

CHAPTER 55-A

STOCKBRIDGE-MUNSEE TRIBAL LAW

PREVAILING WAGE ORDINANCE

55-A.1 Purpose

In accordance with 25.U.S.C. 4114(b)(3) Indian Tribes' prevailing wage determinations supercede federal prevailing wages (Davis-Bacon Act, 40 U.S.C. 276) provided that the Indian Tribe has established, by law or regulation, a prevailing wage. This Prevailing Wage Ordinance is intended to supercede all federal wage determinations to the greatest extent allowed under federal law and to the fullest authority of Tribal law.

55-A.2 Definitions

(A) "Acts" means any United States federal law containing requirements for establishment and payment of a determined prevailing wage, including but not limited to wage determinations of the Secretary or wage determinations set under the Davis-Bacon Act, 40 U.S.C. 276 applicable to Indian Tribes.

(B) "Agreement" means any contract or other written document for assistance, sale, or lease funded by any United States' Act applicable to Indian Tribes and specifically including the Native American Housing Assistance and Self-Determination Act of 1996, as amended, 25 U.S.C. 4101, et. seq.

(C) "Housing" means the Stockbridge-Munsee Community's Division of Community Housing.

(D) "Human Resources" means the Stockbridge-Munsee Community's Human Resources Department.

(E) "Prevailing Wage" means the wages as determined by the Tribe prevailing on the Tribe's reservation and with the Tribe's and Housing's areas of operations for each category of employee including, but not limited to, architect, technical engineer, draftsman, technician, laborer, plumber, electrician, and mechanic.

(F) "Secretary" means Secretary of Housing and Urban Development, Secretary of Bureau of Indian Affairs, Secretary of Health and Human Services, or their designees.

(G) "Tribe" means the Stockbridge-Munsee Community, a band of Mohican Indians, it's agencies, departments, enterprises, or other subdivisions thereof.

(H) "Tribal Council" means the Tribe's elected Tribal Council.

55-A.3 Payment of Prevailing Wage Required

(A) Payment Required in Agreements. Any Agreement pursuant to Acts with the Tribe for construction, installation, alteration, repair or maintenance of buildings or other works or for provision of labor/services/materials to be performed for the Tribe must contain a provision requiring not less than Prevailing Wages shall be paid to the contractor/employer. Agreements not pursuant to Acts are exempt from this requirement unless Tribal Council requires the use of Prevailing Wages on a project(s).

(B) Volunteers. Prevailing Wages shall not apply to any individual who receives no compensation or is only reimbursed or paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered. No individual currently employed under an agreement for the same or similar services on a project shall be a considered a volunteer on the same project.

55-A.3 Determination of Tribal Prevailing Wage

(A) At the first Tribal Council meeting of each fiscal year, Tribal Council shall consider changes to the established Prevailing Wage. If Tribal Council desires to make any changes to the Prevailing Wage, the changes shall make the changes by motion.

(1) Prior to the first Tribal Council meeting of the new fiscal year, Human Resources must conduct a wage survey and submit the recommended Prevailing Wage, based on a wage survey to the Tribal Council.

(2) Human Resources shall obtain wage rates from available sources of each class of profession or trade included in the survey and shall recommend to Tribal Council that the Prevailing Wage at not less than the average wage paid to each class of profession or trade included in the survey. The survey shall also include the classification for trainee in all trades.

(3) Human Resources shall maintain the names and addresses of all sources contacted and the wage rates reported by each source for a minimum of three years.

(4) Wage rates shall include monetary salary but not the value of fringe benefits paid to or on behalf of the employees.

(5) If there are years where the Tribe does not update the wage survey, or Tribal Council does not act the Prevailing Wages, the Prevailing Wage shall be adjusted by Human Resources pursuant to the published Cost of Living Index for the area.

Section 55-A.4 Employer Requirements

(A) Payment of Prevailing Wages. Each contractor/employer, including the Tribe, when performing under an agreement pursuant to Acts or an agreement designated by Council, shall pay the established Prevailing Wage, and shall maintain payroll records reporting the hourly wages paid to each employee.

(B) Prevailing of Wage to be Provided. Upon request by bidders, or contractors/employers pursuant to an Agreement pursuant to the Act, the Tribe shall provide the current established Prevailing Wage.

(C) Posting of Prevailing Wage. Each contractor/employer, while performing under an Agreement, pursuant to an Act, shall:

- (1) Post in a conspicuous location site the current established Prevailing Wage,
- (2) Allow the Tribe's auditors, project managers, or other authorized staff to inspect and copy payroll records and/or interview employees in order to verify compliance with this Ordinance.

(D) Payments withheld. In addition to the remedies available in Section 55-A.5, the Tribe, has the authority to withhold payment to contractors/employers if the Tribe in good faith believes that an contractor/employer is not complying with any provision of this Ordinance.

Section 55-A.5 Tribal Court Jurisdiction

(A) The Stockbridge-Munsee Tribal Court shall have jurisdiction to hear actions to enforce the provisions of this Ordinance.

(B) A petition filed in Tribal Court under this ordinance must include at least the following:

- (1) The name and address of the petitioner.
- (2) A statement identifying which of the provisions of this Ordinance has been violated.
- (3) A brief description of the facts and events that gave rise to the alleged violation.
- (4) The remedy sought.

(C) In addition to the requirements in Section 55-A.5(B), petitioners must comply with the filing requirements contained in the Stockbridge-Munsee Tribal Court Rules of Civil Procedure.

(D) Upon a finding by the Court based upon credible evidence and by a preponderance of the evidence that a violation of this Ordinance has occurred, the Court may order any of the following remedies:

(1) If the employee has been underpaid, the employer may be ordered to pay the difference in the wage paid to the employee and Prevailing wage.

(a) The Court may also order punitive damages not to exceed three times the amount of 55-A.5(D)(1).

(b) The Court may also award reasonable attorney fees to the prevailing party.

(c) The Court may also issue an order barring the contractor/employer and/or its principal employees from performing work or services to the Stockbridge-Munsee Community, not to exceed five years.

(d) The Court may also order any other remedy that is narrowly tailored to remedy the violation.

(2) For any other violations, the Court may order any of the remedies from 55-A.5(D)(1)(b)(c)(d) or impose fines and interest not to exceed \$500.00 per day.

(E) Actions brought under this Ordinance must be brought with one year of the event that gave rise to the petitioner's claim.

Section 55-A.6 Sovereign Immunity

Nothing in this Ordinance shall provide or be interpreted to provide a waiver of the Stockbridge-Munsee Community, or any of its governmental officers' and/or agents' and/or employees' sovereign immunity from suit.

Section 55-A.7 Severability

If any section, or any part thereof, of this Ordinance shall be held invalid or illegal by a court of competent jurisdiction, the remainder of the section, or part of the Ordinance shall not be affected and shall remain in full force and effect as though no section, or part thereof, has been declared to be invalid or illegal.

Section 55-A.8 Effective Date

This Ordinance shall take effect ten days after Bureau of Indian Affairs approval. This Ordinance applies only to projects that the Tribe has not yet accepted for bid. In no way should this Ordinance apply to projects already where the Tribe has accepted bids or bids/projects that are currently in progress.

Legislative History

Adopted by Tribal Council on October 1, 2002, Resolution No. 054-02. Approved by BIA on October 18, 2002.