

## **Subpart S Employment Law & Labor Relations**

### **S-1 Employee Drug Testing Policy and Procedures for Employees of the Pueblo of Pojoaque Tribal Government**

The Pueblo of Pojoaque Tribal Government wishes to protect the health, safety and welfare of the Pueblo of Pojoaque enrolled members, employees and visitors by ensuring a drug-free workplace. Drugs include alcohol. Recognizing that requiring urinalysis and breathalyzer testing for drugs is an invasion of a person's privacy, the Pueblo of Pojoaque drug testing policy has been designed to test for drugs in the most confidential, discreet and sensitive manner possible.

(a) Pre-Employment Drug Testing for Employees. Any person applying for a job through the Pueblo of Pojoaque Tribal Government Human Resources Department may be required to submit to a urinalysis test. The urinalysis test shall be scheduled at the earliest possible date after an offer of employment is made by the Pueblo of Pojoaque Tribal Government.

(b) Random Drug Testing Safety Sensitive Jobs. Any employee who works in a safety-sensitive job may be tested at random through urinalysis or a breathalyzer test. Random testing may be done when required by the Department director. Testing may only be done when there is a random choice of employees to be tested and where all employees in the safety-sensitive job are included in the employee pool to be tested.

A safety-sensitive job is defined as a job where:

1. Errors in judgment, inattentiveness or diminished coordination, dexterity or composure while performing their duties could clearly result in mistakes that would endanger the health and safety of others;
2. The worker is responsible for supervision of children; and
3. Any job where a Pueblo of Pojoaque motor vehicle is operated and the motor vehicle is listed in the Pueblo of Pojoaque's motor vehicle insurance.

The Pueblo of Pojoaque has designated the following jobs as safety-sensitive: All positions in the Tribal Works Department, Day Care Center, and Boys and Girls Club, any Tribal Police officers who are authorized to carry weapons, and any person who operates a Pueblo of Pojoaque-owned motor vehicle that is insured by the Pueblo of Pojoaque insurance is in a safety-sensitive position.

(c) Drug Testing when there is Articulable, Reasonable Suspicion that the Employee is Using Drugs. Any employee may be tested through urinalysis or a breathalyzer when reasonable suspicion of drug use is supported by facts. Facts include, but are not limited to: intoxication at the workplace; on-duty accidents or incidents that may be caused by drug use; violation of safety precautions that may be caused by drug use; or possession of drugs and/or alcoholic beverages.

(d) Laboratories Authorized to Conduct Drug Testing.

Drug test samples shall be analyzed by:

1. A commercial laboratory meeting standards that are the same as those used by the Department of Health and Human Services (DHHS)/National Institute on Drug Abuse (NIDA) to certify laboratories engaged in urine drug testing for Federal agencies (Mandatory Guidelines for Federal Workplace Drug Testing Program, Federal Register, Vol. 53, No. 69) or those standards used by the College of American Pathologists (CAP) to accredit laboratories for forensic urine drug testing (Standards for Accreditation, Forensic Drug Testing Laboratories, College of American Pathologists): and

- A. Is capable of same site initial screening and confirmatory tests,
- B. Utilizes FDA-approved immunoassay tests, and
- C. Participates in a laboratory proficiency testing program.

(e) Required Components for Drug Testing. Any drug testing or retesting procedure shall include all of the following:

1. The drug screening methodology to be used, which shall be a type of immunoassay, except that another may be used if a department can demonstrate that it is equally reliable as immunoassay;

2. The drugs to be tested, which shall only include the following drugs of abuse:

- A. Amphetamines and Methamphetamines
- B. Cocaine
- C. Marijuana/Cannabinoids (THC)
- D. Opiates (narcotics)
- E. Phencyclidine (PCP)
- F. Alcohol, testing may be conducted through breath testing devices or urine specimens
- G. Barbiturates
- H. Methadone
- I. Propoxyphene

3. Cutoff levels for screening tests that will identify positive samples while minimizing false positive test results;
4. Chain of custody provisions, which shall include at least the following:
  - A. A procedure to assure that a valid specimen is acquired, the donor is properly identified, and that no tampering or mishandling of the specimen occurs from initial collect to final disposition. Specimen handlers shall be certified through the laboratory that tests the specimens.
  - B. A written log in which is recorded the name, signature, time of receipt, and time of release of each person handling, testing or storing each specimen, and reporting test results.
  - C. Collection of specimen samples in a clinical setting such as a laboratory collection station, doctor's office, hospital or clinic, or in another setting approved by the Gaming Commission's Executive Director on the basis that it provides an equally secure and professional collection process.
5. Procedure for confirmation of positive screening test results utilizing gas chromatography/mass spectrometry (GS/MS);
6. Notes to the applicant which shall be written and based on the following:
  - A. If the screening test result is negative, the test is concluded and the applicant has passed the drug test.
  - B. If the necessary confirmatory test result is negative, the test is concluded and the applicant has passed the drug test.
  - C. If both the screening test and the confirmatory test results are positive and the opinion is that the positive test results are not because of prescribed or over the counter medication or for any other medically acceptable reasons, the applicant has failed the drug test.
7. Specimen retention and retesting procedure, which shall include at least the following:
  - A. Provisions for retesting of confirmed positive specimens by any laboratory authorized to conduct drug testing, at the request of an applicant and at the applicant's expense, provided that the request is received within thirty (30) days of notifying the applicant of his or her disqualifications. Retesting shall correspond exactly with the initial methods and procedures.
8. Provisions for maintain the confidentiality of test results, which shall include at least the following:

