



THE MILLE LACS BAND OF
OJIBWE INDIANS

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Office of the Solicitor General

OPINION OF THE SOLICITOR GENERAL
NO. 38-13

The Commissioner of Finance and Executive Director of the Department of Labor formally inquired whether the wages of Department of Labor Flex Labor workers are subject to withholding for state unemployment taxes. They additionally inquired whether such wages could be garnished to satisfy child support orders. After reviewing relevant Mille Lacs Band statutes and the Flex Labor Program's funding agreements, I conclude the wages of Flex Labor workers cannot be used for either purpose. Flex Labor wages are paid out from two (2) primary funding sources: the Band's 477 Plan and Federal TANF Plan.¹ Both of these funding sources restrict withholding from Flex Labor wages.


The 477 Plan entered into by the Band and the U.S. Department of the Interior considers the Flex Labor wages as analogous to Minnesota Family Investment Program/Diversionsary Work Program ("MFIP/DWP") assistance.² The 477 Plan states that "due to the fact that the participants are participating in a work training program, and wages are paid through federal grants, the participant will not be eligible for unemployment compensation once their employment ends per Minnesota Statute 268.035, Subd. 20(10),"³ designating such wages as non-covered employment. By comparison, state statute prohibits garnishing needs based assistance, including MFIP/DWP.⁴

Although the Band is not subject to state civil regulatory laws,⁵ the State of Minnesota administers unemployment benefits. Therefore, state law prohibits the State of Minnesota from garnishing the Flex Labor wages for unemployment insurance. The Band's Federal TANF Plan echoes the 477 Plan's exemption of Flex Labor wages from unemployment insurance.⁶ In this regard, the Federal TANF Plan excludes reimbursement for employment training activities funded under the 477 Plan from its definition of income.⁷

Furthermore, the Band's child support statutes prohibit garnishing Flex Labor wages. "A parent's *gross income* does not include public assistance benefits received under the TANF program, the Minnesota Family Investment Program, or other programs of public assistance based on need."⁸ The statute also states that "court-ordered child support shall be withheld from the *obligor's income*."⁹ Therefore, if the Flex Labor wage program is a form of public assistance based on need, such wages cannot be garnished for child support because they would fall outside the statute's definition of income.

The child support statutes define "Public Assistance" as "temporary financial assistance given to needy persons by a tribal or state government agency."¹⁰ The fact that participants in

the Flex Labor Program must be at or below 200% (or 300%) of the poverty guidelines to qualify indicates the program bases eligibility on need.¹¹ The program correspondingly limits participants to a certain amount of assistance per year, making the assistance temporary in nature. Therefore, under the Band's child support statutes, Flex Labor wages are a form of public assistance that cannot be considered as income and thus cannot be garnished for child support purposes.¹²


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Solicitor General

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¹ The Mille Lacs Band of Ojibwe Tribal Employment, Training & Related Services P.L.102-477 Plan became effective October 1, 2010, and extends through September 30, 2013. The Mille Lacs Band of Ojibwe Federal TANF Plan became effective January 1, 2010, and extends through December 31, 2013.

² 477 Plan at 15.

³ *Id.* at 16.

⁴ MINN. STAT. § 571.925 (2012).

⁵ See generally *Bryan v. Itasca County*, 426 U.S. 373 (1976) (holding that states do not have the right to impose civil regulations upon tribal land absent a specific Congressional grant of authority).

⁶ Fed. TANF Plan, § 27 at 47.

⁷ *Id.*, § 10(2)(1) at 21.

⁸ 8 MLBSA § 2008(i) (emphasis added).

⁹ *Id.*, § 2051 (emphasis added).

¹⁰ *Id.*, § 2003(x).

¹¹ 477 Plan at 15; Fed. TANF Plan, § 27 at 47.

¹² I must highlight one seeming contradiction within the analysis of the Federal TANF Plan. The program goals state that "the Band believes that offering *non-assistance* services such as training, employment and support services through the Band's TANF program, to low income Mille Lacs Band members ages 18-35, who do not have children and, whose incomes are below (a certain percentage of the 2010 Federal Poverty Guideline specified throughout plan for specific services), will teach them to be . . . responsible . . ." Fed. TANF Plan, § 2(3)(a) at 8 (emphasis added). The "non-assistance" designation likely serves to generally distinguish the associated programs from ordinary and more prevalent need-based grants. The remainder of the Federal TANF Plan clearly treats Flex Wages as public assistance. Therefore, I firmly contend that Flex Wages remain exempt from garnishment for unemployment insurance and child support.