

Quinault Indian Nation Tribal Employment Rights Office Bidders Packet Non-Construction Projects

- Compliance Plan & Agreement
- TERO Compliance Requirements
- Job Request Form
- Candidate Evaluation Form & Performance Evaluation Form
- Question & Answers



QIN TERO forms and information can be found on our website

at: www.quinaultindiannation.com/tero

Click on departments then click TERO

Quinault Indian Nation Tribal Employment Rights Office

Notice

The Quinault Indian Nation has a Tribal Employment Rights Ordinance (Title 97) in effect covering Indian Preference, Indian Employment, Training, Contracting and Sub-Contracting. All bidders must contact the Quinault Indian Nation Tribal Employment Rights Office to obtain all relevant information before bidding. The successful bidder must notify our TERO office in person before any work commences.

If the successful bidder has five or more employees working on the project, or has gross sales or income of \$10,000.00 or more per year coming from work on or near the Reservation as defined in Title 97, then that Employer shall pay a quarterly fee of 1.75% of the gross quarterly payroll for those Employees Engaged in Work On or Near the Reservation as defined in Title 97. Such fee shall be paid by the Employer within 30 calendar days after the end of each quarter.

Any Employer that does not submit an acceptable Compliance Plan may be denied the right to commence or continue business within the boundaries of the Quinault Indian Nation Reservation as defined in Title 97.

Bidders are required to contact the TERO office for information concerning TERO requirements in the following areas:

- Wage Rates
- Indian Sub-Contracting
- Indian Employment
- Indian Training Opportunities

Please contact the TERO office should you have any questions or visit our website at www.quinaultindiannation.com for copies of Title 97 related information, forms and documents.

TERO Office
360.276.8215 x 4800

TERO@quinault.org

Evelyne Kalama
TERO Manager
360.276.8215 x4805

Cell: 360.324.9177

Email: ekalama@quinault.org

Tribal Employment Rights Office

Quinault Indian Nation TERO
P.O Box 189, Taholah, WA 98587
Phone: 360-276-8215 Ext. 4800
TERO@quinault.org

COMPLIANCE PLAN & AGREEMENT

for

(Company Name)

Note: All Employers must meet with the TERO office.

Any covered entity not submitting a completed compliance plan will be denied the right to commence work on the Project. A compliance plan should be submitted at least 72 hours prior to starting the Project. All Contractors are required to submit a copy of the contract with the compliance plan to TERO.

**Failure to comply with the TERO Ordinance
may result in civil penalties.**

Historically, Quinault Tribal members and other Indians have suffered discrimination in employment on and near the Quinault Reservation by being excluded from the employment market and experiencing discrimination when employed by private sector employers. As a result, Indians have suffered poverty and high unemployment rates, lost opportunities to learn needed skills or to participate in job training programs, lost opportunities for permanent/full time employment, and were not paid equal wage for equal work. To eliminate discrimination and insure that tribal members and other Indians on the Quinault Reservation will have preference in employment and training opportunities, the Quinault Nation established a Tribal Employment Rights Ordinance (TERO), Title 97 of the Quinault Tribal Code.

Project or Service Provider Information

Project Name: _____ Project No.: _____

Location: _____

Project Funding Agency: _____

Funding Agency Contact: _____ Phone _____

Project Start Date: _____

Project Completion Date: _____

Is this project related to the extraction of resources from trust or restricted fee land? ☐ Yes ☐ No

Contractor/Service Provider Information

Company: _____

Complete Address: _____

Contact Person: _____ Title: _____

Telephone: _____ Cell: _____

Email: _____ Fax: _____

Insurance Company: _____

Policy: _____

Scope of work performed: _____

Number of permanent employees who will be working on or near the Reservation: _____

Estimated Quarterly Payroll: \$ _____

Estimated TERO Fee (1.75%): \$ _____

This agreement shall be for the life of this specific project.

Identification of Key Personnel

A Key Employee is defined as one who is in a top supervisory position or performs a critical function such that an Employer would risk likely financial damage or loss if that task were assigned to a person unknown to the Employer.

