



# SHINGLE SPRINGS BAND OF MIWOK INDIANS EMPLOYMENT CODE

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# **TITLE 1. GENERAL PROVISIONS**

## **ARTICLE I - AUTHORITY**

The Shingle Springs Band of Miwok Indians (“Tribe”) establishes this Employment Code (“Code”) pursuant to its inherent sovereign authority to protect the health, safety, and welfare of the Tribe, Tribal employees, and other individuals employed on the Tribe’s territory.

## **ARTICLE II – JURISDICTION**

This Code shall apply to all Employers on the Shingle Springs Rancheria including, but not limited to, the Tribe, Shingle Springs Band of Miwok Indians Development Corporation (“Development Corporation”), and all businesses operated on the Rancheria, excluding Red Hawk Casino unless specifically stated. If a conflict exists between the Code and the current Tribal-State Gaming Compact then the Compact shall supersede this Code in regards to employment at the Red Hawk Casino. If a conflict exists between the Code and the policies of the Development Corporation then the policies shall supersede this Code in regards to employment at any of the Development Corporation’s businesses.

## **ARTICLE III – SEVERABILITY**

If any part of this Code is found void and without legal effect, the remainder of the Code shall continue to remain in full force and effect, as though such part had not been contained therein

## **ARTICLE IV – EFFECTIVE DATE**

This Code shall become effective immediately upon adoption by a majority vote of the Tribal Council of the Shingle Springs Band of Miwok Indians.

## **ARTICLE V – AMENDMENTS**

This Code may be amended by the Tribal Council at any duly called regular or special meeting.

## **ARTICLE VI – SOVEREIGN IMMUNITY**

The sovereign immunity of the Tribe is in no manner waived by this Code or by action by the Tribal Council, or other staff of the Tribe acting pursuant to this Code.

### ARTICLE III – DEFINITIONS

For the purpose of this Code, unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in this Article have the meanings given to them.

- A. **“Administrative”** shall mean any employment where the employee’s job duties consist of primarily non-manual work directly related to the management or general business operations of the employer or the employer’s customers and a primary component of which involves the exercise of independent judgment and discretion about matters of significance.
- B. **“Administrative Claim”** means a document prepared by the Tribe, which requests specific information in order for the Claim to be investigated.
- C. **“Administrator”** means the agency (which may be a department of the Casino/Tribe) or individual responsible for managing the Casino/Tribe’s workers’ compensation program. Responsibilities include, but are not limited to, determining the compensability of claims, making payments to injured Employees, medical providers and others, managing a trust account for the purpose of dispensing the Tribe’s workers’ compensation liabilities, and reporting to the Tribe or Casino regarding the program and individual claims. The Administrator’s duties are more fully described at Articles XVI and XVII, below.
- D. **“Beneficiary”** means a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.
- E. **“Casino”** refers to the Red Hawk Casino.
- F. **“Child”** or **“Children”** means the offspring of an Employee, including a posthumous child, a child legally adopted prior to the Work Injury, an illegitimate child, and a stepchild, if such stepchild was, at the time of the Work Injury, a member of the Employee’s family. A person might also qualify as a Child according to tribal custom as determined by applicable tribal law.
- G. **“Claim”** means a claim of Employment Discrimination arising out of the Claimant’s employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility, or the Gaming Activities.
- H. **“Claimant(s)”** for purposes of Title 2, means an Employee or his or her Dependents, who seek compensation for a Work Injury suffered by the Employee. For purposes of Title 6, means a person by or on whose behalf an Employment Discrimination Claim is made under this Ordinance.

- I. **“Code”** means this Shingle Springs Band of Miwok Indians Employment Code.
- J. **“Compact”** refers to the Amended and Restated Tribal-State Gaming Compact Between The Shingle Springs Band of Miwok Indians and The State of California.
- K. **“Confidential”** means all ideas, information, and materials, tangible or intangible, that are not generally known to the public and that relate, in any manner, to the business or operation of the Employer/Tribe, its personnel (including its managers, employees, agents, representatives, Tribal courts, Tribal entities, and contractors), its members and Tribal Council, and all others with whom it does business, that an Employee learns or acquire during my association with the Employer/Tribe.
- L. **“Days”** means calendar days unless otherwise expressly provided.
- M. **“Dependent(s)”** means the Employee’s Spouse or Children, or any other family member as approved by the Administrator, who at the time of the Work Injury that causes the Employee’s death is actually and necessarily dependent in whole or in part upon the Employee’s earnings.
- N. **“Disability/Disabled”** a person can show that he or she is disabled if; 1) he or she has a physical or mental condition that substantially limits a major life activity; 2) has a history of a disability; 3) is believed to have a physical or mental impairment that is not transitory. For purposes of Workers Compensation disability shall mean the Employee’s incapacity, resulting from a Work Injury, to perform his or her usual work, or to perform that work full time.
- O. **“Employer”** means any person acting directly as an employer, or indirectly in the interest of an employer in relation to an employee. This includes the Tribe, off-reservation Tribal business, and any businesses licensed to operate on the Rancheria, excluding Red Hawk Casino unless specifically stated.
- P. **“Employee”** means any individual employed by an employer, including Tribal employees.
- Q. **“Employee Benefit Plan”** means any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise; medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits,

apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, provides retirement income to employees, or results in a deferral of income by employees for periods extending to the termination of covered employment or beyond.

R. **“Employment Discrimination”** for purposes of Title 6 means:

- i. Harassment, including sexual harassment, in the workplace that would give rise to a cause of action under federal or California law if it occurred in a workplace other than on the Rancheria;
- ii. Discrimination in connection with employment at the Gaming Facility on the basis of race, color, religion, ancestry, national origin, gender, marital status, medical condition, sexual orientation, age, or disability that would give rise to a cause of action under federal or California law if it occurred in a workplace other than on the Rancheria;
  - a. This shall not include the Tribe giving preference in employment to members of federally-recognized Indian tribes, pursuant to a duly adopted Tribal ordinance.
- i. Retaliation for opposing discrimination at the Gaming Facility or for participating in a proceeding initiated under this Ordinance, to the extent that it would give rise to a cause of action under federal or California law if it occurred in a workplace other than on the Rancheria.

S. **“Employment Discrimination Claim”** for purposes of Title 6 means a claim brought by a current or former employee of the Gaming Authority seeking recompense under this Ordinance for employment discrimination that occurred in connection with that person’s employment by the Gaming Authority at the Tribe’s Gaming Facility.

T. **“Executive”** shall mean any employment where the employee 1) regularly supervises two or more other employees; and 2) has management as the primary duty of the position; and 3) has some genuine input into the job status of other employees.

U. **“Gaming Activities”** means the Class III Gaming activities authorized under the Compact in Section 3.1.

V. **“Gaming Facility”** means the Red Hawk Casino.

W. **“Gaming Operation”** means each economic entity that is licensed by the Tribe, operates games, receives gaming revenues, issues prizes, and pays gaming related expenses. A gaming operation may be operated by the Tribe directly or by a management contractor.

- X. **“Gender”** means sex, and includes a person's gender identity and gender expression.
- Y. **“Gender Expression”** shall mean a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.
- Z. **“Genetic Information”** includes information about an individual’s genetic tests and the genetic tests of an individual’s family members, as well as information about the manifestation of a disease or disorder in an individual’s family members (family medical history).
- AA. **“HR Director”** shall mean the Human Resources Director of the Shingle Springs Band of Miwok Indians or its equivalent.
- BB. **“Independent Medical Examination”** means a medical examination and/or evaluation of the Employee, scheduled by the Casino /Tribe or Administrator, at the Casino’s/Tribe’s expense, for the purpose of obtaining medical information or an opinion.
- CC. **“Oppressive Child Labor”** means a condition of employment under which 1) any employee under the age of sixteen (16) years is employed by an employer in an occupation, or 2) any employee between the ages of sixteen (16) and eighteen (18) years is employed by an employer in any occupation which is hazardous for the employment of children between such ages or detrimental to their health or well-being.
- DD. **“Participant”** means any employee of an employer who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer, or whose beneficiaries may be eligible to receive any such benefit.
- EE. **“Policy”** for purposes of Title 6, refers to the employment practices liability insurance policy referred to in Section 12.3(f)(1) of the Compact.
- FF. **“Professional”** shall mean any employment where the employee’s job duties; 1) require advanced knowledge acquired through prolonged course of specialized academic study; and 2) requires the exercise of discretion and judgment.
- GG. **“Professionally Developed Ability Test”** shall mean any employment test, created by an Employer or third-party, that meets the following requirements; (1) the test-makers have conducted a suitable job analysis; (2) the test-makers have used reasonable competence in constructing the test itself; (3) the content of the test is related to the content of the job; (4) the content of the test is representative of the content of the job; (5) the test is used with a scoring system that usefully selects from among the applicants those who can better perform the job.

- HH. **“Psychiatric Injury”** means a mental disorder diagnosed using the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (4th Edition). For a Psychiatric Injury to be compensable under this ordinance, the Employee must demonstrate that it resulted, in its entirety, from a specific, traumatic employment event.
- II. **“Rancheria”** refers to all land, air, and water located within the borders of land owned in fee or trust by the Shingle Springs Band of Miwok Indians.
- JJ. **“Recognized Hazards”** a hazard qualifies as recognized if; 1) there is evidence of actual employer knowledge of the hazardous condition; 2) the employer’s industry is aware of its existence; or 3) it is so obvious that any reasonable person would have recognized it.
- KK. **“Rejected Claims”** means, for the purposes of Title 6, the Claimant did not complete the Administrative Claim Form properly and/or in its entirety.
- LL. **“Succession Plan”** means a process for identifying and developing internal people with the potential to fill key business leadership positions in the organization. This process is meant to increase the availability of experienced and capable Tribal members that are prepared to assume these roles as they become available.
- MM. **“Spouse”** means the Employee’s husband or wife. If members of the same sex have (1) cohabitated as if they were a married couple for over one year prior to the date of a Work Injury suffered by one or the other, and (2) at the time of the Work Injury are registered with the California Secretary of State’s Domestic Partners Registry, the surviving cohabitant shall be deemed a Spouse for purposes of compensation under this ordinance.
- NN. **“Termination”** means the involuntary termination of employment.
- OO. **“Tribe”** means the Shingle Springs Band of Miwok Indians, a federally recognized Indian Tribe eligible for the special programs and services by the United States to Indians because of their status as Indians and is recognized as possessing powers of self-government.
- PP. **“Tribal Council”** means the duly-elected governing body of the Shingle Springs Band of Miwok Indians.

QQ. **“Tribal Court”** means the Shingle Springs Tribal Court established pursuant to Tribal ordinance.

RR. **“Tribal Employee”** shall mean an individual directly employed by the Shingle Springs Band of Miwok Indians. This shall not include employees of the Development Corporation or Red Hawk Casino.

SS. **“Work Injury”** or **“Work Injuries”** mean any injury or disease, including Psychiatric Injury, arising out of and in the course of employment with the Casino/Tribe. Work Injury includes damage to artificial members, dentures, hearing aids, eyeglasses, and medical braces of all types. However, eyeglasses and hearing aids will not be replaced or repaired unless damage to them results from an injury causing Disability.

