

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

### **ARTICLE 1 - PURPOSE**

In accordance with Section 12.3(f) of the 2020 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 - CLAIMS**

Claims of Harassment, Retaliation or Employment Discrimination arising out of an individual's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming Activities, may be filed against the Tribe in accordance with this Ordinance.

### **ARTICLE 3 - LIMITED WAIVER OF SOVEREIGN IMMUNITY**

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 resolution of claims outlined in Articles 2 in the Tribal Court and Tribal Claims Commission, provided that this waiver shall not apply to:

- A. Punitive damages
- B. The portions of Claims that exceed either three million dollars (\$3,000,000). Furthermore, the Tribe expressly waives its right to assert sovereign immunity in connection with the jurisdiction of the Tribal Court, Tribal Claims Commission, and JAMS Optional Arbitration Appeal Procedure, and in any suit to;
  1. Enforce an obligation under this Ordinance;
  2. Enforce or execute a judgment based upon the award of the Tribal Court, Tribal Claims Commission, or the JAMS Optional Arbitration Appeal Procedure.

This waiver shall not apply to claims made against individual Tribal officials or employees.

### **ARTICLE 4 - 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 the Tribal Claims Commission. The final 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 process for the Tribal Employment Dispute Resolution shall be;

**Step 1.** When a Claimant believes he or she has been the victim of prohibited Harassment, Retaliation, or Employment discrimination, he or she shall have one (1) year from the date that the alleged act occurred to file a written notice with the Casino’s Human Resources Department

**Step 2.** Within fourteen (14) days following notification that a Claimant alleges that he or she has suffered prohibited Harassment, Retaliation, or Employment Discrimination, the Casino’s Human Resources Department shall provide written notice by personal service or certified mail, return receipt requested, that the Claimant is first required to exhaust the Tribal Employment Dispute Resolution Process, and if dissatisfied with the resolution, is entitled at Claimant’s sole discretion to bring an action in Tribal Court or the Tribal Claims Commission 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 Casino’s Human Resources Department shall also provide the Claimant with the Administrative Claim Form, along with a notice that the claim must be filed within one hundred eight (180) days of receipt.

**Step 3.** The Claimant must file the Administrative Claim Form with the Casino’s Human Resources Department 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 Casino’s Human Resources Department 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. The decision shall be in writing, based on the facts surrounding the dispute, and a reasoned decision.

**Step 5.** If the Casino’s Human Resources Department or designee denies the Claim, the Claimant has twenty (20) days from the date of the denial letter to request, in writing, to the Casino’s Human Resources Department 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. The decision shall be in writing, based on the facts surrounding the dispute, and a reasoned decision.

**Step 7.** 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 heard in Tribal Court or through the Tribal Claims Commission. The decision to choose either the Tribal Court system or Tribal Claims Commission shall be at the sole discretion of the Claimant.

#### **ARTICLE 5 - 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. Discovery proceedings shall be governed by procedures comparable to section 1283.05 of the California Code of Civil Procedure.
- B. The title of the filed court claim shall be “Claimant v. Red Hawk Casino,” and all service shall go through the Casino’s Human Resources Department
- C. The Claimant must file a copy of the denial letter from the Tribe’s Legal Department along with the appeal petition.
- D. Resolution of the dispute before the Tribal Court system shall be at no cost to the Claimant (excluding Claimant’s attorney’s fees).
- E. The decision of the Tribal Court shall be final and binding on both parties.
- F. The decision of the Tribal Court shall be issued within thirty (30) days of the Tribal Court hearing. If there is no Tribal Court hearing, then the Tribal Claims Commission shall issue its decision within thirty (30) days of the date that the Casino files its response.
- G. Under no circumstances shall there be any awards for attorney’s fees or costs.

#### **ARTICLE 6 - RESOLUTION BY TRIBAL CLAIMS COMMISSION**

If the Claimant requests the dispute be settled by the Tribal Claims Commission, the Tribe shall consent provided the following apply:

- A. Unless otherwise stated in this Ordinance, all Tribal Claim Commission rules and procedures shall apply. Discovery proceedings shall be governed by procedures comparable to section 1283.05 of the California Code of Civil Procedure.
- B. The title of the filed court claim shall be “Claimant v. Red Hawk Casino,” and all service shall go through the Casino’s Human Resources Department.

- C. The Claimant must file a copy of the denial letter from the Tribe’s Legal Department along with the appeal petition.
- D. Resolution of the dispute before the Tribal Claim Commission shall be at no cost to the Claimant (excluding any Claimant’s attorney’s fees).
- E. The decision of the Tribal Claims Commission shall be final and binding on both parties.
- F. The decision of the Tribal Claims Commission shall be issued within thirty (30) days of the Tribal Claims Commission hearing. If there is no Tribal Claims Commission hearing, then the Tribal Claims Commission shall issue its decision within thirty (30) days of the date that the Casino files its response.
- G. Under no circumstances shall there be any awards for attorney’s fees or costs.

### **ARTICLE 7 – APPEALS**

Any party dissatisfied with the award of the Tribal Court or Tribal Claims Commission may, at the party’s election, appeal the matter to a tribal court of appeal, if one is established, or invoke the JAMS Optional Arbitration Appeal Procedure (and if those rules no longer exist, the closest equivalent).

- A. JAMS Appeal – The Tribe consents to the jurisdiction of the JAMS Appeal provided that the James Appeal meet the following requirements:
  - 1. Take place in El Dorado County; and
  - 2. Use one (1) arbitrator, agreed upon by the parties, and shall not be a de novo review, but shall be based solely upon the record developed in the Tribal Court or Tribal Claims Commission proceeding; and
  - 3. Review all determinations of the Tribal Court or Tribal Claims Commission on matters of law, but shall not set aside any factual determinations of the Tribal Court or Tribal Claims Commission if such determination is supported by substantial evidence; and
  - 4. Not overturn the decision of the Tribal Court or Tribal Claims Commission if there is a conflict in the evidence such that a reasonable fact-finder could have found for either party.
  - 5. If there is no tribal court of appeal, the cost and expense of the JAMS Optional Arbitration Appeal Procedure (“JAMS appeal”) shall be initially borne equally by the Tribe and the patron and both parties shall pay their share of the JAMS appeal costs at the time the JAMS appeal option is elected, but the JAMS

arbitrator shall award costs and expenses to the prevailing party (but not attorney's fees). If a tribal court of appeal is available, the party electing the JAMS appeal option shall bear all costs and expenses of the JAMS appeal, regardless of the outcome, and each party will bear their own attorney's fees.

B. Tribal Court of Appeals – The Tribe consents to the jurisdiction of the Tribal Court of Appeals provided that the Tribal Court of Appeals shall:

1. Be governed by the Tribal Court of Appeal's rules and procedures; and
2. Review all determinations of the Tribal Court or Tribal Claims Commission on matters of law, but shall not set aside any factual determinations of the Tribal Court or Tribal Claims Commission if such determination is supported by substantial evidence; and
3. Not overturn the decision of the Tribal Court or Tribal Claims Commission if there is a conflict in the evidence such that a reasonable fact-finder could have found for either party.
4. Resolution of the dispute before the Tribal Court system shall be at no cost to the Claimant (excluding the patron's attorney's and other professional fees and costs).

#### **ARTICLE 8 - 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 9 - 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.