

ARTICLE X. - OCCUPATIONAL SAFETY AND HEALTH

Sec. 4-311. - Short title.

This Article may be cited as the Mohegan Occupational Safety and Health Ordinance ("MOSHO").

Sec. 4-312. – Purpose and Authority.

- (a) Purpose. The Mohegan Tribe hereby establishes the Mohegan Occupational Safety and Health Ordinance in order to assure safe and healthful working conditions for all employees while working on the Mohegan Reservation.
- (b) Authority. This Article is adopted by the Mohegan Tribal Council pursuant to Article IX, Sections 2(c),(l),(p) and (t) of the Constitution of the Mohegan Tribe.

Sec. 4-313. - Adoption of the Mohegan Occupational Safety and Health Ordinance.

- (a) Incorporation by Reference. To the extent necessary to carry out the purpose of this Article, the substantive provisions of Chapter 29 of the Code of Federal Regulations Sections 1910 (General Occupational Safety and Health Standards) and 1926 (Occupational and Health Standards for Construction), are hereby adopted and incorporated by reference as tribal law, as implemented and modified by this Article, except to the extent its provisions contradict Mohegan law. For purposes of this Article, any reference to the "Secretary of Labor" or the "Secretary of Health and Human Services" in such substantive provisions shall mean the Safety Manager or his designee(s) and any reference to the Occupational Safety and Health Commission shall mean the MOSHO Hearing Officer or his designee. In adopting the provisions of this Article, the Mohegan Tribe does not consent to the applicability of the federal OSHA or OSHA Standards or to any other federal law that does not expressly apply to Indian Tribes.
- (b) Modifications.
 - (1) 29 CFR 1910.9(b) is modified to require all employees of non-Mohegan Employers to attend a safety orientation prior to conducting manual labor type work .
 - (2) 29 CFR 1910.38(b) is modified to require each Employer to submit an Emergency Action Plan with the Mohegan Tribal Safety Department and to review and update its Emergency Action Plan on an annual basis.

- (3) 29 CFR 1910.134 is modified to mandate that if an Employer is required to have a Respiratory Protection Program, it shall submit its written Respiratory Protection Program with the Mohegan Tribal Safety Department.
- (4) 29 CFR 1910.146 is modified to mandate all Employers to abide by the Mohegan Tribal Safety Department's Confined Space Program.
- (4) 29 CFR 1910.178 is modified to require all employees of a Mohegan Employer to obtain a license issued by the Mohegan Tribal Safety Department before such employee is authorized to operate powered industrial trucks. The Safety Manager or his designee may suspend or revoke such license for the employee's non-compliance with this Article. The employee shall have the right to appeal a denial, suspension or revocation pursuant to Sec.4-320. Employees of all non-Mohegan Employers shall submit evidence of sufficient training before operating powered industrial trucks.
- (5) 29 CFR 1910.1200 is modified to require all Employers using chemicals must submit a written plan to the Mohegan Tribal Safety Department and must submit sufficient evidence of training for all its hazards communication employees.
- (6) 29 CFR 1910.1030 is modified to mandate all Employers to abide by the Mohegan Tribal Safety Department's plan for Bloodborne Pathogens.
- (7) 29 CFR 1910.147 is modified to require all Employers to submit an energy control program to the Mohegan Tribal Safety Department.
- (8) 29 CFR 1910.28 and 29 CFR 1926.450, Subpart L are modified to require all employees of a Mohegan Employer to obtain a license issued by the Mohegan Tribal Safety Department before such employee is authorized to operate scissor lifts. The Safety Manager or his designee may suspend or revoke such license for the employee's noncompliance with this Article. The employee shall have the right to appeal a suspension or revocation pursuant to Sec. 4-320. Employees of all non-Mohegan Employers shall submit evidence of sufficient training before operating aerial lifts.

(9) 29 CFR 1910.28 is modified to require a minimum of one escort when moving scissor lifts in general public areas.

(10) 29 CFR 1926.453 is modified to require all employees of a Mohegan Employer to obtain a license issued by the Mohegan Tribal Safety Department before such employee is authorized to operate aerial lifts. The Safety Manager or his designee may suspend or revoke such license for the employee's noncompliance with this Article. The employee shall have the right to appeal a denial, suspension or revocation pursuant to Sec.4-320. Employees of all non-Mohegan Employers shall submit evidence of sufficient training before operating aerial lifts.

(11) 29 CFR 1926.453 is modified to require a minimum of two escorts when moving an aerial lift in a general public area.

(12) 29 CFR 1926.500 is modified to require all employees to use fall protection when working at a height of six feet or higher.

