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EMPLOYMENT AND CONTRACTING**

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TERO CODE**

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9.05.010 Introduction.

The Tulalip Tribes Board of Directors finds that employment discrimination against Native Americans (hereafter Natives) persists despite a large number of Native and non-Native owned businesses employing skilled and nonskilled workers. The Tulalip Tribes Board of Directors further finds that jobs in businesses and other economic opportunities on or near the Tulalip Indian Reservation are important resources to which Natives have unique preferential rights and therefore, to implement the unique employment rights of Natives, established a Tribal Employment Rights Commission and Tulalip Tribal Employment Rights Office to achieve its goals and policies.

The Tulalip Tribes (hereafter the "Tribes") enacts this chapter (hereafter the "code") pursuant to its inherent sovereign powers to create law that promote unique employment and contracting preference that provide Native American and Tulalip Tribal member preference, on Indian lands within the jurisdiction of the Tulalip Tribes.

Under this code, the Tulalip Tribal Employment Rights Office (hereafter "TERO") operates as an employment hiring agency. TERO provides preferential employee dispatch, referral services and skills training. TERO also has the authority to regulate and enforce preference in employment, contracting, and economic development opportunities under this code.

This code is separated into the following sections in order to provide comprehensive application of the employment and contracting laws as they apply within the TERO jurisdiction, as listed below:

- (1) Article I – General Provisions. Purpose and authority of TERO and general requirements of this code.
- (2) Article II – Contractor Requirements. Provides preference in contracting/employment.
- (3) Article III – Tulalip Tribal Entities Construction Procurement. Provides preference in contracting and procurement in all Tribal entities and divisions.
- (4) Article IV – Certification of Native American Owned Businesses (NAOB). All aspects of certification of Native American Owned Businesses.
- (5) Article V – Enforcement. Allows enforcement of provisions of this code and outlines due process requirements.

This code repeals and replaces Tulalip Tribal Employment Rights Ordinance Nos. 60 and 89. Amendments to this code will be reviewed and approved first by the TERO Commission prior to approval and adoption by the Tulalip Tribes Board of Directors. [Res. 2014-446; Res. 2012-257].

9.05.020 Glossary.

This glossary has the definitions of the terms as they apply to the provisions of this code. Any word or term not

defined in this section shall be used with the meaning of common or standard use as determined by a current edition of Webster's Dictionary.

- (1) "Agency" shall mean the main business organization; that may or may not have subdivisions or subsidiaries.
- (2) "Board of Directors" means the governing body of the Tulalip Tribes that consists of seven elected Tribal member officials.
- (3) "Business" means a company or other organization that buys and sells goods, makes products, or provides services.
- (4) "Business necessity" means necessary job duties pertaining to industry standards or a legitimate business requirement that is necessary to perform certain work or complete a job.
- (5) "Certification," as it pertains in this code, means certifying that a business has a minimum percentage of Native American ownership to qualify as a NAOB.
- (6) "Change order" means proposed changes in a contract outside the scope of work.
- (7) "Civil Rights Commission" means a state organization that protects civil rights.
- (8) "Commission" means the Tulalip TERO Commission, which consists of five elected Tribal members; that is the judicial body that oversees the TERO program.
- (9) "Commissioner" means a member of the Tulalip Tribal Employment Rights Commission.
- (10) "Company" shall mean business, corporation, or firm that is engaged in business.
- (11) "Compliance plan" means a binding agreement between the contractor and TERO.
- (12) "Compliance Officer" means a TERO representative who enforces TERO codes, rules and regulations.
- (13) "Conduit" means a certified business which agrees to be named as a subcontractor on a contract in which such certified business does not perform the work but, rather, the work is performed by the prime contractor, prime consultant, material supplier, purchasing contractor, or any other noncertified business.
- (14) "Contract" means a formal legal binding agreement between two parties outlining deliverables and responsibilities.
- (15) "Contracting agency" means the main organization or owner that is offering a contract and is responsible for compliance with the provisions of this code.

- (16) "Contractor" means organization or individual that contracts with another organization to perform work.
- (17) "Court" means the Tulalip Tribes Tribal Court.
- (18) "Decertification" means the un-certifying of a NAOB by the Commission; removing the business off the NAOB registry, and denying preference.
- (19) "Director" means the Director of TERO Department.
- (20) "Dispatch" means a TERO document that is given to an individual when they are sent out for employment at a job site or company.
- (21) "Due process" means the right to defend yourself against allegations through a fair non-biased process.
- (22) "EEOC" means the Equal Employment Opportunities Commission.
- (23) "Employee" means a person who works for another for payment or other compensation. For the purposes of this code, an employee is not an independent contractor. An employee may also be referred to as a "worker" in this code.
- (24) "Employer" means any individual, business, company, entity, contractor or subcontractor employing one or more persons.
- (25) "Employment discrimination" means discrimination on the basis of protected category that affects the terms, conditions and privileges of employment.
- (26) "Entities" shall mean subsidiaries or subdivisions of an organization or agency.
- (27) "Front" means a business that claims to be eligible for certification but is not in fact legitimately owned and controlled by a Native American.
- (28) "General contractor" means an organization or individual that contracts with another for the construction of a building, road or other facility.
- (29) "Immediate family member" means spouse, parents, children, grandparents, grandchildren, brothers and/or sisters, or any member of the immediate household.
- (30) "Injunctive order" means a Commission order to require a person to do or cease doing a specific action.
- (31) "Jurisdiction of TERO" means the power, right, or authority to interpret, apply and enforce the provisions of this code within the boundaries of the Tulalip Reservation and on Tribal projects that are located off Reservation.

- (32) "NAHASDA" means Native American Housing Assistance and Self-Determination Act that is a Federal law.
- (33) "NAOB" means (a) Native American owned business that has been certified by Tulalip TERO; or (b) any business that is owned by the Tulalip Tribes in which the Tulalip Tribes exercises majority control of the business and is substantially involved in the day-to-day management and operations.
- (34) "NAOB registry" means list of (a) Native American owned businesses that have been certified by TERO and (b) any Tulalip Tribally owned NAOB set forth under subsection (33) of this section.
- (35) "Native American" means any person who is a member of a Federally recognized Indian tribe, nation, or band, including members of Federally recognized Alaskan Native villages, communities or corporations.
- (36) "OFCCP" means the Office of Federal Contract Compliance Programs.
- (37) "Pass-through," for the purpose of this code, means a business that does not have the expertise to self-perform any of the work, does not receive the benefit of mentoring or gaining knowledge, and subcontracts all the work out. This includes vendors that buy goods and resell them, that do not have their own stock, inventory or expertise on the products they sell.
- (38) "Personnel or human resource (HR) policies" means policies that govern the internal personnel policies of its employees.
- (39) "Preferred or preference employees" means employees who receive preference under the tier categories.
- (40) "Preference tier" means a list of the order in which preference is assigned.
- (41) "Qualified/technically qualified" means a company or person who, by possession of a recognized degree, certificate, or professional standing, or who has sufficient knowledge, training, experience, and has successfully demonstrated his ability to perform or complete the work, or the project.
- (42) "Recusal/recuse" means voluntarily stepping aside due to conflict of interest.
- (43) "Reservation" means all lands and waters within the exterior boundaries of the Tulalip Indian Reservation or within the jurisdiction of the Tulalip Tribes.
- (44) "Responsible bidder" means a bidder who has demonstrated the attribute of trustworthiness, as well as quality, capability, capacity, and experience. A bidder who submits a bid or proposal below the bidder's cost of performing the contract, producing the product, or providing the service shall not be considered a responsible bidder.
- (45) "Responsive bidder" means a party who submits a bid which meets the specifications and qualifications.

- (46) "Retaliation" means to hurt somebody in return or deliberately harm somebody in response or revenge or reciprocate for a harm or perceived harm that another person has done. Retaliation occurs when an employer or individual takes an adverse action against another individual.
- (47) "RFB" means request for bid.
- (48) "RFP" means request for proposal.
- (49) "Skills bank" means a database which holds applicants' information for employment opportunities.
- (50) "Spouse" means a legally married husband or wife, or a legal domestic partner, but does not include a person separate or apart and who has filed in an appropriate court a petition for legal separation or dissolution of marriage or domestic partnership.
- (51) "Subcontractor" means an individual or business that signs a contract to perform part or all of the obligations of another's contract.
- (52) "Suspend" means the suspension of a NAOB by the Commission.
- (53) "TERC" means Tribal Employment Rights Code.
- (54) "TERO" means Tribal Employment Rights Office.
- (55) "Tribal entity" means an entity, subdivision or business that is owned by or is under the direction of the Tribes.
- (56) "Tribal member" means any person who is an enrolled member of the Tulalip Tribes.
- (57) "Tribes" means the Tulalip Tribes.
- (58) "Unions" means an organization that represents a group of individuals in a specific trade.
- (59) "Violation" means noncompliance with requirements or violating prohibited activities in this code. [Res. 2019-297; Res. 2014-446; Res. 2012-257].

Article I. General Provisions

9.05.030 Purpose.

The purpose of this code is:

- (1) To promulgate laws and rules for governing preference in employment and contracting within Tribal jurisdiction.

(2) To assist with compliance under this code and enforce the laws governing employment preference and contracting preference.

(3) To provide a fair, enforceable, and effective system for contracting, subcontracting and purchasing supplies, services, labor and materials, where any part of the work will be performed on the Reservation or on Tribal projects off the Reservation.

(4) To require contractors to utilize TERO dispatch in hiring within the boundaries of the Reservation or on Tribal projects off the Reservation.

(5) To require a 1.75 percent TERO fee on the total aggregate cost of all construction over \$10,000. [Res. 2012-257 § 1.1].

9.05.040 Notification.

TERO shall make good faith efforts to educate all employees, employers, contractors, and the public on TERO and employment, hiring and preference laws. All contracting agencies and entities are required to notify contractors/subcontractors of their obligations under the TERO Code. Failure to receive notification, or ignorance of law, is not a defense in any enforcement action under this code. [Res. 2012-257 § 1.2].

9.05.050 TERO Commission members.

The TERO Commission (hereafter the "Commission") is the administrative quasi-judicial body of five Tribal members who are elected by the Tulalip General Council, and shall serve under the guidance of the Tulalip Tribes Board of Directors (hereafter "Board of Directors").

The Commission serves as the quasi-judicial and regulatory authority delegated with:

- Enforcement of the provisions of the TERO Code and other Native preference codes or policies (hereafter "code") in accordance with applicable procedures.
- Implementation of the TERO quasi-judicial process.
- Overall guidance to the TERO program.

The Commissioners are subject to Chapter 1.15 TTC, Code of Ethics for Tulalip Tribal Commissioners, and other applicable policy or law.

(1) TERO Commissioner Candidate Qualifications. Every candidate seeking election to the TERO Commission must:

- (a) Be an enrolled Tulalip Tribal member.

(b) Be 18 years of age or older.

(c) Not have been found guilty of any felony, or a misdemeanor involving controlled substances or dishonesty, in any Tribal, State, or Federal Court within three years prior to the election.

(2) Terms of Office. The TERO Commissioners shall be elected by the general membership of the Tulalip Tribes at the semiannual General Council meeting and shall serve staggered three-year terms.

Newly elected Commissioners shall be sworn in by the Tulalip Board of Directors at the next regular monthly Board meeting or as designated by the BOD.

(3) Election of Executive Officers. Election of Executive Officers shall take place at the next TERO Commission meeting after new Commissioners have been sworn in by the Tulalip Board of Directors. Executive Officers will be nominated and elected by the Commissioners by majority vote. The positions of the Chairperson, Vice-Chairperson and Secretary shall be held until the following year when new Commissioners are sworn in.

(4) Duties of the Executive Officers.

(a) The Chairperson shall:

(i) Call the meetings to order.

(ii) Preside over the meetings.

(iii) Sign all approved minutes and action items as needed.

(iv) In urgent situations, call for a special meeting in lieu of a scheduled meeting.

(v) Recognize speakers with their hands raised to maintain order.

(vi) Limit the time on a certain topic to stay on task.

(vii) Maintain point of order in the event the topic or speaker is out of order or inappropriate.

(b) Vice-Chairperson. In the absence of the Chairperson, the Vice-Chairperson shall proceed over the meeting.

(c) The Secretary shall:

(i) Take notes and keep minutes of all meetings.

(ii) Record motions verbatim.

- (iii) Aide the Chairperson by compiling a list of the order of speakers.
- (iv) Review drafted minutes for approval prior to the next Commission meeting.
- (v) In the absence of the Chairperson and Vice-Chairperson, shall proceed over the meeting.
- (vi) Keep Commission attendance, late arrivals and leaving early record.
- (vii) Write Commission hearing decisions and order.

(5) Commissioner Vacancies. If a vacancy occurs on the Commission prior to the end of a term because of removal or resignation or for any other reason, the Board of Directors shall appoint the successor, unless the semiannual election is within four months, in which case a successor shall be elected at the next election. Candidates for such appointment and successors must meet all other qualifications for membership in the Commission.

Appointment or election to fill a vacant position shall be for the remainder of the term of the Commissioner being replaced.

(6) Resignation. A position on the TERO Commission shall be deemed vacant when a Commissioner resigns their position.

Any Commission member may resign at any time by delivering a written resignation to the Chairperson of the Commission, or if the Chair is resigning, to the Vice-Chair. The Commission shall provide notice to the Chairperson of the Tulalip Board of Directors and to the TERO Director. Such resignation shall be effective upon receipt, unless otherwise provided by the terms thereof and agreed to by the Commission.

(7) Removal. The Commission may recommend removing a Commissioner after majority vote, for the following reasons:

- (a) Inefficiency, negligence or carelessness in the performance of duty.
- (b) Conduct in bringing the Tribes in disrepute.
- (c) Soliciting or accepting bribes or favors.
- (d) The Commissioner fails to participate in three consecutive regular meetings without good cause, at the discretion of the other Commissioners.
- (e) Violations of laws and regulations.
- (f) Breach of confidentiality or conflict of interest.

(g) Violation of the Commissioner Code of Ethics, Chapter 1.15 TTC.

(8) Removal Appeal. If the Commission recommends removal of a Commissioner, the Commission shall forward such recommendation and the grounds thereof to the Board of Directors. The Board shall review the recommendation and, if it concurs with the recommendation, they shall send out written notice of intent to remove the Commissioner and advise the Commissioner of their right to request a due process hearing prior to the removal becoming final. The request for a hearing must be received by the Tulalip Tribes Board of Directors Chairman no later than 10 days after the date of mailing of the notice of intent to remove the Commissioner. If no request for a hearing is received within 10 days, the removal shall be deemed final. If a timely request for a hearing is received, a hearing shall be scheduled and conducted in accordance with TTC 1.15.120. [Res. 2014-446; Res. 2012-257 § 1.3].

9.05.060 Powers of the Commission.

The Commission has the power, jurisdiction, and authority to:

- (1) Take all appropriate actions necessary to implement the provisions of this code.
- (2) Provide policy oversight and policy direction to the TERO Director.
- (3) Review policies, rules or regulations that may be in conflict with the provisions of the code and make amendment recommendations to the Board for approval.
- (4) Hold hearings and appeals in accordance with the provisions of the TERO Code.
- (5) Assist in presentations to educate the public on Native American employment and business preferential requirements.
- (6) Issue subpoenas, conduct hearings, order any relief or sanctions that are necessary and appropriate to enforce this code.
- (7) Review and recommend the annual TERO budget for Board of Directors approval. [Res. 2014-446; Res. 2012-257 § 1.4].

9.05.070 Recusal of Commission members.

No member of the Commission shall have contact with a complainant, witness or other interested parties regarding the specifics of an appeal prior to a Commission hearing. If a Commissioner is approached by a party, witness or any other interested person outside the formal hearing process, it shall be the duty of the Commissioner to explain they are prohibited from discussing any aspects of the complaint or appeal. If information pertaining to the appeal or matters at issue in a hearing is shared with a Commissioner, the Commissioner shall disclose the existence of such communications on the record prior to the hearing. If the

communication involved sharing of evidence or argument regarding the appeal outside the hearing process, the Commissioner shall be recused from participating in the hearing.

A Commissioner shall not participate in any action, hearing, or decision where that Commissioner or their immediate family member has a financial or business interest (contractual or otherwise) in the transaction or entity involved in the hearing or is an employee of such entity. However, in appeals involving the Tulalip Tribes or its entities, Commissioners who are Tribal employees may participate unless they are an employee of the department or division of the Tribes that is involved in the contract or complaint at issue, or had other involvement in the actions that are the subject of the appeal, in which case recusal is required.

Commissioners may participate but must disclose on the record if any person with an interest in the hearing is, by blood or marriage, related by consanguinity in the third or fourth degree (uncles, aunts, nephews, great grandparents, cousins, great uncles and aunts and great-great grandparents).

In situations where recusal is not required, a Commissioner should nonetheless recuse themselves if the Commissioner believes that:

- (1) They cannot act fairly or without bias; or
- (2) There is an appearance that they cannot act fairly or without bias.

A Commissioner, the Commission, or other interested parties may request recusal of a Commissioner if they believe that a Commissioner is unable to act impartial and fair due to a relationship of any kind. In this circumstance, the other Commissioners may hear arguments and review evidence, including testimony, and make a determination on recusal by majority vote. The decision of the Commission shall be final and not subject to appeal.

Nothing in this code shall exclude a Commissioner from participating in or conducting business with the Tulalip Tribes, so long as the Commissioner is in compliance with Chapter 1.15 TTC, Code of Ethics for Tulalip Tribal Commissioners, or other applicable law and policy. [Res. 2014-446; Res. 2012-257 § 1.5].

9.05.080 Authority and responsibilities of TERO.

The TERO Department shall carry out the day-to-day administrative operations to enforce this code. The authority and duties shall include, but are not limited to, the following:

- (1) Implement and enforce the provisions of this code.
- (2) Administer the TERO program and budget.
- (3) Recommend regulations, amendments and agreements.

- (4) Develop, implement and enforce policies and procedures.
- (5) Investigate and process complaints alleging violations of this code to provide due process.
- (6) The Director shall represent TERO at Tulalip Board meetings, TERO Commission hearings and Tulalip Court proceedings.
- (7) Coordinate and provide reports for the Commission meetings.
- (8) Negotiate with contractors regarding their workforce requirements and TERO fee payment schedule.
- (9) Provide education and training options, eliminate barriers to employment, and enhance employment opportunities for Native Americans.
- (10) The TERO staff shall report administratively in accordance with the organizational chart, as approved by the Tulalip Board of Directors. [Res. 2014-446; Res. 2012-257 § 1.6].

9.05.090 Inter-governmental relationships.

- (1) EEOC/OFCCP. The TERO Director, with approval from the Tulalip Board of Directors, is authorized to enter into cooperative relationships with Federal employment rights agencies, such as, but not limited to, Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Program (OFCCP). The purpose of entering into these agreements is to prevent discrimination in the workplace. Nothing in these agreements supersedes the authority of the TERO Director and/or staff to investigate, act, or refer complaints to the appropriate agency.
- (2) Federal Requirements. Agencies shall ensure compliance with Federal preference or other preference regulations for projects using Federal funds. Such Federal requirements may restrict agencies from utilizing the TERO preference bidding process in certain circumstances, or utilizing other TERO processes that give specific Tribal preference under this code.
- (3) NAHASDA Tribal Housing. Native American Housing Assistance and Self-Determination Act (NAHASDA) project wages shall not be paid less than those required by the U.S. Secretary of Labor under the Davis-Bacon Act (40 U.S.C.) for the locality in which the work is to be performed, or as per the Tribal wage scale rates approved by the Tulalip Tribes. [Res. 2014-446; Res. 2012-257 § 1.7].

9.05.100 Native American preference – Employment.

All contractors, businesses and employers operating within the boundaries of the Reservation, or on Tribal projects off the Reservation, shall give preference in hiring, promotion, training, layoffs, recall, and all other aspects of employment, unless other contractual agreements or Federal requirements restrict the preference specified below.

