

COQUILLE INDIAN TRIBAL CODE

Chapter 188

Part 1 – General Governmental Affairs

Tribal and Indian Preference in Employment

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Tribal and Indian Preference in Employment

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188.010 General

1. Purpose, Background and Intent - The Coquille Indian Tribal Council finds the following, and intends for these findings to guide interpretation of this Ordinance when questions of its intent arise:

- (a) Employing Tribal Members is an investment in the future longevity and success of the Coquille Indian Tribe;
- (b) Much like natural resources, employment for Coquille Tribal Members and members of other federally recognized tribes is a resource that must be invested in, cultivated and encouraged to grow;
- (c) The Tribe is dedicated to working hand in hand with its members who demonstrate a desire and capacity to improve their socioeconomic status;
- (d) The employment and promotion of Tribal members contributes to the wealth and wellness of the Tribal member family and the tribal community and is a priority of the Tribe;
- (e) Forcible removal of Native Americans from their homelands and discriminatory hiring laws and practices have led to very high Native American unemployment rates, including within the Coquille Indian Tribe;
- (f) Statistics consistently show that Native Americans suffer from higher than average rates of unemployment, underemployment, poverty, and other negative social indicators;
- (g) The Coquille Restoration Act and the Constitution of the Coquille Indian Tribe both prioritize the self-sufficiency of the Tribe and its members, and socioeconomic status is a major determinative factor to measure our success;
- (h) The Tribe and its affiliates are dedicated, in part, to address the economic struggles of the communities where they do business;
- (i) Tribal employment on or near the Reservation is a critical resource for the Tribe;
- (j) It is incumbent upon the Tribal Council to use its sovereign power to ensure the development of such jobs for Tribal members and to diligently work to eradicate discrimination against Indian people;
- (k) Tribal members are entitled to the protection of federal laws which have

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been adopted by the United States Congress to combat employment and economic discrimination and the Tribal Council intends to play an important role in the implementation of such laws;

- (l) The Tribe also wishes to promote the employment of members of other federally recognized tribes, Veterans and the Tribal community; and
- (m) The employment of Tribal members, members of other federally recognized tribes and Tribal community members and policies achieving this goal are purely intramural matters for the Tribe;
- (n) It is necessary to adopt into tribal law, a strong statement of the Tribe's Tribal and Indian preference policy; and
- (o) The Tribal Council has decided to establish a Tribal Employment Advocacy Department ("Department") to promote employment of Tribal members and Indians and to report on compliance with this Ordinance.

2. Definitions –

- (a) Unless a section of this Ordinance provides otherwise, the term "Employee" shall include any employee or applicant for employment by the Coquille Indian Tribe ("Tribe") or a Tribal Entity, and shall include, for the purposes of assessing compliance with the termination and lay off preferences of this ordinance, a former Preference Employee who has been laid off or terminated from Tribal or Tribal Entity employment within the six months preceding any such assessment.
- (b) The term "Employer" means the Coquille Indian Tribe or any Tribal Entity with one or more employees.
- (c) The term "Immediate Family Member" means father, mother, son, daughter, husband, wife, domestic partner, brother, sister or any other relative living in the same household.
- (d) The term "Coquille Tribal Family Relation" means an Immediate Family Member, grandparent, guardian, step parent, foster parent, step child, or anyone whose employment significantly supports a Coquille tribal child under the age of 21.
- (e) The term "Indian" means an enrolled member of any federally recognized Tribe.
- (f) The term "Person" shall include both natural persons and artificial

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persons, including but not limited to corporations, trusts and partnerships.

- (g) The term “Preference Candidate” shall mean an Employee or candidate for employment or contracting that is a Coquille Tribal member, Tribal Spouse, Coquille Tribal Family Relation, or an Indian.
- (h) The term “Preference Employee” shall mean an Employee that is a Coquille Tribal member, Tribal Spouse, Coquille Tribal Family Relation, or an Indian.
- (i) The term "Qualified" means that a person meets the required qualifications listed in a job description, request for proposals, or contract. “Qualifications” include reliable evidence of a candidate’s past behavior and work performance.
- (j) The term “Tribal Entity” means any company, organization, non-natural person, or association that is wholly owned by the Coquille Indian Tribe, either directly or through a wholly-owned subsidiary; provided that it shall not mean any entity formed under state law.
- (k) The term “Tribal member” means a member of the Coquille Indian Tribe.
- (l) The term “Tribal Spouse” means a natural person who has entered into a Marriage or Domestic Partnership with a Tribal member, as defined by or recognized under CITC Chapter 740.
- (m) The term “Tribe” means the Coquille Indian Tribe and its divisions, regardless of function.

