

# Mille Lacs Band Statutes Annotated

Amendments received through: May 5, 2014

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## TITLE 18 - COMMERCIAL PRACTICES

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### Historical and Statutory Notes

The Preamble of Band Statute 1090-MLC-7 provides:

"It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians a code to license all persons, companies, corporations, associations, partnerships cooperatives. Utilities and any other public or private commercial entity who engages in the sale of any goods and/or services with any Band member, mdi an(s) or other person(s) who reside on lands subject to the jurisdiction of the Mille Lacs Band of Chippewa Indians and with any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians, any political sub-division(s) thereof, and/or any entity under the jurisdiction of the Mille Lacs Band of Chippewa Indians on lands subject to the jurisdiction of the Mille Lacs Band of Chippewa Indians and for other related purposes, such as persons who solicit business or literature upon those persons who reside on lands under the jurisdiction of the Band and those who peddle merchandise of any type of goods or services upon those persons who reside on lands under the jurisdiction of the Band."

Band Statute 1090-MLC-7, § 27 provides:

"Section 27. Severability. If any provisions of this chapter, or the application thereof, to any person, business, corporation or state government or any political subdivision or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provisions or application and to this end the provisions of this Chapter are declared severable."

## **Cross References**

Administrative system, see 16 MLBSA § 5.  
Application of Truth in Lending Act, see 24 MLBSA § 5.  
Business corporations, foreign corporations, see 16 MLBSA § 1004.  
Nonprofit corporations, foreign corporations, see 16 MLBSA § 2005.

## **CHAPTER 1**

### **GENERAL PROVISIONS**

#### **Section**

1. Findings and determinations.
2. Definitions.
3. Reservation of right.
4. Rules and regulations.
5. Jurisdiction of the Court of Central Jurisdiction; damages.
6. Waiver of sovereign immunity.
7. Solicitor General obligation.
8. Investigations proceedings.
9. Equality and consistency in the exercise of powers and duties.
10. Violations.

#### **Historical and Statutory Notes**

The title of Ordinance 15-14 is:

“An ordinance amending Section 3(a) in Title 6 of the Mille Lacs Band Statutes Annotated; amending Sections 2, 4, 6 and 10 in Title 18 of the Mille Lacs Band Statutes Annotated; amending Chapter 5 of Title 18 in the Mille Lacs Band Statutes Annotated; and repealing any inconsistent Indian Preference language in any other Band law or policy, including any Corporate Commission policy, in order to create consistency in Band law and policy.”

The preamble of Ordinance 15-14 provides:

“It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Section 3(a) in Title 6 of the Mille Lacs Band Statutes Annotated; Sections 2, 4, 6 and 10 in Title\* in the Mille Lacs Band Statutes Annotated; amending Chapter 5 of Title 18 of the Mille Lacs Band Statutes Annotated (the Band’s Indian Employment Rights Ordinance or ‘TERO’); and repealing any inconsistent Indian Preference language in Band law or policy, including any Corporate Commission policy, in order to create consistency in Band law and policy.”

\*So in original. Probably should be Title 18.

#### **§ 1. Findings and determinations**

(a) The Band Assembly hereby finds and determines that pursuant to Article VI, Section 1, Sub-section 3, of the Constitution of the Minnesota

Chippewa Tribe, that it may authorize, regulate and license all persons, companies, corporations, associations, partnerships, cooperatives, utilities, and any other public or private commercial entity who engages in the sale of any goods and/or services with any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians.

(b) The Band Assembly hereby finds and determines that the regulation and licensure of all persons, companies, corporations, associations, partnerships, cooperatives, utilities and any other public or private commercial entity who engage in the sale of any goods and/or services with any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians is an effective way to regulate commercial activity on lands under the jurisdiction of the Band and that such regulation is vital to the economic security, political integrity and general welfare of the members of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians.

(c) The Band Assembly hereby finds and determines that members of the Mille Lacs Band of Chippewa Indians have entered into grossly unfavorable contracts with other persons, companies, corporations, associations, partnerships, cooperatives, utilities and any other public or private commercial entity who engage in the sale of any goods and/or services under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians with said contracts not being clearly understood by said Band members.

(d) The Band Assembly hereby finds and determines that many members of the Mille Lacs Band of Chippewa Indians have been imposed upon by persons who solicit and/or peddle literature, insurance policies, merchandise of poor quality and other like-type goods or services and that said persons utilize unprofessional sales tactics in order to coerce Band members and others to accept said products which Band members under ordinary circumstances would not accept.

(e) The Band Assembly hereby finds and determines that through the imposition of a license regulations governing such transactions upon all persons, companies, corporations, associations, partnerships, cooperatives, utilities and any other public or private commercial entity who engage in the sale of any goods and/or services with Band members and others under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians is an effective way to regulate such 'transactions and to protect basic civil rights to due process of those persons subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, pursuant to 1 MLBSA § 1 et seq. and Article XIII of the Constitution of the Minnesota Chippewa Tribe.

(f) The Band Assembly hereby finds and determines that any person(s), companies, corporations, associations, partnerships, cooperatives, utilities and any other public or private commercial entity who desires to engage in such commercial activity, be permitted to do so under such rules and regulations as the Band Assembly may enact or the Chief Executive pursuant to lawful Executive Order may prescribe, so that the best interest of Band members and others under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall be protected.

(g) The Band Assembly hereby finds and determines that pursuant to Article VI, Section 1 , Subsection D and Article XV, Section 1 , 2 and 3 of the Constitution of the Minnesota Chippewa Tribe requires that any ordinance which imposes a license or fee upon non-members of the Minnesota Chippewa Tribe-Non-Removable Mille Lacs Band of Chippewa Indians shall be subject to review by the Secretary of Interior, and the regulatory provisions of Chapters 1 to 5 of this title clearly fall within the provisions of the aforementioned constitutional declaration

(h) The Band Assembly hereby finds and determines that in the best interests of Indian Self-Determination that the Secretary of Interior shall exercise his fiduciary obligation by reviewing any proposed Band Statute that levies a licensing fee on nonmembers of the Non-Removable Mille Lacs Band of Chippewa Indians and making recommendations to the Band Assembly so that it may become a Band Statute for regulatory and revenue generating purposes and be codified into the laws of the Non-Removable Mille Lacs Band of Chippewa Indians without undue delay.

(i) The Band Assembly hereby finds and determines that persons, companies, corporations, associations, partnerships, cooperatives, utilities and any other public or private commercial entity who engage in the sale of any goods and/or services of any material value with any person subject to the jurisdiction, on lands subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians or with the Non-Removable Mille Lacs Band of Chippewa Indians or any entity or any political subdivision thereof; have conducted such business transactions without regard to the law, policies or judicial determinations of the Non-Removable Mille Lacs Band of Chippewa Indians and that such a condition violates the general welfare, economic security and political integrity of the Band members and others under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians and that due to this condition , it is necessary to promulgate rules and regulations which govern the conduct of these transactions on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 1.

**Code Revision:** The phrase “Chapter 1 to 5 of” was inserted before “this title” in paragraph (g) by the Code Reviser when Chapter 6 was added to this title.

## **§ 2. Definitions**

As used in Chapters 1 to 4 of this title, the words, terms, and phrases, defined in this section have the meanings given them. Unless the language or context of any undefined word, term or phrase, clearly indicates that a different meaning is intended, the meaning of sub-joined to any said work, term or phrase shall be subject to definitions found in Minnesota Statutes.

(a) Association: The act of a number of persons in uniting together for some special purpose or business.

(b) Commercial Entity: Any person(s), company(ies), corporation(s), association(s), partnership(s), cooperative(s), utility(ies) and any other public or private commercial entity who engage in trading in any goods and/or services of any material value with any person subject to the jurisdiction on lands, subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians or with the Non-Removable Mille Lacs Band of Chippewa Indians or any entity or any political subdivision thereof.

(c) Company: Union or association of persons for carrying on a commercial or industrial enterprise.

(d) Cooperative: A corporation or association organized for purpose of rendering economic services, without gain to itself, to share holders or members who own and control it.

(e) Corporation: An artificial person or legal entity created by or under the authority of the laws of the Non-Removable Mille Lacs Band of Chippewa Indians, any state or nation, composed in some rare instances of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals, including those entities defined in Band Statutes 1077-MLC-16, Section 26.01-26.03.

(f) Court: The Court of Central Jurisdiction as created pursuant to 5 MLBSA § 1 et seq.

(g) Partnership: A voluntary contract between two or more competent persons to place their money, effects, labor and skill, or some or all of them, in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them.

(h) Person: A natural person, corporation, company, association, cooperative, unincorporated association, trust or joint stock association, church, religious sect, religious denomination, or league and includes any trustee, receiver, assignee, agent or other similar representative thereof.

(i) Process: Any statutory notice or demand required or permitted to be served on a natural person or a corporation and includes a summons in a civil action and any process which may be issued in any action or proceedings in the Court of Central Jurisdiction.

(j) Solicit: The request, directly or indirectly, for any contribution, regardless of which party initiates communication, on the plea or representation that such contribution will or may be used for any charitable purpose, and the term shall be all inclusive.

(k) Solicitation: Asking, enticing, requesting; or to appeal for something.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-7, § 32; Band Ordinance 15-14, Title II, § 1.

**Code Revision:** The phrase “Chapter 1 to 5 of” was inserted before “this title” in the paragraph preceding paragraph (a) by the Code Reviser when Chapter 6 was added to this title.

### **§ 3. Reservation of right**

The Band Assembly hereby fully reserves the right to alter, amend or repeal the provisions of Chapters 1 to 5 of this title with the required review and approval of the Secretary of Interior. All rights and privileges granted or extended hereunder, shall be subject to such reserved right, however said reservation of right shall not be applicable to existing licenses issued prior to any statutory amendment.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-7, § 26.

**Code Revision:** The phrase “Chapter 1 to 5 of” was inserted before “this title” in this section by the Code Reviser when Chapter 6 was added to this title.

### **§ 4. Rules and regulations**

The Corporate Commission is authorized to issue all rules and regulations necessary for the implementation of Chapters 1 to 4 of this title.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-7, § 3.01; Band Ordinance 15-14, Title II, § 2.

**Code Revision:** The phrase “Chapter 1 to 5 of” was inserted before “this title” in this section by the Code Reviser when Chapter 6 was added to this title.

#### **Cross References**

Powers and duties of Corporate Commission, see 16 MLBSA § 111.

### **§ 5. Jurisdiction of the Court of Central Jurisdiction; damages**

(a) The Court of Central Jurisdiction is hereby conferred exclusive subject matter jurisdiction to resolve any and all disputes which may arise pursuant to any provisions of Chapters 1 to 4 of this title. The provisions of 5 MLBSA §113, shall apply to any non-Indian who initiates any action in the Court of Central Jurisdiction pursuant to any provision of Chapters 1 to 4 of this title. All non-Indian persons who apply for and receive a license to engage in the sale of goods and/or services pursuant to provisions of Chapters 1 to 4 of this title shall be deemed to have voluntarily consented to the civil jurisdiction of the Court of Central Jurisdiction for all civil causes of action which arise herewith.

(b) Any cause of action which arises pursuant to any provision of Chapters 1 to 4 of this title in which the Non-Removable Mille Lacs Band of Chippewa Indians or any of its political entities is named as a defendant shall be limited in relief to declaratory or injunctive measures and no damages monetary or otherwise, including but not limited to attorney fees, shall be permitted

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 25.

#### **Cross References**

Damages, generally, see 24 MLBSA § 651 et seq.

Subject matter jurisdiction, Court of Central Jurisdiction, see 5 MLBSA § 111.

### **§ 6. Waiver of sovereign immunity**

Nothing in this title shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe in any state or federal court.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 30; Band Ordinance 15-14, Title II, § 3.

**Code Revision:** The phrase “Chapter 1 to 5 of” was inserted before “this title” in this section by the Code Reviser when Chapter 6 was added to this title.

