fails or refuses to comply and requests a hearing, the hearing shall be held within 48 hours after the party has received notification of the hearing schedule. If the party fails or refuses to comply and does not request a hearing, the TERO Director shall request that the chairman of the Commission convene a session of the Commission within 48 hours to impose sanctions on the party.

#### 17.13.2.5 Hearing Procedures.

- A. Any hearing held pursuant to this Chapter shall be conducted by the Commission. The hearing shall be governed by rules of practice and procedure that are adopted by the Commission. The Commission may consider any evidence that it deems relevant to the hearing. The Commission shall not be bound by technical rules of evidence in the conduct of hearings under this Act, 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 Commission. A tape recording shall be made of each hearing. No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of the party charged.
- B. The TERO Director shall prosecute the alleged violation on behalf of the TERO. For the hearing and all stages of the procedural process, as provided for in this Chapter, the

TERO Director may be represented by the Tribe's Office of Legal Counsel. If the party is an office or subsidiary of the Tribal Government, it shall be the responsibility of that entity to obtain legal counsel, if it so chooses, from a source other than the Tribe's Office of Legal Counsel.

- C. To avoid a conflict of interest between the Commission, which shall sit as an impartial judicial body, and the TERO Director, who shall act as the prosecutor, the Commission shall establish such procedures and safeguards to ensure the due process rights of all parties are protected and that there is no improper contact or communication between the Commission and the TERO Director during the hearing phase of the enforcement process.
- D. If the Commission requires legal assistance during the hearing process or at any other phase of the enforcement process, and it would be a conflict of interest for the Tribe's Office of Legal Counsel to provide such representation, the Commission shall retain its own legal counsel from a source other than the Tribe's Office of Legal Counsel.

### **Part 3. Sanctions**

#### 17.13.3.1 Sanctions.

- A. If, after a hearing, the Commission determines that the alleged violation of this Act or regulations has occurred, and that the party charged has no adequate defense in law or fact, or if a party was issued a formal notice of non-compliance and failed to request a hearing, the Commission may:
  - 1. Deny such party the right to commence business on the Reservation;
  - 2. Suspend such party's business activity within the Reservation;
  - 3. Terminate such party's business activity within the Reservation;
  - 4. Deny the right of such party to conduct any further business within the Reservation;
  - 5. Impose a civil fine on such party;
  - 6. Order such party to make payment of back pay or other damages to any aggrieved party;
  - 7. Order such party to dismiss any employees hired in violation of the Tribe's employment rights requirements;
  - 8. Order the Tribal Treasurer to reimburse any party who improperly paid a TERO fee or overpaid said fee, but no interest shall be paid in such cases; and/or
  - 9. Order the party to take such other action as is necessary to ensure compliance with this Act or to remedy any harm caused by a violation of this Act, consistent with the requirements of the laws of the Tribe and the Indian Civil Rights Act, 25 U.S.C. 1301 et seq.
- B. The Commission's decision shall be in writing, shall be served on the charged party by registered mail or in person by an employee of the TERO, no later than thirty days after the close of the hearing, or within ten (10) days after the Commission's decision to impose sanctions where a party has not requested a hearing. Where the party's failure to comply immediately with the Commission's orders may cause irreparable harm, the TERO Director may move the Tribal Court, and the Court shall grant, such injunctive relief as is necessary to preserve the rights of the beneficiaries of this Act, pending the party's appeal or expiration of the time for appeal.

## Part 4. Appeals

### 17.13.4.1 Appeals.

- A. An appeal to the Tribal Court may be taken from any final order of the Commission by any party adversely affected thereby, including a complainant. The appeal must be filed in the Crow Tribal Court, with a copy to the TERO Director and any other party to the proceeding, no later than 20 days after the party receives a copy of the Commission's decision.
- B. The notice of appeal shall:
1. Set forth the order from which appeal is taken.
  2. Specify the grounds upon which reversal or modification of the order is sought.
  3. Be signed by the appellant or his legal representative.
  4. Comply with any other requirements for actions filed in the Crow Tribal Court, as established by that court.
- C. Except as provided elsewhere in this Chapter, the order of the Commission shall be stayed pending the determination of the Tribal Court. The TERO Director may petition, and for good cause shown, the Court may order the party filing the appeal to post a bond sufficient to cover monetary damages that the Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's order if that order is upheld by the court.
- D. If a complainant files an appeal of a decision by the Commission, the Commission may choose not to be a party to the appeal. If the Commission chooses not to be a party in such a situation, the TERO Director shall so notify the court and the other parties.
- E. The Tribal Court shall uphold the decision of the Commission unless it is demonstrated that the decision of the Commission was arbitrary, capricious or in excess of the authority of the Commission.
- F. If, by the 20th day after the party's receipt of either:
1. Notice of a decision by the Commission from which no appeal to the Tribal Court is taken, or
  2. Notice of a final decision of the Tribal Court upholding the Commission's decision from which no appeal to the Tribal Appellate Court is taken,
- And the party has failed to come into compliance with the decision of the Commission or court, the TERO Director shall petition the court and the court shall grant such orders as are necessary and appropriate to enforce the orders of the Commission or court and the sanctions imposed by them, including confiscation and sale as provided for in Section 17.13.5.1.
- G. If the order of the Commission is reversed or modified, the court shall by its mandate specifically direct the Commission as to further action the Commission shall take in the matter, including making and entering any order or orders in connection therewith, and the limitations, or conditions to be contained therein.

