

POSTED FOR PUBLIC COMMENT

Tribal Occupational Safety & Health Code

14.16.010 Title and Authority: This code shall be known as the “Tribal Occupational Safety & Health Code” of the Puyallup Tribe of Indians. This code is enacted by the Puyallup Tribal Council as the governing body of the Puyallup Tribe of Indians and pursuant to the inherent authority of the Puyallup Tribe of Indians to regulate activities and govern conduct on its reservation and to place conditions on entry and continued presence on the reservation.

Please review and mail questions, comments, concerns, or to request copy of the code, contact:

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Re: TOSH Code
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Tacoma, WA 98404*

Or email to:

*Re: TOSH Code
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Comments must be received no later than 4:00pm on Friday, June 30, 2023

Chapter 14.16

TRIBAL OCCUPATIONAL SAFETY & HEALTH CODE

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Chapter 14.16
TRIBAL OCCUPATIONAL SAFETY & HEALTH CODE

14.16.010 Title and authority.

This Code shall be known as the "Tribal Occupational Safety & Health Code" of the Puyallup Tribe of Indians. This Code is enacted by the Puyallup Tribal Council as the governing body of the Puyallup Tribe of Indians and pursuant to the inherent authority of the Puyallup Tribe of Indians to regulate activities and govern conduct on its reservation and to place conditions on entry and continued presence on the reservation.

14.16.020 Purpose.

The Puyallup Tribal Council adopts this chapter to promote the welfare and safety of all persons who work within the jurisdiction of the Puyallup Tribe of Indians and to provide for fair and efficient enforcement of applicable occupational safety and health standards.

14.16.030 Definitions.

For purposes of this Code, the following definitions apply:

- a. "Employee" means an individual employed by an Employer and who performs work, in whole or in part, for the Employer on the Reservation.
- b. "Employer" means any Person, under Tribal jurisdiction, that employs Employees who perform work, in whole or in part, on the Reservation. Employer shall include the Tribal Nation. The term Employer excludes federal, state, and local governments—unless the Tribe enters into an intergovernmental agreement that authorizes the TOSH department to assist federal, state, or local government enforcement.
- c. "Puyallup Tribe of Indians Tribal Council" or "Tribal Council" means the governing body of the Puyallup Tribe of Indians pursuant to Article III, Section 1 of the Constitution and Bylaws of the Puyallup Tribe of Indians.
- d. "Person" means both natural persons and artificial persons, including, but not limited to, entities considered Employers hereunder, corporations, partnerships, joint ventures, limited liability companies, sole proprietorships, associations, unions, trusts, trustees, and agents.
- e. "Reservation," when unqualified, means the Puyallup Indian Reservation, established pursuant to the provisions of the Treaty of Medicine Creek, 10 Stat. 1121, December 26, 1854, and the Executive Orders of January 20, 1857, and September 6, 1873. For purposes of this code, it means any lands held by the United States government in trust for the Tribe or members thereof, and any other lands or waters subject to the Tribe's jurisdiction.
- f. "TOSH" or "TOSH Department" means the Tribal Occupational Safety and Health Department.
- g. "TOSH Director" or "Director" means the person hired by the Puyallup Tribe of Indians to

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perform the duties described in this code.

- h. "Tribe", "Tribal Nation", "PTOI" means the Puyallup Tribe of Indians, and includes any arm, department, agency, corporation, subdivision, enterprise, entity or organization of the Tribe or any entity wholly/majority owned by the Tribe.

14.16.040 Sovereign immunity.

Nothing in this Code constitutes a waiver or impairs the sovereign immunity of the Tribe, or any of its subordinate boards or bodies.

