

A scenic photograph of the Nisqually River flowing through a dense forest. The river is in the foreground, with a rocky shoreline. The background is filled with tall evergreen trees and lush greenery. The text is overlaid on the left side of the image.

Nisqually Tribal Employment Rights Office (TERO)

Nisqually TERO

11500 25th Ave. SE

Olympia, WA 98513

360-456-5221 | www.nisqually-nsn.gov

tero@Nisqually-nsn.gov



Purpose of TERO

- The purpose of TERO is to eliminate discrimination in employment against Native Americans, to create contracting preference for tribal and tribal member owned businesses on tribal land, and to work with Enterprises and contractors to establish training programs for TERO referrals to increase the pool of qualified employees.



Mission & Vision

- The **mission** of the Nisqually Tribal Employment Rights Office is to enforce the TRIBAL EMPLOYMENT RIGHTS ORDINANCE, Title 42, to eliminate discrimination and ensure preference for Native Americans in employment and contracting on all projects and in all businesses operating on or near Nisqually Tribal land.
- Our **vision** is to remove all **barriers** that block the path to success in all aspects of employment and contracting opportunities for all Nisqually Tribal members. Through training, education, and enforcing Native American preference in employment and contracting on projects on or near Nisqually Tribal land, Tribal Employment Rights Office will create opportunities for economic success of Tribal members.



Services

Nisqually tribal members, descendants and spouses of an enrolled Nisqually tribal member, and tribal community members enrolled in a Federally Recognized Tribe are eligible to register with Nisqually TERO.

- Training opportunities throughout the year.
- Apply for employment opportunities with MCEC.
- Native American business owners can complete an 'Application for Certification as a Native American Owned Business' to be added to our NAOB Registry.
- Assistance with work clothes and boots for new jobs, union dues, certifications, business start-up, **and more.**



TERO Compliance Requirements

Compliance Notice

All Contractors/Subcontractors must meet with the TERO office. Any covered entity not submitting a completed compliance plan will be denied the right to commence business on the Nisqually Indian Reservation. A compliance plan should be submitted at least two (2) weeks prior to starting project. All Contractors are required to submit copy of contract with compliance plan to TERO. Failure to comply with the TERO Ordinance may result in civil penalties.



Title 42: Tribal Employment Rights Ordinance

- The Nisqually Tribe's Tribal Employment Rights Ordinance, Title 42, addresses Native American preference in employment, training opportunities, contracting, and established the Tribal Employment Rights Office and its requirements.



History of the Tribal Employment Rights Ordinance

- Historically, Nisqually Tribal members and other Native Americans have suffered discrimination in employment on and near the Nisqually Reservation. As a result of this discrimination Native Americans were excluded from employment and training opportunities. These lost opportunities created high unemployment rates and poverty. With no job training programs or on-the-job training, Tribal members had little chance for permanent/full time employment. When Native Americans did work they were paid less than their non-Indian counterparts and had little chance for advancement. To eliminate discrimination and ensure that covered employers give preference to qualified Native Americans in all hiring, promotion, training, lay-offs, and all other aspects of employment, the Nisqually Indian Tribe established a Tribal Employment Rights Ordinance (TERO).



Native American Preference

- All covered employers shall give preference to qualified Native Americans and all hiring, promotion, training, layoffs, and all other aspects of employment. To the extent permitted by applicable federal law preference shall be given in the following order:
 1. To Nisqually Tribal Members
 2. To spouses and descendants of Nisqually tribal members
 3. To other Native Americans living on or near the Nisqually Indian reservation.
- Covered employers shall comply with the rules regulations guidelines and orders of the Nisqually travel employment rights commission which sets forth the specific obligations of employers in regard to native preference.
- These requirements shall not apply to any direct employment by the Nisqually Indian tribe, the federal, state, or other governments or their subdivisions. It shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments.



