

MORONGO BAND OF MISSION INDIANS

ORDINANCE 40

**MORONGO GAMING OPERATION
EMPLOYMENT DISCRIMINATION,
HARASSMENT, AND RETALIATION
ORDINANCE**

Effective January 22, 2018

Morongo Band of Mission Indians

MORONGO GAMING OPERATION EMPLOYMENT DISCRIMINATION,
HARASSMENT, AND RETALIATION ORDINANCE

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MORONGO BAND OF MISSION INDIANS

MORONGO GAMING OPERATION EMPLOYMENT DISCRIMINATION, HARASSMENT, AND RETALIATION ORDINANCE

SECTION 1. STATEMENT OF PURPOSE.

Through this Gaming Operation Employment Discrimination, Harassment and Retaliation Ordinance, the Morongo Band of Mission Indians ("Tribe") recognizes the right of employees of a Morongo Tribal Gaming Operation or Gaming Facility to a workplace that is free from unlawful discrimination, harassment (including sexual harassment), or retaliation ("Prohibited Acts," as further defined in this Ordinance), and creates enforceable remedies, in the form of money damages or other appropriate relief, for persons against whom such acts are committed.

SECTION 2. DEFINITIONS.

2.1. "Alleged Perpetrator" means the Person or entity alleged in a Claim to have committed a Prohibited Act.

2.2. "Claim" means a written complaint by a natural person employed in or in connection with a Gaming Operation or Gaming Facility alleging under penalty of perjury that s/he has been subjected to any Prohibited Act(s) in violation of this Ordinance.

2.3. "Claimant" means a Person who submits, or on whose behalf is submitted, a Claim under this Ordinance.

2.4. "Compact" is the Class III gaming compact between the Tribe and the State of California that was executed by the Tribe on or around September 6, 2017, and that took effect on January 22, 2018, when notice that the Compact had been deemed approved was published in the Federal Register.

2.5. "Discrimination" means subjecting a person to unequal and unfavorable treatment based on his/her race, color, religion, ancestry, national origin, gender, marital status, medical condition, sexual orientation, age, or disability, but does not include giving preference in employment, promotion or retention to members of federally recognized Indian tribes or enforcing compliance with reasonable job-related requirements for uniforms and personal appearance.

2.6. "Gaming Activity" means any type of Class III gaming authorized under the Tribe's Compact.

2.7. "Gaming Facility" is any building on the Morongo Indian Reservation in which Gaming Activities or Gaming Operations occur, and all rooms, buildings, and areas, including parking lots and walkways, over which the Tribe exercises jurisdiction and the principal purpose of which is to serve the activities of the Gaming Facility.

2.8. "Gaming Operation" is any business enterprise owned by the Tribe that offers and operates Gaming Activities on the Morongo Indian Reservation.

2.9. "Harassment" means unwanted workplace conduct toward another person based on his or her race, religion, gender, national origin, age, disability, or sexual orientation.

2.10. "Materially Adverse" means any action that might deter a reasonable person from engaging in Protected Activity. "Materially Adverse" does not include a petty slight, minor annoyance, trivial punishment, or any other action that is not likely to dissuade a Person from engaging in Protected Activity.

2.11. "MCRS" means Morongo Casino Resort Spa.

2.12. "MCRS Human Resources Department" means the MCRS department responsible for administering the employment policies and procedures of the MCRS and maintaining all records pertaining to Persons employed in the Tribe's Gaming Facilities and Gaming Operations.

2.13. "Morongo Gaming Agency" means the regulatory agency created under the Tribe's Gaming Ordinance and responsible for overseeing and regulating the Tribe's gaming operations to ensure they are conducted fairly and in compliance with the Indian Gaming Regulatory Act, the Tribe's Gaming Ordinance, and the Compact.

2.14. "Morongo Tribal Court" means the judicial body established by the Tribe and vested with jurisdiction to adjudicate disputes arising on the Morongo Indian Reservation, including Claims asserted under this Ordinance. "Tribal Court" includes the Morongo Tribal Appellate Court.

2.15. "Person" means an individual employed by the Tribe in connection with the Tribe's Gaming Operation or a Tribal Gaming Facility as defined in the Compact. "Person" does not include any individual employed in the Tribe's Tribal Administration, any department of the Tribe's government, or any other Tribal business enterprise, wherever located, any independent contractor, or any individual employed by a person or entity that is not wholly owned and operated by the Tribe.

