



MILLE LACS BAND OF CHIPPEWA INDIANS
Judicial Branch of Tribal Government

Judicial Interpretation 01-A

Mille Lacs Band of Chippewa Indians, Plaintiffs

Vs.

Mary Crenna and Elaine Guck, Defendants

The case before the Judicial Policy Board is one that requests interpretation of Section 5.0 and Section 5.1 of the Board's personnel policies. The formal hearing was held on Monday, October 25, 1982, at 2:15 p.m. This interpretation concerns matters of sick leave and maternity leave.

The Judicial Policy Board having convened to deliberate the findings of fact and offer an interpretive opinion hereby decree the following:

- 1) Absent a controlling civil rights ordinance which declares basic rights for all those under the jurisdiction of the Band; we, the Judicial Policy Board hereby grant applicability to the motion of the defense with regard to 29 CFR 1604.10 of P.L. 95-555, Stat 2076 Pregnancy Discrimination Act.

BY SPLIT DECISION IT IS SO ORDERED

- 2) Maternity status shall be defined as status which is the result of pregnancy of a female employee of tribal government which shall automatically be granted upon presentation to the Commissioner of Administration of an official letter of pregnancy from a qualified physician. This status shall be valid from the time of conception to the day of delivery of the new-born child or upon any day in which a pregnancy is terminated due to any medical complication.

A. A female employee shall be required to submit an official physician's letter two months from the expected delivery date. Said letter shall explicitly state the physician's opinion that "the mother's physical and emotional state of health is such that she is permitted to continue work, and her type of job in all probability will not hinder the positive development of the baby under normal working conditions." Additionally, the opinion should list those **non-**permissible work activities and the period of time in duration.

BY UNANIMOUS DECISION IT IS SO ORDERED

3} Medical status shall be defined as status which commences the day of the birth of a child, or the day of the termination of pregnancy due to medical complications and continues for a period of time not to exceed sixty days. The specific provisions listed above in maternity status shall apply to a physician's statement officially filed at least one day before a female employee may return to government service.

BY UNANIMOUS DECISION IT IS SO ORDERED

We, the Judicial Policy Board find for the defense with regard to maternity status and medical status, and hereby prohibit the government from limiting any fringe benefits of a female employee while on either status with the exception that any annual or sick leave accrued as a result of not working can not be used during maternity or medical status. This can be used when said employee returns to full-time government service.

4} With regard to utilization of annual leave and sick leave, we, the Judicial Policy Board find for the government and hereby limit annual leave to be utilized in conjunction with maternity status and sick leave to be limited in conjunction with medical status. However, the female employee can submit her physician's letter which certifies her illness as pregnancy-related and receive sick pay while under maternity status.

We recognize that there will be days during maternity status in which the mother is unable to work due to illness. We also recognize that there will be days during medical status in which the female employee will not be sick. Payment in each case shall occur contingent upon sufficient accrual. However, the problem is how

to protect the basic interests of the employee and their relationships to the government. Here, we think each sides' interest can be sufficiently protected with the limitations imposed.

BY UNANIMOUS DECISION IT IS SO ORDERED

- 5) With regard to paternal leave, we, the Judicial Policy Board find no legislative or executive intent to establish an additional fringe benefit. Here, we think the Band Assembly and/or the Administrative Policy Board need to explicitly state all intentions in law or policy. Given this, we find for the government and are thus constrained in this case from promulgating new policy for another branch of government.

BY SPLIT DECISION IT IS SO ORDERED

- 6) With regard for the phrase "only 12 days", we, the Judicial Policy Board find for the government and interpret the phrase to mean no sick leave shall accrue beyond twelve days during any time of the fiscal year. Here, the defendant failed to present evidence of an alternative intention.

- A. With regard to the defendant's request for the issuance of a grandfather clause, we, the Judicial Policy Board find the purpose of sick leave is to compensate an individual on a daily basis for each day he is prohibited from working due to physical or emotional illness. This benefit is not offered as is annual leave--that is, for the most part. Those affected employees are fortunate to have avoided illness during the previous year or years. However, failure to utilize this benefit is similarly related to the failure to utilize the hospitalization benefit. Even though one is not placed in the hospital to utilize this benefit, this does not mean he gets additional hospitalization benefits the next year based upon the fact that he did not use them last year. On the other hand, employees should not put off medical treatment because they do not have sufficient sick leave accrued. As a result of the above considerations, the defendants' motion for grandfather clause is hereby denied.

employee on maternity leave for any reason without express written request of employee's physician.

BY UNANIMOUS DECISION IT IS SO ORDERED

7) During maternity or medical status no employee shall be transferred, demoted, suspended, or dismissed except upon the written concurrence of the employee to the government's request.

This interpretation shall be in no way construed as a statement which has weight of law as regard to discrimination between the sexes. This issue should remain the discretion and judgement of the legislative branch of government. Although passage of a Band Civil Rights Ordinance may necessitate alteration of this interpretation for legal compliance.

Mille Lacs Band of Chippewa Indians
Judicial Branch of Tribal Government
Judicial Interpretation 01-A


Introduced to the Judicial Policy Board this 25th day of October in the year one thousand nine hundred and eighty-two.

Interpretation rendered this 1st day of November in the year one thousand nine hundred and eighty-two.

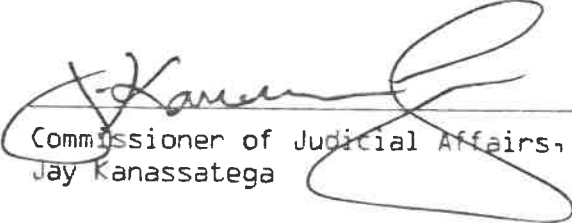
Certification:

The interpretation issued herewith conforms with the decision of the Administrative Law Judges.

Approved:


Presiding Administrative Law Judge,
Natalie Weyaus

Certification:


Commissioner of Judicial Affairs,
Jay Kanassatega