Preference shall be given in the order listed below:

(1) Enrolled Tulalip Tribal members.

(2) Spouses, parent of a Tribal member child, biological child born to an enrolled Tulalip Tribal member, current legal guardian of a Tribal member dependent child (with a proper letter of temporary or permanent legal guardianship from a court), or a Tribal member in a domestic partner relationship (with documentation).

(3) Other Natives/Indians, which shall mean any member of a Federally recognized Indian tribe, nation or band, including members of Federally recognized Alaskan Native villages or communities.

(4) Spouse of Federally recognized Native American.

(5) Other. [Res. 2014-446; Res. 2012-257 § 1.8].

9.05.110 Native American preference – Contracting and procurement.

(1) All entities, businesses, companies, and contractors shall give preference to certified businesses on the TERO NAOB registry for procurement of goods and services and construction projects, and in compliance with applicable laws and policies as referred to in TTC [9.05.140](#). Preference is further restricted by the following:

When 100 percent of Tulalip Tribal funds are used for contracting or purchasing goods or services, so long as the bid is responsive, responsible and within budget, bids shall be awarded: (a) first to a Tulalip Tribal owned NAOB, if qualified; then, (b) second to TERO certified Tulalip Tribal member NAOB, if qualified. For the purpose of this section, a “Tulalip Tribal member NAOB” is a business on the TERO NAOB registry that is 100 percent owned by a Tribal member or Tribal members, and shall be identified by TERO during the certification process in Article IV of this chapter. Preference shall be followed if there is neither (a) Tulalip Tribally owned NAOB qualified or otherwise able to do the work nor (b) Tulalip Tribal member NAOB qualified or otherwise able to do the work.

(2) Preference in bidding may also be given to certified businesses on the TERO NAOB registry by restricting bidding, limiting competition and/or other bid preference provisions as specified in this code. [Res. 2019-297; Res. 2012-257 § 1.9].

9.05.120 Exclusions.

(1) Homeowners that are building their own home are excluded from the construction contracting requirement. The definition of “home” as it applies in this section is defined as the main residence of an individual. Homeowners building secondary or multiple homes will not be eligible for the exclusion.

(2) Tribal, Federal and State projects where the work is performed by their regular permanent workforce are exempt from TERO requirements. However, TERO requirements shall apply to any work within these contracts that is contracted out. [Res. 2012-257 § 1.10].

9.05.130 Conflict of interest.

Any individuals shall be disqualified from any actions involving the decision process of employment or contracting where they have a personal interest or ownership in or involve an immediate family member. This may include personal relationships where there is a perception or appearance that they cannot act fair and without bias. [Res. 2012-257 § 1.11].

9.05.140 Application of other law and policy.

All persons, entities, agencies, contractors, and businesses under the jurisdiction of this code shall comply with all applicable Tribal laws and policies, including the Tribal Procurement Policies, and policies/SOPs that pertain to preference in employment, the workforce, workforce protection, contracting, and the purchase of goods and services. [Res. 2015-065; Res. 2014-446; Res. 2012-257 § 1.12].

Article II. Contractor Requirements**9.05.150 Preference provisions.**

All businesses that advertise or solicit bids for projects, contracts, subcontracts, including written contracts to provide material, goods or services (procurement) shall give preference to qualified businesses listed on the TERO NAOB registry. Preference may be restricted or limited as required and/or allowed under this code.

The NAOB must be on the current TERO NAOB registry at or before the date the contract bid or proposal is due in order to qualify for preference on the contract.

The entity or contractor shall be prohibited from using excessive or unnecessary qualification criteria that exclude NAOBs.

This code shall not prevent the rejection of any bid or proposal on the grounds that the bid is nonresponsive or nonresponsible. [Res. 2014-446; Res. 2012-257 § 2.1].

9.05.160 Compliance responsibility.

All entities and/or persons engaged directly or indirectly in contracting are responsible to ensure that their contractors and subcontractors are in compliance with this code. [Res. 2012-257 § 2.2].

9.05.170 Compliance plan.

(1) All owners or contracting agencies and contractors, regardless of tier, shall be required to submit a TERO compliance plan within a minimum of 72 hours prior to commencing any work on the Reservation or on Tribal projects off the Reservation. No work shall commence until the compliance plan is approved by TERO. A compliance plan shall be used to monitor compliance with this code. Compliance plan requirements and goals may be tailored to the individual circumstances of the project or contractor in order to maximize TERO employment and NAOB contracting.

All contracting agencies/owners will be required to submit a contracting agency/owner compliance plan that will provide the TERO Department information regarding the project outline and total estimated project cost.

A compliance plan shall constitute a binding agreement, the terms of which shall be fully enforceable by TERO. Failure to obtain or adhere to the terms of an approved compliance plan, or supplying false information to TERO, shall subject the noncomplying party to monetary penalties of up to \$1,000 per violation per day. Penalties assessed may be appealed to the TERO Commission.

Contractors engaged in work without an approved compliance plan will be required to stop work until an acceptable plan for implementing their obligations has been submitted to TERO and has been approved.

If a contractor or subcontractor has failed to comply with the preference requirements, TERO and/or the Tribes shall not be liable for any losses incurred when a contractor is not permitted to commence work.

(2) Notwithstanding any other provisions to the contrary in this code, project specific compliance plan agreements may be executed between the Board and contractor or employer, to govern employment and contracting within the Tulalip Business Park development or Quil Ceda Village. The duration of a specific compliance plan agreement approved by the Board and a contractor or employer may be the term of the employer's lease or sublease, within the business park development or Quil Ceda Village. A project specific compliance agreement approved by the Board (a) may establish and govern the permanent or long term employment or contracting rights, responsibilities, liabilities, and obligations of the contractor or employer and subleases, contractors, subcontractors, vendors, and third party contracts of such contractor or employer under this code, (b) ensure due process for the contractor or employer, or (c) exempt the employer and any subleases, contractors, subcontractors, vendors, and third party contracts of such employer from other requirements, liabilities, and obligations of this code. [Res. 2014-446; Res. 2012-257 § 2.3].

9.05.180 Contractor job qualifications and requirements.

A contractor/subcontractor shall not create excessive and unnecessary job skill qualifications on TERO preference applicants, unless required by business necessity as determined by TERO. In this circumstance, the contractor/subcontractor shall submit a justification to TERO if requested by TERO. Nothing in this section shall preclude an applicant or TERO from challenging job requirements or criteria. TERO shall make a final determination on excessive and unnecessary job skill qualification, and require changes if necessary. [Res. 2012-257 § 2.4].

9.05.190 Workforce.

(1) Hiring Requirements. In accordance with the construction compliance plan, each contractor/subcontractor shall negotiate TERO preference hiring goals to maximize preference for positions outlined in the compliance plan.

Contractors/subcontractors shall not create unnecessary or excessive job skill requirements.

Employers shall give preference at all times so long as the worker is qualified. TERO may require a non-TERO worker be replaced if there is a qualified TERO worker available.

TERO reserves the right to negotiate up to 100 percent TERO hiring goals specifying the number of TERO workers the employer shall hire by craft and skill level.

Employers must contact TERO for employee dispatch 72 hours prior to commencing work to negotiate the workforce and to find qualified workers. If no TERO workers are available, the business may recruit from other resources. After receiving adequate justification, TERO will review and make a determination on a case-by-case basis to either approve or deny any exception from this requirement.

TERO is authorized in accordance with Article V of this chapter, Enforcement, to order removal and/or issue sanctions if any non-Native preference employees are not listed on the employer's approved compliance plan. In deciding whether the employee should be removed, the TERO shall consider whether any qualified Natives applied or were available for hire at the time the position was filled.

Apprenticeship programs and/or positions may be considered in meeting employment preference goals.

All construction contractors/employers shall compensate their employees at a rate not less than the approved Tulalip construction wage scale specified for their trade or the prevailing wage scale per contract requirements. If the company is signatory to a construction trade union, the current pay scale with benefits of that trade will be paid, unless otherwise specified through any other compliance plan or contract; provided, that it is not less than the Tulalip construction wage scale.

(2) Permanent and Key Employee. Prior to commencing work on the Tulalip Indian Reservation, a prospective employer and all contractors and subcontractors shall identify permanent and key employees.

(a) A permanent employee is one who is and has been on the employers' or contractors' annual payroll for a period of one year continuously, working in a regular position for the employer, or is an owner of the firm. An employee who is hired on a project by project basis shall not be considered a permanent employee.

(b) A key employee is 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. An employee who is hired on a project by project basis may be considered a key employee so long as they are in a top supervisory position or perform a critical function.

(c) TERO will review permanent and key employees on a case-by-case basis to ensure no actions were taken to circumvent the requirements of this section.

(d) Nonpreferred permanent and key employee(s) shall not exceed 20 percent of the workforce. Permanent

and key employees are subject to TERO approval and TERO may require a position to be opened up to all preference workers.

(3) Counseling and Support Programs. TERO will work with the employer to provide referrals for TERO preference employees for counseling and other support services to assist in retaining employment when determined necessary.

(4) Layoffs. TERO preference employees shall not be laid off where non-TERO preference employees are still working. If the employer lays off employees by crews, classifications or other categories, qualified TERO preference employees shall be transferred to crews or positions that will be retained. This section does not apply to key or permanent employees. [Res. 2014-446; Res. 2012-257 § 2.5].

9.05.200 Compliance monitoring.

All entities engaged in any aspect of business within the TERO jurisdiction shall submit reports and other information, including but not limited to contract documents, TERO approved certified payroll and personnel records, if requested by TERO. TERO shall have the right to make on-site inspections in order to monitor an entity's compliance. [Res. 2012-257 § 2.6].

9.05.210 Prohibited activities.

Contractors/subcontractors shall not:

- (1) Submit false or fraudulent information to TERO or a Tribal agency.
- (2) Knowingly make a false statement, whether by affidavit, verified statement, report, or other representation to a Tribal official or employee as it relates to contracting under this code.
- (3) Operate as a front or pass through company.
- (4) Prevent or interfere with a contractor's or subcontractor's compliance with this code.

This list is not exhaustive and violations of any other provision in this code shall be deemed a prohibited activity, and contractors/subcontractors who engage in prohibited activities, or commit any other violation in this code, shall be subject to penalties in accordance with Article V of this chapter. TERO may request any and all documentation deemed necessary by TERO, and determine whether or not a violation has occurred. [Res. 2012-257 § 2.7].

9.05.220 TERO fee.

- (1) The TERO fee is assessed for the privilege of conducting business on the Reservation or on Tribal projects off the Reservation and for the cost of assistance and enforcement under this code.
- (2) Every project or contract with total aggregate price of \$10,000 or more will be assessed a TERO fee of 1.75

percent of the total gross contract price.

(3) The contracting agency or general contractor shall be the responsible party for paying the entire TERO fee for the project.

(4) Upon completion of the compliance plan, the TERO Department may invoice the general contractor or contracting agency for the TERO fee with payment due within 14 days of the invoice. Lack of an invoice shall not relieve any obligation to pay the required fee. The TERO fee shall be paid in full, prior to commencement of any work. However, where good cause is shown, TERO may authorize installment payments to be paid over the course of the contract.

(5) Fee collection enforcement and property seizure provisions shall be pursuant to enforcement provisions in Article V of this chapter. [Res. 2012-257 § 2.8].

9.05.230 Change order fee assessment.

If for any reason the cost of the project increases or decreases, the contracting agency or general contractor shall notify TERO of this change and any additional TERO fee shall be assessed and paid or refunded. [Res. 2012-257 § 2.9].

9.05.240 Construction trade unions.

Nothing herein shall constitute Tulalip Tribes recognition of any union or endorsement of any union activity, and unions have no jurisdiction or authority over any activities operated pursuant to the sovereign authority of the Tulalip Tribal Government. An employer, contractor or subcontractor having a collective bargaining agreement with one or more labor unions must obtain written agreement from said unions indicating that they will comply with this code, and the rules, regulations and orders of the TERO Representative. Until such agreement is filed with the TERO Representative, the employer shall not commence work on the Tulalip Reservation.

(1) Contents of Union Agreements. Every union agreement with a contractor must be filed with the TERO Representative and must provide:

(a) Preferred Employee Preference. The union shall give absolute preference to preferred employees in job referrals regardless of which union referral list they are on.

(b) Cooperation with the TERO Representative. The union shall cooperate with the TERO Representative in all respects.

(c) Registration. The union shall establish a mechanism allowing preferred employees to register for job referral list by telephone or mail or in person, coordinating efforts through the TERO Representative.

(d) Training Programs. The union shall establish entry apprenticeship programs, advanced apprenticeship program and a journey level upgrade.

(e) The union shall provide direct entry into the union for all preferred employees who wish to join the union at a skill level (i.e. apprentice, journey, etc.) commensurate with their ability and skill.

(f) Temporary Work Permits. The union shall grant temporary work permits to preferred employees who do not wish to join the union.

(g) Special Provisions. The union shall provide special provisions for TERO clients through negotiations with the TERO Representative. [Res. 2014-446; Res. 2012-257 § 2.10].

Article III. Tulalip Tribal Entities Construction Procurement

9.05.250 Preference requirements.

All Tribal agencies, entities, divisions, departments, contractors, subcontractors and vendors that advertise or solicit bids for projects, contracts, and subcontracts, including purchase orders to provide material, goods or services shall give preference to a qualified NAOB on the TERO NAOB registry.

All businesses on the TERO NAOB registry must be given the opportunity to bid on the work in which they are qualified. The agency or contractor shall be prohibited from using excessive or unnecessary qualification criteria. [Res. 2014-446; Res. 2012-257 § 3.1].

9.05.260 Federal funding – Preference.

When Federal funding is utilized in a project, the agencies shall comply with Federal and other preference requirements if applicable. [Res. 2012-257 § 3.2].

9.05.270 Restrictive bidding.

The Tulalip Tribes finds that small business is historically underutilized within the jurisdiction of the Tulalip Tribes. The primary objective of this section is to promote and grow these businesses by providing additional opportunity within the jurisdiction of the TERO program.

(1) An agency, entity, department, contractor, or other business has discretion and may limit or restrict bidding to Tulalip Tribal member small business on identified projects. If the agency identifies a project that can be limited to small business and there are two or more certified, qualified Tulalip Tribal member small businesses on the TERO registry that are likely to submit responsive and responsible bids, then the agency shall restrict bidding to only Tulalip Tribal member small businesses as defined below.

“Small business” is defined by a Tulalip Tribal member NAOB with gross revenue less than \$1,000,000 as reported annually on its Federal income tax return or its return filed with the Department of Revenue over the previous year. Owners with interest in two or more businesses on the TERO NAOB registry do not qualify for small business category unless the combined gross revenues for the businesses do not exceed \$1,000,000. In order to qualify under this category, the business must provide the necessary documents for TERO

determination, and certify, under penalty of perjury, that it is owned and operated independently from all other businesses.

(2) When there are two or more certified, qualified Tulalip Tribal member owned NAOBs on the TERO registry that are likely to submit responsive and responsible bids and there are no bidding requirements that would preclude such a restriction, the agency shall restrict bidding to only Tulalip Tribal member owned NAOBs.

(3) When there are two or more certified, qualified NAOBs on the TERO registry that are likely to submit responsive and responsible bids, then the agency may restrict bidding to only NAOBs. [Res. 2014-446; Res. 2012-257 § 3.3].

9.05.280 Maximizing NAOB involvement.

The Tribal contracting entity shall evaluate each contract on a case-by-case basis to divide the scope of work to achieve maximum involvement of contracting/subcontracting with NAOBs on the TERO registry. [Res. 2014-446; Res. 2012-257 § 3.4].

9.05.290 Self-performance and contractor restrictions.

(1) Tribal entities may require and ensure that a contractor/subcontractor is able to perform, and is actually performing, a minimum percentage of the work outlined in the bid documents. The minimum percentage, if any, shall be defined and determined by the entity letting the bid.

(2) No NAOB shall receive preference provisions or preference points offered by this code as both a general contractor and subcontractor, regardless of tier, on the same project. Additionally, when the request for bid or request for proposal includes minimum requirements for TERO participation related to subcontracting, no NAOB shall be counted twice in determining if a bidder meets the specified minimum requirements for the project. If a NAOB has interest or partnership with other NAOBs, only one of the NAOBs will be counted in determining if a bidder meets the specified minimum requirements for the project, regardless of tier. All provisions in this section shall be applied together and in their entirety. [Res. 2014-446; Res. 2012-257 § 3.5].

9.05.300 Monitoring responsibilities.

Each contracting agency shall be responsible for monitoring and enforcing preference implementation in contracting, employment, and training by its contractors and subcontractors. Monitoring under this section shall include monitoring and requiring performance in conformity with NAOB or non-NAOB bid submission information. Should incidents of noncompliance be found to exist, the agency or contractor shall take appropriate remedial action.

If the agency or contractor has not provided adequate monitoring or enforcement of preference they may be found in noncompliance and are subject to remedial actions and/or sanctions. Multiple violations will be reported to the appropriate management authority to implement corrective action in accordance with their respective personnel policy or ordinance.

If there is a contract performance issue with the quality of work of a NAOB, the relevant documentation must be submitted to TERO. In this circumstance, TERO may determine or direct one or all of the following:

- (1) The performance issue is “unfounded.”
- (2) Approve an exclusion from accepting bids from the same contractor on future projects.
- (3) Provide the contractor with recommendations in training to remedy the performance issue.
- (4) Decertification of the NAOB if the NAOB refuses or fails to remedy the performance issue. [Res. 2014-446; Res. 2012-257 § 3.6].

9.05.310 Conflict of interest.

Tribal employees or other Tribal officials shall be disqualified from any actions involving the decision process of awarding bids, contracts or purchases that they have a personal interest or ownership in or if the decision involves an immediate family member. Any conflict of interest violation may render a contract null and void. [Res. 2012-257 § 3.7].

9.05.320 Tulalip bid award process.

Some of the determining factors of awarding a bid that may be considered are, but not limited to: the contractor’s capability, qualifications, scheduling, pricing and preference. All entities shall be required to utilize competitive bids or proposals as follows:

- (1) TTC [9.05.330](#), Competitive bid award.
- (2) TTC [9.05.340](#), Competitive “weight of award” bid process.
- (3) TTC [9.05.350](#), Requests for proposal (RFP).
- (4) TTC [9.05.360](#), Imminent need and emergency award process. [Res. 2012-257 § 3.8].

9.05.330 Competitive bid award.

Preference in the award of contracts and subcontracts that are let under a competitive bidding or proposal process (e.g., conventional bid construction contracts, material supply contracts) shall be provided as follows:

- (1) If the agency or contractor has restricted bidding or limited competition to only qualified NAOB firms in accordance with TTC [9.05.270](#), then the bid award shall be made to the NAOB firm with the lowest responsive and responsible bid.
- (2) If only one qualified NAOB submits a responsive bid or proposal, the agency or contractor shall proceed as follows:

(a) Accept the one responsive bid or proposal should the agency determine the one NAOB responsive bid or proposal is at an unusually favorable price; or

(b) Negotiate a reasonable price with the single qualified NAOB should the agency determine that delays caused by re-advertising the work would subject the project to higher costs; or

(c) Reject all bids and re-advertise for bids or proposals. The agency will determine whether to restrict or limit competition to NAOBs. If bidding is not restricted to NAOBs then the agency or contractor shall comply with the requirements in subsection (3) of this section.

