Sitka Tribe of Alaska

Tribal Government for Sitka, Alaska

SITKA TRIBE OF ALASKA
TRIBAL ORDINANCE

ORDINANCE 84-08, AS AMENDED
TRIBAL EMPLOYMENT RIGHTS OFFICE ORDINANCE

Whereas, the Sitka Tribe of Alaska serves as the tribal government for 4,020 enrolled tribal citizens in the Baranof Island area, and

Whereas, the Sitka Tribe of Alaska is a duly recognized Indian tribe formally organized under provisions of the Indian Reorganization Act, and

Whereas, the unemployment rate for the eligible native labor force is nearly 44%, and

Whereas, like land, water, and minerals, jobs in the private sector of the Baranof Island area are rare and important resources for Indian people and Indians must utilize their inherent sovereign right to obtain jobs as they become available, and

Whereas, Indians have unique and special employment rights and the Sitka Tribe of Alaska tribal government has the inherent sovereign power to implement and enforce those special rights on behalf of Indians, and

Whereas, the Sitka Tribe of Alaska tribal council believes it is important to establish and maintain an employment rights office in order to implement the increase of employment for Indians, and

Whereas, these policies will assist the tribe in the eradication of employment discrimination of any form,

NOW THEREFORE BE IT RESOLVED

1. The Sitka Tribe of Alaska tribal council does hereby establish the Sitka Tribe of Alaska Tribal Employment Rights Office, hereinafter called "office" as an independent office of the Sitka Tribe of Alaska, reporting directly to the Council through the Executive Director.

   The Sitka Tribe of Alaska Employment Rights Officer(s) shall be appointed by the Executive Director; the Tribal Employment Rights Officer (TERO) shall have the authority necessary to carry out the purpose of the office. The office shall have the authority to issue rules, regulations, and guidelines to implement the employment rights requirements imposed by this ordinance and to make other such actions as are necessary for the fair and vigorous implementation of this ordinance.

2. In implementing the requirements of this ordinance, the Employment Rights Office is authorized to:

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a) Set numerical goals and timetables that explicitly require Employer/Contractors to hire and train a specific number of Tribal members.

b) Require covered employers to submit to review by the TERO their job descriptions and qualifications, also the personnel procedures, that tend to disqualify Indian applicants.

c) Set up a hiring hall system to refer applicants to employers by trade and skill level.

d) Set up a "trainee" list, as part of the hiring hall list, that will make available to employers a pool of Tribal Members that are partially skilled and may require further training to make them more qualified.

e) Make every effort to implement and monitor for compliance the directives set forth by the below legislation-- setting the parameters of Indian preference.

1. Indian Self-Determination and Education Assistance Act, Section 7(b);

   A) As applied to the new Housing and Urban Development Indian Preference Policy, effective 9/26/84,

   and;

   B) As applied to new Bureau of Indian Affairs directive on "Preference Status for Indian/Alaska Native Persons and Economic Enterprises as Bureau Contractors" under the Acquisition and Assistance Agreement Instruction 84-1.

   C) As applied to IHS Indian preference regulations.

2. Title VII of the 1964 Civil Rights Act (as enforced by the Equal Employment Opportunity Commission)

3. Executive Order 11246

4. Buy-Indian Act

5. Alaska State Human Rights law

6. Indian Reorganization Act of 1934, as amended for Alaska, 1936.

7. Indian Civil Rights Act, 1968.

8. Tribe's inherent sovereign authority.

f) Require specific Indian preference obligations of covered Employers/Contractors

1. A covered employer is defined as "any employer, contractor, or sub-contractor that receives federal contracts, subcontracts, grants or subgrants for the benefit of Indians, or authorized under Congressional Acts authorizing federal contracts with or grants to Indian organizations"

2. Employer/Contractor shall apply hiring of Indian/Alaska Natives in accordance with Section 7(b) of Public Law 93-638, Indian Self Determination Act.