Work Injuries may be either:

- ii. “Specific,” occurring as a result of one incident or exposure which causes Disability or need for medical treatment; or
- iii. “Cumulative,” occurring as a result of repetitive trauma extending over a period of time, the combined effect of which causes Disability or the need for medical treatment. The date of a cumulative trauma injury is the date upon which the Employee first knew or should have known that his present or prior employment caused such injury. Psychiatric Injury cannot be cumulative.

TT. **“Written Decision”** means the Administrator’s written determination to accept in full or in part or deny in full or in part any claim submitted by a Claimant regarding a Work Injury.

## **TITLE 2. FAIR EMPLOYMENT PRACTICES**

### **ARTICLE I - PURPOSE**

The Shingle Springs Band of Miwok Indians (“Tribe”) establishes this Employment Code (“Code”) for the purpose of providing uniform employment practices throughout the Shingle Springs Rancheria, including off-reservation Tribal Businesses/Offices as applicable. It is the desired goals and objectives of the Tribe to ensure fair employment practices through enforcement of this Code and non-retaliation against individuals who report violations.

### **ARTICLE II –EMPLOYMENT ON THE RANCHERIA**

#### **Section 1. At-Will Employment**

Employment with the Tribe and Red Hawk Casino is for no definite or determinable period and may be terminated at any time, with or without cause, at the option of the Employee or Tribe, and no promises or representations are binding on the Tribe unless made in writing, reviewed and approved by the Legal Department and signed by the Employee and the Tribal Chairperson or applicable Board Chairperson. The at-will employment relationship may not be modified by any oral or implied agreement, and no policy, nor any course of conduct, practice, award, promotion, performance evaluation, transfer, or length of service can modify this at-will relationship.

#### **Section 2. Employment Contract**

Employment contracts, including at Red Hawk Casino are agreements between the Tribe and the Employee to complete specific work during a specified period of time for a specified salary. The Chairperson of the Tribe of appropriate Board or his/her designee and the Legal Department will negotiate all terms of the contract. Employment contracts will specify the extent which the Tribe’s personnel policies apply.

#### **Section 3. Education Requirement**

Individuals must possess, at a minimum, a GED or High School diploma in order to be eligible for employment. Professional or trade school certificates do not fulfill this criteria.

- A. Shingle Springs Band of Miwok Indians members who are Elders (55 years of age or older) are exempt from this education requirement.
- B. Participants in the Tribe’s Workplace Re-entry Program are exempt from this educational requirement in accordance with the Program policies.

#### **Section 4. Confidentiality Agreements**

All Tribal and Red Hawk Casino Employees shall sign a Confidentiality agreement, and are prohibited from providing or disclosing to any person, any confidential information he or she has acquired during the course of employment with the Tribe or Red Hawk Casino.

#### **Section 5. Succession Planning**

All Employers, including Red Hawk Casino, shall create a Succession Plan for any positions director level and above. Each Employer shall make every effort to train and fill these positions with Tribal members.

All Succession Plans shall be submitted to the Tribal Chairperson or his or her designee 60 days after implementation of this Code in order to assist Tribal Members. Succession Plans shall be reviewed no less than annually and all updates provided to the Tribal Chairperson or his or her designee.

#### **Section 6. Rehire**

Any Employee, including those at Red Hawk Casino, who is involuntarily terminated from employment with the Tribe may be eligible for rehire one additional time if the following requirements are met:

- A. Individual completes a one-year waiting period between termination and rehire; and
- B. Individual meets the minimum qualifications for the position; and
- C. Individual must be approved by the Tribal Chairperson or his or her designee for rehire, at the request of a hiring Department Director who desires to sponsor him or her for rehire; and
- D. Individual successfully completes a nationally certified employment class as approved by the appropriate Human Resources Department.

If an individual has already been terminated from employment with any Employer, including Red Hawk Casino, twice, he or she is permanently ineligible for rehire.

### **ARTICLE III – UNLAWFUL EMPLOYMENT PRACTICES**

#### **Section 1. Prohibition of discrimination**

It shall be an unlawful employment practice for an Employer, including Red Hawk Casino –

- A. To fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to his/her compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, sexual orientation, gender identity, gender expression, disability, genetic information, marital status, pregnancy, military service; or
- B. To limit, segregate, or classify his/her Employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his/her status as an Employee, because of such individual's race, color, religion, sex, sexual orientation, gender identity, gender expression, disability, genetic information, marital status, pregnancy, or military service.

## **Section 2. Merit System**

Notwithstanding any other provision of this Article, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, sexual orientation, gender identity, gender expression, disability, genetic information, marital status, pregnancy, military service, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any Professionally Developed Ability Test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex, sexual orientation, gender identity, gender expression, disability, genetic information, marital status, pregnancy, military service.

## **Section 3. Tribal Preference**

Notwithstanding any other provision in this Code, it shall not be an unlawful employment practice to give employment preference to Native American candidates. The Tribe shall hire the most qualified applicant. However, when candidates for an open position are determined to be equally qualified, the following order of preference shall be adhered to for hiring purposes;

- A. Members of the Shingle Springs Band of Miwok Indians;
- B. All other documented Native Americans;
- C. All other candidates.

## **ARTICLE III - AGE DISCRIMINATION IN EMPLOYMENT**

### **Section 1. Prohibited Age Discrimination**

It shall be unlawful for an Employer;

- A. to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his/her compensation, terms, conditions, or privileges of employment, because of such individual's age;
- B. to limit, segregate, or classify his/her employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an Employee, because of such individual's age; or
- C. to discriminate against any Employee thereof or applicant for employment, because such individual, Employee or applicant for employment has opposed any practice made unlawful by this section, or because such individual, Employee or applicant for employment has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this article.
- D. to print or publish, or cause to be printed or published, any notice or advertisement relating to employment indicating any preference, limitation, specification, or discrimination, based on age.

### **Section 2. Permissible Age Discrimination**

It shall not be unlawful for the Tribe, or any employer licensed to operate on the Rancheria, to take any action prohibited under Section 1 of this Article where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age.

### **Section 3. Age**

The prohibitions in this chapter shall be limited to individuals who are at least 40 years of age.

### **Section 4. Medical Evaluation**

Notwithstanding any other provision in this Article, all Tribal Employees age of seventy (70) or older must have a medical evaluation and be medically cleared to work by a licensed physician at the Shingle Springs Health and Wellness Center to fulfill the bona fide occupational qualifications of his or her current position, unless the Employee's position is that of an elected Tribal government official.

## **ARTICLE IV - LABOR STANDARDS**

### **Section 1. Minimum Wage**

An Employer, including Red Hawk Casino, shall pay to each of its Employees who in any workweek is engaged in services, commerce or in the production of goods for commerce, or is employed in an enterprise engaged in services, commerce or in the production of goods for commerce, wages commensurate with at least federal minimum wage.

### **Section 2. Oppressive child labor**

- A. An Employer, including Red Hawk Casino, shall not employ any Oppressive Child Labor in services, commerce or in the production of goods for commerce or in any enterprise engaged in services, commerce or in the production of goods for commerce.
- B. Tribal internships shall not constitute Oppressive Child Labor as interns are not employed by the Tribe or Red Hawk Casino, in an occupation.

### **Section 3. Maximum hours**

- A. Except as otherwise provided in this Article, no Employer, including Red Hawk Casino, shall work any of his/her employees for a workweek longer than forty hours unless such employee receives compensatory time off at a rate not less than one and one-half times the amount of overtime work.
- B. Employers, including Red Hawk Casino, shall not be required to compensate overtime work based upon the Employees regular rate of pay.

### **Section 4. Exempt Employees**

An Employee, including those at Red Hawk Casino, is exempt from the provisions of Section 1 and 3 of this Article if he/she;

- A. is paid more than \$455 per week (\$23,600 per year); and
- B. is paid on a salary basis; and
- C. is employed in a bona fide Executive, Professional or Administrative capacity;

- i. Executive - any employment where the employee a) regularly supervises two or more other employees; and b) has management as the primary duty of the position; and c) has some genuine input into the job status of other employees.
- ii. Professional - any employment where the employee's job duties; a) require advanced knowledge acquired through prolonged course of specialized academic study; and b) requires the exercise of discretion and judgment.
- iii. Administrative - any employment where the employee's job duties consist of primarily non-manual work directly related to the management or general business operations of the employer or the employer's customers and a primary component of which involves the exercise of independent judgment and discretion about matters of significance.

## **ARTICLE V – FAMILY MEDICAL CARE AND MILITARY LEAVE**

### **Section 1. Family Medical Care Leave**

Eligible Employees shall have the right to take unpaid, job-protected leave for specified family medical care reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

#### **A. Eligible Employees**

Employees are eligible for family medical care leave if they have worked for their Employer for at least twelve (12) months, and have worked at least 1,250 hours compensated (prorated for part-time) over the previous 12 months. This shall include employees of Red Hawk Casino.

#### **B. Family Medical Care Reasons –**

Eligible employees are entitled to twelve workweeks of leave in a 12-month period for:

- i. the birth of a child and to bond with or care for the newborn child within one year of birth;
- ii. the placement with the employee of a child for adoption or foster care and to bond with or care for the newly placed child within one year of placement;

- iii. to care for the employee's spouse, child (including foster child, legal ward, stepchild, or a person to whom the employee stands in the position of a parent), or parent (or person who stood in the position of a parent when the employee was a child) who has a serious health condition;
- iv. a serious health condition that makes the employee unable to perform the essential functions of his or her job;
- v. any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" or

#### C. Military Caregiver Leave

Eligible employees are entitled to twenty-six workweeks of leave during a single twelve (12) month period to care for an active duty servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin.

#### D. Medical Certification

Employers may require the Employee to submit a certification from a health care provider to support the Employee's need for family medical care leave. The Employer may not request a certification for leave to bond with a newborn child or a child placed for adoption or foster care, however, leave for either of these purposes will count towards the Employees twelve (12) workweeks of leave.

#### E. Sick and Vacation Leave

Employees are required to use all of their accrued sick, vacation paid leave, and/or PTO as applicable concurrent with Family Medical Care Leave prior to taking such leave unpaid.

#### F. Returning to Work

Prior to returning to work from medical care leave, Employees shall provide their Employer with a medical certificate from a licensed medical provider certifying that the Employee is medically clear to perform his/her job duties.

### **Section 2. Uniformed Service Members Reemployment**

Any Employee, including those of Red Hawk Casino, whose absence from a position of employment is necessitated by reason of service in the uniformed services may be reemployed, if a position is available, and shall continue to receive health benefits from their Employer if—

- A. the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's Employer;
- B. the cumulative length of the absence and of all previous absences from a position of employment with that Employer by reason of service in the uniformed services does not exceed five years; and
- C. the person reports to, or submits an application for reemployment to, such Employer.

## **ARTICLE VI - HEALTH AND SAFETY**

### **Section 1. Employer Duties**

An Employer shall;

- A. Furnish to each of its Employees employment and a place of employment which are free from Recognized Hazards that are causing or are likely to cause death or serious physical harm to its Employees;
- B. Comply with the health and safety rules established by the Tribe.

