

# Does OSHA Apply to Native American Indian Tribes?

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# Does OSHA Apply to Native American Indian Tribes?

- \* In general, the tribes govern themselves and must abide by federal law, such as the Occupational Safety and Health Act (OSHA)

# Does OSHA Apply to Native American Indian Tribes?

- \* Indian territories have "tribal sovereignty," Essentially, this means that they can govern themselves.
- \* OSHA regulations are designed to protect employees while on the job. These regulations stipulate basic safety standards, such as personal protective equipment, and a system of inspections to ensure safety.

# Does OSHA Apply to Native American Indian Tribes?

- \* The Supreme Court has determined that **states** have no authority to regulate conduct by the tribes unless specifically authorized by Congress.
- \* Congress has specifically exempted tribes from several familiar employment laws.

# Tribal Sovereignty

- \* Any discussion of jurisdiction over American Indian tribes inevitably begins with the tribal sovereignty.

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- \* Federal statutory and common law claims fall into several groups:
  - \* Those specifically including American Indian tribes and
  - \* Those excluding American Indian tribes by implication.

# Does OSHA Apply to Native American Indian Tribes?

- \* **Explicit Exemption (not covered)**

- \* Congress has specifically exempted tribes from several familiar employment laws, including:

- \* • Title VII of the Civil Rights Act of 1964, 42 USC 2000e(1)

- \* • Title I of the Americans with Disabilities Act, 42 USC 12111(b)

- \* • The Workers Adjustment and Retraining and Notification Act, 20 CFR 639.3(a)(1)

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## \* **Explicit Coverage**

- \* On the other hand, Congress can make a statute applicable to tribes through the exercise of its plenary powers.
- \* Congress did so in the 1983 amendments to the Social Security Act. As a result, tribes are now subject to both Social Security and federal unemployment taxes.

# Does OSHA Apply to Native American Indian Tribes?

- \* The application of the Occupational Safety and Health Act (OSHA) is similar.
- \* If employer is a commercial enterprise in and affecting inter-state commerce.
- \* The Act does not interfere with tribal governance nor does the Act clash with rights granted Indians by other statutes or by treaties with Indian tribes.
- \* Therefore, Tribes are subject to the Occupational Safety and Health Act (OSHA)

# Does OSHA Apply to Native American Indian Tribes?

- \* A presumption that statutes of general applicability apply to Indian tribes unless a contrary showing is made.
- \* "The Occupational Safety and Health Act (OSHA) is a statute of general applicability designed to 'assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.'
- \* Current OSHA regulations expressly adopt the Tuscarora approach, stating that: 'It is well settled that under statutes of general applicability, such as [OSHA], Indians are treated as any other person, unless Congress expressly provided for special treatment.'

# Does OSHA Apply to Native American Indian Tribes?

- \* Tribal employers should review federal employment laws, determine which apply, and ensure that all tribal laws, ordinances, regulations, or policies and procedures provide comparable protections for the existing workforce.

**Although few and far between, there are a few federal employment laws tribal employers do not have to worry about. In each case, Indian tribes are expressly excluded from the definition of “employer.”**

- \* Title VII of the Civil Rights Act of 1964 (Title VII): Title VII prohibits discrimination in employment because of race, color, sex (including pregnancy), national origin, and religion.
- \* American with Disabilities Act (ADA):
- \* Worker Adjustment and Retraining Notification Act (WARN Act)

• Standard Number: 1975.4(b)(3)

March 12, 1998

The Honorable Jay Johnson  
U.S. House of Representatives  
Washington, D.C. 20515-4908

Dear Congressman Johnson:

Thank you for your letter of November 9, 1997, to the Occupational Safety and Health Administration (OSHA) on behalf of your constituent [name withheld]. [Name withheld] works at a casino operated by [company name withheld] and has expressed concerns that her working conditions have resulted in debilitating injuries. I apologize for the delay in this response.

