

TITLE 26
LABOR AND EMPLOYMENT

CHAPTER I	GENERAL PROVISIONS	
26.01.01	Findings	1
26.01.02	Purpose	1
26.01.03	Jurisdiction.....	2
26.01.04	Sovereign Immunity.....	2
26.01.05	Severability	2
26.01.06	Repealer	2
CHAPTER II	DEFINITIONS	
26.02.01	Definitions	3
CHAPTER III	EMPLOYEES RIGHT TO WORK	
26.03.01	Freedom of Choice and Employment Rights	4
26.03.02	Unlawful Agreements	5
26.03.03	Unlawful Actions	5
26.03.04	Union Activities Prohibited within the Tribal Administration.....	5
CHAPTER IV	UNION AGREEMENTS	
26.04.01	Union Agreements with the Tribe or a Tribally Owned Enterprise.....	6
26.04.02	Content of Union Agreements	6
26.04.03	Recognition of Unions	6
CHAPTER V	REGISTRATION OF LABOR ORGANIZATIONS AND BUSINESS AGENTS	
26.05.01	License Requirement.....	7
26.05.02	Application Information	7
26.05.03	Issuance of License	8
26.05.04	Reporting Requirements.....	9
26.05.05	Effect of Failing to Register or Report.....	9
26.05.06	Violations of Chapter	9
CHAPTER VI	ENFORCEMENT	
26.06.01	Tribal Court Authority	10
26.06.02	Enforcement.....	10
26.06.03	Non-Complying Agreements Null and Void.....	10
26.06.04	Retaliation.....	10

26.06.05	Exclusion	10
26.06.06	Orders to Police	11
26.06.07	Appeals	11

CHAPTER VII - NISQUALLY PREVAILING WAGE ORDINANCE

<u>26.07</u>	<u>PURPOSE AND CONSTRUCTION</u>	
26.07.01	Title	11
26.07.02	Authorization	11
26.07.03	Purpose	11
26.07.04	Applicability	11
26.07.05	Interpretation.....	12
26.07.06	Definitions	12
26.07.07	Determination of Prevailing Wage	13
26.07.08	Delegation of Authority.....	14
26.07.09	Payment of Prevailing Wage Required	14
26.07.10	Notification of Prevailing Wage Required	14
26.07.11	Tribal Court Action and Remedies	14
26.07.12	Limitation of Actions	15
26.07.13	No Waiver of Sovereign Immunity.....	15
26.07.14	Severability; Construction	15
26.07.15	Authority to Promulgate Standards.....	15
26.07.16	Effective Date	15

Chapter I GENERAL PROVISIONS

26.01.01 Findings

- (a) The Nisqually Tribe exercises powers of self-government over its members and territory, including the power to regulate union activity within its jurisdiction.
- (b) Any union activity within the Nisqually Tribe's jurisdiction must be conducted in a manner that does not interfere with the Tribe's ability to perform its governmental functions.
- (c) It is essential to the Tribe's health, welfare and political integrity, that the Tribe's laws and policies combat the effects of discrimination against Nisqually tribal members and other Native Americans and ensure that these people are given priority in regard to employment and training opportunities on tribal lands.
- (d) It is also essential to the Tribe's health, welfare and political integrity that the right to work of Nisqually tribal members, Native Americans and other persons not be subject to undue restraint, coercion, or infringed 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.
- (e) The unauthorized entry of various entities and persons on tribal lands and any attempt to impose conditions or restrictions on tribal-related employment contrary to this Title and/or any other tribal law or policy threatens the political integrity, economic security and the health, safety and welfare of the Tribe and its members.

HISTORICAL NOTE

Chapters I–VI and the renumbering of Chapter VII, were approved by Tribal Council Resolution 27-2013 dated April 9, 2013.

26.01.02 Purpose

- (a) To protect the health, welfare and political integrity of the Nisqually Tribe by insuring that outside influences, including labor organizations, can not unduly interfere with the Tribe's performance of its governmental operations.
- (b) To promote the economic health and welfare of the Nisqually Tribe and its members by training and employing Nisqually tribal members and other Native Americans to the greatest extent possible.
- (c) To ensure that Nisqually Tribal members and other Native Americans are given priority in regard to employment and training opportunities available with the Tribe and tribally-owned enterprises.