14.16.050 TOSH Director.

- a. The TOSH Director shall be responsible for administering the policies and procedures of the TOSH department, and enforcing this Code.
- b. The TOSH Director has the authority to:
 - (i) Review this Code continually and if necessary, present recommendations to Council for amendment to this Code;
 - (ii) Present emergency recommendations to Council, as needed for the protection of the health and safety of all;
 - (iii) Conduct educational programs so that all persons, including both Employees and Employers, are trained on applicable occupational safety and health standards;
 - (iv) Establish a system of inspection for all Employers under Puyallup Tribal jurisdiction, located within the exterior boundaries of the Puyallup Tribe Reservation, and for all tribally owned enterprises.
 - (v) Establish TOSH department policies and procedures;
 - (vi) Issue citations, per the approved penalty schedule;
 - (vii) Work with all affected Tribal Nation departments and enterprises to promote and ensure compliance with this Code;
 - (viii) Establish a fair and efficient method for enforcing this Code;
 - (ix) Work with staff counterparts from Federal, State, Tribal and other local governmental agencies and make recommendations to Council for intergovernmental agreements;
 - (x) Work with non-governmental entities to prepare contracts for Council approval;
 - (xi) Work with Tribal, federal, state, local, and private entities to obtain grant funding;
 - (xii) Supervise TOSH staff.

14.16.060 Occupational Safety and Health Standards.

The standards of the Federal Occupational Safety and Health Administration are adopted as the tribal standards to be enforced through TOSH on the Reservation, provided that the adoption of such standards is not intended to and does not waive the Tribe's immunity from suit in any state or federal forum, whether administrative or judicial, or in any other forum except as provided in this Code. To the extent that this Code establishes a standard stricter than the federal standards, the tribal standard shall govern.

14.16.070 Duties of Employers and Employees.

- a. **Each Employer –**
 - (i) Shall furnish to each Employee, employment and a place of employment which are free from recognized hazards that cause or are likely to cause death or physical harm to the Employer's Employees;
 - (ii) Shall comply with occupational safety and health standards promulgated under or adopted by this Code.
 - (iii) Shall report all work-related illnesses, injuries, catastrophes, or fatalities to the TOSH Department as soon as possible. Illnesses or injuries that only require first-aid and do not result in time loss, reassignment of duties, or limitation of duties, are encouraged, but not required to be reported. For less than serious incidents; reports are required within 24 hours. For serious, catastrophic, or fatal incidents; the TOSH department shall be contacted within 4 hours after the incident.
- b. Each Employee shall comply with all applicable occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Code.
- c. Each employer and employee shall possess and maintain, every two (2) years, an authorized OSHA 10 or OSHA 30 card that has been issued by an authorized training institute. Cards obtained by online sources shall not be acceptable unless accompanied by a proxy certified letter attested to under penalty of perjury, that the individual attesting therein was the individual that took the course.

14.16.080 Inspections, Investigations, and Recordkeeping.

- a. *Authority to enter, inspect and investigate places of employment within the Tribe's jurisdiction.* In order to carry out the purposes of this Code, the Director or authorized designee, upon presenting appropriate credentials to the owner, operator or agent in charge, is authorized–
 - (i) to enter without delay and at reasonable times any workplace or environment where the Tribe has regulatory jurisdiction; and
 - (ii) to inspect and investigate during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such Employer, owner, operator, agent or Employee.
- b. *Employer and employee representative accompany director on inspection of workplace.*
 - (i) A representative of the Employer and a representative authorized by the Employer's Employees shall be given an opportunity to accompany the Director or authorized designee during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection.
 - (ii) Where there is no authorized employee representative, the Director or authorized designee may consult any number of Employees concerning matters of health and safety in the workplace.
- c. *Maintenance, preservation, and availability of records.*
 - (i) Each Employer shall make, keep and preserve, and make available to the Director or authorized designee such records regarding the Employer's activities relating to this Code.
 - (ii) Each Employer shall maintain accurate records, and make periodic reports on work-related

deaths, injuries, and illnesses. Minor injuries requiring only first aid treatment, which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, do not require reporting.

(iii) Any information obtained by the Director under this Code shall be obtained with a minimum burden upon Employers, especially those operating small businesses, and will be received only in accordance with applicable federal privacy laws.

d. *Request for inspection by employees or representative of employees; special inspection; notice of non-finding.*

(i) Any Employee or representative of the Employees who believes that an imminent danger exists, or that a violation of an applicable safety or health standard exists that threatens physical harm, may request an inspection by giving notice to the Director or authorized representative of such danger or violation. Any such request shall be in writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the Employee or the representative of Employees. The Director shall withhold the name(s) of the complaining party if the complaining party makes such a request.

(ii) If after initial review of the request, the Director determines there are reasonable grounds to believe that such danger or violation exists, they shall make a special inspection in accordance with this Code as soon as practicable, to determine if such danger or violation exists. The Director or the Director's designee shall provide a copy of the request to the Employer or his agent no later than at the time of the inspection.