188.020 Applicable Laws.

1. The Constitution of the Coquille Indian Tribe dedicates the Tribe, as a sovereign self-governing power to several objectives, including the promotion of social and economic welfare of Coquille Indians. The Constitution further provides that the Tribe’s Tribal Council shall have the power to exercise all legislative authority of the Tribe (except for the authority vested in the General Council) and all executive authority of the Tribe. Finally, the Constitution provides that all tribal members shall be accorded the opportunity to participate in the economic resources and activities of the Tribe.
2. The Indian Self-Determination and Education Assistance Act of 1974 (Public Law 93-638), (“ISDEAA”) applies to certain Tribal government activities. Section 7(b) of the ISDEAA states: Any contract, subcontract, grant or subgrant pursuant

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to this act...or any other act authorizing federal contracts with or grants to Indian organizations or for the benefit of Indians shall require that to the greatest extent feasible:

- (a) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and
 - (b) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises...”
- 3. The Native American Housing and Self Determination Assistance Act provides in part as follows: “Tribal Preference in Employment and Contracting- Notwithstanding any other provision of law, with respect to any grant (or portion of a grant) made on behalf of an Indian tribe under this Act that is intended to benefit 1 Indian tribe, the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives the benefit shall apply with respect to the administration of the grant (or portion of a grant).” (25 USC § 4111k)
- 4. Nothing contained in this Ordinance shall violate or undermine federal requirements of Equal Employment Opportunity, namely Title VII of the 1964 Civil Rights Act, the “Office of Federal Contract Compliance Programs” (OFCCP) Compliance of Federal Contract Compliance Program, or Executive Order 11246. Title VII prohibits preferential employment on the basis of race, religion, color, sex or national origin. However, Title VII contains a special exception: Section 30 (i) states: “Nothing contained in this title shall apply to any business or enterprise on or near an Indian Reservation with regard to any publicly announced employment practice of such business or enterprise under which preferential treatment is given to an individual because he/she is Indian.”

188.100 Tribal and Indian Preference Required

- 1. As described below, all Employers shall give preference to qualified Tribal members and other Preference Candidates and Preference Employees in all phases of employment training and contracting.
 - (a) Employer Compliance. All Employers must comply with this Ordinance.
 - (b) Employment Phases. Employment phases include but are not limited to, recruitment, advertising, hiring, upgrading job duties, promotion, transfer, rate of pay changes, layoff or not for cause termination, and selection for

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training or apprenticeship.

- (c) Tribal Preference as Applied. Tribal Preference means that, after identifying Qualified candidates, Employers shall observe the following preference order (“Preference Order”), to the extent permissible under applicable law, with the most preferred categories listed first:
- (1) Qualified Tribal Member;
 - (2) Qualified spouse or domestic partner of a Tribal Member;
 - (3) Qualified Immediate Family Member of a Tribal member;
 - (4) Qualified Coquille Tribal Family Relation;
 - (5) Qualified Indian;
 - (6) Qualified United States Veteran;
 - (7) Other qualified applicant.
- (d) When to Apply Preference. Preference shall be applied both when identifying qualified candidates and when assessing which candidate(s) shall receive an offer of employment/contracting.
- (e) Layoffs; Reductions in Force. In general, layoffs or furloughs of personnel shall consider the Preference Order in reverse, Employers must receive the approval of the Department before executing layoffs or furloughs.
- (f) Promotion, Career Advancement, Career Advancement and Succession Opportunities. Employers shall follow the Preference Order for all Employer-offered promotional opportunities, career advancement/succession opportunities or programs, specialized or general training opportunities, and employee or management development activities, etc., that are not available or distributed to all employees within a classification.
- (g) Training and Apprenticeship. As requested by the Department, Employers shall participate in applicable training programs to encourage Tribal Members and Tribal Spouses to advance their prospective job qualifications.
- (h) Part-Time, Temporary, Summer, and Cooperative Student Employees. Opportunities for part-time, temporary, summer and co-operative student employment shall be filled in accordance with the Preference Order. The Department will work in conjunction with Employers to locate and refer qualified candidates.
- (i) Job Qualification Requirements of Employers. Employers shall design

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job qualification criteria for the sole purpose of identifying required and desirable skills, education, certifications and experience for each position. An Employer shall not develop or apply job qualification requirements that effectively serve to bar the employment or promotion of Preference or non-Preference Candidates. Employers may utilize Bona Fide Occupational Qualifications as defined by the Equal Employment Opportunity Commission. Nothing in the Ordinance limits an Employer's discretion to assess the qualifications of any candidate; provided that any such assessment must be consistent with the terms of this Ordinance.