(d) To ensure that the rights of Nisqually tribal members and others to work and to receive preference in employment shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization.

(e) To ensure that any labor organization seeking to organize employees working within the Nisqually Tribe's jurisdiction does so consistently with the Tribe's laws and policies.

(f) To ensure the integrity of labor organizations doing business within the Tribe's jurisdiction by requiring such labor organizations to obtain a license.

26.01.03 Jurisdiction

(a) The Nisqually Tribal Court shall have jurisdiction over cases arising under this Title of the Nisqually Law and Order Code. The jurisdiction of the tribal court over persons and territory is limited only by federal law and the Constitution of the Nisqually Indian Tribe. The tribal court shall have the power to decide questions of jurisdiction which may be raised under this Title.

(b) All persons who enter Nisqually tribal lands shall be deemed to have given implied consent to the jurisdiction of the Tribe with regard to any employment related matters, and shall be subject to the provisions of this Title and any other applicable tribal law.

26.01.04 Sovereign Immunity

(a) The sovereign immunity of the Nisqually Indian Tribe shall in no manner be waived by this Title. Nothing in this Title shall be construed as waiving the sovereign immunity of the Tribe, its entities or enterprises, or its agents, employees or officials.

(b) No agent or participant in any transaction which is in any way related to activities subject to this Title shall attempt, or be authorized, to waive the sovereign immunity of the Nisqually Indian Tribe from suit; nor may any such person attempt, or be authorized, to create any liability or obligation on behalf of the Tribe without the express written consent of the Nisqually Tribal Council.

26.01.05 Severability

The provisions of this Title are hereby declared to be severable. If any provision or application of this Title is declared void, invalid, or unenforceable in whole or in part, then that declaration shall not effect the remaining provisions of this Title and any such determination shall not render such provision inapplicable to other persons or other circumstances nor invalidate any other provisions of this Title.

26.01.06 Repealer

This Title is to be interpreted to supersede and replace any conflicting provisions of all prior codes and laws of the Nisqually Indian Tribe.

CHAPTER II DEFINITIONS

26.02.01 Definitions

For the purposes of this Title, unless otherwise expressly provided, the following definitions shall apply:

- (a) Business Agent - Any person who acts or attempts to act for, or on behalf of, any labor organization in:
 - (i) 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
 - (ii) Soliciting or receiving from any employer any right or privilege for employees.
- (b) Chairman – The Chairman of the Nisqually Tribal Council.
- (c) Good Moral Character – A person is of “good moral character” if such person lacks any convictions for crimes of moral turpitude, violent felonies, or crimes involving breach of fiduciary duty, and is not involved in any business entity with any other person with such convictions.
- (d) Governmental Operations – The operations of the Nisqually Indian Tribe exercised pursuant to its inherent self-governing authority as a federally recognized Indian Tribe or pursuant to its governmental activities expressly recognized or supported by Congress, including but not limited to (1) the provision of health, housing, education, and other governmental services and programs to its members; (2) the generation of revenue to support the Tribe’s governmental services and programs, including the operation of gaming facilities; and (3) the exercise and operation of its administrative, regulatory, and police power authority within its jurisdiction.
- (e) Labor Organization - Any organization of employees organized for the purpose of bargaining with an employer over hours of employment, rate of pay, working conditions, benefits, grievances or other terms or conditions of employment.
- (f) Native American - Any person who is a member of a federally recognized Indian tribe.
- (g) Person - Any individual, employer, business agent, labor organization, corporation, partnership, or other entity. The term “entity” is intended to be as broad as possible to ensure this Title’s coverage over all employment activities within the Tribe’s jurisdiction.
- (h) Tribal Administration– The departments, divisions and agencies of the tribal organization that are responsible for providing governmental services and programs for tribal members and others within the jurisdiction of the Nisqually Tribe. This definition is intended to include all governmental activities except for activities conducted by a tribally owned business or corporation.

