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*MILLE LACS BAND OF CHIPPEWA INDIANS*  
*Judicial Branch of Tribal Government*

Opinion of the Solicitor General

05-056-83

TO: Senior Accountant, Office of Management and Budget, Management Section  
FROM: Jay Kanassatega, Solicitor General  
SUBJECT: Fringe Benefits for Part-time Employees

You have requested an opinion regarding the correct interpretation of Sections 1.13, 5.01, 5.03, 5.06, 5.09 and 5.10 of the Personnel Policies of the Band. The questions you have raised relate to the meaning of fringe benefits and their applicability to part-time employees. You have also requested information regarding liability for workman compensation insurance with this same category of employee.

Section 1.13 - Part-time employees . . . . and shall not be eligible to accrue fringe benefits.

Response: The intention of the Band Assembly in considering the adoption of this policy primarily involved financial considerations. With the budget reductions in the programmatic account, the search to streamline the delivery of services to Band members by reorganizing and restructuring various services lead to the elimination or reductions in the offerings of the government to its employees. For example, the government elected to withdraw from the Minnesota Unemployment Compensation Fund and the elimination of unlimited accrual and annual leave. However, the question at hand involves fringe benefits and why it must be offered to employees and what is it comprised of needs to be answered in light of Federal and State administrative body of law and balanced by the Constitution of the Minnesota Chippewa Tribe and the Civil Rights Statutes of the Band. Normally, the Band needs not consider exterior governmental administrative law, however due to the Band's contractual arrangement with these governments, the Band is bound legally to uphold certain standards.

Webster's Second College Edition Dictionary of the American Language, 1980, defines fringe benefits as, "a payment other than wages or salary made to an employee, as in the form of a pension, vacation, insurance, etc.." Further, the work Benefit is defined as, "payment made by an insurance company, public agency, welfare society, etc. as during sickness, retirement, unemployment etc. or for death." The United States Department of Labor mandates the following fringe benefits in its contracts: {1} workmans compensation insurance including medical, accident, and income maintenance under Federal Register

Vol 44 No. 216, 688-83, and; {2} unemployment compensation insurance where states mandate this benefit for C.E.T.A. workers.

Office of Management and Budget Circular A-87, 13-b provides, "employee benefits in the form of employers' contribution or expenses for the federal insurance contributions act {social security}, employee's life and health insurance plans, unemployment insurance coverage, workman's compensation insurance, pension plans, severance pay, and the like" are all allowable expenditures of Federal funds under the fringe benefit category. Further analysis with regard to a retirement benefit program reveals that unless the Band operated a retirement program, social security protection for employees would be mandatory. This would also apply to federal unemployment insurance and in our case the Band nor its employees receive any benefits. Finally, the State of Minnesota mandates workman's compensation insurance as a fringe benefits for all employees compensated with State grant or contract funds.

In considering the above mandates of the Band by virtue of its contracts with exterior governments two points are clear: 1) the past and present conception of fringe benefits can be directly related to legal mandates of the administrative body of law of the United States and the State of Minnesota both of which seem to evolve around a 'controlled compensation principle', and; 2) the wages and/or salaries that trigger fringe benefits are closely aligned with a 'controlled compensation principle'.

To more clearly state the point, Webster defines compensation as, "anything given as an equivalent, or to make amends for a loss, damage, unemployment, etc; recompense b). payment for services; esp. wages or remuneration. Therefore, the determination of what is fringe benefits and what is its composition directly related to the 'controlled compensation principle' as well as legal mandates.

In applying the controlled compensation principle to all types of benefits offered as a supplement of wage, the following categorization can be outlined. The controlled aspect of the principle involves those types of activities mandated upon the Band in the form of a quasi-contract which can be litigated in a court of law. The Band Assembly intended these activities to be:

- 1). Federal Insurance Contributions Act {S.S.I.}
- 2). United States Withholding Tax
- 3). State Withholding Tax
- 4). Workman's Compensation Insurance
- 5). Health Insurance Plan
- 6). Federal Unemployment Insurance
- 7). Retirement Plans.
- 8). Maternal Status

Duly considering all aspects of these eight insurance-benefit type activities, it is hereby ordered and decreed that they shall constitute fringe benefits in compliance with the employer - employee relationship which satisfied the quasi-contractual mandates of Federal and State administrative body of law.

Additionally, as a result of the quasi-contractual nature of these types of fringe benefits, I hereby find this portion of Section 1.13 to be inconsistent with the contractual arrangement with these exterior governments and prohibit the Executive Branch of tribal government from enforcement there with. Further there is in any event, strong possibilities of this part of the policy being in violation of the due process and equal protection provisions of the Constitution of the Tribe and the Band's Civil Rights Statute.

With regard to the remaining types of activities, the Band can not be legally coerced into offering them as a supplement to one's wages. For the most part, they constitute conditions of employment which the Band Assembly has established as an 'obligation' of the government which can be utilized for all intent and purposes at the discretion of the employee if he/she meets certain requirements. The obligation of course can be withdrawn at any time by the Band Assembly merely as a change in the employee - employer relationship. The activities which shall constitute obligations of the government as authorized by the Band Assembly are:

- a). Annual Leave
- b). Sick Leave
- c). Medical Status
- d). Religious Leave
- e). Training
- f). Funeral Leave
- g). Holiday Leave
- h). Military Leave
- i). Jury Duty Leave

In considering these obligations imposed by the Band Assembly, I am unconvinced that these various forms of leave were intended to be mandatory fringe benefits as a result of quasi-contractual basis of inter-government agreements. To consider them so, would have the effect of near total delegation of sovereign power to the exterior governments in exchange for domestic assistance.

Therefore, I interpret Section 1.13, . . . part-time employee shall not accrue fringe benefits to mean, part-time employees shall not be eligible to receive obligations the same as offered to full-time employees. Part-time employees shall be eligible for all fringe benefits as outlined in this opinion.

Section 5.01 - Do part-time employees accrue sick leave?

Response: No.

Section 5-01 - Do part-time employees accrue annual leave?

Response: No.

Section 5-01 - Part-time employees over 29 hours?

Response: The minutes of the Band Assembly in considering a distinction between part-time and full-time employees clearly illustrates their intention that any employee who consistently was authorized to work thirty or more hours per week would be considered as a full-time employee and eligible for all fringe benefits and obligations.

Section 5-03 - Category 3 - Funeral leave?

Response: No.

Section 5-06 - Jury duty?

Response: The United States Supreme Court has declared jury duty to be an obligation of all citizens of the United States. All employers must release employees for jury duty service.

Section 5-09 - Training?

Response: No.

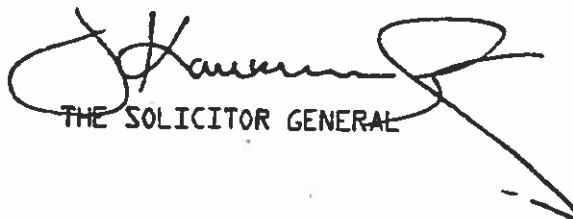
Section 5-10 - Holiday pay?

Response: No.

Question - Does the program pay workman's compensation or does the employee?

Response: It is the contractual mandate of this government to provide this type of insurance to all employees as a fringe benefit. Contract personnel who are not employees are mandated to provide the Band with a certification of this type of insurance or the Band can provide it at the expense of the contractor.

Should you require additional information or any clarification, please don't hesitate to contact me.

  
THE SOLICITOR GENERAL

DATE: July 1, 1983