

TITLE 42
NISQUALLY INDIAN TRIBE
TRIBAL EMPLOYMENT RIGHTS ORDINANCE

Table of Contents

<u>42.1</u>	<u>GENERAL PROVISIONS</u>	
42.01.1	Purpose	1
42.01.2	Severability	1
42.01.3	Jurisdiction	1
42.01.4	Repealer	2
42.01.5	Sovereign Immunity Preserved	2
42.01.6	Law Enforcement Authorization	2
<u>42.2</u>	<u>DEFINITIONS</u>	
42.02.1	Definitions	2
<u>42.3</u>	<u>NATIVE PREFERENCE</u>	
42.03.1	Native Preference in Employment	3
42.03.2	Application of Native Preference Requirements	4
42.03.3	Native Preference in Contracting	4
42.03.4	Application of Native Preference in Contracting	4
42.03.5	Tribal Programs or Divisions	4
42.03.6	Subcontracts Included	4
42.03.7	All Covered Entities to Comply	5
42.03.8	System for Certifying Businesses for Native Preference	5
<u>42.4</u>	<u>TRIBAL EMPLOYMENT RIGHTS COMMISSION</u>	
42.04.1	Establishment of Employment Commission	5
42.04.2	Quorum	5
42.04.3	Recusal of Commission Members	5
42.04.4	Definition of Immediate Family	5
42.04.5	Commissioner Participation	6
42.04.6	Voluntary Recusal	6
<u>42.5</u>	<u>POWERS OF THE COMMISSION</u>	
42.05.1	Powers of the Commission	6

42.05.02	Promulgation of Regulations	7
<u>42.6</u>	<u>TRIBAL EMPLOYMENT RIGHTS OFFICER</u>	
42.06.1	Tribal Employment Rights Officer	8
<u>42.7</u>	<u>COMPLIANCE BY UNIONS</u>	
42.07.1	Union Agreements	8
42.07.2	Content of Union Agreements	8
42.07.3	Model Union Agreement	9
42.07.4	Recognition of Unions	9
<u>42.8</u>	<u>COMPLAINTS</u>	
42.08.1	Complaint by Individual or Group	9
42.08.2	Investigations by TERO Officer	10
42.08.3	Notice of Non-Compliance	10
42.08.4	Complaint by Employer or Union	10
42.08.5	Retaliation or Reprisal	11
<u>.09</u>	<u>INVESTIGATIONS</u>	
42.09.1	Investigations	11
42.09.2	Authority to Enter	11
42.09.3	Investigative Powers	11
42.09.4	Trade Secrets or Confidential Information	11
42.09.5	Restriction of Access to Certain Information	11
<u>42.10</u>	<u>COMMISSION PROCEDURES</u>	
42.10.1	Request for Hearing	12
42.10.2	Bond Requirement	12
42.10.3	Hearing Procedures	12
42.10.4	Burden of Proof	13
42.10.5	Penalties	13
<u>42.11</u>	<u>APPEALS</u>	
42.11.1	Appeals	14
42.11.2	Automatic Stay	14
42.11.3	Reversal or Modification of Commission's Order	14
42.11.4	Order Affirmed or No Appeal Taken	14

42.12 ENFORCEMENT

42.12.1 Emergency Relief 15

42.12.2 Enforcement of Order 15

42.12.3 Petition for Confiscation 15

42.12.4 Notice of Confiscation 15

42.12.5 Sale of Confiscated Property 15

42.13 EMPLOYMENT RIGHTS TAX

42.13.1 Employment Rights Tax 16

TITLE 42

NISQUALLY INDIAN TRIBE TRIBAL EMPLOYMENT RIGHTS ORDINANCE

42.1 GENERAL PROVISIONS

42.01.1 Purpose

(a) The purpose of this Title is to create employment and training opportunities for Nisqually Tribal members and other Native Americans living on or near the Nisqually Indian Reservation and to prevent employment discrimination against Native people. It is the intent of the Nisqually Tribe that preferential employment treatment be given first to Tribal members and then to other Native Americans, to the fullest extent allowed by federal law.