(13) 29 CFR 1910 Subpart S Appendix A is modified to replace the reference for non-mandatory information from NFPA 70E-2000 to NFPA 70E-2009.

Sec. 4-314. - Definitions.

(a) Employer means any person or entity that employs for wages one or more employee who perform work on the Mohegan Reservation.

(b) Mohegan Court shall mean either the Mohegan Tribal Court or the Mohegan Gaming Disputes Court, as appropriate.

- (c) Mohegan Employer means the Mohegan Tribe, its entities, agencies and instrumentalities, including but not limited to the employees of the Tribal commissions, authorities and limited liability companies who work on the Mohegan Reservation.
- (d) Mohegan Reservation shall mean all lands within the exterior boundary of the reservation of the Mohegan Tribe, all trust lands of the Mohegan Tribe, all lands owned by the Mohegan Tribe that are contiguous to the trust lands, and all lands over which the Mohegan Tribe has regulatory authority.

Sec. 4-315. - Administrative Provisions.

- (a) This Article shall be applied to, and administered and enforced at all workplaces and developments on the Mohegan Reservation.
- (b) The Safety Manager shall review this Article at least annually to determine if modifications are necessary and shall review the relevant Federal Standards contained in the Code of Federal Regulations. Upon the completion of such review, the Safety Manager shall recommend for adoption such amendments to this Article as will make its substantive provisions at least as stringent as the substantive provisions of the applicable sections of the Code of Federal Regulations.

Sec. 4-316. - Duties

- (a) Each Employer:
 - (1) Shall furnish to each of its employees a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees;
 - (2) Shall comply with the occupational safety and health standards adopted by this Article.
- (b) Each employee shall comply with occupational safety and health standards and all rules, regulations and orders issued pursuant to this Article which are applicable to the employee's own actions and conduct.

Sec. 4-317. - Safety Manager: Selection, Qualifications and Duties.

- (a) No person shall serve as the Safety Manager unless he or she is qualified under the job description, as approved by the Tribal Council.

- (b) The Safety Manager or his designee(s) may issue official interpretations of this Article, upon the request of any person. The Safety Manager shall compile and index each interpretation.
- (c) The Safety Manager shall immediately consult with: the Mohegan Tribe's Director of Regulations and Compliance regarding any incidents involving building and construction safety and environmental protection; and the Mohegan Tribe's Director of Health regarding any incidents involving public health..

Sec. 4-318. - Penalties and Enforcement.

- (a) Any entity or individual who violates any provision of this Article shall be liable for a civil penalty as assessed by the Safety Manager in accordance with this Article. The entity or individual may additionally be liable for civil penalties pursuant to Mohegan law, including but not limited to the Mohegan Tribe's public health and environmental laws. If the individual is an employee of a Mohegan Employer, any violation of this Article may result in a human resource disciplinary action in accordance with Human Resources policies and, if applicable, suspension or revocation of any license issued under this Article. If an individual is not an employee of a Mohegan Employer, a violation of this Article may result in removal of the individual from the worksite for up to ninety (90) days.
- (b) Whenever and as soon as the Safety Manager or his designee(s) concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Article, he shall inform the affected employees and Employers of the danger and shall remove the individual(s) from the worksite until the danger can be eliminated.

Sec. 4-319. - Powers and Duties of the Safety Manager.

- (a) The Safety Manager or his designee(s) shall have the authority to inspect any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an Employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein for compliance with the provisions of this Article for any work performed on Mohegan Reservation.
- (b) The Safety Manager, in consultation with the Director of Regulation and Compliance and the Tribal Council, shall be the liaison between the Mohegan Tribe and any government agency, employer or employee when issues arise relating to or pertaining to provisions of this Article.

- (c) When the Safety Manager or his designee(s) finds a condition that is in violation of any provision of this Article, he shall assess a civil penalty in accordance with this Article. Fines are due thirty (30) days from the date of issuance of the Notice of Safety Violation. Such fines shall be made payable to the Mohegan Tribe and shall be used for safety training and incentives.
- (d) If the fine remains outstanding after forty-five (45) days from the date of issuance of the Notice of Safety Violation, the Safety Manager shall have the authority to direct the construction manager, general contractor, general manager, director, owner, or any other individual to offset the amount of the fine from any outstanding or future monies coming due to the individual or entity responsible for payment of such fine.

