

# Title 14 – Employment

## Chapter 1 – Tribal Employment Rights

**Sec.**

14-01.010	Title
14-01.020	Findings
14-01.030	Authority
14-01.040	Definitions
14-01.050	Applicability and Jurisdiction
	<i>Subchapter I – Tribal Employment Rights Office Commission</i>
14-01.060	Establishment of the Tribal Employment Rights Office Commission
14-01.070	Powers of the Commission
14-01.080	Regulations
14-01.090	Publication of Ordinance
14-01.100	Commission Funds
	<i>Subchapter II – Employment Rights Office</i>
14-01.110	Employment Rights Office
	<i>Subchapter III - Requirements on Employers</i>
14-01.120	Employment Preference to be Given
14-01.130	Compliance Plan
14-01.140	Reporting and On-Site Inspection
14-01.150	Union Agreements
14-01.160	Penalties for Violation
	<i>Subchapter IV – Administrative Hearings</i>
14-01.170	Compliance Hearing
14-01.180	Individual Complaint Procedures
14-01.190	Appeal of a Director’s Decision
14-01.200	Hearing Procedures
14-01.210	Additional Evidence
14-01.220	Order to Police
14-01.230	Appeal of a Commission Decision
	<i>Subchapter V – Judicial Review</i>
14-01.240	Filing
14-01.250	Effect of Proceedings
	<i>Subchapter VIII – Fair Labor Standards Policy</i>
14-01.260	Fair Labor Standards Policy [Reserved]
	<i>Subchapter IX – Repealer, Severability and Effective Date</i>
14-01.270	Repealer

14-01.280 Severability  
14-01.290 Effective Date

### **Legislative History**

**Enacted:**

Regulating Employment Rights and Taxing Employers, Ord. 189 (10/24/03), BIA (11/7/03).

**Repealed or Superseded:**

Tribal Employment Rights Ordinance, Ord. 52 (7/9/85), Enacting Res. 85-7-52, BIA (9/4/85).

---

**14-01.010 Title.**

This Chapter shall be cited as the “Swinomish Tribal Employment Rights Ordinance” and may also be referred to as the “Swinomish TERO”.

[History] Ord. 189 (10/24/03).

**14-01.020 Findings.**

- (A) The Swinomish Indian Tribal Community realizes that it is important to create employment and training opportunities and to eradicate discrimination against Swinomish Tribal Members and other Indians on or near the Swinomish Reservation. The Swinomish Indian Tribal Community may impose such fees and taxes as are necessary to achieve these goals.
- (B) Title VII of the 1964 Civil Rights Act prohibits preferential employment on the basis of race, color, sex, national origin, and religion. However, Title VII contains a special exception that makes Indian Preference permissible. Section 703 (I) (42 U.S.C. 2000 e-1(i) provides: “Nothing contained in this title shall apply to any business or enterprise on or near an Indian Reservation with regard to any publicly announced employment practices of such business or enterprise under which preferential treatment is given to any individual because he/she is an Indian.”
- (C) The Bureau of Indian Affairs in its regulations, at 25 CFR 3271.44, implementing the Indian Self-Determination Act, Public Law 93-638, provides for Indian Preference in employment training, contracting and subcontracting of all contracts negotiated or let on behalf of an Indian Tribe pursuant to the Act.
- (D) In January 1977, the Office of Federal Contract Compliance Programs issued regulations that provide: “It shall not be a violation of the equal opportunity clause for a construction or non-construction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian Reservation. The

use of the word ‘near’ would include all that area where a person seeking employment could reasonably be expected to commute to and from work in the course of a workday.” 41 CFR 60-1.5(a)(6).

[History] Ord. 189 (10/24/03).

**14-01.030 Authority.**

The authority for this Chapter is Article VI, Section 1(p) and Article VI, Section 2 of the Constitution of the Tribe.

[History] Ord. 189 (10/24/03).