A. The results of any test shall be given only to the applicant who was tested, the Tribal Secretary and/or their representative. The test results cannot be revealed to any other party without the written authorization of the person tested.

B. However, the Tribal Secretary may reveal that a drug test was failed and give other relevant information to the Human Resources Department.

C. All drug test results shall be kept under lock and key and only accessible to the Tribal Secretary or their designee.

(f) Consequences of Failing or Refusing to Take the Drug Test.

1. Applicants for a job who fail the pre-employment drug test may be ineligible for employment for a specific period of time.

2. Any employee failing a drug test may be terminated.

3. Any employee failing a drug test may lose New Mexico Worker's Compensation benefits.

4. Termination may not be affected should the employee enter a drug treatment program after a drug test is failed.

5. A person covered by this policy who refuses to take the drug test may be terminated.

(g) Employee Assistance Program. Employees with a drug or alcohol abuse problem may seek assistance from the Human Resources Department. While the Pueblo of Pojoaque is not financially responsible for employee treatment, paid or unpaid administrative leave may be granted during the treatment program.

(h) Penalties for Failure of Employees of Tribal Programs to Pass Drug/Alcohol Tests.

1. The Pueblo of Pojoaque Tribal Council passed a comprehensive drug and alcohol policy in Tribal Council Resolution 1994-15. For employees of Tribal programs, the penalties included in this Resolution supersede Tribal Council Resolution 1994-15. The remaining provisions in Tribal Council Resolution 1994-15 remain in effect.

2. If there is reasonable suspicion that an employee is using illegal drugs, pharmaceutical drugs that are not prescribed by a physician, or using alcohol to the extent that job performance may be impaired, they may be tested for drug/alcohol use. These penalties also apply to random drug/alcohol tests and drug/alcohol tests for safety-sensitive positions.

3. If the first drug/alcohol test is positive, the employee may request a second test, at their own expense, to ensure the validity and reliability of the first test. The second drug/alcohol test must be requested and taken within an hour of receiving the result of the first drug/alcohol test.

4. If the employee tests positive for drug/alcohol use described above, they shall be subject to First Offense Penalties.
5. First Offense Penalties are mandatory. First Offense Penalties include at a minimum, that the employee shall be given one (1) week of leave without pay. Leave without pay shall continue until the employee's test results are negative. Upon returning to work, the employee shall be placed on three (3) months of probation during which time they may be subject to random drug testing at the discretion of their Department Supervisor or a Tribal Official. The employee shall be responsible for the costs of all drug-testing within the probationary period.
6. Second Offense Penalties are mandatory. After a second offense, employment is terminated for one (1) year.
7. Federal or State grant employees. If the employee is paid through a Federal or State grant, and the employee tests positive for alcohol or drugs, the employee shall be terminated immediately upon the first offense.
8. DUI Convictions. At the discretion of the Department Supervisor or Tribal Official, any employee convicted in any Court of Driving under the Influence may be subject to the First and Second Offense Penalties.
9. Procedure. Upon receiving notification that the employee has tested positive for drugs/alcohol, the Department Supervisor shall immediately forward the notification to the Human Resources Department. The Human Resources Department shall then immediately apply the penalties.

## **S-2 Drug-Free Workplace Act**

- (a) The Pueblo of Pojoaque does not differentiate between drug users and drug pushers or sellers. Any employee who gives or in any way transfers a controlled substance to another person or sells or manufactures a controlled substance will be subject to discipline up to and including dismissal.
- (b) The term controlled substance means any drug considered unlawful according to federal regulations.
- (c) An employee is required by law to inform his or her immediate supervisor or the Governor within five (5) days after he or she is convicted for violation of any federal or state criminal drug statute at the workplace.
- (d) The personnel officer of any agency receiving federal funds must notify the U.S. Government agency with which the contract was made within ten (10) days after receiving notice from the employee or otherwise receiving actual notice of the conviction.

(e) If an employee is convicted of violating any criminal drug statute while in the workplace, he or she will be subject to discipline as determined by the Pueblo of Pojoaque Tribal Council. The Tribal Council shall determine the extent of discipline up to and including dismissal. Alternatively, the Tribal Council may require the employee to undergo treatment at an approved private or governmental institution.