(iii) If the Director determines there are no reasonable grounds to believe that a danger or violation exists, they shall notify the Employee or representative of Employee in writing of such determination.

e. *Anonymous tip line.* The TOSH department shall set up and maintain an anonymous tip line for employees who feel that reporting may result in retaliation. When leaving a message on the Tip Line, the Employee or the Employee's representative shall include all pertinent detailed information. The Director or authorized designee shall investigate the claim.

14.16.090 Enforcement; Citations, Fines or Penalties, and other Remedies.

a. *Authority to Issue.* If, upon inspection or investigation, the TOSH Director or authorized designee believes that an Employer has violated this Code, they may issue a citation to the Employer. /A citation to the Employer may include the assessment of fines or penalties according to section 14.16.090(d) of this code. A citation to the Tribal Nation as Employer may not include the assessment of fines or penalties. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of this Code, or applicable standard alleged to have been violated. In addition, the citation shall provide for a reasonable time for the abatement of the violation. The Director may issue a Notice of Abatement in lieu of a citation with respect to minor violations which have no direct or immediate relationship to safety or health.

b. *Posting.* Each citation issued under this section, or a copy or copies thereof shall be posted at or near the place where each violation occurred to make employees aware of the hazards to which they may be exposed. The TOSH Notice must remain posted for 3 working days or until the hazard is abated, whichever is longer. (Saturdays, Sundays and Tribal or Federal holidays are not

counted as working days).

c. *Time for issuance.* No citation may be issued under this section after the expiration of six (6) months following the occurrence of any violation unless such violation is an ongoing violation.

d. *Violations—Civil Penalties.*

TOSH citations inform the Employer and Employees of the regulations and standards violated, and of the imposed length of time set to correct the hazards. The TOSH department may issue citations to the Employer with a notice of civil penalty. The TOSH department shall deliver the citation and notice of penalty either personally by a TOSH representative or by certified mail with return receipt requested. These are the types of violations that may be cited and the penalties that may be imposed on non-Tribal Nation Employers:

Other-Than-Serious Violation – A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm.	Minimum: \$500 Maximum: \$5,000 For each violation
Serious Violation – A violation where there is a substantial probability that death or serious physical harm could result.	Minimum: \$1,500 Maximum: \$10,000 For each violation
Serious Willful Violation – A serious violation that the employer intentionally and knowingly commits.	Minimum: \$10,000 Maximum: \$20,000 For each violation
Willful Violation (results in death)	Multiplier of up to 15X Possible recommendation of criminal charges to appropriate law enforcement agency.
Willful Violation – Egregious Multiplier	Multiplier of up to 15X. Willful penalties are applied on a violation-by-violation basis or employee-by-employee exposure.
Failure-to-Abate – Failure to correct a prior violation	Up to \$5,000 a day for each day violation continues beyond abatement date.
Falsifying records or making false statements – Knowingly making any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this code.	Minimum \$ 1,000 Maximum \$ 10,000 Possible recommendation of criminal charges to appropriate law enforcement agency.
Violating Posting Requirements (failure to post OSHA poster, OSHA 300 Annual summary, citations, etc.)	Maximum: \$5,000
Failure to report fatality/catastrophic event within specified period.	Minimum: \$30,000
Providing advance notice of inspection – Any Person who gives advance notice of any inspection to be conducted under this code, without authority from the TOSH Director or authorized designee.	\$5,000 fine (per incident) Possible recommendation of criminal charges to appropriate law enforcement agency.

- e. *Payment of civil penalties.* Civil penalties owed under this code shall be paid to the Accounting department of the Puyallup Tribe of Indians, made payable to the Puyallup Tribe of Indians.
- f. *Tribal Nation is exempt from TOSH issued monetary penalties.* Monetary penalties shall not apply to the Tribal Nation as Employer.