**14-01.040 Definitions.**

As used in this Chapter:

- (A) **“Chair”** shall mean the Chair of the Swinomish Tribal Employment Rights Office Commission.
- (B) **“Commerce”** shall include without limitation all trades, traffic distribution, communications, and transportation, provision of services, fishing, manufacturing, production, agricultural production, building, maintenance, construction, banking, mining, and energy resources production.
- (C) **“Commission”** shall mean the Swinomish Tribal Employment Rights Office Commission.
- (D) **“Commissioner”** shall mean a commissioner of the Swinomish Tribal Employment Rights Office Commission.
- (E) **“Covered Employer”** shall mean any employer employing two (2) or more employees who during any thirty (30) day period, spend, cumulatively, four (4) or more hours performing work within the exterior boundaries of the Swinomish Indian Reservation.
- (F) **“EEOC”** shall mean the Equal Employment Opportunity Commission of the United States.
- (G) **“Employee,”** shall include all persons earning wages for work performed on or near the Swinomish Indian Reservation.
- (H) **“Employee on the Swinomish Reservation,”** shall include all employees who spend more than one-tenth (0.1) of his or her working hours per month or per pay period, whichever is shorter, on the Swinomish Indian Reservation.
- (I) **“Employer”** shall include, but is not limited to, any person, company, contractor, sub-contractor, or other entity that is located or otherwise engaged in work on the

- Swinomish Reservation that employs two (2) or more persons for wages. The term **“Employer”** includes state, county, and other governmental agencies and contractor or sub-contractor of a governmental agency, and also includes the Swinomish Indian Tribal Community unless the Swinomish Indian Tribal Community is exempt from this ordinance as a result of another ordinance or an explicit provision of the Personnel Manual. The term shall also include independent contractors, and sub-contractors to any other employer.
- (J) **“Indian”** shall mean any enrolled member of a federally recognized Indian Tribe.
- (K) **“Indian Owned Firm or Entity,”** shall mean any commercial, industrial or other business activity, or entity in which the equity ownership and controlling Indian ownership constitutes not less than fifty-one percent (51%).
- (L) **“Indian Preference”** shall mean:
- (1) For non-tribal employers, that all other qualifications being equal, qualified Indians, residing on or near the Swinomish Indian Reservation are given preference over non-Indians in contracting, subcontracting, hiring, promotion, training, and all other aspects of employment; and
  - (2) For the Tribe as employer or for tribally owned and/or operated firms or entities, that all other qualifications being equal, qualified Indians, residing on or near the Swinomish Reservation are given preference over non-Indians in contracting, subcontracting, hiring, promotion, training, and all other aspects of employment and will receive preferential treatment with first consideration being given to Swinomish tribal members; and second consideration to other Indians.
- (M) **“Indian Resident on the Reservation”** or **“Resident Indian,”** shall mean any Indian person residing for at least sixty (60) days in Skagit County.
- (N) **“Near the Reservation”** shall mean any employer located within daily commuting distance of the Reservation.
- (O) **“Non-Resident Indian”** shall include all Indians who are not resident Indians within the definition in Section 4-01.040(M).
- (P) **“Notice,”** as it is required to be given by the TERO Director, shall mean and shall be sufficient if it is published in a local newspaper of suitable size and general circulation, and posted in a public place on the Reservation, as to: (1) unnamed parties in an action; (2) all interested persons who are not parties to an action; and (3) in all instances where a specific person is not addressed.
- (Q) **“OFCCP”** shall mean the Office of Federal Contract Compliance Programs of the United States.

- (R) **“Person”** shall include both natural persons and artificial persons, including, but not limited to, corporations, trusts, partnerships, unions, agents, societies, sole proprietorships, and estates of descendants.
- (S) **“Reservation”** shall mean all lands and waters within the exterior boundaries of the Swinomish Indian Reservation.
- (T) **“Secretary”** shall mean the Secretary of the Interior or the Secretary’s duly authorized representative.
- (U) **“Senate”** shall mean the Swinomish Indian Senate.
- (V) **“TERO”** shall mean the Tribal Employment Rights Ordinance and/or the Tribal Employment Rights Office.
- (W) **“Tribe”** shall mean the Swinomish Indian Tribal Community.
- (X) **“Union,”** or **“Labor Union”** shall mean 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, rate of pay, hours of employment or conditions of work.
- (Y) **“Wages”** shall mean payment for work done on a regular basis for another person.