Name	Position/Classification	Licensed Yes/No	Hourly Rate	Length with Company

Employment Rights Fee

Every Employer, other than Construction Employers, with five or more Employees working on or near the Reservation, or with gross sales or income on or near the Reservation of \$10,000.00 or more shall pay a quarterly fee of 1.75 percent of the gross quarterly payroll for those Employees Engaged in Work on or near the Reservation, which shall be paid within 30 calendar days after the end of each quarter. This fee shall not apply to education, health, governmental or nonprofit Employers, nor to utilities franchised by the Quinault Indian Nation.

Identification of Sub-Contractors

It shall be the Employer's responsibility to provide copies of this TERO Compliance Plan and Agreement form to any subcontractors and suppliers. All Subcontractors must secure an approved TERO Compliance Plan and Agreement **prior** to the commencement of any portion of work activity they will be involved in.

Company Name	Phone	Scope of Work	Estimated Start Date

Manpower Requests

Provide a preliminary estimate of workers (in addition to permanent and key employees) that your company will require for completing the work on this project. List classification/skill, number needed, starting date, and pay rate. A TERO Dispatch form and follow up call to TERO at least forty-eight (48) hours prior to identified “start date” is required.

Attach a copy of Personnel Manual and Company application to be used in selection process.

Skill/Qualification	Start Date	No	Pay Rate	Fringe

Training and Salary

The Employer agrees that all local Indian employees will receive adequate training for the position for which they are hired. All Indian employees will be evaluated and paid in accordance with a training plan set forth between the contractor and TERO.

Emergency Replacement Workers:

Employers operating during hours when the TERO office is closed (i.e. weekends, holidays, etc.) who are in need of workers to fill a vacancy will be authorized to place an emergency worker to fill the vacancy. This emergency placement shall be allowed for no longer than seventy-two (72) hours. The TERO will be notified of such hires immediately upon the next working day and the position will be filled by TERO worker(s) unless none are available. The TERO Office hours are between 8 AM- 4:30 PM Mon-Fri

Notify TERO by email or call our cell phones listed.

Termination/Layoff

No TERO workers shall be terminated except for cause as provided in the contractor’s personnel policies.

No TERO worker, who can perform the work required, shall be terminated through layoff or reduction in force while a non-Indian or non-local Indian employee in the same craft is still employed. If employees are laid off by crews, classifications or other categories, qualified TERO workers shall be transferred to crews or positions that will be retained.

Enforcement

If any report required by Title 97 and/or this Agreement indicates that the Employer is out of compliance, the Manager or the Manager's designee has the authority to initiate an on-site inspection. The Manager or the Manager's designee shall provide 24 hours' notice of the inspection to a designated point of contact and insure that the inspection does not disrupt business operations. The Manager or the Manager's designee may inspect and copy all relevant records of the Employer, speak with workers on the premises during normal breaks and engage in similar investigatory inspection activities.

Employers ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites in all facilities at which the employees are assigned to work. The Employers shall specifically ensure that all supervisors are aware of and carry out the Employers obligations under the TERO ordinance.

The Employer agrees to comply with all rules and regulations authorized by Title 97. This agreement is affirmed in writing by the appropriate company officer.

TERO Understanding and Acceptance

Quinault Nation Tribal Employment Rights Office

Understanding & Acceptance

On behalf of _____, I hereby certify that I have received and understand the Quinault Nation Tribal Employment Rights Office (TERO) requirements set forth in this TERO Compliance Plan and Agreement, and hereby agree to accept the responsibility of compliance with the described obligations and requirements.

Dated this _____ day of _____, 20_____.

Project: _____ Project No. _____

Contractor: _____ Sub-Contractor: _____

Address: _____

Phone: _____ Fax: _____

Printed Name: _____ Title: _____

Signature: _____ Date: _____

NOTICE TO PROCEED

The attached TERO Compliance Plan and Agreement has been received and is fully acceptable. On behalf of the Quinault Nation TERO, authorization to begin work on the above-described project is hereby granted.

Signature _____ Date _____
TERO Manager

ATTACHMENT A

* * * * *

DESCRIPTION OF TERO COMPLIANCE REQUIREMENTS

DESCRIPTION OF TERO COMPLIANCE REQUIREMENTS

The Quinault Indian Nation Tribal Employment Rights Program is authorized by Title 97 of the Quinault Tribal Code. Title 97 establishes the Tribal Employment Rights Office and the requirements for compliance.