### **Section 2. Employee Duties**

Every Employee shall;

- A. Comply with the health and safety rules established by the Tribe and all rules, regulations, and orders issued pursuant to this Code which are applicable to his/her own actions and conduct.
- B. Immediately report work related injuries to his/her Employer in accordance established policies and procedures.

### **Section 3. Tribal Compliance**

It shall be the responsibility of the Tribe's Facilities Department to provide Tribal Employees with necessary protective equipment and to ensure that all Tribal facilities comply with the requirements of Section 1 of this Article.

#### **Section 4. Drug/Alcohol Free Workplace**

All Employers, including Red Hawk Casino, and Employees are required to maintain a drug/alcohol free workplace. In order to enforce the requirements of this Section, Employers are authorized to conduct both random and for-cause drug testing under the appropriate human resources policies and procedures. Employers are required to conduct a drug/alcohol test of all Employees involved in a workplace accident in accordance with appropriate policies.

#### **Section 5. Background Checks/Evaluations**

In accordance with appropriate policies, Employers are authorized to require Employees to submit to reasonable background checks, medical evaluations, mental evaluations and/or provide medical certificates in order to establish that the Employee is able to fulfill his/her job duties.

#### **Section 6. Building Codes**

Employers, including Red Hawk Casino, must, at a minimum, comply with the building safety codes as adopted by the Tribe.

### **ARTICLE VII - EMPLOYEE RETIREMENT INCOME SECURITY**

#### **Section 1. Summary Plan Description**

An Employer shall cause to be furnished to each Participant covered under an Employee Benefit Plan and to each Beneficiary who is receiving benefits under the plan—A summary plan description.

- A. within 90 Days after he/she becomes a participant, or (in the case of a beneficiary) within 90 Days after he/she first receives benefits, or
- B. if later, within 120 Days after the plan becomes subject to this part.
- C. every fifth year, except that in a case where no amendments have been made to a Plan during such five-year period.

#### **Section 2. Content of Summary Plan**

The summary plan description shall be written in a manner calculated to be understood by the average Plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such Participants and Beneficiaries of their rights and obligations under the Plan. The summary Plan shall include information on what the Plan provides, how it operates, when an

Employee can begin to participate in the Plan, how service and benefits are calculated, when benefits becomes vested, when and in what form benefits are paid, and how to file a claim for benefits.

### **Section 3. Material Modifications**

A summary of any material modification in the terms of the Plan shall be written in a manner calculated to be understood by the average Plan Participant and shall be furnished not later than 210 Days after the end of the Plan year in which the change is adopted to each Participant, and to each Beneficiary who is receiving benefits under the Plan. If there is a modification or change that is a material reduction in covered services or benefits provided under a group health plan, a summary description of such modification or change shall be furnished to Participants and Beneficiaries not later than 60 Days after the date of the adoption of the modification or change.

### **Section 4. Annual Reports**

An annual report shall be prepared with respect to every Employee Benefit Plan to which this part applies. Within 210 Days after the close of the fiscal year of the Plan, the Employer shall furnish to each Participant, and to each Beneficiary receiving benefits under the Plan, a copy of the statements and schedules, for such fiscal year, such other material as is necessary to fairly summarize the latest annual report.

### **Section 5. Content of Annual Report**

The annual report shall include; statement of assets, liabilities, receipts, disbursements, loans in default, leases in default, reportable transactions.

### **Section 6. Tribal Exemption**

The Tribal Government may choose to comply with the notifications set forth in this Article, but is not required to.

## **ARTICLE VIII- SOCIAL SECURITY AND MEDICARE TAXES**

### **Section 1. Withholdings**

Employers must comply with all Federal laws and IRS rules requiring the withholding of social security and Medicare taxes from employees' wages and paying a matching amount themselves. At the end of the year, Employers must prepare and file with the IRS Form W-2, Wage and Tax Statement to report wages, tips and other compensation paid to an employee.

## **Section 2. Honorarium**

- A. Elected Officials. The Tribe shall file an IRS Form W-2 for honorarium paid to Tribal Council members. However, in accordance with IRS Revenue Ruling 59-354, the Tribe shall not withhold social security or Medicare taxes from honorarium payments because amounts paid to members of the Tribal Council for services performed do not constitute wages for purposes of the Federal Insurance Contributions Act. The Tribe shall withhold federal and state income tax as requested by the Tribal Council member.
- B. Appointed Officials. The Tribe shall file an IRS Form W-2 for honorarium paid to individuals appointed by the Tribal Council to serve on Tribal Committees/Boards. In accordance with IRS Revenue Ruling 59-354, the Tribe shall withhold social security and Medicare taxes from honorarium payments because amounts paid to Committee/Board members for services performed constitute wages for purposes of the Federal Insurance Contributions Act. The Tribe shall withhold state income tax as requested by the Tribal Council member.

## **ARTICLE IX – IMMIGRATION CONTROL**

Employers may hire only persons who may legally work in the United States. Employers must verify the identity and employment eligibility of anyone to be hired by requiring new Employees to complete the Employment Eligibility Verification Form (I-9) and present documentation establishing identity prior to beginning work. Employers must verify that the documentation presented to establish identity is valid and contains an authentic signature. Employers must keep each I-9 on file for three years from the date of hire, or one year after employment ends, whichever is longer.

## **ARTICLE X - RECORDKEEPING/NOTICES**

### **Section 1. Recordkeeping**

This Section shall also apply to Red Hawk Casino.

- A. Employee Records - An Employer shall make, keep, and preserve such records of the persons employed by it and of the wages, hours, and other conditions and practices of employment maintained by it in accordance with this Code, and shall preserve such records for three (3) years from the date of the separation of employment. At which time the physical records may be scanned if kept in hard copy, digitally archived and then destroyed.

- B. Hiring Records – An Employer shall retain hiring records for one (1) year after the decision to hire/not hire is made. Federal contractors shall retain hiring records for two (2) years after the decision to hire/not hire is made.
- C. Employment Benefit Records – An Employer shall retain records of required reports under Article X, for a period of six (6) years. An Employer shall maintain benefit records with respect to each of its Employees sufficient to determine the benefits due or which may become due to such Employees.
- D. Tax Records – An Employer shall retain all records of employment taxes for at least four years after filing the 4th quarter for the year.
- E. Safety Data – Employers shall retain all records relating to work related injuries for five (5) years following the year that the records pertain to. The medical record for each employee that is exposed to toxic substances or BBP shall be preserved and maintained for at least the duration of employment plus thirty (30) years.

**Section 2. Notices**

- A. Each Employer shall post and keep posted a notice or notices informing employees of the protections and obligations provided for in this Act. Such notice or notices shall be posted by the Employer on its website and in its establishment in a conspicuous place or places where notices to employees are customarily posted. Each Employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.
- B. In January of each year, each Employer shall send an annual notice informing employees of the protections and obligations provided for in this Act. For Tribal Employees, this annual notice shall be sent along with the employee’s paycheck or stub.

**ARTICLE XI – CONFLICT OF INTEREST/CODE OF CONDUCT**

The Tribe will adopt policies to address conflicts of interest and the code of conduct at the workplace.

**ARTICLE XII– PERSONNEL RECORDS**

**Section 1. Use and Maintenance of Personnel Records**

Employers, including Red Hawk Casino, shall maintain a personnel file for every employee. Personnel files shall contain a medical/benefit file, and payroll file. Separate files will be kept for investigations and workers compensation claims. Only files kept by the HR Department shall be the recognized file for all official purposes.

## **Section 2. Confidential Nature of Personnel Records**

In accordance with all applicable regulations and laws, personnel records of employees are not public information and, therefore, shall be treated as confidential and kept in a secured file. Personnel records shall be available to authorized individuals when access to the information is reasonably necessary for the conduct of one's official duties.

## **Section 3. Personnel File Review**

Current Employees have a right to review and request a copy of their application and any other documents they have signed in their personnel files. Employers, including Red Hawk Casino have a reasonable time period to make these documents available to the Employee requesting it. Former Employees have no right to review or copy any documents in their personnel files. Personnel files are the property of the Employer.

# **ARTICLE XIII– VIOLATIONS**

## **Section 1. Employee Violations**

- A. Violation of this Code by an Employee, including those at Red Hawk Casino, may be grounds for discipline, including immediate termination.
- B. Violation of this Code by Employee, including those at Red Hawk Casino, which results in financial harm to the Employer, may form the basis of a claim for restitution by the Employer in the Shingle Springs Tribal Court.

## **Section 2. Employer Violations**

- A. Violations of this Code by the Employer, including Red Hawk Casino must be reported to the Employee's immediate supervisor or the head of human resources. Employees shall have no basis for a claim against the Employers unless they go through the Employer's administrative process for violations of this Code.
- B. Violations of this Code by non-Tribal Employers, excluding Red Hawk Casino and the Development Corporation, may form the basis of a claim for specific performance by the Employee in the Shingle Springs Tribal Court.

## **Section 3. Reporting Violations**

Any individual who has concerns of possible violations of this Code should contact their Employer's human resources department.

## **TITLE 3. WORKERS' COMPENSATION FOR TRIBAL EMPLOYEES**

### **Section 1. Purpose**

The Tribe has decided to create and maintain a system that provides redress for its Employees' work-related injuries. The purpose of this Title is to establish a systematic and uniform procedure for the administration of workers' compensation benefits to Tribal Employees.

### **Section 2. Declaration of Policy**

The objectives of this Title are declared to be as follows:

- A. To provide sure and prompt medical treatment for injured Employees, and fair, adequate and reasonable income benefits to Claimants; and
- B. To provide a fair and just administrative system for delivery of medical and income benefits to injured Employees; and
- C. To restore injured Employees physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable; and
- D. To provide the exclusive means by which Claimants may seek and qualify for remedies for injuries or death arising out of and in the course of employment with the Tribe.

### **Section 3. Scope**

This Title applies to all tribal Employees and their Dependents. All Employees are covered for Work Injuries whether the incident giving rise to the Work Injury occurs on or off the Reservation. Benefits are limited as indicated in this ordinance.

### **Section 4. Exclusive Remedy**

This Title shall be the exclusive method for obtaining compensation from the Tribe for injuries or death arising out of and in the course of Employment with the Tribe. The liability of the Tribe for all injuries or death arising out of and in the course of Employment with the Tribe is limited to the compensation provided pursuant to this Title. Such liability shall not be expanded except by amendment of this Title by the Tribal Council.

### **Section 5. Reporting Obligations**

- A. An Employee must report, in writing, any Work Injury, no matter how slight, to his/her supervisor within 24 hours of the incident causing the Work Injury. Another person on

behalf of the Employee may submit the written report of a Work Injury to the Employee's supervisor.

- B. An Employee, or person on the Employee's behalf, reporting a Work Injury must maintain a copy of the written report of the injury as proof of submission.
- C. A supervisor, receiving a written report of a Work Injury from the Employee or another acting on the Employee's behalf, must promptly report the claim to the Tribe's Human Resources Director who shall forward the claim to the Administrator or to the Tribal Council's designee for reporting.