[History] Ord. 189 (10/24/03).

**14-01.050 Applicability and Jurisdiction.**

This Chapter shall be binding on all covered employer(s) regardless of whether or not they are operating within the exterior boundaries at the time of the implementation of this Chapter. This Chapter shall apply to all lands and waters within the exterior boundaries of the Swinomish Indian Reservation and other lands subject to jurisdiction of the Tribe.

[History] Ord. 189 (10/24/03).

*Subchapter I - Tribal Employment Rights Office Commission*

**14-01.060 Establishment of the Tribal Employment Rights Office Commission.**

- (A) The Tribal Employment Rights Office Commission is hereby created to administer the TERO.
- (B) The Commission shall consist of three (3) commissioners and one (1) alternative commissioner appointed by the Senate. The Senate shall appoint a Chair of the Commission who shall preside over Commission meetings. The Chair of the Senate and the Chair of the Personnel Committee shall be ex-officio members of the Commission.

[History] Ord. 189 (10/24/03).

**14-01.070 Powers of the Commission.**

The TERO Commission is delegated such authority to carry out the duties under this Chapter, subject to the review of the Senate, including to:

- (A) Establish and enforce TERO regulations;
- (B) Establish and collect such TERO fees and taxes as are appropriate and necessary to operation of the TERO;
- (C) Enforce the Indian Preference provisions of the TERO;
- (D) Investigate and report, and take such regulatory actions as are needed, regarding compliance with the TERO;
- (E) Use the Tribal Personnel Committee to hire and fire Commission employees and to set salaries pursuant to a salary schedule and budget approved by the Tribe;
- (F) Establish rules and regulations governing all activities of the Commission;
- (G) Expend funds appropriated by the Tribe for the TERO Office and to seek funding from federal, state, or other sources to supplement Senate appropriations, subject to Senate approval;
- (H) Establish numerical hiring goals and timetables specifying the maximum number of Indians an employer must hire by craft or skill level, where hiring goals and timetables for hiring, retention and promotion of tribal employees shall be negotiated with the Personnel Committee, provided that disputes between an individual employee and the Tribe regarding discipline, retention, and promotion shall be decided under the procedures of the personnel manual;
- (I) Require employers to establish or participate in job training programs as the Commission deems necessary to increase the pool of Indians eligible for employment on the Reservation;
- (J) Assist and monitor the establishment and implementation of the tribal hiring hall and require employers to use it;
- (K) Prohibit employers from using the job qualifications criteria or personnel requirements that may bar Indians from employment unless such criteria is required by business necessity. Commission regulations may adopt EEOC guidelines or may adopt additional requirements to eliminate employment barriers unique to Indians and the Reservation;
- (L) Recommend that the Tribe enter into agreement with unions to ensure union compliance with this Chapter;

- (M) Require employers to give preference to tribal and other Indian owned businesses in the award of contracts and subcontracts;
- (N) Subject to the appropriation of funds by the Tribe for this purpose, establish and administer counseling programs to assist Indians in obtaining and retaining employment;
- (O) Hold hearings and subpoena witnesses and documents in accordance with this Chapter;
- (P) Require employers to submit reports and take action deemed necessary by the Commissions to implement this Chapter;
- (Q) Recommend that the Tribe enter into cooperative agreements with federal and state agencies to eliminate discrimination against Indians both on and off the Reservation;
- (R) Levy a TERO Tax in accordance with Chapter 17-05; and
- (S) Take such other actions as are necessary to achieve the purposes and objectives established in this Chapter.

[History] Ord. 189 (10/24/03).

**14-01.080 Regulations.**

The Commission shall issue regulations in the same manner, and with the same procedure, as the Senate enacts ordinances.

[History] Ord. 189 (10/24/03).