(f) Employees will receive notification of all programs and services available to the Pueblo of Pojoaque by the Eight Northern Indian Pueblos Substance Abuse Prevention Program.

(g) Employees will be required to sign a certification form stating compliance with the Pueblo of Pojoaque's policy statement regarding the Drug-Free Workplace. This requirement is included in the orientation checklist to be completed by each new employee.

(h) As a condition of further employment on a federal government contract, the law requires all employees to abide by this policy.

### **S-3 Labor Organization Ordinance**

(a) Definitions. For purposes of this Ordinance:

1. "Business agent" means any person who acts or attempts to act for, or on behalf of, any labor organization in:

A. The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization; or

B. Soliciting or receiving from any employer any right or privilege for employees.

2. "Employer" means any person, firm, association, corporation and other business entity lawfully operating on the Pueblo lands, including the Pueblo and its instrumentalities, enterprises, corporations or other subordinate economic organizations owned by the Pueblo.

3. "Labor organization" means any organization of any kind or any agency or employee representation committee or plan in which employees organize for the purpose, in whole or in part, of dealing with an employer concerning hours of employment, rate of pay, wages, working conditions, or grievances of any kind relating to employment and desiring to operate on the Pueblo lands.

4. "Ordinance" means the Pueblo of Pojoaque Labor Organization Ordinance.

5. "Person" means any individual, employer, labor organization, corporation, association, company, firm, partnership or other entity.

6. "Pueblo" means the Pueblo of Pojoaque, a federally-recognized Indian tribe.

7. “Pueblo lands” means the lands anywhere within the exterior boundaries of any grant from a prior sovereign, as confirmed by Congress or the Court of Private Land Claims to a Pueblo Indian Tribe of New Mexico; or lands held in trust by the federal government for the benefit of the Pueblo or any other lands subject to the jurisdiction of the Pueblo.

8. “Governor” means the Governor of the Pueblo or his designee.

9. “Tribal Council” means the governing body of the Pueblo.

10. “Tribal Court” means the Pueblo of Pojoaque Tribal Court.

11. “Tribal Criminal Offense” means any action that violates Subpart M (Criminal Code) of the Pueblo of Pojoaque Law and Order Code, any applicable public policies, memorandums and resolutions regarding the Law and Order Code, as previously enacted. Such offenses include, but are not limited to, assault, battery, theft, bribery, conspiracy, negligence, disorderly conduct, extortion, misusing property, malicious mischief and trespass.

12. “Corporate Team Member” is defined as a Team Member who works for one of the Corporate Employers owned by the Pueblo of Pojoaque and its instrumentalities as provided under *Section III A of the Corporate Team Handbook*.

13. “Corporate Employer” is defined as a corporation owned by the Pueblo. The Pueblo, in its governmental capacity, charters for-profit corporations. The corporations chartered by the Pueblo are also owned by the Pueblo and are referred to in the Corporate Team Member Handbook as “Corporate Employers.” The Corporate Employers include, but are not limited to:

- Buffalo Thunder Inc. (BTI)
- Pojoaque Gaming Inc. (PGI)
- Pueblo of Pojoaque Enterprise Corporation (PPEC)
- Pueblo of Pojoaque Commercial Development Corporation (PPCDC)
- Pueblo of Pojoaque Development Corporation (PPDC)

(b) As provided under *Section III B. of the Corporate Team Handbook*,

1. Tribal Council Findings. The Tribal Council finds that The Pueblo possesses the inherent power to exclude persons from Pueblo lands which includes the lesser power to place conditions on entry, on continued presence, or on conduct on Pueblo lands;

2. Various labor organizations and their business agents may attempt to enter Pueblo lands without the authorization of the Pueblo through their connection with employers who have lawfully entered Pueblo lands pursuant to leases, rights-of-ways and other consensual relationships with the Pueblo;

3. The unauthorized entry of various entities and persons on Pueblo lands threatens the political integrity, economic security and the health, safety and welfare of the Pueblo and its members and visitors in the overall direction and policy for the economic development of the Pueblo;

4. The individual freedom of choice in the pursuit of employment on Pueblo lands should be encouraged as a matter of the public policy and law of the Pueblo; and

5. The right to work should not be subject to undue restraint, coercion, or infringed upon based on membership in, affiliation with, or financial support of a labor organization, or upon the refusal to join, affiliate with, or financially or otherwise support a labor organization.

(c) Jurisdiction. All persons who enter Pueblo lands shall be deemed to have given implied consent to the jurisdiction of the Pueblo and shall be subject to the provisions of this Ordinance.

(d) Registration of Labor Organizations.