### **Section 6. Administrator**

The Administrator will act on the Tribe's behalf in receiving and processing workers' compensation claims under this Title. The responsibility of the Administrator to make determinations and decisions will include, but not be limited to, the following:

- A. Based upon investigation and available information, the Administrator will determine the Tribe's responsibility and will either accept or deny a claim. Within 90 Days of receiving notice of a Work Injury, the Administrator will issue its Written Decision, which it will provide to both the Claimant and the Tribe.
- B. The Administrator, in its sole discretion, will determine the reasonableness and necessity of medical care and charges and will determine amounts payable under this ordinance. The Administrator, in its sole discretion, will determine which medical services provider will render the medical care to the Employee.
- C. Based on information supplied by the Tribe and/or Employee, the Administrator will determine the compensation rates payable for Disability and dependency.
- D. The Administrator will determine the length of time during which temporary total or temporary partial Disability benefits are payable.
- E. The Administrator will determine the amount of permanent partial Disability benefits payable.
- F. The Administrator will determine the eligibility of Dependents and the term of any dependency benefits payable.
- G. In the event of the need to allocate dependency benefits between Dependents living in different households, the Administrator will make the necessary allocation based on the obligations, legal or otherwise, of the decedent.

- H. If an Employee's claim is subject to the limitations of Section 11, the Administrator will advise the Employee and Tribe in writing of the effect of this limitation.
- I. The Administrator will, on behalf of the Tribe, vigorously pursue any cause of action assigned to the Tribe to recover from third parties responsible for injuries leading to claims against the Tribe.

### **Section 7. Independent Medical Examination**

- A. Whether or not an Employee is entitled to compensation under this ordinance, the Employee shall, upon the Tribe's or Administrator's written request, submit at reasonable intervals to an Independent Medical Examination by a practicing physician, selected by the Administrator and paid for by the Tribe.
- B. If the Employee unreasonably fails to appear for a scheduled Independent Medical Examination, the responsibility of the Tribe for payment of any benefits under this ordinance ceases.
- C. If the Employee disputes the physician's conclusion regarding the Employee's medical condition, the Employee may, within 20 Days of the physician communicating his or her conclusion to the Employee, have that conclusion reviewed through an Independent Medical Examination performed by another practicing physician, selected by the Administrator and paid for by the Tribe. This physician must not be the same individual who previously evaluated the Employee's medical condition with respect to the same claim.

### **Section 8. Dispute Resolution**

- A. Any Claimant who disagrees with any aspect of the Written Decision may appeal that decision by writing to the Administrator within 20 Days from the date of the Written Decision. The Claimant's appeal request must specifically explain what aspects of the decision the Claimant believes are inappropriate or incorrect. Failure of the Claimant to timely challenge the Written Decision renders the decision final.
- B. The Administrator will have 30 Days from the date it receives the Claimant's appeal request to attempt to resolve the dispute informally. The Administrator will decide the method of informal resolution it deems appropriate.
- C. If the parties fail to resolve some or all of the dispute as provided above, the Claimant may appeal any unresolved aspect of the Written Decision by writing to the Tribal Court within 15 Days after the 30 Day resolution period expires. The Claimant's appeal request

must specifically explain what unresolved aspects of the Written Decision remain and why the claimant believes the Administrator's position is inappropriate or incorrect. The Tribal Court will subsequently take final action regarding the appeal and will communicate that action in writing to the Claimant. The Claimant will have no further recourse after the Tribal Court makes a final order regarding the appeal.

## **Section 9. Excluded Injuries**

- A. An injury which the Administrator determines did not arise out of or occur in the course of the Employee's employment shall be afforded no coverage under this ordinance.
- B. An injury occurring while an Employee travels to or from work is not a Work Injury, unless such travel is in connection with the performance of employment duties.
- C. The following are not Work Injuries:
  - i. Psychiatric Injury, where the Employee has been continuously employed for less than six months;
  - ii. Psychiatric Injury caused by a personnel action;
  - iii. Injuries resulting from intoxication, by alcohol or the unlawful use of a controlled substance, of the Employee;
  - iv. Self-inflicted injuries;
  - v. Suicide;
  - vi. Injuries resulting from an altercation in which the injured Employee is the initial physical aggressor;
  - vii. Injuries resulting from horseplay;
  - viii. Injuries occurring after the Employee has been terminated or has received notice of termination;
  - ix. Injuries resulting from second-hand smoke;
  - x. Complex regional pain syndrome and/or reflexive sympathetic dystrophy, regardless of the cause;
  - xi. Idiopathic injuries or conditions;

- xii. Cumulative injuries where the Employee has been continuously employed for less than six months;
- xiii. Injuries caused by a third person or fellow Employee intended to injure the Employee for personal reasons;
- xiv. Injuries occurring during the commission of a felony, or a crime which is punishable as specified in subdivision (b) of Section 17 of the California Penal Code, by the injured Employee and the Employee is found by a preponderance of the evidence to have committed such act; or
- xv. Injuries arising out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting a part of the Employee's work related duties, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment.

## **Section 10. Benefits**

### **A. Medical, Surgical, Hospital and Dental Treatment**

- i. The injured Employee is entitled to receive all medical, surgical, hospital and dental treatment approved by the Administrator and reasonably necessary to cure or relieve from the effects of the Work Injury.
- ii. The Administrator will determine the medical services providers who will treat injured Employees.

### **B. Temporary Disability**

- i. If the Work Injury causes temporary partial or temporary total Disability, the Disability payment is two-thirds of the Employee's average weekly earnings for the prior three months of employment, subject to the maximum amount set forth in the California Labor Code. No payment is due during the first 3 Days after the Employee leaves work as a result of the Work Injury.
- ii. Such payments will be reduced by the sum of unemployment compensation benefits and extended duration benefits received by the Employee during the period of Disability. The injured Employee shall report any pensions, Disability payments or earnings to the Administrator within 10 Days of receipt of such funds.

- iii. Temporary Disability payments shall be limited to 104 weeks or the maximum period set forth in the California Labor Code, counted from the date of the first payment.

#### C. Permanent Partial Disability

For purposes of this ordinance, permanent partial Disability means a permanent Disability with a rating of less than one-hundred (100) percent permanent Disability.

- i. In determining the percentage of permanent Disability, the Administrator shall take account of the nature of the physical injury or disfigurement, the occupation of the injured Employee, and the Employee's age at the time of the injury. The Administrator will also consider the Employee's diminished ability to compete in an open labor market.
- ii. The Administrator may rely on the American Medical Association's Guides to the Evaluation of Permanent Impairment in determining the percentages of permanent Disability, but the Guides are not prima facie evidence of a percentage of Disability.
- iii. Average weekly wage will be determined based upon the Employee's actual average weekly wage for the prior three months of employment.

#### D. Permanent Total Disability

- i. Permanent total Disability is a Disability which the Administrator has determined precludes the injured Employee from any and all gainful employment. There shall be no presumptions of permanent total Disability.
- ii. Compensation shall be paid at the appropriate weekly rate for temporary Disability benefits.

#### E. Supplemental Job Displacement

- i. If a Work Injury results in permanent partial Disability and the injured Employee does not return to work for the Tribe within 60 Days of the termination of temporary Disability, the injured Employee shall be eligible for a supplemental job displacement benefit for education-related retraining or skill enhancement at schools approved or accredited by the State of California.

- ii. The amount of the benefit will be:
  - a. Up to \$4,000 for permanent partial Disability awards of less than fifteen (15) percent, as determined by the Administrator;
  - b. Up to \$6,000 for permanent partial Disability awards between fifteen (15) and twenty-five (25) percent, as determined by the Administrator;
  - c. Up to \$8,000 for permanent partial Disability awards between twenty-six (26) and forty-nine (49) percent, as determined by the Administrator;
  - d. Up to \$10,000 for permanent partial Disability awards between fifty (50) and ninety-nine (99) percent, as determined by the Administrator.
- iii. The benefit may only be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement.
- iv. The Employee shall not be entitled to the supplemental job displacement benefit under this Section if within 30 Days of the termination of temporary Disability benefits, the Tribe offers, and the Employee rejects, or fails to accept, modified or alternative work accommodating the Employee's work restrictions.

#### F. No Compensation During Incarceration

No compensation under this ordinance shall be payable during incarceration of the Employee.

#### G. Fatality Income Benefits

- i. When a Work Injury causes death within 5 years from the date of the injury, the Tribe will be liable for compensation to the Dependents of the injured Employee as provided for in this Section. The Dependents must be totally or partially dependent upon the injured Employee at the time of the Work Injury and at the time of death in order to qualify for benefits.
- ii. The death benefit will be four times the Employee's annual earnings from the Tribe, not to exceed the following maximums:
  - a. One Dependent: \$250,000.00;
  - b. Two Dependents: \$290,000.00;

c. Three or more Dependents: \$320,000.00; and

d. Burial allowance: \$5,000.00.

- iii. The death benefit will be paid in installments in the same manner and amounts as temporary Disability benefits. Benefits shall cease upon the remarriage of the Spouse or upon the Child or Children turning 18 years of age. Children over 18 years of age may receive benefits if the Administrator determines they are mentally or physically incapacitated from earning.
- iv. The weekly compensation will be divided between the qualifying Dependents in proportion to the percentage of support each received from the deceased Employee. It will be presumed that each qualifying Dependent received equal support from the deceased Employee.

#### **Section 11. Statute of Limitations**

Any right to benefits under this Title shall be barred unless a Work Injury is reported in writing to the Tribe within 30 Days of its occurrence.

#### **Section 12. Compromise and Release**

Nothing in this Title shall impair the rights of the parties to compromise any liability that is claimed to exist under this Title on account of injury, disease or death, subject to the provisions herein. The Administrator shall enter an award based on the release or compromise agreement.

#### **Section 13. Claim Closure**

An Employee's claim shall be closed when the Administrator determines it appropriate to do so. Circumstances meriting claim closure include, but are not limited to, determination by the Administrator that the injured Employee has reached the point where no further material improvement would reasonably be expected from medical treatment, the Claimant's withdrawal or abandonment of the claim, the Claimant's failure to comply with the Administrator's claim investigation, and the lack of medical treatment within a successive 12 month period.

#### **Section 14. Recovery of Payments Made In Error**

- A. Whenever the Administrator pays a claim under this ordinance as a result of a clerical error, mistaken identity, innocent misrepresentation by or on behalf of the payment recipient, or because of any other similar circumstance not involving fraud, the recipient shall refund the payment to the Administrator. The Administrator must request such refund within one year of making the payment, or the Administrator will waive the

refund claim. The Administrator has discretion to waive, in whole or in part, any refund claim where the recovery would be against equity and good conscience.

- B. Whenever the Administrator has been fraudulently induced to make any benefit payment under this ordinance, the recipient shall repay the payment, along with a penalty of fifty (50) percent of the payment amount. The Administrator must demand the repayment within one year of discovering the fraud.

### **Section 15. Claim Files and Records Confidential**

Information contained in the claims file and records of injured Employees shall be confidential and shall not be open to public inspection. A Claimant (or his or her representatives, after presenting the Claimant's signed authorization) may obtain from the Administrator copies of the relevant Employee's medical records from the Employee's claim file, but is entitled to no other documentation or information from that claim file. The Tribe or its duly authorized representatives may review any files of their own injured Employees in connection with any pending claims. Physicians treating or examining Employees claiming benefits under this ordinance, or physicians giving medical advice to the Administrator regarding any claim may, at the Administrator's discretion, inspect the claims files and records of the injured Employee. Other persons may inspect Employee claims files and records, at the Administrator's discretion, when such persons are assisting the Administrator with any aspect of a claim.

