

EMPLOYMENT DISCRIMINATION COMPLAINT ORDINANCE

SYCUAN BAND OF THE KUMEYAAY NATION

BE IT ENACTED BY THE SYCUAN BAND OF THE KUMEYAAY NATION AS FOLLOWS:

I. TITLE.

This Ordinance shall be entitled the “Sycuan Band of the Kumeyaay Nation Employment Discrimination Complaint Ordinance.”

II. PURPOSE.

The purposes of this Ordinance are:

A. To set forth the terms and conditions under which the Tribe will grant a limited waiver of its sovereign immunity solely for Claims seeking money damages resulting from alleged Employment Discrimination.

B. To establish time limits, substantive standards and procedures for the filing and prompt and fair adjudication of Claims against the Tribe for money damages for Employment Discrimination alleged to have arisen out of a Claimant’s employment in connection with, or relating to the operation of the Tribe’s Gaming Operation, Gaming Facility, or Gaming Activities.

C. To delegate to the Business Committee the authority to retain the services of a Claims Administrator to investigate, evaluate, negotiate and determine the resolution of Claims, to advise the Business Committee regarding Claims and to assist in the representation of the Tribe in mediations, hearings and appeals associated with contested Claims.

III. DEFINITIONS.

A. “Award” is the financial remedy offered a Claimant to resolve a Certified Claim timely filed under this Ordinance

B. “Business Committee” is the elected body of the Sycuan Band of the Kumeyaay Nation to which the Sycuan General Council has delegated the authority to enact and implement this Ordinance; provided, however, that for the purposes of this Ordinance, the Business Committee may delegate the performance of its administrative duties hereunder to the Claims Administrator.

C. “Claim” is the written document, together with supporting information and documentation submitted by a Claimant seeking redress for alleged Employment Discrimination.

D. “Claimant” is an Employee who submits a Claim under this Ordinance, alleging Employment Discrimination.

E. “Claims Administrator” is the person or entity designated or retained by the Business Committee to receive, investigate, evaluate, negotiate and determine the resolution of Claims filed under this Ordinance, to assist the Tribe’s representatives in mediations, hearings and appeals associated with contested Claims, and to advise the Business Committee in the final disposition of Claims.

F. “Employee” is a person who is employed by the Tribe in connection with, or relating to, the Gaming Operation, Gaming Facility or Gaming Activities, whereby that person receives a salary or wages directly from the Tribe for services rendered in connection with the operation of the Gaming Operation or the Gaming Facility. An independent contractor, outside consultant, or vendor is not an Employee.

G. “Employment Discrimination” is harassment, including sexual harassment, in the workplace; discrimination in the workplace on the basis of race, color, religion, ancestry, national origin, gender marital status, medical condition, sexual orientation, age, or disability; or retaliation against persons who oppose discrimination or participate in proceedings under this Ordinance, but only to the extent that such conduct would give rise to a cause of action under federal or California state law.

H. “Employment Discrimination Review Board” is a three-member panel made up of a representative from the Human Resources Department, the Tribal Legal Department and the Claims Administrator.

I. “Gaming Facility” is any building in which Class III gaming activities or gaming operations occur on Indian lands over which the Tribe exercises jurisdiction.

J. “Gaming Operation” is any business enterprise owned by the Tribe that offers and operates Class III gaming activities on Indian lands over which the Tribe exercises jurisdiction.

K. “Judgment” is an order of the Sycuan Tribal Court or the Intertribal Court of Southern California Court of Appeals.

L. “Rejected Claim” is a Claim that has failed to comply with one or more procedural requirements as provided herein, including deadlines for filing Claims or the provision of sufficient information or supporting documentation.

M. “Tribe” is the Sycuan Band of the Kumeyaay Nation, the federally-recognized Indian tribe with jurisdiction over the Sycuan Indian Reservation.

#### IV. COVERED CLAIMS AND EXCLUSIONS.

A. This Ordinance creates both procedures and substantive rights or causes of action for redress of Claims of Employment Discrimination. Only those substantive rights or causes of action and remedies created by this Ordinance are cognizable hereunder, or are within the scope of the Tribe's limited waiver of sovereign immunity.

B. Notwithstanding the foregoing, nothing in this Ordinance creates any substantive right to relief or consents to the maintenance against the Tribe of any Claim based upon any act or omission of persons who are not officers, employees or agents of the Tribe.