2.16. "Prohibited Act" includes harassment, retaliation, and discrimination as defined and prohibited by this Ordinance.

2.17. "Protected Activity" means asserting rights conferred by this Ordinance, and includes initiating and/or participating in an investigation or proceeding conducted pursuant to this Ordinance.

2.18. "Responding Party" means either the person or entity responding to an appeal from a determination by the Morongo Gaming Agency or the Morongo Tribal Court.

2.19. "Retaliation" means taking a materially adverse action against a Person because the Person has engaged in Protected Activity.

SECTION 3. LIMITED WAIVER OF TRIBAL SOVEREIGN IMMUNITY.

3.1. Subject to the limitations set forth in this Section 3, the Tribe waives its sovereign immunity and the right to assert sovereign immunity to suit only as necessary to effectuate a Person's filing, litigation, and enforcement of a Claim governed by this Ordinance. Nothing in this Ordinance shall be construed as submission of the Tribe to the jurisdiction of the federal Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing or the California Fair Employment and Housing Commission, or the courts of the State of California or the United States, or to the creation of any private right of action by any Person for money damages or other relief other than as expressly provided in this Ordinance. Nothing in this Ordinance shall preclude the Tribe from, or provide the basis for any Claim based upon, giving a preference in employment to members of federally recognized Indian tribes pursuant to a duly adopted tribal policy or from enforcing compliance with reasonable job-related requirements for uniforms and personal appearance.

3.2. Any Claim that does not fall within the express waiver of sovereign immunity set forth in this Section is not covered by this Ordinance and shall not form the basis of any action for any relief in any forum against the Tribe, its Tribal Council members, or against any of its officers, employees, or agents for acts or omissions committed within the course and scope of their duties and the Tribe's authority.

3.3. The only tribal assets that may be levied upon in satisfaction of an award on a Claim governed by this Ordinance shall be the Gaming Operation's accounts, and not the Tribe's government accounts.

3.4. No award issued pursuant to this Ordinance may include punitive or exemplary damages, or attorneys' fees.

SECTION 4. TIME FOR FILING CLAIMS.

A Person who alleges s/he was or is the victim of any Prohibited Act shall have ninety (90) days from the date that the Prohibited Act(s) allegedly occurred or that the Person knew or reasonably should have known of its occurrence to file a Claim with the Morongo Gaming Agency. A Claim must allege that the Claimant has been the victim of a Prohibited Act, describe the Prohibited Act(s) and the date(s) of occurrence, and provide all available information from which the identity of the Alleged Perpetrator(s) can be determined. If within ninety (90) days of a Prohibited Act, one or more subsequent Prohibited Acts effectively prevents the Claimant from filing a Claim within the initial ninety (90) days, the Claimant's time to file the complaint shall be extended for an additional ninety (90) days from the date that the Claimant no longer is being prevented from filing the Claim. If an alleged Prohibited Act consisted or consists of a pattern of the same or qualitatively similar conduct engaged in on multiple occasions, the time to file a Claim based on that conduct shall begin to run from the earliest date upon which the Claimant perceived or reasonably should have perceived the existence of the pattern of conduct upon which the Claim is based. To be timely filed, the Claim must be received by the Morongo Gaming Agency within the time allowed herein.

SECTION 5. INVESTIGATION OF CLAIMS.

Upon receipt of a Claim, the Morongo Gaming Agency's Executive Director shall designate either a qualified staff member or a qualified independent third-party investigator, to interview the Claimant to obtain as much information about the Claim as the Claimant may possess, and at the conclusion of the interview prepare a written report summarizing the information obtained during the interview. The Claimant shall be requested to review the report and acknowledge in writing that the report accurately summarizes the results of the interview. The Morongo Gaming Agency shall then conduct a thorough formal investigation of the Claim in a manner that will protect both the privacy of the Claimant and the due process rights of the Alleged Perpetrator(s), in order to determine whether there is reasonable cause to believe that the Claim could be substantiated. The investigation shall be completed within sixty (60) days from the date the Morongo Gaming Agency received the Claim, unless circumstances beyond the Gaming Agency's control prevent completion of the investigation within that period, in which event the investigation shall be completed as soon thereafter as practicable. If, based upon its investigation, the Morongo Gaming Agency makes a preliminary determination that there is no reasonable cause to believe that a Claim could be substantiated, the Morongo Gaming Agency shall serve the Claimant with a written statement of the determination and the reason(s) for such determination.