(b) 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. Title VII sec. 703(i) states, “Nothing in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which preferential treatment is given to any individual because he is an Indian living on or near a reservation.” 42 U.S.C. sec. 2000e-2(i).

(c) The provisions of this Title are also consistent with 25 U.S.C. 450e which states that “with respect to any self-determination contract, or portion of a self-determination contract, that is intended to benefit one tribe, the tribal employment or contract preference laws adopted by such tribe shall govern with respect to the administration of the contract or portion of the contract.”

HISTORICAL AND STATUTORY NOTES

This Title 42 was enacted by Tribal Council Resolution 118-2013, dated July 25, 2013.

42.01.2 Severability

If any part of this Title or its application to any person or circumstance is held to be invalid, the remainder of this Title or its application to other persons or circumstances is not affected.

42.01.3 Jurisdiction

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.

42.01.04 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.

42.01.5 Sovereign Immunity Preserved

The sovereign immunity of the Nisqually Indian Tribe shall in no manner be waived by this ordinance. 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.

42.01.6 Law Enforcement Authorization

Nisqually Law Enforcement Officers are expressly authorized and directed to enforce such cease and desist or related orders as may from time to time be properly issued by the Commission. Such orders do not require a judicial decree or order to render them enforceable. A removal order, however, shall not be enforced unless it is accompanied by a judicial decree of the Tribal Court. Nisqually Law Enforcement Officers shall not be civilly liable for enforcing orders signed by the Chairman of the Commission.

42.2 DEFINITIONS

42.02.1 Definitions

- (a) Chairman - The Chairman of the Nisqually Employment Commission.
- (b) Commission - The Nisqually Employment Commission
- (c) 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.
- (d) Day - A twenty-four (24) hour period which shall be from 12:00 a.m. to 11:59:59 p.m. in the Pacific Time zone of the United States.
- (e) Employer - Any person, company, contractor, subcontractor or other entity located or engaged in work on Tribal land and employing one or more persons. The term "employer" excludes Federal, State, County and Tribal Governmental Agencies, but expressly includes tribal government corporations and contractors and subcontractors of all governmental agencies. The term "employer" shall not include a person who contracts with another in order to receive services for his or her personal benefit.
- (f) Engaged in Work on Tribal Land - An employer is "engaged in work on Tribal land" if during any portion of a business enterprise or specific project, contract or

subcontract, he or any of his employees spends a majority of his time performing work on Tribal land.

(g) Entity - Any person, partnership, corporation, joint venture, association, government, governmental enterprise or any other natural or artificial person. The term “entity” is intended to be as broad and encompassing as possible to ensure the coverage of this chapter over all employment and contract activities within the Tribe’s jurisdiction and the term shall be so interpreted by the Commission and Courts.

(h) Local Resident - a person who has been residing within or adjacent to the Nisqually Reservation for a period of six months or longer.

(i) Located on Tribal Land - An employer is “located on tribal land” if during any portion of a business enterprise or specific project contract or subcontract, he maintains a temporary or permanent office or facility on Tribal land.

(j) Native American, Native, or Indian - Any person who is a member of a federally recognized Indian tribe.

(k) Native American Owned Business - A business entity of which at least 51% is owned, controlled, and managed by Native Americans.

(l) Tribal Council - The Nisqually Tribal Council.

(m) Tribal Land - All lands within the exterior boundaries of the Nisqually Reservation and all other lands owned or otherwise under the jurisdiction of the Nisqually Indian Tribe.

(n) Tribal Member - Any person who is an enrolled member of the Nisqually Indian Tribe.

(o) Tribal Government Enterprise - Any commercial enterprise wholly or partially owned by the Nisqually Indian Tribe, or a subsidiary corporation formed by the Nisqually Tribal Council.

(p) Tribe -The Nisqually Indian Tribe.

42.3 _____ NATIVE PREFERENCE

42.03.1 _____ Native Preference in Employment

(a) All covered employers shall give preference to qualified Native Americans in all hiring, promotion, training, lay-offs, and all other aspects of employment. To the extent permitted by applicable federal law, preference shall be given in the following order:

(i) To Nisqually tribal members;

(ii) To spouses and descendants of Nisqually tribal members;

(iii) To other Native Americans living on or near the Nisqually Indian Reservation.