C. The Tribe shall not be liable for interest prior to judgment. In no event shall the Tribe be held liable for damages in excess of Three Million Dollars (\$3,000,000), and then only to the extent that such damages are covered by insurance required under the terms of the Tribe's 2015, Tribal-State Gaming Compact.

D. This Ordinance does not provide any remedy or forum for alleged injuries to Employees, arising from or related to an Employee's work.

E. This Ordinance does not provide any remedy or forum for alleged Employment Discrimination that occurred more than three hundred sixty five (365) days prior to the filing of a Claim.

F. This Ordinance does not provide any remedy or forum for claims against the Tribe for equitable indemnity or contribution arising from third-party litigation.

G. This Ordinance does not provide any remedy or forum for claims against the Tribe for punitive damages, or attorneys' fees or costs.

#### V. TRIBAL DISPUTE PROCESS.

A. Notice. Within fourteen (14) days following receipt of notice from a Claimant, alleging Employment Discrimination, the Tribe shall provide notice that the Claimant is required within one hundred eighty (180) days to first exhaust the Tribal Dispute Process as set forth in this Article V. Claimant shall be informed that failure to exhaust the Tribal Dispute Process will result in the Claimant's forfeiture of further rights to pursue a claim under this Ordinance. Such notice shall be delivered via personal service or certified mail, return receipt requested.

B. Presentation and Contents of the Claim. A Claimant or his or her legal representative must file a written Claim presenting all material facts relating to the alleged incident and injury. Upon request to the Sycuan Casino Human Resources Department, a claim form will be provided, along with instructions for its completion and submission, but a Claimant need not use that form so long as all of the information required by that form is provided. At a minimum, the written Claim must contain the following:

- (1) The name, mailing address, and telephone number of the Claimant and the Claimant's attorney, if any.
- (2) The date, location, and detailed account of the alleged incident or occurrence that gave rise to the Claim.
- (3) The identity or description of all persons known to Claimant or believed by Claimant to be involved in the incident or occurrence that gave rise to the Claim.
- (4) The identity or description of all persons known to Claimant or believed by Claimant to be witnesses to the incident or occurrence that gave rise to the Claim.
- (5) A description of the nature of the alleged damage or injury suffered and the compensation requested as of the date of presentation of the Claim.
- (6) Copies of all supporting documentation in the possession or control of Claimant or his or her attorneys relating to the Claim, including but not limited to medical records and reports, investigative reports, witness statements, contracts, photographs, and police and incident reports.
- (7) The Claim must be signed by the Claimant under penalty of perjury. If the Claimant is unable to sign the Claim because of physical or mental incapacity, the Claim must be signed under penalty of perjury by another person with personal knowledge of the contents of the Claim.

In the event that the Claimant does not possess complete information about the Claim when the Claim is presented, the Claim shall identify the information that Claimant lacks, set forth the reason(s) why the information cannot be presented with the initial submission of the Claim and request that the Claimant's time to complete submission of the Claim be extended by the amount of time, not to exceed one hundred eighty (180) calendar days from the date of receipt of the written notice provided pursuant to Section V. A.

C. Time Limits on Filing Claim. To be timely submitted, the Claim must be received by the Sycuan Casino Human Resources Department no later than one hundred

eighty (180) calendar days after the date of receipt of the written notice provided pursuant to Section V. A. If the one hundred eightieth (180th) day falls on a Saturday, Sunday, or officially-recognized federal or Tribal holiday, the deadline shall be deemed to be the next business day. This time limit is jurisdictional and shall be strictly construed to preclude late-filed Claims.

D. Amending and Supplementing Claims. At any time after submission of a Claim but prior to the expiration of one hundred eighty (180) calendar days from the date of receipt of the written notice provided pursuant to Section V. A., Claimant may supplement or amend the Claim without having to obtain the Tribe's consent, but only if the amendment relates to the same transaction or occurrence that gave rise to the original Claim.

E. Burden of Proof. The Claimant bears the burden of providing sufficient information and documentation to prove by a preponderance of evidence both that the Tribe is liable for the Claimant's injuries and the compensation due, in accordance with this Ordinance.

F. Review of Claims.

- (1) Within thirty (30) calendar days of the receipt of a Claim, the Director of Human Resources or designee shall determine whether:
  - (a) the alleged act of Employment Discrimination occurred within three hundred sixty five (365) days prior to receipt of the Claim;
  - (b) the Claim was received within one hundred eighty (180) calendar days of the date of receipt of the written notice provided pursuant to Section V. A.;
  - (c) the Claim as presented substantially complies with the content requirements described in Section V. A above and is signed under penalty of perjury;
  - (d) the incident or occurrence alleged by the Claim arose out of a Claimant's employment in connection with, or relating to the operation of the Tribe's Gaming Operation, Gaming Facility or Gaming Activities; and
  - (e) the Claim seeks a remedy created by and available under this Ordinance.