1. Every labor organization operating on Pueblo lands shall file a report with the Governor, within sixty (60) calendar days after this Ordinance is enacted by the Tribal Council and/or at least sixty (60) calendar days prior to any activity on Pueblo lands or prior to activity related to employees or workers performing work or services on Pueblo lands and thereafter on or before December 31 of each year. The report, which shall be filed by the president or the business agent of the labor organization, shall contain the following information:

A. The name and address of the labor organization.

B. The names and addresses of the president, secretary, treasurer, and business agent of the labor organization.

C. The name and address of the national or international organization, if any, with which it is affiliated.

D. A copy of the collective bargaining agreement between the labor organization and an employer, if any.

2. At the time of filing the report, the labor organization shall pay an annual fee of twenty-five dollars (\$25.00).

3. The president or the business agent of the labor organization shall file with the Governor a notice of changes to the information required by this Section within ten (10) days after the changes are made, and provide any additional information requested by the Governor.



(e) Business Agent.

1. All licenses shall be non-transferable or non-assignable.
2. Any person desiring to act as a business agent on Pueblo lands shall first obtain a license from the Pueblo by: (i) filing an application under oath with the Governor; (ii) paying a license fee of twenty five dollars (\$25.00); (iii) submitting a full set of fingerprints of the applicant, which shall be taken by the Pueblo of Pojoaque Tribal Police Department or other law enforcement agency authorized by the Tribal Council to do so; and (iv) submitting a statement signed by the president and the secretary of the labor organization showing his authority to act as a business agent for the labor organization.
3. The Governor, in his discretion, may conduct or cause to be conducted an independent background investigation of the applicant to determine the applicant's eligibility for a license.
4. Upon compliance with Paragraph (d), the Governor shall issue the license. If at any time after the issuance of the license the Governor receives reliable information based on the background investigation or other source that the licensee is ineligible to hold a license, the Governor may suspend or revoke the license, in which case the licensee may appeal the suspension or revocation within thirty (30) days to the Tribal Court. The license shall run for the calendar year for which is issued unless sooner surrendered, suspended, or revoked.
5. All licenses shall expire at midnight on December 31 of each year, but may be renewed by the Governor on a form prescribed by the Governor for that purpose and upon the payment of an annual renewal fee of twenty five dollars (\$25.00); however, if any license has been surrendered, suspended or revoked during the year, then the applicant must go through the requirements set forth in Paragraph (d) as a new applicant.
6. Grounds for denial, suspension, or revocation of licenses shall include false application.
7. The Pueblo reserves its right to deny a license to any organization, entity, or person that does not meet the license application requirements or that does not comport to the Pueblo's values and priorities as determined by the Pueblo's authority in its sole discretion. However, the Pueblo will not discriminate against an organization, entity, or person based on any federally-protected classification.

(f) Freedom of Choice Guaranteed.

1. No person shall be required, as a condition of employment or continuation of employment on Pueblo lands, or on lands owned by the Pueblo or any of its instrumentalities, corporations or entities or as an employee of the Pueblo or any of its instrumentalities, corporations or entities or political or economic subdivisions to: (i) resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization; (ii) become or remain a member of a labor

organization; (iii) pay dues, fees, assessments or other charges of any kind or amount to a labor organization; or (iv) pay to any charity or other third party, in lieu of such payments any amount equivalent to or a pro-rata portion of dues, fees, assessments or other charges regularly required of members of a labor organization.

2. Any actual agreement between any labor organization and an employer that violates the rights of employees guaranteed by the provisions of this Ordinance is declared to be against the public policy of the Pueblo and of no legal effect.

3. No person, including any labor organization, employer, or employee, shall commit any tribal offense or threaten, or act against, the health, safety and welfare of the Pueblo and its members and its visitors.

(g) Solicitation and Distribution Policy, Corporate Team Members, Corporations Owned by the Pueblo of Pojoaque, Corporate Team Member Handbook.

Corporate Team Members shall refrain from soliciting other Corporate Team Members during the working hours of either Corporate Team Member. Examples of solicitation include the selling or merchandising of property, seeking contributions or donations for any reason, or seeking signatures in support of any cause.

Corporate Team Members shall refrain at all times from distributing any literature in any work area.

Solicitation of Corporate Team Members or distribution of any literature by non-Corporate Team Members on Pueblo of Pojoaque premises and in work areas is forbidden. The Chief Executive Officer may waive the above under certain circumstances and may make appropriate amendments to the Corporate Team Member Handbook.

(h) Violations of the Ordinance. It shall be a violation of this Ordinance for any person on Pueblo lands:

1. To act as a business agent without having obtained a valid license.
2. To solicit membership for or to act as a business agent of any labor organization without authority of the labor organization to do so.
3. To make any false statement in an application for license.
4. To unlawfully seize or occupy any property during the existence of a labor dispute.
5. To coerce or intimidate any elected or appointed Tribal Official; or to intimidate the family, picket the domicile, or injure the person or property of any employee or Tribal Official.