## **§ 7. Solicitor General obligation**

The Solicitor General shall represent the interest of the Non-Removable Mille Lacs Band of Chippewa Indians and the Corporate Commission in any matter arising from any provision of Chapters 1 to 4 of this title before the Court of Central Jurisdiction.

### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 31.

### **Cross References**

Duties of Solicitor General, see 4 MLBSA § 18.

## **§ 8. Investigations proceedings**

The Commissioner of Corporate Affairs in his discretion may make investigations as he deems necessary to determine whether any person has violated or is about to violate any provisions of Chapters 1 to 4 of this title or any Commission Order issued pursuant thereto and to submit the results of this investigation to the Solicitor General for appropriate court action.

### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 11.

## **§ 9. Equality and consistency in the exercise of powers and duties**

Notwithstanding the provisions of any other title of the Mille Lacs Band Statutes Annotated, the Corporate Commission and the Solicitor General may use any information in their possession, or to which they have access, to insure equal and consistent application and enforcement of the provision of this law which is administered by the Commission. This section shall not be construed as granting the Corporate Commission or Solicitor General any power to release information under their direct control to any exterior person, entity or government absent a due process hearing. All information collected shall be deemed highly classified and confidential.

### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-7, § 29.

## **§ 10. Violations**

Any person who shall fail to comply with the licensing provisions of Chapters 1 to 4 of this title or any lawful Commission Order, or order of the Court of Central Jurisdiction shall be deemed guilty of the offense of obstruction of the lawful process, and upon conviction thereof, shall be sentenced to a suspension or revocation of the privilege to conduct commercial enterprise on lands subject to the jurisdiction of the Band for a period not to exceed one hundred eighty days or exclusion from said lands pursuant to provisions of 2 MLBSA § 201 et seq [Digitizer's note: Section not in digital copy].

### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 24; Band Ordinance 15-14, Title II, § 4.

**Code Revision:** The phrase “Chapter 1 to 5 of” was inserted before “this title” in this section by the Code Reviser when Chapter 6 was added to this title.

### **Cross References**

Licensing of commercial entities, see 18 MLBSA § 101 et seq.

## **CHAPTER 2**

### **LICENSING OF COMMERCIAL ENTITIES**

#### **Section**

- 101. Power to license.
- 102. Application for license.
- 103. Classes of licenses.
- 104. Fees for issuance of license.
- 105. License fee revenue distribution.
- 106. Licenses issued to principal of commercial entity.
- 107. License period.
- 108. License renewal.
- 109. Denial, suspension, revocation of license.
- 110. Service of process.
- 111 . Forfeiture of goods.
- 112. Power to close unlicensed stores.

### **Cross References**

Violations, see 18 MLBSA § 10.

## **§ 101. Power to license**

The Corporate Commission shall have the sole power and authority to license commercial entities who sell or offer for sale any goods and/or services to person(s) on lands subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians. Any persons(s), company(ies), corporation(s), association(s), partnership(s), cooperative(s), utility(ies) and any other public or private commercial entity who desires to sell or offer for sale any goods and/or services of any material value or to sell or offer for sale the exchange of property, real or personal, as defined in 24 MLBSA § 3302, with any Band member or Indian or any person subject to the jurisdiction of the Mille Lacs Band of Chippewa Indians; or with the Non-Removable Mille Lacs Band of Chippewa Indians; or any political subdivision or entity thereof, shall upon establishing the fact to the satisfaction of the Corporate Commission that he is a proper person or entity to engage in such activity, be permitted to do so under such rules and regulations as the Corporate Commission may prescribe through the issuance of lawful Orders of the Commission. Any such Commission Order shall not be applicable to any commercial entity during the term of any existing license but shall become effective upon the issuance of a new license or upon renewal of an existing license.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 2. 52

### **§ 102. Application for license**

(a) Application for licenses must be made in writing on a form prescribed by the Corporate Commission, setting forth the full name and residence of the applicant; if a firm, the firm name and the name of each member thereof, the place where it is proposed to carry on the sale of goods and services; the capital to be invested, the names of the clerks to be employed; the person responsible for the general books of account of the firm and the name of one other person exclusive of the owner who shall both be designated to receive service of process; and the business experience of the applicant. The application must be forwarded through the Commissioner of Corporate Affairs. Licensed entities will be held responsible for the conduct of their employees.

(b) When an application for a license or permit is filed with the Commissioner of Corporate Affairs, the application shall be accompanied by a nonrefundable fee of ten dollars (\$10.00). The Corporate Commission shall be ninety days from the date of filing to approve or deny any application. Notwithstanding, the Commissioner of Corporate Affairs shall issue a temporary license valid for ninety days upon receipt and filing of said application.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-7, § 5.

### **§ 103. Classes of licenses**

The Non-Removable Mille Lacs Band of Chippewa Indians hereby designates the following classes of licenses which shall be available for any commercial entity who desires to engage in the sale of any goods and/or services on lands subject to the jurisdiction of the Band. The following classes of licenses shall be made available to any person, company, corporation, association, partnership, cooperative, utility, or financial institution, be it public or private who seeks to engage in the sale of such goods or services on lands subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians. The class of license sought shall be issued according to the classification of the goods and/or services sold on said lands.

(a) Retail Sales License. This license is available to a person who sells any goods and commodities at retail on lands under the jurisdiction of the Band.

(b) Entertainers License. This license is available to a person who provides entertainment to the public. For example: a band, theater or dance troupe, etc.

(c) Professional Services License. This license is available to a person who provides services in the practice of medicine and surgery, chiropractic, nursing, optometry, psychology, dentistry, pharmacy, podiatry, veterinary medicine, architecture, engineering, surveying, landscape architecture, accountancy and law.

(d) Utilities License. This license is available to a person providing telephone, electrical, water, sewer, gas to the public.

(e) Public Accommodations License. This license is available to a person providing lodging, prepared foods or beverages, and equipment rental to the public.

(f) Hawkers, Peddlers, Transient Merchants License. This license is available to a person who transacts any temporary and transient business on lands under the jurisdiction of the Band including selling goods, wares, merchandise and distributing literature of any type.

(g) General Service License. This license is available to a person who provides commercial services to the public, such as refuse disposal, plumbing, auto or equipment repair, electrical, carpentry, cleaning and maintenance services, personal care and other like general services.

(h) Special Events License. This license is available to a person who conducts commercial activity usually on a one time per annum basis, but

not exceeding three times per annum. Said activity does not occur on a regular or consistent basis.

(i) Miscellaneous License. This license is available to a person who sells goods or services that do not fall into another category in subsections (a) to (h).

**Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-7, § 6.

**§ 104. Fees for issuance of license**

The following fee schedule based on annual gross sales of the licensed entity is hereby enacted for various classes of licenses offered in 18 MLBSA § 103.

(a) License fee for Commercial Services License is hereby established at:

\$ -0- to \$50,000.00	=	\$75.00
\$ 50,001.00 to \$100,000.00	=	\$100.00
\$100,001.00 and over	=	\$150.00

(b) License fee for Entertainers License is hereby established at fifty dollars (\$50.00).

(c) License fee for Professional Services License is hereby established at:

\$ -0- to \$50,000.00	=	\$75.00
\$ 50,001.00 to \$100,000.00	=	\$100.00
\$100,001.00 and over	=	\$150.00

(d) License fee for Public Utilities License is hereby established at:

\$ -0- to \$50,000.00	=	\$75.00
\$ 50,001.00 to \$100,000.00	=	\$100.00
\$100,001.00 and over	=	\$150.00

(e) License fee for Public Accommodations License is hereby established at:

\$ -0- to \$50,000.00	=	\$75.00
\$ 50,001.00 to \$100,000.00	=	\$100.00
\$100,001.00 and over	=	\$150.00

(f) License fee for Hawkers, Peddlers, Transient Merchants License is hereby established at:

\$ -0- to \$50,000.00	=	\$25.00
\$ 50,001.00 to \$100,000.00	=	\$40.00
\$100,001.00 and over	=	\$50.00

(g) License fee for General Commercial Services License is hereby established at:

\$ -0- to \$50,000.00	=	\$75.00
\$ 50,001.00 to \$100,000.00	=	\$100.00
\$100,001.00 and over	=	\$150.00

(h) License fee for One-Time Special Events is hereby established at fifty dollars (\$50.00).

(i) License fee for Miscellaneous License is hereby established at:

\$ -0- to \$50,000.00	=	\$75.00
\$ 50,001.00 to \$100,000.00	=	\$100.00
\$100,001.00 and over	=	\$150.00

### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 7.

### **§ 105 . License fee revenue distribution**

All revenue derived from license fees from this title shall be forwarded on the first day of

each month to the Commissioner of Finance who shall superintend and manage said funds until lawfully disbursed pursuant to formal Revenue Resolution of the Band Assembly.

**Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 23.

**§ 106. Licenses issued to principal of commercial entity**

The Corporate Commission shall issue licenses only in the name of the principal owner of any commercial entity who transacts business pursuant to provisions of this title. Any said license issued pursuant to provisions of this title is nontransferable.

**Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 13.

**§ 107. License period**

License to sell or offer for sale any goods and/or services to any person subject to the jurisdiction of the Band shall be valid throughout the calendar year in which it is issued.

**Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 8.

**§ 108. License renewal**

Application for renewal of license shall be made to the Commissioner of Corporate Affairs on an appropriate form at least thirty days prior to the expiration of the existing license and the Commissioner must report to the Corporate Commission as to the record the applicant has made and his fitness to continue as a commercial entity under a new license.

**Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 9.

**§ 109. Denial, suspension, revocation of license**

(a)(1) The Corporate Commission may by order deny any application or suspend or revoke any license or registration if it finds that the applicant, registrant or licensee:

(A) has filed an application for a license or registration which is incomplete in any material respect or contains any statement which, in light of the circumstances under which it is made, is false or misleading with respect to any material fact;

(B) has engaged in a fraudulent, deceptive or dishonest practice;

(C) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of conducting commercial activity;

(D) has violated or failed to comply with any provision of this chapter or any Commission Order issued pursuant thereto.

(2) Any applicant for a license or licensee or registrant shall be accorded due process rights to a hearing pursuant to provisions of subsection (c)(1), prior to revocation, suspension or denial action.

(b) The Corporate Commission may promulgate rules and regulations further specifying and defining those actions and omissions which constitute fraudulent, deceptive or dishonest practices, and establishing standards of conduct for commercial activity.

(c)( 1 ) The Court of Central Jurisdiction may issue an order requiring a licensee, registrant or applicant for a license or registration to show cause why the license or registration should not be revoked or suspended. In the case of the denial of an application, the Corporate Commission may issue such a show cause order. All orders shall be calculated to give reasonable notice of time and place for hearing thereon, and shall state the reasons for the entry of the order. All hearings shall be conducted in accordance with 24 MLBSA § 2001 et seq. After the hearing, the court shall enter an order making such disposition of the matter as the facts require. In the case of hearings before the Corporate Commission, the Commission shall enter an order making such disposition of the matter as the facts require. Any such order may be appealed to the Court of Central Jurisdiction.

(2) If the licensee, registrant or applicant fails to appear at a hearing of which he has been duly notified, such person shall be deemed in default, and the proceeding may be determined against him upon consideration of the order to show cause, the allegations of which may be deemed to be true.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 10.

### **§ 110. Service of process**

All commercial entities that sell or offer for sale any goods and/or services on lands subject to the jurisdiction of the Band, but do not maintain an office on lands subject to the jurisdiction of the Band shall be subject to service of process as follows: by service thereof on its registered agent within the Band or if there be no such registered agent, then upon the person who has been designated in the registration statement as having custody of books and records or upon the person who is an agent of the commercial entity or by placing a copy of said process in registered and regular United States mail at the last known address.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 14.