- (i) Tribal Council - The Nisqually Tribal Council.
- (j) Tribal Land – All land within the exterior boundaries of the Nisqually Indian Reservation, all land held in trust for the Nisqually Indian Tribe or any tribal member, and all other land over which the Nisqually Indian tribe may lawfully assert jurisdiction.
- (k) Tribal Member - Any person who is an enrolled member of the Nisqually Indian Tribe.
- (l) Tribally Owned Business - Any business wholly or partially owned by the Nisqually Indian Tribe, or a subsidiary corporation formed by the Tribal Council.
- (m) Tribe - The Nisqually Indian Tribe.
- (n) Tribal Court - The Nisqually Tribal Court.
- (o) Tribal Offense - Any action that violates any provision of the Nisqually Law and Order Code.
- (p) Union Activity - Any activity to promote or encourage employees or prospective employees to join, affiliate with, or financially support a labor organization; any communication with employees who are members of a union; and, any collective bargaining activities.

CHAPTER III RIGHT TO WORK

26.03.01 Freedom of Choice and Employment Rights

- (a) No person shall be required, as a condition of employment or continuation of employment at any tribally owned business, to:
 - (i) resign, abstain or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
 - (ii) become or remain a member of a labor organization;
 - (iii) pay dues, fees, assessments or other charges of any kind or amount to a labor union or labor organization; or
 - (iv) 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) No person shall be required, as a condition of employment or continuation of employment at a tribally owned business to be recommended, approved, referred or cleared through a labor organization.
- (c) It shall be unlawful to deduct from the wages, earning or compensation of an employee at a tribally-owned business any union dues, fees, assessments, or other charges to be held for,

transferred to, or paid over to a labor organization, unless the employee has presented to his or her employer a signed written authorization for such deductions, which authorization may be revoked by the employee at any time by giving written notice of revocation to the employer.

(d) Any tribally-owned business that is subject to a collective bargaining agreement that requires it to pay monies for fringe benefits for its employees into a union fund, such as health or pension funds, shall offer any employee who is not a union member the option of receiving directly, in each paycheck, the amount that would otherwise have been placed into the union fund on behalf of that employee.

26.03.02 Unlawful Agreements

(a) Any agreement between any tribally-owned business and any labor union or labor organization whereby persons not members of such union or organization shall be 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 benefits by such employer is hereby declared to be against public policy, void, and illegal.

(b) Any agreement between a labor organization and a tribally-owned business that violates any of the rights of employees guaranteed by any of the provisions of this Title is hereby declared to be against public policy, void, and illegal.

26.03.03 Unlawful Actions

(a) It shall be unlawful for any person, labor organization, business agent or officer or agent thereof, or any employer, or officer or agent thereof, by any threatened or actual intimidation of an employee or prospective employee or that employee's family or household members, or by any damage or threatened damage to his property to compel or attempt to compel such employee or prospective employee to join, affiliate with, or financially support a labor organization or refrain from doing so, or otherwise forfeit his or her rights under this Title.

(b) It shall be unlawful to cause or attempt to cause any employee to be denied employment or discharged from employment because of support or non-support of a labor organization or to induce or attempt to induce any other person to refuse to work with such employee.

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

26.03.04 Union Activities Prohibited within the Tribal Administration

Union activities within the tribal administration or at administration buildings are prohibited and shall be considered a violation of this Title.

**CHAPTER IV
UNION AGREEMENTS WITH TRIBAL ENTERPRISES**

26.04.01 Union Agreements with Tribally Owned Businesses

No agreement shall be entered into between any labor organization and any tribally owned business that does not conform to the requirements of this Title.

26.04.02 Contents of Union Agreements

Every union agreement with a tribally-owned business must provide:

- (a) The union will abide by the Indian preference hiring policies of the tribally-owned business.
- (b) The union will abide by the laws established in the Nisqually Law and Order Code.
- (c) The union will give preference to tribal members and other Native Americans in job referrals regardless of which union referral list they are on.
- (d) The union will cooperate with the Tribe in all respects and assist in the compliance with and enforcement of this Title and related regulations and agreements.
- (e) The union will establish a mechanism allowing tribal members and other Native Americans to register for job referral lists by telephone or mail.
- (f) The union will grant temporary work permits to tribal members and other Native Americans who do not wish to join the union.
- (g) That no employee shall be required to join the union, however, the employer shall agree that all employees shall received the same rates of pay, benefits and access to grievance procedures as employees who are members of the union.
- (h) That the parties consent to the jurisdiction of the Tribal Court and agree that all disputes regarding the agreement shall be brought in Tribal Court.