Employment Requirements

- The intent of TERO is to achieve employment and training opportunities for Nisqually Tribal Members, their immediate families, and all other Native Americans. The provisions of this Title are consistent with Title VII of the 1964 Civil Rights Act which prohibits employment discrimination based on race, color, religion, sex, or national origin.
- All Core Crew and Key Employees, who will be utilized on this project, must be identified in this TERO Compliance Plan and Agreement by name and title, with a complete description of duties each will be performing on this project.
- **Core Crew Employee** is defined as one who is an owner of the firm, or in a supervisory position and listed as such on the employer's or contractors annual payroll for a minimum period of one year continuously. An employee who is hired on a project-by-project basis is not considered a core crew employee.
- **Key Employee** is defined as one who is in a supervisory position or one who possess a "specialized skill" in which the employer who invested time and cost to help that employee reach a level of specialized skill and who performs a critical function, such that an employer would likely risk financial damage or loss if unable to employ. Such claims to have invested in the employee's skill level shall require written proof, including resume of work history, certificates, licenses, etc.

Employment Requirements Cont.

- **Hiring:** Covered employers agree to utilize the TERO Office to fill their manpower request, and must provide a minimum of forty-eight (48) hours notice and a job description on the manpower needs to the TERO office. The TERO staff will attempt to accommodate the employer in the timeliest manner, matching the specified needs with a TERO referral that meets the minimum of qualifications. TERO will certify in writing when a qualified TERO referral is not available.
- **TERO Dispatching:** All TERO referrals or “Dispatches” will be made from the Tribal Hiring Hall or Skills Bank listings of qualified TERO referrals.
- **TERO Dispatch Form** provides a space for the employer to give a brief job description which includes company name, address, and phone number, position title/classification, start date, start time, rate of pay, anticipated length of employment, who to see, etc. The TERO referral or “dispatch” shall sign the pay rate offered. All dispatch forms shall require dates and signatures of the employer and a TERO Representative. Unsigned forms will be considered invalid. Employers should review the dispatch form and discuss it with the referral/worker his/her first day of work. Any revisions to the work opportunity, identified on the original dispatch form, regarding position/title, duties, rate of pay, etc. must be reported to TERO prior to any revisions taking place.
- **Qualified TERO Referral** is defined as, an enrolled Nisqually Tribal member, the immediate family of a Nisqually Tribal member, or any other Native American living on or near the Nisqually Reservation who has the minimum qualifications for the work described on the Man Power Request Form.
- **Covered Employer:** Any employer hiring two or more employees who, during any 20-day period, spends 16 or more hours engaged in work on Tribal land.
- **Hiring Hall / Skills Bank:** The main TERO Hiring Hall / Skills Bank is located at the Nisqually TERO Office, in the Human Resources building.
- **Training:** All training opportunities or Training Special Provision (TSP) requirements must be identified prior to the commencement of work activity on this project.
- **Waivers:** A TERO waiver is an employer’s written request for employees who do not meet the definition of “Core Crew” or “Key Employee”. Employers are required to notify the TERO of the work opportunity prior to submitting a Waiver Request. Written request and supporting documentation (i.e. resume, proof of certification, licenses, etc.) must be submitted and approved by TERO prior to the individual beginning work on the above described project. Any worker discovered on the job, who does not possess an approved TERO Waiver, shall constitute grounds for a “Notice of Violation” and possible sanctions against the employer.

Employment Requirements Cont.

- **Layoff:** TERO referred workers will have priority in all work opportunities. In the event that a lay-off becomes necessary, a TERO Referred worker with skills, equal to a waived employee, and in some cases key employee, will be retained.
- **Disciplinary Action:** Employers must report any disciplinary action taken against a TERO Referred worker in written form, providing name, date of incident(s), individual(s) involved, names of witnesses, location of incident, etc. Any disciplinary action taken against a TERO Referred worker will be kept on record at the TERO Office.
- **Termination:** Employers must discuss termination of a TERO Referred worker with the TERO Office prior to final action. In instances of deliberate acts of safety violation, damage to property, or act of violence, the employer shall have the right to dismiss the employee immediately. Failure to provide TERO with a notice of impending termination for other matters may result in a violation of this agreement.
- **Employer Policies:** The employer must submit a copy of its employee policies prior to the commencement of work activity for TERO review and approval. In case of any conflict or dispute between company policies and with the TERO requirements, Nisqually Tribal Law will have primacy. An employer may be required to demonstrate that a challenged employment practice is job-related for the position in question and consistent with business necessity.
- **Drug Testing:** Employment must be offered prior to requiring a “pre-employment” drug test. The TERO Office must be notified and provided a copy of the employer’s pre-employment drug testing policies. Documentation must be provided that all core crew and key employees have complied with the drug testing requirements prior to the commencement of their work activity on this project.