(b) Covered employers shall comply with the rules, regulations, guidelines and orders of the Nisqually Tribal Employment Rights Commission which sets forth the specific obligations of employers in regard to Native preference.

42.03.2 ___ Application of Native Preference Requirements

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 the contractors or grantees of such governments and to all commercial enterprises operated by such governments.

42.03.3 ___ Native Preference in Contracting

All entities awarding contracts or subcontracts for supplies, services, labor, or materials where the majority of the work on the contract or subcontract will occur on Tribal lands shall give preference in contracting and subcontracting to qualified entities as follows: To the extent permitted by applicable federal law, preference shall be given first to enterprises owned and controlled by the Nisqually Tribe or by Nisqually Tribal members. If no Nisqually government or tribal member business is qualified, then preference shall be given to other Native American owned businesses located on or near the Nisqually Reservation.

42.03.4 ___ Application of Native Preference in Contracting

These requirements shall not apply to the award of contracts awarded directly by the Nisqually Tribal Council or by the federal or state government or their subdivisions. These requirements shall apply to any contract awarded by any commercial enterprise of the Nisqually Tribe, even if said contract must be submitted to the Nisqually Tribal Council for approval.

42.03.5 ___ Tribal Programs or Divisions

Tribal programs or divisions other than commercial enterprises shall not be required to comply with this chapter but shall, when submitting a contract to the Tribal Council or the Tribe's Chief Executive Officer for approval, indicate the steps taken to award the contract consistent with the preferences expressed in Section 42.03.03.

42.03.6 ___ Subcontracts Included

This chapter shall apply to all subcontracts awarded by a Tribal, federal, or state direct contractor or grantee, whether or not the prime contract was subject to this chapter.

42.03.07 All Covered Entities to Comply

All covered entities shall comply with the rules, regulations, guidelines and orders of the Commission which set forth the specific obligations of such entities in regard to Native preference in contracting and subcontracting.

42.03.8 System for Certifying Businesses for Native Preference

The Commission shall establish a system for certifying businesses as entitled to preference under this Title.

42.4 TRIBAL EMPLOYMENT RIGHTS COMMISSION

42.04.1 Establishment of Employment Commission

There is hereby established a Nisqually Employment Rights Commission consisting of five members who shall be appointed by the Nisqually Tribal Council. The Tribal Council may also appoint alternate Commission members.

To the extent that they are not inconsistent with this Title, the provisions of Title 1 (Open Meetings and Conduct of Officials) and Title 2 (Committees and Commissions) of the Nisqually Law and Order Code shall apply to the appointment and activities of the Nisqually Employment Rights Commission.

42.04.2 Quorum

A majority of the Commission shall constitute a quorum to transact business.

42.04.3 Recusal of Commission Members

No member of the Commission shall participate in any action or decision by the Commission directly involving himself or herself, or a member of his or her immediate family, or any person, business or other entity of which he or she or a member of his or her immediate family is an employee, or in which he or she or a member of his or her immediate family has a substantial ownership interest, or with which he or she or a member of his or her immediate family has a substantial contractual relationship.

42.04.4 Definition of Immediate Family

For the purposes of this subchapter, “immediate family” means, including by adoption, brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half-brother, and half-sister.

Nothing in this subchapter shall preclude a Commissioner from participating in any action or decision by the Commission which:

42.04.05 Commissioner Participation

- (a) Generally affects a class of persons, regardless of whether the Commissioner or a member of his or her immediate family is a member of that class;
- (b) Affects the Nisqually Tribe or a Tribal enterprise, regardless of whether the Commissioner is a member of the Tribe.

42.04.6 Voluntary Recusal

A Commissioner may voluntarily recuse him or herself and decline to participate in any action or decision by the Commission when the Commissioner, in his or her discretion, believes:

- (a) That he or she cannot act fairly or without bias; or
- (b) That there would be an appearance that he or she could not act fairly or without bias.