### **§ 111. Forfeiture of goods**

Any person who shall attempt to conduct commerce on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians as a commercial entity, or to introduce goods, offer for sale any services or to conduct commercial activity therein without a license, shall forfeit all merchandise offered for sale to any person or the Band which is found in his possession to the Non-Removable Mille Lacs Band of Chippewa Indians.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 4.

### **§ 112. Power to close unlicensed stores**

If persons carry on commercial activities within the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians with any person under the jurisdiction of the Band or the Band or entity of the Band without a license, or continue to conduct commerce

after expiration of the license without applying for renewal, the Commissioner of Corporate Affairs will immediately report the facts to the Solicitor General who may, if necessary, direct the Law Enforcement officials to close the store of such commercial entities. The Solicitor General shall within forty-eight hours file a proper complaint in the Court of Central Jurisdiction and seek permanent or temporary injunctive relief from the court whichever is appropriate.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 12.

## **CHAPTER 3**

### **REGULATION OF TRADE**

#### **Section**

- 201. Inspection of prices.
- 202. Credit at seller's risk.
- 203. Cash payment only to any band member.
- 204. Government checks paid in cash.
- 205. Premises kept in sanitary condition.
- 206. Tobacco sales to minors.
- 207. Imitation Indian-made goods and commercially grown wild rice prohibited.
- 208. Corporate Commission authorizations.
- 209. Pawnbrokers and junk dealers.

#### **§ 201. Inspection of prices**

(a) It is the duty of the Commissioner of Corporate Affairs, to see that the prices charged by commercial entities are fair and reasonable. To this end the commercial entities shall on request submit to the Commissioner or inspecting officials the original invoice, showing cost, together with a statement of transportation charges, retail price of articles sold by them, the amount of Indian accounts carried on their books, the total annual sales, the value of buildings, the number of employees, and any other business information such officials may desire. The quality of all articles kept on sale must be good merchandise. The Commissioner shall conduct any such inspection upon receipt of any complaint from any person.

(b) The Corporate Commission shall promulgate standards for fair and reasonable inspection of any commercial entity located on lands subject to the jurisdiction of the Band, so as to prevent bias. No inspections shall occur until said standards have been promulgated.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 16.

### **§ 202. Credit at seller's risk**

Credit given to any Band members, will be at the seller's own risk, as no assistance will be given by Government officials in the collection of debts against any Band members other than that specified in 24 MLBSA § 3001 et seq. Commercial entities shall not accept pawns or pledges of personal property by any Band members to obtain credit or loans. Receipts must be given to all articles they have sold to commercial entities and on which they have requested book credit. These receipts must show the following information: The date the transaction was made, the amount paid the Band member and a description of the article or articles sold. All receipts issued by the commercial entity for Band members products must be recorded in the commercial entity's book in such manner that all information contained in the receipt is duplicated. Receipts may be transferred upon order of the initial recipient if it is to his convenience that such a procedure be followed.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 17.

### **§ 203. Cash payment only to any band member**

Commercial entities must not pay Band members in tokens, tickets, store orders or anything else of that character. Payment must be made in money, or in credit if the Band member is indebted to the commercial entity.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 18.

### **§ 204. Government checks paid in cash**

Commercial entities must pay all government checks accepted in cash, merchandise or credit to the full value of the check presented. The acceptance of cash, merchandise, or credit for government checks shall be at the option of the Band member in all cases.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 19.

## **§ 205. Premises kept in sanitary condition**

The commercial entities shall keep both their premises and place of business in a clean, sanitary and presentable condition at all times and shall avoid exposure of foodstuff to infection from the air, dust, insects or handling. It shall be the duty of the Commissioner of Human Services of the Band and his/her assistants to make periodical inspections, recommend improvements and report thereon to the Commissioner of Corporate Affairs or his duly authorized representative.

### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 20.

## **§ 206. Tobacco sales to minors**

No commercial entity shall sell tobacco, cigars, or cigarettes to any Band member under 18 years of age.

### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 15.

## **§ 207. Imitation Indian-made goods and commercially grown wild rice prohibited**

(a) No person shall introduce or have in his possession for disposition or sale to Band members or others, within the exterior boundaries of lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, any goods, wares, and merchandise known as moccasins, bead work, birchbark baskets, deerskin work, grass rugs, sweet grass baskets, and other goods which are manufactured or produced in imitation of genuine American Indian-made goods, wares, or merchandise without first clearly branding, labeling or marking said goods, wares or merchandise as imitation of genuine American Indian-made goods, wares or merchandise. For purposes of this section, Indian-made goods are those made exclusively by persons who are at least one-quarter Indian blood or who are listed on the rolls of any federally recognized Indian tribe, Band or community.

(b) The brand, label or mark required by subsection (a) shall be the words "not Indian-made" and shall be placed or attached outside of and on a conspicuous part of the finished article so as to be plainly visible to the purchasing public, and shall be the size and style known as great primer Roman capitals. Such brand or mark, if the article will permit, shall be

placed upon it, but when such branding or marking is impossible, a label shall be used and attached thereto.

(c) Any person injured by violation of subsection (a) may bring a civil action and recover damages, together with costs and disbursements, including reasonable attorney's fees, and receive other equitable relief as determined by the Court of Central Jurisdiction.

(d) No person shall sell, offer for sale, or have in his possession for the purpose of sale any commercially grown wild rice.

(e) All such imitation Indian-made goods which are mislabeled, in violation of subsection (a) and commercially grown wild rice introduced in violation of subsection (d) shall be subject to seizure by any law enforcement officer of the Band in the event that any person shall introduce or intend to introduce for purposes of sale to the general public such goods and/or commercially grown wild rice.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 22.

### **§ 208. Corporate Commission authorizations**

The Corporate Commission is authorized, whenever in its opinion the public interest may require, to prohibit the introduction of goods, or of any particular articles, into the country belonging to the Non-Removable Mille Lacs Band of Chippewa Indians and direct that all licenses to sell or offer for sale any goods and/or services with persons or the Band be revoked, and all applications therefore rejected. No commercial entity shall, so long as such prohibition exists, sell or offer for sale any goods and/or services with any entity of the Band and for said Band, or to any person subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, § 3.

### **§ 209. Pawnbrokers and junk dealers**

(a) Every pawnbroker or junk dealer subject to the jurisdiction of the Court must keep a detailed register in which must be entered the description of every article pawned by him/her or purchased by him/her with the date of pawning or purchasing date when the article must be redeemed, with the name of the person by whom the article was pawned, or by whom purchased and the amount loaned thereon or paid thereof, and

in case of the sale of any article pawned or pledged, the pawnbroker or junk dealer must enter upon said register the name of the purchaser, the time of the sale and the price paid therefore and the register must always be open to inspection and examination of any law enforcement officer.

(b) Furthermore, no person may carry on the business of pawnbroker or junk dealer by receiving goods pawned, or in pledge for loans, at any rate of interest higher than is allowed pawnbrokers of junk dealers under Federal regulation. There must be no other or greater amount received by and pawnbroker or junk dealer, his/her employee or agents, for interest, commission, discount, storage or caring for property pledged than the rate allowed under Federal regulations.

(c) Failure to comply with the terms and conditions of this section shall constitute an offense, punishable upon conviction of a sentence to labor for a period not to exceed 180 days, and/or by a fine not to exceed \$500.00, and the violator may be subject to other related charges under provisions of the Mille Lacs Band Statutes Annotated such as 24 MLBSA §1154. The Court may order the violator to cease and desist from any further business as pawnbroker or junk dealer until full compliance with this section is to the satisfaction of the Court.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, § 28.

## **CHAPTER 4**

### **UNIFORM COMMERCIAL CODE**

#### **Section**

301. Enactment.

302. Amendments.

#### **Cross References**

Application of Uniform Commercial Code to civil causes of action, see 24 MLBSA § 4. Contracts, acceptance and counteroffer, see 24 MLBSA §107.

### **§ 301. Enactment**

The Band Assembly hereby enacts the Uniform Commercial Code of the State of Minnesota-Minnesota Statutes, Chapter 336 as the Uniform Commercial Code for the Non-Removable Mille Lacs Band of Chippewa Indians. The Justices of the Court of

Central Jurisdiction shall be bound by the provisions of Minnesota Statutes, Chapter 336 in all causes of action which arise pursuant thereto. Exclusive subject matter jurisdiction is hereby conferred to the Court of Central Jurisdiction.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-7, § 28.

#### **Cross References**

Applicability to motor vehicle lien holders, see 19 MLBSA § 18 [Digitizer's note: Section not in digital copy].

Applicability to watercraft, see 20 MLBSA § 11.

Subject matter jurisdiction, Court of Central Jurisdiction, see 5 MLBSA § 111.

### **§ 302. Amendments**

Band Statute 1090-MLC-47 (see, now, 18 MLBSA § 301) adopted the Uniform Commercial Code as adopted by the State of Minnesota. Should the State of Minnesota amend or change its Uniform Commercial Code after the enactment of the above mentioned Statute, the Commissioner of Corporate affairs may, in his discretion, adopt those amendments or changes into Band law via a Commissioner's Order.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1202-MLC-16A, § 16.

#### **Cross References**

Commissioner's Orders, see 4 MLBSA § 7.

## **CHAPTER 5**

### **Tribal Employment Rights**

<b>Subchapter</b>	<b>Section</b>
<b>I. General Provisions</b>	<b>401</b>
<b>II. Administration; Mille Lacs Band of Ojibwe Tribal Employment Rights Office</b>	<b>405</b>
<b>III. Indian Preference in Employment and Contracting</b>	<b>410</b>

<b>IV. Fees</b>	<b>417</b>
<b>V. Compliance Plan, Notice and Contracts</b>	<b>421</b>
<b>VI. Prohibition of Employment Discrimination</b>	<b>426</b>
<b>VII. Employee Wage and Hour</b>	<b>431</b>
<b>VIII. Occupational Safety and Health of Employees</b>	<b>439</b>
<b>IX. Enforcement</b>	<b>442</b>

### **Historical and Statutory Notes**

The title of Ordinance 15-14 is:

“An ordinance amending Section 3(a) in Title 6 of the Mille Lacs Band Statutes Annotated; amending Sections 2, 4, 6 and 10 in Title 18 of the Mille Lacs Band Statutes Annotated; amending Chapter 5 of Title 18 in the Mille Lacs Band Statutes Annotated; and repealing any inconsistent Indian Preference language in any other Band law or policy, including any Corporate Commission policy, in order to create consistency in Band law and policy.”

The preamble of Ordinance 15-14 provides:

“It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Section 3(a) in Title 6 of the Mille Lacs Band Statutes Annotated; Sections 2, 4, 6 and 10 in Title\* in the Mille Lacs Band Statutes Annotated; amending Chapter 5 of Title 18 of the Mille Lacs Band Statutes Annotated (the Band’s Indian Employment Rights Ordinance or ‘TERO’); and repealing any inconsistent Indian Preference language in Band law or policy, including any Corporate Commission policy, in order to create consistency in Band law and policy.”

\*So in original. Probably should be Title 18.

The title of Ordinance 30-14 is:

“An Ordinance amending Chapter 5 of Title 18 of the Mille Lacs Band Statutes Annotated to further advance the hiring of Band members on the reservation.”

The preamble of Ordinance 30-14 provides:

“It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Chapter 5 (TERO) of Title 18 of the Mille Lacs Band Statutes Annotated to further advance the hiring of Band members on the reservation.”

