

CHAPTER 53

STOCKBRIDGE-MUNSEE TRIBAL LAW EMPLOYEE RIGHTS ORDINANCE

Preamble

The Stockbridge-Munsee Tribe is firmly committed to the principal of tribal self-government. Consistent with federal policy, tribal government provides a wide range of public services, including general governmental services, the maintenance of peace and good order, and the promotion and regulation of economic activities within the sovereign jurisdiction of the tribe. Pursuant to the inherent sovereign powers of the Tribe and the powers expressly delegated to the Tribal Council by the tribal constitution, the tribal government recognizes the need for creating laws to govern and protect its employees, especially where state and federal laws do not apply.

Section 53.1 Purpose

The Stockbridge-Munsee Tribal Council recognizes that on occasion, differences may arise between employees and supervisors due to misunderstanding, lack of communication, or concern over supervisory decisions. The Stockbridge-Munsee Tribal Council further recognizes that employees of the Stockbridge-Munsee Community, comprised of all branches of government and business, need protection of their rights including a stable working environment and the right to file a grievance and seek assistance in solving on-the-job problems via the proper, established policies and procedures. However, Stockbridge-Munsee Community employees do not have property rights in employment. The Stockbridge-Munsee Tribe, through this ordinance, seeks to define and establish employee rights and to establish a grievance process allowing all tribal employees an opportunity to have recourse for their grievances.

Section 53.2 Definitions

(A) CORRECTIVE ACTION means any documented oral warnings, written warnings, probation or suspension generated by administration/management.

(B) BUSINESS AGENT means any person who acts or attempts to act for or on behalf of any labor organization in:

- (1) 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,
- (2) soliciting or receiving from any employer any right or privilege for employees; or,
- (3) soliciting or obtaining a security agreement.

(C) **DISCRIMINATE** means to refuse to hire, to terminate or to treat a person differently with respect to promotion, compensation or other terms or conditions of employment.

(D) **EMPLOYEE** for the purposes of this ordinance shall mean any individual and/or appointee hired or appointed by the Stockbridge-Munsee Community or any subordinate organization thereof.

(E) **EMPLOYMENT MANUAL** means the Employment Manuals for tribal government employees and for tribal enterprise employees, as adopted by the Stockbridge-Munsee Tribal Council, as well as any amendments or successor documents prepared for employees and adopted by the Tribe.

(F) **ESTABLISHED POLICIES AND PROCEDURES** means the policies, guidelines and procedures published in the Employment Manual and its inserts or in resolutions or ordinances adopted by the Tribal Council.

(G) **EXEMPT EMPLOYEES** means employees exempt from the overtime pay provisions of the Tribal Fair Labor Standards Ordinance. Exempt employees are compensated on a salary basis and do not earn overtime pay for hours worked over 40 hours per week.

(H) **LABOR ORGANIZATION** means any organization or employees organized for the purpose of dealing with an employer, concerning hours of employment, rate of pay, working conditions, benefits, or grievances of any kind relating to employment and desiring to operate on Tribal lands.

(I) **NONEXEMPT EMPLOYEES** means all employees who are not exempt employees.

(J) **ORIENTATION PERIOD** means a period of up to 120 days during which employees are subject to rigorous performance evaluations and are employed at the will of the Tribe. Failure to meet performance standards will result in termination of employment. Such termination may occur at any point during the orientation period. The Tribal Council may designate by motion or resolution an exception to the 120-day limit for those positions such as law enforcement officers or others, where the nature of the job requires a longer orientation period.

(K) **PERSONNEL RECORDS** means any record kept by the Tribe that identifies an employee, to the extent that the record is used or has been used, or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation, medical condition or corrective action.

(L) **POLITICAL APPOINTEES** means those employees who are hired by the Tribal Council and serve at the pleasure of the Tribal Council. **POLITICAL APPOINTEES** are high level executive positions that are so vital to the execution of the Tribal Council's policies that the Council must be free to entrust the positions to individuals who enjoy the Council's complete confidence. Political appointments are not subject to the employment posting policy.

(M) PROBATIONARY EMPLOYEES means employees who have not successfully completed the Orientation Period.