188.200 Tribal Development Department

1. There shall be a Tribal Development Department ("Department"). The primary purpose of the Department is to support Employer efforts to fulfill the purpose of this Ordinance and to assist Tribal Members in professional growth and development. The Department shall be led by a Director. Unless the Tribal Council provides otherwise, the Director shall be employed or contracted directly by the Tribal Council, at the Tribal Council's sole discretion. The Tribal Council or its authorized delegate may suspend or terminate the Director at will.

2. In collaboration with Employers, the Department can develop proposed policies and guidelines as deemed necessary to carry out CITC 188.300 and to support and document implementation of the preference requirements of this Ordinance. Any such policies and guidelines must be consistent with the provisions of this Ordinance and any applicable regulations. The Department shall provide drafts of proposed policies and procedures to the Tribal Legal Department for legal compliance review. Such policies may address:
 - a. Training for all appropriate Employer management and staff regarding the provisions of this Ordinance and its regulations and policies;
 - b. Employer-developed procedures to verify the preference qualifications of Preference Candidates in order to ensure that any such person is eligible for a preference;
 - c. The preparation of Employer's annual reports to the Tribal Council, documenting compliance with this Ordinance.
 - d. Work with appropriate CEO/ED, HR Director, in developing and approving succession plans for director and above positions when applicable;
 - e. Procedures governing the contracting requirements of this Ordinance,

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which could be adapted to the unique needs of each Tribal Entity and must be approved by Tribal Council resolution; and

- f. Procedures as described in CITC 188.300 of this Ordinance.
- 3. The Department shall not perform the duties or functions of any Employer, and shall not alter the Chain of Command of any Employer.
- 4. The Department staff shall be available to assist both employees and Employers in improving communications and resolving conflicts regarding this Ordinance.

188.300 Working Together to Resolve Disputes

- 1. The Tribe expects Employers and the Department to implement this Ordinance with mutual understanding, compassion and a desire to resolve disputes in a nonpunitive way and at the lowest possible level.
- 2. From time to time the Department and an Employer might disagree about interpretation and implementation of this Ordinance. In such instances, both parties shall make diligent and informal efforts to resolve such concerns. It is preferable to resolve any concerns at the lowest possible level within an Employer's chain of command.

188.400 Religious Accommodation

Employers shall make reasonable accommodations to the traditional religious beliefs and practices of Tribal Member and Indian workers in accordance with Public Law 95-341, "American Indian Religious Freedom", and tribal custom.

188.500 Reporting Requirements

- 1. Employers shall provide an annual written report of its activity under this Ordinance. Reports shall be provided to the Tribal Council Chairperson and the Department no later than 90 days after the end of each year. Reports shall not disclose confidential personnel information.
- 2. To the extent necessary to perform its authorized functions, the Department shall have the authority to inspect and copy employment records of an Employer to speak with employees on the job site, and to engage in similar investigatory activities, provided that no such activities conflict with any Employee's work obligations, and provided further that the Department's authority shall not exceed minimum activity and access necessary to perform its express duties. All personnel information and protected health information (if any) collected or viewed by the Department shall be kept confidential unless disclosure is required pursuant to applicable law.

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188.550 Conflicts of Interest

The Department shall adopt and maintain a policy to ensure that Department employees shall refrain from involvement in personnel matters involving their Immediate Family Members or Coquille Tribal Family Relations.

188.600 Issuance of Policies and Guidelines

In issuing implementing policies and guidelines, the Employer and Department shall be guided by the intent, policy and standards enumerated throughout this Ordinance and by any such further resolutions as the Tribal Council may issue.

188.700 Compliance

Compliance with this Ordinance is the responsibility and duty of the Department and the Governing Body of each Employer. The Tribal Council will consider the success of each Employer when conducting annual performance reviews of each manager under their supervision.

188.900 Severability

To the greatest possible extent, this Ordinance shall be construed in a manner that avoids conflict with applicable federal laws. If the Tribal Council or a court of competent jurisdiction finds any provision of this ordinance to be invalid or illegal under applicable tribal or federal law, such provision shall be severed from this Ordinance and the remainder of this ordinance shall remain in full force and effect.

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History of Amendments to Chapter 188 Tribal and Indian Preference in Employment:

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