

## CHAPTER 10-5

### WORKFORCE PROTECTION ACT

#### 10-5-1

##### **Short Title**

This chapter may be cited as the “Workforce Protection Act.”

#### 10-5-2

##### **Definitions**

(a) “Business agent” means any person who acts or attempts to act for or on behalf of any labor organization in:

(1) The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization; or

(2) Soliciting or receiving from any employer any right or privilege for employees.

(b) “Commission” means TERO Commission.

(c) “Council” means the Colville Business Council.

(d) “Director” means the TERO Director. “Employer” means any person, firm, association, corporation and other business entity lawfully operating on the lands within the jurisdiction of the Colville Tribes.

(e) “Good moral character” means a person lacks any convictions of crimes of moral turpitude, violent felonies, or crimes involving breach of fiduciary duty that has not been expunged from said person’s record and/or lacks current membership in any business entity with any person with said non-expunged convictions.

(f) “Labor organization” means any organization of employees organized for the purpose of dealing with an employer concerning hours of employment, rate of pay, working conditions, or grievances of any kind relating to employment and desiring to operate on all lands within the jurisdiction of the Colville Tribes.

(g) “Person” means any individual, employer, labor organization, corporation, partnership, or other entity.

(h) “TERO” means the Tribal Employment Rights Office.

(i) “Tribal Court” means the Colville Tribal Court.

(j) “Tribal lands” means all lands within the jurisdiction of the Colville Tribes.

(k) “Tribal offense” means any action that violates the Colville Tribal Law and Order Code, as previously enacted. Such offenses include, but are not limited to, assault, assault and battery, breaking and entry, bribery, discharging of firearms, disorderly conduct, extortion, fires, injury to property, malicious mischief, and trespass.

(l) “Tribes” or “Colville Tribes” means the Confederated Tribes of the Colville Reservation, a federally recognized Indian tribe.

#### LABOR ORGANIZATIONS

#### 10-5-50

##### **Legislative Findings.**

The Council finds that:

- (a) The Tribes possesses the inherent power to exclude non-Indians from tribal lands, which includes the lesser power to place conditions on entry, on continued presence, or on conduct on tribal lands;
- (b) Various labor organizations and their business agents have entered or may enter tribal lands without the authorization of the Tribes through their connection with employers who have lawfully entered tribal lands pursuant to leases, rights-of-way and other consensual relationships with the Tribes;
- (c) The unauthorized entry of various entities and persons on tribal lands threatens the political integrity, economic security and the health, safety and welfare of the Tribes and its members;
- (d) The individual freedom of choice in the pursuit of employment on tribal lands should be encouraged as a matter of the public policy and law of the Tribes; and
- (e) The right to work should not be subject to undue restraint, coercion, or infringement based upon membership in, affiliation with, or financial support of a labor organization, or upon the refusal to join, affiliate with, or financially or otherwise support a labor organization.

**10-5-51**      **Jurisdiction.**

All persons who enter tribal lands shall be deemed to have given implied consent to the jurisdiction of the Tribes and shall be subject to the provisions of the chapter.

**10-5-52**      **Registration of Labor Organizations.**

(a) Every labor organization operating on tribal lands shall file a report with the TERO Director, or designee to TERO headquarters on or before sixty (60) days after the chapter is enacted by the Council, or within forty-eight (48) hours of any subsequent first entry on tribal lands, and thereafter on or before December 31 of each year. The report, which shall be filed by the president or the business agent of the labor organization, shall contain the following information:

- (1) The name and address of the labor organization;
- (2) The names and addresses of the president, secretary, treasurer, and business agent of the labor organization;
- (3) The name and address of the national or international organization, if any, with which it is affiliated;
- (4) A copy of the collective bargaining agreement between the labor organization and an employer, if any.

(b) The president or the business agent of the labor organization shall file with the TERO Director or designee a notice of any changes to the information required by Section 10-5-52(a) no more than ten (10) business days after the changes are made, and provide any additional information requested by the TERO Director.

**10-5-53**      **Business Agents.**

(a) No person shall be granted a license to act as a business agent on tribal lands if that person:

- (1) has been convicted of a felony and has not had his/her civil rights restored;
- or

(2) is not a person of good moral character. License applicants shall submit relevant information and permission for the TERO Director to conduct a background check to ensure licensees comply with these requirements. All licenses shall be non-transferable and non-assignable.

(b) Any person desiring to act as a business agent on tribal lands shall first obtain a license from the Tribes by:

(1) Filing an application under oath with the TERO Office;

(2) Paying a license fee of five hundred dollars (\$500.00);

(3) Submitting a full set of fingerprints of the applicant, which shall be taken by the Colville Tribes Public Safety Department or other law enforcement agency authorized by the Council to do so; and

(4) Submitting a statement signed by the president and the secretary of the labor organization showing his or her authority to act as a business agent for the labor organization.