1. **EMPLOYMENT REQUIREMENTS.** The intent of TERO is to achieve employment and training opportunities for the local Indian workforce. Pursuant to Title 97, Indian preference will be required on all employment and training opportunities. All Permanent and Key Employees, who will be utilized on this project, must be identified in this TERO Compliance Plan by name and title, with a complete description of duties each will be performing on this project.

A. **Key Employee** is defined as one who is in a top supervisory position or performs a critical function such that an Employer would risk likely financial damage or loss if that task were assigned to a person unknown to the Employer. Any claims that the employee possesses a “specialized skill” in order to be designated a key employee shall require written proof, including resume of work history, certificates, licenses, etc. *A complete description of duties for each “key employee” listed must be attached to this TERO Compliance Plan.* TERO will review the information submitted and determine whether the employee is in fact a key employee.

B. **Hiring.** The Employer agrees to utilize the TERO Hiring Hall to fill their manpower request, and must provide a minimum of seventy-two (72) 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.

C. **TERO Dispatching.** All TERO referrals or “Dispatches” will be made from Hiring Hall listings of Local Indian Workforces. The hiring hall lists contain names of unemployed Indian workers who have indicated that they are available for work and their skill level. Once a name is taken from the Hiring Hall List, the individual’s name will be provided to the Employer. If that worker possesses the minimum threshold of qualification, then they are referred for the opportunity. All TERO referrals will report to work with a TERO Referral form in hand, unless a copy has been faxed/ mailed/hand-delivered prior to the referral’s first day of work. The Employer shall contact TERO regarding any worker who reports to the job site without a TERO Referral Form in hand. *(See Attachment B).*

D. **TERO Job Request.** Provides a space for the Employer to give a brief job summary, including company name, address, and phone number, position title/classification, start date, start time, rate of pay anticipated length of employment, tools required, who to see, etc. The TERO referral of “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. (*See Attachment B*).

E. **Local Indian Workforce** is defined as any member of a federally recognized tribe who resides either within the exterior boundaries of the Quinault Indian Reservation or within 60 miles of the Reservation.

F. **Hiring Hall**. The main TERO Hiring Hall is located at the Taholah Administration Building at 1214 Aalis St. Taholah, WA 98587.

G. **Training**. All training opportunities or Training Special Provisions (TSP) requirements must be identified prior to the commencement of work activity on this project. Training opportunities shall be filed through the same process described under Section B “Hiring”, and through coordination with the TERO Employment and Training Program components to locate individual(s) who may already be in an apprenticeship program for which the opportunity will exist.

H. **Layoff**. TERO referred workers will have priority in all work opportunities. In the event that a lay-off becomes necessary, a TERO worker with skills, and in some cases key employee, will be retained. Daily TERO monitoring and a review of quarterly certified payroll reports will be made to assure that opportunities are not being eliminated by revising the duties of Key Personnel or Employees.

I. **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 worker will be kept on record at TERO.

J. **Termination**. Employers must discuss termination of an Indian worker with TERO 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.

K. **Employer Policies**. The Employer must submit a copy of its employee policies prior to the commencement of work activity for TERO review. In case of any conflict or dispute between company policies and with the TERO requirements, Title 97 will govern. 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.

L. **Drug Testing**. Employment must be offered prior to requiring a “pre-employment” drug test. The TERO must be notified and provided a copy of the Employer’s pre-employment drug testing policies. Documentation must be provided that all permanent and key employees have complied with the drug testing requirements prior to the commencement of their work activity on this project. It the contractors responsibility to do drug testing.

2. **WAGE RATES/PAYROLL REPORTS.**

- A. **Wages.** The Employer must submit a table of wages to be paid. TERO referrals must receive pay equal to the Employer's permanent employees 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.
- B. **Certified Payroll Reports.** The Employer must submit a quarterly 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 quarterly basis will constitute grounds for a "violation" and possible sanctions against the Employer.
- C. **Payroll Deductions.** No payroll deductions indirectly or directly will be taken from the full wages earned, other than tax withholding permissible deductions outlined in the United States Federal Labor and Standards Act (FLSA) and this TERO Agreement, so long as the deduction does not take the employee below federal minimum wage for the workweek.
- D. **Pay Day Schedules.** TERO workers will receive their pay on the same day as the Employer's permanent and key employees.
- E. **Distribution of Payroll.** Payroll checks must not be distributed to anyone other than the worker for whom the check is made out, unless the worker has given written permission to release their check to a specifically named individual.

