



SHINGLE SPRINGS BAND OF MIWOK INDIANS

Shingle Springs Rancheria, (Verona) Tract, California

5281 Honpie Road, Placerville CA 95667

P.O. Box 1340, Shingle Springs CA 95682

(530) 676-8010 Office; (530) 676-8033 Fax

WORKERS' COMPENSATION ORDINANCE FOR TRIBAL EMPLOYEES

SECTION 1 TITLE

The Shingle Springs Band of Miwok Indians, a sovereign Indian tribe (the "Tribe"), hereby enacts this ordinance, which shall be entitled the "Workers' Compensation Ordinance for Tribal Employees."

SECTION 2 AUTHORITY

The Tribe enacts this ordinance under its inherent sovereign authority.

SECTION 3 PURPOSE

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

SECTION 4 DECLARATION OF POLICY

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

- 4.1 To provide sure and prompt medical treatment for injured Employees, and fair, adequate and reasonable income benefits to Claimants; and
- 4.2 To provide a fair and just administrative system for delivery of medical and income benefits to injured Employees; and
- 4.3 To restore injured Employees physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable; and
- 4.4 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 5 SCOPE

This ordinance 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 6 EXCLUSIVE REMEDY

This ordinance 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 ordinance. Such liability shall not be expanded except by amendment of this ordinance by the Tribal Council.

SECTION 7 DEFINITIONS

- 7.1 **“Administrator”** means the agency (which may be a department of the Tribe) or individual responsible for managing the 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 regarding the program and individual claims. The Administrator’s duties are more fully described at Section 9, below.
- 7.2 **“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.
- 7.3 **“Claimant(s)”** means an Employee or his or her Dependents, who seek compensation for a Work Injury suffered by the Employee.
- 7.4 **“Days”** means calendar days unless otherwise expressly provided.
- 7.5 **“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.
- 7.6 **“Disability”** means the Employee’s incapacity, resulting from a Work Injury, to perform his or her usual work, or to perform that work full time.
- 7.7 **“Employee”** means a person employed by the Tribe under any contract for hire, express or implied, oral or written, where the Tribe has the power or right to control and direct such individual in return for which such individual receives a salary or wages. For purposes of this ordinance, Employee does not include independent contractors, contractors, outside consultants, and any elected or appointed officials.

- 7.8 **“Independent Medical Examination”** means a medical examination and/or evaluation of the Employee, scheduled by the Tribe or Administrator, at the Tribe’s expense, for the purpose of obtaining medical information or an opinion.
- 7.9 **“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.
- 7.10 **“Reservation”** means all land held or owned by the Tribe, including all lands held in trust by the United States of America for the benefit of the Tribe, whether or not such land has reservation status.
- 7.11 **“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.
- 7.12 **“Tribal Council”** means the Tribe’s governing body as established by the Tribal Constitution and Bylaws.
- 7.13 **“Work Injury”** or **“Work Injuries”** mean any injury or disease, including Psychiatric Injury, arising out of and in the course of employment with the 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:

- (a) “Specific,” occurring as a result of one incident or exposure which causes Disability or need for medical treatment; or
 - (b) “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.
- 7.14 **“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.

SECTION 8 REPORTING OBLIGATIONS

- 8.1 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.
- 8.2 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.
- 8.3 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 9 ADMINISTRATOR

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

- 9.1 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.
- 9.2 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.
- 9.3 Based on information supplied by the Tribe and/or Employee, the Administrator will determine the compensation rates payable for Disability and dependency.
- 9.4 The Administrator will determine the length of time during which temporary total or temporary partial Disability benefits are payable.
- 9.5 The Administrator will determine the amount of permanent partial Disability benefits payable.
- 9.6 The Administrator will determine the eligibility of Dependents and the term of any dependency benefits payable.
- 9.7 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.

- 9.8 If an Employee's claim is subject to the limitations of Section 14, the Administrator will advise the Employee and Tribe in writing of the effect of this limitation.
- 9.9 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 10 INDEPENDENT MEDICAL EXAMINATION

- 10.1 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.
- 10.2 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.
- 10.3 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 11 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.

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 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 12 EXCLUDED INJURIES

- 12.1 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.
- 12.2 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.
- 12.3 The following are not Work Injuries:
- (a) Psychiatric Injury, where the Employee has been continuously employed for less than six months;
 - (b) Psychiatric Injury caused by a personnel action;
 - (c) Injuries resulting from intoxication, by alcohol or the unlawful use of a controlled substance, of the Employee;
 - (d) Self-inflicted injuries;
 - (e) Suicide;
 - (f) Injuries resulting from an altercation in which the injured Employee is the initial physical aggressor;
 - (g) Injuries resulting from horseplay;
 - (h) Injuries occurring after the Employee has been terminated or has received notice of termination;
 - (i) Injuries resulting from second-hand smoke;
 - (j) Complex regional pain syndrome and/or reflexive sympathetic dystrophy, regardless of the cause;
 - (k) Idiopathic injuries or conditions;
 - (l) Cumulative injuries (as defined in Section 7.14(b)) where the Employee has been continuously employed for less than six months;
 - (m) Injuries caused by a third person or fellow Employee intended to injure the Employee for personal reasons;
 - (n) 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

- (o) 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 13 BENEFITS

13.1 MEDICAL, SURGICAL, HOSPITAL AND DENTAL TREATMENT

- (a) 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.
- (b) The Administrator will determine the medical services providers who will treat injured Employees.