(3) If the agency or contractor has not restricted bidding or limited competition to only qualified NAOB firms in accordance with TTC [9.05.270](#), then the award shall be made to the certified, qualified NAOB with the lowest responsive bid if that bid is within budgetary limits established for the specific project or activity for which bids are being taken and no more than "X" higher than the bid prices of the lowest responsive bid from any qualified non-NAOB bidder. "X" is determined as follows: When the lowest responsive bid is:

	X = lesser of
Less than \$100,000	10% of that bid, or a maximum of \$9,000
At least \$100,000 but less than \$200,000	9% of that bid, or a maximum of \$16,000
At least \$200,000 but less than \$300,000	8% of that bid, or a maximum of \$21,500
At least \$300,000 but less than \$400,000	7% of that bid, or a maximum of \$25,000
At least \$400,000 but less than \$500,000	6% of that bid, or a maximum of \$27,000
At least \$500,000 but less than \$1 million	5% of that bid, or a maximum of \$45,000
At least \$1 million but less than \$2 million	4% of that bid, or a maximum of \$72,000
At least \$2 million but less than \$4 million	3% of that bid, or a maximum of \$108,000
At least \$4 million but less than \$7 million	2% of that bid, or a maximum of \$126,000
\$7 million or more	1.5% of the lowest bid, with no dollar limit

If a certified, qualified NAOB firm does not submit a responsive bid within the stated range of the total bid price of the lowest non-NAOB responsive bid, award shall be made to the non-NAOB bidder with the lowest

responsive bid. [Res. 2014-446; Res. 2012-257 § 3.9].

9.05.340 Competitive “weight of award” bid process.

If the agency or contractor determines that it is appropriate to base award of the work upon a competitive “weight of award” bid process, award shall be made to the most responsive bidder with the highest total points awarded to them after taking all bid items into consideration. The agency or contractor shall clearly define the particulars of the “weight of award” rating system that provides for assignment of points for the relative merits of submitted bids. The bid documents shall identify all rated factors, including price or costs, or significant subfactors that will be considered in awarding the contract, and shall state the relative importance the agency or contractor places on each evaluation factor and/or subfactor. Prior to the award of contract an agency or contractor shall require that the most responsive bidder provide supportive documentation verifying submitted bid information. Should the bidder be unable to substantiate the stated bid information, then the agency or contractor shall disqualify the bidder and require the next most responsive bidder to submit this information for their bid.

(1) If the agency or contractor has restricted bidding or limited competition to only qualified NAOBs in accordance with TTC [9.05.270](#), then the bid award shall be made to the certified, qualified NAOB with the highest total points awarded.

(2) If only one qualified NAOB submits a responsive bid or proposal, the agency or contractor shall proceed as follows:

(a) Accept the one responsive bid or proposal should the agency determine the NAOB responsive bid or proposal is at an unusually favorable price; or

(b) Negotiate a reasonable price with the single qualified NAOB should the agency determine that delays caused by re-advertising the work would subject the project to higher costs; or

(c) Reject all bids and re-advertise for bids or proposals without restricting or limiting competition to NAOBs. The agency will determine whether to restrict or limit competition to NAOBs. If bidding is not restricted to NAOBs then the agency or contractor shall comply with the requirements of subsection (3) of this section.

(3) If the agency or contractor has not restricted bidding or limited competition to only qualified NAOB firms in accordance with TTC [9.05.270](#), then the NAOB shall be given a bid preference. Such preference “Y” shall be given to certified, qualified NAOBs provided their bid is no more than “X” higher than the bid prices of the lowest responsive bid from any qualified non-NAOB bidder. “X” and “Y” shall be determined as follows:

When the lowest responsive bid is:

X = lesser of

Less than \$100,000	10% of that bid, or a maximum of \$9,000
At least \$100,000 but less than \$200,000	9% of that bid, or a maximum of \$16,000
At least \$200,000 but less than \$300,000	8% of that bid, or a maximum of \$21,500
At least \$300,000 but less than \$400,000	7% of that bid, or a maximum of \$25,000
At least \$400,000 but less than \$500,000	6% of that bid, or a maximum of \$27,000
At least \$500,000 but less than \$1 million	5% of that bid, or a maximum of \$45,000
At least \$1 million but less than \$2 million	4% of that bid, or a maximum of \$72,000
At least \$2 million but less than \$4 million	3% of that bid, or a maximum of \$108,000
At least \$4 million but less than \$7 million	2% of that bid, or a maximum of \$126,000
\$7 million or more	1.5% of the lowest bid, with no dollar limit

Provided the requirements for "X" have been met, "Y" shall be determined as follows:

When the lowest responsive bid is:

Y = additional points awarded to Bidder calculated as

Less than \$100,000	10% of the points awarded to Bidder for Price
At least \$100,000 but less than \$200,000	9% of the points awarded to Bidder for Price
At least \$200,000 but less than \$300,000	8% of the points awarded to Bidder for Price
At least \$300,000 but less than \$400,000	7% of the points awarded to Bidder for Price
At least \$400,000 but less than \$500,000	6% of the points awarded to Bidder for Price
At least \$500,000 but less than \$1 million	5% of the points awarded to Bidder for Price
At least \$1 million but less than \$2 million	4% of the points awarded to Bidder for Price

million	
At least \$2 million but less than \$4 million	3% of the points awarded to Bidder for Price
At least \$4 million but less than \$7 million	2% of the points awarded to Bidder for Price
\$7 million or more	1.5% of the points awarded to Bidder for Price

After the preference provisions have been added to the NAOBs' proposals the bid award shall be made to the bidder with the highest total points awarded, provided the proposals are within the projected budget amount.

If a qualified NAOB does not submit a responsive bid satisfying the preference provision requirements, then the bid award shall be made to the bidder with the highest total points awarded. [Res. 2012-257 § 3.10].

9.05.350 Requests for proposal (RFP).

Preference in the award of contracts and subcontracts that are let under a request for proposal (RFP) shall be provided as follows:

If the agency or contractor selects its contractor(s) or subcontractor(s) through a request for proposal (RFP) process and has restricted bidding or limited competition to only qualified NAOBs in accordance with TTC [9.05.270](#), then the contract award shall be made to the qualified NAOB with the highest total points awarded for their proposal based upon the rating system as established in the RFP after taking all proposal items into consideration.

If only one qualified NAOB submits a responsive bid or proposal the agency or contractor may re-advertise the RFP without restricting or limiting competition to the NAOBs.

The agency or contractor shall clearly define the particulars concerning the RFP, including the rating system that provides for assignment of points for the relative merits of submitted proposals. The RFP documents shall identify all rated factors, including price or costs, or any significant subfactors that will be considered in awarding the contract, and shall state the relative importance the agency or contractor places on each evaluation factor and/or subfactor.

(1) If the RFP invites responses from qualified non-NAOBs, the agency or contractor shall set aside a minimum of 15 percent of the total number of available rating points for the provision of Native preference in the award of contracts and subcontracts. The percentage or number of points set aside for preference and the method for allocating these points shall be clearly defined in the RFP.

(2) An agency shall require contractors responding to an RFP issued as a part of this section to use the same point system as stated in the RFP when considering procurement of subcontracted work. The contractor shall

set aside a minimum of 15 percent of the available rating points for the provision of Native preference in subcontracting. The RFP shall explain the criteria to be used by the contractor in evaluating proposals submitted by subcontractors. [Res. 2012-257 § 3.11].

9.05.360 Imminent need and emergency award process.

Tribal entities may contract for imminent need and/or emergency repair or work on a time and materials basis. An “imminent need and/or emergency” shall be defined as repair or work that must be started within 24 hours of the time the entity first learned of the need for the repair or work. Each entity shall maintain a list of qualified contractors to utilize under these circumstances, and shall make a good faith effort to rotate qualified contractors used in an imminent need and/or emergency circumstance. [Res. 2012-257 § 3.12].

9.05.370 Bid collusion.

Bid collusion is strictly prohibited for contracts awarded under this code and subject to penalty and enforcement by TERO. Bid collusion shall include, but is not limited, to price fixing, bid rigging, allocation schemes, or any other action or inaction that restricts competition or impacts project pricing. Furthermore, any practice involving or comparable to informing a competitor of the amount of the bid or offering them an opportunity to underbid will be considered bid collusion.

If a Tribal entity determines that a contractor has engaged in bid collusion, the entity shall disqualify the bid and refer the matter to TERO. The Tribal entity shall provide TERO with all documentation supporting its determination. If TERO makes a finding that bid collusion did occur, penalties may be issued accordingly.

TERO reserves the right to exercise all available equitable and legal remedies, including withholding of contract payment. Additionally, the following specific penalties in accordance with Article V of this chapter, Enforcement, shall be followed.

(1) Cancellation of the contract and debarment from contracting or decertification with the Tribes for up to one year, debarment for up to three years may be imposed for willful repeated violations. Individuals debarred from contracting may not bid or participate in any Tribal contracts as owners or key employees of other companies during the period of debarment. In the event a contractor is engaged in work on the Reservation or on Tribal funded projects off the Reservation at the time they are found to have engaged in bid collusion, the contracting agency in its discretion may require that the contractor complete their current contracted work, and during this period, the contractor shall be suspended from bidding and/or performing any other work. The debarment period imposed shall commence when the current work is completed.

(2) Any contractor found to have engaged in bid collusion may be liable for damages for any losses suffered by another firm as determined and assessed by the TERO Commission.

Any contractor disputing a TERO determination on bid collusion may appeal in accordance with the procedures in Article V of this chapter. [Res. 2014-446; Res. 2012-257 § 3.13].

Article IV. Certification of Native American Owned Business (NAOB)

9.05.380 TERO NAOB certification.

An applicant seeking to be TERO certified for preference in contracting shall submit a complete certification application, along with the following documents:

- (1) Documentation of membership by a U.S. Federally recognized Native American tribe, nation or band, including members of Federally recognized Alaskan Native villages, communities and corporations and proof of at least 51 percent Native ownership.
- (2) Business license certifications, business structure documents (sole proprietor, partnerships, incorporations, LLC), insurance and bonding capabilities.
- (3) TERO shall require all other necessary licensing documentation specific for the service provided as determined by TERO.
- (4) TERO reserves the right to exempt certain requirements if deemed not necessary for the type of service provided.
- (5) (Industry standards) portfolio that includes proof of the experience and staff expertise in the specific field listed, resume of jobs completed, and references.
- (6) Business plan that includes proof of the experience and staff expertise in the specific field, projected financials and references.
- (7) Any other documentation or pertinent information required by TERO. TERO shall have sole discretion in determining licensing requirements under this section.

For compliance and enforcement purposes, TERO shall require that each NAOB maintain and provide a Federal tax ID number to TERO and separate Tulalip business licenses for each separate business as required by TERO. TERO shall require each separate business to meet all NAOB certification requirements in this section.

(8) NAOB Ownership Requirements. The following factors shall be applied in identifying 100 percent Tulalip Tribal member owned business and minimum ownership requirements for the applicable certification categories. The purpose of this identification is for awarding contracts under TTC [9.05.110](#) and other restrictive bidding opportunities in this code.

(a) Percentage and Control.

- (i) One Hundred Percent Tulalip Tribal Member NAOB. Must be 100 percent owned by a Tulalip Tribal member or members. The owner(s) must exercise majority control of the business and be

substantially involved in the day-to-day management and operations.

(ii) NAOB. Must be 51 percent Native American owned and the majority owner must exercise majority control of the business and be substantially involved in the day-to-day management and operations.

(b) Value. The Native owner(s) must establish that they provide real value for their stated ownership interests by providing legal documents such as stock ownership, capital, assets, structure, management, control, financing and salary commensurate with the value of their ownership share.

(c) Profits. The Native owner(s) will receive a percentage of all profits equal to their ownership interest. Any provision that gives a non-Native owner a greater share of the profits, such as but not limited to management fees, equipment rental fees or bonuses, will result in decertification. Salary scales are subject to review by TERO to ensure the relative salaries being paid to Native and non-Native owners are consistent with the skills of the parties and are not being used to circumvent the requirements of this code.

(d) Technical Qualifications. The NAOB will be required to submit sufficient documentation to verify that it has the technical and administrative qualifications to be certified in the specific category requested including the Native owner(s) having the skill and expertise to perform the work.

All NAOBs shall report any changes of ownership or control status within 14 days after such changes have occurred. If at any time Native American ownership drops below 51 percent TERO reserves the right to decertify the company.

The TERO Department shall review the status of all certified NAOBs on an annual basis. Each NAOB, other than a Tulalip Tribal owned NAOB, shall update their information annually. Failure to provide information pursuant to these requirements shall constitute grounds to be decertified and taken off the NAOB registry. [Res. 2019-297; Res. 2012-528; Res. 2012-257 § 4.1].

9.05.390 Appeal of denied certification.

Denial of NAOB certification by the TERO Department may be appealed to the TERO Commission. The written appeal must be received by TERO within 14 days of the denial notice. The Commission's decision is final and cannot be further appealed.

A firm that has been denied certification may not re-apply for a period of time as determined by the TERO Commission on a case-by-case basis. [Res. 2014-446; Res. 2012-257 § 4.2].

9.05.400 Brokers, vendors, suppliers and distributors.

In order to obtain certification under this code, brokers, vendors, suppliers and distributors must own, operate or maintain a store, warehouse, or other establishment in which the materials, supplies, articles or equipment being provided are kept in stock and regularly sold or leased to the public in the usual course of business. Relevant documentation, as determined by TERO, shall be provided to TERO upon request. This requirement shall not

apply where the applicant demonstrates proof that it is not customary and usual in the particular business industry to keep the materials, supplies, articles or equipment in stock. [Res. 2012-257 § 4.3].

9.05.410 Joint ventures.

Joint venture documents between certified NAOBs will be submitted and processed through the TERO Department for review. Joint ventures between a NAOB and a non-NAOB will be certified on a project by project basis if the NAOB can successfully demonstrate the following:

- (1) The Native American ownership and control complies with the requirements as defined in this section.
- (2) The NAOB has entered into the joint venture with the non-NAOB to provide limited backup capabilities such as bonding, specialized expertise, or capital.
- (3) The non-NAOB will mentor the NAOB to increase the expertise and value of the NAOB.

No joint venture shall qualify for preference if the Native American ownership in the joint venture is less than 51 percent or fails to demonstrate the majority control of the business at any time; which may result in a violation or decertification. The owners must have prior experience, training, occupational ties or sufficient knowledge in the business that the joint venture is engaged in such that they are qualified to serve in the senior level positions. [Res. 2012-257 § 4.4].

9.05.420 Decertification.

A NAOB is subject to decertification if the business engaged in prohibited activities or has changed its ownership and control so that it no longer meets the requirements for certification. Failure to notify TERO of changes in ownership, control, or operations shall also be grounds for decertification.

The TERO Commission may review and recommend corrective action or training for a NAOB with a multiple nonperformance contract issue or multiple violations of the TERO Code. If the NAOB refuses or does not comply with the Commission directive they may be decertified. [Res. 2012-257 § 4.5].

Article V. Enforcement

9.05.430 Due process.

All persons, agencies, departments, entities, and contractors shall have the rights to due process through a fair non-biased process. [Res. 2012-257 § 5.1].

9.05.440 Complaint.

(1) TERO Complaint. An aggrieved party ("complainant") may file a written signed complaint stating the basis for an alleged violation of this code. The complaint must include a detailed account of the facts with supporting documentation and the remedy that they are seeking. The complaint must be filed at the TERO office within 14 days from the date of the last action or omission upon which the complaint is based. The TERO office shall

serve the complaint on the respondent.

(2) Contracting Complaint. A contractor aggrieved by a decision of a contracting agency (“complainant”) must first file a written signed complaint with the contracting agency stating the basis of the alleged violation of this code. The complaint must include a detailed account of the facts with supporting documentation and the remedy that they are seeking. The complaint must be filed with the contracting agency no later than 14 days from the date of the action or omission upon which the complaint is based.

(3) Contracting Agencies Complaint Responsibilities. Upon receipt of a complaint under this section, the contracting agency shall:

(a) Immediately initial and date when a complaint is received;

(b) Communicate with the complainant within seven days to attempt to resolve the issue;

(c) The agency or contractor shall take appropriate steps to remedy any noncompliance issues or violations of the code immediately upon notification;

(d) If the matter is not resolved within 10 days of the initial complaint, the complainant may file a written complaint with TERO (see subsection (1) of this section) and shall serve the document on the contracting agency. [Res. 2014-446; Res. 2012-257 § 5.2].

9.05.450 TERO jurisdiction determination.

Upon receipt of a complaint, TERO shall conduct a preliminary review to determine if TERO has jurisdiction over the complaint.

If the TERO Department makes a determination that the complaint does not allege a violation of this code, the complaint shall be immediately dismissed, and/or referred to the proper department or agency. The complainant may appeal and seek review of this jurisdictional determination by the Commission by filing a written request for review within 14 days of the date of the dismissal. The complainant shall state in writing the nature of the complaint and the reasons they believe TERO has jurisdiction. The Commission shall review the file at the next scheduled TERO Commission meeting at which the complainant may attend and be heard on the issue of jurisdiction. The Commission will make a jurisdiction determination. The decision of the Commission is final and not subject to further appeal. [Res. 2012-257 § 5.3].

9.05.460 Investigations.

The TERO staff shall have full investigative authority as deemed necessary to determine whether a violation of any provision of this code has occurred or to aid in prescribing rules, regulations, and guidelines hereunder.

All reported incidents shall be investigated under the following guidelines:

(1) All information shall be kept confidential to the fullest extent possible, unless disclosure is required for further investigation, or during a hearing or appeal. However, TERO shall not allow the goal of confidentiality to be a deterrent to an effective investigation.

(2) TERO will not allow retaliation against any parties that may be included in the investigation or complaint process.

(3) An employer may not be held liable for such acts of its employees, if the employer is able to establish that they took immediate and appropriate corrective action.

If a covered employer or contractor refuses to permit TERO staff from entering onto business premises during business hours or from reasonably inspecting or copying documents, the Director may impose a violation with fines.

If the TERO Director is forced to seek enforcement of a Commission subpoena in Tribal Court, the Court shall order, in addition to the penalties authorized by this code, the assessment of attorney's fees and costs against the party found in violation of the Commission subpoena. [Res. 2012-257 § 5.4].

9.05.470 Complaint process and determination.

Upon determination that TERO has jurisdiction over the matter, TERO staff will meet with the complainant within seven days of receiving the complaint. TERO shall attempt to remedy the issue through mediation with both parties within 10 days of first receipt of the complaint. If the parties are unable to resolve the dispute through mediation, TERO shall begin a formal investigation within seven days of the close of mediation. During the investigation, TERO shall review all pertinent documentation and any additional information, if any, and shall gather written statements from both parties. The complainant has the burden to prove that a violation of this code did in fact occur. Both parties shall also have the responsibility to provide all relevant documentation. TERO has 21 days to complete the investigation.

Within seven days of the completion of the investigation, TERO shall notify the complainant and responding party in writing of the findings and the basis for such findings, and remedies ordered.

If TERO finds insufficient evidence to establish that a violation occurred, the file shall be closed and notice of closure shall be provided to both parties. [Res. 2014-446; Res. 2012-257 § 5.5].

9.05.480 Penalties and remedies.

TERO shall have the authority to issue citations with a warning, assess penalties and other remedies. Upon a finding of a violation of this code, under the direction of the TERO Director, the TERO staff shall have the authority to assess the following penalties and remedies:

(1) Impose a remedial civil penalty not to exceed \$5,000 per violation;

- (2) Order any employer to remedy the situation;
- (3) Issue a stop work or removal order;
- (4) Order the payment of back pay and/or punitive damages;
- (5) Order the payment of documented lost profits;
- (6) Any other penalties authorized under specific sections of this code;
- (7) Withhold payment until the violation is remedied;
- (8) Suspension or termination of the contract;
- (9) Debarment from contracting with the Tribes for up to one year; debarment for up to three years may be imposed for willful repeated violations. Individuals debarred from contracting may not bid or participate in any Tribal contracts as owners or employees of other companies during the period of debarment;
- (10) Denial of certification;
- (11) Suspension of certification; and/or
- (12) Decertification.

If the Director believes that immediate action is necessary to prevent irreparable harm resulting from an alleged violation of this code, the Director may request the Commission to issue a temporary order for immediate interim injunctive relief not to exceed 14 days.

Penalties shall be imposed by TERO with a written notice to the person or business. The TERO orders or penalties may be appealed to the TERO Commission in accordance with TTC [9.05.520](#).

