

CHAPTER 54

STOCKBRIDGE-MUNSEE TRIBAL LAW EMPLOYEE PREFERENCE POLICY ORDINANCE

Purpose: Optimum employment in the Stockbridge-Munsee Community for Tribal members, as well as those who live in the Community as spouses or direct descendants, is a critical element to building self-sufficiency, sovereignty and an economy that combats poverty and social ills, and assures that the Stockbridge-Munsee Community receives the maximum benefits generated by its entities and enterprises.

The purpose of this ordinance therefore is to provide maximum employment opportunity and preference in hiring and lay-offs, to the people of the Stockbridge-Munsee Community.

Section 54.1 Definitions

- (A) "Employee" means any person paid wages, salary, or stipend by the Stockbridge-Munsee Community or any of its entities and enterprises.
- (B) "Employer" means the Stockbridge-Munsee Community, its subdivisions, entities and enterprises. The definition of employer also includes the Mohican Housing Authority.
- (C) "Preference" means people will be employed according to a priority listing as long as they meet qualifications of the job description or job announcement.
- (D) "Meet Qualifications" means that the applicant or employee possesses the skills, education, experience or other job-related requirements in the job description or job announcement.
- (E) "Enrolled Member" means a person who is officially enrolled as a member of the Stockbridge-Munsee Band of Mohican Indians.
- (F) "Direct Descendant" for purposes of this ordinance means any person whose biological father or biological mother is an enrolled member of the Stockbridge-Munsee Band of Mohican Indians.
- (G) "Spouse" means legally married spouse of an enrolled member of the Stockbridge-Munsee Band of Mohican Indians.
- (H) "Interview Panel" means the panel of individuals created to interview applicants for a position. It is assumed for the purposes of this Ordinance that the Interview Panel has the authority to recommend applicants for hire, but does not have the authority to hire.

Section 54.2 Establishing Preference

(A) Preference shall be given according to Section 3 below when it is established that the employee or applicant meets qualifications as stated in the job description or the job announcement. If the person has the qualifications as stated, he or she is eligible for the position and shall not be denied if another person at a lower preference has higher qualifications than are necessary for the position. If more than one person at the same preference level meets qualifications the decision-makers shall have discretionary power. Accordingly, when preparing job descriptions or job announcements care should be taken to establish qualifications that fit the desired needs of the position.

(B) It shall be prohibited to use job qualifications or personnel requirements which are not necessary to the position and which act as barriers to employment preference.

Section 54.3 Order of Preference

(A) The following order of preference shall be adhered to when hiring for employment positions or when involuntary layoffs occur:

- (1) Enrolled member.
- (2) Direct Descendant.
- (3) Spouse.

Section 54.4 Coverage

This ordinance shall be binding on all entities, enterprises, and organizations operating under the Stockbridge-Munsee Community, and shall supersede all previous actions and policies regarding Indian preference in employment.

Section 54.5 Enforcement

(A) The Human Resources Department shall have the responsibility and authority to assure that the provisions of this ordinance are implemented and enforced.

(B) The Employment Preference Compliance Report must be completed and signed by the appropriate Human Resources Department.

(C) After the Interview Panel selects an applicant, if the Human Resources Department determines the selection violates this Ordinance, the Human Resources Department will convene the Interview Panel. The Human Resources Department and Interview Panel will discuss the matter and the parties involved will make a good faith effort to reach agreement on an applicant whose selection complies with this Ordinance. If an agreement cannot be reached, the Human Resources Department has the authority to dissolve the Interview Panel, create a new Interview Panel and conduct re-interviews of the candidates.

COMMENT: Section 5 (B); this section is intended to take into account the different tribal entities. The Tribe already has more than one Human Resources Department; Casino and non-Casino.

Section 54.6 Effect of Stockbridge-Munsee Employee Rights Ordinance

When interpreting any section of this ordinance, this ordinance and the employee rights ordinance shall be read as working together to give the employee or applicant the maximum benefits of both ordinances. Furthermore, if there is any dispute or conflict between the language and provisions of this ordinance and the employee rights' ordinance, those disputes shall be resolved in favor of the employee or applicant.

Section 54.7 Effective Date and Amendments

(A) This ordinance shall be effective upon the approval of a resolution adopting same by the Stockbridge-Munsee Tribal Council.

(B) This ordinance may be amended by resolution of the Stockbridge-Munsee Tribal Council.

Section 54.8 Remedies; Limited Waiver of Sovereign Immunity for Purposes of Enforcement

(A) In order to enforce the provisions of this ordinance, the Stockbridge-Munsee Community shall be subject to suit in the Stockbridge-Munsee Tribal Courts by employees or applicants in accordance with the limitations of this section.

(B) Money damages shall not be available in any suit brought under this ordinance. The sole remedy available to the aggrieved party shall be the appointment to the job, promotion, transfer, or interim appointment that was denied as a result of a violation of this ordinance. The complainant may also be awarded a similar unfilled position if one is available.

(C) Any complaint brought under this Ordinance must be filed in Tribal Court within 5 business days of receipt of notice that the complaining applicant did not receive the position. Complaints brought more than 5 days after notification shall not be heard.

LEGISLATIVE HISTORY

Ordinance to establish Employment Preference Policy adopted by Resolution #046-96 on July 9, 1996.

Section 54.1(I) is added and Section 54.5 amended to clarify that Human Resources has the authority to enforce this Ordinance, on November 7, 2000, by Resolution No. 072-2000. BIA approval, November 22, 2000.

On May 4, 2004, by Resolution 019-04, Tribal Council amended the Purpose section, deleted Section 54.(H) [Other Indian], 54.3(A)(4) [Other Indian] to remove “other Indian” as a preference category and to amended the Purpose section and Section 54.3(A) to clarify that preference is to be applied only in hiring and layoff situations. BIA approval, May 27, 2004.