26.04.03 Recognition of Unions

Nothing herein shall constitute official Tribal recognition of any union or Tribal endorsement of any union activities on tribal land.

CHAPTER V
REGISTRATION OF LABOR ORGANIZATIONS AND BUSINESS AGENTS

26.05.01 License Requirement

- (a) No business agent or labor organization shall engage in organizing employees working for any tribally-owned business without a license issued by the Nisqually Tribal Council.
- (b) The application for license shall require the applicant to provide relevant information and permission for the Tribe to conduct a background check to ensure that the licensee meets the requirements of subsection (c).
- (c) No business agent or labor organization shall be granted a license to conduct business within tribal lands, if such business agent or any officer or agent of the labor organization:
 - (i) has been convicted of a felony in any court and has not had his/her civil rights restored; or
 - (ii) is not a person of good moral character.
- (d) The license shall provide as follows:
 - (i) The right of the business agent or labor organization to conduct business within the Tribe's jurisdiction is a privilege, subject to the consent and regulatory authority of the Tribe;
 - (ii) The consent of the Tribe to allow such business agent or labor organization to conduct business within the jurisdiction of the Tribe is conditioned upon the business agent or labor organization's agreement to be subject to the laws of the Tribe and its regulatory authority;
 - (iii) In consideration of the Tribe's consent to such business agent or labor organization's conduct of business within the jurisdiction of the Tribe, such labor organization agrees to (A) comply with all rules, regulations, and laws of the Tribe; (B) submit to the jurisdiction of the tribal court; and (C) pay an annual business license fee in the amount of \$500.
 - (iv) Such business agent or labor organization agrees that a license issued by the Tribe for conducting business within tribal land may be revoked by the Tribe at any time, with or without a hearing, for failure to comply with the laws of the Tribe.
- (e) All licenses shall be non-transferable or non-assignable.

26.05.02 Application Information

- (a) An applicant for a license to act as a business agent or labor organization shall provide the following information in its application that shall be signed under oath:
 - (i) The name and address of the labor organization;

- (ii) The names and addresses of the president, secretary, treasurer and business agent of the labor organization;
- (iii) The name and address of the national or international organization, if any, with which it is affiliated; and
- (iv) A statement signed by the president and the secretary of the labor organization showing the labor organizations authority to engage in business and/or the agent's authority to act as a business agent for the labor organization.
- (v) A copy of the collective bargaining agreement between the labor organization and an employer, if any, within the jurisdiction of the Tribe and/or doing business on tribal land.
- (vi) A statement that the applicant agrees to be bound by the provisions of this Title and the Nisqually Law and Order Code.
- (vii) A statement that the applicant consents to the jurisdiction of the tribal court for any actions that arise during the time it is doing business on tribal lands.

(b) The applicant shall be required to submit a full set of fingerprints of the business agent, or of the principle officers, if a labor organization, which shall be taken by the Nisqually Law Enforcement Department.

(c) All applicants shall notify the Tribal Council Chairman of any changes to the information provided in the application within 20 days after such changes are made.

26.05.03 Issuance of License

(a) The Tribal Council, in its discretion, may conduct or cause to be conducted an independent background investigation of the application to determine the applicant's or labor organization's eligibility for a license prior to issuing a license under this Title.

(b) If the Tribal Council determines that the requirements of this Title have been met, the Chairman shall issue the license.

(c) If at anytime after the issuance of the license, the Tribal Council receives reliable information based on the background investigation or other source that the licensee is ineligible to hold a license hereunder, the Tribal Council may suspend or revoke the license, in which case the licensee may within thirty (30) days appeal the suspension or revocation to the Tribal Court. The license shall run for the calendar year for which it is issued unless sooner surrendered, suspended, or revoked.

(d) All licenses shall expire at midnight on December 31 of each year, but may be renewed by the Tribal Council on a form prescribed by the Tribal Council for that purpose and upon the payment of an annual renewal fee of \$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 this chapter as a new applicant.

