

GAMING EMPLOYMENT DISCRIMINATION COMPLAINT ORDINANCE
Of the Hoopa Valley Tribe
Hoopa, California

Title 76

DATE APPROVED: October 1, 2021

SUBJECT: Lucky Bear Casino Employment Discrimination Complaint Ordinance

WHEREAS: The Hoopa Valley Tribe (Tribe) adopted its Constitution and Bylaws on June 20, 1972, approved by the Commissioner of Indian Affairs on August 18, 1972, confirmed and ratified by the United States Congress in October 1988, in Public Law 100-580, the Hoopa-Yurok Settlement Act, and thereafter amended on June 18, 1996;

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Tribe pursuant to authority expressed in Article V Section 1 of the Constitution;

WHEREAS: The Hoopa Valley Tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and nonmembers of the Hoopa Valley Tribe;

WHEREAS: The Hoopa Valley Tribe and the State of California (State) entered into a tribal-state gaming compact pursuant to the Indian Gaming Regulatory Act of 1988 (25 U.S.C. § 2701 *et seq.*) (IGRA) in September, 1999;

WHEREAS: The voters of California approved Proposition 1A on March 7, 2000 thereby amending the California Constitution to authorize the scope of gaming contained in the tribal-state gaming compact;

WHEREAS: The Tribe and the State agreed to an amended Compact, executed on September 10 and October 19, 2018 (Compact);

WHEREAS: The Compact, at section 12.3(f), acknowledges the Tribe's right to assert Indian Preference in employment practices and also requires the Tribe to adopt and comply with tribal law forbidding harassment, including sexual harassment, in connection with the employment of persons working for or applying to work for the Gaming Operation or in the Gaming Facility, forbidding discrimination on the basis of race, color, religion, ancestry, national origin, gender, marital status, medical condition, sexual orientation, age, disability, or any other protected group under federal or California law, and forbidding retaliation against persons who oppose discrimination or participate in employment discrimination proceedings.

NOW, THEREFORE, BE IT RESOLVED THAT: the Tribal Council hereby adopts and enacts this Employment Discrimination Complaint Ordinance in order to comply with the requirements of the Compact to the extent the requirements of the Compact are authorized under IGRA.

1 SHORT TITLE

This Ordinance shall be known and may be cited as the Gaming Employment Discrimination Complaint Ordinance or Title 76.

2 SCOPE

This ordinance shall apply to all persons employed by or who have applied to be employed by the Gaming Operation or the Lucky Bear Casino.

3 POLICY AND PURPOSE

It is the policy of the Tribe to prohibit discrimination, harassment, including sexual harassment, and retaliation, on the basis of race, color, religion, ancestry, national origin, gender, marital status, medical condition, sexual orientation, age, disability, or other protected groups, in the Gaming Operation and Gaming Facility.

This Ordinance is adopted pursuant to Section 12.3(f) of the Compact which requires the Tribe to enact tribal law governing claims of harassment, discrimination, and retaliation arising out of the employment of persons applying to work or working for the Gaming Operation or Gaming Facility of the Tribe. This Ordinance sets forth the substantive standards and procedures to be used for the filing and prompt and fair adjudication of claims of harassment, discrimination, or retaliation. Only those substantive rights or causes of action and remedies expressly created by this Ordinance are cognizable hereunder.

Any alleged violations of this ordinance shall be subject to the review of the Human Resources Department and, as appropriate, the Hoopa Valley Tribal Courts. Any claims brought hereunder shall be brought in accordance with this Ordinance and any ordinance, rules or regulations promulgated under tribal law.

4 DEFINITIONS

4.1 **“Applicant”** means a person who has applied but was not selected for employment at the Gaming Facility and/or with the Gaming Operation or Gaming Facility.

4.2 **“Award”** means either:

- (1) money damages, excluding punitive damages, awarded to a Claimant due to the Gaming Operation’s and/or Gaming Facility’s violation of a standard prescribed by Section 5; or
- (2) a sum-certain which a Claimant agrees to accept in exchange for settlement of a Claim filed hereunder.

4.3 **“Business Day”** means a day on which the offices of the Tribal government are open.

4.4 **“Claim”** means an Employee’s or Applicant’s demand for an Award arising from harassment, retaliation, or employment discrimination in violation of the standards prescribed by Section 5.

