



**TWENTY-NINE PALMS BAND OF MISSION INDIANS  
EMPLOYMENT DISCRIMINATION COMPLAINT ORDINANCE  
As of November 14, 2018**

The Tribal Council of the Twenty-Nine Palms Band of Mission Indians, empowered by the Tribe's Articles of Association to enact ordinances, hereby enacts this Employment Discrimination Complaint Ordinance in accordance with Section 12.3(f) of the Tribal-State Gaming Compact between the Tribe and the State of California ("Compact").

**I. Title**

This Ordinance shall be known as the "Twenty-Nine Palms Band of Mission Indians 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 Employment-Related 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 Employment-Related 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.

**III. Definitions**

Unless otherwise required by the context, the following words and phrases shall be defined as follows:

A. "Casino" means the Spotlight 29 Casino and/or the Tortoise Rock Casino.

B. "Claimant" means an Employee who submits an Employment-Related Claim under this Ordinance.

C. "Claims Administrator" means the person appointed to administer all Employment-Related Claims filed under this Ordinance.

D. "Compact" means the Tribal-State Gaming Compact between the Tribe and the State of California executed in or about August 2018.

E. "County" means either the County of Riverside, California, or the County of San Bernardino, California. When the Ordinance refers to the County, it will be referring to the County in which the Gaming Facility at issue is located.

F. "Employee" means 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 hourly wages directly from the Tribe for services rendered. An independent contractor, outside consultant, or vendor is not an Employee. The term does not include agents or representatives of the United States or of the State of California or any of their political subdivisions.

G. "Employment Discrimination" means 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, disability, gender identity, genetic information, military or veteran status, and any other protected groups under federal or California law; or retaliation against persons who oppose discrimination or participate in employment discrimination proceedings under this Ordinance, but only to the extent that such conduct would give rise to a cause of action under California law. Nothing herein shall preclude the Tribe from giving a preference in employment to members and descendants of the Tribe, or to members and descendants of other federally recognized Indian tribes, pursuant to a duly adopted tribal ordinance.

H. "Employment-Related Claim" means a written document, together with supporting information and documentation, submitted by a Claimant pursuant to the procedures and requirements of this Ordinance, seeking money damages for Employment Discrimination.

I. "Gaming Activities" means the Class III gaming activities authorized under the Compact.

J. "Gaming Facility" means any building in which Gaming Activities or any Gaming Operations occur, or in which the business records, receipts, or funds of the Gaming Operation are maintained (but excluding off-site facilities primarily dedicated to storage of those records, and financial institutions), which may include parking lots, walkways, rooms, buildings, and areas that provide amenities to Gaming Activity patrons, if and only if, the principal purpose of which is to serve the activities of the Gaming Operation, provided that such area is covered by Insurance. Nothing herein shall be construed to apply in a manner that does not directly relate to the operation of Gaming Activities.

K. "Gaming Operation" means the business enterprise that offers and operates Gaming Activities, whether exclusively or otherwise, and which shares all aspects of the Tribe's sovereign immunity, but does not include the Tribe's governmental or other business activities unrelated to operation of the Gaming Facility.

L. "Insurance" or "Insurance Policy" means only that valid and binding policy of liability insurance procured in connection with the Gaming Operation, with liability coverage and policy limits solely as described under Section 12.3(f) of the Compact.

M. "Ordinance" means this Twenty-Nine Palms Band of Mission Indians Employment Discrimination Complaint Ordinance.

N. "Tribal Council" means the governing body of the Tribe, as set forth in the Tribe's Articles of Association.

O. "Tribal Court" means the Twenty-Nine Palms Tribal Court.

P. "Tribal Court of Appeals" means the Twenty-Nine Palms Court of Appeals.

Q. "Tribe" means the Twenty-Nine Palms Band of Mission Indians.

#### IV. Covered Claims, Limits and Exclusions

A. Covered Claims. This Ordinance covers only those claims that would be considered employment-related claims were they to arise under the laws of the State of California and which are covered by the Insurance Policy. Only those 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. 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.

B. Limits. 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 Compact.

C. Exclusions.

1. This Ordinance does not provide any remedy or forum for any alleged occupational injury or illness to an Employee arising from or related to employment.

2. This Ordinance does not provide any remedy or forum for alleged Employment Discrimination that occurred more than one hundred-eighty (180) days prior to submitting written notice of such claim to the Claims Administrator.