42.5 POWERS OF THE COMMISSION

42.05.1 Powers of the Commission

The Commission shall have full power, jurisdiction, and authority to:

- (a) Formulate, adopt, amend and rescind rules, regulations and guidelines necessary to carry out the provisions and intent of this chapter.
- (b) Require each covered employer or entity to submit to the Commission an acceptable compliance plan indicating how it will comply with this chapter. Such compliance plans shall be submitted before a covered employer or entity may commence work on Tribal land.
- (c) Impose numerical hiring goals and timetables that specify the minimum number of Native Americans a covered employer or entity must hire, by craft or skill level.
- (d) Require covered employers to establish or participate in such training programs as the Commission determines necessary in order to increase the pool of qualified Native Americans on Tribal lands as quickly as possible.
- (e) Establish in conjunction with Tribal employment and training programs a Tribal hiring hall or skills bank and impose a requirement that no covered employer may hire a non-Indian until the Tribal hiring hall or bank has certified that no qualified Native American is available to fill the vacancy, with a preference in referral as established by section 42.03.01 of this Title.
- (f) Prohibit covered employers from using qualification criteria or other requirements that serve as barriers to Native preference in employment unless the employer can demonstrate that such criteria or requirements are required by business necessity.

(g) To enter into agreements with unions to ensure union compliance with this chapter. Such agreements shall in no way constitute recognition or endorsement of any union.

(h) Impose contract and subcontract preference requirements, with a first preference to Nisqually tribal government and tribal member owned businesses.

(i) Conduct hearings in accordance with such rules of practice and procedure as may be adopted by the Commission, and to order any relief or sanctions provided by this chapter, and to petition the Tribal Court for orders as are necessary and appropriate to enforce decisions of the Commission or TERO Officer and any sanctions imposed by them.

(j) The Commission shall delegate to the TERO Officer the authority to carry out the day-to-day operations of the Commission and such other authority as is convenient or necessary to the efficient administration of this chapter, except that the Commission shall not delegate its authority to adopt, amend or rescind rules, regulations or guidelines or to conduct hearings or to impose sanctions.

42.05.2 _____ Promulgation of Regulations

(a) The Commission shall have the authority to adopt, subject to the final approval of the Tribal Council, more detailed regulations to fully implement this Title.

(b) The Commission shall abide by the following minimal procedures in issuing all regulations.

(i) All proposed regulations shall be sent to the Tribal Council and shall be posted at the Nisqually Administration Building for not less than twenty (20) days.

(ii) The Commission shall accept comments from any interested parties during the twenty (20) day period.

(iii) The final regulations shall go into effect upon being approved by the Commission and the Tribal Council in a manner consistent with Title 1 (Open Meetings) of the Nisqually Law and Order Code. Final regulations shall be kept in a file in the TERO Office which is open to the public inspection.

42.06 TRIBAL EMPLOYMENT RIGHTS OFFICER

42.06.1 Tribal Employment Rights Officer

(a) A position shall be created at the Nisqually Tribe for a Tribal Employment Rights Officer (TERO Officer) who shall have the duties established in this Title. The TERO Officer shall be an employee of the Tribe.

(b) In addition to any other duties established by this Title, the TERO Officer shall have the following duties:

(i) To contact all employers on the reservation and inform them of the requirements of this Title.

(ii) To gather information and keep records on the number of Nisqually tribal members, tribal member spouses and other Native Americans who are available to fill job openings, their skills and qualifications, and whether they are interested in receiving training.

(iii) To establish numerical hiring goals and timetables specifying the minimum number of Nisqually tribal members, tribal member spouses and/or other Native Americans each employer must hire by craft or skill level.

(iv) To require employers to establish or participate in job training programs.

(v) To review reports submitted by employers in accordance with this Title and conduct investigations to determine whether employers are meeting the requirements of this Title.

(vi) To notify employers and the Nisqually Employment Commission of violations of this Title and to issue notices of non-compliance and assess penalties consistent with this Title when informal resolutions can not be reached.

(vii) To take such other actions as are necessary to achieve the purposes and objectives of the Nisqually Employment Rights Program established in this Title.

42.7 COMPLIANCE BY UNIONS

42.07.1 Union Agreements

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.