6. To engage in picketing in any manner which constitutes a Tribal offense, including picketing in a manner to prevent ingress to and egress from any premises, and picketing other than in a reasonable and peaceful manner.

7. To violate the provisions under Paragraph (g).

(i) Penalties. Any person who, directly or indirectly, violates any provision of this Ordinance shall be subject to a fine not exceeding one thousand dollars (\$1,000), or exclusion from Pueblo lands, or both.

(j) Civil Remedies. Any person injured as a result of any violation or threatened violation of the provisions of this Ordinance shall be entitled to injunctive relief from the Pueblo of Pojoaque Tribal Court against any person threatening any violation, and may, in addition, recover any and all damages, including costs and reasonable attorney fees, resulting from the violation or threatened violation. The remedy shall be independent of, and in addition to, any other penalties and remedies prescribed by applicable law.

(k) Severability. The provisions of this Ordinance are declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, then that declaration shall not affect the remaining provisions of this Ordinance. However, nothing in this Ordinance is intended nor shall be construed to violate the National Labor Relations Act to the extent, if any, as it applies to the Pueblos of New Mexico.

(l) Sovereign Immunity. Nothing in this Ordinance shall be construed as waiving the sovereign immunity of the Pueblo or its agents, employees or officials, or any of the Pueblo's instrumentalities, corporations or entities or their respective officers, directors, employees or agents, nor intended to constitute consent to suit or consent to jurisdiction of any court, administrative agency, arbitrator or other tribunal.

(m) Exclusive Jurisdiction. The provisions of this Ordinance shall be under the sole jurisdiction of the Pueblo of Pojoaque Tribal Court.

#### **S-4 Tribal Employment Rights Office Ordinance**

(a) Declaration of Policy. As a guide to the interpretation and application of the Ordinance, the public policy of the Pueblo of Pojoaque is declared to be as follows: land, water, minerals, jobs, subcontracts and contracts in the private sector on or near the Pueblo of Pojoaque are an important resource for Indian people and Indians must use their rights to obtain their rightful share of such opportunities as they become available. Indians have unique and special employment, subcontract and contract rights, and the Pueblo of Pojoaque Tribal Government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indians. An integral part of attaining this goal is by structuring employment and training opportunities on the Pueblo of Pojoaque to provide for the hiring of Indians who are qualified, and through training of Indians where there are sufficiently qualified Indians to meet employment opportunities. Indians are also entitled to the protection of the laws that the Federal government has adopted to combat employment discrimination, and tribal governments can and should play a role in the enforcement of those laws. The Pueblo of Pojoaque believes it is important to establish an employment rights

program and office in order to use the aforementioned laws and powers to increase employment of Indian workers and businesses and to eradicate discrimination against Indians. Nothing contained in this Ordinance shall violate or undermine federal requirements on equal employment opportunity, namely Title VII of the 1964 Civil Rights Act; and the Office of Federal Contract Compliance Programs (OFCCP) or Executive Order 11246.

(b) Definitions.

1. "Employee" means any person employed for remuneration.
2. "Employer" means any person, partnership, corporation or other entity that employs, for wages, two (2) or more employees or any person who engages in employment or construction activities through paid agents or servants or who is hired on contracts for services within the exterior boundaries of the Pueblo of Pojoaque. The term employer includes any person acting as an agent, contractor, subcontractor of an employer, directly or indirectly, but shall not include the United States or any wholly owned government corporation or any state or political subdivision thereof; but shall include independent contractors and subcontractors of the United States or any wholly owned government corporation or any state or political subdivision thereof.
3. "Covered Employer" means any employer employing two or more employees who during any thirty-(30)-day period spend, cumulatively, forty (40) or more hours performing work within the exterior boundaries of the Pueblo of Pojoaque.
4. "Entity" means any person, partnership, corporation, joint venture, government, governmental enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be as broad and as encompassing as possible to ensure the Ordinance's coverage overall employment and contract activities within the Pueblo's jurisdiction, and the term shall be so interpreted by the TERO Director and the courts.
5. "Commercial Enterprise" means any activity by the Pueblo of Pojoaque or of the federal or state governments that is not a traditional government function as defined by the Internal Revenue Service.
6. "Indian" means any member of a federally recognized tribe.
7. "Indian-Owned Firm or Entity" means any commercial, industrial, or other business activity owned firm or entity, provided that such Indian ownership constitutes not less than fifty-one percent (51%) of the enterprise.
8. "Indian Preference" means that Indians, without regard to tribal affiliation, are given preference over non-resident Indians in employment and training, and that Indians are given preference over non-Indians in employment and training.
9. "TERO Director" is the person appointed by the Tribal Council to administer the TERO Program.

10. "Local Indian" means any member of a federally recognized tribe who resides within the exterior boundaries of the Pueblo of Pojoaque.

11. "Person" shall include both natural and artificial persons including, but not limited to, corporations, trusts, partnerships, unions, agents, societies, sole proprietorships, and estates of decedents.