14.16.100 Due Process.

- a. *Right to an Informal Conference.* If after an inspection or investigation, the Director issues a citation they shall, within five (5) business days after the termination of such inspection or investigation, notify the Employer of the citation and penalty, if any, proposed to be assessed and that the Employer has fifteen (15) business days within which to notify the Director that the Employer wishes to be heard by the Director in an informal conference the purpose of which is to discuss an informal resolution of the citation and penalty. Notification of a citation and/or penalties to the Employer must be made by a method of delivery that insures receipt by the Employer. If, within fifteen (15) business days from the delivery of the notice issued by the Director, the Employer fails to request an informal conference, the citation and the assessment or penalty, as proposed, shall be deemed a final order of the Director. If an Employer requests an informal conference pursuant to this section and such conference is held but an informal settlement agreement is not entered, the citation and assessment or penalty shall become a final order of the Director.
- b. *Right to Appeal Final Order.* A Person who is aggrieved by a final order of the Director may contest the final order by filing a notice of appeal with the Puyallup Tribal Court within thirty (30) calendar days from the date of the final order.
- c. *Procedure for Notice of Appeal.* The notice of appeal shall specify the final order being challenged and include an attachment of a copy of the order; the grounds upon which reversal or modification of the order is sought; and state whether a hearing is requested. The notice shall name the Director as the defendant. The notice of appeal shall be taken by serving a written notice of appeal with the tribal court with a copy to the Director within thirty (30) calendar days after the date of the final order. The Director shall, within 10 business days of the filing of the notice of appeal, file with the Court a responsive pleading addressing the factual and legal claims made in the notice of appeal, providing a copy of any record before the Director including any reports, citations, communications and/or orders. The Court may determine whether any further pleading or evidence is required and whether a hearing is necessary; provided that the Court shall make all efforts to expedite the process and decision.
- d. *Remedies; Standard of Review.* The Court shall confirm a final order of the Director unless it determines that the Director clearly abused their discretion in rendering the final order. If the Court determines that the Director clearly abused their discretion, the Court may vacate the order or modify the order if it is determined that such a modification would address the abuse of discretion identified by the Court.
- e. *Stay of Enforcement.* The filing of a notice of appeal shall not, of itself, stay enforcement of a

final order of the Director. An application of a stay may be made to the Court.

- f. *Failure to Correct Violation; Enforcement Actions.* If an Employer, excluding the Tribal Nation as Employer, fails to comply with any order issued by the Director, including failure to correct a violation for which a citation has been issued within the period permitted for its correction and failure to pay a penalty assessed by the Director, the Director shall notify the Employer of such failure and of any penalty proposed to be assessed by reason of such failure, and that the Employer has ten (10) business days from receipt of notice to correct the noncompliance including the payment of any penalties assessed. Any notification made to an Employer must be by a method of delivery that ensures receipt by the Employer. If an Employer continues to be in noncompliance at the expiration of the 10-day period, the Director may bring an action in the Puyallup Tribal Court seeking enforcement of such order, compliance with a citation and/or payment of penalties imposed, or such other appropriate relief.

14.16.110 Discharge or Discrimination Prohibited.

- a. No Employer shall discharge or cause to be discharged, or in any manner discriminate against any Employee because such Employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to this Code or has testified or is about to testify in any such proceeding or because of the exercise by such Employee on behalf of himself or others of any right afforded by this Code.
- b. Any Employee of a non-Tribal Nation Employer who believes that they have been discharged or otherwise discriminated against by an Employer in violation of this subsection may, within one hundred and eighty days (180) calendar days after such violation occurs, bring a civil action in the Puyallup Tribal Court pursuant to this Code and other applicable Tribal laws.
- c. Any Employee of a Tribal Nation Employer who believes that they have been discharged or otherwise discriminated against by the Tribal Nation Employer in violation of this subsection may utilize the grievance process as provided under the Tribal Nation Employer's personnel policies and procedures manual.

14.16.120 Tribal Court Jurisdiction.

- a. The Puyallup Tribal Court shall have limited jurisdiction to hear and determine the claims established in this Code including those contesting a final order of the Director, a civil claim by an Employee of a non-Tribal Nation Employer pursuant to Section 14.16.110 of this Chapter, and an enforcement action against a non-Tribal Nation Employer by the Director under Section 14.16.090 of this Chapter.

14.16.130 Preservation of Other Law.

Nothing in this Code shall be construed to supersede or in any manner affect the Puyallup Tribe's Workers' Compensation Ordinance, Puyallup Tribal Codes Chapter 14.04, or to enlarge

or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of Employers and Employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.