(N) REASONABLE ACCOMMODATION means reasonable modifications or adjustments to the work environment or to the manner or circumstances under which a position is customarily performed, that enable a qualified person with a disability to perform the essential functions of the position if such accommodation does not cause the Tribe, or the employing agency of the Tribe, undue hardship. "Reasonable accommodation" does not require measures that would result in an expenditure of tribal funds.

(O) RESTRICTED DUTY means restrictions on an employee's hours or work duties that temporarily prevent the employee from performing all essential job duties but which do not prevent the employee from performing some essential job duties, provided such restrictions are recommended by a physician, subject to review by a physician selected by the Tribe.

(P) SEXUAL HARASSMENT means unwelcome sexual advances, unwelcome requests for sexual favors, unwelcome physical contact of a sexual nature or unwelcome verbal or physical conduct of a sexual nature. SEXUAL HARASSMENT includes conduct directed by a person at another person of the same or opposite sex. "Unwelcome verbal or physical conduct of a sexual nature" includes but is not limited to the deliberate, repeated making of unsolicited gestures or comments of a sexual nature; the deliberate, repeated display of offensive sexually graphic materials which is not necessary for business purposes; or deliberate verbal or physical conduct of a sexual nature, whether or not repeated, that is sufficiently severe to interfere substantially with an employee's work performance or to create an intimidating, hostile or offensive work environment.

Section 53.3 Guaranteed Employee Rights

The Stockbridge-Munsee Tribal Council ordains that all employees, exempt or nonexempt, are guaranteed basic employment rights as outlined in the following areas:

(A) All employees are eligible for unemployment compensation in accordance with applicable laws, rules and regulations as adopted by the Stockbridge-Munsee Tribe.

(B) The Tribe recognizes basic human rights in the workplace in regard to age, sex, disability, race, creed, religion, political affiliation, national origin, color, sexual orientation, marital status and ancestry. Subject to the Tribe's Employment Preference Ordinance, employees shall not be discriminated against for these basic rights, provided that:

(1) This paragraph shall not infringe on the right of the tribal government to discriminate based on tribal political affiliation with respect to political appointees.

(2) It is not a violation of this Ordinance to treat a person differently based on disability if the disability prevents the person from adequately performing all essential job duties and no reasonable accommodation is available.

(3) It is discrimination based on sex to discriminate based on pregnancy, childbirth, maternity leave or related medical conditions.

(4) It is not a violation of this Ordinance to discriminate based on sex where sex is a bona fide occupational qualification.

(C) Employees shall be entitled to leave benefits consistent with the federal Family Medical Leave Act, unless superseded by a tribal Medical Leave Act.

(D) The Tribe recognizes the right of employees to meet during nonworking hours to discuss their common interests in regard to employee workplace issues and concerns without threat of retaliation or dismissal.

(E) Employees shall be entitled to certain compensated paid time off, funeral leave, National Guard and reserve call-up time as provided under the established policies and procedures.

(F) Employees shall be entitled to a compensated leave during jury duty and court ordered or subpoenaed court appearances that are work-related, pursuant to established policies and procedures.

(G) An employee unable to vote during nonworking hours shall be granted reasonable time off with pay to vote in any tribal, federal, state or local election according to established tribal policies and procedures.

(H) The Tribe guarantees equal pay for men and women doing the same job and who would otherwise be compensated equally based on experience, education, performance and years of service.

(I) The Stockbridge-Munsee Tribe prohibits all types of sexual harassment. All employees shall be treated with courtesy, respect and dignity while employed by the Tribe and all of its agencies. Employees should immediately report sexual harassment to the appropriate person as identified in the Employment Manual at which time an investigation in accordance with the established policies and procedures shall take place.

(J) Employees' privacy shall be protected in the following ways:

(1) Personnel records, including background investigations, developed during the hiring process and actual employment will be safeguarded from unauthorized use.

(2) Interview boards shall maintain full confidentiality of information given during their involvement in the hiring process with a failure to do so resulting in disciplinary action up to and including termination. Tribal employers and departments shall not collect information about employees that is not job related and based on business necessity.

(3) An employee may review and copy his or her personnel files except for those items regarding:

- (a) records relating to the investigation of possible criminal offenses committed by the employee;
- (b) letters of reference for the employee;
- (c) materials used by employers for staff management, including judgments and recommendations concerning future salary changes, promotions or job assignments or other comments on ratings used for planning purposes;
- (d) information that would invade another person's privacy; or
- (e) records relevant to a pending claim between the employer and the employee which are discoverable in a judicial proceeding.