- 4.5 **“Claimant”** means an Employee or Applicant who brings a Claim under this Ordinance.
- 4.6 **“Discrimination Complaint Resolution Process”** means the procedure set forth in this Ordinance for the review, investigation and settlement of Claims.
- 4.7 **“Employee”** means a person employed directly by the Gaming Operation or Gaming Facility. An independent contractor or vendor of the Gaming Operation or Gaming Facility is not an Employee.
- 4.8 **“Gaming Activities”** means the Class III gaming activities authorized under the Compact, including the Lucky Bear Casino.
- 4.9 **“Gaming Facility”** means any building in which Gaming Activities or Gaming Operations occur, or in which business records, receipts, or funds of the Gaming Operation are maintained (excluding offsite facilities primarily dedicated to storage of those records, and financial institutions), and all rooms, buildings, and areas, including hotel parking lots, and walkways, a principal purpose of which is to serve the activities of the Gaming Operation. Nothing herein shall be construed to apply in a manner that does not directly relate to the activities of the Gaming Operation.
- 4.10 **“Gaming Operation”** means the business enterprise that offers and operates Gaming Activities, including the Lucky Bear Casino’s Human Resources Department.
- 4.11 **“Human Resources Department”** and **“Human Resources Officer”** means the Gaming Operation employee(s) or officer(s) primarily responsible for overseeing human resources matters, whether or not such employee or officer also performs other duties, or his or her designee for handling employment-related claims, which may be the Insurer.
- 4.12 **“Insurer”** means the entity providing the employment practices liability insurance policy required by the Compact.
- 4.13 **“Tribal Business Council”** means the Tribal Council of the Hoopa Valley Tribe.
- 4.14 **“Tribal Court”** means the court of the Hoopa Valley Tribe providing dispute resolution services on behalf of the Tribe.
- 4.15 **“Tribe”** means the Hoopa Valley Tribe, a federally-recognized Indian tribe. Depending on the context, “Tribe” includes the Tribe’s elected or appointed officials, employees, and agents.

5 GAMING OPERATION AND FACILITY EMPLOYMENT STANDARDS

5.1 Standards of Conduct. The Gaming Operation and Gaming Facility shall, at all times, comply with standards no less stringent than federal law forbidding:

- (a) harassment, including sexual harassment, in the workplace;
- (b) discrimination arising out of the employment of persons applying to work, or working, for the Gaming Operation or Gaming Facility on the basis of race, color, religion, ancestry, national origin, gender, marital status, medical condition, sexual orientation, age, disability, gender identity, genetic information, military or veteran status, and any other protected groups under federal or California state law; and
- (c) retaliation against persons who oppose discrimination or participate in employment discrimination proceedings.

5.2 Indian Preference. Nothing in this Ordinance shall preclude the Gaming Operation or the Gaming Facility from giving a preference in employment to members and descendants of members of federally recognized Indian tribes in accordance with Tribal law.

5.3 Posting of Rights. The Gaming Operation shall, at all times, in its employee handbook and by posting in prominent and accessible places where notices to Employees and Applicants are customarily posted, make available:

- (a) the address for service of a notice of Claim under Section 5.1;
- (b) the address for service of a Claim under Section 5.3;
- (c) the address for service of a request for Tribal Court review under Section 6 of a final decision on a Claim;
- (d) a general description of the rights of Employees and Applicants under this Ordinance;
- (e) other information pertinent to the filing of a Claim under this Ordinance; and
- (f) pertinent provisions of this Ordinance.

5.4 Required Insurance Coverage. The Gaming Operation shall, at all times, maintain an employment practices liability insurance policy which:

- (a) is consistent with industry standards for non-tribal casinos;
- (b) is underwritten by an Insurer with an A.M. Best rating of A or higher;
- (c) provides coverage of at least three million dollars (\$3,000,000) per occurrence for unlawful harassment, retaliation, or employment discrimination arising out of the employment of persons seeking to work or working for the Gaming Operation or Gaming Facility;
- (d) covers all Awards up to the coverage limits; and
- (e) includes an endorsement providing that the Insurer shall not invoke tribal sovereign immunity up to the limits of such policy for Claims alleging harassment, retaliation, or employment discrimination pursuant to this Ordinance.

6 GAMING OPERATION CLAIMS RESOLUTION PROCESS

6.1 Notice of Claim. An Employee or Applicant who alleges harassment, discrimination, or retaliation in violation of the standards prescribed by Section 5 shall, no later than one year after the events constituting the alleged violation, provide a written notice of claim to the Gaming Operation, via personal service or certified mail to the Human Resources Officer, which specifies:

- (a) the mailing address, email address, and telephone number of the Claimant and the Claimant's representative, if any;
- (b) the general nature of the Claim; and
- (c) the amount of any Award sought.

