



LEGAL ALERT

INDIAN LAW UPDATE

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The Fair Labor Standards Act ("FLSA") Applies To Indian-Owned Businesses Located On Tribal Lands

By Gerard Morales

On April 20, 2009, the United States Court of Appeals for the Ninth Circuit held that the overtime compensation provisions in the Fair Labor Standards Act ("FLSA") apply to the employees of an Indian-owned retail store located within the Puyallup Tribe Reservation. *Solis v. Matheson* 563 F. 3d 425 (9th Cir. 2009).

The business, owned by a member of the Tribe, was a retail store that employed tribal members as clerks and sold sundries and tobacco products to Indians and non-Indians. It argued that the FLSA did not apply to its operations on two grounds:

- 1) it involved intramural affairs; and 2) it was exempted by treaty rights. The court rejected both arguments.

The court held that the FLSA is a statute of general applicability, which is to be construed liberally. As such, Indians and their tribes are subject to it "just as any other United States citizen." Since the FLSA is silent on the issue of applicability to Indian tribes, it applies to Indian-owned business, located on Indian lands unless:



- 1) the law touches exclusive rights of self-governance in purely intramural matters;
- 2) application of the law would abrogate rights guaranteed by Indian treaties; or
- 3) there is proof by legislative history that Congress intended the law not to apply to Indians on their reservations.

None of those conditions were present.

Intramural matters pertain to conditions of tribal membership, inheritance rules, and domestic relations. There was nothing “intramural” with respect to the business of the retail store.

Similarly, there was nothing in the treaty between the Puyallup Tribe and the United States that would preclude the application of the FLSA to non-intramural activities conducted within the Reservation.

In summary, while Indian tribes have a special status as sovereigns with limited powers, they are dependent on and subordinate to the federal government. Accordingly, unless one of the very limited exceptions stated above apply, federal statutes of general applicability may be enforced with respect to Indian-owned businesses conducted within Indian reservations.

In this case, the FLSA applies to the retail store; therefore, the Secretary of Labor has the authority to enter the Indian reservation to audit the books of the business, as she would regularly do with respect to any private business.

If you have any questions on the subject of this article or would like more information, please contact the author or another Snell & Wilmer attorney at 602.382.6000.



Gerard Morales
602.382.6362
jmorales@swlaw.com

Jerry is a partner at the Phoenix office of Snell & Wilmer. His practice is concentrated on labor, employment, and construction law. Representation in employment-related matters includes wrongful termination, employment discrimination, arbitration, and other alternative dispute resolution proceedings.