### **Section 16. Effective Date**

Upon approval of this Code, this Title shall apply to all claims being administered as of that date, and to all Work Injuries reported after that date, regardless of when the Work Injury occurred.

## **TITLE 4. – WORKERS' COMPENSATION FOR CASINO EMPLOYEES**

### **Section 1. Purpose**

The Tribe, for the Employees of the Red Hawk Casino (the "Casino"), has exercised its right under Section 10.3 of the Compact between the Tribe and the State of California, as amended, to opt out of the state statutory workers' compensation system and to create and maintain a system that provides redress for Employees' work-related injuries by obtaining insurance or through self-insurance. The purpose of this Title is to establish a systematic and uniform procedure for the administration of workers' compensation benefits to Casino Employees.

## **Section 2. Declaration of Policy**

The objectives of this Title are declared to be as follows:

- A. To provide sure and prompt medical treatment for injured Employees, and fair, adequate and reasonable income benefits to Claimants; and
- B. To provide a fair and just administrative system for delivery of medical and income benefits to injured Employees; and
- C. To restore injured Employees physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable; and
- D. To provide the exclusive means by which Claimants may seek and qualify for remedies for injuries or death arising out of and in the course of employment with the Casino.

## **Section 3. Scope**

This Title applies to all Casino Employees and their Dependents. All Employees are covered for Work Injuries whether the incident giving rise to the Work Injury occurs on or off the Reservation. Benefits are limited as indicated in this Title.

## **Section 4. Exclusive Remedy**

This Title shall be the exclusive method for obtaining compensation from the Tribe or Casino for injuries or death arising out of and in the course of employment with the Casino. The liability of the Tribe or Casino for all injuries or death arising out of and in the course of employment with the Casino is limited to the compensation provided pursuant to this Title. Such liability shall not be expanded except by amendment of this ordinance by the Tribal Council.

## **Section 5. Reporting Obligations**

- A. An Employee must report, in writing, any Work Injury, no matter how slight, to his/her supervisor within 24 hours of the incident causing the Work Injury. Another person on behalf of the Employee may submit the written report of a Work Injury to the Employee's supervisor.
- B. An Employee, or person on the Employee's behalf, reporting a Work Injury must maintain a copy of the written report of the injury as proof of submission.

- C. A supervisor, receiving a written report of a Work Injury from the Employee or another acting on the Employee's behalf, must promptly report the claim to the Casino's risk manager who shall forward the claim to the Administrator or to the Tribal Council's designee for reporting.

## **Section 6. Administrator**

The Administrator will act on the Casino's behalf in receiving and processing workers' compensation claims under this Title. The responsibility of the Administrator to make determinations and decisions will include, but not be limited to, the following:

- A. Based upon investigation and available information, the Administrator will determine the Casino's responsibility and will either accept or deny a claim. Within 90 Days of receiving notice of a Work Injury, the Administrator will issue its Written Decision, which it will provide to both the Claimant and the Casino.
- B. The Administrator, in its sole discretion, will determine the reasonableness and necessity of medical care and charges and will determine amounts payable under this ordinance.
- C. Based on information supplied by the Casino and/or Employee, the Administrator will determine the compensation rates payable for Disability and dependency.
- D. The Administrator will determine the length of time during which temporary total or temporary partial Disability benefits are payable.
- E. The Administrator will determine the amount of permanent partial Disability benefits payable.
- F. The Administrator will determine the eligibility of Dependents and the term of any dependency benefits payable.
- G. In the event of the need to allocate dependency benefits between Dependents living in different households, the Administrator will make the necessary allocation based on the obligations, legal or otherwise, of the decedent.
- H. If an Employee's claim is subject to the limitations of Section 11, the Administrator will advise the Employee and Casino in writing of the effect of this limitation.

- I. The Administrator will, on behalf of the Casino, vigorously pursue any cause of action assigned to the Casino to recover from third parties responsible for injuries leading to claims against the Casino.

## **Section 7. Independent Medical Examination**

- A. Whether or not an Employee is entitled to compensation under this Title, the Employee shall, upon the Casino's or Administrator's written request, submit at reasonable intervals to an Independent Medical Examination by a practicing physician, selected by the Administrator and paid for by the Casino.
- B. If the Employee unreasonably fails to appear for a scheduled Independent Medical Examination, the responsibility of the Casino for payment of any benefits under this Title ceases.
- C. If the Employee disputes the physician's conclusion regarding the Employee's medical condition, the Employee may, within 20 Days of the physician communicating in writing his or her conclusion to the Employee, have that conclusion reviewed through an Independent Medical Examination performed by an Independent Medical Reviewer on the State of California's approved list and selected by the Casino or Administrator, a Qualified Medical Evaluator on the State of California's approved list and selected by the Casino or Administrator, or an Agreed Medical Examiner selected by agreement between the Casino or Administrator and the Employee.

## **Section 8. Dispute Resolution**

### **A. Informal Dispute Resolution**

Any Claimant who disagrees with any aspect of the Written Decision may appeal that decision by writing to the Administrator within 20 Days from the date of the Written Decision. The Claimant's appeal request must specifically explain what aspects of the decision the Claimant believes are inappropriate or incorrect. Failure of the Claimant to timely challenge the Written Decision renders the decision final, precluding any further action challenging it.

The Administrator will have 30 Days from the date it receives the Claimant's appeal request to attempt to resolve the dispute informally. The Administrator will decide the method of informal resolution it deems appropriate. If the Administrator elects to schedule a meeting between the Claimant and representatives of the Administrator and the Casino, the parties may, at their own expense, have legal counsel present at the meeting. If during the course of

this informal resolution period the parties agree on any of the disputed issues, such agreement will be reduced to writing by the parties and will be binding on them.

## B. Arbitration

If the parties fail to resolve informally some or all of the dispute as provided in Section 11.1, the dispute will proceed to arbitration before a single arbitrator. The Administrator will randomly select the arbitrator from a list of independent neutrals maintained by the Administrator. The arbitrator will hear any issues and make any necessary final determination relative to compensability of a Work Injury, medical care or charges, extent of Disability, dependency, or any other issue that may arise under this Title. The arbitrator will consider the issue or issues de novo.

### i. Cost of Arbitration

The parties shall bear their own costs, including attorneys' fees, in the arbitration. Initially, the Casino shall pay the arbitrator's fees, but if the arbitrator determines the Casino is the prevailing party on the arbitration, the arbitrator may award up to fifty percent of his or her fees to the Casino as costs.

### ii. Conduct of Hearing

The arbitrator will consider evidence, hear witnesses and receive exhibits in keeping with the goal of making a just final determination.

### iii. Standard of Proof

The arbitrator will weigh the evidence, testimony of witnesses, and exhibits and reach a decision based on the preponderance of evidence and credibility of the evidence and witnesses.

### iv. Burden of Proof

The burden of proof in any hearing before the arbitrator will be on the Claimant. A Dependent shall at anytime upon request furnish the Administrator with proof satisfactory to the Administrator of the nature, amount and extent of the contribution by the Employee for such Dependent's support and shall have the burden of proof on such issue in any hearing before the arbitrator.

v. Applicable Law

The Administrator and arbitrator shall be governed by this ordinance. California case law shall not be followed, but may be used as a non-binding source of guidance. Any use of California statutory law for guidance shall be liberally construed in favor of the Casino.

vi. Decision

An arbitrator's decision must be issued in writing and copies must be mailed to all interested parties. The decision shall generally review the evidence and testimony and may compare the merits of the evidence or testimony of the opposing parties. The arbitrator's decision shall state the arbitrator's final determination on all issues before him or her. No attorneys' fees, costs or punitive damages shall be awarded against the Casino in the arbitration.

vii. Effect of Request for Hearing

- a. During the pendency of the arbitration, the Claimant shall continue to receive all benefits approved by the Administrator in the original Written Decision, but shall receive no new benefits claimed before the arbitrator.
- b. Payments made to the Claimant during the pendency of the arbitration shall not be recovered by the Administrator or the Casino, except in cases of fraud.

**Section 9. Excluded Injuries**

- A. An injury which the Administrator determines did not arise out of or occur in the course of the Employee's employment shall be afforded no coverage under this Title.
- B. An injury occurring while an Employee travels to or from work is not a Work Injury, unless such travel is in connection with the performance of employment duties.
- C. The following are not Work Injuries:
  - i. Psychiatric Injury, where the Employee has been continuously employed for less than six months;
  - ii. Psychiatric Injury caused by a personnel action;

- iii. Injuries resulting from intoxication, by alcohol or the unlawful use of a controlled substance, of the Employee;
- iv. Self-inflicted injuries;
- v. Suicide;
- vi. Injuries resulting from an altercation in which the injured Employee is the initial physical aggressor;
- vii. Injuries resulting from horseplay;
- viii. Injuries occurring after the Employee has been terminated or has received notice of termination;
- ix. Injuries resulting from second-hand smoke;
- x. Complex regional pain syndrome and/or reflexive sympathetic dystrophy, regardless of the cause;
- xi. Idiopathic injuries or conditions;
- xii. Cumulative injuries where the Employee has been continuously employed for less than six months;
- xiii. Injuries caused by a third person or fellow Employee intended to injure the Employee for personal reasons;
- xiv. Injuries occurring during the commission of a felony, or a crime which is punishable as specified in subdivision (b) of Section 17 of the California Penal Code, by the injured Employee and the Employee is found by a preponderance of the evidence to have committed such act; or
- xv. Injuries arising out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting a part of the Employee's work related duties, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment.

## Section 10. Benefits

### A. Medical, Surgical, Hospital And Dental Treatment

- i. The injured Employee is entitled to receive all medical, surgical, hospital and dental treatment approved by the Administrator and reasonably necessary to cure or relieve from the effects of the Work Injury. Prior to the Administrator issuing its Written Decision, an Employee alleging a Work Injury shall be entitled to receive up to \$10,000 toward such treatment.
- ii. The injured Employee is entitled to treatment by a physician of his or her choice, either after 30 Days from the date the injury is reported or if a medical provider network has been established, within the medical provider network.

### B. Temporary Disability

- i. If the Work Injury causes temporary partial or temporary total Disability, the Disability payment is two-thirds of the Employee's average weekly earnings for the prior three months of employment, subject to the maximum amount set forth in the California Labor Code. No payment is due during the first 3 Days after the Employee leaves work as a result of the Work Injury.
- ii. Such payments will be reduced by the sum of unemployment compensation benefits and extended duration benefits received by the Employee during the period of Disability. The injured Employee shall report any pensions, Disability payments or earnings to the Administrator within 10 Days of receipt of such funds.
- iii. Temporary Disability payments shall be limited to 104 weeks or the maximum period set forth in the California Labor Code, counted from the date of the first payment.

### C. Permanent Partial Disability

For purposes of this ordinance, permanent partial Disability means a permanent Disability with a rating of less than one-hundred percent permanent Disability.

