

SPECIAL ENVIRONMENTAL COUNSEL MEMORANDUM NO. 2024-04

DATE: December 18, 2024

TO: Tribal Environmental Professionals

FROM: Tribal Government Practice Group, Ogden Murphy Wallace, P.L.L.C.

RE: Tribal Employment Rights Offices (TEROs) and the EEOC

1. What's New

On October 30, The EEOC issued a press release describing its partnerships with TEROs, noting that “Tribal governments have the inherent sovereign power to regulate commercial dealings by all entities within their jurisdictions, which gives them the authority to require employers on the reservations to provide preference to Indians in employment and business opportunities.” We wanted to advise you of this development of our work in the area of Tribal employment law.

The EEOC press release went on to advise Indian tribes that “TEROs assist the EEOC in carrying out the Commission’s responsibilities by ensuring that Native Americans and Alaska Natives know, understand and exercise their rights as they relate to, not only Indian preference requirements on reservations, but also other workplace issues such as harassment and different terms and conditions of employment.”

2. Background

There is overlapping jurisdiction between Tribal Employment Rights Offices (TEROs) and the EEOC with respect to discrimination in employment. As the EEOC states in its FAQs:¹

- The EEOC has jurisdiction over employment discrimination charges against federally recognized Tribes that are based on federal laws against age discrimination and gender-based pay discrimination unless the application of these laws would infringe on treaty rights or Tribal sovereignty.
- The EEOC does not have jurisdiction over employment discrimination claims against federally recognized Tribes that are based on race, national origin, sex, color, religion, disability, or genetic information.
- The EEOC has jurisdiction to enforce the federal laws against discrimination in employment with respect to private employers operating on Tribal lands.
- The EEOC may have jurisdiction over a business that is owned by a Tribe, but not integrated with and controlled by the Tribe if it is not performing essentially governmental functions on behalf of the Tribe.

3. EEOC/Tribal Relations

The EEOC is interested in partnering with tribal governments in the following ways:

- EEOC funding for TEROs to maximize employment opportunities and protect employee rights under the federal laws prohibiting discrimination in employment and specific preference rights of Native Americans and Alaska Natives.
- EEOC funding and support for TEROs to identify, remedy, and eliminate unlawful employment discrimination occurring on or near the reservation/tribal lands,” as described in <https://www.eeoc.gov/contract-qualification-teros>.
- Consultation with Tribal governments to identify ways to provide information and access to the EEOC’s services.
- EEOC funding to support accessibility, training, outreach, and other programmatic needs.
- TEROs may refer matters to the EEOC in situations where there is potential employment discrimination on or near reservations.
- TEROs also may collaborate with the EEOC by completing interview questionnaire forms for potential charging parties and forwarding them to EEOC field offices.
- The EEOC enters into Memorandums of Understanding (MOUs) with Tribal governments for charge processing of charges filed with the EEOC or with both the EEOC and the TERO over which EEOC has jurisdiction; charges the EEOC receives where it does not have jurisdiction, but the TERO may have jurisdiction, information sharing between the EEOC and the TERO, and training, assistance, and reporting.²

4. Recommendations and Conclusions

Tribal governments with TEROs that have not already done so may want to consider partnering or collaborating with the EEOC to address discrimination in employment in areas where they have overlapping jurisdiction. We can assist Tribal governments in developing MOUs and developing policies and ordinances to meet the criteria for contracting with the EEOC. Please let us know if you have any questions or need any assistance.

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¹ For details, see <https://www.eeoc.gov/frequently-asked-questions-about-indian-tribes-and-tribal-employment-rights-offices>.

² For details, see <https://www.eeoc.gov/mou/memorandum-understanding-between-us-equal-employment-opportunity-commission-and-nationtribe>.