3. **CONTRACTING AND SUBCONTRACTING.**

- A. The Employer shall give preference to Quinault TERO Certified Native American Owned Businesses (NAOB) for any subcontracting opportunities on this project. A list of Quinault Native American Owned Businesses is available from TERO. TERO NAOBs are subject to Title 97 and are required to submit a Compliance Plan and Agreement for TERO approval prior to the start of work activity.
- B. **Notification of Subcontract Opportunity.** If a subcontract opportunity arises, the Employer must provide notification to TERO providing the name of the Project, project owner, funding source, location and listing of subcontract opportunities. Once it has been determined that the project is located on or near the Quinault Reservation, the Employer must provide copies of "notice of subcontracting opportunity" forms, by email, mail, or fax transmission. If you do not wish to use the attached form, provide copies of letters notifying NAOB'S of opportunity and attach U.S. Post Office certified mail receipts. Notification must be made in good faith, providing adequate information about scope of work opportunity and time-line for response. *(See Attachment D – Notice of Subcontracting Opportunity).*

- C. **Response to Notice of Subcontract Opportunity.** Once the deadline for responses to the “Notification of Subcontracting Opportunity” has elapsed, the Employer will provide TERO with a written explanation of the responses and the decision on the subcontract award. TERO will retain a copy in the project file.
4. **RELIGIOUS ACCOMMODATION.** Employer agrees to make reasonable accommodation to the religious beliefs of Indian workers. TERO will assist the Employer in identifying “reasonable accommodation.”
5. **TERO FEE.** For those Employers with five or more Employees working on or near the Reservation, or with gross sales or income on or near the Reservation of \$10,000.00 or more per year, a TERO Fee will be assessed at **1.75%** of the gross quarterly payroll for those Employees Engaged in Work On or Near the Reservation. No fees shall be passed on to the contracting entity, including but not limited to as a change order or as part of the bid or contract amount.
- Change Orders** must be reported to TERO immediately upon approval from the funding/contracting agency. Adjustments to the TERO Fee amount will be made accordingly. If the change orders are not reported that is considered a violation.
6. **PROJECT MONITORING.** If any report required by Title 97 and this Agreement indicates that the Employer is out of compliance, the TERO Office has the authority to initiate an on-site inspection. The TERO Office shall provide 24 hours’ notice of the inspection to a designated point of contact and insure that the inspection does not disrupt business operations. The TERO Office may inspect and copy all relevant records of the Employer, speak with workers on the premises during normal breaks and engage in similar investigatory inspection activities. Any potential violation will be documented and processed pursuant to the procedures provided in Title 97. Continuous violation may result in sanctions against the Employer as provided by Title 97.
7. **COMPLAINTS.**
- A. **On-The-Job Incidents.** TERO referrals are advised to make complaints for incidents occurring on the job through the procedures outlined in the Employer policies prior to filing a complaint with TERO. The Employer must provide notice to TERO 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.
- B. **Discrimination.** If a TERO referred worker feels they have been discriminated against because they are Indian, they may file a complaint with TERO. The complaint must be employment related.
- C. **Complaint Investigation.** TERO will investigate complaints pursuant to the procedures provided in Title 97.

8. **FAILURE TO COMPLETE 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 Quinault TERO 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.