All monetary penalties shall be paid within 30 days from date of the citation. If a party fails to file a timely appeal or comply with a TERO order, TERO may petition the Tribal Court for an order of enforcement.

In cases involving a challenge to employment or contracting decisions or actions by the Tribes, Tribal entities or Tribal officials acting within the scope of their authority, remedies shall be limited to nonmonetary injunctive relief and payment of documented lost wages or lost profits. [Res. 2014-446; Res. 2012-257 § 5.6].

9.05.490 Enforcement violation.

The Director shall have authority to seek enforcement in Tribal Court, if necessary. The Tribal court shall have jurisdiction over proceedings brought by the Director to enforce TERO orders, and may assess attorney fees and costs, and such other sanctions in addition to those contained in the order, that the court deems just and

reasonable. [Res. 2014-446; Res. 2012-257 § 5.7].

9.05.500 Property seizure provisions.

If at any stage in the fee assessment process there is good reason to believe there is a danger the party will remove itself or its property from the jurisdiction of the Tulalip Tribal Court, and TERO will not be able to collect monetary damages or TERO fees that are owed, the Director may petition the Court pursuant to the Court's rules and procedures to attach property to secure compliance or for such other relief as is necessary and appropriate to protect the rights of affected parties.

If a party has failed to pay monetary damages imposed, or fails to comply with any order of the Commission or the Court, the Director may petition the Court to hold such party in default. The Tribal Court shall have authority to authorize the Tribal Police to seize property of the defaulting party to satisfy obligations under a valid TERO order. [Res. 2012-257 § 5.8].

9.05.510 Appeals to TERO Commission.

Any party that is dissatisfied or aggrieved by a decision from TERO may file a written appeal to the Commission within 14 days from the date of receipt of the decision. The appeal notice shall state the reasons for the appeal and shall have a copy of the decision or order attached. If the party fails to respond within the 14 days they shall lose all rights to challenge or appeal, and the decision or order shall be final and be enforced immediately.

The Commission shall review the files and determine if they will hold a hearing on the case, or if they can decide the case based on the written materials submitted by the TERO and the complainant. If the Commission determines that a hearing is unnecessary, the Commission shall issue an order stating the basis for its decision. A hearing shall be afforded in all cases when a timely appeal is filed by an individual or entity challenging a TERO noncompliance order imposing sanctions, or penalties. [Res. 2012-257 § 5.9].

9.05.520 Appeal of noncompliance by TERO.

Any party that believes an action by the TERO staff is in excess of the authority granted under this code may file a complaint with the Commission. The complaint must be filed no later than 14 days from the date of the action upon which the complaint is based. The complainant shall have the burden of proof. [Res. 2012-257 § 5.10].

9.05.530 Fee enforcement and collection.

If a required fee is not paid within one month of receipt of the invoice a citation shall be issued. If necessary a TERO Commission hearing shall be scheduled, and the TERO Department may issue a stop work or payment order. Interest will accrue from 60 days past the due date at a rate of 12 percent annually. [Res. 2012-257 § 5.11].

9.05.540 Pre-hearing process.

(1) Review of TERO Files. The responding party shall have the right to review the case file of the TERO Department by scheduling a visit during regular working hours at any point after receiving notice of a hearing.

However, TERO shall have the right to excise proprietary information, the identity of confidential informants or confidential information from the file which will not be relied upon in the presentation of TERO's case.

(2) Continuance. Any party can request a continuance of a TERO hearing. The party must show good cause for continuing the hearing. [Res. 2012-257 § 5.12].

9.05.550 Commission hearing.

When there is a TERO determination that expeditious action is required to preserve the rights of the individuals, a TERO hearing will be scheduled as soon as possible. Commission hearings will be open, unless either party can show good cause to close the procedures to the public.

The roles and responsibilities of the parties are, but not limited to, as listed below:

(1) Burden of Proof. Parties aggrieved by a TERO order shall have the burden of proof by a preponderance of the evidence that TERO was incorrect in finding a violation of this code or the regulations adopted under it, or that any proposed penalty, sanction, award, or required action ordered by TERO is incorrect or unwarranted.

(2) Presiding Officer. As presiding official, the Chairperson of the Commission will control the proceedings and shall take whatever action is necessary to ensure an equitable, orderly, and expeditious hearing.

(3) TERO Representation. TERO staff shall present the requirements of the TERO Code in all Commission hearings even if the hearing was initiated by a complaint filed by a private individual.

(4) Respondent. The respondent shall be present for the entire hearing to represent themselves.

(5) Failure to Appear. If either party fails to appear, the Commission will review all pertinent information and make their decision with the testimony presented.

(6) Commission Quorum. In the absence of a quorum at a Commission hearing, a case filed by a complainant will be postponed until a later date. In the case of a citation appeal all charges shall be dismissed.

(7) Prohibition against Reprisals. All parties shall have a right to testify, without fear of reprisal or retaliation. [Res. 2014-446; Res. 2012-257 § 5.13].

9.05.560 Commission decision.

The Commission findings shall be in writing and issued within 14 days after the hearing. The decision shall be effective and enforceable immediately.

(1) Penalties and Remedies Authorized. If the action appealed is from a noncompliance order or decision, the Commission may uphold the TERO order or decision, overturn the TERO order or decision, or reduce the TERO recommended penalties. The TERO Commission shall not have the authority to increase the total amount of

monetary penalties or damages issued under the TERO order except for justified adjustments in back pay or lost profit amounts. If the appeal is from a TERO finding that no violation occurred and the TERO Commission reverses the TERO decision and finds a violation did occur, the Commission shall have authority to issue any remedies that the TERO Director is authorized to issue under TTC [9.05.490](#). [Res. 2012-257 § 5.14].

9.05.570 Appeals to Tulalip Tribal Court.

Any party that is dissatisfied or aggrieved by a final decision of the TERO Commission may file an appeal to the Tulalip Tribal Court. The appeal shall be taken by filing a written notice of appeal with the Tribal Court and attaching the TERO Commission decision that is being appealed. The appeal must be filed within 10 days of the date of issuance of the TERO Commission decision. The notice of appeal shall be served on all parties on or before the date due for filing the appeal.

All appeals to Tribal Court shall be decided based on the record of the TERO Commission hearing or decision. Upon filing of an appeal, the TERO Commission shall transfer the Commission hearing or decision record to the Tribal Court. The appellant shall pay the costs of copying the TERO Commission record. The appellant shall have the burden of proof on appeal. The jurisdiction of the Tribal Court in appeals of TERO Commission decisions shall be limited to reversing the TERO Commission and directing a new Commission hearing with appropriate instructions where the TERO Commission decision is found to be arbitrary, capricious or clearly erroneous. There shall be no further appeal from a decision of the Tulalip Tribal Court. [Res. 2012-257 § 5.15].

9.05.580 Legal representation.

If any party retains an attorney they must give a 14-day notice to TERO of their intent to have legal representation. At that time TERO will request the Reservation Attorney to represent TERO in all further matters. [Res. 2012-257 § 5.16].

9.05.590 Sovereign immunity.

Nothing in this code is intended to waive or alter the sovereign immunity of the Tribes, Tribal departments, entities or employees acting in their official capacities. [Res. 2012-257 § 5.17].

**Chapter 9.10
HUMAN RESOURCES**

(Repealed by Res. 2014-378)

**Chapter 9.15
WORKERS' COMPENSATION**

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Article I. General Provisions

9.15.010 Purpose.

This chapter is intended to establish procedures to administer and define the Tribes' self-administered workers' compensation program, in a manner that is fair to both employees and the Tribes. All work-related injuries and deaths sustained by employees of the Tulalip Tribes and its enterprises are withdrawn from private controversy.

To guarantee relief for employees killed or injured on the job and their families, regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, the following plan is adopted, which shall be known as the Tulalip Tribes workers' compensation plan. The plan shall serve as the exclusive remedy for the injured employee, except as otherwise provided herein, and to that end all civil causes of action for such personal injuries or deaths and all jurisdictions of the Courts are hereby abolished. [Ord. 108 § 108.1.1, 10-6-2006 (Res. 2006-312)].

9.15.020 Scope.

This chapter shall apply to the Tulalip Tribes, every entity of the Tribes that is an employer, and to all employees of the Tribes and its entities. For purposes of this chapter, "every entity of the Tribes" includes every political subdivision, subordinate organization, economic enterprise, commission, and authority organized under Tribal law, including but not limited to the Tulalip Utility Authority and the Tulalip Gaming Organization. [Ord. 108 § 108.1.2, 10-6-2006 (Res. 2006-312)].

9.15.030 Sovereign immunity.

Except as expressly provided in this chapter, the Tulalip Tribes shall be immune from all liability for compensation for injuries sustained by Tribal employees arising out of and in the course of their employment.

(1) Limited Waiver for Claims Under This Chapter. For those claims outlined herein, this chapter contains a strictly limited waiver for suit only and solely in Tribal Court. This limited waiver shall extend only to Tribal employees and other persons specifically entitled to benefits under this chapter, and shall not be construed to apply or extend to actions by any other party or actions beyond the scope of this chapter.

(2) No Modification to Existing Law. Except as specifically provided in this chapter, the provisions herein shall not be construed as modifying or restricting the immunity of the Tribes from tort liability as it existed on the date of enactment. Except as to claims that are wholly covered by the Tulalip Tribes workers' compensation plan, nothing in this chapter, or in any State law incorporated herein by reference, shall in any way waive or diminish the sovereign immunity of the Tulalip Tribes. [Ord. 108 § 108.1.3, 10-6-2006 (Res. 2006-312)].

9.15.040 Reporting obligations.

Any employee who has sustained an injury in the course of their employment shall immediately report the injury to the employer in accordance with TTC [9.15.330](#). In the case of an occupational disease, the employee shall report the condition to the employer immediately after the employee learns of, or reasonably should have been aware of, the connection between their employment and the occupational disease. All reports of injury and occupational disease shall be made in writing, in accordance with TTC [9.15.330](#). [Ord. 108 § 108.1.4, 10-6-2006 (Res. 2006-312)].

9.15.050 Exclusive remedy.

The right to receive compensation pursuant to this chapter for injuries sustained by a covered worker shall be the exclusive remedy against the Tribes and employees thereof, except as otherwise provided herein, and to that

end, all civil causes of action against the Tribes and its employees for such personal injuries or death, all jurisdictions of the Courts, and all claims for contribution or indemnity asserted by third persons from whom damages are sought on account of such injuries, are hereby abolished. [Ord. 108 § 108.1.5, 10-6-2006 (Res. 2006-312)].

9.15.060 Administration.

(1) Workers' Compensation Committee.

(a) Membership. There is hereby established a Tulalip Workers' Compensation Committee, whose responsibility it shall be to administer the plan and to act as the first level of review in the case of a disputed claim. The Committee shall be composed of six members, one of which shall serve as Chairperson of the Committee. The Committee shall include one representative from the Tribal government, one representative from Quil Ceda Village, one representative from the Legal Department, one representative from the Finance Department, and two representatives from the Tulalip Gaming and Hospitality Organization. The Committee Chairperson and members shall be appointed by the Tulalip Board of Directors for terms of three years. Vacancies occurring due to resignation, removal, or death shall also be filled by this method of appointment. The Board of Directors may remove any member of the Committee for cause. A majority of the Committee members shall constitute a quorum, and a majority of those members present and constituting a quorum must concur in order for any decision of the Committee to be valid.

(b) Functions, Duties, and Authority. The Workers' Compensation Committee shall:

(i) Contract with a professional claims administration firm to handle the duties of the Claims Administrator, as provided in subsection (2) of this section. The Committee may review and approve key actions taken by the Claims Administrator to ensure compliance with this chapter.

(ii) Establish and promulgate rules governing the administration of this chapter.

(iii) Purchase stop loss insurance covering all claims arising under this chapter in excess of those covered by the Tribal fund.

(iv) Hear protests from decisions of the Claims Administrator as provided in Article V of this chapter.

(v) Consult with outside physicians having medical expertise related to the injury, when necessary.

(vi) Manage the Tribal fund as provided in Article VI of this chapter.

(vii) Submit annual reports to the Board of Directors as provided in Article VI of this chapter.

(2) Claims Administrator.

- (a) Appointment. The Workers' Compensation Committee shall contract with a third party administrator to serve as the Claims Administrator.
- (b) Functions, Duties, and Authority. The Claims Administrator shall:
- (i) Supervise medical, surgical, and hospital treatment for injured employees to ensure that it meets the required standards of modern medicine at the lowest possible cost.
 - (ii) Open claims, verify time loss and other aspects of disability, handle disbursement of funds for employees and beneficiaries on Tribal checks drawn on the Tribal fund, make claim evaluations and determinations with respect to each claim made.
 - (iii) Compile statistics as will afford the Workers' Compensation Committee reliable information upon which to base its decisions.
 - (iv) Make, and from time to time update, a fee chart of maximum charges to be made by any physician, surgeon, hospital, druggist, or other agency or person rendering services to the injured employee.
 - (v) Make a record of the commencement of every disability and termination thereof, and when bills are rendered for the care and treatment of injured employees, approve and pay those which conform to the promulgated rules, regulations, and practices of the Workers' Compensation Committee, and reject any bill or item thereof incurred in violation of the provisions of this chapter or the rules and regulations promulgated under it. [Res. 2010-41; Ord. 108 § 108.1.6, 10-6-2006 (Res. 2006-312)].

9.15.070 Definitions.

- (1) "Accident" means a specific occurrence, neither expected nor intended, which causes bodily injury to an employee.
- (2) "Accredited school" means a school approved by the Tribes or the State, or a school regulated, licensed, or recognized by the Tribes as having approved course content.
- (3) "Average monthly wage" means the average wage in the State of Washington, calculated by determining the total amount of wages paid by all employers in the State and dividing by 12 to derive the monthly average. RCW 51.08.018 defines "average monthly wage" as it is determined under RCW 50.04.355.
- (4) "Award" means the monetary compensation benefits that the Claims Administrator or Committee determines an injured employee is entitled to.
- (5) "Beneficiary" means a spouse, child, or dependent of an employee in whom shall vest a right to receive

compensation under this plan.

(6) "Board of Directors" means the Board of Directors of the Tulalip Tribes.

(7) "Child" includes a posthumous child, a child legally adopted prior to the injury, a child toward whom the employee stands in the place of a parent, an illegitimate child, and a stepchild, if such stepchild was, at the time of the injury, a member of the employee's family and substantially dependent upon the employee for support. A dependent physically or mentally incapacitated child is a child, for purposes of benefits, regardless of age, so long as the child was physically or mentally incapacitated at the time of the injury and thereafter remains incapacitated and substantially dependent on the employee for support. A child does not include any married children unless they are dependents. A person might also qualify as a child according to Tribal custom as determined by the Workers' Compensation Committee.

(8) "Claim" means a written request for compensation from an employee or someone on the employee's behalf, or any compensable injury of which the employer has notice or knowledge.

(9) "Claims Administrator" means the third party administrator appointed by the Tribes.

(10) "Committee" means the Workers' Compensation Committee.

(11) "Compensation" means the compensation and benefits provided under this chapter and includes every benefit or payment conferred by this chapter upon an injured employee.

(12) "Compromise" means an agreement between parties to settle any liability that is claimed to exist under this chapter on account of injury or death.

(13) "Dependent" means any of the following named relatives of an employee whose death results from an injury and who leaves no surviving widow, widower, or child under the age of 18 years: father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half-sister, half-brother, niece, nephew, or any other extended family member as approved by the Workers' Compensation Committee, who at the time of the injury is actually and necessarily dependent in whole or in part upon the earnings of the employee.

(14) "Disability" means incapacity because of injury to earn wages in the same or any other employment.

(15) "Earning power" means actual wages. Loss of earning power is calculated with reference to an individual's actual wages at the time of an injury compared to the employee's wages, at any kind of work, after the injury.

(16) "Employee" means any person employed by the Tribes and its entities entitled to benefits under the provisions of Chapter [9.10](#) TTC, Human Resources, and authorized variances, including, but not limited to, the Tulalip Police Department Manual, Quil Ceda Village and Tulalip Gaming Agency human resources ordinances

and manuals. "Employee" shall not be construed to include a consultant or contract employee unless specifically provided for in their written contract.

(17) "Employer" means the Tulalip Tribes and its enterprises.

(18) "Employer representative" means that person designated by the employer to receive injury reports and updates.

(19) "Injury" means the physical conditions resulting from a sudden and tangible happening of a traumatic nature, producing an immediate or prompt result. The term also encompasses the contraction of an occupational disease. (See Sault Ste. Marie and old Tulalip codes.)

(20) "Legal custody" means having been legally vested with the power and responsibility to care for a child, and/or the child's property, by a court of competent jurisdiction.

(21) "Light duty" means any assignment, other than the employee's usual job, designed to help the employee return to some sort of gainful employment.

(22) "Maximum medical improvement" means an injured employee has reached a treatment plateau from which it is reasonably believed the condition will not change. It can mean either that the employee has fully recovered from the injury or that the employee's medical condition has stabilized to the point that, based on the medical evidence, no material change can be expected.

(23) "Occupational disease" means such disease or infection as arises naturally and proximately out of employment.

(24) "Permanent disability" means that maximum medical improvement has been reached and there is still a loss of use or function. Permanent disabilities can be partial, where there is still some use or function, or total, where the employee is unable to return to any gainful employment.

(25) "Preexisting medical condition" means any injury, disease, congenital abnormality, or medical condition that contributes or predisposes an employee to disability or the need for treatment and that precedes the injury or occupational disease that forms the basis for a claim under this chapter.

(26) "Spouse" means a person who is married to an employee under the law or customs recognized by the Tulalip Tribes. "Spouse" does not include a person who is living separately and apart from an employee and who has filed, in Court, a petition for legal separation or dissolution of marriage.

(27) "Temporary disability" means a physical incapacity that is expected to be completely curable or improved with proper medical attention. Temporary disabilities can be partial, where the employee can still perform some work though not necessarily their usual job, or total, where the employee is unable to perform at any gainful

employment.

(28) "Travel expenses" means the standard GSA reimbursement rate for mileage or expenses incurred utilizing public transportation. It does not include money spent on gas or costs of a rental car, unless specifically approved by the Claims Administrator.

(29) "Treating physician" means a person licensed to independently practice one or more of the following professions: medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; and optometry. A treating physician actively treats an injured or ill worker.

(30) "Tribal Court" means the Tulalip Tribal Court.

(31) "Tribal fund" means the workers' compensation fund established by the Tribes.

(32) "Tribes" means the Tulalip Tribes.

(33) "Willfully and deliberately" means intentionally, knowingly, or voluntarily acting in a particular manner. It is distinguished from accidental actions. [Res. 2010-41; Ord. 108 § 108.1.7, 10-6-2006 (Res. 2006-312)].

Article II. Coverage

9.15.080 Persons covered.

(1) Injured/Diseased Employees and Beneficiaries. Each employee injured or killed due to an accident or who has suffered an occupational disease in the course of his or her employment, or such employee's dependents or beneficiaries, shall receive compensation in accordance with this chapter, except as otherwise provided herein. Such payment shall be in lieu of any and all causes of action whatsoever against the Tribes.

(2) Special Rules for Noncustodial Situations. If an injured employee, or the surviving spouse of a deceased employee, does not have the legal custody of a dependent child on whose account payments are required to be made under this chapter, such payment shall be made to the person having legal custody of such child, but only for the periods of time after the Workers' Compensation Committee has been notified of the fact of such legal custody. It shall be the duty of any such person receiving payments because of legal custody of any child to immediately notify the Workers' Compensation Committee of any change in such legal custody. [Ord. 108 § 108.2.1, 10-6-2006 (Res. 2006-312)].

9.15.090 Persons not covered.

(1) Intentional Injuries. If injury or death results to an employee from the deliberate intention of the employee to bring about such injury or death, neither the employee nor the widow, widower, child, or dependent of the employee shall receive any compensation whatsoever under this chapter.

