

CHAPTER 55

STOCKBRIDGE-MUNSEE TRIBAL LAW MOHICAN FAIR LABOR STANDARDS ORDINANCE

Section 55.1 Purpose

(A) In order to maintain a minimum standard of living necessary for health, efficiency and general well-being of all employees within its jurisdiction, the Stockbridge-Munsee Community has enacted the Mohican Fair Labor Standards Ordinance.

(B) Any differences between the Mohican Fair Labor Standards Ordinance and the federal Fair Labor Standards Act are not intended to bypass or circumvent the requirements and protections of the federal Act; rather, the Stockbridge-Munsee Community has enacted an ordinance which attempts to address the unique and special circumstances that exist within the Community and endeavors to sensibly protect the rights of all employees within its jurisdiction.

The Stockbridge-Munsee Community has reached for these goals by exercising its inherent sovereign right as an entity existing prior to the formation of the United States.

(C) In order to be subject to the conditions of this ordinance, an employer must employ 5 (five) or more employees.

(D) The Mohican Nation reaffirms its sovereignty, yet acknowledges the desire for fair treatment in the work place.

Section 55.2 Jurisdiction

The Stockbridge-Munsee Tribal Court shall have jurisdiction over any employer or employee physically located within the Stockbridge-Munsee Reservation or on its trust lands.

Section 55.3 Definitions

(A) “Compensatory time” means hours awarded to an employee in lieu of overtime compensation.

(B) “Employ” includes to suffer or permit to work.

(C) “Employee” is defined as any individual employed by an employer.

(D) “Employer” means any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency.

(1) For the purposes of this definition, two entities will be considered separate employers if all of the following are true:

- (a) employees working for both employers are doing so voluntarily.
- (b) each entity does not have or exercise any control over the other entity's employees.
- (c) employees working for both employers are doing so without the expectation of overtime compensation calculated using the hours from both employers; however, no employee shall be denied overtime compensation for hours worked in excess of forty (40) hours for the same employer.
- (d) the employee's performance for one entity does not effect his job status at the other entity.

(E) "Independent contractor" means persons whose legal relationship to the employer is solely contractual. The following factors shall be used to determine whether a person is an independent contractor or employee. The existence of a factor makes it more likely that the person is an employee:

- (1) the individual has become integrated into the organization;
- (2) the individual's work is substantial, regular, and continuous;
- (3) the individual is subject to the direction and control of the organization; and
- (4) the individual has the right to participate in the organization's fringe benefits.

(F) "Minor" means any person who has not yet attained his or her eighteenth (18th) birthday.

(G) "Overtime compensation" means a rate of pay equal to one and one-half times an employee's regular rate of pay.

(H) "Person" means an individual, partnership, association, corporation, business trust, legal representative, Indian tribe or any organized group of persons.

(I) "Public agency" means the government of the Stockbridge-Munsee Community or any political subdivision thereof.

(J) "Volunteer" means a person who performs labor or services for the employer without compensation and without an expectation of compensation.

(K) "Work week" means the seven consecutive days, commencing at 12:00 AM on Sunday and ending the following Saturday at 11:59 PM.

Section 55.4 Pay

(A) Hourly employees are paid at their regular rate of pay and are paid for all hours worked.

(B) Hourly employees are paid overtime compensation or given compensatory time for hours worked in excess of 40 hours worked in a work week.

Section 55.5 Exempt Employees

Exempt employees are defined as follows:

(A) An **executive employee** is paid at least \$360.00 per week; their primary duty is management of the enterprise in which employed, or of a customary recognized department or sub-division thereof and supervises two or more employees; the customary and regular direction of the work of two or more other employees in the establishment or department. Primary duty is defined as 50% or more of their time.

(B) An **administrative employee** is paid at least \$360.00 per week and the primary duty is the performance of office or non-manual work directly related to management policies or general businesses operations of their employer or their employer's customers and such duty includes work requiring the exercise of discretion and independent judgement. Primary duty is defined as 50% or more of their time.

(C) A **professional employee** is paid at least \$360.00 per week. Their primary duty consists of the performance of work either requiring knowledge of an advanced type in a field of science or learning, or teaching, including work that requires the consistent exercise of discretion, judgment or the primary duty consists of the performance of work in a recognized field of artistic endeavor, including work that requires invention, imagination or talent.

(D) Exempt employees will be compensated by a weekly wage, when multiplied by 52 will be expressed annually. A weekly wage divided by 40 will express an hourly value, which may be used for accounting purposes.

(F) Exempt employees are not covered by the provisions of § 55.4 of this Ordinance.