(c) Employer Reporting Information and Requirements. Every employer is subject to the Pueblo of Pojoaque TERO requirements. All employers shall report to the Pueblo of Pojoaque TERO Director and register his or her business activity. Every employer shall report: the nature of his or her business activity; the number of employees at various stages of the contract/subcontract; total amount of contracts; and provide supporting documents as required for business activity conducted within the exterior boundaries of the Pueblo of Pojoaque.

(d) Indian Preference in Employment. All covered employers, for all employment occurring within the exterior boundaries of the Pueblo of Pojoaque, shall give preference to qualified Indians, with the first preference to local Indians, in all hiring, promotion, training, and all other aspects of employment. Such employers shall comply with the rules, regulations, guidelines and orders of the TERO Director, which set forth the specific obligations of employers in regard to Indian preference and local Indian preference. These requirements shall not apply to any direct employment by the Pueblo of Pojoaque or by the federal, state or other governments or their subdivisions. It shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments.

(e) Indian Preference in Contracting. All entities awarding contracts or subcontracts for supplies, services, labor and materials in an amount of five thousand dollars (\$5,000) or more where the majority of the work on the contract or subcontract will occur within the exterior boundaries of the Pueblo of Pojoaque, shall give preference in contracting and subcontracting to qualified entities that are certified by the TERO Director as fifty-one percent (51%) or more Indian owned and controlled, with a first preference to qualified entities that are fifty-one percent (51%) or more owned and controlled by local Indians. These requirements shall not apply to the award of contracts awarded directly by the Pueblo of Pojoaque Tribal Council or by the federal or state government or their subdivisions. They shall apply to any contracts awarded by any commercial enterprise of the Pueblo of Pojoaque; even if said contracts must be submitted to the Pueblo of Pojoaque Tribal Council for approval. Tribal programs or divisions other than commercial enterprises shall not be required to comply with these requirements but shall be required, when submitting a contract to the Pueblo of Pojoaque Tribal Council for approval, to indicate, as part of the submission to the TERO Director, the steps taken to award the contract to a local Indian contractor. These requirements shall apply to all subcontracts awarded by a tribal, federal or state direct contractor or grantee, whether or not the prime contract was subject to these requirements. All covered entities shall comply with the rules, regulations, guidelines, and orders of the TERO Director, which set forth the specific obligations of such entities in regard to Indian preference in contracting and subcontracting. The TERO Director shall establish a system for certifying firms as Indian preference and local Indian preference eligible.

(f) Unions. Any covered employer who has a collective bargaining agreement with one or more unions shall obtain written agreement from such union(s) stating that the union shall comply with Indian preference laws, and with the rules, regulations and guidelines of the Pueblo of Pojoaque. Such agreement shall be subject to the approval of the TERO Director.

(g) Powers of the TERO Director. The TERO Director has the full power, jurisdiction, and authority to:

1. Formulate, adopt, amend and rescind rules, regulations and guidelines necessary to carry out the provisions of this Ordinance. Except when an emergency exists, the TERO Director shall provide the public with a reasonable time for comment before promulgating any final regulations.
2. Require each covered employer or entity to submit to the TERO Director an acceptable compliance plan indicating how it will comply with this Ordinance, before a covered employer or entity may commence work within the exterior boundaries of the Pueblo of Pojoaque.
3. Impose numerical hiring goals and timetables that specify the minimum number of Indians a covered employer must hire, by craft or skill level.
4. Require covered employers to establish or participate in such training programs as the TERO Director determines necessary in order to increase the pool of qualified Indians on the Pueblo of Pojoaque as quickly as possible.
5. Establish in conjunction with Tribal employment and training programs, a tribal hiring hall or skills bank and impose a requirement that no covered employer may hire a non-Indian until the tribal hiring hall or bank has certified that no qualified Indian is available to fill the vacancy, with a first preference in referral to local Indians.
6. Prohibit covered employers from using qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the employer can demonstrate that such criteria or requirements are required by business necessity. In developing regulations to implement this requirement, the TERO Director shall adopt the EEOC guidelines on these matters to the extent that they are appropriate. The TERO Director shall have the right to impose its own requirements in addition to or in lieu of EEOC guidelines when necessary to address unique qualification problems confronting Indians.
7. To enter into agreements with unions to ensure union compliance with this Ordinance. Such agreements shall in no way constitute recognition or endorsement of any union.
8. Impose contract and subcontract preference requirements, with first preference requirements to local Indian firms, and establish and operate a system for certifying firms as eligible for Indian preference and local Indian preference.

(h) TERO Director; Staff; Duties. The TERO Director shall have all necessary power to: administer, implement, and enforce this Ordinance, including but not limited to:

1. Adopt, amend and rescind rules, regulations, or guidelines.
2. To subpoena records and witnesses.
3. Conduct investigations.
4. To conduct hearings or to impose sanctions pursuant to Subsection (n).