## **SUBCHAPTER I**

### **GENERAL PROVISIONS**

- Section**  
401. Policy  
402. Purpose

## § 401. Policy and Findings

- (a) It is the policy of the Mille Lacs Band of Ojibwe (the Band) to provide a preference in employment and contracting to members of the Band and other federally recognized Indian tribes.
- (1) This policy applies to employment and contracting by the Band's government (including all branches, departments and agencies thereof), by all Band-owned entities while they are engaged in commercial or economic activities on behalf of the Band within the Band's Reservation and by all persons and entities doing business with the Band (including subcontractors of persons or entities contracting with the Band) within the Band's Reservation.
  - (2) This policy: (A) is intended to further the Band's overriding interests in self-government, self-sufficiency and economic development; (B) is directed to the participation of the governed in the Band's governing bodies and in its commercial and economic activities; (C) is intended to make the Band's government and its commercial and economic activities more responsive to the needs of its constituents; and (D) is intended to provide for the economic security and employment of members of the Band and of other federally recognized Indian tribes and to overcome the effects of past discrimination against such persons.
  - (3) Economic insecurity and unemployment are serious impediments to the health, morale, and welfare of the Band. Employment and contracting opportunities with the Band's government and with Band-owned entities and other persons and entities doing business with the Band within the Band's Reservation are important resources for members of the Band and of other federally recognized Indian tribes, who have historically suffered from discrimination in employment and contracting opportunities. As a result, Indian people living on or near the Band's Reservation have unique and special

employment rights under federal law, and the Band is obligated to implement those rights.

(b) Subject to the policy described in paragraph (a) of this section, all employees subject to the Mille Lacs Band of Ojibwe's jurisdiction are entitled to a workplace environment that prohibits employment discrimination, protects employees' wages, and promotes health and safety.

(c) The provisions of this Chapter are critically important to the health and welfare of members of the Band and of other federally recognized Indian tribes, especially those residing on or near the Band's Reservation. Unemployment and underemployment within the boundaries of the Band's Reservation are consistently many times higher than the national and state average. This pervasive unemployment and underemployment has directly contributed to serious social problems and a lower quality of life for members of the Band and of other federally recognized Indian tribes residing on or near the Band's Reservation and impeded the self-governance objectives of the Band.

(d) The Band declares that the public good and the welfare of the Band require the enactment of this Chapter, which is enacted pursuant to the Band's inherent sovereign and political powers, in order to increase employment of and the number of businesses owned by members of the Band and of other federally recognized Indian tribes, especially within the Band's Reservation, and to protect the workforce rights of Indian and non-Indian employees within the jurisdiction of the Band.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 401.

### **§ 402. Purpose**

This Chapter is adopted by the Mille Lacs Band of Ojibwe (the Band), under its inherent sovereign and political powers, for the following purposes:

- (a) To promulgate Band laws and rules governing employment relations and contracting preference within the Band's jurisdiction;
- (b) To establish the Band's Tribal Employment Rights Office (TERO) in order to enforce the Band's laws governing employment and contracting preference, and to protect the rights of all members of the Band, members of other

federally recognized Indian tribes, and all other employees within the Band's jurisdiction;

- (c) To increase the employment of members of the Band and of other federally recognized Indian tribes;
- (d) To eradicate employment discrimination, protect employees' wages, and protect employees' health and safety within the Band's jurisdiction;
- (e) To provide a fair, enforceable, and effective system of preferences in contracting and/or sub-contracting as it relates to the provision of supplies, services, labor and materials to the Band's government and to Band-owned entities and other persons or entities doing business with the Band (including subcontractors of persons or entities contracting with the Band) within the Band's Reservation; and
- (f) To supersede all other provisions of Band law that are inconsistent with the provisions of this Chapter.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 402.

### **§ 403. Severability**

If any provision of this Chapter, or the application thereof to any person, business, corporation, government (including any agency or political subdivision thereof), or circumstance, is held invalid, the invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 403.

### **§ 404. Definitions**

- (a) "Adverse Action" means an action taken to try to keep an individual from opposing a discriminatory practice or from participating in an employment discrimination proceeding. Adverse actions include termination, refusal to hire, denial of promotion, threats, unjustified negative evaluations, unjustified negative references, increased surveillance or any other action, such as assault

or unfounded civil or criminal charge, that are likely to deter reasonable people from pursuing their rights.

- (b) “Band” means the Mille Lacs Band of Ojibwe, a federally recognized Indian tribe, and includes the Band’s government (including all branches, departments and agencies thereof) and all Band-owned entities while they are engaged in commercial or economic activities on behalf of the Band within the Band’s Reservation.
- (c) “Board” means the Administration Policy Board established in 4 MLBSA § 8.
- (d) “Chief Executive” means the Chief Executive of the Band.
- (e) A “Conflict of Interest” occurs when a Board member is in a position to influence a decision that may result in a personal gain for that member or for a member of his or her Immediate Family.
- (f) “Core Crew” means regular, permanent employees in supervisory or other key positions where an employer would face serious financial loss if the positions were filled by persons who had not previously worked for that employer.
- (g) “Covered Employer” means the Band and any entity, company, contractor, sub-contractor, corporation or other business doing business with the Band (including subcontractors of persons or entities contracting with the Band) within the Band’s Reservation that employs for wages or other remuneration two (2) or more employees.
- (h) “Days” means calendar days, including holidays and weekends, unless otherwise indicated.
- (i) “Director” means the director of the Band’s Tribal Employment Rights Office.
- (j) “Disability” means, with respect to an individual:
  - (1) a physical or mental impairment that substantially limits one or more major life activities of such individual;
  - (2) a record of such an impairment; or
  - (3) being regarded as having such an impairment.

An impairment does not have to be permanent to rise to the level of a disability. Temporary impairments that take significantly longer than normal

to heal, long-term impairments, or potentially long-term impairments of indefinite duration may be disabilities if they are severe.

- (k) “EEOC” means the federal Equal Employment Opportunity Commission.
- (l) “Immediate Family” includes a person’s spouse, a person’s biological or adopted child, a member of a person’s household, and a person’s mother, father, sister, and brother.
- (m) “Indian” means a member of a federally recognized Indian tribe.
- (n) “Indian Certified Entity” means an entity, certified by the Board, in which fifty-one percent (51%) or more of the ownership interests are held by one or more Indians and in which daily management and control is provided by one of more Indians.
- (o) “Reservation” means all lands within the exterior boundaries of the Mille Lacs Indian Reservation as established by the Treaty of 1855, 10 Stat. 1165, all lands held in trust by the United States for the benefit of the Minnesota Chippewa Tribe, the Band or individual members of the Band, which are subject to the jurisdiction of the Band, and all lands owned by the Band which are located within one of the districts designated in 2 MLBSA § 11.
- (p) “TERO” means the Band’s Tribal Employment Rights Office established by this Chapter.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 404.

## **SUBCHAPTER II**

### **Administration; Mille Lacs Band of Ojibwe Tribal Employment Rights Office**

#### **Section**

- 405. Recusal of Board Members
- 406. Powers of the Board to Administer this Chapter
- 407. Tribal Employment Rights Office; Director
- 408. Powers and Duties of TERO Director
- 409. Intergovernmental Relationships

#### **§ 405. Recusal of Board Members**

(a) Recusal of Board Members. In exercising its powers to administer this Chapter, as set forth in section 406 of this Chapter, the Board shall comply with the following provisions governing the recusal of its members.

(1) Except as provided in paragraph (2), no member of the Board shall participate in any action or decision by the Board directly involving himself or herself, a member of his or her Immediate Family, or any person, business or other entity of which he or she or a member of his or her Immediate Family is an employee, in which he or she or a member of his or her Immediate Family has a substantial ownership interest, or with which he or she or a member of his or her Immediate Family have a substantial contractual relationship.

(2) Nothing in this section shall preclude a Board member from participating in any action or decision by the Board which:

(A) Affects a general class of persons, regardless of whether the Board member or a member of his or her Immediate Family is a member of the affected class; or

(B) Affects the Band, a Band entity, or a person or entity in a contractual relationship with the Band or a Band entity.

(3) A Board member may voluntarily recuse himself or herself and decline to participate in any action or decision by the Board when the Board member, in his or her discretion, believes:

(A) That he or she cannot act fairly or without bias; or

(B) That there would be an appearance that he or she could not act fairly or without bias.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 405.

### **§ 406. Powers of the Board to Administer this Chapter**

The Board has the full power, jurisdiction and authority:

(a) To take all actions necessary and appropriate to implement the provisions of this Chapter;

- (b) To approve or reject any and all rules, regulations and/or guidelines formulated by the Director to carry out the provisions of this Chapter and to approve or reject the amendment or rescission of any such rules, regulations or guidelines, *provided that*, except when an emergency exists, the Board shall provide the public an opportunity to comment at a meeting of the Board before approving any such rules, regulations or guidelines or the amendment or rescission thereof;
- (c) To conduct hearings in accordance with such rules of practice and procedure as may be adopted by the Board after providing the public an opportunity to comment on them at a meeting of the Board; and
- (d) To order any relief or sanctions authorized by this Chapter, and to petition the Mille Lacs Band Court of Central Jurisdiction for such orders to enforce the decisions of the Board and any sanctions imposed by the Board, if necessary.

**Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 406.

**§ 407. Tribal Employment Rights Office; Director**

There is hereby created a Tribal Employment Rights Office within the Executive Branch of Band government. The Director of the TERO shall be an employee of the Executive Branch under the direct supervision of the Commissioner of Administration and shall have the powers and duties prescribed in section 408 of this Chapter.

**Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 407.

**§ 408. Powers and Duties of TERO Director**

The Director shall have the following powers and duties:

- (a) To formulate, amend and rescind regulations, rules and guidelines necessary to carry out the provisions of this Chapter, subject to the approval of the Board;
- (b) To implement and enforce the provisions of this Chapter, as well as any properly adopted regulations, rules, guidelines and orders;
- (c) To hire staff, expend designated funds from an approved budget, and obtain and expend funding from federal, state, and other sources;

- (d) To maintain a list of : (1) current Covered Employers, (2) current employer permits and work permits issued, and (3) current Indian Certified Entities;
- (e) To maintain a record of all contracting projects subject to this Chapter and the TERO fees assessed for each project;
- (f) To process applications for certification of Indian Certified Entities by the Board;
- (g) To grant TERO permits and collect TERO fees as authorized by this Chapter;
- (h) To establish training and workforce development programs, in conjunction with the Mille Lacs Band Department of Labor, for Band members and other Indians to assist them in obtaining and retaining employment;
- (i) To process applications for and maintain a list of Band members and other Indians living on or near the Reservation who are available for employment and to assist such persons with job placement; and
- (j) To contract with federal and/or state entities for the provision of additional job procurement services and funding consistent with the purposes of this Chapter.

**Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 408.

**§ 409. Intergovernmental Relationships**

The TERO, acting through the Director, is authorized, with the written concurrence of the Commissioner of Administration, to enter into cooperative relationships with federal employment rights agencies, such as the EEOC and the Office of Federal Contract Compliance Programs (OFCCP), and with state employment rights agencies, such as the Human Rights Commission, in order to eliminate discrimination against Indians on and off the Reservation, as well as to develop training programs for Indians. The Director may also, with the written concurrence of the Commissioner of Administration, enter into cooperative relationships with federal agencies, including but not limited to the Bureau of Indian Affairs, the Department of Labor, the Federal Highway Administration, and the Internal Revenue Service, in order to implement any federal employment or other workforce rights, authorities, or requirements as such agency may lawfully delegate to the Band.

**Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 409.

## **SUBCHAPTER III**

### **Indian Preference in Employment and Contracting**

**Section**

- 410. Indian Preference in Employment
- 411. Covered Employer's Responsibilities
- 412. Core Crew
- 413. Indian Preference in Contracting
- 414. Indian Certified Entities
- 415. Applicability of Indian Preference in Contracting
- 415A. Other Preferences to be Consistent.

#### **§ 410. Indian Preference in Employment**

- (a) All Covered Employers shall give preference to Indians living on or near the Reservation in the hiring, promotion, training, and all other aspects of employment within the boundaries of the Reservation, provided that these individuals have the necessary qualifications. The priority for Indian Preference is as follows:
  - 1. Mille Lacs Band Member
  - 2. Member of another federally recognized Indian Tribe
  - 3. All Others
- (b) Every Covered Employer shall encourage Indians to seek promotional opportunities. For every opening in a supervisory position, the employer shall inform Indian workers about the position and encourage them to apply.
- (c) No Covered Employer shall be permitted to maintain a position that no employment opportunities exist in the fulfillment of any said contract in order to evade the provisions of this section. The Covered Employer shall develop a goal statement which is subject to advance approval by the TERO Director prior to the commencement of any work. Additionally, no goal statement shall be approved which contains less than fifty percent (50%) for each construction operation in Indian employment opportunities pursuant to any contract.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 410;  
Band Ordinance 30-14, Title I, § 1.