ATTACHMENT B

* * * * *

DISPATCH FORM

&

EMPLOYEE DISPOSITION FORM

TERO Dispatch Form
TRIBAL EMPLOYMENT RIGHTS OFFICE

Project: _____
Location: _____

DISPATCH INFORMATION & JOB SUMMARY (TO BE COMPLETED BY EMPLOYER)

Company Name: _____
Address: _____
Phone: _____ Fax: _____ Cell: _____
Classification/Title: _____
Hourly Pay Rate: \$ _____
Start Date: _____ Time: _____ AM _____ PM Job Length _____
Whom to Report to: _____ Title: _____
Brief Job Summary: _____
Tools/Equipment required: _____
Employer will provide the following: _____
Employer Signature: _____ Date: _____

UNDERSTANDING AND ACCEPTANCE (TO BE COMPLETED BY DISPATCHING WORKER)

I have reviewed and understand that I am being dispatched to the above named company for the stated job classification/title, at no less than the hourly rate stated. I understand that TERO does not issue payroll for the above named company, and questions regarding pay, paydays or any discrepancy of pay related matters, I must first attempt to resolve the matter with my Employer. If issues cannot be resolved TERO will intervene upon receipt of a written complaint. I further understand that it is my responsibility to carry proper identification and proof of citizenship with me when I report to work for employer tax purposes. I also understand that it is not TERO'S responsibility to provide my proof of enrollment or any other identification required.

_____ I HEREBY ACCEPT THIS JOB DISPATCH

_____ I DECLINE THIS DISPATCH

Dispatch Signature: _____ Date: _____

TERO Official _____ Date: _____

Would you rehire this employee? ___ Yes ___ No ___ Not Sure

RATE THIS EMPLOYEE, ON A SCALE OF 1-10, ON THE FOLLOWING:

Attendance	
Knowledge of skills required for the job/classification for which they were referred	
Knowledge of proper use of tools or equipment required for this position	
Used time productively	
Ability to work cooperatively with others	
Attitude	
Other:	

AUTHORIZED EMPLOYER REPRESENTATIVE

I understand that the information provided above will be taken in the strictest of confidentiality, and is to be used to assist TERO in assessing the level of skill and training needs of TERO referred workers.

Employer Representative: _____ Date; _____

Please Return to:

Quinault TERO

P.O Box 189

Taholah, WA 98587

PH: (360) 276-8211 ext.4800

FX: (360) 276-4191

Date Received by TERO Representative: _____

TERO Official: _____

NOTICE OF SUBCONTRACTING OPPORTUNITY

Date: _____

Project Name: _____

Location: _____

Project Owner _____

Project Funding Agency: _____

Funding Agency Contact: _____

CONTRACTOR INFORMATION

Name: _____ Contract #: _____

Address: _____

Phone: _____ Fax: _____ Email: _____

This form is a requirement for bids on the above-described project. The Quinault Tribal Employment Rights Office (TERO) referred our company to your company, and we look forward to receiving a bid. If you would take a moment and fill out the following item(s), it would assist this company in fulfilling its obligation to provide subcontracting opportunities for Quinault Nation TERO Native American Owned Businesses.

Bid opening Date is ____/____/____ and this company will welcome bids until ____/____/____.

Time: _____ AM _____ PM Thank you for your time and response.

Authorized Signature of Employer: _____

RESPONSE FROM TERO CERTIFIED NATIVE AMERICAN OWNED BUSINESSES

Upon notification of this opportunity, our company requested, received or were given the opportunity to review description of work to be bid on:

____ Yes ____ No If yes, date received: ____/____/____

____ Our company has DECLINED the opportunity to bid on the above named division/project.

____ Our company BID and were given the opportunity to negotiate for the above division. Comments:

TERO CERTIFIED NATIVE AMERICAN OWNED BUSINESS INFORMATION

Company Name: _____ CIB # _____

Owner Name/Contract: _____ Title: _____

Address: _____

Insurance/Bonding Company: _____

Phone: _____ Fax: _____ Cell/Email: _____

CC: QIN TERO ☐ U.S. Postal ☐ Fax ☐ Hand Delivered ☐ Other

Quinault Indian Nation
Tribal Employment Rights Office (TERO)
PO Box 189
Taholah, WA 98587

email: TERO@quinault.org

All TERO forms, documents and information can be
found on the website at:
www.quinaultindiannation.com/tero

Contractor	Date
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Tribal Employment Rights Manager	Date
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Tribal Employment Rights Commission	Date
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Quinault Indian Nation
Tribal Employment Rights Office
Job Request Form