13.2 TEMPORARY DISABILITY

- (a) 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.
- (b) 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.
- (c) 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.

13.3 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.

- (a) 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.
- (b) 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.

- (c) Average weekly wage will be determined based upon the Employee's actual average weekly wage for the prior three months of employment.

13.4 PERMANENT TOTAL DISABILITY

- (a) 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.
- (b) Compensation shall be paid at the appropriate weekly rate for temporary Disability benefits.

13.5 SUPPLEMENTAL JOB DISPLACEMENT

- (a) 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.
- (b) The amount of the benefit will be:
 - (i) Up to \$4,000 for permanent partial Disability awards of less than fifteen (15) percent, as determined by the Administrator;
 - (ii) Up to \$6,000 for permanent partial Disability awards between fifteen (15) and twenty-five (25) percent, as determined by the Administrator;
 - (iii) Up to \$8,000 for permanent partial Disability awards between twenty-six (26) and forty-nine (49) percent, as determined by the Administrator;
 - (iv) Up to \$10,000 for permanent partial Disability awards between fifty (50) and ninety-nine (99) percent, as determined by the Administrator.
- (c) The benefit may only be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement.
- (d) 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.

13.6 NO COMPENSATION DURING INCARCERATION

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

13.7 FATALITY INCOME BENEFITS

- (a) 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.
- (b) The death benefit will be four times the Employee's annual earnings from the Tribe, not to exceed the following maximums:
 - (i) One Dependent: \$250,000.00;
 - (ii) Two Dependents: \$290,000.00;
 - (iii) Three or more Dependents: \$320,000.00; and
 - (iv) Burial allowance: \$5,000.00.
- (c) 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.
- (d) 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 14 STATUTE OF LIMITATIONS

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

SECTION 15 COMPROMISE AND RELEASE

Nothing in this ordinance shall impair the rights of the parties to compromise any liability that is claimed to exist under this ordinance 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 16 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 17 RECOVERY OF PAYMENTS MADE IN ERROR

17.1 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.

17.2 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 18 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.

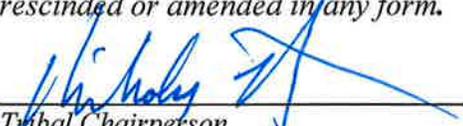
SECTION 19 EFFECTIVE DATE, AMENDMENT

This ordinance shall take effect as of November 8, 2012, and 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. This ordinance shall remain in full force and effect until such time as the ordinance may be amended in the same manner as it was adopted.

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 8th day of November, 2012 at which time a quorum of 7 was present, this ordinance was duly adopted by a vote of 7 FOR, 0 AGAINST, 0 ABSTAINED, and said ordinance has not been rescinded or amended in any form.



Tribal Chairperson

11/8/12

Date

ATTEST:



Tribal Secretary

11/8/12

Date



SHINGLE SPRINGS BAND OF MIWOK INDIANS

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RESOLUTION 2012-79

SUBJECT: APPROVAL OF WORKERS COMPENSATION ORDINANCE FOR TRIBAL EMPLOYEES.

WHEREAS, the Shingle Springs Band of Miwok Indians (the “Tribe”) is a federally recognized Indian tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians and is recognized as possessing powers of self-government; and

WHEREAS, the Shingle Springs Tribal Council is the duly-elected governing body of the Tribe and is authorized to act on behalf of the Tribe; and

WHEREAS, the Tribe has the ability to develop codes and a program regarding workers compensation for its employees; and

WHEREAS, the Tribe has drafted a Workers Compensation Ordinance for Tribal Employees that will create a system that provides redress for Tribal employee work-related injuries; and

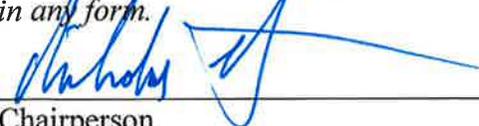
WHEREAS, the Tribal Council has reviewed the attached Workers Compensation Ordinance for Tribal Employees and supports entry into it in order to handle work-related injuries through a self-insurance system.

NOW THEREFORE, BE IT RESOLVED that the Tribal Council hereby enacts and adopts the attached Workers Compensation Ordinance for Tribal Employees, and authorizes the Chairman or his designee to execute any and all documents and agreements necessary as may be required to give effect to the transactions, herein contemplated, and to take such other actions as may hereby be necessary and appropriate to carry out the obligations there under.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately.

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 8th day of November, 2012 at which time a quorum of 7 was present, this resolution was duly adopted by a vote of 7 FOR, 0 AGAINST, 0 ABSTAINED, and said resolution has not been rescinded or amended in any form.



Chairperson

11-8-12

Date

ATTEST:


Secretary

11-8-12

Date