#### **§ 411. Covered Employer's Responsibilities**

- (a) Advertising of positions. Covered Employers shall notify the TERO of openings in employment positions subject to this Chapter and provide job descriptions for such openings at or before the time at which they advertise the openings. Job descriptions shall not be written in a way to unnecessarily exclude Band members or other Indians from employment.
- (b) All Covered Employers shall define in writing the necessary qualifications for each employment position in their work force that is subject to this Chapter, which shall be provided to the Director and applicants upon request.
- (c) All Covered Employers shall comply with this Chapter, all rules and regulations relating to it, and all guidelines and orders of the Director.
- (d) The requirements in this Chapter shall not apply to any direct employment by the Federal or a State government or their agencies or subdivisions. However, such requirements shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments when they are doing business with the Band within the Reservation.
- (e) Covered Employers shall include and specify an Indian employment preference policy statement in all job announcements and advertisements and all employer policies that are subject to this Chapter.
- (f) Covered Employers shall post in a conspicuous place on their premises for their employees and applicants an Indian preference policy notice prepared or approved by the TERO.
- (g) Covered Employers, except for construction contractors, shall advertise and announce all openings in employment positions subject to this Chapter on the Mille Lacs Band website. Construction contractors, prior to starting work within the Reservation, shall provide a TERO Compliance Plan for the project to the TERO Director.
- (h) Covered Employers shall use non-discriminatory job qualifications and selection criteria in filling employment positions subject to the requirements of this Chapter. No Covered Employer shall use any job qualification criteria that serve as barriers to Indian preference in employment, unless the Covered Employer can demonstrate that such criteria or requirements are required by business necessity.
- (i) Regardless of the qualifications of any non-Indian applicant, any Indian who demonstrates the necessary qualifications for an employment position subject to this Chapter:

- (1) Shall be selected by Covered Employers in the case of hiring, promotion, transfer, upgrading, recall and other employment opportunities with respect to such position; and
- (2) Shall be retained by Covered Employers in the case of a reduction-in-force affecting a certain class of positions until all non-Indians employed in that class of positions are laid-off.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 411.

### **§ 412. Core Crew**

- (a) Covered Employers, may, if necessary, designate a core crew, which is exempt from the Indian preference requirements of this Chapter.
- (b) If a core crew is necessary, such core crew shall not exceed twenty-five percent (25%) of the total employees of the project/jobsite except as otherwise provided in paragraph (c) of this section.
- (c) The Director may, at his or her discretion, grant a Covered Employer a larger core crew designation upon a satisfactory demonstration by the Covered Employer that a larger core crew is necessary due to unique or specialized positions that are essential for the operation of the business. A Covered Employer may appeal the decision of the Director to the Board.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 412.

### **§ 413. Indian Preference in Contracting**

- (a) To the extent provided in section 415 of this Chapter, all Covered Employers shall give preference in contracting and subcontracting to Indian Certified Entities.
- (b) If one or more qualified Indian Certified Entities submit a bid that is within ten (10%) percent of the lowest competitive bid, the Covered Employer shall give one of the qualified Indian Certified Entities submitting such a bid the opportunity to negotiate an acceptable bid.
- (c) In accordance with sections 406 and 408 of this Chapter, the Director shall formulate and the Board shall approve regulations providing guidance on implementing the requirements of this section and for implementing Indian

contracting preference when the awarding entity uses a method other than competition to select a contractor.

- (d) Whenever feasible, the Covered Employer shall submit to the Director, at least thirty (30) days in advance of the deadline for the submission of bids for a contract or subcontract, a list of all related contracts and subcontracts contemplated by the Covered Employer in order to enable the Director to give Indian Certified Entities the opportunity to prepare bids for such related contracts and subcontracts.
- (e) Any Covered Employer or Indian Certified Entity entering into a contract under the Indian preference provisions of this Chapter consents to the jurisdiction of the Band's Court of Central Jurisdiction for purposes of resolving any dispute arising under such contract, *provided* that nothing in this paragraph shall waive the sovereign immunity of the Band.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 413.

### **§ 414. Indian Certified Entities**

The Board shall establish a system for certifying firms as Indian Certified Entities. This system shall include detailed provisions to ensure that entities that are not truly 51% or more owned by Indians, or in which daily management and control is not provided by Indians, are not granted Indian preference certification.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 414.

### **§415. Applicability of Indian Preference in Contracting**

- (a) Except as otherwise provided in this section, the Indian preference in contracting required under section 413 of this Chapter shall apply only to contracts and subcontracts to be performed on the Reservation and shall not apply to the delivery of goods from a location outside the Reservation.
- (b) Notwithstanding any other provision in this Chapter, the Indian preference in contracting required under section 413 of this Chapter shall not apply to any contracts or subcontracts where the Board determines that application of that preference is specifically prohibited by Federal law.
- (c) The Indian preference in contracting required under section 413 of this Chapter shall not apply to contracts awarded by the Federal or a State government or their agencies or subdivisions. However, the Indian preference

in contracting required under section 413 of this Chapter shall apply to all subcontracts awarded by a Federal or State contractor or grantee that is a Covered Entity, whether or not the prime contract was subject to that preference, except when the Board determines that application of that preference to that entity is specifically prohibited by Federal law.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 415.

#### **§415A. Other Preferences to be Consistent**

Any provision for Indian Preference in employment or contracting contained in any Band policy, including any policy of the Corporate Commission, must be consistent with the Indian Preference in 18 MLBSA sections 410 and 413, which provide first priority to Mille Lacs Band Members, second priority to members of another federally recognized Indian Tribe, and third priority to all others.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title IV, § 2.

### **SUBCHAPTER IV**

#### **Fees**

##### **Section**

- 416. Fees
- 417. Exempt Employers and Entities
- 418. Fee Collection and Expenditure
- 419. Monthly Statements

#### **§ 416. Fees**

Except as otherwise provided in section 417 of this Chapter, and except as prohibited by Federal law, the following fees are assessed on Covered Employers (other than the Band) for the privilege of doing business with the Band within the Reservation and to raise revenue for the operation of the TERO office and the enforcement of this Chapter.

- (a) Every Covered Employer other than the Band that enters into a contract with the Band totaling \$25,000.00 or more shall pay a one-time project fee of one half percent (0.5%) of the total amount of the contract. The Covered Employer shall pay the full amount of the fee before commencing work on the Reservation under the contract, *provided* that the Director may, for good cause shown by the Covered Employer, authorize the fee to be paid in installments over the life of the contract, and *provided further* that if the total amount of

the contract is subsequently increased, the Covered Employer shall pay the additional amount due (0.5% of the increased amount of the contract) at the time of the increase. In all cases, the full amount shall be paid by the contractor upon the last pay application. A Covered Employer other than the Band that enters into a contract with the Band for less than \$25,000.00 shall pay the 0.5% fee on the total amount of the contract if the contract is amended or enlarged to \$25,000.00 or more within one (1) year after it was entered into. The fee imposed by this paragraph does not apply to a Covered Employer that enters into a subcontract made under a contract with the Band where the fee has been paid on the total amount of such contract.

- (b) All Covered Employers other than the Band shall, as a condition of doing business on the Reservation under a contract with the Band, consent to the Band entity awarding the contract paying the fee imposed under paragraph (a) of this section directly to the TERO prior to the commencement of work under the contract and subtracting the amount of the fee from the payments due to the Covered Employer under the contract. Prior to making the payment, the Band entity awarding the contract shall provide the contractor with a form prepared by the TERO, in which the contractor grants its consent to the payment of the TERO fee based on the amount it is entitled to receive from the Band entity. A contractor shall not be permitted to commence work on the Reservation until it has executed this form, *provided* that this provision shall not apply if the imposition of the fee with respect to the contractor is prohibited by Federal law.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 416.

### **§ 417. Exempt Employers and Entities**

The fees imposed in Section 416 of this Chapter shall not be collected where applicable provisions of a Federal contract or grant prohibit the collection of such fees.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 417.

### **§ 418. Fee Collection and Expenditure**

- (a) The TERO fees shall be collected by the Director pursuant to TERO regulations. The fees shall be paid over to the Band's Office of Management and Budget (OMB) and shall be credited to the TERO account. These funds shall be expended solely by the TERO, pursuant to a duly approved budget in order to carry out the purposes of this Chapter.

- (b) The TERO Office, in conjunction with the Band's Department of Labor, shall prepare a quarterly report as to all employment and training expenditures. The report shall be made available to the Legislative Branch and Executive Branch each calendar quarter.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 418.

## **SUBCHAPTER V**

### **Compliance Plan, Notice and Contracts**

#### **Section**

- 420. Compliance Plan
- 421. Notice to Proposed Contractors and Subcontractors
- 422. Contract Language Imposing TERO Requirements
- 423. Model Language
- 424. TERO Approval of Notices of Contracts and Awarded by Covered Entities

#### **§ 420. Compliance Plan**

- (a) All Covered Employers other than the Band shall, no less than ten (10) business days prior to commencing business on the Reservation, prepare and submit to the Director for his or her approval a plan setting out how the employer will comply with the requirements of this Chapter and its implementing regulations regarding Indian employment and Indian contracting preference. A Band-owned entity shall, no less than ten (10) business days prior to entering into a contract with a non-Band contractor to be performed on the Reservation, prepare and submit to the Director for his or her approval a plan setting out how the Band-owned entity will comply with the requirements of this Chapter and its implementing regulations regarding Indian employment and Indian contracting preference in connection with such contract. A Covered Employer already doing business on the Reservation on the effective date of this Chapter that has not prepared a Compliance Plan that has been approved by the Director under this section shall come into compliance with the requirements of this section within thirty (30) business days of the effective date of this Chapter.
- (b) The payroll records of all Covered Employers other than the Band shall be submitted to the Director within thirty (30) days of his or her request. Any Covered Employer required to submit a certified payroll pursuant to federal law under the Davis-Bacon Act shall submit a copy of this certified payroll record to the Director.

- (c) All Covered Employers other than the Band are required to report relevant changes regarding their employees and employment positions to the Director when they submit the payroll records to the Director under paragraph (b) of this section, including but not limited to new positions, terminations, layoffs, promotions, and retirements.

**Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 420.

**§ 421. Notice to Proposed Contractors and Subcontractors**

- (a) Any Covered Employer, when issuing a notice of a proposed contract to be awarded by it, shall include provisions in the notice that inform a prospective contractor about the requirements established by this Chapter.
- (b) Any Covered Employer, when issuing a notice of a proposed subcontract to be awarded by it, shall include provisions in the notice that inform any prospective subcontractor about the requirements established by this Chapter.

**Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 421.

**§ 422. Contract Language Imposing TERO Requirements**

Any Covered Employer, when awarding a contract or subcontract, shall include provisions that impose the requirements of this Chapter on the contractor or subcontractor, such that the legal document will fully bind the party to comply with the requirements of this Chapter.

**Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 422.

**§ 423. Model Language**

In order to implement the requirements of sections 421 and 422 of this Chapter, the Director shall provide to the Covered Employer:

- (a) Model language that shall be included in the notice to prospective contractors and subcontractors, informing them of the requirements established by this Chapter; and

- (b) Model language to be included in each contract and subcontract, imposing the requirements set out in this Chapter as terms of the contract.

#### **§ 424. TERO Approval of Notices of Contracts and Contracts Awarded by Covered Employers**

Each Covered Employer, prior to issuing notice of a contract to prospective contractors or subcontractors and prior to awarding a contract or subcontract, shall submit the proposed notice, contract or subcontract to the Director for approval.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 424.