Wage Rates/Fringe Benefits/Payroll Reports

- **Fringe Benefits:** The prime contractor and their subcontractor(s) must submit a table of wage to be paid. TERO referrals must receive pay equal to the employer's core crew and waived workers performing the same duties/job descriptions. Each worker must receive a paycheck with an explanation of workweek, payroll number, regular and over-time hours, and all deductions taken. The company will pay General Laborer positions according to the approved Project Wage Scale and the pay scale equal to that utilized for permanent/annual employees.
- **Fringe Benefits** TERO referrals will receive all fringe benefits in cash, unless the worker is a union member. TERO referrals will not be required to join a union to procure or retain employment.
- **Certified Payroll Reports:** All contractors and subcontractors must submit a weekly certified payroll report. Certified payroll reports submitted to the contracting agency will not satisfy this requirement. Payroll reports must contain the name, address, social security number, classification/title, hourly rate, over-time rate, number of regular and over-time hours worked that pay period and deductions for each worker the employer has on the project. Failure to submit certified payroll reports on a weekly/timely basis will constitute grounds for a "violation" and possible sanctions against the employer.
- **Payroll Deductions:** No payroll deductions indirectly or directly will be taken from the full wages earned, other than permissible deductions outlined in the United States Federal Labor and Standards Act (FLSA) and this TERO Agreement.
- **Pay Day Schedules:** TERO Referrals will receive their pay on the same day as the employer's core crew and key employees. All employees must receive their paycheck for the previous week's work hours no later than the close of the workday every Thursday or Friday; whichever may be the last working day of the week for the employer.
- **Distribution of Payroll:** Payroll checks must not be distributed to anyone other than the worker for whom the check is made out to. Unless the worker has given written permission to release their check to specifically named individual.
- **Show up Time:** will be determined by the TERO Officer on a case-by-case basis. Failure to provide adequate notice of the cancellation of workday may require the employer to pay show up time



Contracting and Subcontracting

- Native American Preference in Contracting and Subcontracting opportunities on projects located on or near the Nisqually Reservation is allowed through the authority delegated by or recognized by the United States Congress through federal enactment's, rules and regulations promulgated for the benefit of Native Americans. The General Contractor shall give preference to Nisqually TERO Certified Native American Owned Businesses in all subcontracting opportunities for this project. A list of Nisqually Certified Native American Owned Businesses is attached or available from TERO. TERO certified contractors are subject to the same terms of this agreement and required to submit a Compliance Plan and Agreement for TERO approval prior to the start of work activity.



Religious Accommodation

- In concurrence with the Native American Indian Religious Freedom Act, the employer agrees to provide reasonable accommodation to the Native American Indians who wish to exercise their rights under the Act. TERO will assist the employer in identifying “reasonable accommodation.”



Employment Rights Tax

- An Employment Rights Tax will be assessed at 1.75% of the total contract award amount for all contracts. The Employment Rights Tax shall be paid prior to commencing work. Where good cause is shown, the Director may authorize the Tax be paid in installments.
 - A. Change Orders:** Must be reported to the TERO Office immediately upon approval from the funding/contracting agency. Adjustments to the Employment Rights Tax amount will be made accordingly.



Project Monitoring

- TERO will monitor this Compliance Plan and Agreement through onsite visits. On-site visits will be conducted in a manner, which causes minimal interruption to the progress of the project. Any possible violation will be documented and reported to the employer for immediate resolution. Continuous violation may result in sanctions against the employer, including up to \$500 per day per violation, back pay for lost opportunity and as a last resort, a stop work order.