- i. In determining the percentage of permanent Disability, the Administrator shall take account of the nature of the physical injury or disfigurement, the occupation of the injured Employee, and the Employee's age at the time of the injury. The

Administrator will also consider the Employee's diminished ability to compete in an open labor market.

- ii. The Administrator may rely on the American Medical Association's Guides to the Evaluation of Permanent Impairment in determining the percentages of permanent Disability, but the Guides are not prima facie evidence of a percentage of Disability.
- iii. Average weekly wage will be determined based upon the Employee's actual average weekly wage for the prior three months of employment.

#### D. Permanent Total Disability

- i. Permanent total Disability is a Disability which the Administrator has determined precludes the injured Employee from any and all gainful employment. There shall be no presumptions of permanent total Disability.
- ii. Compensation shall be paid at the appropriate weekly rate for temporary Disability benefits.

#### E. Supplemental Job Displacement

- i. If a Work Injury results in permanent partial Disability and the injured Employee does not return to work for the Casino within 60 Days of the termination of temporary Disability, the injured Employee shall be eligible for a supplemental job displacement benefit for education-related retraining or skill enhancement at schools approved or accredited by the State of California.
- ii. The amount of the benefit will be:
  - a. Up to \$4,000 for permanent partial Disability awards of less than 15 percent, as determined by the Administrator;
  - b. Up to \$6,000 for permanent partial Disability awards between 15 and 25 percent, as determined by the Administrator;
  - c. Up to \$8,000 for permanent partial Disability awards between 26 and 49 percent, as determined by the Administrator;

d.Up to \$10,000 for permanent partial Disability awards between 50 and 99 percent, as determined by the Administrator.

- iii. The benefit may only be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement.
- iv. The Employee shall not be entitled to the supplemental job displacement benefit under this Section if within 30 Days of the termination of temporary Disability benefits, the Casino offers, and the Employee rejects, or fails to accept, modified or alternative work accommodating the Employee's work restrictions.

#### F. No Compensation During Incarceration

No compensation under this ordinance shall be payable during incarceration of the Employee.

#### G. Fatality Income Benefits

- i. When a Work Injury causes death within 5 years from the date of the injury, the Casino will be liable for compensation to the Dependents of the injured Employee as provided for in this Section. The Dependents must be totally or partially dependent upon the injured Employee at the time of the Work Injury and at the time of death in order to qualify for benefits.
- ii. The death benefit will be four times the Employee's annual earnings from the Casino, not to exceed the following maximums:
  - a. One Dependent: \$250,000.00;
  - b. Two Dependents: \$290,000.00;
  - c. Three or more Dependents: \$320,000.00; and
  - d. Burial allowance: \$5,000.00.
- iii. The death benefit will be paid in installments in the same manner and amounts as temporary Disability benefits. Benefits shall cease upon the remarriage of the Spouse or upon the Child or Children turning 18 years of age. Children over 18 years of age may receive benefits if the Administrator determines they are mentally or physically incapacitated from earning.

- iv. The weekly compensation will be divided between the qualifying Dependents in proportion to the percentage of support each received from the deceased Employee. It will be presumed that each qualifying Dependent received equal support from the deceased Employee.

### **Section 11. Statute Of Limitations**

Any right to benefits under this Title shall be barred unless a Work Injury is reported in writing to the Casino within 30 Days of its occurrence.

### **Section 12. Compromise and Release**

Nothing in this Title shall impair the rights of the parties to compromise any liability that is claimed to exist under this Title on account of injury, disease or death, subject to the provisions herein. The Administrator shall enter an award based on the release or compromise agreement.

### **Section 13. Claim Closure**

An Employee's claim shall be closed when the Administrator determines it appropriate to do so. Circumstances meriting claim closure include, but are not limited to, determination by the Administrator that the injured Employee has reached the point where no further material improvement would reasonably be expected from medical treatment, the Claimant's withdrawal or abandonment of the claim, the Claimant's failure to comply with the Administrator's claim investigation, and the lack of medical treatment within a successive 12 month period.

### **Section 14. Recovery of Payments Made In Error**

- A. Whenever the Administrator pays a claim under this ordinance as a result of a clerical error, mistaken identity, innocent misrepresentation by or on behalf of the payment recipient, or because of any other similar circumstance not involving fraud, the recipient shall refund the payment to the Administrator. The Administrator must request such refund within one year of making the payment, or the Administrator will waive the refund claim. The Administrator has discretion to waive, in whole or in part, any refund claim where the recovery would be against equity and good conscience.
- B. Whenever the Administrator has been fraudulently induced to make any benefit payment under this ordinance, the recipient shall repay the payment, along with a penalty of fifty percent of the payment amount. The Administrator must demand the repayment within one year of discovering the fraud.

### **Section 15. Claim Files and Records Confidential**

Information contained in the claims file and records of injured Employees shall be confidential and shall not be open to public inspection. A Claimant (or his or her representatives, after presenting the Claimant's signed authorization) may obtain from the Administrator copies of the relevant Employee's medical records from the Employee's claim file, but is entitled to no other documentation or information from that claim file. The Casino or its duly authorized representatives may review any files of their own injured Employees in connection with any pending claims. Physicians treating or examining Employees claiming benefits under this ordinance, or physicians giving medical advice to the Administrator regarding any claim may, at the Administrator's discretion, inspect the claims files and records of the injured Employee. Other persons may inspect Employee claims files and records, at the Administrator's discretion, when such persons are assisting the Administrator with any aspect of a claim.

### **Section 16. Effective Date**

Upon approval of this Code, this Title shall apply to all claims being administered as of that date, and to all Work Injuries reported after that date, regardless of when the Work Injury occurred.

### **Section 17. Sovereign Immunity**

The Tribe hereby waives its right to assert sovereign immunity (and any defense based on sovereign immunity) in an arbitration proceeding conducted in accordance with Section 8 of this Article. The Tribe waives its right to assert sovereign immunity in an action in a court of competent jurisdiction to (1) enforce its obligation to arbitrate as set forth in Section XI(B), (2) confirm, correct, or vacate pursuant to California Code of Civil Procedure 1285 et seq., the arbitral award rendered in said arbitration, or (3) enforce or execute a judgment based upon said arbitral award. Nothing in this ordinance shall be construed as a sovereign immunity waiver to allow any court to adjudicate the merits of any claim submitted pursuant to this Title. This limited waiver shall create no rights in and does not apply to any third party or to any legal process that does not comply with the terms and conditions of this Title.

## **TITLE 5. CASINO TRIBAL EMPLOYMENT PREFERENCE**

### **ARTICLE 1 – PURPOSE**

In accordance with Section 12.3(f) of the Amended and Restated Tribal State Compact between The State of California and the Shingle Springs Band of Miwok Indians, this Article is created to effectuate the Tribe's right to give preference in employment at the Gaming Facility to members of federally-recognized Indian Tribes.

### **ARTICLE 2 – ESTABLISHING PREFERENCE**

Before an applicant may receive preference in employment at the Gaming Facility, it must first be established that he/she meets the qualifications as stated in the job announcement/description.

### **ARTICLE 3 – PREFERENCE**

It is the policy of the Gaming Authority to hire the most qualified applicant. However, when candidates for an open position are determined to be equally qualified, Native American candidates will have preference for hiring purposes. This means that if the qualifications of the best candidates are comparable, the Native American candidate is given preference. The following order of preference shall be adhered to when hiring qualified applicants at the Gaming Facility.

- A. Members of Shingle Springs Band of Miwok Indians
- B. Spouses of members of the Shingle Springs Band of Miwok Indians
- C. Parents of children of the Shingle Springs Band of Miwok Indians
- D. All other documented Native Americans
- E. El Dorado County Residents
- F. All other applicants

If there are multiple qualified applicants at the same preference level, then the decision-maker shall have discretionary authority to pick among the highest preference applicants.

### **ARTICLE 4 – EMPLOYMENT DISCRIMINATION**

Any employment preference given in accordance with this Ordinance shall not be subject to an Employment Discrimination Claim.

# **TITLE 6. CASINO EMPLOYMENT DISCRIMINATION** **ORDINANCE**

## **ARTICLE 1 – PURPOSE**

In accordance with Section 12.3(f) of the Amended and Restated Tribal State Compact between The State of California and the Shingle Springs Band of Miwok Indians, this Ordinance is created to provide a fair system for adjudication of claims of discrimination in employment arising solely in connection with employment by the Gaming Authority at the Tribe's Gaming Facility.

All terms not otherwise defined in this Ordinance shall have the definition assigned to them in the Compact.

## **ARTICLE 2 – LIMITED WAIVER OF SOVEREIGN IMMUNITY**

### **Section 1. Harassment, Retaliation and Employment Discrimination Claims**

If the Claimant has exhausted the Tribal Dispute Process, the Tribe expressly waives its sovereign immunity and its right to assert sovereign immunity and any and all defenses with respect to the arbitration or the Tribal Court hearing of any Claim for harassment, retaliation, or employment discrimination arising out of the Claimant's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming Activities. This waiver shall not apply to;

- A. Punitive damages.
- B. The portions of Claims that exceed either three million dollars (\$3,000,000) or the Policy limits, whichever is greater.

### **Section 2. Tribal Court**

The Tribe expressly waives its sovereign immunity and its right to assert sovereign immunity in connection with the Tribal Court jurisdiction, the arbitrator's jurisdiction and in any state or federal action to;

- A. Enforce the parties' obligation to arbitrate;
- B. Confirm, correct, or vacate the arbitral award rendered in the arbitration in accordance with section 1285 et seq. of the California Code of Civil Procedure, or;
- C. Enforce or execute a judgment based upon the award.

### **ARTICLE 3 – TRIBAL EMPLOYMENT DISPUTE RESOLUTION PROCESS**

The Claimant must first exhaust the Tribal Employment Dispute Resolution Process before he or she may bring a Claim under this Ordinance to Tribal Court or arbitration. The process for the Tribal Employment Dispute Resolution shall be;

**Step 1.** When a Claimant believes he or she has been the victim of Employment Discrimination, he or she shall have one (1) year from the date that the alleged discriminatory act occurred to file a written notice with the Vice President (“VP”) of Human Resources (“HR”) of the Casino.

**Step 2.** Within fourteen (14) days following notification that a Claimant claims that he or she has suffered Employment Discrimination, the Tribe shall provide written notice by personal service, FedEx signed receipt, or certified mail, return receipt requested, that the Claimant is first required to exhaust the Tribal Employment Dispute Resolution process within one hundred eighty (180) days, and if dissatisfied with the resolution, is entitled at Claimant’s sole option to bring an action in Tribal Court or arbitrate the claim before a retired judge in a binding arbitration proceeding, both to be at no cost to the Claimant (excluding any costs incurred by the Claimant on their own, including Claimant’s attorney or expert witness fees). The VP of HR shall also provide the Claimant with the Administrative Claim Form.

**Step 3.** The Claimant must file the Administrative Claim Form with the VP of HR within one-hundred-eighty (180) days of receipt of the written notice (“limitation period”) of the Tribe’s Employment Dispute Resolution Process, as long as the notice complies with Step 2 above, and the limitation period is prominently displayed on the front page of the notice. Any arbitration or Tribal Court hearings shall be stayed until the completion of the Tribal Employment Dispute Process or one hundred eighty (180) days from the date the Claim is filed, whichever first occurs, unless the parties mutually agree in writing to a longer period.