(i) Intergovernmental Relationships. The TERO Director is authorized to enter into cooperative relationships with federal employment rights agencies, such as EEOC and OFCCP, in order to eliminate discrimination against Indians.

(j) Employment Rights Fee. An employment rights fee, to raise revenue for the operation of the TERO Office, is imposed as follows:

1. Every covered employer with a construction contract in the sum of one hundred thousand dollars (\$100,000) or more shall pay a one-time fee of five percent (5%) of the total amount of the contract. The fee may be paid in installments over the length of the contract, if approved by the TERO Director.
2. Every covered employer, other than construction contractors, with twenty (20) or more employees working, within the exterior boundaries of the Pueblo of Pojoaque, with gross sales of one hundred thousand dollars (\$100,000) or more shall pay a quarterly fee of one half of one percent ( $\frac{1}{2}$  of 1%) of his employees' quarterly payroll which shall be paid within thirty days after the end of each quarter. This fee shall not apply to education, health, governmental, or nonprofit employers nor to utilities franchised by the Pueblo of Pojoaque.
3. The TERO Director shall be responsible for collecting said fees pursuant to any rules and regulations adopted. Said fees shall be paid to the Treasurer and shall be credited to the general account of the Pueblo.

(k) Complaints. Any individual, group of individuals or organization that believes any covered employer or entity has violated any requirements imposed by this Ordinance or regulations issued pursuant to it, may file a complaint with the TERO Director. The complaint shall be in writing and shall provide such information as is necessary to enable the TERO Director to carry out an investigation. The TERO Director shall investigate every complaint filed with him. If upon investigation, he has reason to believe a violation has occurred, he shall proceed pursuant to the provisions of Subsection (n). Within twenty (20) days after receipt of the complaint, and on a regular basis thereafter, the TERO Director shall provide the complaining party with a written report on the status of the complaint.

(l) Investigations. On his own initiative or pursuant to a complaint, the TERO Director or any field compliance officer designated by the TERO Director shall make such public or

private investigations within the boundaries of the Pueblo of Pojoaque as he or the TERO Director deems necessary to determine whether any covered employer or other covered entity has violated any provision of this Ordinance or any rule or order hereunder, or to aid in prescribing rules, regulations and guidelines hereunder. The TERO Director or his delegate may enter, during business hours, the place of business or employment of any employer for the purpose of such investigations, and may require the covered employer or entity to submit such reports as he deems necessary to monitor compliance with the requirements of this Ordinance or any rule or order hereunder.

(m) Power to Require Testimony and Production of Records. For the purpose of investigations or hearings which, in the opinion of the TERO Director, are necessary and proper for the enforcement of this Ordinance, the TERO Director, or any field compliance officer designated by the TERO Director may administer oaths or affirmations, subpoena witnesses, take evidence, and require, by citation, the production of books, papers, contracts, agreements or other documents, records or information which the TERO Director deems relevant or material to the inquiry.

(n) Enforcement.

1. When, after conducting an investigation, initiated by a complaint pursuant to Subsection (k) or a self-initiated investigation pursuant to Subsection (l), the TERO Director has reason to believe a violation of this Ordinance or regulations issued pursuant to it has occurred, the TERO Director shall notify the covered employer or entity in writing, specifying the alleged violations. However, he may withhold the name(s) of the complaining party if he has reason to believe that such party shall be subject to retaliation. The TERO Director shall seek to achieve an informal settlement of the alleged violation. If he is unable to do so, he shall issue a formal notice of non-compliance, which shall also advise the covered employer or entity of his right to request a hearing.

2. The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the employer or entity with a reasonable time, which in no event shall be less than five (5) days from the date of receipt of such notice, to comply, unless the TERO Director has reason to believe irreparable harm will occur during that period, in which case he may require that compliance occur within fewer than five (5) days. If the party fails or refuses to comply, he may request a hearing before the TERO Director which shall be held no sooner than five (5) days and no later than thirty (30) days after the date for compliance set forth in the TERO Director's notification to the party charged of a violation, unless an expedited hearing is deemed necessary by the TERO Director to avoid irreparable harm. If a party fails or refuses to comply and does not request a hearing, the TERO Director may proceed pursuant to Subsection (n)(5).

3. If the party requests a hearing pursuant to Subsection (n)(2), and the TERO Director has good cause to believe that there is a danger that the party requesting the hearing will remove itself or its property from the jurisdiction of the Pueblo prior to the hearing, he may, in his discretion, require the party to post a bond with the TERO Director in an amount sufficient to cover possible monetary damages that may be



assessed against the party at the hearing. If the party fails or refuses to post said bond, the TERO Director may proceed pursuant to Subsection (n)(5). The TERO Director may also petition the Pueblo of Pojoaque Tribal Court for such interim and injunctive relief as is appropriate to protect the rights of all parties during the pendency of the complaint and hearing proceedings.