- H. For a claim on which an individual proves a violation of the WPA, the Tribal Court may grant attorney's fees and costs attributable to the pursuit of the claim.

## **Part 5. Confiscation, Sale, and Other Enforcement Mechanisms**

### 17.13.5.1 Confiscation and Sale.

If a party has failed to pay monetary damages imposed on it or otherwise failed to comply with an order of the Commission or the court, and the TERO Director believes there is a likelihood the party will remove itself and its property from the jurisdiction of the Tribe, the TERO Director may petition the Tribal Court to order the Tribe's police to confiscate, and hold for sale, such property of the party as is necessary to ensure payment of said monetary damage order or to otherwise achieve compliance with the order of the Commission or the court. Said petition shall be accompanied by a list of property belonging to the party which the TERO Director has reason to believe is within the jurisdiction of the court, the value of which approximates the amount of monetary damages at issue. If the court finds the petition to be valid, it shall order the Tribe's police to confiscate and hold said property or as much as is available. The Tribe's police shall deliver in person or by certified mail, a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it. If 30 days after confiscation the party has not come into compliance, the court shall order the police to sell said property and use the proceeds to pay any outstanding monetary damages imposed by the Commission or court and all costs incurred by the court and police in the confiscation and sale. Any proceeds remaining shall be returned to the party.

### 17.13.5.2 Other Enforcement Mechanisms.

- A. If at any stage in the enforcement process, the TERO Director has reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Tribal Court, such that the Commission or the Court will not be able to collect monetary damages or TERO fees that are (1) owed by that party pursuant to any outstanding order of the Commission or court, or (2) which may be owed if the charges set out in any outstanding notice of violations are upheld, the TERO Director may, in his discretion, require the party to post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be or have been assessed against the party. If the party fails or refuses to post said bond, the TERO Director may petition the Tribal Court for such interim and injunctive relief as is appropriate to protect the rights of the TERO and other parties during the pendency of the complaint and hearing proceedings.
- B. If the TERO Director believes that irreparable loss of employment, contracting, or subcontracting opportunities will occur pending a hearing requested by a party, pending a session of the Commission where a party has failed to request a hearing, pending action by the Tribal Court, or at any other stage of the process provided for in this Chapter, the TERO Director may petition the Tribal Court to temporarily enjoin such actions of the party as may be necessary to prevent the irreparable loss. Upon a showing by the TERO Director of probable cause of success on the merits and irreparable injury, the court shall grant the requested injunction for such period as may be necessary to prevent the irreparable loss.
- C. When irreparable harm will occur before a matter can be brought before the Tribal Court, the Commission is authorized to issue such cease and desist or related orders as may be necessary to enforce the requirements of this Act. The Tribe's police are hereby expressly authorized and directed to enforce such cease and desist or related orders as

may from time to time be properly issued by the Commission. Such orders do not require a judicial decree or order to render them enforceable. The police shall not be civilly liable for enforcing such orders so long as the order is signed by the Chairman of the Commission as a duly authorized order of the Commission. The Commission shall seek a court order as quickly as possible. The Court may dissolve the cease and desist order or may order such injunctive or other relief to replace the cease and desist order as it deems appropriate.

- D. In addition to the procedures and remedies provided for in this Act, the TERO Director is authorized to petition the Tribal Court under any other appropriate provision of the Crow Law & Order Code as is necessary to effect implementation of and compliance with this Act.

## **Part 6. Monitoring and Coordination with other Tribal, State, and Federal Laws**

- 17.13.6.1 If, when carrying out inspections at work sites or otherwise carrying out their responsibilities under this Act, the TERO Director or TERO compliance officers have reason to believe that a requirement of a Tribal, Federal, state or local law, act or regulation, other than the ones included in this Act, may have been violated by a party, the TERO Director is authorized to document such possible violation, to report it to the appropriate enforcement agency, and, to the extent that resources permit and the TERO Director determines it to be appropriate, assist that agency to investigate and cure the possible violation.

## **Part 7. Retaliation**

### 17.13.7.1 Prohibition of Retaliation

- A. It shall be a violation of this Act for any person, employee, employer, entity or other party subject to this Act to engage in any act of retaliation against any party who is seeking or has sought to enforce any right or protection provided to that party under this Act.
- B. The TERO Director shall take immediate action, including seeking possible injunctive relief to:
  - i. Stop such retaliation as quickly as possible;
  - ii. Seek redress for the party subject to retaliation as is necessary to make such party whole.
- C. A person, employer, entity or other party that is found to have engaged in retaliation, in addition to being subject to the actions provided for in subsection (B) above, may be subject to punitive damages if the TERO Commission or the Tribal Court determines it is necessary to discourage such actions in the future.