(2) Institutionalized Child. A physically or mentally incapacitated child, while being supported and cared for in a

Tribal, State, or Federal institution, shall not be a dependent or beneficiary or be counted as a beneficiary in fixing the amount of any compensation to be received under this chapter.

(3) Double Death Benefits for Children Precluded. A child may receive payments as either the natural child of a deceased employee, or the stepchild of another deceased employee, but shall not receive double payments as both.

(4) Children Who Become 18 Years of Age. Any payments to or on account of a minor dependent or beneficiary of a deceased or temporarily or totally permanently disabled worker shall terminate when any such child reaches the age of 18 years, unless such child is a dependent physically or mentally incapacitated child or is under 23 years of age and enrolled as a full-time student in an accredited school. Payments to students who have attained age 18 shall be made directly to the student. Payments to or on account of any dependent physically or mentally incapacitated child over the age of 18 years shall continue in the amount previously paid on the account of such child until they shall cease to be dependent. When enrolled as a full-time student in an accredited school, payments to children who thereafter reach age 18 shall continue in the amount previously paid on the account of such student until they reach age 23 or cease to be enrolled full-time, whichever comes first. Where the employee sustains an injury or dies when any of his or her offspring are over the age of 18 years and either a dependent physically or mentally incapacitated child or enrolled full-time in an accredited school and are under age 23, the payment to or on account of such beneficiary shall be made as herein provided.

(5) Minor Children Not Dependent. Minor children of the employee who are not dependents of the employee as defined in this chapter are not covered by these provisions. [Ord. 108 § 108.2.2, 10-6-2006 (Res. 2006-312)].

9.15.100 Employees with preexisting medical conditions.

If it is determined that an employee had, at the time of sustaining an injury and/or occupational disease, a preexisting medical condition, it shall be considered as follows:

(1) Compensability. If it is determined that an injured employee had, at the time of their injury, a preexisting medical condition and that such medical condition delays or prevents complete recovery from the injury, it shall be ascertained, as nearly as possible, the period over which the injury would have caused disability were it not for the preexisting medical condition.

(2) Permanent Partial Disability. In making a claim closing determination, it shall be ascertained, as nearly as possible, the extent of impairment which the injury/disease would have caused were it not for the preexisting condition. Disability benefits shall be awarded only for the portion of disability related to the work injury or disease. [Ord. 108 § 108.2.3, 10-6-2006 (Res. 2006-312)].

9.15.110 Acts outside course or scope of employment.

(1) Employees determined to be acting outside of the course or scope of their employment shall be afforded no coverage, compensation, or benefits under this chapter.

(2) An employee injury occurring while the employee is commuting to or from work is not within the due course or scope of employment unless such travel is in direct connection with the employee's work and was specifically requested by the employer.

(3) Liability for compensation shall not exist against the Tribes for any injury sustained by an employee if the injury is caused by any of the following:

(a) Where the injury is caused by the intoxication, by any intoxicating substance or the unlawful use of a controlled substance, of the injured employee;

(b) Where the injury arises out of an altercation in which the injured employee is the initial physical aggressor;

(c) Where the injury is caused by the commission of a criminal act by the injured employee and the employee is found to have committed such act beyond a reasonable doubt by a court of competent jurisdiction;

(d) Where the injury arises out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting a part of the employee's work-related duties, including, but not limited to, activities sponsored by the employer, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment; or

(e) Where the employee has willfully and deliberately caused his or her own death.

(4) Where the employee's use of an intoxicating substance or unlawful use of a controlled substance at the time of injury has been established, there is a rebuttable presumption that the injury was caused by the intoxication. [Ord. 108 § 108.2.4, 10-6-2006 (Res. 2006-312)].

9.15.120 Incarcerated employees.

Any employee receiving benefits under this plan who is subsequently confined in, or who subsequently becomes eligible therefor while confined in, any penal institution under conviction and sentence shall have all payments of such compensation canceled during the period of confinement. After discharge from the institution, payment of benefits henceforth due shall be paid; however, no back pay for the time spent incarcerated shall be awarded to the employee. If the incarcerated employee has any beneficiaries during such confinement period, they shall be paid directly the monthly benefits which would have been paid to them had the employee not been so confined. No payment shall be made to or on behalf of the incarcerated employee during confinement. Any lump sum benefits to which the employee would otherwise be entitled but for the provisions of this section shall be paid on a monthly basis to the beneficiaries. [Ord. 108 § 108.2.5, 10-6-2006 (Res. 2006-312)].

Article III. Compensation and Medical Benefits

9.15.130 Medical services and supplies.

(1) Upon the occurrence of any injury to an employee entitled to compensation under the provisions of this chapter, the employee shall receive proper and necessary medical and surgical services at the hands of a physician and proper and necessary hospital care and services during the period of disability from the injury, as limited herein:

(a) In the case of temporary total disability, not to extend beyond the date of claim closure.

(b) In the case of permanent partial disability, medical and surgical treatment may be continued if, and so long as, the Claims Administrator deems such continuation necessary to reach maximum medical improvement.

(c) In the case of a permanent total disability, not to extend beyond the date on which a lump sum settlement is made to the employee or after they are placed upon the permanent pension roll. The Claims Administrator may authorize continued medical and surgical treatment for conditions previously accepted by the employer when they deem it necessary.

(d) Any change of physician after the initial visit for a particular injury under this chapter must be approved by the Claims Administrator, except in the case of a physician-to-physician referral.

(e) The physician must be a medical doctor licensed to practice medicine in the State of Washington. Payment for treatment of the employee by chiropractors, physical therapists, nurse practitioners, and medical doctors licensed to practice in a state other than Washington must be approved by the Claims Administrator.

(2) When injury to any employee is so serious as to require transportation from the place of injury to a place of treatment, the employer shall furnish transportation to the nearest place of proper treatment. [Ord. 108 § 108.3.1, 10-6-2006 (Res. 2006-312)].

9.15.140 Artificial substitutes and mechanical aids.

(1) Every employee whose injury results in the loss of one or more limbs or eyes shall be provided with proper artificial substitutes.

(2) Every employee who suffers an injury to an eye producing an error of refraction shall be once provided proper, and properly equipped, lenses to correct such error of refraction and the employee's disability rating shall be based upon the loss of sight before correction.

(3) Every employee whose hearing aid or eyeglasses or lenses are damaged, destroyed, or lost as a result of an industrial accident shall have the same restored or replaced with substitutes comparable to those lost or damaged.

(4) Every employee whose accident results in damage to or destruction of an artificial limb, eye, or tooth shall have the same repaired or replaced.

(5) All medical appliances necessary in the treatment of an injured employee, such as braces, belts, casts, and crutches, shall be provided. All mechanical appliances required as permanent equipment after treatment has been completed shall continue to be provided or replaced without regard to the date of the injury or date treatment was completed. [Ord. 108 § 108.3.2, 10-6-2006 (Res. 2006-312)].

9.15.150 Modifications to residence or vehicle.

(1) Residence. Whenever, in the sole discretion of the Workers' Compensation Committee, it is reasonable and necessary to provide residence modifications to meet the needs and requirements of the employee who has sustained catastrophic injury, the employer may be ordered to pay an amount not to exceed the average annual wage for one year as determined under RCW 51.08.018 toward the cost of the modifications or construction. Such payment shall only be made for the modification or construction of a residence in which the injured employee resides. Only one residence of any employee may be modified or constructed under this subsection, although the Workers' Compensation Committee may order more than one payment for any one home up to the maximum amount permitted herein.

(2) Vehicle. Whenever in the sole discretion of the Workers' Compensation Committee it is reasonable and necessary to modify a vehicle owned by an employee who has become an amputee or paralyzed because of an injury, the Committee may order up to 50 percent of the average annual wage for one year as calculated in RCW 51.08.018 to be paid toward the costs thereof. [Ord. 108 § 108.3.3, 10-6-2006 (Res. 2006-312)].

9.15.160 Employer liability for medical services and supplies.

(1) An employee whose injury is of such a short duration as to bring them within the time limit provisions of [TTC 9.15.190](#) shall nevertheless receive during the omitted period medical, surgical, and hospital care and service and transportation under the provisions of this chapter.

(2) The liability of the employer for medical treatment as provided herein is not affected by the fact that the employee was injured through fault or negligence of a third party not in the same employ, or that suit has been brought against that third party. The employer shall, however, have a cause of action against the third party to recover any amounts paid by the employer pursuant to the provisions of this chapter. [Ord. 108 § 108.3.4, 10-6-2006 (Res. 2006-312)].

9.15.170 Time loss.

(1) If an employee is unable to work at their regular, or any, employment, because of their injuries, they will be paid a portion of their regular wages as time loss compensation, as calculated in the temporary or permanent disabilities sections. If a temporarily disabled worker does not fully recover but instead reaches a static impaired condition, the worker's classification is changed from temporarily disabled to permanently disabled and the

worker receives either a pension or a permanent partial disability award.

(2) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the employee will receive:

(a) Payments equal to 80 percent of the actual difference between the worker's present wages and their earning power at the time of injury, but not to exceed 150 percent of the average monthly wage in the State as computed under RCW 51.08.018.

(b) However, no compensation will be payable under this subsection unless the loss of earning power exceeds five percent.

(3) In no event shall the monthly payment provided in this section for time loss exceed the maximum amount set forth in RCW 51.32.060. [Ord. 108 § 108.3.5, 10-6-2006 (Res. 2006-312)].

9.15.180 Utilizing sick leave.

Should an injured employee elect to take sick leave during any period of time they are unable to work, or should the employer continue to pay the injured employee their wages while they are unable to work for any reason, such injured employee shall not receive any compensation under this chapter except for medical benefits and supplies during the time the employee is receiving the sick leave or wages. [Ord. 108 § 108.3.6, 10-6-2006 (Res. 2006-312)].

9.15.190 Limitation on payment.

No employee will receive compensation for or during the day on which the injury was received or the three days following the same, unless their disability continues for a period of 14 consecutive calendar days from the date of injury; provided, that attempts to return to work in the first 14 days following the injury will not break the continuity if the disability continues 14 days after the injury occurred. [Ord. 108 § 108.3.7, 10-6-2006 (Res. 2006-312)].

9.15.200 Temporary partial disability.

When a disability is or becomes partial only, and is temporary in character, the worker shall receive, for a period not exceeding two years, that proportion of the payments provided for temporary total disability in TTC [9.15.220](#) which the loss of earning power at any kind of work bears to the earning power existing at the time of the occurrence of the injury. [Ord. 108 § 108.3.8, 10-6-2006 (Res. 2006-312)].

9.15.210 Payments on behalf of children.

(1) For any period of time where both parents of a child or children are entitled to compensation due to either a temporary or permanent disability under this chapter, only the parent having the higher wages of the two is entitled to claim their child or children for purposes of increased compensation.

(2) Any compensation payable under this chapter for children who are not in the custody of the injured employee as of the date of the injury shall be payable to the person with legal custody of the children. [Ord. 108 § 108.3.9, 10-6-2006 (Res. 2006-312)].

9.15.220 Temporary total disability.

When total disability is only temporary, the schedule of payments outlined in TTC [9.15.260](#) for permanent total disability shall apply, so long as the total disability continues.

(1) As soon as recovery is so complete that the present earning power of the employee, at any kind of work, is restored to that existing at the time of the injury, the payment will cease.

(2) If and so long as the present earning power is only partially restored, payments shall continue according to TTC [9.15.170](#).

(3) In no event shall the monthly payments for time loss provided in this section exceed the maximum amounts set forth in RCW 51.32.090. [Ord. 108 § 108.3.10, 10-6-2006 (Res. 2006-312)].

9.15.230 Return to work provisions.

(1) Whenever the employer requests that an employee entitled to temporary total or temporary partial disability be certified by a physician as able to perform available work other than their usual job, the employer shall furnish the physician, with a copy to the employee, a statement describing the available work in terms that will enable the physician to relate the physical activities of the work to the employee's disability. The physician shall then determine whether the employee is physically able to perform the work described.

(a) If the employee is released by the physician for said work, and the work thereafter comes to an end before the employee's recovery is sufficient in the judgment of the physician to permit the return to their usual job, or to perform other available work, the employee's temporary total disability payments shall be resumed.

(b) Should the available work described, once undertaken by the employee, impede recovery to the extent that in the judgment of the physician the employee should not continue in that work, temporary total disability payments shall be resumed when the employee ceases such work.

(c) Once the employee returns to work as described herein, they shall not be assigned by the employer to work other than the light duty work described without the employee's written consent, or without prior review and approval by the employee's physician. In the event of any dispute as to the employee's ability to perform the work offered by the employer, the Workers' Compensation Committee shall make the final determination.

(2) An employer may, but is not required to, offer light duty work to injured employees who are given a limited

release to return to work, but are not yet able to perform their regular job.

(a) An employer is not required to make light duty work available while a worker is on limited release. If an employer provides light duty work at a lower wage than the employee's average hourly wage at the time of the injury, the employee will receive temporary partial disability benefits proportional to the difference between their usual wages and the wages of the light duty job.

(b) If the employee refuses the offer of light-duty work then benefits will cease.

(c) No loss of earning power compensation will be provided unless there is a five percent or greater difference between the wages. [Ord. 108 § 108.3.11, 10-6-2006 (Res. 2006-312)].

9.15.240 Determination of permanent disability.

(1) All determinations of permanent disabilities shall be made by the Claims Administrator from information supplied by licensed medical doctors whose specific training qualifies them to make an accurate determination. Either the employee or the employer may request a determination of permanent disability; however, the determination can only be made after the employee's condition becomes fixed. In conjunction with this, the Claims Administrator may require that the employee present themselves for a special medical examination by a physician or physicians selected by the Claims Administrator. In such event, the costs of such examination or interview, including payment of any reasonable travel expenses and wages for any scheduled work hours missed, shall be paid by the fund.

(2) The Claims Administrator will reexamine periodically each permanent disability claim for which the Claims Administrator has current payment responsibility, to determine whether the worker is currently permanently incapacitated from regularly performing work at any gainful and suitable occupation. Reexamination will be conducted at least every two years or more frequently if the Workers' Compensation Committee requires. Reexamination will include medical examinations, reports and other records that the Claims Administrator considers necessary or as the Workers' Compensation Committee requires. The Claims Administrator will forward to the Workers' Compensation Committee the results of each reexamination. [Ord. 108 § 108.3.12, 10-6-2006 (Res. 2006-312)].

9.15.250 Permanent partial disability.

(1) For the permanent partial disabilities described in RCW 51.32.080(1)(a), the injured employee shall receive compensation according to the schedule set out in RCW 51.32.080.

(2) Compensation for amputation of a member or part thereof at a site other than those described in RCW 51.32.080, and for loss of central visual acuity and loss of hearing other than complete, shall be in proportion to that which such amputation or partial loss of visual acuity or hearing most closely resembles and approximates.

(3) The total compensation for all unspecified permanent partial disabilities resulting from the same injury shall

not exceed the amount mandated for total bodily impairment, except that the total compensation for all unspecified permanent partial disabilities involving injuries to the back that do not have marked objective clinical findings to substantiate the disability and which result from the same injury shall not exceed 75 percent of the amount allowed for total bodily impairment in RCW 51.32.080.

(4) If permanent partial disability compensation is followed by permanent total disability compensation, any portion of the permanent partial disability compensation which exceeds the amount that would have been paid the injured employee if permanent total disability compensation had been paid in the first instance shall be deducted from the pension reserve of the injured employee and his monthly compensation payments will be reduced accordingly.

(5) Should an employee receive an injury to a member or part of their body already, from whatever cause, permanently partially disabled, resulting in amputation thereof or aggravation or increase in such permanent partial disability, but not resulting in the permanent total disability of such employee, their compensation for such partial disability will be adjudged with regard to the previous disability of the injured member or part and the degree of the extent of the aggravation or increase of the disability.

(6) When compensation provided under this section exceeds three times the average monthly wage calculated in RCW 51.08.018, payment will be made in monthly payments until such compensation is paid in full, except that the first monthly payment will be in an amount equal to three times the average monthly wage, and interest will be paid at eight percent on the unpaid balance commencing with the second monthly payment. [Ord. 108 § 108.3.13, 10-6-2006 (Res. 2006-312)].

9.15.260 Permanent total disability.

(1) When the Claims Administrator determines that permanent total disability results from the injury, the employee shall receive on a monthly basis, during the period of disability:

(a) If married at the time of the injury, 65 percent of their monthly wages, but not less than \$215.00 per month.

(b) If married with one child at the time of the injury, 67 percent of their monthly wages, but not less than \$252.00 per month.

(c) If married with two children at the time of the injury, 69 percent of their monthly wages, but not less than \$283.00 per month.

(d) If married with three children at the time of the injury, 71 percent of their monthly wages, but not less than \$306.00 per month.

(e) If married with four children at the time of the injury, 73 percent of their monthly wages, but not less than \$329.00 per month.

- (f) If married with five or more children at the time of the injury, 75 percent of their monthly wages, but not less than \$352.00 per month.
- (g) If unmarried with one child at the time of the injury, 62 percent of their monthly wages, but not less than \$222.00 per month.
- (h) If unmarried with two children at the time of the injury, 64 percent of their monthly wages, but not less than \$253.00 per month.
- (i) If unmarried with three children at the time of the injury, 66 percent of their monthly wages, but not less than \$276.00 per month.
- (j) If unmarried with four children at the time of the injury, 68 percent of their monthly wages, but not less than \$299.00 per month.
- (k) If unmarried with five or more children at the time of the injury, 70 percent of their monthly wages but not less than \$322.00 per month.

(2) If the character of the injury is such that it renders the employee so physically helpless as to require hiring an attendant, the employer shall make monthly payments to such attendant for their services as long as the requirement continues. [Ord. 108 § 108.3.14, 10-6-2006 (Res. 2006-312)].

9.15.270 Death during permanent total disability.

Every employee who becomes eligible for permanent total disability must select one of the three options listed below. Once an employee has selected an option, then if the employee should die during the period of permanent disability, whatever the cause of death, leaving a spouse or any dependents, payment shall be made in the manner and in the amounts as provided for by the option selected. If, however, an employee dies from a cause related to the injury during a period of permanent total disability, then their beneficiaries shall receive benefits under TTC [9.15.300](#).

(1) Option I. An injured employee selecting this option will receive the benefits provided under TTC [9.15.260](#). The benefits will cease upon the employee's death, with no benefits being paid to the worker's surviving spouse, children, or others. The employee must make the election in writing and the employee's spouse, if any, must consent in writing as a prerequisite to electing this option.

(2) Option II. An injured employee selecting this option shall receive an actuarially reduced benefit, which upon death will be continued throughout the life of and be paid to the surviving spouse, child, or other dependent. The employee selecting this option must nominate the person to whom the benefits will be paid, in writing, at the time of the selection.

(3) Option III. An injured employee selecting this option shall receive an actuarially reduced benefit and, upon death, one-half of the reduced benefit shall be continued throughout the life of and be paid to the surviving spouse, child, or other dependent. The employee selecting this option must nominate the person to whom the benefits will be paid, in writing, at the time of the selection. [Ord. 108 § 108.3.15, 10-6-2006 (Res. 2006-312)].

9.15.280 Reduction of awards.

(1) Social Security Offset. For persons under the age of 65 receiving compensation for temporary or permanent total disability as provided in this chapter:

(a) Compensation provided under this chapter will be reduced by an amount equal to the benefits payable under the Federal Old-Age, Survivors and Disability Insurance Act, as now and hereafter amended, not to exceed the amount of reduction established pursuant to 42 U.S.C. 424a. However, compensation will not be reduced when the workers' compensation provided herein combined with the Federal Old-Age, Survivors and Disability Insurance Act is less than the total benefit to which the Federal reduction would apply pursuant to 42 U.S.C. 424a.

(b) Where any person described in this section refuses to authorize the release of information concerning the amount of benefits payable to them under the Federal act, the employer's estimate of the amount shall be deemed correct unless and until the actual amount is established. No adjustment will be made for any period of time covered by such refusal where the employer's estimate is incorrect.