**Step 4.** The VP of HR or designee shall investigate the Claim and shall then inform the Claimant in writing, within twenty (20) days of receipt of the Claim, whether the Claim is founded, unfounded, unable to determine or rejected.

**Step 5.** If the VP of HR denies the Claim, the Claimant has twenty (20) days from the date of the denial letter to request, in writing, to the VP of HR that the Claim be reviewed by the Tribe’s Legal Department, otherwise the Claim will be forever barred.

**Step 6.** If requested by the Claimant, the Tribe’s Legal Department shall investigate the Claim and inform the Claimant in writing, within twenty (20) days of receipt of the request, whether the claim has been accepted or denied.

**Step 7.** The decision of the Tribe’s Employment Dispute Resolution Process shall be rendered within one hundred eighty (180) days from the date the claim was filed, unless the parties mutually agree, in writing, upon a longer period. The decision shall be in writing, based on the facts surrounding the dispute, and a reasoned decision.

**Step 8.** If the Claim is denied, or the Claimant is dissatisfied with the resolution, the Claimant has twenty (20) days from the date of the notice of denial to request that it be either arbitrated or heard in Tribal Court. The decision to choose either binding arbitration or the Tribal Court system shall be at the sole discretion of the Claimant.

#### **ARTICLE 4 – RESOLUTION BY TRIBAL COURT**

If the Claimant requests the dispute be settled in Tribal Court, the Tribe shall consent provided that the following apply;

- A. Unless otherwise stated in this Ordinance, all Tribal Court rules and procedures shall apply.
- B. The title of the filed court claim shall be “Claimant v. Red Hawk Casino,” and all service shall go through the VP of HR.
- C. Resolution of the dispute before the Tribal Court system shall be at no cost to the Claimant (excluding any cost, if any, incurred by the Claimant on their own, including Claimant’s attorney or expert witness fees).
- D. The decision of the Tribal Court shall be final and binding on both parties.
- E. The Tribe agrees not to assert, and will waive, any defense alleging improper venue or forum non conveniens as to any state court located within the County or any federal court located in the Eastern District of California in any such action brought with respect to the Tribal Court award.

#### **ARTICLE 5 – RESOLUTION BY ARBITRATION**

If the Claimant requests the dispute be settled in arbitration, the Tribe shall consent provided that the following apply;

- A. The claim shall be heard by a single arbitrator, who is a retired judge (“JAMS arbitrator”).
- B. The arbitration shall be conducted in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS (or, if those rules no longer exist, the closest equivalent).

- C. The arbitration shall take place within seventy-five (75) miles of the Gaming Facility, or as otherwise mutually agreed by the parties.
- D. Discovery shall be governed by section 1283.05 of the California Code of Civil Procedure.
- E. The cost and expenses of arbitration shall initially be borne by the Tribe. However, the arbitrator may award costs to the prevailing party not to exceed those allowable in a suit in California Superior Court.
- F. The decision of the arbitrator shall be binding on both parties.
- G. Any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent), provided that the party making such election must bear all costs and expenses of JAMS and the JAMS arbitrators associated with the Appeal Procedure, regardless of the outcome.
- H. The Tribe agrees not to assert, and will waive, any defense alleging improper venue or forum non conveniens as to any state court located within the County or any federal court located in the Eastern District of California in any such action brought with respect to the arbitration award.

**ARTICLE 6 – APPLICABLE LAW**

California law shall govern all claims of harassment, retaliation, or employment discrimination arising out of the claimant's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility, or the Gaming Activities; with the exception that California law providing for punitive damages shall not apply. Nothing in this provision shall be construed as a submission of the Tribe to the jurisdiction of the California Department of Fair Employment and Housing or the California Fair Employment and Housing Commission.

**ARTICLE 7 – EFFECTIVE DATE**

This Ordinance shall become effective upon adoption by the Tribal Council and shall replace all existing Employment Discrimination Ordinances thereby encompassing all past, present and future claims.

# **TITLE 7. TRIBAL LABOR RELATIONS ORDINANCE**

## **ARTICLE 1 – PURPOSE**

Rules & procedural requirements governing the tribal labor relations activities of the Shingle Springs Band of Miwok Indians.

## **ARTICLE 2 – THRESHOLD OF APPLICABILITY**

- A. Any Tribe with 250 or more persons employed in a tribal casino and related facility shall adopt this Tribal Labor Relations Ordinance ("TLRO or Ordinance"). For purposes of this ordinance, a "tribal casino" is one in which class III gaming is conducted pursuant to a tribal- state compact. A "related facility" is one for which the only significant purpose is to facilitate patronage of the class III gaming operations.
- B. Any Tribe which does not operate such a tribal casino as of September 10, 1999, but which subsequently opens a tribal casino, may delay adoption of this ordinance until one year from the date the number of employees in the tribal casino or related facility as defined in 1(a) above exceeds 250.
- C. Upon the request of a labor union, the Tribal Gaming Commission shall certify the number of employees in a tribal casino or other related facility as defined in 1(a) above. Either party may dispute the certification of the Tribal Gaming Commission to the Tribal Labor Panel.

## **ARTICLE 3 – DEFINITION OF ELIGIBLE EMPLOYEES**

- A. The provisions of this ordinance shall apply to any person (hereinafter "Eligible Employee") who is employed within a tribal casino in which Class III gaming is conducted pursuant to a tribal-state compact or other related facility, the only significant purpose of which is to facilitate patronage of the Class III gaming operations, except for any of the following:
  - i. any employee who is a supervisor, defined as any individual having authority, in the interest of the Tribe and/or employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

- ii. any employee of the Tribal Gaming Commission;
- iii. any employee of the security or surveillance department, other than those who are responsible for the technical repair and maintenance of equipment;
- iv. any cash operations employee who is a "cage" employee or money counter; or
- v. any dealer.

**ARTICLE 4 – NON-INTERFERENCE WITH REGULATORY  
OR SECURITY ACTIVITIES**

Operation of this Ordinance shall not interfere in any way with the duty of the Tribal Gaming Commission to regulate the gaming operation in accordance with the Tribe's National Indian Gaming Commission-approved gaming ordinance. Furthermore, the exercise of rights hereunder shall in no way interfere with the tribal casino's surveillance/security systems, or any other internal controls system designed to protect the integrity of the Tribe's gaming operations. The Tribal Gaming Commission is specifically excluded from the definition of Tribe and its agents.

**ARTICLE 5 – ELIGIBLE EMPLOYEES FREE TO ENGAGE IN OR REFRAIN FROM  
CONCERTED ACTIVITY**

Eligible Employees shall have the right to self-organization, to form, to join, or assist employee organizations, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

**ARTICLE 6 – UNFAIR LABOR PRACTICES FOR THE TRIBE**

It shall be an unfair labor practice for the Tribe and/or employer or their agents:

- A. to interfere with, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;
- B. to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, but this does not restrict the Tribe and/or employer and certified union from agreeing to union security or dues checkoff;
- C. to discharge or otherwise discriminate against an Eligible Employee because s/he has filed charges or given testimony under this Ordinance;
- D. to refuse to bargain collectively with the representatives of Eligible Employees.

## **ARTICLE 7 – UNFAIR LABOR PRACTICES FOR THE UNION**

It shall be an unfair labor practice for a labor organization or its agents:

- A. to interfere, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;
- B. to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or primary or secondary boycott or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce or other terms and conditions of employment. This section does not apply to Section 11;
- C. to force or require the Tribe and/or employer to recognize or bargain with a particular labor organization as the representative of Eligible Employees if another labor organization has been certified as the representative of such Eligible Employees under the provisions of this TLRO;
- D. to refuse to bargain collectively with the Tribe and/or employer, provided it is the representative of Eligible Employees subject to the provisions herein;
- E. to attempt to influence the outcome of a tribal governmental election, provided, however, that this section does not apply to tribal members.

## **ARTICLE 8 – TRIBE AND UNION RIGHT TO FREE SPEECH**

The Tribe's and union's expression of any view, argument or opinion or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of interference with, restraint or coercion if such expression contains no threat of reprisal or force or promise of benefit.

## **ARTICLE 9 – ACCESS TO ELIGIBLE EMPLOYEES**

### **Section 1. Union Access**

Access shall be granted to the union for the purposes of organizing Eligible Employees, provided that such organizing activity shall not interfere with patronage of the casino or related facility or with the normal work routine of the Eligible Employees and shall be done on non-work time in non-work areas that are designated as employee break rooms or locker rooms that are not open to the public. The Tribe may require the union and or union organizers to be subject to the same licensing rules applied to individuals or entities with similar levels of access to the casino or

related facility, provided that such licensing shall not be unreasonable, discriminatory, or designed to impede access.

### **Section 2. Additional Voluntary Access**

The Tribe, in its discretion, may also designate additional voluntary access to the Union in such areas as employee parking lots and non-Casino facilities located on tribal lands.

### **Section 3. Activities that Interfere with Tribal Work**

In determining whether organizing activities potentially interfere with normal tribal work routines, the union's activities shall not be permitted if the Tribal Labor Panel determines that they compromise the operation of the casino:

- A. security and surveillance systems throughout the casino, and reservation;
- B. access limitations designed to ensure security;
- C. internal controls designed to ensure security;
- D. other systems designed to protect the integrity of the Tribe's gaming operations, tribal property and/or safety of casino personnel, patrons, employees or tribal members, residents, guests or invitees.

### **Section 4. Election Eligibility List**

The Tribe shall provide to the union, upon a thirty percent (30%) showing of interest to the Tribal Labor Panel, an election eligibility list containing the full first and last name of the Eligible Employees within the sought after bargaining unit and the Eligible Employees' last known address within ten (10) working days. Nothing herein shall preclude a Tribe from voluntarily providing an election eligibility list at an earlier point of a union organizing campaign.

### **Section 5. Dissemination of Information**

The Tribe agrees to facilitate the dissemination of information from the union to Eligible Employees at the tribal casino by allowing posters, leaflets and other written materials to be posted in non-public employee break areas where the Tribe already posts announcements pertaining to Eligible Employees. Actual posting of such posters, notices, and other materials, shall be by employees desiring to post such materials.

## **ARTICLE 10 – INDIAN PREFERENCE EXPLICITLY PERMITTED**

Nothing herein shall preclude the Tribe from giving Indian preference in employment, promotion, seniority, lay-offs, or retention to members of any federally recognized Indian Tribe or shall in any way affect the Tribe's right to follow tribal law, ordinances, personnel policies or the Tribe's customs or traditions regarding Indian preference in employment, promotion, seniority, lay-offs or retention. Moreover, in the event of a conflict between tribal law, tribal ordinance or the Tribe's customs and traditions regarding Indian preference and this Ordinance, the tribal law, tribal ordinance or the Tribe's customs and traditions shall govern.

## **ARTICLE 11 – SECRET BALLOT ELECTIONS REQUIRED**

### **Section 1. Election**

Dated and signed authorized cards from thirty percent (30%) or more of the Eligible Employees within the bargaining unit verified by the elections officer will result in a secret ballot election to be held within 30 days from presentation to the elections officer.