(4) Except in the case of employees whose previous drug test has produced a positive finding or is under suspicion of drug use, no employee shall be subjected to random drug testing more than three (3) times in any twelve (12) month period, consistent with Tribal drug testing policy.

(K) The Stockbridge-Munsee Tribe ordains that any Employees Assistance Policy ("EAP") in effect at the time of employment will be enforced. Employees failing related testing procedures, including those for medical problems, will be provided treatment pursuant to the EAP, provided the employee has not been guilty of conduct which merits termination.

(L) Tribal employees are not to be retaliated against, harassed or dismissed by supervisors or any other person when they report to the tribal government, violations of any rules, regulations, laws, ordinances, or policies at any level of government or employment.

(M) Employees may not be terminated from employment without just cause, except for orientation employees who are employed at-will.

(N) Established personnel policies and procedures shall reflect the above listed rights ordained by this Employment Rights Ordinance.

(O) Employees shall not be required, as a condition of employment or continuation of employment, to:

- (1) resign or refrain from voluntary membership in voluntary affiliation with, or voluntary financial support of a labor organization,
- (2) become or remain a member of a labor organization,
- (3) pay dues, fees, assessments or other charges of any kind or amount to a labor organization, or,
- (4) 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.

Section 53.35 Other Rights

The rights under this section are listed as employee rights, but are not subject to grievances under Section 53.4.

- (A) Employees shall be subject to the Tribal Fair Labor and Standards Ordinance.
- (B) Employees shall be covered under existing rules and regulations concerning Workers Compensation and Disabilities as adopted by the Stockbridge-Munsee Tribe.
- (C) The Stockbridge-Munsee Tribe ordains a safe work place including buildings, environment, equipment, safe work practices safety education and training.
- (D) The Tribe will enforce policies in the workplace to protect its employees from harassment and sexual harassment such as: threats, intimidation, physical or verbal abuse, from co-workers or non-employees during working hours.

Section 53.4 Employee Appeals to Tribal Court

(A) As a part of the Stockbridge-Munsee Community's commitment to protect the rights of its employees and promote a stable working environment, the following appeal process is made available to each employee:

- (1) Only violations of those employee rights enumerated in Section 53.3 of this Ordinance are appealable to the Tribal Court. All other issues must be handled through the applicable internal dispute resolution process, which may be a grievance process or an employee mediation panel, as provided for in the Employment Manual. The internal dispute resolution process shall be the final recourse for all issues not expressly enumerated in Section 53.3.
- (2) The employee must exhaust the applicable internal dispute resolution process before the Tribal Court appeal process will be available to him or her.
 - (a) In cases of employee terminations, the employee may choose to waive the internal dispute resolution process and file a claim directly with the Tribal Court.
 - (b) In all other cases, where the employee can demonstrate to the Human Resources Director or his or her designee, that exhaustion of the internal dispute resolution process would not further the process of resolving the problem, for whatever reason, then the requirement may be waived by the Human Resource Director and the appeal may be taken directly to Tribal Court.

Section 53.45 Statute of Limitations

The employee must initiate the court action within 30 calendar days of the event or events that gave rise to the employee's claim. In cases where the employee initiates the internal

dispute resolution process, the employee must initiate the court action within 30 calendar days of receiving the final written communication of the internal dispute resolution process.

Section 53.5 Court Procedures

(A) The petition filed in tribal court under this Ordinance may be in any written format, but shall include at least the following information:

- (1) The name and address of the petitioner.
- (2) A statement identifying which of the enumerated rights under Section 53.3 has been violated.
- (3) A brief description of the facts and events that gave rise to the alleged violation, including the names of potential witnesses and the name of the petitioner's supervisor, if applicable.
- (4) A specific request stating the required relief. Relief is governed by subsection (F) below.

(B) After the filing of the petition, the employer shall file a written answer within 20 days.

(C) After the filing of the answer, the Court shall schedule an initial informal conference with the parties to discuss preliminary matters, including but not limited to, scheduling, motions, discovery and whether there is any possibility of the parties reaching a settlement.