3. Training

   All Employer/Contractor(s), as requested by the office, shall participate in training programs to assist Indians to become qualified in the various job classifications used by Employer/Contractor. Employers engaged in construction shall employ the maximum number of trainees or apprentices possible. The ratio of trainees to fully qualified workers shall be set by the TERO after discussions with the Employer/Contractor. For construction projects, the number shall be no less than the minimum ration established by the Department of Labor. All trainees or apprentices shall be Indian.

4. Union

   A) Unions shall be expected to adhere to the requirements under 7(b) of PL 93-638, the Indian Self-Determination Act.

   B) If Section 7(b) of 93-638 is not applicable, the TERO office will enter into agreements to insure Union compliance with this ordinance.

5. Counseling and Support Programs

   The office, in conjunction with other Tribal and Federal offices, will provide counseling and other support services to Indians employed by covered employers to assist such Indians to retain employment.

6. Preference in sub-contracting to Tribal and Indian-owned firms.

   Covered Employer/Contractors shall be in accordance with PL 93-638 Section 7(b) regarding sub-contracting.

7. Lay-offs

   In all lay-offs and reductions in force no Indian worker shall be terminated if a non-Indian worker in the craft is still employed. The non-Indian shall be terminated first so long as the Indian meets the threshold qualifications for the job. Further, if the employer lays off by crews, qualified Indians shall be transferred to crews that will be retained so long as there are non-Indians in the same craft employed elsewhere on the job site.

8. The Employer/Contractor shall give preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. For all supervisory positions filled by non-Indians, the employer shall file a report with the office stating what Indians, if any, applied for the job, the reasons why they were not given the job, and what efforts were made to inform Indian workers about the opportunity.

9. Summer students

Indians shall be given preference in the hiring of summer student help. The Employer/Contractor shall make every effort to promote after-school, summer, and vacation employment for Indian youth.

As with the manpower roster, the Tribe will have a summer youth roster, primarily for the purpose of providing Tribal youth the maximum opportunity to return to educational pursuits. This employment effort will be coordinated with the Summer Youth Employment Program (JTPA) and STA/Higher Education Program (BIA).

3. Reporting and On-site inspections

Employers shall submit reports and other information as are requested by the Office. Employees of the Office shall have the right to make on-site inspections during regular working hours in order to monitor an employer's compliance with these Guidelines. Employees of the Office shall have the right to inspect and copy all relevant records of an employer, of the signatory unions or subcontractors, to speak with workers on the job site, and to engage in similar investigatory activities. All information collected by the Office shall be kept confidential.

4. Compliance and Hearing Procedures

If the Tribal Employment Rights Officer (Officer) believes that an Employer (including a subcontractor) has failed to comply with any of the requirements set out in these Guidelines, he or she shall so notify the employer in writing, specifying in detail the alleged violation(s). The employer shall then be entitled to respond to the Officer in writing. The Officer and the employer shall meet to attempt to achieve informal settlement. If after attempting informal settlement, the Officer believes that the Employer is (a) out of compliance with its Indian preference obligations as established within or under this Ordinance or (b) that the Employer is not making its best efforts to achieve compliance, then the Officer may file a complaint in the Sitka Tribe of Alaska Tribal Court under the rules of the Tribal Court, as established by the Tribal Court Rules and Civil Procedure (Sitka Tribal Code 06.01). The Officer must provide written notice to the employer of the filing of any such complaint in the Tribal Court.

The Tribal Court Hearing procedures shall comply with the requirements of due process but will not be bound by the formal rules of evidence. The employer shall be entitled to present evidence and to call witnesses to demonstrate that the employer has complied with the requirements under this Ordinance or that the employer made a best effort to do so and therefore should not be subject to sanctions. The Officer shall represent the interests of the Tribe at the Tribal Court. On the basis of evidence presented at the tribal court hearing and the information collected by the court, the Judge shall determine whether or not the employer complied with its Indian preference requirements. If the Judge determines that the employer is out of compliance and has not made a best effort to comply, the Judge shall impose one or more of the sanctions provided for in paragraph 5 of these Guidelines, as appropriate, and shall order the employer to take such corrective action as is necessary to remedy any harm done to the tribe or to individual Indians by the employer's non-compliance. The Tribal Court shall send written notice of the decision to the employer.