42.07.2 Contents of Union Agreements

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 which 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 lists 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.

42.07.3 ___ Model Union Agreement

The TERO Officer may provide a model union agreement for use by all unions who have collective bargaining agreements with any employer.

42.07.4 ___ Recognition of Unions

Nothing herein or any activity by the TERO Officer or the Commission authorized hereby shall constitute official Tribal recognition of any union or Tribal endorsement of any union activities on the Reservation.

42.8 ___ COMPLAINTS

42.08.1 ___ Complaint by Individual or Group

- (a) Any person or entity entitled to preference under this Title who has cause to believe that an employer, contractor, subcontractor or other entity has violated or failed to comply with any requirements imposed by this Title or orders or regulations issued by the TERO Officer or the Commission, or has cause to believe they have been discriminated against by an employer because they are Native American, may file a complaint with the TERO Officer. A complaint shall be in writing and contain the date, place and circumstances of the alleged violation(s) or discrimination. A complaint must be filed within sixty (60) days after the alleged violation(s) or discrimination occurred.
- (b) The TERO Officer shall investigate any complaint and if any violations are found the TERO Officer will attempt to achieve an informal settlement of the complaint. The terms of a settlement shall be in writing. If a settlement cannot be achieved within 30 days after the complaint is filed, the TERO Officer shall issue a formal notice of noncompliance in accordance with Section 42.08.03.
- (c) If the TERO Officer does not find any merit to the complaint or finds that the complaint does not warrant any action, the TERO Officer shall so notify the individual complainant(s) who may then request a hearing on the complaint before the Nisqually

Employment Commission.

42.08.2 Investigations by TERO Officer

If, after its own investigation, the TERO Officer has cause to believe that an employer, contractor, subcontractor or other entity, has violated or failed to comply with any requirements imposed by this Title or orders or regulations issued by the TERO Officer or the Commission, the TERO Officer shall so notify the party in writing and shall attempt to achieve an informal settlement. The terms of the settlement shall be in writing. If an informal settlement is not achieved within 30 days from the date the party was notified of the violation(s) a formal notice of non-compliance shall be issued.

42.08.3 Notice of Non-Compliance

- (a) A formal notice of non-compliance shall contain the following:
 - (i) The nature of the alleged violation and the steps that must be taken to come into compliance;
 - (ii) The period of time within which the employer must comply;
 - (iii) Notice to the employer of the right to request a hearing in accordance with Chapter 42.10;
 - (iv) Notice that if the party fails or refuses to comply and does not request a hearing within the period of time specified for compliance, the TERO Officer may proceed pursuant to Section 42.10.05.
- (b) The TERO Officer shall provide the employer with a reasonable amount of time to comply, which in no event shall be less than 5 days from the date of receipt of the notice, unless the TERO Officer has reason to believe irreparable harm will occur during that period, in which case the TERO Officer may require that compliance occur within fewer than 5 days.

42.08.4 Complaint by Employer or Union

Any employer or union that believes any regulations or orders issued by the TERO Officer or Commission, are illegal or erroneous, may file a complaint with the TERO Officer. The TERO Officer will attempt to achieve an informal settlement of the complaint. The terms of the settlement shall be in writing. If a settlement cannot be achieved within 30 days after the complaint is filed, the complainant may request a hearing before the Commission on the complaint. A complaint shall be filed within 60 days after the alleged error or illegality occurred and shall be in writing and contain the date, place and circumstances of the alleged error or illegality.

42.08.05 Retaliation or Reprisal

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.

42.9 INVESTIGATIONS

42.09.1 Investigations

On his or her own initiative or pursuant to a complaint, the TERO Officer or his or her agent shall make such public or private investigation within the jurisdiction of the Nisqually Tribe as the TERO Officer or the Commission deems necessary to determine whether any covered employer or entity has violated any provision of this chapter or rule or order hereunder, or to aid in prescribing rules, regulations and guidelines hereunder.

42.09.2 Authority to Enter

The Director or his agent may enter during business hours the place of business or employment of any employer for the purpose of such investigations.