(c) The TERO Director, at his/her discretion, may conduct or cause to be conducted an independent background investigation of the applicant to determine the applicant's eligibility for a license.

(d) Upon compliance with Section 10-5-53(b), the TERO Director or designee shall issue the license within thirty (30) business days of compliance with Section 10-5-43(b). If at any time after the issuance of the license the TERO Director or designee receives reliable information based on the background investigation or other source that the licensee is ineligible to hold a license hereunder, then the TERO Director or designee may suspend or revoke the license, in which case the licensee may within thirty (30) days of receiving notice, appeal the suspension or revocation to the TERO Commission and pay a fee of \$500.00 to TERO as set out in all filings and note that there will be no waivers issued by the TERO Director or designee. All decisions made by the TERO Commission are final. The license shall run for the calendar year for which it is issued unless sooner surrendered, suspended, or revoked.

(e) All licenses shall expire at midnight on December thirty-one (31) of each year, but may be renewed by the TERO Director or designee on a form prescribed by the TERO Director or designee for that purpose and upon the payment of an annual renewal fee of five hundred dollars (\$500.00); however, if any license has been surrendered, suspended or revoked during the year, then the applicant must go through the requirements set forth in Section 10-5-53 (b) as a new applicant.

(f) Grounds for denial, suspension, or revocation of licenses shall include, but not be limited to, false application.

#### **10-5-054**

##### **Freedom of choice guaranteed.**

(a) No person shall be required, as a condition of employment or continuation of employment on tribal lands, to:

(1) Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;

(2) Become or remain a member of a labor organization;

(3) Pay dues, fees, assessments or other charges of any kind or amount to a labor organization; or

(4) Pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessments or other charges regularly required of members of a labor organization.

(b) Any actual agreement between any labor organization and an employer that violates the rights of employees guaranteed by the provisions of the chapter is hereby declared to be against the public policy of the Tribes and of no legal effect.

(c) No person, including any labor organization, employer, or employee, shall commit any tribal offense.

**10-5-055**

**Violations.**

(a) It shall be a violation of the chapter for any person on tribal lands:

(1) To act as a business agent without having obtained a valid license.

(2) To solicit membership for or to act as a business agent of any labor organization without authority of the labor organization to do so.

(3) To make any false statement in an application for license.

(4) To unlawfully seize or occupy any property during the existence of a labor dispute.

(5) To coerce or intimidate any employee in the enjoyment of his or her legal rights; to coerce or intimidate any elected or appointed tribal official; or to intimidate the family, picket the domicile, or injure the person or property of any employee or tribal official.

(6) To engage in picketing in any manner which constitutes a tribal offense, including picketing in a manner to prevent ingress to and egress from any premises, and picketing other than in a reasonable and peaceful manner.

(7) To violate any other provision of Colville law.

**10-5-56**

**Penalties.**

Any person who, directly, or indirectly, violates any provision of the chapter shall be subject to a fine not exceeding one thousand dollars (\$1,000.00) for each violation, or exclusion from tribal lands, pursuant to the procedures of Chapter 3-2 of the Colville Tribal Code, or both.

**10-5-57**

**Civil remedies.**

Any person injured as a result of any violation or threatened violation of the provisions of the chapter shall be entitled to injunctive relief from the Tribal Court against any person committing or threatening any violation, and may, in addition thereto, recover any and all damages, including costs and reasonable attorney fees, resulting from the violation or threatened violation, except that nothing in the chapter shall be construed as a waiver of the sovereign immunity of the Tribes, or of its enterprises, agents, employees or officials. The remedy shall be independent of and in addition to any other penalties and remedies prescribed by applicable law.

10-5-58

**Severability.**

The provisions of the chapter are hereby declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, then that declaration shall not effect the remaining provisions of this chapter. However, nothing in the act codified in this chapter is intended nor shall be construed to violate the National Labor Relations Act to the extent that it is applicable to the Tribes.

EMPLOYEE WAGES AND HOURS

10-5-100

**Minimum Wage**

Any employee who, in any work week, is engaged in commerce or the production of goods for commerce, shall be paid an hourly wage of not less than the minimum wage of the State of Washington the Colville Reservation. Such wage may be changed by vote of the Colville Business Council. Where employees are paid on a commission, piece of work, volume or weight, wholly or partially the total wages paid for such period shall be computed on the hours worked in that period resulting in no less than the applicable wage.