Position: _____ Company/Project: _____

Today's Date: _____ Job Start Date: _____

Type of Employment: ☐ Temporary ☐ Seasonal ☐ Regular ☐ Full Time ☐ Part Time

Work Days: S M T W T F S Wage: ☐ Hourly ☐ Monthly ☐ Annually \$ _____

No. of Positions: _____ Physical Location of Job: _____ Phone: _____

Skills Required: _____

Drivers License Required? ☐ Yes ☐ No CDL? ☐ Class: A B C D MVR? ☐ Yes ☐ No

Certification Required? ☐ OSHA ☐ Haz-Mat ☐ CPR/First Aid ☐ Flagger ☐ Food Handler ☐ EMT/CNA

Report To: _____ Title: _____

TERO Applicants Referral List:

	Referred Yes/No	Name	Phone #	Hired	Comment
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					

TERO Authorization

Date

Quinault Indian Nation

Tribal Employment Rights Office

TERO Candidate Evaluation Form

Candidate Name: _____

Position: _____

Interviewer Name: _____

Interview Date: _____

Rating Scale (1-5): {Circle one choice only, enter NA under Comments if question not applicable}
1=Unsatisfactory, 2=Below Average, 3=Average, 4=Above Average, 5=Outstanding

						Comments
Related Education/Training/Certification	1	2	3	4	5	
Communication Skills	1	2	3	4	5	
Technical Ability	1	2	3	4	5	
Practical Application	1	2	3	4	5	
Overall Understanding	1	2	3	4	5	
Professional Appearance	1	2	3	4	5	
Direct Answers	1	2	3	4	5	
Writing Ability	1	2	3	4	5	
Clarity of Ideas	1	2	3	4	5	
Problem Solving	1	2	3	4	5	
Accountable	1	2	3	4	5	
Likes Challenges Offered	1	2	3	4	5	
Working with Others	1	2	3	4	5	
Team Player	1	2	3	4	5	
Motivated to Work	1	2	3	4	5	
Fit for Project/Position	1	2	3	4	5	

Overall Rating:	1	2	3	4	5	
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Comments:

Reviewer Signature: _____

Date Signed: _____

Quinault Indian Nation
Tribal Employment Rights Office

TERO EMPLOYEE PERFORMANCE REVIEW

Employee Name:		Date Hired:	
Job Title:		Reviewer:	
Date of Review:		Next Review:	☐ 30 Days ☐ 90 Days ☐ 1 Year

Performance Evaluation	Excellent	Good	Fair	Poor	Comments
Job Knowledge	☐	☐	☐	☐	
Productivity	☐	☐	☐	☐	
Work Quality	☐	☐	☐	☐	
Technical Skills	☐	☐	☐	☐	
Work Consistency	☐	☐	☐	☐	
Enthusiasm	☐	☐	☐	☐	
Cooperation	☐	☐	☐	☐	
Attitude	☐	☐	☐	☐	
Initiative	☐	☐	☐	☐	
Work Relations	☐	☐	☐	☐	
Creativity	☐	☐	☐	☐	
Punctuality	☐	☐	☐	☐	
Attendance	☐	☐	☐	☐	
Dependability	☐	☐	☐	☐	
Communication Skills	☐	☐	☐	☐	
Leadership Ability	☐	☐	☐	☐	
Overall Rating	☐	☐	☐	☐	

Development Opportunities

Reviewer's Comments

By signing this form you are confirming this evaluation is true to the best of your knowledge as a representative of the business listed below and is for the sole purpose of following up on a job referral from the Quinault Indian Nation TERO Department and Title 97 compliance.

Reviewer's Signature

Business Name

Date _____

Quinault Indian Nation
Tribal Employment Rights Office
Tribal Employment Rights Ordinance

Questions & Answers

The following presents a listing of some of the most common inquiries made about Indian Preference and Tribal Employment Rights Offices (TEROs)

1. WHAT IS TERO?

There are two (2) main elements of TERO:

- A. Conceptual—TERO is a sovereignty based, self-help, and systematic approach to Indian and economic self-reliance or self-determination.
- B. Programmatic—TERO is also a Tribal enforcement and compliance program that monitors employers to ensure optimal benefits are attained from Federal and Tribal employment laws, regulations, policies and procedures.

2. WHAT IS THE PURPOSE OF TERO?

To access more employment & training opportunities for Native Americans, and to provide more business & economic opportunities for businesses owned by Native Americans.