4. Any hearing held pursuant to Subsection (n)(2) shall be governed by the rules of practice and procedure which may be adopted by the TERO Director. The TERO Director shall not be bound by technical rules of evidence in the conduct of hearings under this Ordinance, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the TERO Director. No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of the party charged.

5. If, after the hearing, the TERO Director determines that the violation alleged in Subsection (n)(1) occurred and that the party charged has no adequate defense in law or fact, if no hearing is requested, the TERO Director may:

A. Deny such party right to commence business within the exterior boundaries of the Pueblo of Pojoaque;

B. Suspend such party's operation within the exterior boundaries of the Pueblo of Pojoaque;

C. Terminate such party's operation within the exterior boundaries of the Pueblo of Pojoaque;

D. Deny the right of such party to conduct any further business within the exterior boundaries of the Pueblo of Pojoaque;

E. Impose a civil fine on such party in an amount not to exceed five thousand dollars (\$5,000) for each violation;

F. Order such party to make payment of back pay to any aggrieved Indian;

G. Order such party to dismiss any employees hired in violation of the Pueblo of Pojoaque Employment Right requirements; or

H. Order the party to take such other action as is necessary to ensure compliance with this Ordinance or to remedy any harm caused by violation of this Ordinance, consistent with the requirements of 25 U.S.C. 1301, et seq.

6. The TERO Director's decision shall be in writing, shall be served on the charged party by registered mail or in person no later than thirty (30) days after the close of the hearing provided in Subsection (n)(5). Where the party's failure to comply immediately with the TERO Director's orders may cause irreparable harm, the TERO Director may move the Tribal Court, and the Tribal Court shall grant, such injunctive relief as

necessary to preserve the rights of the beneficiaries of this Ordinance, pending the party's appeal or expiration of the time for appeal.

(o) Jurisdiction. The Pueblo of Pojoaque Tribal Council, the TERO Director and the Pueblo of Pojoaque Tribal Court have exclusive jurisdiction of all matters arising under the TERO Resolution and any related Ordinance, Rules, Regulations, Laws and Policies.

(p) Appeals.

1. An appeal to the Tribal Court may be taken from any final order of the TERO Director by any party adversely affected thereby. Said appeal must be filed no later than twenty (20) days after the party receives a copy of the TERO Director's decision. The Tribal Court shall uphold the decision of the TERO Director unless it is demonstrated that the decision of the TERO Director is arbitrary, capricious or in excess of the authority of the TERO Director. The appeal shall be taken by serving a written notice of appeal with the Tribal Court, with a copy to the TERO Director within twenty (20) days after the date of the entry of the order. The notice of appeal shall:

- A. Set forth the order from which appeal is taken;
- B. Specify the grounds upon which reversal or modification of order is sought; and
- C. Be signed by the appellant.

2. The order of the TERO Director shall abate pending the determination of the Tribal Court. However, the TERO Director may petition an, for good cause shown, the Court may order the party requesting a hearing to post a bond sufficient to cover monetary damages that the TERO Director assessed against the party or to assure the party's compliance with other sanction or remedial actions imposed by the TERO Director's order if that order is upheld by the Court. If the order of the TERO Director is reversed or modified, the Court shall by its mandate specifically direct the TERO Director as to further action in the matter, including making and entering any order or orders in connection therewith, and the limitations, or conditions to be contained therein. If the TERO Director's order is upheld on appeal, or if no appeal is sought within twenty (20) days from the date of the party's receipt of the TERO Director's order, the TERO Director shall petition the Court and the Court shall grant such orders as are necessary and appropriate to enforce the orders of the TERO Director and the sanctions imposed by it.

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

is necessary and appropriate to protect the rights of the TERO Director and other affected parties.

(q) Confiscation and Sale. If, twenty-one (21) days after a decision by the TERO Director pursuant to Paragraph (o) no appeal has been filed, or thirty (30) days after a decision by the Court on an appeal from a decision by the TERO Director pursuant to Subsection (p)(1) a party has failed to pay monetary damages imposed on it or otherwise complied with an order of the TERO Director or the Court, the TERO Director may petition the Court to order the tribal police to confiscate, and hold for sale, such property of the party as is necessary to ensure payment of said monetary or to otherwise achieve compliance. Said petition shall be accompanied by a list of property belonging to the party which the TERO Director has reason to believe is within the jurisdiction of the Tribal Court, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition valid, it shall order the tribal police to confiscate and hold said property or as much as is available. The tribal police shall deliver in person or by certified mail, a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it. If thirty (30) days after confiscation the party has not come into compliance, the Court shall order the police to sell said property and use the proceeds to pay any outstanding monetary damages imposed by the TERO Director and all costs incurred by the Court and police in the confiscation and sale. Any proceeds remaining shall be returned to the party.