(c) Any reduction under this subsection (1) shall be effective the month following the month in which the employer is notified by the Federal Social Security Administration that the person is receiving disability benefits under the Federal act.

(2) Awards Through Other Compensatory Schemes. Where an employee is receiving payment under the workers' compensation provisions of another political entity, it does not bar a claim for compensation under this chapter. However, the total amount of compensation paid to an injured employee under the other workers' compensation law will be credited against the compensation due the employee or their beneficiary under this chapter.

(3) Failure to Follow Safety Procedures. Where an employee fails to follow standard operating safety procedures, including but not limited to failure to use safety devices or obey any reasonable rule adopted for the safety of employees, the award for any injury or occupational disease will be reduced by 15 percent.

(4) In the event of an overpayment of benefits, the employer may not recover more than the overpayments for the six months immediately proceeding the date the employer notifies the employee that overpayment has occurred.

(5) Upon a determination that there has been an overpayment, the employer shall immediately notify the person

who received it that they will be required to make repayment pursuant to TTC [9.15.420](#). [Ord. 108 § 108.3.16, 10-6-2006 (Res. 2006-312)].

9.15.290 Compensation for additional accident.

Should a further accident occur to an employee receiving compensation for a temporary disability, or who has been paid or awarded compensation for a permanent disability, the award of compensation for such further injury will be made with regard to the combined effect of the injuries of the employee and past receipt of money for such disabilities. [Ord. 108 § 108.3.17, 10-6-2006 (Res. 2006-312)].

9.15.300 Death benefits.

If death results from an injury, payment will be made as follows:

- (1) The expenses of burial, including transportation of the body, will be paid, but not exceeding the amount allowed for burial expenses under RCW 51.32.050.
- (2) An amount equal to 100 percent of the average monthly wage as defined in RCW 51.08.018 will be paid to any surviving spouse, or child or children of a deceased employee if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child. Any such children or parent shall share and share alike the aforementioned amount.
- (3) A surviving spouse of a deceased employee eligible for benefits under this chapter will receive, in addition to the lump sum payment in subsection (2) of this section, until remarriage, monthly payments as follows:
 - (a) If there are no children of the deceased employee, 60 percent of the deceased employee's wages, but not less than \$185.00;
 - (b) If there is one child of the deceased employee in the legal custody of the surviving spouse, 62 percent of the deceased employee's monthly wages, but not less than \$222.00;
 - (c) If there are two children of the deceased employee in the legal custody of the surviving spouse, 64 percent of the deceased employee's monthly wages, but not less than \$253.00;
 - (d) If there are three children of the deceased employee in the legal custody of the surviving spouse, 66 percent of the deceased employee's monthly wages, but not less than \$276.00;
 - (e) If there are four children of the deceased employee in the legal custody of the surviving spouse, 68 percent of the deceased employee's monthly wages, but not less than \$299.00;
 - (f) If there are five or more children of the deceased employee in the legal custody of the surviving spouse, 70 percent of the deceased employee's monthly wages, but not less than \$322.00.

(4) Where the surviving spouse does not have legal custody of any child or children of the deceased employee or where after the death of the employee legal custody of their child or children passes from the surviving spouse to another, any payment on account of the child or children not in the legal custody of the surviving spouse will be made to the person or people having the legal custody of the deceased employee's children. The amount of the payments will be five percent of the monthly benefits payable as a result of the employee's death for each child, but not to exceed 25 percent. The payments on account of such surviving children shall be subtracted from the amount to which the surviving spouse would have been entitled had they had legal custody of all of the children and the surviving spouse will receive the remainder after the payments for the surviving children have been deducted. The payments on account of a child or children not in the legal custody of the surviving spouse will be apportioned equally to all eligible children.

(5) Payments to the surviving spouse of the deceased employee will cease at the end of the month in which remarriage occurs; however, the monthly payment made on behalf of the child or children of the deceased employee shall continue following the surviving spouse's remarriage in a sum equal to five percent of the deceased employee's monthly wages for each child, not to exceed 25 percent, and shall be apportioned equally among all eligible children. Payments made pursuant to this section on behalf of the surviving children will be placed into an account for the benefit of the children unless they are 18 or older and then payments will be made directly to the child or children.

(6) If there is a child or children but no surviving spouse of the deceased employee, or the surviving spouse is not eligible to receive benefits under this chapter, benefits will be paid to the child or children as follows:

(a) For one child a sum equal to 35 percent of the deceased employee's wages shall be paid monthly;

(b) For each additional child the benefits will be increased by an amount equal to 15 percent of the deceased employee's wages but not to exceed 65 percent of the deceased employee's wages;

(c) Where there is more than one child the total sum will be divided equally among all children.

(7) If the employee leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment will be made to each dependent equal to 50 percent of the average monthly support actually received by such dependent from the employee during the 12 months preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed 65 percent of the wages of the deceased employee at the time of death or 75 percent of the average monthly wage as calculated in RCW 51.08.018, whichever is less. If any dependent is under the age of 18 years old at the time of the occurrence of the injury, the payment to that dependent will cease when they reach 18, except that such payments will continue until the dependent reaches 23, while enrolled full-time in an accredited school. The payment will cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(8) If the employee leaves no surviving spouse, child, or dependent, a lump sum payment of \$10,000 will be paid

to the employee's estate, in addition to benefits provided for burial in subsection (1) of this section. [Ord. 108 § 108.3.18, 10-6-2006 (Res. 2006-312)].

9.15.310 Accelerating or converting awards.

(1) Where an employee has been awarded compensation for permanent partial disability, and the award has become final by operation of law or waiver of the right to appeal, the Workers' Compensation Committee may, in its discretion, upon the employee's application, order all or any part of the remaining unpaid award to be paid to the employee in a lump sum.

(2) In all cases where the award for permanent partial disability does not exceed the average monthly wages in the State, as calculated by RCW 51.08.018, the Claims Administrator shall pay the total award in a lump sum.

(3) An injured employee or surviving spouse may apply to have their monthly payments converted, in whole or in part, into a lump sum payment, in which event the monthly payment will cease in whole or in part. Each application for conversion will be decided by the Committee on the merits of the individual application. [Ord. 108 § 108.3.19, 10-6-2006 (Res. 2006-312)].

9.15.320 Protection of awards.

No money paid or payable under this chapter will, before the issuance and delivery of the check or warrant, be assignable, charged or taken in execution, attached, garnished or pass or be payable to any person by operation of law, any form of voluntary assignment, or power of attorney. [Ord. 108 § 108.3.20, 10-6-2006 (Res. 2006-312)].

Article IV. Claims Procedures

9.15.330 Notice of injury or occupational disease.

(1) Notice of Injury or Occupational Disease. Any employee who has sustained an injury or developed a disease in the course of employment shall immediately report the accident or diagnosis of disease to the supervisor in charge of the employee and to the designated employer representative. An injury may be reported by another on behalf of the employee. An occupational disease must be reported immediately after the employee learns of, or reasonably should have been aware of, the connection between their employment and the occupational disease.

(2) Form of Notice. Such notice shall be submitted in writing on a form provided by the employer.

(3) Failure to Provide Notice. If the employee fails to report the injury immediately, any award of compensation under this chapter may be reduced proportionately to any prejudice that the employer has sustained by reason of the employee's failure to immediately report the injury. The burden of proof with respect to such prejudice shall rest on the employer. [Ord. 108 § 108.4.1, 10-6-2006 (Res. 2006-312)].

9.15.340 Employee's application for compensation.

(1) Application for Compensation. Where an employee is entitled to compensation under this chapter, the

employee shall file an application for compensation with the designated employer representative and shall identify their treating physician. No medical services covered in this plan shall be paid for at rates exceeding those promulgated by the Workers' Compensation Committee.

(2) Failure to Submit Application for Compensation. An employee shall not be entitled to recover any amount expended by the employee for medical or other treatment or services unless they shall have filed an application for compensation.

(3) Physician's Duty to Aid. It shall be the duty of the treating physician to lend all necessary assistance in making the application for compensation and such proof of other matters required by the rules of the Workers' Compensation Committee without charge to the employee. [Ord. 108 § 108.4.2, 10-6-2006 (Res. 2006-312)].

9.15.350 Employee's duty to report claim activity.

Where a claim has been filed and benefits are being provided, it shall be the obligation of the employee to contact the designated employer representative at least once every 30 days. [Ord. 108 § 108.4.3, 10-6-2006 (Res. 2006-312)].

9.15.360 Statute of limitations.

(1) One-Year Statute of Limitations. Except as otherwise provided herein, the right to compensation for disability or death under this chapter shall be barred unless a claim is filed within one year after the injury or death. The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment.

(2) Incompetents and Minors. If an employee who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions herein shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable from the date of appointment of such guardian or other representative. In the case of a minor, if no guardian is appointed before the minor becomes of age, then these provisions shall be applicable from the date such minor becomes of age.

(3) Occupational Disease. Claims for occupational disease or infection must be filed within one year following the date the employee or beneficiary had notice from a physician of the existence of the employee's occupational disease without reference to its date of origin, or within one year after the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the disease or death and the employment, but in no event longer than three years from the date the employee terminates their employment with the Tribes or one of its enterprises. [Ord. 108 § 108.4.4, 10-6-2006 (Res. 2006-312)].

9.15.370 Burden of proof.

The burden of proof to establish entitlement benefits under this chapter, except as set forth in TTC [9.15.380](#), shall rest on the covered employee, or their dependents in the case of death. [Ord. 108 § 108.4.5, 10-6-2006

(Res. 2006-312)].

9.15.380 Presumptions.

When a covered employee is found dead by accident under circumstances indicating that the accident took place within time and place limits of employment and no conclusive evidence is present to exclude coverage as provided herein, it shall be the presumption that death arose out of employment, and benefits shall be paid. [Ord. 108 § 108.4.6, 10-6-2006 (Res. 2006-312)].

9.15.390 Proof of dependency.

Upon request at any time, a dependent shall furnish the Claims Administrator with proof satisfactory to the Claims Administrator of the nature, amount, and extent of the contribution by the employee for such dependent's support. [Ord. 108 § 108.4.7, 10-6-2006 (Res. 2006-312)].

9.15.400 Compromise and release.

Nothing in this chapter shall impair the rights of the parties to compromise, subject to the provisions herein, any liability which is claimed to exist under this chapter on account of injury, disease, or death. After reaching a compromise, a copy of the release or compromise agreement signed by both the claimant and the Claims Administrator shall be presented to the Workers' Compensation Committee for approval. If approved, the Claims Administrator shall enter an award based on the release or compromise agreement. [Ord. 108 § 108.4.8, 10-6-2006 (Res. 2006-312)].

9.15.410 Claim closure.

(1) Closure Determination. An employee's claim shall be closed when the Claims Administrator determines that the injured employee has reached the point where maximum medical improvement has been reached. Where a claim has been filed and where benefits have been provided by the employer, the Claims Administrator shall close an employee's claim if there has been no claim activity for the previous 180 days. Such closure shall be deemed to occur by operation of law. The Claims Administrator shall serve written notice of the closure of the claim after expiration of the 180-day period.

(2) Reopening of Claims. Where any significant change in disability occurs within seven years of the closing of the claim, the employee may petition for a readjustment of the compensation rate. The Claims Administrator may, at any time, upon his or her own motion, readjust the rate of compensation, or in a proper case, terminate the payment. If an order denying an application to reopen is not issued within 90 days of receipt by the Claims Administrator, such application shall be deemed granted. However, for good cause, the Claims Administrator may extend the time for making the final determination on the application for an additional 60 days. [Ord. 108 § 108.4.9, 10-6-2006 (Res. 2006-312)].

9.15.420 Recovery of payments made due to error, mistake, erroneous adjudication, or fraud.

(1) Payments Due to Error and Mistake. Whenever any payment of benefits under this chapter is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly

acted upon, or any other circumstances of a similar nature not induced by fraud, the recipient shall repay it. Recoupment may be made from any future payments due the recipient on any claim against the Tribes. The Claims Administrator must make a claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed that any claim therefor has been waived. The Claims Administrator may exercise their discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) **Payments Due to Erroneous Adjudication.** Whenever any payment of benefits under this chapter has been made pursuant to a determination by the Claims Administrator and timely protest or appeal has been made, where the final decision is that any such payment was made pursuant to an erroneous adjudication or pursuant to the exhaustion of administrative appeals, the recipient shall repay it, and recoupment may be made from any future payments due the recipient on any claim being paid by the Tribes. The Claims Administrator may exercise their discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(3) **Payments Due to Fraud.** Whenever any payment of benefits under this chapter has been induced by fraud, the recipient shall repay any such payments together with a penalty of 50 percent of the total of any such payments, and the amount of such total sum may be recouped from any future payments due the recipient on any claim against the Tribes. Such repayment or recoupment must be demanded within one year of the discovery of the fraud. In addition to the penalties provided under this chapter, the recipient may also be charged with a Class D offense under TTC 3.35.140, False claims to Tribal agencies. [Ord. 108 § 108.4.10, 10-6-2006 (Res. 2006-312)].

9.15.430 Medical examinations.

(1) **Medical Examination May Be Required.** When medical questions arise, an employee entitled to or claiming compensation under this chapter shall, if requested by the Claims Administrator, submit to medical examination at a time, and from time to time, and at a place reasonably convenient for the employee by a physician selected by the Claims Administrator.

(2) **Medical Evaluations.** Medical evaluations for purposes of determining permanent disability, claim reopening, and claim closure shall not be made by the employee's treating physician. Such evaluations shall be made by an evaluating physician selected by the Claims Administrator.

(3) **Refusal to Submit.** If the employee refuses to submit to a medical examination or obstructs the same, or if any injured employee shall persist in unsanitary or injurious practices which tend to imperil or retard such worker's recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to the employee's recovery, the Claims Administrator, with notice to the employee, may reduce or suspend the employee's compensation as long as such refusal or practice continues.

(4) **Travel Expenses.** If the employee necessarily incurs traveling expenses in attending a medical examination

pursuant to the request of the Claims Administrator, such traveling expenses shall be repaid to the employee by the Tribes. [Ord. 108 § 108.4.11, 10-6-2006 (Res. 2006-312)].

9.15.440 Testimony of physicians not privileged.

Information obtained by the attending physician or surgeon while treating the injured employee shall not be a privileged communication if such information is required by the Claims Administrator for a proper understanding of the case and a determination of the rights involved. The Claims Administrator shall have the right to request a full and complete report from the physician or surgeon at times and in the form and detail deemed necessary to evaluate the claim. [Ord. 108 § 108.4.12, 10-6-2006 (Res. 2006-312)].

9.15.450 Confidentiality.

Information contained in the claims files and records of injured employees under the provisions of this plan shall be deemed confidential and shall not be open to public inspection. Representatives of the claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant. The employer or its duly authorized representatives may review any files of their own injured employees in connection with any pending claims. Physicians treating or examining employees claiming benefits under this chapter, or physicians giving medical advice to the Claims Administrator regarding any claim, may, at the discretion of the Claims Administrator, inspect the claims files and records of the injured employee. Other persons may make such inspection, at the Claims Administrator's discretion, when such persons are rendering assistance to the Claims Administrator at any stage of the proceedings on any matter pertaining to the administration of this chapter. [Ord. 108 § 108.4.13, 10-6-2006 (Res. 2006-312)].

9.15.460 Actions against third persons.

(1) Election to Bring Third Party Action. If a third person, not in the employ of the Tribes, is or may become liable to pay damages on account of an employee's injury for which benefits and compensation are being provided under this chapter, the injured employee or their beneficiary may elect to seek damages from that third person. The injured employee will be entitled to the full compensation and benefits provided under this chapter regardless of any such third party action.

(2) Assignment of Action to Tribes. An election not to proceed against the third party operates as an assignment of the cause of action to the Workers' Compensation Committee, which may prosecute or compromise the action, at its discretion, in the name of the injured employee, beneficiary or legal representative. If such an election is made, the injured employee or their beneficiary shall be entitled to any remaining balance of the award or settlement recovered after deduction of the expenses incurred in making the recovery, including reasonable legal services, and the compensation and benefits paid on behalf of the employee or their beneficiary by the Workers' Compensation Committee.

(3) Notice to Parties. If either the employee or the Workers' Compensation Committee brings an action against a third party for the injury, they shall give to the other a copy of the complaint either by personal service or

certified mail. If either the employee or the Committee brings the action, the other may, at any time before trial on the facts, join as a party plaintiff or consolidate actions if they were brought independently.

(4) Distribution of Award or Settlement.

(a) In an action by an injured employee or their beneficiary against a third party, any award or settlement shall be distributed as follows:

(i) The costs and reasonable attorneys fees shall be paid;

(ii) The injured employee or their beneficiary shall be paid 25 percent of the balance of the award; provided, that in the event of a compromise and settlement by the parties, the injured employee or their beneficiary may agree to a sum less than 25 percent;

(iii) The balance of the award will be deposited with the Tribal fund, but only to the extent necessary to reimburse the fund for compensation benefits paid;

(iv) Any remaining balance shall be paid to the injured employee or their beneficiary.

(b) After the award or settlement has been distributed, no payment will be made to or on behalf of the employee or beneficiary from the Tribal fund for such injury until the amount of any further compensation or benefits that would have been due equals any such remaining balance under subsection (4)(a)(iv) of this section. Thereafter such benefits shall be paid from the fund to or on behalf of the employee or their beneficiary as though no third party action had been made.

(c) Any compromise or settlement of a third party cause of action that results in less than the entitlement in subsections (4)(a)(i) through (iii) of this section is void unless made with the written approval of the Workers' Compensation Committee and the employee or their beneficiary.

(5) Award Subject to Lien. The award or settlement shall be subject to a lien in favor of the Tribal fund for its share under this section.

(6) Required Election. The Workers' Compensation Committee may require the injured employee or their beneficiary to exercise the right to election herein by serving a written demand, either by mail or personal service, on the employee or their beneficiary. Unless an election is made within 60 days of receipt of the demand, the employee or beneficiary is deemed to have assigned the action to the Tribes. [Ord. 108 § 108.4.14, 10-6-2006 (Res. 2006-312)].

Article V. Protests and Appeals

9.15.470 Protests.

(1) What Can Be Protested. Any order, decision, or award made by the Claims Administrator can be protested to the Workers' Compensation Committee after exhaustion of administrative appeals to the Claims Administrator. Whenever such an order, decision, or award is made, the employee, beneficiary, employer, and any other person affected by the decision shall be sent a copy of the decision by mail.

(a) Exhaustion of Administrative Appeals. Decisions of the Claims Administrator must be appealed within 15 days. If the administrative appeals process extends beyond 90 days from the time of filing, any benefits suspended during the pendency of the administrative appeals shall be reinstated from that date forward until the Claims Administrator issues a final decision.

(2) Procedure for Protest.

(a) Notice of Protest. Any employee, beneficiary, employer, or other person aggrieved by an order, decision, or award as initially made by the Claims Administrator must file a notice of protest with the Workers' Compensation Committee within 15 days after receipt of the Claims Administrator's final decision following exhaustion of administrative appeals. Such notice of protest need be in no particular form, but must be in writing. Any additional evidence, proof, or claim shall be submitted along with the notice of protest. A notice of protest is barred if it is not timely filed.

(b) Workers' Compensation Committee Decision. The protest shall be considered by the Workers' Compensation Committee, and a decision shall be rendered within 30 days of receipt of the notice of protest and additional evidence. The Workers' Compensation Committee shall hold no hearing, but shall review the matter on the basis of the claim files and records. The Committee may also seek opinions from outside physicians, if necessary, and consider any supplementary materials submitted by the protestor. The written decision shall be sent to the protestor by mail.

(c) Scope of Decision. The Workers' Compensation Committee has the power to approve, deny, or modify any order, decision, or award of the Claims Administrator upon protest. [Ord. 108 § 108.5.1, 10-6-2006 (Res. 2006-312)].