(e) Grounds for denial, suspension, or revocation of licenses shall include false statements in an application.

26.05.04 Reporting Requirements

(a) Every labor organization operating on tribal lands shall file an annual report with the Chairman, on or before 60-days after this Title is enacted by the Tribal Council 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:

- (i) The name and address of the labor organization;
- (ii) The names and addresses of the president, secretary, treasurer, and business agent of the labor organization;
- (iii) The name and address of the national or international organization, if any, with which it is affiliated; and
- (iv) A copy of the collective bargaining agreement between the labor organization and an employer, if any, within the jurisdiction of the Tribe and doing any business on tribal lands.

(b) The president or the business agent of the labor organization shall file with the Chairman a notice of any changes to the information required by subsection (a) within ten (10) days after any such changes are made, and provide any additional information that may be requested by the Chairman or his or her designee.

26.05.05 Effect of Failing to Register or Report

No employer shall engage in collective bargaining with any business agent or labor organization that has failed to register, report or pay the license fee as required by this Title.

26.05.06 Violations of Chapter

It shall be a violation of this Title for any person on tribal lands:

- (a) To act as a business agent without having obtained a valid license.
- (b) To solicit membership for or to act as a business agent of any labor organization without authority of the labor organization to do so.
- (c) To make any false statement in an application for license.
- (d) To commit any violation of tribal law while engaging in business with the Tribe or on tribal lands.

CHAPTER VI ENFORCEMENT

26.06.01 Tribal Court Authority

The Nisqually Tribal Court shall have the responsibility and authority to assure that the provisions of this ordinance are implemented and enforced.

26.06.02 Enforcement

Any employee, labor organization or employee or agent of a labor organization that violates the provisions of this Title shall be subject to a civil action by the Tribe or the affected employer for declaratory and injunctive relief in the Nisqually Tribal Court.

(a) Upon a finding of a violation of this Title by an individual employee, the Court may impose a civil fine not to exceed \$1,000 for each violation.

(b) Upon a finding of a violation of this Title by a labor organization or an employee or agent thereof, the Court may impose a civil fine not to exceed \$5,000 for each violation.

26.06.03 Non-complying Agreements Null and Void

The tribal court shall declare any contract or other agreement that violates the provisions of this Title to be null and void.

26.06.04 Retaliation

(a) No person or entity shall retaliate against any employee or person who has attempted to enforce the requirements of this Title, or has assisted another to do so, by means of harassment, unjustified discipline or termination. An employer or union shall be responsible for the actions of all its employees or representatives, supervisory or otherwise.

(b) Any harassment, action, discrimination or threat against any person or company because that person or company filed a complaint or testified, assisted or participated in any manner in an investigation, proceeding or hearing is in itself an unlawful employment practice and subject to the penalties provided for in this Title.

26.06.05 Exclusion

If any person or entity fails to comply with an order of non-compliance, within the time specified by the tribal court, or is found to have repeatedly violated the provisions of this Title, such person or entity may be excluded from the Nisqually tribal lands in accordance with the Nisqually Exclusion Code.

26.06.06 Orders to Police

The Nisqually Tribal 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 tribal court.

26.06.07 Appeals

- (a) An appeal to the Nisqually Court of Appeals may be taken from any final decision of the Tribal Court by any party adversely affected thereby.
- (b) All appeals should be governed by applicable Tribal Court procedures.

CHAPTER VII - NISQUALLY PREVAILING WAGE ORDINANCE

26.07.01 Title

This chapter shall be known as the Nisqually Prevailing Wage Ordinance.

26.07.02 Authorization

This chapter, governing the establishment and payment of a prevailing wage, is enacted pursuant to the authority vested in the Nisqually Tribal Council by Article VI of the Nisqually Tribal Constitution, which grants authority to pass ordinances that govern the conduct of all persons and regulate all property within the Tribe's jurisdiction to the fullest extent allowed under applicable federal law.

26.07.03 Purpose

The purpose of this ordinance is to establish a prevailing wage for construction activities and to require that any agreement with a contractor to which this ordinance applies contain a provision that not less than prevailing wages as set pursuant to this ordinance shall be paid by the contractor and any subcontractors.