[Name withheld] exercised her ability to file a complaint with OSHA's Appleton, Wisconsin Area Office. The Area Office expressed its concern that the agency was precluded from conducting enforcement activity on tribal lands. The Area Office requested that the OSHA National Office make a jurisdictional determination on the applicability of the Occupational Safety and Health Act of 1970 (OSH Act) to tribal enterprises. We have determined that OSHA, in most instances, may conduct inspections at tribal enterprises.

The OSH Act charges OSHA with the responsibility to assure safe and healthful working conditions for working men and women. OSHA has always considered the OSH Act to be a statute of general applicability. Therefore, the OSH Act reaches workplaces located on tribal lands and operated by tribal employers. The position is consistent with the Supreme Court's decision in *FPC v. Tuscarora Indian Nation*, 362 U.S. 99, 116 (1960), which declares that "a general statute in terms applying to all persons includes Indians and their property interests."

The courts have, however, established some limited exceptions to the general applicability of the OSH Act to tribal enterprises. The OSH Act would apply to a tribal enterprise unless its application touched upon purely intramural matters (such as tribal membership, domestic relations and inheritance) or violated a treaty or unless the legislative history of the Federal statute or surrounding circumstances in its enactment indicated that the statute was not to apply. In light of President Clinton's April 29, 1994 Memorandum, "Government-to-Government Relations With Native American Tribal Governments," we strive to assure that the agency's actions do not interfere in governmental functions which are integral to tribal sovereignty. Since the tribal enterprise in question (a casino) does not appear to involve purely intramural matters, OSHA has the authority to respond to complaints about corresponding working conditions.

We hope that the above discussion has clearly delineated OSHA's enforcement policy as it applies to tribal enterprises. The complaint filed by [name withheld] will be returned to our Appleton, Wisconsin Area Office for further action consistent with this letter.

Sincerely,

March 12, 1998 Letter of Interpretation

OSHA-APPLETON  
The 21st St. WILSON  
WISCONSIN

# Does OSHA Apply to Native American Indian Tribes?

- \* In Menominee Tribal Enter. v. Solis, No. 09-2806, the court addressed an Indian Tribe's petition for review of an order of the Occupational Safety and Health Review Commission, citing the tribe for violations of OSHA in operation of a sawmill on its reservation.
- \* The OSHA Act contains an express exemption for the federal government and for state and local governments, but says nothing about Indian tribes.
- \* Furthermore, the Act does not interfere with tribal governance nor does the Act clash with rights granted Indians by other statutes or by treaties with Indian tribes. **Therefore, the sawmill and related commercial activities of the Menominees' enterprise are subject to OSHA.**