These determinations shall be made solely for the purpose of determining whether to certify the Claim for further proceedings, and shall not constitute a determination of the merits of the Claim.

(2) In the event the Director of Human Resources or designee determines that a timely filed Claim contains incomplete information or is missing any of the required items, the Claimant shall be notified in writing that the Claim is incomplete and shall identify the information and any documentation that Claimant must provide in order to present a complete Claim. Claimant shall be given at least twenty (20) business days from the date of notification to provide the requested information. If the requested information is not received within the time provided, or if the Claim for other reasons does not comply with the requirements of this Section V., it will be rejected. In such case, the Director of Human Resources or designee shall send to the Claimant, within thirty (30) days of its determination, a written "Rejection of Claim" stating all grounds for this action and informing Claimant of the right to appeal the rejection of the Claim to the Employment Discrimination Review Board.

(3) If a Claim meets all of the requirements of this Section V., the Director of Human Resources or designee shall undertake an investigation of the Claim.

(a) If, during the course of the investigation it is determined that additional evidence or documentation is necessary, the Claimant shall be sent a request for any such additional supporting evidence or documentation. Any such notice shall provide the Claimant at least twenty (20) business days to respond. The Claimant may request a reasonable extension of time to provide the requested evidence or documentation. If the requested evidence or documentation is not received within the time provided, the Claim shall be considered abandoned and, on this basis will be automatically denied. No award shall be made on an abandoned claim. The Director of Human Resources or designee shall send to the Claimant, within thirty (30) days of making the determination of abandonment, written notice of denial of the Claim that describes the grounds for the decision and informs the Claimant of his or her right to appeal the decision to the Employment Discrimination Review Board.

G. Claim Resolution.

(1) Within one hundred eighty (180) calendar days of the date of receipt of the Claim, the Director of Human Resources or designee shall conclude the investigation into the Claim and determine whether the Claim has merit and warrants an Award or whether the Claim should be denied.

(2) If a Claim is determined to be valid, the Director of Human Resources or designee, in consultation with the Claims Administrator shall

be authorized to enter into a binding settlement or render a final decision and issue an Award. If the Award exceeds one hundred thousand dollars (\$100,000), the Claims Administrator shall notify the Business Committee and provide an opportunity for the Business Committee to review the matter and provide input on or object to the award.

(3) If a Claim is denied or the Claimant is dissatisfied with the resolution of the Claim, the Claimant shall have thirty (30) days from receipt of the denial to request, in writing, to the Director of Human Resources, that the Employment Discrimination Review Board review the Claim, otherwise the Claim will be forever barred.

(4) Upon Claimant's timely request, the Employment Discrimination Review Board shall review the Claim and supporting documentation and, if necessary, further investigate the Claim and inform the Claimant in writing that the Claim has been denied or accepted and the Award amount, if any. If the Claim is denied or the Claimant is dissatisfied with the resolution of the Claim, the Claimant shall have thirty (30) days from receipt of the denial to appeal the Employment Discrimination Review Board's decision to the Sycuan Tribal Court, otherwise the Claim will be forever barred.

(5) The decisions reached as a result of the Tribal Dispute Process shall be in writing, based on the facts surrounding the dispute, shall be a reasoned decision, and shall be rendered within one hundred eighty (180) days from the date the Claim was filed, unless the parties mutually agree upon a longer period.

## VI. APPEALS FROM TRIBAL DISPUTE PROCESS.

### A. Sycuan Tribal Court.

(1) A Claimant may appeal to the Sycuan Tribal Court the Employment Discrimination Review Board's rejection of a Claim on procedural grounds; the denial of a Claim on the merits; or the amount of an Award. However, the Sycuan Tribal Court shall have no jurisdiction over any Claim brought pursuant to this Ordinance until the one hundred eighty first (181st) day after Claimant's receipt of notice provided pursuant to Section V. A. or until the Tribal Dispute Process described in Article V. of this Ordinance has been exhausted, whichever is earlier. Provided, that the parties may mutually agree to a longer period in which to conclude the Tribal Dispute Process.