9.15.480 Appeals.

(1) Tribal Court Appeal. Any employee, beneficiary, employer, or other person aggrieved by the protest decision of the Workers' Compensation Committee shall have the right to appeal that determination to the Tribal Court.

(2) Procedures for Appeal.

(a) Notice of Appeal. A Notice of Appeal must be filed within 30 days from the receipt of the written decision from the Workers' Compensation Committee. Such notice must be filed with the Tribal Court and copies must be served either personally or by certified mail, return receipt requested, upon the Claims Administrator and Workers' Compensation Committee.

(b) Contents of Notice. The Notice of Appeal must set forth in full detail the grounds upon which the appealing party considers the decision of the Workers' Compensation Committee unjust or unlawful. The notice must include every issue to be considered by the Court. The appellant will be deemed to have waived all objections to irregularities concerning the matter on which such appeal is taken other than those specifically set forth in the Notice of Appeal.

(c) Administrator's Record. The Claims Administrator shall transmit their original records, or legible copies certified as to their accuracy, to the Tribal Court within 10 days of receiving Notice of Appeal to the Tribal Court.

(d) Committee's Record. The Workers' Compensation Committee shall submit their original records, or legible copies certified by the Chairman as to their accuracy, to the Tribal Court within 10 days of receiving Notice of Appeal to the Tribal Court.

(e) Hearing. The Court will schedule a hearing to take place no later than 30 days from receipt of the Notice of Appeal. The Court Clerk will send notice of the time, date, and location of the hearing to the parties.

(f) Bond. No bond will be required on appeal to the Tribal Court.

(g) No Stay of Award. The commencement of an action for review by the Tulalip Court does not relieve the employer from payment of compensation as directed by the Workers' Compensation Committee. If the Committee's decision is overturned, then repayment will be governed by TTC [9.15.420](#).

(3) Proceedings in Tribal Court.

(a) Rules. The Tribal Court's rules of civil procedure will govern any appeal to the Tribal Court, except where they conflict with the specific procedures herein.

(b) Evidence.

(i) Only such issues of law or fact that were properly included in the Notice of Appeal shall be heard by the Court. The Trial Court will review the case anew, but only on the basis of the evidence or testimony submitted in connection with the protest to the Workers' Compensation Committee or contained in the Committee's record filed in the Court. The Court may not receive new testimony, except as provided for in subsection (3)(b)(ii) of this section.

(ii) In cases of alleged procedural irregularities not shown in the record, the Court may take testimony from witnesses.

(c) Standards. In all Court proceedings under this chapter, the findings and decisions of the Workers' Compensation Committee shall be considered correct on their face and the employee will have the burden

of proving their case. If the Court determines that the Committee has correctly construed the law and found the facts, the decision of the Committee will be confirmed. Otherwise, the decision of the Committee will be reversed or modified. Where the Court modifies the Committee's decision, the Court will remand to the Committee for further proceedings in accordance with the Court's findings. However, the Court cannot remand for an award higher than that set out in the schedule of compensation provided for in this chapter.

(d) Decision. All Tribal Court decisions will be in writing, stating the issues as they appeared to the Court and the basis of the Court's decision. Copies of the decision will be sent to all parties to the appeal. The Court will issue its decision within 30 days of the hearing. Decisions of the Tribal Court may not be appealed. [Ord. 108 § 108.5.2, 10-6-2006 (Res. 2006-312)].

9.15.490 Attorneys fees.

After appeal to the Tribal Court from the decision of the Workers' Compensation Committee, a reasonable fee for the services of the prevailing party's attorney may be fixed by the Court. [Ord. 108 § 108.5.2, 10-6-2006 (Res. 2006-312)].

Article VI. Funding

9.15.500 Purpose of fund.

There shall be established a Tribal fund for the purposes of payment of compensation claims under the Tulalip Tribes workers' compensation plan. [Ord. 108 § 108.6.1, 10-6-2006 (Res. 2006-312)].

9.15.510 Administration of fund.

The Board of Directors shall direct the overall administration of the fund. Upon request from the Board, the Workers' Compensation Committee shall provide annual reports on the status of the fund. The Tribes may require employees to contribute to the fund if deemed necessary by the Board of Directors to sustain the Tulalip Tribes workers' compensation plan. [Ord. 108 § 108.6.2, 10-6-2006 (Res. 2006-312)].

Article VII. Severability

9.15.520 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall remain in effect. [Ord. 108 § 108.7.2, 10-6-2006 (Res. 2006-312)].

Chapter 9.20 RIGHT TO WORK

Sections:

[9.20.010 Preamble.](#)

[9.20.020 Definitions.](#)

[9.20.030 Right to Work or Employment Without Membership in Labor Organization.](#)

[9.20.040 Illegality of Acts or Agreements Violating Article – Strike or Picketing for Illegal Purpose.](#)

[9.20.050 Civil Liability of Person Violating Article.](#)

[9.20.060 Injunctive Relief from Injury Resulting from Violation of Article.](#)

9.20.010 Preamble.

The Tulalip Tribes is committed to preserving the resources of the Tribes, its members and the Tribal community, through encouraging employment, providing for a wide range of public services, and maintaining peace and good order within the sovereign jurisdiction of the Tribes. Pursuant to the inherent sovereign powers of the Tribes and the powers expressly delegated to the Board of Directors by the Constitution and Bylaws of the Tribes, the Tribes recognizes the need for creating this chapter which protects and guarantees the rights of employees to have full employment opportunity on the Reservation. [Ord. 131 § 1, 7-12-2007 (Res. 2007-185)].

9.20.020 Definitions.

In this chapter, unless the context otherwise requires:

(1) "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

(2) "Person" includes one or more individuals, a corporation, association, company, firm or labor organization. [Ord. 131 § 2, 7-12-2007 (Res. 2007-185)].

9.20.030 Right to Work or Employment Without Membership in Labor Organization.

(1) No person shall be denied the opportunity to obtain or retain employment because of nonmembership in a labor organization, nor shall the Tribes or any governmental subdivision thereof, or any corporation, individual, or association existing or by license or otherwise operating on the Tulalip Indian Reservation, enter into an agreement, written or oral, which excludes a person from employment or continuation of employment on the Tulalip Indian Reservation because of nonmembership in a labor organization.

(2) No person shall be required, as a condition of employment or continuation of employment on the Tulalip Indian Reservation, to: (a) resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization; (b) become or remain a member of a labor organization; (c) pay dues, fees, assessments or other charges of any kind or amount to a labor organization; (d) pay to any charity or other third party, in lieu of such payments, any amount equivalent to dues, fees, assessments or other charges regularly required of members of a labor organization; or (e) be recommended, approved, referred or cleared through a labor organization. [Ord. 131 § 3, 7-12-2007 (Res. 2007-185)].

9.20.040 Illegality of Acts or Agreements Violating Article – Strike or Picketing for Illegal Purpose.

(1) Any act or provision in an agreement which is in violation of this chapter is illegal and void.

(2) Any strike or picketing to force or induce an employer to make an agreement orally or in writing in violation of this chapter is for an illegal purpose.

(3) Any act by any person, employee, labor organization, or officer, agent or member thereof, of threatened or actual interference with a person, his immediate family or his property, to compel or attempt to compel such person to join a labor organization, to strike against his will or to leave his employment is unlawful and prohibited by this chapter. [Ord. 131 § 4, 7-12-2007 (Res. 2007-185)].

9.20.050 Civil Liability of Person Violating Article.

A person who violates any provision of this chapter, or who enters into an agreement containing a provision declared illegal by this chapter, or who brings about the discharge of or denial of employment to any person because of nonmembership in a labor organization shall be liable to the person injured as the result of such act or provision and may be sued therefor in Tulalip Tribal Court, and in such action any labor organization, subdivision or local thereof shall be bound by the acts of its duly authorized agents acting within the scope of their authority, and may sue or be sued in its common name. [Ord. 131 § 5, 7-12-2007 (Res. 2007-185)].

9.20.060 Injunctive Relief from Injury Resulting from Violation of Article.

A person injured or threatened with injury by an act declared illegal by this chapter shall, notwithstanding any other provision of law to the contrary, be entitled to injunctive relief therefrom. [Ord. 131 § 6, 7-12-2007 (Res. 2007-185)].

Chapter 9.25 TULALIP EMPLOYMENT

Sections:

[9.25.010 Purpose.](#)

[9.25.020 Scope.](#)

[9.25.030 Definitions.](#)

[9.25.040 Preference.](#)

[9.25.050 Job Announcements.](#)

[9.25.060 Complaint Process.](#)

[9.25.070 Sovereign Immunity.](#)

[9.25.075 Employee Furlough.](#)

[9.25.080 Severability.](#)

9.25.010 Purpose.

The Tulalip Tribes (and all of its entities) shall ensure preference, fairness and consistency in the hiring process; which includes, but is not limited to, advertisement, screening, testing and interviews. [Res. 2016-111; Ord. 141, 9-6-2014 (Res. 2014-378)].

9.25.020 Scope.

(1) This chapter shall apply to every entity of the Tulalip Tribes that is an employer and its employees, unless a variance is approved by the Tulalip Board of Directors.

(2) TERO (Tribal Employment Rights Office) has full investigative authority of noncompliance in regard to preference in the hiring process.

(3) The Tulalip Board of Directors and the Quil Ceda Village Council reserve the right to authorize hiring of individuals without utilizing the hiring process per this chapter. [Res. 2016-111; Ord. 141, 9-6-2014 (Res. 2014-378)].

9.25.030 Definitions.

(1) "Applicant" means an individual who applies or is considered for a position within the Tulalip Tribes.

(2) "Family Members" means spouse, children, parents, siblings, nieces, nephews, grandparents, grandparents-

in-law, grandchildren, aunts, uncles, step and foster children, legal wards, first cousins, parents-in-law, siblings-in-law, and others raised or residing in the home and considered by the Tribal community to be a part of the immediate family.

(3) "Native American Preference" means employment preference given to an enrolled Native American of a Federally recognized tribe, nation or band, including Alaskan Native villages, communities and/or corporations.

(4) "Military Veteran" means a person who has been discharged from the active, reserve, or National Guard armed forces of the United States including Army, Navy, Marines, Air Force and Coast Guard, excluding dishonorable discharge.

(5) "Preference Tier" means a list of the order in which hiring preference is assigned to eligible Applicants.

(6) "Tribal Preference" means employment preference given to an enrolled member of the Tulalip Tribes. These individuals will be given the first preference for all employment opportunities. [Res. 2016-111; Ord. 141, 9-6-2014 (Res. 2014-378)].

9.25.040 Preference.

(1) Applicants shall be assigned a preference category, if applicable, upon valid documentation.

(2) Applicants who are not eligible for one of the preference categories may only proceed if there are no qualified preference Applicants for the position, regardless of any higher qualifications that a nonpreference Applicant may have.

(3) Preference categories in employment shall be assigned in the following order:

(a) TERO Preference.

(i) Category 1: enrolled Tulalip Tribal Member.

(ii) Category 2: spouse, parent or child of an enrolled Tulalip Tribal Member, current legal guardian of a Tulalip Tribal Member (with court documentation of guardianship), or a domestic partner of a Tulalip Tribal Member.

(iii) Category 3: other Native American enrolled in a Federally recognized tribe, nation or band, including Alaskan Native villages, communities and/or corporations.

(iv) Category 4: spouse of other Native American enrolled in a Federally recognized tribe(s) as listed above.

(b) Current Employee Preference.

Category 5: an Employee currently employed by an entity of the Tulalip Tribes.

(c) Veteran Preference. The Tulalip Tribes shall allow Veteran Preference. If an Applicant is being considered for hire that is a United States Military Veteran, the individual shall be given further preference by being afforded five additional points in the interview process. Any spouse of an active enlisted military member shall receive an additional three points in the interview process. [Res. 2016-111; Ord. 141, 9-6-2014 (Res. 2014-378)].

9.25.050 Job Announcements.

(1) All newly created positions shall be advertised. Open positions, which have been previously advertised, are eligible to be filled through promotion, transfer and/or reclassification per the terms of the entity Handbook. This provision does not apply to temporary/seasonal positions.

(2) The initial advertisement of job vacancies shall be posted for a minimum of seven calendar days.

(3) Ongoing or open-until-filled positions shall be advertised with no closing date. Applications shall be accepted on a continuous basis.

(4) Positions not filled requiring re-advertisement shall be posted for a minimum of seven calendar days. [Res. 2016-111; Ord. 141, 9-6-2014 (Res. 2014-378)].

9.25.060 Complaint Process.

(1) Complaints of noncompliance in regard to preference in the hiring process must be submitted in writing to the Entity's Employment Manager for investigation within five business days of the alleged violation or notification. The Employment Manager shall investigate and notify the complainant of its decision, in writing, within five business days. If the individual was not notified of a continuance or the decision is not received within this timeline, a written complaint may be filed with TERO.

(2) If there is a founded complaint the Entity's Employment Manager will remedy the situation if possible and report the findings through the appropriate line of communication.

(3) If the complainant is not satisfied with the Employment Manager's decision, he or she may file a written complaint with TERO within five business days after written notification of the decision.

(4) TERO shall review the complaint and provide a summary determination and recommendation(s) to the Employment Manager and the General Manager or President within 10 business days. The General Manager/President will review and make the final determination. [Res. 2016-111; Ord. 141, 9-6-2014 (Res. 2014-378)].

9.25.070 Sovereign Immunity.

Nothing in this chapter shall be deemed to constitute a waiver by the Tulalip Tribes of its Sovereign Immunity for

any reason whatsoever. [Ord. 141, 9-6-2014 (Res. 2014-378)].

9.25.075 Employee Furlough.

All Tulalip government, Quil Ceda Village, TGO and Tulalip business entity employees covered by the Tulalip employee handbooks, including contract employees, shall be subject to the terms of any furlough resolution issued by the Board of Directors due to interruption of Tribal government revenues or operations, insufficient Tribal treasury funds or other emergencies as determined by the Board of Directors. The terms of Tulalip employee furlough resolutions shall control over any conflicting terms in any employment contract or policy. Furloughs may be issued immediately by the Board of Directors on an emergency basis when in the best interest of the Tulalip Tribes due to acts of God or sudden emergencies requiring immediate curtailment of activities. [Res. 2020-213].

9.25.080 Severability.

(1) If any part or parts, or the application of any part, of this chapter is held invalid, such holding shall not affect the validity of the remaining parts of this chapter.

(2) The Tulalip Tribes Board of Directors hereby declares that it would have passed the remaining parts of this chapter even if it had known that such part or parts or application of any part thereof would be declared invalid. [Ord. 141, 9-6-2014 (Res. 2014-378)].

Chapter 9.30 QUALIFIED MEDICAL LEAVE

Sections:

[9.30.010 Purpose.](#)

[9.30.020 Scope.](#)

[9.30.030 Definitions.](#)

[9.30.040 Policy.](#)

[9.30.050 Eligibility.](#)

[9.30.060 Procedures.](#)

[9.30.070 Intermittent Leave Procedures.](#)

[9.30.080 Sovereign Immunity.](#)

[9.30.090 Severability.](#)

9.30.010 Purpose.

Qualified Medical Leave provides Eligible Employees with up to 12 weeks of unpaid, job-protected leave per a 12-month period for certain family and medical reasons. [Ord. 142, 9-6-2014 (Res. 2014-378)].

9.30.020 Scope.

This chapter shall apply to every entity of the Tulalip Tribes that is an Employer and its Employees, unless a variance is approved by the Board of Directors. [Ord. 142, 9-6-2014 (Res. 2014-378)].

9.30.030 Definitions.

(1) "Continuing Treatment" means a Serious Health Condition involving Continuing Treatment by a Health Care Provider and includes any one or more of the following:

- (a) Incapacity and Treatment: a period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition;
- (b) Treatment two or more times within 30 days of the first day of incapacity; and/or
- (c) Treatment by a Health Care Provider on at least one occasion which results in a regimen of Continuing Treatment under the supervision or a referral of a Health Care Provider.

(2) "Covered Service Member" means an Employee's Family Member who is on active duty or called to active

duty status or meets the criteria of qualifying emergency leave.

- (3) "Eligible Employee" means an Employee who meets the eligibility requirements of this chapter.
- (4) "Employee" means an Employee or Team Member of one of the Tulalip Tribes entities.
- (5) "Employer" means the Tulalip Tribes entity where the Employee works.
- (6) "Emergency" means urgent need; something that a situation demands or makes urgently necessary.
- (7) "Family Member" means an Employee's spouse, son, daughter, parent, sibling, grandparent, or grandchild.
- (8) "General Manager" means the General Manager for the Tulalip Tribes government, Quil Ceda Village, the President of TGO, or their designee.
- (9) "Grandchild" means the son or daughter of an Employee's son or daughter.
- (10) "Grandparent" means the parent of an Employee's mother or father.
- (11) "Health Care Provider" means a certified licensed physician, doctor of osteopathy, certified licensed chemical dependency provider/substance abuse provider, or nurse practitioner.
- (12) "Human Resources (HR)" means the Administrator of QML case management.
- (13) "Incapacity" means the inability to work or perform other regular daily activities due to a Serious Health Condition.
- (14) "Inpatient Care" means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of Incapacity as defined in "Continuing Treatment," or any subsequent treatment in connection with such Inpatient Care.
- (15) "Parent" means a biological, adoptive, step or foster father or mother, or any other individual who stood in the place of a parent.
- (16) Qualifying Emergency. Employees may take QML while the Employee's Family Member (the Covered Service Member) is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. Qualifying emergencies shall include:
 - (a) Short notice deployment;
 - (b) Military events and related activities;

(c) Childcare and school activities;

(d) Financial and legal arrangements;

(e) Counseling;

(f) Rest and recuperation;

(g) Post deployment activities; and/or

(h) Additional activities which arise out of the Covered Service Member's active duty or call to active duty status, provided the Employer and Employee agree that such leave shall qualify as an emergency and agree to both timing and duration of leave.

(17) "Reduced Leave Schedule" means a change in an Employee's work schedule for a period of time.

(18) "Serious Health Condition" means an illness, injury, impairment, physical or mental condition that involves Inpatient Care or Continuing Treatment by a Health Care Provider.

(19) "Sibling" means a biological brother or sister (one or both parents in common), step brother or sister, adopted or foster brother or sister.

(20) "Son or Daughter" means a biological, adopted, step or foster child, a legal ward, or a child of a person standing in the place of a parent.

(21) "Spouse" means persons who are legally married to one another, or who have obtained a certificate of domestic partnership. The Tulalip Tribes reserves the right to request legal documentation to verify a spousal relationship.

(22) "Treatment" includes but is not limited to medical care and/or evaluations to determine if a Serious Health Condition exists. [Ord. 142, 9-6-2014 (Res. 2014-378)].

9.30.040 Policy.

(1) Eligible Employees may request a leave of absence for qualifying medical reasons, or for the birth or placement of a child. Eligible Employees may receive up to 12 weeks of leave (or equivalent hours of leave; i.e., maximum of 480 hours of leave for full-time Employees who work 40 hours a week) during a 12-month period under this chapter.

(2) Eligible Employees may receive a maximum of 26 weeks of leave as a military caregiver.

(3) Eligible Employees shall be required to use all available paid leave when taking QML time off from work before using Leave Without Pay.