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

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

#### **V. Exhaustion of Tribal Dispute Process Required**

As a prerequisite to adjudication of any Employment-Related Claim, Claimant must first exhaust the tribal dispute process for resolving an Employment-Related Claim as provided in Section VI. of this Ordinance. Claimant's failure to exhaust or to strictly comply with any aspect of the tribal dispute process shall result in the forfeiture of Claimant's opportunity to pursue an Employment-Related Claim. The Tribe does not waive its sovereign immunity in any forum or for any Employment-Related Claim that does not strictly comply with the requirements of the tribal dispute process.

#### **VI. Tribal Dispute Process – Employment Discrimination**

A. Notice of Alleged Occurrence. A person seeking redress based upon an Employment-Related Claim must submit a written notice of such claim to the Claims Administrator within one hundred-eighty (180) days of the alleged occurrence of the Employment Discrimination.

B. Notice of Tribal Employment Discrimination Dispute Process. Within fourteen (14) days of receipt of timely written notice of an alleged occurrence of Employment Discrimination, the Claims Administrator shall provide notice by personal service or by certified mail, return receipt requested (or any other form of delivery by which confirmation of receipt may be obtained) that compliance with the Tribe's employment discrimination dispute process is required in the event he or she wishes to pursue his or her Employment-Related Claim, and that if dissatisfied with the resolution, is entitled to pursue his or her Employment-Related Claim before the Tribal Court at no cost to the Claimant (except for the Claimant's attorney's fees and a nominal filing fee that will be refunded if the Employment-Related Claim is successful). A copy of the tribal dispute process shall accompany such notice.

C. Deadline for Filing Employment-Related Claim. A person must bring his or her Employment-Related Claim within one hundred eighty (180) days of receipt of the written notice and copy of the Tribe's employment discrimination dispute process, provided that the one hundred eighty (180)-day limitation period is prominently displayed on the front page of the notice. An Employment-Related Claim must be delivered by certified mail, return receipt requested (or any other form of delivery by which confirmation of receipt may be obtained). Failure to timely file an Employment-Related Claim in accordance with the requirements of this Ordinance shall result in the forfeiture of Claimant's opportunity to pursue an Employment-Related Claim under this Ordinance. This time limit is jurisdictional, and shall be strictly construed to preclude late-filed claims.

D. Contents of an Employment-Related Claim. An Employment-Related Claim must include the following information:

1. The name, mailing address, and telephone number of Claimant and Claimant's legal representative, if any;

2. The date, location, and detailed account of the alleged incident or occurrence that gave rise to the Employment-Related 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 Employment-Related Claim;

4. The identity or description of all persons known to Claimant or believed by Claimant to have personal knowledge of the incident or occurrence that gave rise to the Employment-Related Claim, including without limitation, name, address, and phone number of such persons;

5. A detailed description of the nature and cause of the alleged damage or injury, including the identification of the type and amount of monetary damages requested;

6. The identity or description of all persons known to Claimant or believed by Claimant to have personal knowledge of the alleged damage or injury suffered by Claimant arising out of, connected with, or related to the incident or occurrence that gave rise to the Employment-Related Claim, including without limitation, name, address, and phone number of such persons;

7. Copies of all documentation in the possession or control of Claimant or his/her legal representative relating to the Employment-Related Claim, including without limitation, previously filed complaints of an alleged Employment-Related Claim with the Tribe, investigative reports and documentation of any alleged Employment-Related Claim, medical records and reports, security reports, witness statements, photographs, and police reports; and

8. The Employment-Related Claim must be signed by the Claimant under penalty of perjury. If the Claimant is unable to sign the Employment-Related Claim because of physical or mental incapacity, the Employment-Related Claim must be signed under penalty of perjury by another person with personal knowledge of the contents of the Employment-Related Claim. The failure of the Claimant to provide the required information may be grounds for denial of the Employment-Related Claim.

E. Burden of Proof. The Claimant bears the burden of proving, by a preponderance of the evidence, that Claimant was subjected to an Employment-Related Claim and that Claimant suffered actual damages caused by such Employment-Related Claim.

F. Investigation. The Claims Administrator shall investigate the Employment-Related Claim, and may, in its discretion, request additional information from Claimant. In addition, the Claims Administrator may request Claimant and witnesses to appear before it and to give recorded testimony under oath as to facts underlying the Employment-Related Claim. The failure of Claimant to provide additional information requested by the Claims Administrator or failure of Claimant to appear before the Claims Administrator and to give recorded testimony when requested may result in the denial of the Employment-Related Claim.