SECTION 6. PROCESSING OF CLAIMS.

6.1. Appeal of Preliminary Determination That a Claim Cannot Be Substantiated:

6.1.1. If the Claimant contests the Morongo Gaming Agency's preliminary determination that there is no reasonable cause to believe that the Claim could be substantiated, the Claimant shall have sixty (60) days from the date of service of the preliminary determination to request a hearing before the Morongo Gaming Agency to present any additional evidence that the Claimant alleges either was not adduced during the investigation or addressed in the Morongo Gaming Agency's preliminary determination and written statement of reasons. To be timely, the request for hearing must be received by the Morongo Gaming Agency within the time allowed hereunder.

6.1.2. The Morongo Gaming Agency shall conduct the hearing within thirty (30) days after receipt of Claimant's timely request for a hearing pursuant to subsection 6.1.1. Within thirty (30) days after the close of the hearing record, the Morongo Gaming Agency shall issue and serve on the Claimant, and the Tribe a written decision either affirming or modifying its preliminary determination, or vacating its preliminary determination and directing such further investigation as it deems appropriate. A copy of the record on which the decision is based shall be served along with the decision

6.1.3. If the Claimant chooses to appeal the Morongo Gaming Agency's decision to the Morongo Tribal Court, the Claimant must, within sixty (60) days of service of the Gaming Agency's written decision, file with the Clerk of the Morongo Tribal Court and serve on the Tribe, a notice of appeal specifying, with citations to the record previously provided by the Morongo Gaming Agency, each portion of the Morongo Gaming Agency's decision that the

Claimant contends is erroneous. To be timely filed, a notice of appeal must be received by the Clerk of the Morongo Tribal Court within the time allowed hereunder.

6.1.4. If a timely and sufficient notice of appeal is filed, the Tribe shall have forty-five (45) days from receipt of the notice of appeal, or such other time as may be specified in the Morongo Tribal Court's rules of procedure, to file and serve its response to the appeal, the Claimant shall have fifteen (15) days from receipt of the last-filed response to file and serve and the Tribal Court shall set the appeal for hearing within sixty (60) days after receipt of the Responding Party's or Parties' response(s) to the notice of appeal. A response or reply will be timely filed if, on or before the last day for filing, it is: (i) mailed to the Clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or (ii) dispatched to a third-party commercial carrier for delivery to the clerk within three (3) days.

6.1.5. The Claimant or the Tribe may appeal the decision of the Morongo Tribal Court to the Morongo Tribal Appellate Court.

6.2. Procedure if Preliminary Determination Is That a Claim Could Be Substantiated:

6.2.1. If, upon conclusion of the investigation, and after giving all parties a reasonable opportunity to be heard in a proceeding that affords all parties due process consistent with federal standards, the Morongo Gaming Agency determines that the Claim is substantiated, the Agency shall serve upon all parties a copy of the Agency's reasoned decision on the merits of the Claim. The written decision shall identify any sanctions imposed upon the perpetrator(s), any financial compensation to be awarded to the Claimant, and the party responsible for paying such compensation. Included in or accompanying the Morongo Gaming Agency's decision shall be information advising that any party that objects to the determination of the merits of the Claim or to the sanctions or compensation awarded, may, within sixty (60) days of receipt of the Morongo Gaming Agency's decision, file with the Clerk of the Morongo Tribal Court and serve on all other parties and the Agency, a notice of appeal. The notice of appeal must specify each portion of the Morongo Gaming Agency's decision that the appealing party contends is erroneous, and shall specify any further relief sought. To be timely filed, a notice of appeal must be received by the Clerk within the time specified herein. The Morongo Gaming Agency's service of its written decision, the record, and any other documents shall be by personal service or certified mail, return receipt requested. If any party contends that the Morongo Gaming Agency's decision failed to consider material evidence, that party may, within ten days after issuance of the Morongo Gaming Agency's decision on the merits of a Claim, file with the Morongo Gaming Agency and serve on all other parties a petition for rehearing. The Morongo Gaming Agency may, in its discretion, grant or deny a petition for rehearing. If a petition for rehearing is granted, the Morongo Gaming Agency shall schedule such further proceedings as it deems appropriate. If a timely filed and served petition is denied, the time to file and serve a notice of appeal shall run from the date of the Morongo Gaming Agency's order denying the petition.