(D) If the parties are unable to settle the matter, the Court shall schedule the matter for a trial no later than 30 days after the initial conference.

(E) At the trial, the petitioner shall carry the burden of showing by a preponderance of the evidence that a violation of the rights enumerated in Section 53.3 occurred.

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

- (1) Back pay not to exceed one (1) year's wages.
- (2) Reinstatement.
- (3) Any other non-monetary remedy which is narrowly tailored to remedy the violation.

(G) Only for claims filed within the Statute of Limitations, the Stockbridge-Munsee Community provides a limited waiver of sovereign immunity for the purposes of permitting claims arising under Section 53.3 and allowing only those remedies identified in subsection (F) above.

(H) Peacemaking is permitted for employee disputes. Any peacemaking shall be in accordance with the Tribal Peacemaker Ordinance.

Section 53.6 Business Agents-Registration-Agreements-Enforcement-Jurisdiction

(A) Any person desiring to act as a business agent on Stockbridge-Munsee Tribal lands shall first obtain and continue to be eligible to maintain a gaming license pursuant to the gaming license requirements, and in accordance with other gaming license provisions in Chapter 25.

(B) Any agreement between any labor organization and an employer that violates the rights of employees guaranteed by the provisions of this Ordinance is against the public policy of the Tribe, is void and has no legal effect.

(C) Violations. It shall be a violation for any person to:

- (1) Act as a business agent without having a valid gaming license.
- (2) To solicit membership for or to act as a business agent or any labor organization without authority of the labor organization to do so.
- (3) To make any false statement in an application for a license.
- (4) To unlawfully seize or occupy any property during the existence of a labor dispute.
- (5) To attempt to, or to enter into a security agreement.
- (6) To coerce or intimidate any employee in the enjoyment of his or her legal rights; 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.
- (7) 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.

(D) The Tribe, through the Tribal Prosecutor, has the authority to enforce the provisions of Section 53.6 through Tribal Court, and the Tribal Court has jurisdiction relating to enforcement of Section 53.6. In addition to other remedies available, the Court may:

- (1) Order injunctive and emergency injunctive relief to the Tribe or individuals for violations or threatened violations of Section 53.6; and,
- (2) Award to the Tribe actual damages, including costs and reasonable attorney fees resulting from a violation or threatened violation of Section 53.6; and,

(3) Fine any person who, directly or indirectly, violates any provision of this Ordinance shall be subject to a fine not exceeding \$1,000.00, or exclusion from Stockbridge-Munsee Tribal lands, or both.

Section 53.7 Severability

If any part, portion, or section of this Ordinance is found to be illegal or invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance shall remain in full force and effect and shall remain unaffected.

LEGISLATIVE HISTORY

1. Employee Rights Ordinance approved by Tribal Council June 28, 1995, by Resolution No. 1505-95.
2. Employee Rights Ordinance amended by Tribal Council, January 6, 1998, by Resolution # 01-98.
3. Section 53.2K amended to clarify that the Tribe is not required to expend Tribal resources to make reasonable accommodations on January 2, 2002, Resolution Number 01-02. Approved by BIA on January 24, 2002.
4. Section 53.45 amended to clarify the grievance/appeal deadlines on April 5, 2005 by Tribal Council Resolution 014-05. Approved by BIA on April 1, 2005.
5. On July 17, 2007, Tribal Council, by Resolution Number 049-07, created sections 53.2(B); 53.2(H); 53.3(O); 53.6; 53.7, and 53.8 and amended section 53.3(D). No reply from BIA in relation to approval.
6. Amendments adopted by Tribal Council on August 17, 2010, by Resolution No. 055-10, amended Sections 53.1, 53.2(E), 53.2(F), 53.2(J), 53.3(E), 53.3(F), 53.3(I), 53.3(J)(1), 53.3(L), 53.3(M), 53.4, 53.45, and 53.5(G); created new Section 53.2(K); deleted Section 53.5 (H), and renumbering Sections 53.2(L)-(P) and 53.5(I). The version forwarded to the BIA for approval included both the 2007 amendments and those adopted in 2010. Approved by the BIA on April 16, 2012, except for Section 53.8. Section 53.8, regarding the need for BIA approval of future amendments, was deleted.