# E-OSHA Mobile Apps Listing

## [OSHA Heat Tool](#)

### [Sound Level Meters](#)

#### [2.1 iOS](#)

#### [2.2 Android](#)

## [Chemical Safety](#)

### [3.1 iOS](#)

#### [3.1.1 Emergency Response](#)

#### [3.1.2 NIOSH Pocket Guides](#)

#### [3.1.3 Others](#)

### [3.2 Android](#)

#### [3.2.1 Safety Talks iPhone App \\$2.99](#)

#### [3.2.2 iSpirometer - \\$0.99](#)

#### [3.2.3 MSDSs - \\$3.99](#)

#### [3.2.4 HazRef - Free](#)

#### [3.2.5 Safety Talks Lite FREE!](#)

#### [3.2.6 Safety Smart-Construction \\$41.99](#)

#### [3.2.7 OSHA News Reader FREE!](#)

#### [3.2.8 OSHA Compliance Checklist \\$0.99](#)

#### [3.2.9 OSHA Mobile FREE!](#)

#### [3.2.10 iOSHA 1910 e-Reference \\$8.99](#)

#### [3.2.11 iOSHA 1928 e-Reference \\$8.99](#)

#### [3.2.12 eLCOSH on Facebook, Twitter, and YouTube](#)

#### [3.2.13 MobileReflex](#)

#### [3.2.14 Skill-Pill M-Learning](#)



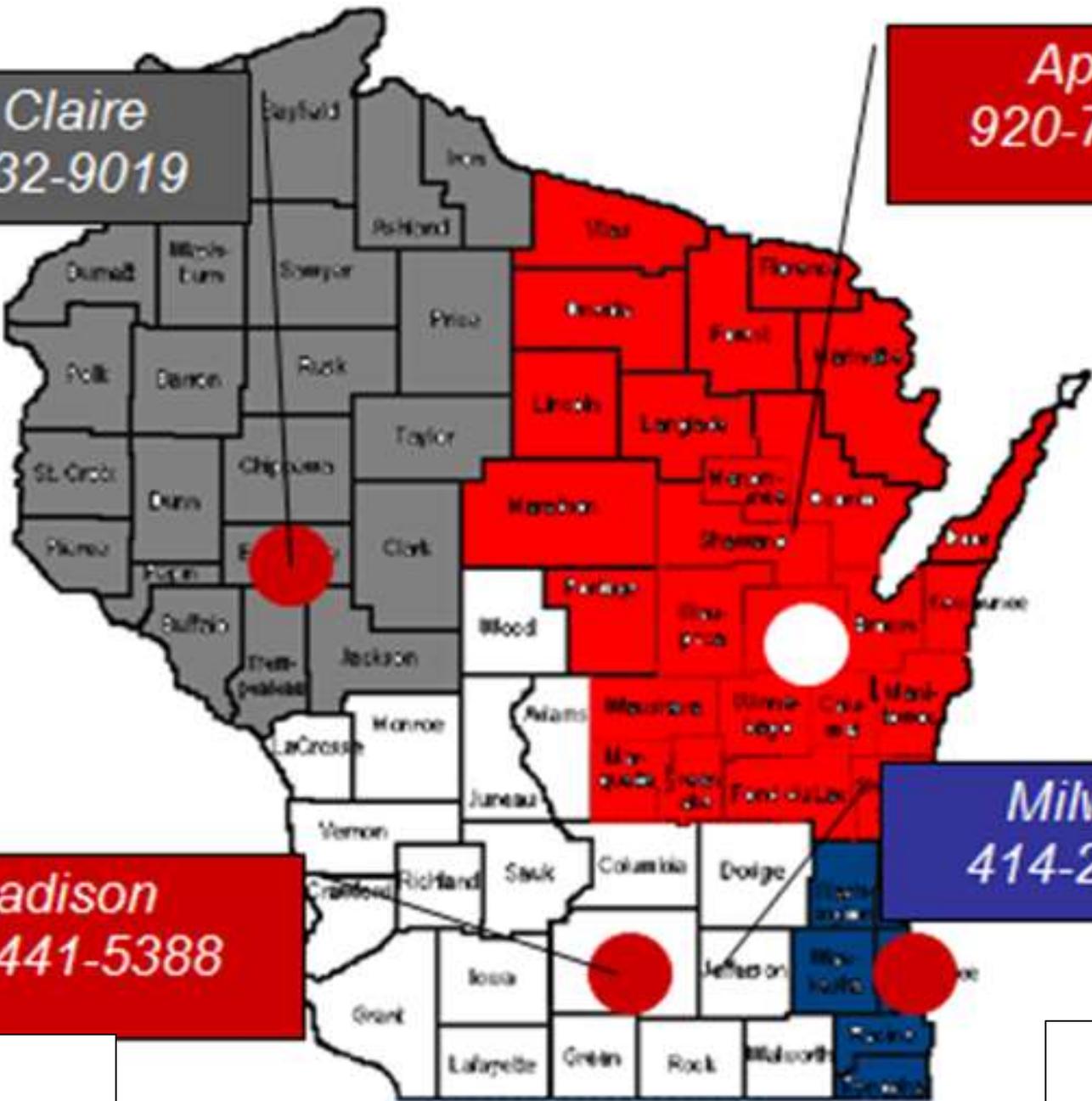
# New Outreach Topics

- \* OSHA at a Glance
- \* Noise in Construction
- \* Hazards of Hair Smoothing Products
- \* Respirator Small Entity Compliance Guide
- \* All About OSHA



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# QUESTIONS?



[www.osha.gov](http://www.osha.gov)