3. WHAT IS THE LEGAL BASIS FOR TERO?

A tribe's authority to enact and enforce an Indian employment preference is grounded in its inherent sovereign powers of self-government. This legal doctrine is the most basic principal of Indian laws and is supported by a host of Supreme Court decisions. These decisions have held that "Inherent sovereign powers derive from the principle that certain powers do not necessarily come from delegated powers granted by express acts of Congress, but are inherent powers of a limited sovereign which have never been extinguished. Tribes have a basic relationship with the federal government as sovereign powers. This is recognized in both treaties and federal statutes. The sovereignty of tribes has been limited from time to time by treaties and federal legislation; however, what has not been expressly limited remains within tribal sovereignty." One important area in which the inherent powers of tribes clearly apply is in the right of tribes to regulate and tax all commerce activity within the jurisdictional boundaries of their reservations. A full and accurate explanation of tribal sovereignty is found in Felix S. Cohen's Handbook of Federal Indian Law.

4. WHAT ARE THE BASIC REQUIREMENTS OF TERO?

All employers operating within tribal jurisdiction are required to provide Indian Preference in employment, training, contracting, subcontracting and all other aspects of employment. Below are six (6) major provisions found in most TERO Ordinances that employers must agree to:

- A. Submit an acceptable compliance plan detailing employer workforce needs and the steps to be taken to ensure Indian Preference.
- B. Utilize the TERO Hiring Hall for all referrals and consider Indian applicants before interviewing or hiring non-Indian workers.

- C. Agree to hire no less than a specific number of Indians in each job classification and cooperate with tribal training programs to hire a certain amount of trainees.
- D. Eliminate all extraneous job qualification criteria or personnel requirements, which may act as a barrier to Indian employment. TEROs are guided by EEOC guidelines for verifying legitimate Bona-Fide Occupational Qualifications (BFOQs).
- E. Agree to acknowledge and respect tribal religious beliefs and cultural differences and to cooperate with the TERO to provide reasonable accommodation.
- F. Tribes have found the most effective means by which they can ensure Indian Preference compliance is through the endeavors of their own TERO enforcement programs. The success of TERO programs can be directly attributed to the fact that these programs embody all of the critical elements listed above. Since TEROs are the core of an effective tribal employment rights effort, a close examination of TERO is necessary.

5. WHAT IS THE EXTENT OF TERO JURISDICTION?

To the extent of what is legally described or defined by treaty or legislation which is the exterior boundaries of the reservation, including ceded territories and lands where jurisdiction has not been extinguished.

6. IS THERE A DIFFERENCE BETWEEN TRIBAL & INDIAN PREFERENCE?

Yes, with jurisdiction on tribal projects which are funded, owned, and operated by the tribe (i.e. Tribal Enterprises), tribes can require tribal preference. This is permissible under the federal law because tribes are exempt from Title VII of the Civil Rights Act, Executive Order 11246 and most other employment rights legislation.

- A. Indian Preference is permissible under some federal laws i.e. Indian Staff Determination Act, Buy Indian Act and under most federal laws.
- B. **Executive Order 11246 Provides:** “Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation and the use of such a preference shall not excuse a contractor from complying with other requirements contained in this chapter.”

7. ARE TERO FEES LEGAL?

Yes, tribal authority to impose fees is equal to that of any government. Licenses, fees and, in some cases, taxation are a valuable sources for financing tribal government operations. TERO Programs have the unique characteristics of being able to generate their own operating income and contribute to the tribal general fund.

8. WILL TERO FEES INCREASE THE COST OF THE PROJECT?

No. The Quinault TERO fee is 1.75%, which is much lower than the state taxes that the contractor might otherwise pay.

The Federal Highway Administration (FHWA) allows a 1% flow through for highway contractors, which means they can pass up to 1% of their tribal tax/fee burden on to the agency. This provides another incentive to support TERO. The remaining amounts are the contractors’ responsibility and like other federal, state, county and local taxes/fees, must come out of the contractors’ pocket.