6.2.2. All testimony received in hearings conducted in connection with a Claim pursuant to this Ordinance shall be given under oath, recorded, and if requested in connection with an appeal, transcribed, with the cost of transcription borne in the first instance by the person or entity requesting transcription. Discovery in Claim proceedings before the Morongo Gaming Agency shall be governed by procedures comparable to section 1283.05 of the California Code

of Civil Procedure. The Morongo Tribal Court shall have discretion to waive technical rules of evidence in all proceedings conducted under this Ordinance in order to avoid undue hardship or manifest injustice, but may exclude any proffered evidence that is cumulative, not relevant or of a kind that is determined not to be reliable under the circumstances. The entity conducting hearings shall have discretion to postpone hearing dates in order to allow sufficient time for parties to conduct such discovery as is authorized.

6.2.3. Upon receiving a notice of appeal, the Morongo Gaming Agency shall, within thirty (30) days, serve a copy of the record on which its decision is based on the Morongo Tribal Court and all parties. Within fifteen (15) days after receipt of the record from the Morongo Gaming Agency, the Morongo Tribal Court shall notify all parties of the date and time at which the Tribal Court will conduct a case management conference, during which the Court shall establish the schedule pursuant to which the respective parties will file opening, responding and reply briefs addressing the issues raised in the notice of appeal. The Tribal Court shall have discretion to adjust the schedule established during the case management conference for good cause shown.

6.2.4. Within fifteen (15) days after the earlier of receipt of appellant's reply brief, if any, or expiration of appellant's time to file a reply, the Tribal Court shall notify all parties of the date, time and place at which a hearing on the appeal will be conducted, and at which all parties to the appeal may appear and be heard. In the Tribal Court's discretion, post-hearing briefing may be permitted. Within sixty (60) days after the close of the hearing record, the Tribal Court shall issue and serve on all parties to the appeal a written decision either affirming, reversing or modifying the original decision, or vacating and remanding the original decision for such further investigation or proceedings, if any, as it deems appropriate. A copy of the record upon which the decision is based shall be served with the decision. The hearing before the Tribal Court shall not be *de novo* or involve re-weighing of evidence, but will be based solely on the record developed in the course of the Morongo Gaming Agency's investigation and hearing of the Claim. If the decision is supported by substantial evidence and is not contrary to applicable law, the Morongo Gaming Agency's decision must be affirmed.

6.2.5. Each party to the Tribal Court proceedings shall be responsible for paying its own attorneys' fees and costs, but the Claimant shall not be required to pay any filing fees to initiate the initial claim or any appeal from a decision on the Claim.

6.3. Appeal from Decision of Morongo Tribal Court:

6.3.1. Any party that objects to the final decision of the Morongo Tribal Court may, within thirty (30) days of service of the decision, file a notice of appeal with the Morongo Tribal Appellate Court, and serve a copy of the notice on the Morongo Tribal Court and all other parties. If the Morongo Tribal Appellate Court is not functioning when a notice of appeal is filed, the notice of appeal shall be filed with Judicial Arbitration and Mediation Service, Inc. ("JAMS") to be processed under the JAMS Optional Arbitration Appeal Procedure. The notice of appeal shall specify each portion of the decision that the party contends is erroneous. To be timely filed, the notice of appeal must be received by the Clerk of the Morongo Tribal Appellate Court or JAMS, as applicable, within the time allowed hereunder. If the appeal is heard by JAMS, the JAMS administrative costs and arbitrator fees shall be initially borne equally by all parties

desiring to participate in the appeal from the time the JAMS appeal option is elected, but the arbitrator shall award costs and expenses to the prevailing party (but not attorneys' fees).

6.3.2. Upon receipt of a timely-filed notice of appeal, the Morongo Tribal Appellate Court or JAMS, as applicable, shall notify all parties identified in the notice of appeal of the date, time and place at which the Tribal Appellate Court will establish the schedule pursuant to which the parties will file their respective opening, opposing and reply briefs. Within fifteen (15) days after the earlier of receipt of the appellant's reply brief, if any, or expiration of appellant's time to file a reply, the Morongo Tribal Appellate Court shall notify all parties of the date, time and place within sixty (60) days of said notice at which a hearing on the appeal will be conducted, and at which all parties to the appeal may appear and be heard.