42.09.3 Investigative Powers

For the purpose of investigations or hearings, which, in the opinion of the TERO Officer or the Commission, are necessary and proper for the enforcement of this chapter, a Commissioner, the TERO Officer or his agent so designated may administer oaths or affirmations, interview witnesses, take evidence, and require the production of books, papers, contracts, agreements or other documents, records or information which the TERO Officer or the Commission deems relevant or material to the inquiry.

42.09.4 Trade Secrets or Confidential Information

When requesting any reports or other information from a covered employer, the Director shall request that the covered employer identify all material which contains trade secrets or privileged or confidential commercial, financial or employment information. Any material so identified shall be kept confidential by the TERO Officer and the TERO Commission.

42.09.5 Restriction of Access to Certain Information

Any state or federal tax records, trade secrets, or privileged or confidential commercial, financial or employment information requested pursuant to this chapter or used in a compliance hearing or subsequent appeal to the Tribal Court shall be confidential records of the Commission or the Tribal Court, and shall not be opened to public inspection and the Tribal Court.

42.10 COMMISSION PROCEDURES

42.10.1 ____ Request for Hearing

- (a) A request for a hearing must be in writing and filed with the Commission. The request shall state the reason for the hearing and the relief requested.
- (b) If a notice of non-compliance has been issued, the employer's request for a hearing must be filed within the time period specified in the notice. If the request for a hearing is not the result of a notice of non-compliance, the request must be filed within 30 days from the date the underlying complaint was submitted to the Commission.
- (c) A hearing shall be held within 30 days from the date the request for a hearing is filed.

42.10.2 ____ Bond Requirement

If an employer requests a hearing as a result of a notice of non-compliance, and the Commission has good cause to believe that there is a danger that the employer will remove itself or its property from the jurisdiction of the Tribe prior to the hearing, the Commission may require the party to post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed against the party at the hearing. If the party fails or refuses to post said bond, the Commission may petition the Nisqually Tribal Court for such interim and injunctive relief as is appropriate to protect the interests of the Tribe and other parties during the pendency of the complaint and hearing proceedings.

42.10.3 ____ Hearing Procedures

- (a) Hearings before the Commission shall be governed by the following rules and procedures:
 - (i) The parties shall be notified by certified mail and in writing of the date, time and place of the hearing and the reason for the hearing.
 - (ii) The Chairperson or Vice-Chairperson of the Commission shall preside at the hearing and shall administer oaths and the Commission shall ascertain the facts in reasonable and orderly fashion.
 - (iii) The Commission may request the advice or assistance of counsel provided by the Tribe.
 - (iv) The parties may present testimony of witnesses and other evidence and may be represented by counsel at their own expense.
 - (v) The hearing may be continued or adjourned or postponed at the discretion of the presiding officer.
 - (vi) The technical rules of evidence shall not apply at the hearing.

- (vii) Any party may request that the hearing be recorded if the request is made 10 days before the date of the hearing and at the cost of the party requesting that the hearing be recorded.
- (viii) At the close of the hearing the Commission may take immediate action or take the matter under advisement.
- (ix) Within 30 days after the close of the hearing the Commission shall notify the parties in writing of its decision and shall explain its reasons for its decision.

(b) The Commission may adopt any other rules of practice or procedure to govern the conduct of a hearing and such rules shall not require a public hearing before adoption.

42.10.4 Burden of Proof

In any hearing before the Commission where the issue is compliance by an employer of any provisions of this Title, the burden of proof shall be on the employer to show compliance.

42.10.5 Penalties

(a) If, after a hearing, the Commission determines that the violation(s) alleged in the complaint occurred and that the party charged has no adequate defense in law or fact, or if no hearing is requested, the TERO Officer determines that any employer, union, contractor or subcontractor has violated any provisions of this Title or regulations or orders of the TERO Officer or Commission, the violator(s) will be subject to penalties for such violation(s), including but not limited to the following:

- (i) Denial of the right to commence business on the Reservation.
- (ii) Suspension of operations on the Reservation.
- (iii) Termination of operations on the Reservation.
- (iv) A prohibition on future operations on the Reservation.
- (v) An order of payment of back pay and/or damages to any injured party.
- (vi) The imposition of a civil fine in an amount not to exceed \$500 for each violation.
- (vii) An order to change procedures or policies to eliminate the violation(s).
- (viii) An order to require the employment, promotion and training of tribal members or other Native Americans injured by the violation(s).
- (ix) An order to take any such other action as is 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 violation(s).