6.2 Notice of Rights. Within 14 days of receiving a notice of claim, the Gaming Operation shall provide a written notice of rights to the Claimant stating:

- (a) that the Claimant is required to proceed with the Gaming Operation Claim Resolution Process as set forth in this Section 6 if he or she wishes to pursue a Claim;
- (b) that failure to exhaust the Discrimination Complaint Resolution Process will result in the forfeiture of the right to further pursue the Claim;
- (c) that, if dissatisfied with the outcome of the Discrimination Complaint Resolution Process, the Claimant may request a hearing before the Tribal Court under Section 7 at no cost (except for Complainant's attorney's fees, which Complainant shall bear); and
- (d) prominently on the first page, notice that the Claimant must file his or her written Claim with the Human Resources Department within 180 days of receipt (limitations period) or forfeit the right to further pursue the Claim.

6.3 Filing and Contents of Claim. In order to pursue resolution of a Claim filed under this ordinance, a Claimant must, within 180 days of his or her receipt of the notice of rights, file a written Claim which specifies:

- (a) the name, mailing address, email address, and telephone number of the Claimant and the Claimant's representative, if any;
- (b) the facts and circumstances giving rise to the Claim, including the date and location of the incident or occurrence that gave rise to the Claim, and the identity or description of any responsible person(s);
- (c) the identity or description of any person known to Claimant or believed by Claimant to be witnesses to the incident or occurrence that gave rise to the Claim;
- (d) the nature of the alleged damage or injury suffered; and
- (e) the amount of Award sought.

Along with the written Claim, the Claimant shall submit copies of all supporting documentation and evidence in his or her possession or control relating to the Claim, such as witness statements, photographs, video and audio recordings, and police reports.

6.4 Amending and Supplementing Claims. Within 180 days of receipt of the notice of rights, the Claimant may supplement or amend the Claim, but only if the amendment relates to the same incident or occurrence that gave rise to the original Claim.

6.5 Initial Review of Claim. Within 30 days of the receipt of a written Claim or any amendment thereto, the Human Resources Officer shall review the Claim to ensure that

- (a) the written Claim was received within 180 days after the date of the Claimant's receipt of the notice of rights;
- (b) the written Claim substantially complies with the requirements of Section 5.3;
- (c) the alleged violation arose out of the Claimant's employment or application for employment with the Gaming Operation or Gaming Facility; and
- (d) the Claim seeks a remedy available under this Ordinance.

6.6 Initial Decision. Upon completing the initial review, the Human Resources Officer shall provide written notice to the Claimant of its decision to either

- (a) accept the Claim for investigation; or
- (b) decline to investigate due to the Claimant's failure to substantially comply with this Ordinance, in which case the notice shall specify the section with which the Claimant failed to comply and inform the Claimant of his or her right to supplement or amend the Claim under Section 5.4.

6.7 Tender & Investigation. The Human Resources Officer shall tender all accepted Claims to the Insurer and conduct an investigation of the Claim.

6.8 Decision. For all accepted Claims, within 180 days after the filing of the Claim, unless the Gaming Operation and the Claimant agree to a longer period of time, the Human Resources Officer, in consultation with the Insurer, shall issue to the Claimant a reasoned written decision based on the facts surrounding the alleged violation which either

- (a) offers a sum-certain Award, no greater than the amount of the insurance coverage carried by the Gaming Operation under Section 5.4, in exchange for the Claimant's agreement to waive all claims arising from the incident or occurrence that gave rise to the Claim, upon such terms and conditions as the Gaming Operation may reasonably specify; or
- (b) declines to offer an Award.

In either event, the decision shall inform the Claimant of his or her right to seek a review within 30 days before the Tribal Court in accordance with Section 7.

- 6.9 Finality.** The acceptance of an Award shall constitute a complete release of any present or future claim arising from the incidents or occurrences that gave rise to the Claim with respect to the Tribe, including the Gaming Operation, the Gaming Facility, all other subdivisions of the Tribe, and any official of the Tribe or any subdivision thereof.
- 6.10 Confidentiality.** The Human Resources Officer shall take reasonable precautions to maintain the confidentiality of the information giving rise to the Claim and resolution of the Claim through the Employment Discrimination Complaint Process.
- 6.11 Service on Claimant.** All written notices required or permitted to be sent to a Claimant under this Ordinance shall be delivered via personal service or certified mail return receipt requested.