Sec. 4-320. – Appeal Procedure

- (a) Any entity or individual whose legal rights have been affected by any decision of the Safety Manager regarding the enforcement of this Article ("appellant") may file an appeal to the MOSHO Hearing Officer who shall be selected by the Mohegan Tribal Council. An appeal must be filed in writing via certified mail or hand-delivery to the MOSHO Hearing Officer within ten (10) days of mailing/hand delivery of decision.
- (b) The MOSHO Hearing Officer shall hold a hearing to review the decision of the Safety Manager within ten (10) days of receipt of request for an appeal. The MOSHO Hearing Officer shall render such decision within five (5) days of the conclusion of the hearing, shall mail a copy of such decision by certified mail or hand-delivery to the appellant and shall deliver a copy of such decision by interoffice mail to the Safety Manager. The appellant or the Safety Manager may appeal the decision of the MOSHO Hearing Officer to the Mohegan Court within twenty (20) days of the mailing of the decision by the MOSHO Hearing Officer pursuant to Mohegan Tribe Code, Part II, Article III, Appeal from Final Agency Decisions, Sec. 3-221, et seq.

Sec. 4-321. - Sovereign Immunity.

- (a) Nothing contained in this Article is intended or shall be construed or applied to create a private right of action in any individual or individuals, partnership, association, corporation, business trust, legal representative, any organized group of individuals or any other person or entity.
- (b) Nothing in this Article waives the sovereign immunity of Mohegan Tribe or the Mohegan Tribal Gaming Authority except to the allow the Mohegan Courts to hear appeals of final decisions of the MOSHO Hearing Officer pursuant to Section 4-320 of this Article.

- (c) The sovereign immunity of the Mohegan Tribe shall attach to the actions or inactions of the Mohegan Tribe and all of its entities and instrumentalities including the Mohegan Tribal Gaming Authority. It shall also attach to the actions or inactions of any individual acting on behalf of the Mohegan Tribe, the Mohegan Tribal Gaming Authority or any of its other entities or instrumentalities.

Sec. 4-322. - Civil Penalties.

These are the types of violations that may be cited and the penalties that may be imposed:

- (a) Other Than Serious Violation - A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm. A penalty of up to \$7,000 may be assessed by the Safety Manager. The Safety Manager may, in his discretion, give a written warning for the first violation of an other-than-serious violation. Any penalty for an other-than-serious violation may be adjusted downward by as much as 95 percent by the MOSHO Hearing Officer upon appeal as provided for in Sec. 4-320, depending on the Employer's good faith (demonstrated efforts to comply with the Article), history of previous violations, and size of business.
- (b) Serious Violation - A violation where there is substantial probability that death or serious physical harm could result and that the Employer knew, or should have known, of the hazard. A mandatory penalty of up to \$7,000 for each violation is assessed by the Safety Manager. A penalty for a serious violation may be adjusted downward, based on the Employer's good faith, history of previous violations, the gravity of the alleged violation, and size of business by the MOSHO Hearing Officer upon appeal as provided for in Sec. 4-320.
- (c) Willful Violation - A violation that the Employer knowingly commits or commits with plain indifference to the law. The Employer either knows that what he or she is doing constitutes a violation, or is aware that a hazardous condition existed and made no reasonable effort to eliminate it. Penalties of up to \$70,000 may be assessed by the Safety Manager for each willful violation. A penalty for a willful violation may be adjusted downward, depending on the size of the business and its history of previous violations by the MOSHO Hearing Officer upon appeal as provided for in Sec. 4-320.
- (d) Repeated Violation - A violation of any standard, regulation, rule, or order where, upon re-inspection, a substantially similar violation is found. A penalty of up to \$70,000 for each such violation may be assessed by the Safety Manager.
- (e) Failure to Abate Prior Violation – A penalty of up to \$7,000.00 for each day the violation continues beyond the prescribed abatement date may be assessed by the Safety Manager.
- (f) De Minimis Violation - De minimis violations are violations of standards which have no direct or immediate relationship to safety or health. Whenever de minimis conditions are found during an inspection, the Safety Manager shall document it, but not include it on the citation.

- (g) A penalty of up to \$10,000 may be assessed by the Safety Manager for falsifying records, reports or applications.
- (h) A penalty of up to \$7,000 may be assessed by the Safety Manager for violations of posting requirements.

Sec. 4-323. - Severability.

If any provision of this Article is invalidated, all valid provisions that are severable from the invalid provision shall remain in effect. If a provision of this Article is invalid in one or more of its applications, that provision remains in effect in all valid applications that are severable from the invalid applications.

Sec. 4-324. - Effective date.

This Article shall be effective upon the date of enactment by the Mohegan Tribal Council.

Secs. 4-325—4-399. - Reserved.