### **SUBCHAPTER VI**

#### **Prohibition of Employment Discrimination**

##### **Section**

- 425. Prohibited Discrimination
- 426. Religious Accommodation
- 427. Discrimination based on Disability
- 428. Discrimination based on Pregnancy
- 429. Harassment
- 430. Retaliation

#### **§ 425. Prohibited Discrimination**

Except as necessary to comply with the Indian employment preferences in Subchapter III of this Chapter, it shall be unlawful for a Covered Employer to do any of the following acts wholly or partially based on the actual or perceived race, color, religion, national origin, sex, age, sexual orientation or political affiliation of any individual, unless such characteristic is a bona fide occupational qualification:

- (a) fail or refuse to hire, or discharge, any individual, or otherwise discriminate against any individual, with respect to his or her compensation, terms and conditions, or privileges of employment, including promotion;
- (b) discriminate in recruiting individuals for employment, or
- (c) limit, segregate, or classify employees in any way that would tend to deprive them of employment opportunities.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 425.

#### **§ 426. Religious Accommodation**

It shall be an unlawful discriminatory practice for a Covered Employer to refuse to make a reasonable accommodation for an employee's religious or spiritual observance, unless doing so would cause undue hardship to the employer. A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice his or her religion, such as flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers if approved by the authorized supervisor in accordance with the Band's Personnel Policy Manual. An accommodation would cause an employer undue hardship when it would require more than ordinary administrative costs, diminish efficiency in other jobs, infringe on other employees' job rights or benefits, impair workplace safety, cause co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or conflict with another applicable law or regulation.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 426.

#### **§ 427. Discrimination based on Disability**

- (a) It shall be unlawful for a Covered Employer to discriminate in any aspect of employment against a qualified individual with a disability because of that disability. However, it is not unlawful for a Covered Employer to use employment qualification standards, tests or selection criteria that are job-related and consistent with business necessity that make an individual with a disability ineligible for an employment position where the individual could not perform the job even with reasonable accommodation. Nothing in this section shall prohibit a Covered Employer from refusing to hire an individual with a disability for or from discharging such an individual from an employment position if the individual, because of the disability, is unable to perform the duties of the position, would perform the duties in a manner that would endanger the health and safety of the individual or others, or is unable to be at or go to or from the place at which the position is located.
- (b) Subject to the provisions of paragraph (c) of this section, a reasonable accommodation for an individual's disability may include but is not limited to making facilities readily accessible to and usable by disabled persons, job restructuring, modifying work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, and the provision of aides on a temporary or periodic basis.

- (c) An accommodation is not required if it would impose an undue hardship on the employer's operation. In determining whether an undue hardship exists, employers may consider:
- (1) the overall size of the business or organization with respect to number of employees and the number and type of facilities;
  - (2) the type of the operation, including the composition and structure of the work force, and the number of employees at the location where the employment would occur;
  - (3) the nature and cost of the accommodation;
  - (4) the reasonable ability to finance the accommodation at each site of business; and
  - (5) documented good faith efforts to explore less restrictive or less expensive alternatives, including consultation with the disabled person or with knowledgeable disabled persons or organizations.

**Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 427.

**§ 428. Discrimination based on Pregnancy**

A Covered Employer shall treat women affected by pregnancy, childbirth, or related medical conditions the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected, but similar in their ability or inability to work. This requirement shall include, but is not limited to, the requirement that a Covered Employer must treat an employee temporarily unable to perform the functions of her job because of a pregnancy-related condition in the same manner as it treats other temporarily disabled employees.

**Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 428.

**§ 429. Harassment**

- (a) It shall be unlawful employment discrimination for a Covered Employer to subject an employee or applicant to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, as well as unwelcome comments, jokes, acts, and other verbal or physical conduct

related to race, color, national origin, religion, sex, age, sexual orientation or disability when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (3) Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

- (b) A Covered Employer is responsible for acts of workplace harassment by its employees when the employer, its agents, or its supervisory employees knew of the conduct. A Covered Employer may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action upon learning of the harassment.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 429.

### **§ 430. Retaliation**

A Covered Employer may not retaliate against an individual for bringing a good-faith claim against the employer for a violation of this Chapter or because the individual opposed a practice he or she believed to violate this Chapter or participated in an enforcement proceeding pursuant to Subchapter IX of this Chapter. The firing, demoting, harassing or taking of any other adverse action against an individual shall constitute retaliation within the meaning of this section. Any retaliation in violation of this section is itself a violation of this Chapter and is subject to enforcement proceedings pursuant to Subchapter IX of this Chapter.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 430.

## **SUBCHAPTER VII**

### **Employee Wage and Hour**

#### **Section**

431. Minimum Wage

432. Prevailing Wage

- 433. Maximum Hours
- 434. Exemptions
- 435. Private Right of Action
- 436. Statute of Limitations
- 437. Guidance
- 438. Fringe Benefits

### **§ 431. Minimum Wage**

Any employee who is employed by a Covered Employer shall be paid an hourly wage of not less than \$7.50 per hour or the current United States Federal Government's minimum wage requirement, whichever is higher.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 431.

### **§ 432. Prevailing Wage**

All Covered Employers are required to compensate construction laborers according to the prevailing wage set by the U.S. Department of Labor according to the Davis-Bacon Act for the county in which the work shall commence, unless the Board implements Band prevailing wage rates by rule, regulation or guideline, in which case the Band prevailing wage determination shall apply.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 432.

### **§ 433. Maximum Hours**

No Covered Employer shall employ any of its employees for a work week longer than forty (40) hours unless such employee receives compensation for the additional hours at a rate not less than one and one-half times the regular rate at which the employee is compensated.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 433.

### **§ 434. Exemptions**

The provisions of this Subchapter shall not apply with respect to any employee employed in a bona fide executive, administrative, or professional capacity, or any other exemption

category in the Federal Fair Labor Standards Act (FLSA) of 1938, 29 U.S.C.A. § 213, including all future amendments thereto, or in regulations implementing that Act as promulgated by the U.S. Department of Labor.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 434.

### **§ 435. Private Right of Action**

Any individual aggrieved under this Subchapter may seek retroactive payment of unpaid minimum wages or unpaid overtime compensation against a Covered Employer pursuant to the enforcement provisions set out in Subchapter IX of this Chapter.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 435.

### **§ 436. Statute of Limitations**

Any action to secure unpaid wages or unpaid overtime compensation must be commenced within one (1) year after the date on which such wages or overtime compensation should have been included in an employee's paycheck, regardless of the date of actual discovery.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 436.

### **§ 437. Guidance**

For the purposes of interpreting this Subchapter only, the Board and the Band's Court of Central Jurisdiction may look to the Fair Labor Standards Act of 1938, Title 29 of the United States Code, sections 201-219, its implementing regulations, and related case law for persuasive guidance, *provided* that nothing in this section shall be construed as an adoption by the Band of that Act or its implementing regulations.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 437.

### **§ 438. Fringe Benefits**

A Covered Employer must give an employee engaged in construction the option of electing to receive any amount to which he or she is entitled as prevailing wage fringe benefits as a part of his or her hourly pay unless it is determined that the application of this provision is specifically prohibited by Federal law. The prevailing wage fringe benefits to which the employee is entitled shall include, but not be limited to, the fringe benefit determination made by the U.S. Secretary of Labor pursuant to the Federal Davis Bacon Act or by the Board pursuant to this Chapter. Every Covered Employer engaged in projects subject to the Federal Davis-Bacon Act shall offer this option to each employee at the time he or she is first employed.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 438.

## **SUBCHAPTER VIII**

### **Occupational Safety and Health of Employees**

#### **Section**

439. Duties of Employers and Employees

440. Adoption of Rules of Federal Occupational Safety and Health Administration

441. Enforcement

### **§ 439. Duties of Employers and Employees**

- (a) Each Covered Employer shall:
- (1) Furnish employees with a place and condition of employment that is free from recognized hazards that may cause or are likely to cause death or serious physical harm to the employees; and
  - (2) Comply with all occupational safety and health rules promulgated or adopted by the Band pursuant to this Subchapter.
- (b) Each employee of a Covered Employer shall comply with all occupational safety and health rules promulgated or adopted pursuant to this Subchapter that are applicable to the actions and conduct of the employee.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 439.

#### **§ 440. Adoption of Rules of Federal Occupational Safety and Health Administration**

The rules and regulations of the Federal Occupational Safety and Health Administration ("OSHA") of the U.S. Department of Labor, including all future rules or amendments to existing rules, promulgated pursuant to the authority granted to OSHA by the Occupational Safety and Health Act of 1975, (29 U.S.C. sections 651-678) are hereby adopted by the Band and apply to all Covered Employers.

##### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 440.

#### **§ 441. Enforcement**

- (a) The Director is authorized to enforce the rules adopted in Section 440 of this Chapter pursuant to the enforcement provisions set out in Subchapter IX of this Chapter, to the extent his or her authority has not been preempted by Federal law.
- (b) For any employer over whom the Director's authority to enforce the requirements of this Subchapter has been preempted by Federal law and for employers within the Reservation who are not subject to the jurisdiction of the Band, the Director shall work cooperatively with Federal and State officials responsible for enforcing occupational safety and health requirements applicable to such employers to ensure maximum enforcement.

##### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 441.

## **SUBCHAPTER IX**

### **Enforcement**

#### **Section**

442. Applicability

443. Investigations

444. Complaints

445. Complaints against the Band

- 446. Resolution of Violations
- 447. Hearing Procedures
- 448. Sanctions
- 449. Appeals
- 450. Monitoring and Coordination with other Tribal, State and Federal Laws

## **§ 442. Applicability**

The provisions set out in this Subchapter shall be used to enforce the requirements set out in this Chapter, unless a specific enforcement provision is contained in a particular Subchapter, in which case the latter provision shall take priority.

### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 442.

## **§ 443. Investigations**

- (a) On his or her own initiative or on the basis of a complaint filed pursuant to section 444 or any other provision of this Chapter, the Director or any field compliance officer designated by the Director may make such public or private investigations within the Reservation as the Director deems necessary to:
  - (1) ensure compliance with a provision in this Chapter;
  - (2) determine whether any Covered Employer has violated any provision of this Chapter or its implementing regulations; or
  - (3) aid in prescribing rules, regulations or policies hereunder.
- (b) Separate from acting on any complaint filed, the Director shall conduct regular compliance reviews to ensure that all Covered Employers are complying with the requirements of this Chapter.
- (c) The Director or any field compliance officer designated by the Director may enter the place of business or employment of any Covered Employer for the purpose of an investigation or compliance review, at said place of business or employment, in a manner consistent with good safety practices and with the orderly operation of the business activity. The Director or officer may:
  - (1) interview any employee or agent of the Covered Employer ;
  - (2) review and copy any documents; and

- (3) carry out any other activity the TERO Director or officer deems necessary to accomplish the investigation or compliance review, provided that, the Director or officer shall comply with the requirements of paragraph (e) of this section when reviewing or copying any confidential documents.
- (d) For the purpose of investigations, compliance reviews, or hearings, which, in the opinion of the Director or the Board, are necessary and proper for the enforcement of this Chapter, the Director or the chairperson of the Board may administer oaths or affirmations, subpoena witnesses, take evidence, and require the production of books, papers, contracts, agreements, or other documents, records or information that the Director or the Board deems relevant to the inquiry.
- (e) Any State or Federal tax records, trade secrets, or privileged or confidential commercial, financial, or employment information subpoenaed or otherwise obtained pursuant to the provisions of this Chapter or used at a compliance hearing or subsequent appeal to the Band's Court of Central Jurisdiction: (1) shall be regarded as confidential records of the Board or the Court; (2) shall not be opened to public inspection; (3) shall be used only by the Director, the Board, or parties to a compliance hearing or subsequent appeal to the court; and (4) shall be used in a manner that, to the maximum extent possible consistent with the requirement of fairness to the parties, protects the confidentiality of the documents.
  - (1) Any person, including but not limited to any employee or official of the Band, who willfully discloses such confidential records, except as expressly authorized by this Chapter or Court order, may be subject to a civil fine not to exceed \$500.00.
- (f) Documents obtained from a Covered Employer under this section shall be returned to the employer at the conclusion of any investigation, compliance review, or hearing, including the end of any available appeal period.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 443.