7. TRIBAL COURT APPEAL

- 7.1 Notice of Appeal.** A Claimant may only appeal a final decision of the Human Resources Department by providing written notice of appeal to the Human Resources Department and by filing the appeal with the Tribal Court within 30 days after either:
- (a) the Claimant's receipt of a decision denying investigation of his or her Claim; or
 - (b) the Claimant's receipt of a final decision denying his or her claim.
- 7.2 Applicable Rules.** The appeal shall be conducted in accordance with the rules of the Hoopa Valley Tribal Courts.
- 7.3 Scope of Review.** The tribal court shall not conduct a de novo review but shall solely review the record developed during the Discrimination Complaint Resolution Process.
- 7.4 Standard of Review.** The Tribal Court shall review all final determinations of the Human Resources Department on matters of law but shall not set aside any factual determination of the Human Resources Department which is supported by substantial evidence. If there is a conflict in the evidence and a reasonable fact-finder could have found for either party, the decision of the Human Resources Department shall not be overturned.
- 7.5 Fees & Costs.** The Gaming Operation shall bear its costs related to the appeal. The Claimant shall not be charged for the costs of appeal, other than his or her own

attorney's fees which he or she shall bear. The Tribal Court may award costs and expenses, but in no instance shall the Tribal Court award either party attorneys' fees or punitive damages.

- 7.6 **Appellate Review.** Any Claimant entitled to adjudicate his or her Claim in the Tribal Court who is dissatisfied with the result may, at the his or her election, appeal the matter to the Tribal Court of Appeal. The costs associated with adjudication by the Tribal Court of Appeal shall be borne by the Tribe, and each party will bear its own attorney's fees. Review in the Tribal Court of Appeal shall not be a de novo review, but shall be based solely upon the record developed in the Tribal Court proceeding. The Tribal Court of Appeal shall review all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determination is supported by substantial evidence. If there is a conflict in the evidence and a reasonable fact-finder could have found for either party, the decision of the Tribal Court will not be overturned on appeal.

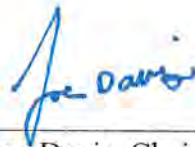
8 SOVEREIGN IMMUNITY

- 8.1 **Gaming Operation Limited Waiver of Sovereign Immunity.** Neither the Tribe nor its insurer, acting on behalf of the Gaming Operation, shall waive, or waive the Gaming Operation's right to assert, sovereign immunity with respect to Claims filed hereunder, except only as necessary for review and payment of Claims under the insurance policy required by Compact section 12.4(f). In no event shall any provision of this Ordinance be construed as a waiver of the sovereign immunity of the Tribe, including the Gaming Operation and all other subdivisions of the Tribe, or any official of the Tribe or any subdivision thereof for any portion of a Claim that exceeds such insurance coverage or with respect to any claim, action, or proceeding other than as expressly set forth in this Ordinance.
- 8.2 **Consent to Enforcement.** To effectuate its consent to the review by the Human Resources Department and the Tribal Courts as set forth in this Ordinance, the Tribe, on behalf of the Gaming Operation, hereby consents to the jurisdiction of the Tribal Courts in accordance with this Ordinance, and in any action in a federal court, but only for the sole purpose of enforcing or executing an Award of the Human Resources Department or the Tribal Courts.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify that the Hoopa Valley Tribal Council is composed of eight (8) members, of which seven (7) were poll voted, constituting a quorum and held this 29th day of September 2021 and approved this 1st day of October 2021 thereof; and was reaffirmed at a Regular Meeting held October 7, 2021; and this Ordinance was duly adopted under the Emergency LPA process, Title 6 of the Hoopa Valley Tribe. The Hoopa Valley Tribe composed of eight (8) members, of which seven (7) were present, constituting a quorum at a Regular Meeting thereof, duly and regularly called, noticed, convened and held this 4th day of November 2021; and final approval occurred and this Ordinance was duly adopted by a vote of six (6) in favor with zero (0) opposed and zero(0) abstaining, and that said Ordinance has not been rescinded or amended in any way.

Dated this fourth day of November 2021.



Joe Davis, Chairman
Hoopa Valley Tribal Council

Attest:



Amber Turner, Executive Secretary
Hoopa Valley Tribal Council