This ordinance is intended to supersede all federal wage determinations to the greatest extent allowed under federal law and to the fullest authority of Tribal law.

26.07.04 Applicability

- (a) This ordinance applies to construction activities, including maintenance, undertaken by the Tribe within the area of operation of the Tribe pursuant to the Native American Housing Assistance and Self-Determination Act of 1996 (“NAHASDA”) or any other federal act containing requirements for the establishment and payment of a determined prevailing wage, including but not limited to wage determinations of the Secretary of Labor or wage determinations set under the Davis–Bacon Act, 40 USC 3141 et seq., applicable to Indian Tribes.

- (b) Tribal Council may, at its discretion, use the established prevailing wages in circumstances to which §26.01.04(a) does not apply but is not required to do so.
- (c) This ordinance does not apply to volunteers, interns, or anyone who receives no compensation, reasonable benefits, or a nominal fee to perform services for which the individual volunteered and who is not otherwise employed at any time in the construction of affordable housing projects.

26.07.05 Interpretation

- (a) This ordinance is an exercise of the sovereign power of the Nisqually Tribe and all provisions of this chapter shall be liberally construed for the accomplishment of the purposes listed in §26.01.03.
- (b) Any ambiguity in this ordinance or in any rules or regulations hereafter promulgated pursuant to this ordinance shall be resolved so as to be consistent with applicable tribal and federal law.

26.07.06 Definitions

- (a) “Agreement” shall include any contract or other written document funded under any United States act applicable to Indian tribes and subject to the Davis–Bacon Act, 40 USC 3141 et seq., specifically including the Native American Housing Assistance and Self-Determination Act of 1996, as amended, PL 104–330, 25 USC 4101 et seq., and such other Tribal agreements as may be determined by the Tribal Council to be appropriate.
- (b) "Construction" includes alteration, maintenance, or repair of public buildings, public housing, or public works.
- (c) “Contractor” or “employer” means any person who is awarded a contract by the Tribe subject to an agreement using federal funds or who is awarded any other contract by the Tribe that is otherwise subject to the Davis–Bacon Act or other wage-establishing federal law.
- (d) “Individual” or “person” means but is not limited to natural persons and business entities, including business sole proprietorships, partnerships, corporations, joint ventures, organizations, and associations.
- (e) “Prevailing wage” shall mean the wages prevailing on the Nisqually Reservation and within the Tribe’s area of operations for each category of employee including but not limited to architect, technical engineer, draftsman, technician, plumber, carpenter, laborer, and mechanic as determined by the Tribe.
- (f) “Subcontractor” means anyone who is awarded a portion of a contract using federal funds or who is otherwise subject to the Davis–Bacon Act.

- (g) "Nisqually Tribe" or "tribe" means the Nisqually Tribe, recognized by the United States government in the Treaty of Medicine Creek of 1854 and having sovereign rights of self-governance. This definition includes all departments, entities, agencies, and officials of the Tribe acting in their official capacity.
- (h) "Nisqually Tribal Council" or "tribal council" means the governing body of the Nisqually Tribe as set forth in the Nisqually Tribe's Constitution and Bylaws.

26.07.07 Determination of Prevailing Wage

The procedures for determining prevailing wages are as follows:

- (a) The Tribe's Human Resources Department, in conjunction with the Tribe's Planning Department, shall arrange for a wage survey to be conducted not less frequently than biennially to determine the prevailing wage for each category of labor subject to this ordinance.
- (b) The Human Resources Department may obtain wage rates through a review of all relevant contracts with the Tribe or any other available and reliable sources for prevailing wages paid each class of profession or trade included in the survey and related to the Nisqually Reservation. The Human Resources Department shall establish the prevailing wage at not less than the average wage paid to each class of profession or trade included in the survey, excluding any wages paid subject to the Davis-Bacon Act. The survey shall also include the classification of trainee in all trades.
- (c) The Tribe shall retain for not less than three (3) years all contracts reviewed and denote that these contracts were used to determine the prevailing wage as well as the survey report and the wage rates reported by each source.
- (d) Wage rates shall include base hourly salary but not the value of benefits paid to or on behalf of the employees.
- (e) The results of the survey and the prevailing wage shall be contained in a Schedule of Prevailing Wages which shall list each covered class of profession, trade, and trainees and the hourly rate for each and the effective dates of the schedule.
- (f) The wage rates shall be adjusted in any year the Tribe does not conduct a survey using the Department of Labor Urban Consumer Price Index (Seattle, Tacoma, Bremerton) adjustment for that year or a similar local index in the event the Consumer Price Index is no longer published.
- (g) Tribal Council shall approve the Schedule of Prevailing Wages at least annually by motion or resolution.