#### **§ 444. Complaints**

Any individual, group of individuals, business or organization that believes any Covered Employer other than the Band, or the Director or other TERO staff, has violated any requirement imposed by this Chapter or any regulation issued pursuant to it, may file a complaint with the Director or, if the complaint is against the Director or other TERO staff, with the chairperson of the Board. The complaint shall be in writing and shall provide such information as is necessary to enable the Director or an independent party

appointed by the Board to carry out an investigation. Within fifteen (15) days after receipt of the complaint, and on a regular basis thereafter, the Director or the independent party appointed by the Board shall provide the complaining party with a written report on the status of the complaint. The Director or the independent party appointed by the Board shall, within thirty (30) days of the date on which a complaint is filed, complete an investigation of the complaint. Upon request, the Board may grant the Director or the independent party appointed by the Board an extension of no more than thirty (30) days to complete the investigation. If upon investigation the Director or the independent party appointed by the Board has reason to believe a violation has occurred, he or she shall proceed pursuant to the provisions of this Chapter.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 444.

### **§ 445. Complaints against the Band**

Any individual who believes the Band, including any office, division, branch, subsidiary entity or commercial enterprise of the Band other than the Director or other TERO staff, has violated any requirement imposed by this Chapter or any regulation issued pursuant to it may file a complaint with the Director, but only after the individual has either:

- (a) Filed a complaint with, and exhausted the administrative remedies provided by the involved office, division, branch, subsidiary entity, or commercial enterprise of the Band, or
- (b) Filed a complaint with the involved office, division, branch, subsidiary entity, or commercial enterprise of the Band and sixty (60) days have passed since filing and no meaningful action has been taken on the complaint by that office, division, subsidiary entity, or commercial enterprise.

Upon receiving a complaint that meets the requirements of this section, the Director shall proceed in the same manner as he would on a complaint filed pursuant to section 444 of this Chapter, except that the Director and the Board shall take into consideration any written decision concerning the complaint issued by the office, division, branch, subsidiary, entity or commercial enterprise of the Band that is the subject of the complaint.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 445.

### **§ 446. Resolution of Violations**

- (a) If, after conducting an investigation or compliance review, the Director has reasonable cause to believe a violation of this Chapter or any regulation issued pursuant to it has occurred (including a failure by a party to comply with a subpoena or other request during an investigation), the Director shall notify the Covered Employer or Covered Entity in writing, delivered by registered mail, specifying the alleged violations.
- (b) The Director shall make a good faith effort to achieve an informal settlement of the alleged violation by meeting with the Covered Employer and taking other appropriate action.
- (c) If the Director is unable to achieve an informal settlement, he shall issue a formal notice of non-compliance, which shall advise the Covered Employer of its right to request a hearing. The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the Covered Employer with a reasonable time, which shall not be less than ten (10) days from the date of service of such notice, to comply. If the Director has reason to believe that irreparable harm will occur during that period, the Director may require that compliance occur in less than ten (10) days.
- (d) If the Covered Employer disputes the violation, as provided for in the formal notice, the Covered Employer may request a hearing before the Board, which shall be held no sooner than five (5) days and no later than thirty (30) days after the date for compliance set forth in the formal notice. The Director or the Covered Employer may ask the Board to hold the hearing sooner. The Board shall grant such a request only upon a showing that an expedited hearing is necessary to avoid irreparable harm.
- (e) If a Covered Employer fails or refuses to comply and does not request a hearing, the Director shall request the chairperson of the Board to convene a session of the Board for the purpose of imposing sanctions on the Covered Employer. This session shall take place as soon as necessary to avoid irreparable harm.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 446.

#### **§ 447. Hearing Procedures**

- (a) Any hearing held pursuant to this Chapter shall be conducted by the Board. The hearing shall be governed by rules of practice and procedure that are adopted by the Board. The Director and the Covered Employer shall have the

right to call and cross examine witnesses, as well as present physical evidence. The Board may consider any evidence that it deems relevant to the hearing. The Board shall not be bound by technical rules of evidence in the conduct of hearings under this Chapter, and the presence of informality in any proceeding, as in the manner of taking testimony, shall not invalidate any order, decision, rule or regulation made, approved, or confirmed by the Board. The Director shall have the burden of proving that the Covered Employer violated this Chapter by a preponderance of the evidence. An audio recording shall be made of each hearing. No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of, the Covered Employer.

- (b) The Director shall prosecute the alleged violation on behalf of the TERO. During the hearing and at all stages of the enforcement process provided for in this Chapter, the Director may be represented by the Band Solicitor General's Office. If the Covered Employer is an office or subsidiary of the Band Government and the Band Solicitor General's Office determines it would create a conflict to represent the Director, the Solicitor General may obtain outside legal counsel for the Director.
- (c) The Board shall sit as an impartial judicial body. The Board shall establish procedures and safeguards to ensure that the rights of all parties are protected and that there is no improper contact or communication between the Board and the Director during the hearing phase of the enforcement process.
- (d) If the Board requires legal assistance during the hearing process, or at any other phase of the enforcement process, and it would be a conflict of interest for the Band Solicitor General's Office to provide such representation, the Solicitor General shall attempt to retain outside legal counsel.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 447.

#### **§ 448. Sanctions**

- (a) If, after a hearing, the Board determines that the alleged violation of this Chapter or a regulation issued pursuant to it has occurred, and that the party charged has no adequate defense in law or fact, or if a party was issued a formal notice of non-compliance and failed to request a hearing, the Board may:

- (1) Deny such party the ability to commence business on lands owned by or for the benefit of the Band or its members on the Reservation (provided that the party is not an office, division, branch, subsidiary, entity or commercial enterprise of the Band);
  - (2) Suspend such party's business activity on lands owned by or for the benefit of the Band or its members on the Reservation (provided that the party is not an office, division, branch, subsidiary, entity or commercial enterprise of the Band);
  - (3) Terminate such party's business activity on lands owned by or for the benefit of the Band or its members on the Reservation (provided that the party is not an office, division, branch, subsidiary, entity or commercial enterprise of the Band);
  - (4) Deny the ability of such party to conduct any further business with the Band or on lands owned by or on behalf of the Band or its members on the Reservation (provided that the party is not an office, division, branch, subsidiary, entity or commercial enterprise of the Band);
  - (5) Impose a civil fine of up to \$500.00 per violation per day following the date for compliance;
  - (6) Order such party to make payment of back pay or other damages to any aggrieved party;
  - (7) Order such party to dismiss any employees hired in violation of the Band's employment rights requirements;
  - (8) Reimburse any party who improperly paid a TERO fee or overpaid said fee, but no interest shall be paid in such cases; and/or
  - (9) Order the party to take such other action as is necessary to ensure compliance with this Chapter or to remedy any harm caused by a violation of this Chapter, consistent with the requirements of the laws of the Band and the Indian Civil Rights Act, 25 U.S.C. 1301, *et seq.*
- (b) The Board's decision shall be in writing and shall be served on the charged party by registered mail or in person by an employee of the TERO no later than thirty (30) days after the close of the hearing. The decision shall contain findings of fact sufficient to support the Board's ordered relief, or lack thereof. Upon a showing by the Director or the charged party that further delay will cause irreparable harm, the Board shall issue its decision within ten (10) days after the close of the hearing. If the party fails to comply with the Board's decision within ten (10) days, the Director may file for an injunction in the Band's Court of Central Jurisdiction. The Court shall grant such injunctive relief as is necessary to

prevent irreparable harm pending an appeal or expiration of the time for the party to file an appeal.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 448.

### **§ 449. Appeals**

- (a) An appeal to the Band's Court of Central Jurisdiction may be taken from any formal order of the Board by any party adversely affected thereby, including a complainant. To take such an appeal, a party must file a notice of appeal in the Band's Court of Central Jurisdiction and serve a copy of the notice of appeal on the Director and any other party to the proceeding no later than twenty (20) days after the party receives a copy of the Board's decision.
- (b) The notice of appeal shall:
  - (1) Set forth the order from which the appeal is taken;
  - (2) Specify the grounds upon which reversal or modification of the order is sought;
  - (3) Be signed by the appellant or his legal representative; and
  - (4) Comply with any other requirements for actions filed in the Band's Court of Central Jurisdiction, as established by that court.
- (c) Except as provided elsewhere in this Chapter, the order of the Board shall be stayed pending the determination of the Court. The Director may petition and, for good cause shown, the Court may order the party filing the appeal to post a bond sufficient to cover the monetary damages that the Board assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Board's order in the event that order is upheld by the Court.
- (d) The Court shall review the decision of the Board de novo.
- (e) If a party has failed to come into compliance with (1) a decision of the Board from which no appeal has been taken, or (2) a decision of the Court, within 20 days after receipt of notice of such decision, the Director shall

petition the Court and the Court shall grant such orders as are necessary and appropriate to enforce the orders of the Board or Court.

- (f) If the order of the Board is reversed or modified, the Court shall specifically direct the Board as to further action the Board shall take in the matter, including making and entering any order or orders in connection therewith, and the limitations, or conditions to be contained therein.

**Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 449.

**§ 450. Monitoring**

If, when carrying out inspections at work sites or otherwise carrying out their responsibilities under this Chapter, the Director or TERO compliance officers have reason to believe that a requirement of a Tribal, Federal, state or local law, act or regulation, other than the ones included in this Chapter, may have been violated by a party, the Director and TERO compliance officers are authorized to document such possible violation(s), to report said violation(s) to the appropriate enforcement agency, and, to the extent that resources permit and the Director determines it to be appropriate, assist that agency in its attempt to investigate and cure the possible violation.

**Historical and Statutory Notes**

**Source:** Band Ordinance 15-14, Title III, Exhibit A, § 550.

## CHAPTER 6 MINIMUM WAGE

Unknown  
Field Code

**Section:**

- 501. Payment of Minimum Wages
- 502. Gratuities not applied
- 503. Sharing of gratuities
- 504. Unreimbursed expenses deducted
- 505. Expense reimbursement
- 506. Overtime
- 507. Work Breaks
- 508. Meal Breaks
- 509. Authorized Leave
- 510. Application

### Historical and Statutory Notes

The Preamble and § 11 of Band Ordinance 30-98 (this Chapter) provide:

“Preamble. It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of establishing minimum wage standards for workers within the territorial jurisdiction of the Mille Lacs Band.”

“**Section 11. Effective Date** This Act shall become effective October 1, 1998.”

The title of Band Ordinance 19-08 is: “An Ordinance amending the minimum wage standard for workers within the territorial jurisdiction of the Mille Lacs Band of Ojibwe in order to comply with the federal guidelines.”

The Preamble and § 11 of Band Ordinance 19-08 provide:

“Preamble. It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending the minimum wage standards for workers within the territorial jurisdiction of the Mille Lacs Band of Ojibwe.”

“**Section 11. Effective Date** This Act shall become effective July 24, 2008.”

### § 501. Payment of Minimum Wages

(a) For purposes of this Chapter, the terms defined in this paragraph have the following meanings:

(1) “Large Employer” means an enterprise whose annual gross volume of sales made or business done is not less than \$500,000.00, exclusive of excise and sales taxes that are collected at the retail level.

(2) “Small Employer” means an enterprise whose annual gross volume of sales made or business done is less than \$500,000.00, exclusive of excise and sales taxes that are collected at the retail level.

(3) “Mille Lacs Band” or “Band” means the Mille Lacs Band of Ojibwe or any political subdivision thereof.

(4) “Salary” means wages paid periodically in contrast to wages based on an hourly rate.