6.3.3. Within thirty (30) days after the close of the hearing record, including such post-hearing briefing as the Court may permit, the Morongo Tribal Appellate Court or JAMS, as applicable, shall issue and serve on all parties to the appeal a written decision either affirming, reversing or modifying the original decision, or vacating and remanding the original decision for such further investigation or proceedings, if any, as it deems appropriate. The hearing before the Morongo Tribal Appellate Court or JAMS, as applicable, shall not be *de novo* or involve re-weighing of evidence, but shall be based solely on the record upon which the decision under appeal is based. If the decision of the Morongo Tribal Court is supported by substantial evidence and is not contrary to applicable law, the decision must be affirmed.

6.4. Any final award of money damages on a Claim shall be entered as a judgment of the Morongo Tribal Court, and may be enforced as such. Entry of a judgment sustaining a Claim shall be considered by the Morongo Gaming Agency in evaluating the suitability of the perpetrator for licensure.

SECTION 7. ACCEPTANCE OF AWARD OR SETTLEMENT.

The acceptance of any award, determination, or settlement by a person pursuing a Claim shall be final and conclusive on that person, his/her heirs, and his/her assigns, and said acceptance shall constitute a waiver of any present or future claim against the Tribe and any of its enterprises, officers, employees or agents, arising from the same or related circumstances giving rise to the claim in question.

SECTION 8. NOTICE OF ORDINANCE.

The Tribe, through the MCRS Human Resources Department, shall provide written notice of this Ordinance and the procedures for bringing a Claim to all Gaming Operation employees, by including such notice in its Gaming Operation employee handbook, and by posting and keeping 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 the Ordinance and information pertinent to the filing of a Claim. All persons or entities employed by the Tribe in connection with the Tribe's Gaming Operation or Gaming Facility shall, as a condition of initial or continued employment, be required to

acknowledge in writing receipt of a copy of this Ordinance, and his/her consent to the jurisdiction of the Morongo Gaming Agency and the Morongo Tribal Court system to enforce its terms and any judgments rendered thereunder.

SECTION 9. EFFECTIVE DATE.

Following the approval of this Ordinance by the Tribe's General Membership, this Ordinance shall be deemed to have taken effect on the date that notice is published in the Federal Register that the Compact has been approved or is deemed to have been approved by the Secretary of the Interior. From that date forward, this Ordinance shall govern all Claims based upon incidents occurring on or after the effective date of this Ordinance. This Ordinance shall not apply to any Claim based on an incident or conduct that occurred prior to that date.

SECTION 10. AMENDMENTS.

The Morongo Tribal Council hereby is delegated the authority to make such amendments to this Ordinance as the Tribal Council deems necessary to comply with the requirements of the Compact, and to settle, in the Tribal Council's discretion, any and all Claims asserted under the Ordinance. The Tribal Council promptly shall inform the General Membership of any amendments made to this Ordinance, cause the Gaming Operation's employee handbook to be updated accordingly, and inform the Gaming Operation's management and employees about all such amendments.

SECTION 11. EXPIRATION; REPEAL.

11.1 This Ordinance shall automatically cease to be in effect without further action by the Tribe or its membership upon the expiration of the Compact, any future amendment of the Compact that renders this Ordinance no longer necessary, or a change in law that eliminates the need for a tribal-state compact to conduct Class III gaming. The expiration, repeal, or other termination of the effectiveness of this Ordinance shall not affect any claim that may be pending or that arose while this Ordinance was in effect.

11.2 If a court of competent jurisdiction enters a provisional order or judgment that for any reason prevents the Compact from taking effect, the operative effect of this Ordinance shall be suspended as long as said provisional judgment remains in effect. Upon entry of a final judgment that allows the Compact to take effect, the operative effect of this Ordinance shall be reinstated as of the date of entry of said final order or judgment.

11.3 A final ruling by a court or agency of competent jurisdiction that the Compact is invalid shall have the effect of automatically repealing this Ordinance without further action by the Tribe or its membership and substituting in its place the this Ordinance that was in effect immediately prior to the adoption of this Ordinance.