26.07.08 Delegation of Authority

The Human Resources Department, with the advice of the Planning Department, may conduct the wage survey or may hire an outside consultant or agency to conduct surveys and/or to develop the prevailing wage under this ordinance.

26.07.09 Payment of Prevailing Wage Required

Each employer, contractor, or subcontractor when performing under an agreement to which this ordinance applies shall pay prevailing wages and shall maintain certified payroll records reporting the hourly rates paid each employee. The employee's certified payroll records shall be available for inspection and copying during regular office hours by the employee.

26.07.10 Notification of Prevailing Wage Required

- (a) The Tribe shall provide every employer with a copy of the currently effective Schedule of Prevailing Wages at the time bids or proposals are solicited.
- (b) At all times while performing under an agreement to which this ordinance is applicable, each employer, contractor, or subcontractor shall post at the job site and in its principal office a copy of the Schedule of Prevailing Wages furnished by the Tribe.

26.07.11 Tribal Court Action and Remedies

- (a) Each covered agreement falling under this ordinance or when so designated by Council shall contain a provision stating the remedies for failure to pay Tribally determined prevailing wages ("wage penalty") or for failing to maintain records ("records penalty").
- (b) Any adversely affected employee covered under this ordinance may bring an action in the Nisqually Tribal Court against any covered employer, contractor, or subcontractor to recover the amount of the wage or records penalty.
- (c) The wage penalty shall be calculated by determining the difference between the amount the employee was actually paid under the agreement and the amount the employee was entitled to under this ordinance. In the event the failure to pay prevailing wages is determined by the Court to be knowing and intentional, the Court may order punitive damages not to exceed two (2) times the amount of the wage penalty.
- (d) The records penalty shall be two hundred dollars (\$200) per day, not to exceed a total of ten thousand dollars (\$10,000), for each day an employer fails to maintain or allow the Tribe or an employee to inspect certified payroll records as required by this ordinance or fails to provide a copy of such record within five (5) work days of a written request.
- (e) In the event the employee prevails in the Tribal Court action, the employee shall be entitled to recover from the employer reasonable attorney's fees.

26.07.12 Limitation of Actions

No action under this ordinance shall be filed or allowed more than two (2) years after the date such wages became due and payable under the agreement.

26.07.13 No Waiver of Sovereign Immunity

This ordinance provides for jurisdiction of the Tribal Court over wage claims and remedies provided by this ordinance and no other claims or remedies. This ordinance shall not be construed or interpreted to grant jurisdiction to any other court over the Tribe, its departments or entities, or individuals acting in their official tribal capacity. Nothing in the ordinance shall be construed to be a waiver of any Tribal sovereign immunity.

26.07.14 Severability; Construction

If any phrase, clause, part, sentence, provision, or section of this ordinance is found to be invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected and shall remain in full force and effect and continue in effect as if the invalid provision(s) were not a part hereof. If the operation of any clause, part, or section of this ordinance shall be held to impair the obligation of a contract or to deny any person any right secured to him or her by the Constitutions of the Nisqually Tribe or of the United States, it is hereby declared that the remainder of this ordinance would have nevertheless been enacted without such invalid clause, part, or section.

26.07.15 Authority to Promulgate Standards

The Human Resources Department is authorized to promulgate prevailing wage standards consistent with the Ordinance, for approval by Tribal Council.

26.07.16 Effective Date

This ordinance shall be effective retroactive to January 1, 2000, but shall not impair any contract or agreement then existing or entered into prior to the enactment of the ordinance or any contract or agreement that may hereafter be entered into pursuant to invitations for bids that are outstanding on the date of enactment.