**14-01.090 Publication of Ordinance.**

- (A) The Commission shall notify and send a copy of this Chapter and Chapter 17-05 to every employer operating on the Reservation and all other interested parties and federal agencies. All bid announcements issued by federal, state, and tribal agencies, or other private or public entities shall contain a clause or statement that the successful bidder will comply with this Chapter and, where applicable, all other rules, regulations, and orders of the Commission.
- (B) All tribal and federal agencies responsible for issuing business and/or other tribal permits, and contracts with perspective employers for Reservation activities, shall be responsible for advising prospective employers of their obligation under this Chapter, Chapter 17-05 and the rules, regulations and orders of the Commission.

[History] Ord. 189 (10/24/03).

**14-01.100 Commission Funds.**

All funds derived from collection of employer taxes, in accordance with Chapter 17-05, and other appropriate resources collected by the Commission shall be placed in a the general fund subject to the budget process of the Senate.

[History] Ord. 189 (10/24/03).

### ***Subchapter II - Employment Rights Office***

#### **14-01.110 Employment Rights Office.**

- (A) The Office of Employment Rights is hereby established with full supervisory authority vested in the Director, who shall report directly to the Commission and to the tribal Social Services Director.
- (B) The Director shall be selected by the Commission, under the personnel policies of the Tribe. The Director shall have the authority to hire staff pursuant to the personnel policies of the Tribe, and to obtain and expend funds from federal, state, or other sources to carry out the purposes of the office subject to the prior approval of the Senate. The Director shall have the authority to issue regulations, rules and guidelines to implement the employment rights requirements imposed by this Chapter, hold hearings, and subpoena witnesses and documents. The Director shall require employers to submit reports, issue cease and desist orders, petition the Commission and Tribal Court for removal orders, and take such actions as are necessary for the implementation of this Chapter.

[History] Ord. 189 (10/24/03).

### ***Subchapter III – Requirements on Employers***

#### **14-01.120 Employment Preference to be Given.**

- (A) All employers are hereby required to give preference to Indians:
  - (1) For non-tribal covered employers, that all other qualifications being equal, qualified Indians, residing on or near the Swinomish Indian Reservation are to be given preference over non-Indians in contracting, subcontracting, hiring, promotion, training, and all other aspects of employment.
  - (2) For the Tribe as employer or for tribally owned and/or operated firms or entities, that all other qualifications being equal, qualified Indians, residing on or near the Swinomish Indian Reservation are to be given preference over non-Indians in contracting, subcontracting, hiring, promotion, training, and all other aspects of employment and will receive preferential treatment with first consideration being given to Swinomish tribal members; and second consideration to other Indians.

[History] Ord. 189 (10/24/03).

#### **14-01.130 Compliance Plan.**

As of the effective date of this Chapter, no new employers may commence work on the Reservation until they have consulted the Director or Commission for meeting their obligations under this Chapter including the creation of a compliance plan. All other covered employers shall consult the Director or Commission within three (3) months concerning their obligations under this new Chapter.

[History] Ord. 189 (10/24/03).

#### **14-01.140 Reporting and On-Site Inspection.**

Employers shall submit reports and other information requested by the Commission. The Commission and Director shall have the right to make periodic on-site inspections during the regular working hours of all employers in order to monitor compliance with this Chapter, rules, regulations, and orders of the Commission. The Commission and Director shall have the right to inspect and copy all relevant records of any employer, signatory, union, contractor, and subcontractors and shall have the right to speak to workers and conduct on-site investigations.

[History] Ord. 189 (10/24/03).

#### **14-01.150 Union Agreements.**

- (A) Any covered employer who has a collective bargaining agreement with one (1) or more unions, shall obtain written agreements from said union(s) stating that the union shall comply with the TERO laws, rules, regulations, and guidelines of the Tribe. Such agreement(s) shall be subject to the approval of the Commission, the Director and the Tribe. Such agreement(s) and approval does not constitute official tribal recognition or sanction of any union.
- (B) All covered employers with collective bargaining agreements shall enter into a compliance plan under this Chapter.
- (C) Nothing in this Chapter shall require payment of prevailing wages under the Davis-Bacon Act, or as amended, unless such a prevailing wage provision is included in the compliance plan entered into by the employer.