Section 55.6 Exempt Employees in Gaming Enterprise

(A) Due to the intense regulatory nature of an Indian gaming enterprise, an employer that is a gaming enterprise shall be permitted to suspend an exempt gaming employee, without pay, pending formal investigation of any allegations that the employee has violated the Stockbridge-Munsee Gaming Ordinance or other gaming laws. Under this section, such a suspension without pay shall not alter the employee's exempt status.

Section 55.7 Exempt Employees Managing 638 Contracts

Due to the nature of tribal government programs funded by 638 contracts, and the need to insure against fraud and embezzlement of government funds, the employer shall be permitted to suspend a 638 exempt employee without pay pending formal investigation of any claims of fraud or embezzlement. Under this section, such a suspension without pay shall not alter the employee's exempt status.

Section 55.8 Minimum Wage

The minimum wage will be set by resolution of the Tribal Council and shall not be less than the minimum wage as outlined by the Fair Labor Standards Act of 1938 as amended.

Section 55.9 Equal Pay

(A) The Mohican Nation shall not discriminate between employees on the basis of sex by paying wages to employees at a rate less than the rate at which it pays wages to employees of the opposite sex for equal work on jobs the performance of which requires equal skill effort and responsibility and which are performed under similar working conditions EXCEPT where such payment is made pursuant to:

- (1) a seniority system,
- (2) a merit system, or
- (3) a system which measures earnings by quantity or quality of production or a differential based on any other factor other than sex;

(B) Salary reductions by the employer shall not be permitted to remedy inequities in violation of this section under this section.

Section 55.10 Child Labor

The Mohican Nation will not employ minors in oppressive labor. In order to define oppressive labor, the federal Fair Labor Standards Act and any regulations created under it, may be used as a guide to establish a list of occupations, in which the employment of minors will not be permitted.

Section 55.11 Compensatory Time

(A) If the employee consents in writing, compensatory time will be awarded at a rate of one and one half hours compensatory time for each one hour of work in excess of 40 hours worked in a work week. Otherwise, employees shall receive overtime pay at a rate

one and one-half times their regular rate of pay for all hours worked in excess of 40 hours worked in a work week.

(B) An employee shall carry over no more than eight (8) hours of compensatory time per month. If at the end of the month, an employee has more than eight (8) hours of compensatory time, the employee shall receive a check for the cash value of the compensatory time.

(C) Compensatory time accrued at the time of an employees termination (voluntary or involuntary) will be paid out to the employee in one lump sum, except where otherwise provided by law.

(D) This section applies only to hourly employees.

Section 55.12 Law Enforcement Officers

Employees who are law enforcement officers will be paid at a rate one and one half times their regular rate of pay for any hours worked exceeding 45 hours of work in a work week.

Section 55.13 Determination of Exempt / Hourly

Until such time that a Tribal FLSO Commission is established, the Department of Human Resources and Legal Department will determine whether an employee is an exempt employee or hourly employee.

Section 55.14 Compensatory Time for Exempt Employees

Exempt employees will not earn overtime compensation, compensatory time or administrative credits.

Section 55.15 Enforcement

(A) The Stockbridge-Munsee Community hereby expressly waives its sovereign immunity and permits suits to be brought against it only in the Stockbridge-Munsee Tribal Court for the limited purpose of enforcing this Tribal Fair Labor Standards Ordinance. Any award or damages shall be strictly in accordance with this section

(B) Any person who has been adversely affected by a violation of this ordinance may bring suit in the Stockbridge-Munsee Tribal Court.

(C) A complaint brought under this ordinance shall contain:

(1) the name and address of the plaintiff

(2) the name and address of the employer.

(3) the section of this ordinance that was allegedly violated

(4) a description of the events and facts that support the plaintiff's claim.

(5) a request for remedies.

(D) After making a determination on the merits of the case, the court has the power to order the following remedies:

(1) that the employer must cease and desist from engaging in a violation of this ordinance;

(2) back pay;

(3) actual damages; and

(4) any other relief the court deems reasonably necessary to remedy a violation of the ordinance.

(E) The court may not award punitive damages against a tribally owned and operated business or enterprise.

(F) No award for damages shall include interest.

(G) Unless otherwise specified in this section, the regular Stockbridge-Munsee Tribal Court Code and Procedures apply.

(H) Any complaint brought under this ordinance must be brought within 2 years of the events which gave rise to the cause of action.

Section 55.16 Effective Date; Severability

(A) The provisions of this ordinance shall take effect on January 1, 1997. All employees who have accrued compensatory time (also known as administrative credits) shall retain all hours accrued.

(B) If any provision of this ordinance is ruled illegal by a court of competent jurisdiction, the remaining provisions of the ordinance shall remain unaffected.