### **Section 2. Election Officers**

The election shall be conducted by the election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning representation of the Tribe and/or Employer's Eligible Employees by a labor organization shall be resolved by the election officer. The election officer shall be chosen upon notification by the labor organization to the Tribe of its intention to present authorization cards, and the same election officer shall preside thereafter for all proceedings under the request for recognition; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

### **Section 3. Certifying the Labor Organization**

The election officer shall certify the labor organization as the exclusive collective bargaining representative of a unit of employees if the labor organization has received the majority of votes by employees voting in a secret ballot election that the election officer determines to have been conducted fairly. If the election officer determines that the election was conducted unfairly due to misconduct by the Tribe and/or employer or union, the election officer may order a re-run election. If the election officer determines that there was the commission of serious Unfair Labor Practices by the Tribe that interfere with the election process and preclude the holding of a fair election, and the labor organization is able to demonstrate that it had the support of a majority of the employees in the unit at any point before or during the course of the Tribe's misconduct, the election officer shall certify the labor organization.

#### **Section 4. Appeals**

The Tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

#### **Section 5. Union which Loses Election**

A union which loses an election and has exhausted all dispute remedies related to the election may not invoke any provisions of this labor ordinance at that particular casino or related facility until one year after the election was lost.

### **ARTICLE 12 – COLLECTIVE BARGAINING IMPASSE**

Upon recognition, the Tribe and the union will negotiate in good faith for a collective bargaining agreement covering bargaining unit employees represented by the union. If collective bargaining negotiations result in impasse, and the matter has not be resolved by the tribal forum procedures set forth in Section 13(b) governing resolution of impasse within sixty (60) working days or such other time as mutually agreed to by the parties, the union shall have the right to strike. Strike-related picketing shall not be conducted on Indian lands as defined in 25 U.S.C. Sec. 2703 (4).

### **ARTICLE 13 – DECERTIFICATION OF BARGAINING AGENT**

#### **Section 1. Election**

The filing of a petition signed by thirty percent (30%) or more of the Eligible Employees in a bargaining unit seeking the decertification of a certified union, will result in a secret ballot election to be held 30 days from the presentation of the petition.

#### **Section 2. Election Officer**

The election shall be conducted by an election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning the decertification of the labor organization shall be resolved by an election officer. The election officer shall be chosen upon notification to the Tribe and the union of the intent of the employees to present a decertification petition, and the same election officer shall preside thereafter for all proceedings under the request for decertification; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

#### **Section 3. Decertification**

The election officer shall order the labor organization decertified as the exclusive collective bargaining representative if a majority of the employees voting in a secret ballot election that the

election officer determines to have been conducted fairly vote to decertify the labor organization. If the election officer determines that the election was conducted unfairly due to misconduct by the Tribe and/or employer or the union the election officer may order a re-run election or dismiss the decertification petition.

#### **Section 4. Timing**

A decertification proceeding may not begin until one (1) year after the certification of a labor union if there is no collective bargaining agreement. Where there is a collective bargaining agreement, a decertification petition may only be filed no more than 90 days, and no less than 60 days prior to the expiration of a collective bargaining agreement. A decertification petition may be filed any time after the expiration of a collective bargaining agreement.

#### **Section 5. Appeals**

The Tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

### **ARTICLE 14 – BINDING DISPUTE RESOLUTION MECHANISM**

#### **Section 1. Exclusive Dispute Resolution**

All issues shall be resolved exclusively through the binding dispute resolution mechanisms herein, with the exception of a collective bargaining negotiation impasse, which shall only go through the first level of binding dispute resolution.

#### **Section 2. First Level**

The first level of binding dispute resolution for all matters related to organizing, election procedures, alleged unfair labor practices, and discharge of Eligible Employees shall be an appeal to a designated tribal forum such as a Tribal Council, Business Committee, or Grievance Board. The parties agree to pursue in good faith the expeditious resolution of these matters within strict time limits. The time limits may not be extended without the agreement of both parties. In the absence of a mutually satisfactory resolution, either party may proceed to the independent binding dispute resolution set forth below. The agreed upon time limits are set forth as follows:

- A. All matters related to organizing, election procedures and alleged unfair labor practices prior to the union becoming certified as the collective bargaining representative of bargaining unit employees, shall be resolved by the designated tribal forum within thirty (30) working days.

- B. All matters after the union has become certified as the collective bargaining representative and relate specifically to impasse during negotiations, shall be resolved by the designated tribal forum within sixty (60) working days;

### **Section 3. Second Level**

The second level of binding dispute resolution shall be a resolution by the Tribal Labor Panel, consisting often (10) arbitrators appointed by mutual selection of the parties which panel shall serve all Tribes that have adopted this ordinance. The Tribal Labor Panel shall have authority to hire staff and take other actions necessary to conduct elections, determine unites, determine scope of negotiations, hold hearings, subpoena witnesses, take testimony, and conduct all other activities needed to fulfill its obligations under this Tribal Labor Relations Ordinance.

- A. Each member of the Tribal Labor Panel shall have relevant experience in federal labor law and/or federal Indian law with preference given to those with experience in both. Names of individuals may be provided by such sources as, but not limited to, Indian Dispute Services, Federal Mediation and Conciliation Service, and the American Academy of Arbitrators.
- B. Unless either party objects, one arbitrator from the Tribal Labor Panel will render a binding decision on the dispute under the Ordinance. If either party objects, the dispute will be decided by a three-member panel of the Tribal Labor Panel, which will render a binding decision. In the event there is one arbitrator, five (5) Tribal Labor Panel names shall be submitted to the parties and each party may strike no more than two (2) names. In the event there is a three (3) member panel, seven (7) TLP names shall be submitted to the parties and each party may strike no more than two (2) names. A coin toss shall determine which party may strike the first name. The arbitrator will generally follow the American Arbitration Association's procedural rules relating to labor dispute resolution. The arbitrator or panel must render a written, binding decision that complies in all respects with the provisions of this Ordinance.

### **Section 4. Third Level**

Under the third level of binding dispute resolution, either party may seek a motion to compel arbitration or a motion to confirm an arbitration award in Tribal Court, which may be appealed to federal court. If the Tribal Court does not render its decision within 90 days, or in the event there is no Tribal Court, the matter may proceed directly to federal court. In the event the federal court declines jurisdiction, the Tribe agrees to a limited waiver of its sovereign immunity for the sole purpose of compelling arbitration or confirming arbitration award issued pursuant to the Ordinance in the appropriate state superior court. The parties are free to put at issue whether or not the arbitration award exceeds the authority of the Tribal Labor Panel.

## **TITLE 8 . GARNISHMENT OF WAGES ORDINANCE**

### **ARTICLE 1 – PURPOSE**

This Ordinance is establish in order to provide a procedure whereby creditors may garnish wages from an employee of the Shingle Springs Band of Miwok Indians, the Tribe's Gaming Operation, SSBMI Development Corporation, or independent contractors contracting with an entity on the Rancheria.

### **ARTICLE 2 – JURISDICTION**

A creditor shall begin a garnishment action against an employee of the Shingle Springs Band of Miwok Indians, the Tribe's Gaming Operation, SSBMI Development Corporation, or independent contractor contracting with either entity, by first obtaining a final judgment from an appropriate court. A garnishment action under this section shall not begin unless the creditor has:

- A. Already obtained a valid final judgment and can show proof of judgment to the Court Clerk; and
- B. The debtor has failed to pay the creditor the agreed upon amount within 40 days of the judgment.

### **ARTICLE 3 – TRIBAL COURT PROCESS**

- A. Filing. The Creditor shall be required to file an action with the Tribal Court according to the Tribal Court Ordinance and the Rules of Court.
- B. Garnishment Hearing. The Tribal Court shall establish a designated date, time, and place to hear evidence in order to render a determination as to the validity of a claim by the creditor in a garnishment action and the amount of the garnishment order to be entered. Hearings shall not be utilized to challenge the validity of the final judgment other than the authenticity of the document. The time may be used to resolve one or more deduction claims of one or more employees. However, each claim shall be heard and determined separately.
- C. Final Decision. The Tribal Court will make the final decision in accordance with the Tribal Court Ordinance and Rules of Court.

### **ARTICLE 4 – NOTICE OF GARNISHMENT**

The Tribal Court will notify the appropriate Finance Department or Payroll Department should a decision to garnish an employee's compensation be made. The notice shall contain the amount and source to be garnished, how long the garnishment will take place, or the number of garnishments and any related fees authorized under the Tribal Court Rules.

**ARTICLE 5 – GARNISHMENT ACTION**

The Departments shall begin garnishments within 20 days of notification of the judgment. The Department shall then: Send to the creditor the allowable amount garnished from the employee's paycheck following each payroll period and notify the employee and creditor when the garnishments are terminated.

**ARTICLE 6 – ADMINISTRATIVE FEE**

An administrative fee of \$5.00 shall be deducted monthly along with the ordered garnishment until the amount claimed is paid in full. This fee is to cover the cost of garnishing as expected by the Finance or Payroll Department.

**ARTICLE 7 – AMOUNT OF GARNISHMENT**

The Tribal Court may order an Employee's compensation to be subject to a garnishment of up to twenty percent of the employee's disposable weekly wage, the remainder to be identified as a protected subsistence allowance. Provided that, in calculating twenty percent, the Tribal Court shall not include amounts garnished regarding child support orders. The Employee may voluntarily request more to be deducted. The request shall be made directly to the Finance Department. It is presumed that the beginning amount to be deducted in any garnishment hearing shall begin at twenty percent of the Employee's weekly wages. The respondent is responsible for presenting evidence that it is unreasonable to require the full twenty percent be deducted.

**ARTICLE 8 –GARNISHMENTS BY THE STATE FOR EMPLOYEES AT THE TRIBE’S GAMING OPERATION**

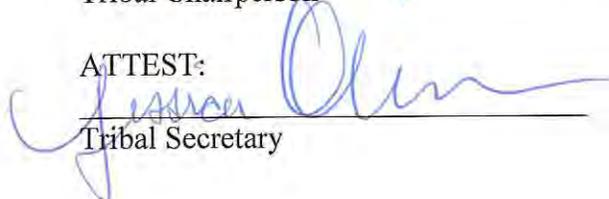
The Tribe and the Tribal Court will honor all garnishments by the State of California for employees at the Tribe's Gaming Operation as described in the 2012 Amended and Restated Tribal-State Gaming Compact at Section 12.6, subdivision (e). The amount of the garnishment will not be subject to modification by the Tribal Court as outline in Article 7 above.

**CERTIFICATION**

*As a duly-elected official of the Shingle Springs Band of Miwok Indians, I do hereby certify that, at a meeting duly called, noticed, and convened on the 10th day of September 2015 at which time a quorum of 5 existed and voted 5 FOR, 0 AGAINST, 0 ABSTAINED, and said Ordinance has not been rescinded or amended in any form.*

  
\_\_\_\_\_  
Tribal Chairperson

September 10, 2015  
\_\_\_\_\_  
Date

ATTEST:  
  
\_\_\_\_\_  
Tribal Secretary

September 10, 2015  
\_\_\_\_\_  
Date