

Frequently Asked Questions

WHAT IS TERO?

TERO stands for Tribal Employment Rights Ordinance or Office. The Lummi Nation Tribal Ordinance, Title 25 of the Lummi Code of Laws, addresses contracting and subcontracting, and establishment of the Tribal Employment Rights Office and its requirements. The intent of TERO is to achieve employment and training opportunities for the local Native American workforce.

WHY WAS THE TERO ORDINANCE ENACTED?

- ✓ To address the deplorable rate of poverty, unemployment and underemployment that exists among native people living on reservations.
- ✓ To eliminate discriminatory and other historical barriers tribal members face while seeking employment and business opportunities on or near reservations.
- ✓ To ensure that tribal members receive their rightful entitlements as intended under the concept of Native Preference.

WHAT DOES THE TERO ORDINANCE DO?

- ✓ SETS CONDITIONS: Mandates the tribal requirements for Native preference that all covered employers must comply with in order to be eligible to perform work on reservation.
- ✓ ESTABLISHES AUTHORITY: Empowers the TERO Commission & Staff with sufficient authority to fully enforce all provisions of the TERO Ordinance.
- ✓ PROVIDES DUE PROCESS OF LAW: It provides principles of legal fairness to all parties involved in compliance or violation dispute issues.

WHAT IS THE PURPOSE OF THE TERO PROGRAM?

The primary purpose of the TERO Program is to preserve, promote and protect our Schelangen through increasing employment and training opportunities and to eradicate discrimination against Lummi Tribal members and other Native Americans on or near the Lummi Reservation. Develop and maintain a cooperative working relationship with contractors and subcontractors while working under the guidelines of the TERO Ordinance. Referring qualified tribal members for employment and training.

WHAT IS NATIVE PREFERENCE?

Native Preference is a unique right that tribal members have that entitles them to first consideration to all employment, training, contracting and subcontracting and business opportunities that exist on and in some cases near reservations.

IS NATIVE PREFERENCE LEGAL?

Native Preference is not allowed on federal/state contracts or in private employer situations. Many tribes have native preferences in their TERO Ordinances that are not consistent federal law and therefore not allowed on any federally funded or assisted contracts. Tribes can however, apply native preference in all aspects of employment to their own business enterprises and construction contracts. Native Preference is also allowed on tribal Public Law 93-638 contracts.

DOES NATIVE PREFERENCE VIOLATE FEDERAL EMPLOYMENT LAW?

There are no federal laws which prohibit Native Preference. Tribes are exempt from Title VII of the Civil Rights Act and several other federal employment laws. Numerous court rulings have upheld this exemption (see *Morton v. Mancari*). Additionally court rulings have indicated that Native preference is a political preference and not a racial preference and as such does not violate the dictates of federal employment law.

WHAT ARE THE BASIC TERO REQUIREMENTS?

ALL covered employers engaged in construction work within the tribal jurisdiction are required to provide Native preference in employment, training, contracting, subcontracting, and all other aspects of economic development activities. Below several specific examples employers are required to comply with:

- ✓ Submit an acceptable compliance plan detailing the steps they will take to ensure compliance with the TERO Ordinance.
- ✓ Utilize the TERO Hiring Hall for all referrals and consider Native applicants before interviewing or hiring non-Native.
- ✓ Eliminate all extraneous job qualification criteria or personnel requirements which may act as barriers to Native employment. EEOC guidelines on legal BFOQs are used by TERO.
- ✓ All employers who have collective bargaining agreements with one or more unions, must secure a written agreement from them indicating they will comply with TERO.
- ✓ Agree to acknowledge and respect tribal religious beliefs and cultural differences and to cooperate with TERO to provide fair and reasonable accommodations.

WHEN DO I NEED TO FILL OUT A COMPLIANCE PLAN?

Compliance Plans are needed for any construction jobs on the reservation. TERO will work with all employers to develop Compliance Plans, no work may commence on the Reservation until they have consulted with TERO and received an approved plan.

WHAT IF I START A PROJECT AND FORGET TO FILL OUT A COMPLIANCE PLAN?

Any unauthorized construction work being done on the reservation may result in fines to the contractor or funding agency, if the contractor has previously dealt with TERO. The fines range in amounts from \$500 per person per day up to \$10,000 a day. Construction employers will be required to stop work until an approved plan has been submitted and approved.

ARE THERE EXEMPTIONS TO TERO REQUIREMENTS?

Yes. There are several exemptions. Most TERO Ordinances exempt direct employment by the Tribe, Federal, State or other governmental and their subdivisions, non-profit corporations, churches, schools etc. However, all contractors working for these entities regardless of the source of funding are covered by the TERO Requirements. At the individual level, the only exemption allowed is for the employer's "core crew or key person" which is defined as: Key Crew, "one who is in a supervisory or lead position or one who possess a "specialized skill" in which the employer who invested time (years) and cost to help that employee reach a level of specialized skill and who performs a critical function, (this does not include a new hire or apprentice)

such that an employer would likely risk financial damage or loss if unable to employ.” Core Crew, “one who is an owner of the firm, corporation, LLC or INC, a superintendant or a foreman and listed as such on the employer’s or contractor’s annual payroll for a minimum period of one year continuously. An employee who is hired on a project-by-project basis is not considered a core crew employee.”

ARE TERO FEES LEGAL?

Yes. Tribal authority to tax is equal to that of any other government. TERO Fees are a valuable source for financing tribal governmental operations.

DO I HAVE TO PAY THE TERO TAX?

The TERO tax applies to construction jobs that are over \$10,000.

WHAT IF I BID A JOB UNDER THE \$10,000?

TERO still requires a plan to be submitted and approved before the commencement of work being done.

WHEN IS TERO TAX DUE?

TERO Fee on Projects bid for \$350,000 or less, full payment of the TERO Fee is due prior to the beginning of work activity.

TERO Fee on Projects bid over \$350,000, No less than ½ the TERO Fee must be paid prior to the commencement of work activity. A written request for payment schedule for the remaining balance to the TERO Fee must be submitted with this compliance plan for approval.

Change Orders on bids must be reported to TERO immediately upon approval from the funding/contracting agency. Adjustments to the TERO Fee amount will be made accordingly.