[History] Ord. 189 (10/24/03).

#### **14-01.160 Penalties for Violation.**

- (A) Any employer, contractor, subcontractor, or union who violates this Chapter, rules and regulation, or orders of the Commission shall be subject to civil sanctions, including but not limited to:
  - (1) Denial of the right to commence or continue business inside the Reservation.
  - (2) Suspension of all operations inside the Reservation.

- (3) Payment of back pay and damages to compensate any injured party.
  - (4) An order to summarily remove employees hired in violation of this Chapter or rules, regulations and order of the Commission.
  - (5) Imposition of monetary civil penalties not to exceed the greater of \$500 per day for each violation or \$10,000 per violation.
  - (6) Prohibition from engaging in any future operations on the Reservation.
  - (7) An order requiring employment, promotion and training of Indians injured by the violation.
  - (8) An order requiring changes in procedures and policies necessary to eliminate the violations.
  - (9) An order making any provisions deemed by the Commission necessary to alleviate, eliminate, or compensate for any violation.
- (B) Penalties are to be assessed by the TERO Director.

[History] Ord. 189 (10/24/03).

#### *Subchapter IV - Administrative Hearings*

##### **14-01.170 Compliance Hearing.**

- (A) If the Commission has reason to believe that the employer, contractor, subcontractor, or union has failed to comply with the Chapter or any rules, regulations or orders of the Commission, it may file a complaint and notify such party of the alleged violations. The Commission will attempt to achieve an informal settlement, but if one cannot be achieved, the Commission may hold a hearing upon the matter pursuant to Subsection (B) of this Section.
- (B) The Commission may hold hearings to investigate compliance with this Chapter. Written notice of the hearing, the nature of the hearing, and a list of the evidence to be presented shall be given to all parties concerned. All parties shall be advised of their right to be present at the hearing, to present testimony of witnesses and other evidence, and to be represented by Counsel at their own expense. The Commission may be represented by the Director or an attorney for the Tribe. Testimony shall be given under oath.

[History] Ord. 189 (10/24/03).

##### **14-01.180 Individual Complaint Procedures.**

If any Indian believes he or she had been discriminated against by an employer because he or she is an Indian, the individual may file a complaint with the Commission specifying the

alleged violation. Upon receipt of the complaint, the Commission shall investigate and attempt to achieve an informal settlement. If one cannot be achieved, the individual Indian or Commission may request a hearing upon the matter pursuant to Section 14-01.170 of this Chapter.

[History] Ord. 189 (10/24/03).

**14-01.190 Appeal of a Director's Decision.**

Any person aggrieved by a decision of the TERO Director may appeal that decision to the Commission by filing a Petition for Review with the Chair of the Commission and serving a copy of the Petition upon the TERO Director.

[History] Ord. 189 (10/24/03).

**14-01.200 Hearing Procedures.**

Hearings held by the Commission under this Subchapter shall be governed by the following rules of procedure:

- (A) All parties may present testimony of witnesses under oath and other evidence and may be represented by counsel at their own expense.
- (B) The Commission may have the advice and assistance of an attorney for the Tribe at the hearing.
- (C) The Chair or the Vice-Chair of the Commission shall preside. No formal rules of evidence or procedures need to be followed, but the Commission shall proceed to ascertain all the relevant facts in a reasonable and orderly fashion.
- (D) Any matter to be proven must be done so to the satisfaction of the Commission by a preponderance of the evidence.
- (E) The hearing may be continued at the discretion of the Commission.
- (F) At the final close of the hearings, the Commission may take immediate action or take the matter under advisement.
- (G) The Commission shall notify all parties of its decision on the matter, within fifteen (15) days after the hearing.

[History] Ord. 189 (10/24/03).