10-5-101

**Excess Hourly Wage**

No employer shall employ any of its employees for a workweek longer than forty (40) hours unless such employee receives compensation for the employee's employment in excess of the hours above specified at a rate not less than one and one-half time the regular rate at which the employee is employed. Employees are not to be compensated in compensatory time or flextime.

10-5-102

**Exemptions**

The provisions in subsection 10-5-101 and 10-5-103 shall not apply with the respect to any employee employed in a bona fide executive, administrative, or professional capacity, or any other exemption category.

10-5-103

**Private Right of Action**

Any individual aggrieved under this section may seek retroactive payment of unpaid minimum wages or unpaid overtime compensation with interest against an employer by filing a complaint with TERO. TERO shall investigate the complaint and issue a decision by the TERO Director within thirty (30) days. This provision shall not be construed as a waiver of the Tribes and its divisions and entities' inherent sovereign immunity.

10-5-104

**Wages Due**

All full wages due shall be paid at no longer than twice monthly mandatory intervals to each employee on regular paydays. To facilitate book keeping an employer may implement a regular payroll system in which wages from up to seven days before payday may be withheld from the pay period covered and included in the next pay period.

10-5-105

**Wages Withheld**

Except otherwise provided by law no employer shall make any deduction from the wage of an employee for:

- (1) Any cash shortage, walkout (failure of customer to pay), breakage or loss of equipment, unless it can be shown that the cash shortage, walkout, breakage or loss of equipment was caused by a dishonest or willful act of the employee;
- (2) For acceptance of a bad check, unless it can be shown that the employee accepted such a check in violation of procedures previously made known to him or her by the employer.

- 10-5-106**      **Meals and Rest**  
 Employees shall be allowed a meal period of at least thirty (30) minutes on the employees time. Mealtimes allowances commence no less than two hours and no more than five hours from the beginning of the shift. Employees shall be allowed a rest period of not less than fifteen (15) minutes on the employer time for each four (4) hours worked. No employee shall be required to work more than three hours without a rest period. Where the nature of work allows employees to take intermitted rest periods equivalent to ten (10) minutes for each four (4) hours worked, scheduled rest periods are not required.
- 10-5-107**      **Investigations Decisions and Appeals**  
 Upon a complaint filed with TERO by an interested party within 30-calendar days from the date of action (or omission) the director shall cause an investigation to be made to determine whether there has been a violation with this section of the code. If the investigation indicates there is a violation all parties shall be notified. A conciliation meeting between all parties will be scheduled not less than 15-days nor more than 60-days thereafter and TERO will attempt to facilitate a settlement.
- 10-5-108**      **Sanctions of Continued Violations**  
 Any covered employer, contractor, or subcontractor that is found to have violated the provisions of this section for a second time in a two (2) year period, shall have his certification revoked for a period of two (2) years. The two-year period shall commence from the date of notice from the director or in case of an appeal from the date of the Commission decision.
- 10-5-109**      **Whistle Blower Protection**  
 Employers shall not retaliate against any employee raising claims in accordance with this Chapter. The TERO Director may penalize any employer found to have retaliated against an employee for claims brought under this Sub-Chapter by revoking Chapter 10-3-4 Certification.
- 10-5-110**      **Appeals to the Commission**  
 Any party aggrieved by the decision or order of the Director may appeal the decision to the TERO Commission. The aggrieved party shall have fifteen (15) days from receipt of certified letter of the decision in which to file an appeal of such decision or order. The TERO Commission shall hold a hearing, in accordance with procedures in CTC 2-4. All TERO Commission decisions under this section shall be final.
- 10-5-111**      **Guidance**  
 For the purposes of interpreting and enforcing this Subchapter only, the TERO Commission may look to the case law, statutory law, and regulatory law of other Indian tribes, states, and the federal government, including, but not exclusively the federal Fair Labor Standards Act for guidance. However, nothing in this Subchapter shall be construed as an adoption by the Tribes of the Fair Labor Standards Act of 1938, Title 29 of the United States Code, sections 201 *et seq.* or any other foreign law. These foreign laws shall be considered only absent binding Colville law. The law of other federally recognized tribes will be considered first, then federal law, and finally state law.
- 10-5-112**      **NO Limited Waiver of Sovereign Immunity**  
 The Colville Tribes will not waive or provide a limited waiver of sovereign immunity for any actions brought pursuant this Subchapter.
- 10-5-113**      **Sovereign Immunity.**  
 Nothing in this act codified in this chapter shall be construed as waiving the sovereign immunity of the Tribes or its enterprises, agents, employees or officials.  
 (Adopted 8/20/09, Codified 8/20/09, Resolution 2009-615)