WAKANAKISING ODAWAK STATUTE 2013-010
AMENDMENT TO WAGANAKISING ODAWAK STATUTE # 2008-011
FAIR EMPLOYMENT

SECTION I. REPEAL

SECTION XIII. EMPLOYEE WAGES AND HOURS

1. Employees shall be paid an hourly wage of not less than the minimum wage established by federal law pursuant to federal Fair Labor Standards Act of 1938, Title 29 of the United States Code, sections 201 *et seq.*, as amended and regulations concerning the FLSA by the U.S. Department of Labor (FLSA). Such wage may be changed by vote of the Tribal Council. Provided that, tipped employees shall utilize the aggregate of hourly rate and tips to identify wage rate.

2. Employee shall not be employed for a workweek longer than forty (40) hours unless such employee receives compensation for the employee's employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which the employee is employed.

3. This provision does not apply to Exempt employees that are employed in a bona fide executive, administrative, or professional capacity, or any other exemption category outlined in the FLSA.

4. For the purposes of interpreting and enforcing this section only, the Tribal Court may look to the FLSA and regulations thereunder as well as relevant case law for guidance, provided however that nothing in this Statute shall be construed as an adoption by the Tribe of the FLSA, nor a waiver of sovereign immunity from suit for any claims or process under the FLSA.

SECTION II. REPLACE

SECTION XIII. EMPLOYEE LIVING WAGES

A. In order to maintain a minimum standard of living necessary for health, efficiency and general well-being of all employees within its jurisdiction, the Little Traverse Bay Bands of Odawa Indians has set forth the following to establish a LTBB Living Wage that is set at $10.50 per hour:

1. $8.25 an hour, beginning three months after the legislation is enacted.

2. $9.25 an hour, beginning one year after the legislation is enacted.

3. $10.50 an hour, beginning two years after the legislation is enacted.

4. Starting the third year after the legislation is enacted, the Living Wage will be adjusted annually by the beginning of the fiscal year, based on the Federal Consumer Price Index. Such living wage will be approved by Resolution by the Tribal Council.

B. An employer who employs those that receive tips is required to pay in hourly wages, plus the tips, equal to at least the LTBB Living Wage. The employee must retain all tips if the employee customarily and regularly receives more than $30 a month in tips. If an employee's tips combined with the employer's direct wages do not equal the LTBB Living Wage, the employer must make up the difference.

C. To assist Tribal Council in making a determination of the amount set for the living wage, the living wage shall be at least one dollar or more than the minimum wage as outlined by the U.S. Fair Labor Standards Act of 1938 as amended (FLSA). For the purposes of interpreting and enforcing this section, the

Tribal Court may look to the FLSA and regulations thereunder as well as relevant case law for guidance, provided however that nothing in this Statute shall be construed as an adoption by the Tribe of the FLSA, nor a waiver of sovereign immunity from suit for any claims or process under the FLSA.

SECTION XIV. EMPLOYEE HOURS

A. Hourly employees are paid at their regular rate of pay and are paid for all hours worked.

B. Hourly employee shall not be employed for a workweek longer than forty (40) hours unless such employee receives overtime compensation for the employee's employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which the employee is employed or the employee may choose compensatory time (also referred to as Paid Time Off, PTO) for hours worked in excess of forty (40) hours worked in a work week at a rate not less than one and one-half times the hours worked in excess of forty (40).

C. Law Enforcement personnel may work under a "14 day work period". Under a 14 day work period, a police officer is due overtime pay only if, when and to the extent actual hours worked exceed 80 hours in the 14 day work period.

D. Exempt employees shall not receive overtime for for hours worked in excess of forty (40) hours worked in a work week.

E. Exempt employees are generally executive employees, administrative employees, outside sales employees, learned professional employees, computer employees, creative professional employees, highly compensated employees, and meet the following:

1. Executive Employee whose primary duty is management of the enterprise or a recognized department or subdivision. Customarily and

regularly directs the work of two or more other employees; AND has authority to hire or fire other employees, OR the employee'ssuggestions as to hiring, firing, promotion or other change of status of other employees are given particular weight.

2. Administrative employee whose primary duty is the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers. Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. Customarily and regularly exercises discretionary powers and independent judgment in performing the job.

3. Outside Sales employee whose primary duty is making sales or obtaining orders or contracts for services, or for the use of facilities for which a consideration will be paid by the client or customer. The employee is customarily and regularly engaged away from the employer's place or places of business. The salary requirements of this section does not apply.

4. Learned Professional employee whose primary duty is the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character, requiring the consistent exercise of discretion and judgment. The advanced knowledge must be in a field of science or learning and customarily acquired by a prolonged course of specialized intellectual instruction.

5. Computer employee whose primary duty of

a. application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional applications;

b. design, development, documentation, analysis, creation, testing, or modification of computer systems or programs,

including prototypes, based on and related to user or system design specifications;

c. design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

d. a combination of duties described in (a.), (b.), and (c.), and the performance of which requires the same level of skills.

6. Creative professional employee whose primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

7. Highly compensated employee whose is paid at least $455/week on a salary or fee basis and have a total annual compensation of $100,000 or more and customarily and regularly perform at least one of the duties of an exempt executive, administrative, or professional employee.

F. For the purposes of interpreting and enforcing this section, the Tribal Court may look to the FLSA and regulations thereunder as well as relevant case law for guidance, provided however that nothing in this Statute shall be construed as an adoption by the Tribe of the FLSA, nor a waiver of sovereign immunity from suit for any claims or process under the FLSA.

SECTION III. EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the Statute, then upon Tribal Council override of the veto.

CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on June 23, 2013 at which a quorum was present, by a vote of 7 in favor, 0 opposed, 0 abstentions, and 2 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Belinda Bardwell				X
Bill A. Denemy	X			
Kevin Gasco	X			
John Keshick	X			
Aaron Otto	X			
Winnay Wemigwase				X
John Bott	X			
Regina Gasco Bentley	X			
Melvin L. Kiogima	X			

Date: 6-24-13 _____
Legislative Leader Melvin L. Kiogima

Date: 6-24-13 Regina Gasco Bentley
Regina Gasco Bentley, Secretary

Received by the Executive Office on 6-25-13 by _____

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: 7-23-13 Dexter McNamara
Dexter McNamara, Tribal Chairperson