(b) Except as may otherwise be provided for in this Chapter, every “Large Employer” or the “Band” must pay wages to each employee in the minimum amount of \$7.50 per hour unless a higher amount is required under applicable law.

(c) Except as may otherwise be provided for in this Chapter, every “Small Employer” must pay each<sup>1</sup> wages to each employee in the minimum amount of \$6.55 per hour unless a higher amount is required under applicable law.

(d) A “Large Employer” must pay each employee at a rate of at least<sup>2</sup> the minimum wage set by this section without the reduction for training wage or full-time student status allowed by federal law.

(e) Any governmentally funded program, whether Band, federal or state, that employs students enrolled in educational classes is expressly exempt from the provisions of this section.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-98, § 1  
Band Ordinance 19-08, § 1

### **§ 502. Gratuities not applied**

(a) An employer may not directly or indirectly credit, apply or otherwise utilize gratuities towards payment of the minimum wage set by this section or any other applicable law.

(b) Notwithstanding any provision of this Chapter to the contrary, an employer shall not be required to pay an employee receiving 30% or more of their earnings from tips or gratuities, the amount of the Band’s minimum wage rate prescribed in section 501 of this Chapter. Instead such an employee shall be entitled to receive a minimum wage at the federal rate for employees of this type.

#### **Historical and Statutory Notes**

**Source:**

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<sup>1</sup> So in original (Band Ordinance 19-08, § 1(c)).

<sup>2</sup> So in original (Band Ordinance 19-08, § 1 (d)). Probably should be “least”.

Band Ordinance 30-98, § 2  
Band Ordinance 19-08, § 2

### **§ 503. Sharing of gratuities**

(a) All tips or gratuities may be retained by employees receiving such tips or gratuities.

(b) Notwithstanding the provisions of paragraph (a) of this section, any tip or gratuity received by an employee and deposited in a fund or pool operated for the benefit of such type of employees to be shared equally shall be permissible.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-98, § 3  
Band Ordinance 19-08, § 3

### **§ 504. Expenses that are not reimbursed that may be deducted**

Deductions, direct or indirect, from wages or gratuities not authorized under this section may only be taken as otherwise authorized by law. Deductions, direct or indirect, up to the full cost of an individual's uniform or individual's piece of work equipment as listed below, may not exceed fifty dollars and no cents (\$50.00). No deductions, direct or indirect may be made for the items listed below which when subtracted from wages would reduce the wage below the allowable minimum:

(a) Purchased or rented uniforms or specifically designed clothes required by the employer, due to the nature of the employment or by law as a condition of the employment, which are not generally appropriate for use except in that employment;

(b) Purchased or rented equipment used in employment, except as tools of trade, motor vehicle or any other equipment which may be used outside the employment;

(c) Travel expenses in the course of employment except those incurred in traveling to and from the employee's residence and place of employment.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-98, § 4  
Band Ordinance 19-08, § 4

### **§ 505. Expense reimbursement**

An employer, at the termination of an employee's employment, must reimburse

the full amount deducted, directly or indirectly, for any of the items listed in section 504 of this Chapter. When reimbursement is made, the employer may require the employee to surrender any existing items for which the employer provided reimbursement.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-98, § 5  
Band Ordinance 19-08, § 5

### **§ 506. Overtime**

(a) An employer may not employ an employee for a workweek longer than (40) hours, unless the employee receives compensation for employment in excess of (40) hours at a rate of at least 1½ times the employee's wage. An employer may also grant compensatory time off at the rate of 1½ hours for each hour worked in excess of (40) hours in lieu of monetary compensation.

(b) An employer does not violate this section 506 if the employer and employee agree before the performance of a work week, to accept to work period of (14) conservative days in lieu of a work week of (7) consecutive days. In such an arrangement, overtime compensation for the employment in excess of eight hours in any workday and in excess of eighty (80) hours in the fourteen (14) day period, the employee shall receive pay or compensatory time off at a rate not less than 1½ times the regular rate at which the employee is employed.

(c) This section 506 shall not apply to employees receiving a Salary.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-98, § 6  
Band Ordinance 19-08, § 6

### **§ 507. Work Breaks**

An employer must allow each employee a 15-minute break from work within each four consecutive hours of work.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-98, § 7  
Band Ordinance 19-08, § 7

## **§ 508. Meal Breaks**

(a) An employer must permit each employee who is working for eight or more hours at least 30 minutes to eat a meal.

(b) Nothing in this section requires the employer to pay the employee during the meal break.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-98, § 8  
Band Ordinance 19-08, § 8

## **§ 509. Authorized Leave**

Any employee may not unreasonably be denied time-off from work to attend Midewin or Drum Society Ceremonies.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-98, § 9  
Band Ordinance 19-08, § 9

## **§ 510. Application**

The provisions of this Chapter shall apply within the territorial jurisdiction of the Mille Lacs Band of Ojibwe.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-98, § 10  
Band Ordinance 19-08, § 10

## **Chapter 7**

### **RIGHT TO WORK**

**Section**

- 601. Findings and Determinations
- 602. Definitions
- 603. Right to Work
- 604. Prohibition of Strikes
- 605. Jurisdiction
- 606. Civil Remedies
- 607. Complaint Process
- 608. Enforcement

### **Historical and Statutory Notes**

The Title of Band Ordinance 55-08 (this Chapter) is: “An Ordinance amending Title 18 of the Mille Lacs Band Statutes Annotated (Commercial Practices) to add Chapter 7 – Right to Work.”

The preamble of Band Ordinance 55-08 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Title 18 of the Mille Lacs Band Statutes Annotated (Commercial Practices) to add Chapter 7 to be entitled ‘Right to Work.’”

## **§ 601. Findings and Determinations**

The Band Assembly hereby finds and determines:

(a) The Mille Lacs Band of Ojibwe has the inherent power to maintain a Band government which may enact laws to preserve the sovereignty of the Band and to promote and maintain individual rights and promote the general welfare of the people of the Band.

(b) With the recent expansion of economic development, employment within the jurisdiction of the Band has grown substantially, and the Band has exercised its sovereignty in enacting laws to govern employment relationships.

(c) The right to work on land within the jurisdiction of the Band is a fundamental right that should not be abridged.

(d) No person should be forced to join or be penalized for not joining a union or other collective bargaining organization and should be able to make that choice freely and voluntarily.

(e) The Mille Lacs Band of Ojibwe enacts this law governing employment and labor pursuant to the Band's inherent sovereign authority to govern activities on lands within the jurisdiction of the Band, whether the activities are of Band members, non-members, Indians, or non-Indians, and whether based on consensual relationships with the Band or conduct which impacts and affects the health, safety, political and economic integrity of the Band and the community including Band members, employees, vendors, patrons and others.

### **Historical and Statutory Notes**

**Source:** Band Ordinance 55-08, § 1

## **§ 602. Definitions**

(a) "Employer" means any person, firm, association, corporation, government or any subdivision thereof and other entity operating within the jurisdiction of the Band and directly or indirectly employing one or more persons to perform work, except for any such person, firm, association, or corporation which has a principal place of business located outside the jurisdiction of the Band and operates pursuant to an Agreement with the Band or Band entity to perform construction related activities.

(b) "Labor organization" means any organization or agency or group of employees or employee committee or plan in which employees participate that is organized or exists for the purpose of dealing with an employer or employers concerning hours of employment, wages, rates of pay, working conditions or grievances of any kind relating to employment.

(c) “Labor dispute” includes any controversy concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment whether or not the disputants stand in the proximate relationship of employer and employee.

(d) “Person” means any individual, labor organization, corporation, partnership, company, association or other legal entity, including the Mille Lacs Band of Ojibwe and any subdivision thereof and the Corporate Commission of the Mille Lacs Band of Ojibwe.

(e) “Strike” means any temporary stoppage, reduction, disruption or slowdown of work by the concerted action of two or more employees as a result of a labor dispute.

(f) “Union dues” means dues, fees, assessments or other charges of any kind or amount or their equivalents paid or payable, directly or indirectly, to a labor organization or its agents and includes payments to any charity or other third party in lieu of such payments to a labor organization.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 55-08, § 2

### **§ 3. Right to Work**

(a) No person shall be required, as a condition of employment, or continuation of employment, within the jurisdiction of the Band, to do any of the following:

- (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; or
- (3) Pay union dues as defined in this chapter.

(b) Any agreement between any labor organization and any employer that violates subsection (a) or otherwise violates the rights of persons defined by this chapter is of no legal effect. This chapter does not bar any person from voluntarily obtaining or maintaining membership in any labor organization or from voluntarily paying union dues as defined in this chapter.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 55-08, § 3

### **§ 604. Prohibition of Strikes**

(a) No person shall engage in a strike and no person shall cause, instigate, encourage, or condone a strike.

(b) For purposes of this section, if a person is absent from work, or abstains wholly or in part from the full performance of his or her normal duties, on the date or dates when a strike occurs, it shall create a rebuttable presumption to have engaged in such strike on such date or dates.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 55-08, § 4

### **§ 605. Jurisdiction**

The Court of Central Jurisdiction shall have jurisdiction over all causes of action alleging violations of this chapter. Nothing provided in this chapter shall be deemed to be a waiver of the sovereign immunity of the Mille Lacs Band of Ojibwe from suit. Nothing provided in this chapter shall diminish the immunity protections of 2 MLBSA § 5 and 16 MLBSA § 109.

### **§ 606. Civil Remedies**

Any person injured as a result of any violation or threatened violation of the provisions of this chapter shall be entitled to petition the Court of Central Jurisdiction for injunctive relief from or against any person who violates or threatens any violation of this chapter, and may, in addition thereto, file a claim to recover actual damages resulting from the violation or threatened violation. Actual damages shall not include punitive damages or attorney fees. The remedy shall be independent of, and in addition to, any other penalties and remedies prescribed by applicable law.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 55-08, § 6

### **§ 607. Complaint Process**

(a) Petition.

Any person injured as a result of any violation or threatened violation of the provisions of this chapter shall first petition the Court of Central Jurisdiction for a show cause hearing. The Petition shall include a statement of the facts constituting the violation or threatened violation of the provisions of this chapter and the specific relief requested. The Petition shall also be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(b) Notice of Hearing.

The Clerk of Court shall schedule a hearing within 30 days after receipt of the Petition. The Clerk shall submit a Notice of Hearing to the person against whom the action is being instituted. The Notice shall state that the person has a right to appear at this hearing on his or her own behalf or with an attorney. The person shall have a right to present defenses to the claim and to state the reasons why the Petition should be denied. The Petition shall clearly state a claim to the violation of this chapter and the damages sought. Finally, the notice shall clearly state that if the person fails to appear at the hearing the Court has the authority to enter a default judgment on behalf of the Petitioner and direct that the requested relief be immediately granted.

(c) Emergency Procedure

(1) Where an application under this chapter alleges an immediate and present violation or threatened violation of section 4 of this chapter, the court may grant an ex-parte temporary order enjoining the violation or threatened violation.

(2) An ex-parte temporary order shall be effective for a fixed period not to exceed 14 days. A full hearing as provided by this chapter shall be set for not later than 7 days from the issuance of the temporary order. The respondent shall be served forthwith a copy of the ex-parte order along with a copy of the petition and affidavit and notice of the date set for the hearing.

(3) Service of Order. Any order issued under this chapter shall be personally served upon the respondent.

**Historical and Statutory Notes**

**Source:** Band Ordinance 55-08, § 7

**§ 608. Enforcement**

(a) The Court of Central Jurisdiction shall have the judicial authority to provide an equitable remedy in the execution its judgments and determinations to promote the general welfare, preserve and maintain justice, and to protect the rights of all persons under the jurisdiction of the Mille Lacs Band of Ojibwe.

(b) The Court of Central Jurisdiction shall have the power to issue orders to prevent an injustice or injury, require action or conduct, and issue any other orders as are necessary in the furtherance of justice.

**Historical and Statutory Notes**

**Source:** Band Ordinance 55-08, § 8