G. Claims Administrator Decision. The Claims Administrator shall issue a written decision, which shall be a reasoned decision based upon the facts surrounding the dispute. Such decision shall be sent by certified mail, return receipt requested (or any other form of delivery by which confirmation of receipt may be obtained) within 180 days of receipt of the Employment-Related Claim, unless such time period is extended by Claimant and the Claims Administrator by mutual agreement. Any decision shall be sent to Claimant at the address provided in the Employment-Related Claim. If the Claim is denied in whole or in part, the Claims Administrator shall include in the decision notice to Claimant of the option to appeal to the Tribal Court.

## **VII. Appeal to Tribal Court**

A. Right to Appeal. If the Claimant is dissatisfied with the Claims Administrator's decision, the Claimant may file an appeal with the Tribal Court in accordance with the rules of the Tribal Court. Discovery in the Tribal Court proceedings shall be governed by procedures comparable to section 1283.05 of the California Code of Civil Procedure. No member of the Tribal Court may be employed by the Gaming Facility or the Gaming Operation.

B. Costs of Appeal. Appeal to the Tribal Court shall be at no cost to the Claimant (excluding Claimant's attorney's fees and a nominal filing fee that will be refunded if the Employment-Related Claim is successful).

C. Location of Appeal. The adjudication, including any appeal, shall take place on the Tribe's Indian lands, or at another location within the County.

## **VIII. Appeal to Tribal Court of Appeals or JAMS Arbitration**

A. Right to Appeal. If the Claimant is dissatisfied with the decision of the Tribal Court, the Claimant may, at the Claimant's election, appeal the matter to the Tribal Court of Appeals or invoke the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent).

1. Tribal Court of Appeals. An appeal to the Tribal Court of Appeals shall be filed in accordance with the rules of the Tribal Court of Appeals. The Tribal Court of Appeals shall include an individual appointed by the Tribal Council who is knowledgeable of the laws prohibiting harassment, retaliation, or employment discrimination. No member of the Tribal Court of Appeals may be employed by the Gaming Facility or the Gaming Operation.

2. JAMS Arbitration. The JAMS appeal shall 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 proceeding. The JAMS 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.

B. Costs of Appeal.

1. Tribal Court of Appeals. Resolution of the dispute before the Tribal Court of Appeals shall be at no cost to the Claimant (excluding Claimant's attorney's fees and a nominal filing fee that will be refunded if the Employment-Related Claim is successful).

2. JAMS Arbitration. The party electing the JAMS appeal option shall bear all costs and expenses of the JAMS appeal, regardless of outcome, and each party shall bear their own attorney's fees.

C. Location of Appeal.

1. Tribal Court of Appeals. The adjudication, including any appeal, shall take place on the Tribe's Indian lands, or at another location within the County.

2. JAMS Arbitration. The JAMS appeal shall take place in the County.

**IX. Exclusive Remedy**

This Ordinance shall be strictly construed to provide the exclusive process for the consideration and resolution of Employment-Related Claims seeking money damages from alleged 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. The Tribe reserves all rights for itself and its officers, employees, and agents not expressly waived by this Ordinance.

**X. Enforcement**

A judgment issued in accordance with this Ordinance may only be enforced in the Tribal Court.

**XI. Limited Waiver of Sovereign Immunity**

The Tribe is a federally recognized Indian tribe that retains and has not waived its sovereign immunity from unconsented lawsuit and legal process. If a Claimant has fully exhausted the tribal dispute process, the Tribe expressly waives, and also waives its right to assert, sovereign immunity with respect to the dispute resolution processes for Employment-

Related Claims expressly authorized in this Ordinance and section 12.3, subdivision (f) of the Compact in connection with the jurisdiction of the Tribal Court, Tribal Court of Appeals, and JAMS arbitration, and in any suit in Tribal Court to either enforce an obligation under section 12.3, subdivision (f) of the Compact, or to enforce or execute a judgment based upon an award of the Tribal Court, Tribal Court of Appeals, or JAMS arbitration; provided, however, this limited waiver shall not apply to punitive damages or be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of a claim that exceeds three million dollars (\$3,000,000) of insurance coverage.

## **XII. Notice of Ordinance and Tribal Dispute Resolution Process**

The Tribe shall provide written notice of this Ordinance and the procedures for bringing a complaint in its employee handbook. The Tribe also shall post and keep posted in prominent and accessible places in the Gaming Facility where notices to employees and applicants for employment are customarily posted, a notice setting forth the pertinent provisions of this Ordinance and information pertinent to the filing of an Employment-Related Claim.