**14-01.210 Additional Evidence.**

Upon receipt of such a Petition filed pursuant to Sections 14-01.170 through 14-01.190, the Chair shall cause the Commission to hold a hearing to consider the merit of the Petition. At least five (5) working days notices for such meeting shall be given both the Petitioner and the

TERO Director, unless such notice is waived at the time of the hearing, provided that the presence of the Petitioner or the TERO Director at the hearing shall not constitute such a waiver without additional indication of such waiver. An electronic or verbatim record of the hearing shall be kept. Testimony at the hearing shall be given under oath, and the parties may be represented by counsel, at their own expense, provided that the counsel is admitted to practice before the Tribal Court. The Commission may receive any evidence it deems relevant to the Petition. The hearing may be continued from time to time. Within fifteen (15) working days of the close of the hearing, the Commission shall issue a written opinion setting out its decision and the reason for its decision. A copy of the opinion shall be served upon the Petitioner and the TERO Director, and upon the Chair of the Senate. The filing of a Petition for review shall not operate to stop the operation of the action of the TERO Director unless the Commission shall so order.

[History] Ord. 189 (10/24/03).

**14-01.220 Order to Police.**

- (A) The Swinomish Tribal Police are hereby expressly authorized and directed to enforce such cease and desist or related orders as may from time to time be properly issued by the Commission and Director.
- (B) Such orders do not require a judicial decree or order to render them enforceable. The police shall not be civilly liable for enforcing such orders so long as the order is signed by the Director and a majority of the Commissioners.

[History] Ord. 189 (10/24/03).

**14-01.230 Appeal of a Commission Decision.**

Any person aggrieved by the decision of the Commission may appeal to the Senate by filing a Notice of Appeal with the Secretary, or with the Office of the Chairman, within ten (10) calendar days of the date of the Commission decision. Within thirty (30) days of the filing of the Notice of Appeal, the person appealing shall file a written transcript of the hearing before the Commission with the Tribe. The costs of the transcription shall be paid by the person appealing. Within thirty (30) calendar days of receipt of the transcript, the Senate shall take up the appeal at a regular or special meeting of the Senate. The Senate's review shall be limited to whether the Commission afforded the person appealing due process and a fair hearing, or if the Commission committed an error of law. No new evidence shall be received by the Senate and no argument shall be made to the Senate unless the appeal was first presented to the Commission. The Senate shall issue a decision within fifteen (15) calendar days of the meeting at which the matter is considered. The filing of a Notice of Appeal shall not operate to stop the effect of the Commission's decision unless the Senate shall order.

[History] Ord. 189 (10/24/03).

### *Subchapter V - Judicial Review*

#### **14-01.240 Filing.**

All remedies under this Chapter must be exhausted before filing a petition in Tribal Court.

[History] Ord. 189 (10/24/03).

#### **14-01.250 Effect of Proceedings.**

Any person aggrieved by the decision of the Senate may file a Notice of Appeal with the Tribal Court. The Tribe specifically waives its immunity from suit in the Tribal Court for the sole and limited purpose of the appeals permitted under this Section, and for the awarding of equitable relief only, and not for the award of money damages. Notice of Appeal shall be filed with the Tribal Court within ten (10) calendar days of the Senate decision, and shall not operate to stop the effect of the Senate decision unless the Court shall order. The Tribal Court shall limit its review on appeal to the issue of whether the person appealing was given due process before the Senate, or if the Senate committed an error of law. Relief given the person appealing by the Tribal Court shall be limited to a declaration of the correct law and a grant of a new hearing before the Senate.

[History] Ord. 189 (10/24/03).

### *Subchapter VI – Fair Labor Standards Policy*

#### **14-01.260 Fair Labor Standards Policy.**

[Reserved]

### *Subchapter VII – Repealer, Severability and Effective Date*

#### **14-01.270 Repealer.**

Ordinance 52 and any amendments thereto are hereby repealed.

[History] Ord. 189 (10/24/03).

#### **14-01.280 Severability.**

If, for any circumstances, provisions or Sections of this Chapter are held invalid by an appropriate court, the remainder of the Chapter and other provisions or Sections will not be affected in the application of the Chapter to any person, employer and other covered by the jurisdiction.

[History] Ord. 189 (10/24/03).

#### **14-01.290 Effective Date.**

This Chapter shall be effective from the date of its approval by the Secretary of the Interior or the Secretary's designated representative.

[History] Ord. 189 (10/24/03).