Complaints

- **On-The-Job Contracts:** TERO referrals are advised to make complaints for incidents occurring on the job through the procedures outlined in the employer's policies prior to filing a complaint with TERO. The employer must provide notice to the TERO Office once a complaint is filed and provide information on the action taken to resolve the matter and final disposition of the matter once it is settled.
- **Discrimination:** If a TERO referred worker feels they have been discriminated against because they are Native American and have been treated unfairly by the employer or the employer representative they may file a complaint with the TERO Office. The complaint must be employment related.
- **Complaint Investigation:** The TERO Office will investigate complaints on-site, by interviewing witnesses, collecting written statements and reviewing supporting evidence. Employees providing statements to the investigator will not be penalized for time taken to give a brief statement or for cooperating with the investigation. The TERO investigator will attempt to minimize the impact of progress on the project.



Failure to Complete a Compliance Plan

- Failure to complete this compliance plan thoroughly and submit prior to the commencement of work on the above described project will be construed as a refusal to comply and may result in a “Notice of Violation.” The Nisqually TERO Office will make every effort to work cooperatively with the employer named on this agreement. However, when willful disregard for these requirements are evident, the sanctions afforded will be utilized to the fullest extent of the law.



Appeals

- An appeal to the tribal court may be taken from any final decision of the commission by any party adversely affected thereby. Said appeal must be filed no later than 20 days after the party receives a copy of the commission's decision. The tribal court shall uphold the decision of the commission unless it is demonstrated that the decision of the commission is arbitrary, Capricious or in excess of authority of the commission. The appeal shall be taken by filing a written notice of appeal with the tribal court, and serving a copy of the notice on the commission. The notice of appeal shall:
 - Set forth the order from which appeal is taken.
 - Specify the grounds upon which reversal or modification of order is sought.
 - Be signed by appellant.
- All appeals should be governed by applicable tribal court procedures.
- Where the party's failure to comply immediately with the commission's order may cause irreparable harm, the commission may move the tribal court for, and the tribal court shall grant, such injunctive relief as necessary to preserve the rights of the beneficiaries of this chapter, pending the parties appeal or expiration of the time for appeal.
- Please refer to Title 42 the tribal employment rights ordinance for a more in-depth explanation of noncompliance and penalties.



Penalties

- If, after a hearing, the commission determines that the violations alleged in the complaint occurred and the party charged has no adequate defense in law or fact, or if no hearing as requested, the TERO Officer determines that any employer, Union, contractor or subcontractor has violated any provisions of this title or regulations or order of the TERO Officer or commission, the violations will be subject to penalties for such violations, including but not limited to the following:
 - Denial of the right to commence business on the reservation.
 - Suspension of operations on the reservation.
 - Termination of operations on the reservation.
 - A prohibition on future operations on the reservation.
 - An order of payment of backpay and/or damages to any injured party.
 - The imposition of a civil fine in the amount not to exceed \$500 for each violation.
 - In order to change procedures or policies to eliminate violations.
 - An order to require the employment, promotion and training of tribal members or other Native Americans injured by the violations.
 - In order to take any such other action as necessary to ensure compliance with this title or to remedy any harm caused by a violation of this title or deemed by the commission necessary to alleviate, eliminate and compensate for any violations.
- Each day a violation exists shall constitute a separate violation.



Unions

Every union with a collective bargaining agreement with a covered employer must file a written agreement stating that the union will comply with this title and the regulations and orders of the commission and TERO Officer. Until such agreement is filed with the TERO officer, the employer may not commence work on tribal land or on projects which directly benefit the Nisqually Tribe.

- Every union agreement with an employer or filed with the TERO officer must provide:
 - A. The union will give preference to tribal members and Native Americans in job referrals regardless of what union referral list they are on.
 - B. The union will cooperate with the TERO officer in all respects and assist in the compliance with and enforcement of this title and related regulations and agreements.
 - C. The union will establish a mechanism allowing tribal members and other Native Americans to register for job referral list by telephone or mail.
 - D. The union will establish a journeyman upgrade advanced apprenticeship program.
 - E. The union will grant temporary work permits to tribal members and other Native Americans who do not wish to join the union.



TERO Staff

- Wayne Lloyd, Building Department Director ext. 2180
- Yolanda Machado, TERO Manager ext. 1023
- Victoria Jackson, Administrative Secretary ext. 1273
- Jennifer Underwood, Compliance Officer, ext. 2211
- Kayla Sparkuhl, Training Coordinator, ext. 1002
- Jack George, Studio Tech., ext. 1020
- Aztec Sovereign, Studio Tech., ext. 1020