- (4) The Tulalip Tribes shall maintain an Employee's employment eligibility status when on approved QML. An Employee has a right to return to the same position or an equivalent position with equivalent pay, benefits, and working conditions at the conclusion of the leave.
- (5) Employees on approved QML may not engage in any other employment without prior written approval by the General Manager.
- (6) An Employee found to have engaged in unapproved outside employment while on approved QML shall have their leave revoked and may be subject to corrective action.
- (7) The 12-month period is based on a rolling calendar year, beginning with the date QML was first used. QML will expire 12 months from that date, unless an earlier date was specified in the certification provided by the Health Care Provider.
- (8) An Employee may submit a new Certification (recertify) specifying the need for continued QML. The Employee shall still be required to meet all eligibility requirements. The Employee should submit the new Certification prior to the end of the 12-month period to prevent uncovered time off from work.
- (9) Employees who have exhausted all QML and paid leave, who still need continued time off from work for medical reasons, may request Leave Without Pay (LWOP). This will require approval of Human Resources and the General Manager. Up to two weeks (up to 80 hours for full-time Employees) days of LWOP may be granted in a 12-month period. LWOP will be granted for a specific duration of time, and not for continued intermittent time off from work. (See Employee Handbook for additional information regarding Leave Without Pay).
- (10) Employees who have been out on QML for a block of time will be required to provide a full release from their Health Care Provider, outlining that they are able to return to work in their position. [Ord. 142, 9-6-2014 (Res. 2014-378)].

9.30.050 Eligibility.

- (1) Eligible Employees must meet all three of the following criteria:
- (a) Be a regular full-time, regular part-time or Contract Employee (per contract terms);
 - (b) Been employed for at least 12 months (during the previous 24 months) with the Tulalip Tribes;
 - (c) Worked at least 1,250 hours during the previous 12-month period.
- (2) The Tulalip Tribes may grant QML for any of the following reasons:
- (a) For leave after the birth of the Employee's child;

- (b) Placement of a child with the Employee for adoption or foster care;
- (c) To care for a Family Member with a Serious Health Condition;
- (d) To care for the Employee's own Serious Health Condition;
- (e) Military Leave (must be a qualifying emergency). A qualifying emergency for a nonmedical activity that is directly related to the Covered Service Member's active duty or call to active duty status; and/or
- (f) Military Caregiver Leave (26 weeks) to care for a Covered Service Member with a serious injury or illness that is directly related to their military service if the Employee is a Family Member;
- (g) Restorative dental or plastic surgeries after an injury or removal of cancerous growths are Serious Health Conditions provided all the other conditions of this chapter are met;
- (h) Mental illness or allergies may be Serious Health Conditions, but only if all the conditions of this chapter are met.

(3) Treatment does **not** include:

- (a) Routine physical examinations;
- (b) Eye examinations;
- (c) Dental examinations;
- (d) A regimen of Continuing Treatment includes, for example:
 - (i) A course of prescription medication (e.g., an antibiotic); or
 - (ii) Therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen); or
 - (iii) Taking of over-the-counter medications such as aspirin, antihistamines, or salves; or
 - (iv) Bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a Health Care Provider, is not, by itself, sufficient to constitute a regimen of Continuing Treatment for purposes of QML;
- (e) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "Serious Health Conditions" unless inpatient hospital care is required or unless complications develop;

(f) Unless complications arise, examples of conditions that do not meet the definition of a Serious Health Condition and do not qualify for QML are listed below:

- (i) The common cold;
- (ii) The flu;
- (iii) Upset stomach;
- (iv) Minor ulcers;
- (v) Headaches other than migraines;
- (vi) Routine dental or orthodontia problems; and/or
- (vii) Periodontal disease. [Ord. 142, 9-6-2014 (Res. 2014-378)].

9.30.060 Procedures.

(1) An Employee must submit the Qualified Medical Leave Request Forms to the Human Resources Department with required supporting documentation, which includes, but is not limited to, a medical Certification from a Health Care Provider.

(2) The QML Request Form is subject to verification by the Employee's Human Resources Department.

(3) When leave is foreseeable, the Employee should apply for QML at least 30 days in advance. When leave is not foreseeable, the Employee has 15 calendar days to submit the QML Request Form to the Human Resources Department from the first date the Employee gives notice of a need for QML or the leave may be denied.

(4) The Employer reserves the right to obtain a second opinion from an Independent Health Care Provider of the Employer's choice and at the Employer's expense. If the original and second opinions conflict, a third and binding opinion from an Independent Health Care Provider of the Employer's choice at the Employer's expense shall be obtained.

(5) Please see the Employer's Human Resources Department and/or the Employee Handbook for additional information regarding procedures for requesting QML.

(6) Continuation of Health Care Coverage. The Tulalip Tribes shall maintain the Employee's previously established health care coverage while the Employee is on QML. The buy-up plan and dependent coverage costs will be the Employee's responsibility, unless otherwise agreed to in writing. [Ord. 142, 9-6-2014 (Res. 2014-378)].

9.30.070 Intermittent Leave Procedures.

- (1) Intermittent Leave is QML taken in separate blocks of time or on a reduced leave schedule due to a single qualifying reason.
- (2) An Employee's request for Intermittent Leave is subject to verification and approval by the Employee's Human Resources Department.
- (3) Employees on approved Intermittent Leave may be required to furnish an updated medical Certification every 60 days, or as otherwise requested by the Employee's Human Resources Department.
- (4) Employees using Intermittent Leave to attend scheduled appointments must notify their supervisor and Human Resources Department in advance of scheduled appointments.
- (5) Human Resources may request an Employee to provide verification of attendance at a scheduled appointment.
- (6) QML may be denied and/or the absence may be considered unapproved if an Employee fails to provide advance notice of scheduled appointments.
- (7) The Employer has a right to temporarily transfer the Employee to a different position with equivalent pay, benefits, and working conditions during the Intermittent Leave. [Ord. 142, 9-6-2014 (Res. 2014-378)].

9.30.080 Sovereign Immunity.

Nothing in this chapter shall be deemed to constitute a waiver by the Tulalip Tribes of its Sovereign Immunity for any reason whatsoever. [Ord. 142, 9-6-2014 (Res. 2014-378)].

9.30.090 Severability.

- (1) If any part or parts, or the application of any part, of this chapter is held invalid, such holding shall not affect the validity of the remaining parts of this chapter.
- (2) The Tulalip Tribes Board of Directors hereby declares that it would have passed the remaining parts of this chapter even if it had known that such part or parts or application of any part thereof would be declared invalid. [Ord. 142, 9-6-2014 (Res. 2014-378)].

**Chapter 9.35
DRUG AND ALCOHOL FREE WORKPLACE**

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9.35.010 Purpose.

(1) The Tulalip Tribes requires all employees to report to work fit to perform their job duties and requires a drug and alcohol free workplace.

(2) This chapter shall be administered by the Tulalip Tribes Central Drug and Alcohol Compliance Department, hereinafter referred to as the CDACD. [Res. 2017-009; Res. 2016-237; Res. 2016-004; Ord. 143, 9-6-2014 (Res. 2014-378)].

9.35.020 Scope.

(1) This chapter shall apply to every entity of the Tulalip Tribes that is an employer and its employees, unless a variance is approved by the Board of Directors.

(2) As a condition of employment all employees are required to consent to drug and alcohol testing and to abide by the terms of this chapter. [Res. 2017-009; Res. 2016-237; Res. 2016-004; Ord. 143, 9-6-2014 (Res. 2014-378)].

9.35.030 Definitions.

(1) "Adulterated specimen" means a urine specimen that contains a substance that isn't expected to be present in human urine, or contains a substance expected to be present but is at a concentration that is not consistent with human urine.

(2) "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

(3) "Alcohol concentration" means alcohol in a volume of breath (shown as grams of alcohol/210 liters of breath) as indicated by a breath test.

(4) "Applicant" means an individual who completes and submits a job application to the Tulalip Tribes Central Employment Department.

(5) "Last chance agreement (LCA)" means an agreement provided to an employee in lieu of dismissal.

(6) "Collector" means a person who instructs and assists employees in the drug testing collection process, receives the specimen, and completes the necessary paperwork.

(7) "Controlled substances" means drugs or chemical substances which have been declared by Federal law and/or Tulalip Tribal law to be illegal. Some controlled substances may be prescribed by a licensed health care provider.

(8) "Cutoff level" means an established concentration based on which a drug is reported as positive or negative.

(9) "Dilute specimen" means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

(10) "Employee" means an employee or team member of one of the Tulalip Tribes entities.

(11) "Employer" means the Tulalip Tribes entity where the employee works.

(12) "Fit for duty" means the capacity of an employee to safely and competently perform job duties.

(13) "Health care provider" means certified licensed physician, doctor of osteopathy, certified licensed chemical

dependency provider/substance abuse provider, or nurse practitioner.

(14) "Illegal drug(s)" means any drug:

- (a) Which is not legally obtainable;
- (b) Which may be legally obtained but has not been legally obtained; or
- (c) Which is being used in a manner or for a purpose other than prescribed.

(15) "Inhalants" means breathable chemical vapors that are intentionally inhaled because of the chemicals' mind-altering effects.

(16) "Invalid drug test result" means the result of a drug test for a urine specimen that contains an unidentified adulterant or interfering substance. The laboratory reports the specimens as follows, but not limited to: "Sample not consistent with human urine, Invalid ... GC/MS Interference and/or Invalid – not consistent with human urine and/or canceled due to GC/MS Interference."

(17) "Impaired" means when an individual's motor senses (e.g., sight, hearing, balance, reaction, reflex, speech) or judgment either is, or may reasonably be presumed to be, affected by drugs/alcohol.

(18) "Legal drug" means a prescribed drug or over-the-counter drug which has been legally obtained and is being used for the purpose for which it is prescribed or manufactured.

(19) "Paraphernalia" means items designed or intended for manufacturing, concealing or using a controlled substance; items used to conceal products claimed to cleanse an individual's system of drugs.

(20) "Positive test" means a drug or metabolite is present in the screened specimen. A positive alcohol result is 0.020 or greater.

(21) "Refuse/refusal to test" means a determination that an individual did one or more of the following:

- (a) Refused to submit to a drug/alcohol test, failed to appear for testing, or displayed disruptive behavior during the collection process.
- (b) Tampered with a sample to include adulteration, intentional dilution, or substitution that is reported by the laboratory as an invalid drug test result.
- (c) Failed to cooperate with the testing process, to include but not be limited to leaving the testing area, not providing an additional specimen when required, and not following the collector's instructions.
- (d) Possessed item(s) that could be used to interfere with the testing process.

(22) "Safety sensitive positions" means positions in which an employee's primary job responsibility includes the following:

- (a) Provides transportation.
- (b) Operates Tulalip vehicles, vessels, and/or vehicles owned by customers/guests.
- (c) Operates or performs maintenance of machinery or equipment.
- (d) Performs security, surveillance, or law enforcement job duties.

(23) "Substance abuse" means a pattern of harmful use of any substance for mood-altering purposes.

(24) "Under the influence" means exhibiting behaviors that interfere with the performance of job duties due to the excessive or improper use of drugs and/or alcohol.

(25) "Work site/premises" means any office, building or property, vehicle or equipment owned, leased or operated by the Tulalip Tribes or where employees represent the Tulalip Tribes. [Res. 2017-009; Res. 2016-237; Res. 2016-004; Ord. 143, 9-6-2014 (Res. 2014-378)].

9.35.040 Violations.

(1) Violations shall result in corrective action, up to and including dismissal of employment. Other rules of prohibited conduct and violations are listed throughout this chapter. Probationary employees and any employee who commits Level II violations shall be dismissed from employment and not offered a last chance agreement.

(2) Level I. The following violations shall result in corrective action up to and including dismissal of employment:

- (a) Reporting to work with illegal drugs or their metabolites in the employee's system that yield a positive test.
- (b) Reporting to work with alcohol in the employee's system that yields a positive test.
- (c) Failure to provide prescription drug information to the CDACD within three working days when required.
- (d) Possess a controlled substance, illegal drugs, or paraphernalia.
- (e) Evidence of improper/illegal use of drugs/inhalants at the Tulalip Tribes work sites.

(3) Level II. The following violations shall result in dismissal of employment regardless of whether such conduct results in criminal charges or legal prosecution:

- (a) Refusal to test.
- (b) Having a drug test reported by the laboratory as an invalid drug test result.
- (c) Providing, selling or attempting to sell, distributing, receiving, trading, manufacturing, transferring, offering, and/or soliciting controlled substances and/or illegal drugs.
- (d) While in a safety sensitive position reports to work while taking legal drugs with warning labels cautioning potential impairment and/or deemed to pose a potential safety threat, unless otherwise preapproved by the CDACD.
- (e) Resign from employment at the time of collection or resign shortly after the collection.
- (f) Refuse to sign required paperwork and/or LCA after having a positive alcohol/drug test result.
- (g) Fail to comply with LCA.
- (h) Have a second positive test within one year from the first positive test.
- (i) While in a safety sensitive position reporting to work with illegal drugs or their metabolites in the employee's system that yield a positive test.
- (j) While in a safety sensitive position reporting to work with alcohol in the employee's system that yield a positive test. [Res. 2017-009; Res. 2016-237; Res. 2016-004; Ord. 143, 9-6-2014 (Res. 2014-378)].

9.35.050 Corrective action.

(1) Last Chance Agreement (LCA). An employee not in a probationary period of employment and/or not currently on a LCA who commits a Level I violation shall be offered a LCA for the opportunity to engage in drug/alcohol rehabilitation.

(a) Employees who are placed on a LCA shall communicate with the CDACD in the event that he or she requires a prescription due to a medical emergency, which could yield a positive test. The employee will require a release from the CDACD Department before returning to work.

(2) Dismissal. An eligible employee who commits a Level II violation shall be dismissed and shall not be offered a LCA. An employee who is in a probationary period of employment who commits a Level I and/or a Level II violation shall be dismissed and shall not be offered a LCA. [Res. 2017-009; Res. 2016-237; Res. 2016-004; Ord. 143, 9-6-2014 (Res. 2014-378)].

9.35.060 Employee responsibility.

The costs of drug/alcohol assessments and treatment whether covered by an employee's medical plan or not are

the employee's responsibility. Employees shall obtain treatment through a Tulalip approved treatment provider/facility that has been preapproved by the Tulalip Tribes medical/benefit plan. [Res. 2017-009; Res. 2016-237; Res. 2016-004; Ord. 143, 9-6-2014 (Res. 2014-378)].

9.35.070 Employment eligibility with the Tulalip Tribes.

(1) Employees who refuse to test, resign, and/or are dismissed for other work violations prior to the CDACD taking action for a positive test result will be ineligible for employment for 90 days and must have a drug/alcohol assessment and follow through with treatment recommendations prior to being eligible for employment.

(2) Employees who have drug/alcohol violations who resign, refuse to test, and/or are dismissed will be ineligible for employment for 90 days and must complete treatment requirements and/or have another drug/alcohol assessment if treatment recommendations were completed and follow through with treatment recommendations prior to being eligible for employment. [Res. 2017-009; Res. 2016-237; Res. 2016-004; Ord. 143, 9-6-2014 (Res. 2014-378)].

9.35.080 Inspections.

Employees are subject to inspections of Tulalip Tribes property when there is reasonable belief that they have violated this chapter. Interference with an inspection is a violation of this chapter and may result in dismissal of employment. [Res. 2017-009; Res. 2016-237; Res. 2016-004; Ord. 143, 9-6-2014 (Res. 2014-378)].

9.35.090 Use of legally obtained prescriptions and/or over-the-counter drugs.

(1) The Tulalip Tribes at all times reserves the right to determine whether an employee should be allowed to continue working during his/her use of legal drugs due to possible safety and/or performance problems that could arise from certain drug use.

(2) Safety sensitive employees must notify the CDACD prior to the performance of job duties, when using narcotic and/or mind-mood altering legally prescribed (RX) or over-the-counter (OTC) drugs that may interfere with the safe and effective performance of duties or operation of the Tulalip Tribes' equipment. [Res. 2017-009; Res. 2016-237; Res. 2016-004; Ord. 143, 9-6-2014 (Res. 2014-378)].

9.35.100 Pre-employment testing.

(1) Applicants will be asked to sign a form consenting to a drug screening test as part of the application process. Failure to sign the consent form will be considered a withdrawal of the application and a refusal to test.

(2) Applicants who test positive will be denied employment and will be ineligible for employment for 90 days.

(3) Current eligible employees applying for another position that have a positive test result shall not be hired for the position and corrective action shall be taken as outlined in this chapter. [Res. 2017-009; Res. 2016-237; Res. 2016-004; Ord. 143, 9-6-2014 (Res. 2014-378)].

9.35.110 Drug and alcohol testing.

(1) For purposes of this chapter and outlined procedures, the testing of urine, breath, hair, saliva, nails, or other body material will be conducted as deemed reasonably necessary to determine the presence of drugs, drug metabolites and/or alcohol.

(2) The Tulalip Tribes may request current employees to submit to a drug test in certain circumstances, including:

(a) When an employee's conduct, actions or behavior reasonably leads the employer to suspect that the employee may be using or under the influence of drugs or alcohol.

(b) When an employee has a controlled substance and/or illegal drug in his or her possession while on worksite premises or while performing work duties for the employer.

(c) When an employee is arrested for a drug or alcohol related offense.

(d) When an employee has experienced an on-the-job injury or accident.

(e) Safety sensitive employees, without individualized suspicion, are required to undergo periodic drug/alcohol tests.

(3) An employee who has tested positive on a test pursuant to this chapter and who is not dismissed may be retested by the employer at periodic intervals for up to 12 months after the positive test result.

(4) Employees may be required to submit to a fitness-for-duty evaluation when test results are negative and the observed impairment indicators are not adequately explained.

(5) Employees testing positive for legal drug(s) may be required to submit to a medical evaluation to determine any potential impact the legal drug(s) has on the employee's work performance and to determine whether the employee is able to continue performance of job duties without the use of the legal drug(s).

(6) Employees possessing commercial driver licenses (CDL) and operating commercial motor vehicles for the employer shall abide by Federal DOT drug/alcohol testing as defined by DOT testing guidelines.

(7) Entities of the Tulalip Tribes may request non-employees to submit to a drug test for permit, licensing and/or to fulfill other requirements. [Res. 2017-009; Res. 2016-237; Res. 2016-004; Ord. 143, 9-6-2014 (Res. 2014-378)].

9.35.120 Confidentiality.

(1) Laboratory test results/reports and treatment compliance information shall be maintained by CDACD.

(2) Access to this information is limited to those who have a legitimate need to know in compliance with relevant

laws which includes disclosure to the following:

- (a) Board of Directors, executive management, managers, supervisors, Human Resources, and the Employee Assistance Program;
- (b) Office of Reservation Attorney;
- (c) Referred treatment providers;
- (d) The Tulalip Tribes' investigative agencies;
- (e) Medical Review Officer;
- (f) To active/inactive employee upon written request;
- (g) When ordered by court of law;
- (h) Emergency medical personnel for medical treatment of an employee unable to authorize disclosure. [Res. 2017-009; Res. 2016-237; Res. 2016-004; Ord. 143, 9-6-2014 (Res. 2014-378)].

9.35.130 Appeals.

(1) Appeal of Urine Drug Test Result. An employee whose urine drug test is reported positive will be offered the opportunity to have the remaining portion of the screened urine specimen that yielded a positive result retested at his/her expense. The payment for the retesting cost and appeal must be filed with the CDACD within seven days upon notification of the positive drug test results.

(2) Eligible Appeals. Employees not in a probationary period who are dismissed due to violations of this chapter may appeal per their Employee Handbook provisions. [Res. 2017-009; Res. 2016-237; Res. 2016-004; Ord. 143, 9-6-2014 (Res. 2014-378)].

9.35.140 Sovereign immunity.

Nothing in this chapter shall be deemed to constitute a waiver of the Tulalip Tribes' sovereign immunity for any reason whatsoever. [Res. 2017-009; Res. 2016-237; Res. 2016-004; Ord. 143, 9-6-2014 (Res. 2014-378)].

9.35.150 Severability.

(1) If any part or parts, or the application of any part, of this chapter is held invalid, such holding shall not affect the validity of the remaining parts of this chapter.

(2) The Tulalip Tribes Board of Directors hereby declares that it would have passed the remaining parts of this chapter even if it had known that such part or parts or application of any part thereof would be declared invalid. [Res. 2017-009; Res. 2016-237; Res. 2016-004; Ord. 143, 9-6-2014 (Res. 2014-378)].