(b) Each day a violation exists shall constitute a separate violation.

42.11 APPEALS

42.11.1 Appeals

(a) 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 the 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:

- (i) Set forth the order from which appeal is taken.
- (ii) Specify the grounds upon which reversal or modification of order is sought.
- (iii) Be signed by appellant.

(b) All appeals should be governed by applicable Tribal Court procedures.

(c) 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 party's appeal or expiration of the time for appeal.

42.11.2 Automatic Stay

Except as otherwise provided herein, the order of the Commission shall be automatically stayed pending the determination of the Tribal Court. The TERO Officer, however, may petition and the Court, for good cause shown, may order the party requesting the hearing to post a bond sufficient to cover monetary damages that the Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's order if that order is upheld by the Court.

42.11.3 Reversal or Modification of Commission's Order

If the order of the Commission is reversed or modified, the Court shall specifically direct the Commission regarding further action in the matter, including making and entering any order or orders in connection therewith, and the limitations or conditions to be contained therein.

42.11.4 Order Affirmed or No Appeal Taken

If the Commission's order is affirmed on appeal, or if no appeal is sought within 30 days from the date of the Commission's order, the Commission shall petition the Court and the

Court shall grant such orders as are necessary to enforce and appropriate to enforce the orders of the Commission and the sanctions imposed by it.

42.12 ENFORCEMENT

42.12.1 Emergency Relief

If, at any stage in the enforcement process, the Commission has reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Tribal Court, such that the Commission or the Court will not be able to collect monetary damages or TERO fees that are owed by that party pursuant to any outstanding order of the Commission or Court, or which may be owed if the charges set out in any outstanding notice of violations are upheld, the Commission may petition the Tribal Court pursuant to the rules and procedures of that Court to attach and hold sufficient property of the party to secure compliance or for such other relief as is necessary and appropriate to protect the rights of the Commission and other affected parties.

42.12.2 Enforcement of Order

If, 30 days after a decision by the Commission, no appeal has been filed, or, 30 days after a decision by the Court on an appeal from a decision by the Commission, a party has failed to pay monetary damages imposed on it or otherwise complied with an order of the Commission or the Court, the Commission may petition the Court to order the Nisqually Law Enforcement to confiscate and hold for sale such property of the party as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance.

42.12.3 Petition for Confiscation

The petition shall be accompanied by a list of property belonging to the party which the Commission has reason to believe is within the jurisdiction of the Tribal Court, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition to be valid, it shall order Nisqually Law Enforcement to confiscate and hold said property or as much is available.

42.12.4 Notice of Confiscation

Nisqually Law Enforcement shall deliver in person or by certified mail a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it.

42.12.5 Sale of Confiscated Property

If 30 days after confiscation the party has not come into compliance, the Court shall order Nisqually Law Enforcement to sell said property and use the proceeds to pay any

outstanding monetary damages imposed by the Commission and all costs incurred by the Court and Law Enforcement in the confiscation and sale. Any proceeds remaining shall be returned to the party.

42.13 EMPLOYMENT RIGHTS TAX

42.13.01 Employment Rights Tax

An employment rights tax to raise revenue for Tribal operations and the operation of the TERO Commission is imposed as follows:

- (a) Every covered employer or entity with a contract or subcontract shall pay a one time tax of 1.75% of the total project/contract costs, i.e., equipment, labor, materials and operations and any increase of the contract/project or subcontract amount.
- (b) Every covered employer or entity, other than construction contractors and subcontractors, with gross sales of more than \$20,000 within the jurisdiction of the Nisqually Tribe shall pay a quarterly tax of 1.75% of the employer's quarterly payroll which shall be paid within 30 days of the end of the quarter. This fee shall not apply to education, health, governmental or non-profit employers.
- (c) The fees imposed by the section shall be collected by the Nisqually Tribe's Financial Services Department.