9. IS INDIAN PREFERENCE “REVERSE DISCRIMINATION?”

No, there is no such thing as reverse discrimination; simply stated, discrimination is discrimination no matter who does it to whom. Indian preference is defined as a “political preference, not a racial one” which exists because of the nation-to-nation relationship America has always enjoyed with tribes since Columbian times. TEROs do not violate any U.S. Equal Protection Laws.

A. In *Morton v. Mancari*, the court held that “the preference as applied, granted to Indians not as a discrete racial group, but rather as members of quasi-sovereign tribal entities.” Subsequently, the Indian preference classification is not racially, but politically based and as such does not violate Title VII or any other federal employment law.

10. ARE THERE ANY EXEMPTIONS TO TERO REQUIREMENTS?

Yes, there are several exemptions. Direct employment by federal/state governments, schools, churches and some non-profits are not covered by the TERO. Some tribes also exempt themselves from TERO coverage. It is important to note, however, that any contract or sub-contract let by any of these entities is covered by TERO.

11. WILL TERO INTERRUPT MY DAILY BUSINESS OPERATIONS?

No, since TEROs are pro-active, TERO and employer sign the compliance agreements before the commencement of work, which prevents disputes. Most TERO ordinances provide for compliance and enforcement visits to the worksites during normal business hours but not to the detriment of operations. TEROs sanctioning employers for violations may shut down operations but only in severe disputes and in accordance with the applicable law.

12. WHAT SANCTIONS DO EMPLOYERS FACE FOR VIOLATIONS OF TERO?

Violation of TERO requirements may result in severe sanctions. If tribes determine that employers willfully and intentionally breached TERO requirements they may:

- A. Deny such a party the right to commence or continue business on the reservation.
- B. Impose a civil fine on such party (at Quinault, the range is \$100 to \$1000 per violation per day, depending on the size of the contract).
- C. Terminate or suspend such party’s operation and deny them the rights to conduct further business on the reservation.
- D. Order such party to dismiss any illegally hired non-Indians, take action to ensure future compliance and to make back payment of any lost wages be paid to aggrieved Indians.

13. ARE EMPLOYERS PROTECTED AGAINST UNFAIR TERO VIOLATION CHARGES?

Yes, the first level of protection comes from the TERO enforcement officer who handles the charge. These officers are trained to deal with facts and merits of the case before taking action. The TERO Commission provides a second level of protection by hearing grievances and again weighing the facts and merits of the case before making determinations. Beyond the TERO Commission, grievants can seek relief in the tribal and federal courts.

14. CAN SANCTIONS IMPOSED BY THE TERO COMMISSION BE APPEALED?

Yes. Sanctions imposed by the TERO Commission can be appealed in tribal court. Appeals of tribal court decisions can be made to the federal court system.

A. It is important to note that only one (1) appeal to a TERO Commission and tribal court has ever been appealed to the federal court. The case ended at the Ninth Circuit Court of Appeals, which upheld the TERO Commission and the tribal court decisions.

15. HOW HAVE VARIOUS FEDERAL, STATE, AND OTHER AGENCIES VIEWED TERO AND INDIAN PREFERENCE IN THEIR OPERATIONS?

When TEROs first appeared in the late seventies there was opposition from some and indifferences from others. Over the years a great deal of progress has been made, some by direct legal action but most through pro-active, non-adversarial, synergistic effort. The results are Indian preference and TERO provision, policies and procedures figure prominently in the following:

- The Civil Rights Handbook
- The Job Training and Partnership Act
- The Small Business Administration 8(a) Program
- Public Law 93-638, The Indian Education Assistance & Self Determination Act of 1974
- HUD Regulations
- BIA Acquisitions Assistance Agreement 84-1
- EEOC/TERO Contracts
- Department of Commerce
- Economic Development Administration
- OFCCP Indian Employment Initiative
- FHWA ISTEA "Indians in Highway Construction Initiative"
- US DOL/BAT Notice 84-1
- Indian Education Impact and Programs under PL 81-815 (construction) and PL 91-874 (OPS/Admin)

16. DO TERO REFERRALS GET SPECIAL TREATMENT ON THE JOB?

No, TERO referrals should be treated like any other qualified employee with the same performance expectations and requirements. Special treatment of preference category employees serves only to isolate them and set them up for disparate or discriminatory treatment.