5. Sanctions

In the event that an employer is found to be out of compliance with the requirements of these Guidelines, the Tribal Court shall be entitled to impose any or all of the following sanctions, as

appropriate, after considering such mitigating factors as the employer's effort to comply and its efforts to remedy any harm done by its non-compliance:

A) Request the BIA Area Office or appropriate Agency to impose civil monetary fines, commensurate with the monetary value of the violation.

B) Request the BIA Area Office or appropriate Agency to suspend the employer's operation until corrective action is taken or a plan for corrective action is developed.

C) Request the BIA Area Office or appropriate Agency to terminate the employer's operation.

D) Request the BIA Area Office or appropriate Agency prohibit the employer from engaging in any future operations in the Baranof Island area.

E) Require the employer to remove certain workers and/or to hire certain workers.

F) Provide back pay, employment, promotion, training and/or other relief to Indians who were harmed by the employer's non-compliance.

Require the employer to make such changes in its procedures or policies as is necessary to comply with these requirements.

6. Appeals

Either party shall have the right to appeal any decision of the Sitka Tribe of Alaska Tribal Court to the STA Appellate Court. An appeal must be filed within 20 days after receipt of notice of the Tribal Court's decision. The Officer shall represent the interest of the Tribe during the appeal.

7. Individual Complaint Procedure

Any Indian, group of Indians, or representatives of a class of Indians, who believe that an employer has failed to comply with these guidelines, or who believe that they have been discriminated against by a covered employer because they are Indians, may file a complaint with the office. Persons may file whether or not they can show that they were personally harmed by the employer's non-compliance. Upon receipt of a complaint, the office shall conduct an investigation of the charge and shall attempt to achieve an informal settlement of the matter. If voluntary conciliation cannot be achieved, the Officer shall send written notice to the individual. The individual may then file a written complaint with the Sitka Tribe of Alaska Tribal Court, requesting a hearing on the matter under the rules of the Tribal Court, as established by the Tribal Court Rules and Civil Procedure (Sitka Tribal Code 06.01). The individual must provide written notice to the employer of the filing of any such complaint in the Tribal Court.

The Tribal Court Hearing procedures shall comply with the requirements of due process but will not be bound by the formal rules of evidence. The employer shall be entitled to present evidence and to call witnesses to demonstrate that the employer has complied with the requirements under this Ordinance or that the employer made a best effort to do so and therefore should not be subject to sanctions. Individual complainants shall have the right to represent their own interests before the Tribal Court. The Officer shall represent the interests of the Tribe at the Tribal Court. On the basis of evidence presented at the tribal court hearing and the information collected by the court, the Judge shall determine whether or not the employer complied with its Indian preference requirements or acted in a discriminatory manner. If the Judge determines that the employer has acted in a discriminatory

manner, or is out of compliance and has not made a best effort to comply, the Judge shall impose one or more of the sanctions provided for in paragraph 5 of these Guidelines, as appropriate, and shall order the employer to take such corrective action as is necessary to remedy any harm done to the tribe or to individual Indians by the employer's non-compliance or discriminatory behavior. The Judge shall send written notice of the decision to the employer.

Either party shall have the right to appeal the decision of the Tribal Court to the Sitka Tribe of Alaska Appellate Court as provided for in paragraph 6. Such appeal must be filed within 20 days after receipt of the decision notice from the Tribal Court.

8. In the event that a portion of this code is declared invalid, such invalidity shall not affect the remaining portions, and to this end this code shall be considered severable.

CERTIFICATION

This Ordinance was originally enacted by a vote of five (5) for and zero (0) against, at a regular meeting of the Sitka Community Association Council in 1984 at which a quorum was present.

Emergency Amendments to this Ordinance were enacted at a duly called and convened meeting of the Tribal Council of the Sitka Tribe of Alaska held on **August 18, 2010** at which a quorum was present by a vote of 8 IN FAVOR, 0 AGAINST, 1 ABSENT AND 0 ABSTAIN.

Lawrence Widmark
Chairman, Sitka Tribe of Alaska

ATTEST:

Clara Gray
Secretary, Sitka Tribe of Alaska