(2) To initiate an appeal, Claimant must, within thirty (30) days of Claimant's receipt of the Employment Discrimination Review Board's decision, submit to the Sycuan Tribal Court ("Court") a written notice

of appeal and shall serve such notice on the Employment Discrimination Review Board. The Claimant shall bear no filing fees or costs other than attorney fees and expenses in connection filing an appeal in the Sycuan Tribal Court, provided, that the Court may award costs associated with filing the appeal, excluding attorneys' fees, to the prevailing party, in an amount not to exceed those allowable in a suit in California superior court.

- (3) Upon receipt of an appeal notice the Employment Discrimination Review Board shall compile and provide to the Court a copy of the Claim file.
- (4) Appeals taken pursuant to this Section VI. shall be conducted in accordance with the Intertribal Court of Southern California Code of Civil Procedure. No judgment may exceed three million dollars (\$3,000,000) and the Court shall have no authority to award attorneys fees or costs.

B. Intertribal Court of Southern California Court of Appeals.

- (1) Any party dissatisfied with the judgment of the Sycuan Tribal Court may, at the party's election, within thirty (30) days of receipt of the Sycuan Tribal Court decision, appeal the judgment to the Intertribal Court of Southern California Court of Appeals, provided that the party making such election must bear all costs and expenses associated with the appeal, regardless of the outcome.
- (2) The Intertribal Court of Southern California Court of Appeals shall review all determinations of the Sycuan Tribal Court on matters of law, but shall not set aside any factual determinations, if such determinations are supported by substantial evidence. The Intertribal Court of Southern California Court of Appeals shall have no authority to award attorneys' fees, costs or lower court costs or fees.
- (3) The decision of the Intertribal Court of Southern California Court of Appeals shall be final and not subject to further appeal.

VII. APPLICABLE LAW.

The Tribe has adopted California law to govern all claims of Employment Discrimination arising under this Ordinance. Provided, that California law, governing punitive damages is expressly not adopted by the Tribe. Nothing in this Ordinance 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.



## VIII. PAYMENT AND FINALITY.

A. The Tribe shall not be obligated to pay any Award or Judgment that is not covered by, or exceeds the policy limits of, the Tribe's liability insurance; provided, that the Tribe shall be obligated to pay any portion of an Award or Judgment that is subject to a self-insured deductible. The Tribe's insurer shall pay any cognizable Award or Judgment in the same manner and at the same time as judgments rendered in the courts of the United States. Awards or Judgments shall be paid within thirty (30) days after becoming final and unappealable; if an appeal is filed, payment shall be deferred until final disposition of the appeal, after which timely payment shall be made in accordance with such disposition.

B. Any Award, Judgment, compromise, settlement, or determination of a Claim under this Ordinance shall be final and conclusive on the Tribe, except when procured by means of fraud.

C. The acceptance by a Claimant of any Award, compromise, settlement, or Judgment on a Claim shall be final and conclusive on the Claimant and shall constitute a complete release of any present or future claim arising from the same or connected circumstances by the Claimant against the Tribe and its employees and agents whose act or omission gave rise to the Claim.

## IX. LIMITED WAIVER OF SOVEREIGN IMMUNITY.

If a Claimant has fully exhausted the Tribal Dispute Process, the Tribe expressly waives its sovereign immunity and its right to assert sovereign immunity and all defenses based thereon with respect to its consent to the jurisdiction of the Sycuan Tribal Court and the Intertribal Court of Southern California Court of Appeals as provided in the ordinance, and in any suit to enforce or execute a Judgment of the Sycuan Tribal Court or the Intertribal Court of Southern California Court of Appeals. Provided however, that this limited waiver shall not apply to punitive damages or for portions of a Claim or Judgment that exceed three million dollars (\$3,000,000).

## X. EXCLUSIVE REMEDY.

This Ordinance provides the exclusive procedure, forum, and remedy for pursuit of claims of Employment Discrimination. Except as expressly provided herein, this Ordinance does not constitute a waiver of the sovereign immunity of the Tribe or its officers, employees, and agents, and the Tribe reserves all rights for itself and its officers, employees, and agents not expressly waived by this Ordinance.

## XI. EFFECTIVE DATE.

This Ordinance shall be effective upon adoption by Tribal resolution and publication of the 2015, Tribal-State Gaming Compact in the Federal Register. The

provisions of this Ordinance shall not apply to any Claim based on conduct alleged to have occurred before the effective date of this Ordinance, but all Claims arising or filed on or after the effective date of this Ordinance shall be subject to the procedural and substantive provisions of this Ordinance.