

**RINCON BAND OF LUISEÑO MISSION INDIANS
RINCON INDIAN RESERVATION, CALIFORNIA**



**RINCON WORKERS' COMPENSATION ORDINANCE
RINCON TRIBAL CODE § 6.600**

Adopted June 14, 2018

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§ 6.600 **TITLE**

This Ordinance shall be entitled the "Rincon Workers' Compensation Ordinance" (hereinafter the "Ordinance").

§ 6.601 **FINDINGS**

- (a) The Gaming Enterprise endeavors to take all reasonable precautions to protect the health, safety and welfare of Gaming Enterprise employees.
- (b) The Gaming Enterprise possesses sovereign immunity from legal action and, unless an immunity waiver is granted, Employees will be unable to prosecute Claims against the Gaming Enterprise for work-related injuries.
- (c) The Gaming Enterprise desires to create a process and remedy by which an Employee who is injured on the job may be fairly compensated; provided however, that no Claim exceeding the limits of applicable insurance, or those excluded in this Ordinance, may be asserted.

§ 6.602 **PURPOSE**

The purpose of this Ordinance is to:

- (a) Create and maintain a system for addressing workers' compensation claims fairly and in general conformity with accepted workers' compensation practices.
- (b) Clearly define standards for injury compensability, and establish benefits comparable to those provided in the State of California; provided that the State of California's statutory workers' compensation system does not apply to any Employees of the Gaming Enterprise, nor shall any claims for workers' compensation benefits be subject to the California workers' compensation laws, statutes, or regulations, or the Workers' Compensation Board of California, or to the jurisdiction of any other court of law or equity.
- (c) Establish a systemic and uniform procedure for the administration of workers' compensation benefits to Employees of the Gaming Enterprise.
- (d) Meet the Tribe's obligations under Section 10.3(a) of the Secretarial Procedures for the Rincon Band of Luiseno Indians ("Class III Gaming Procedures").

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(e) Provide a limited waiver of the Gaming Enterprise's immunity as articulated in Section 6.619 of this Ordinance.

§ 6.603 **SCOPE**

This Ordinance shall apply to all Gaming Enterprise Employees who sustain injuries, illnesses, or other conditions arising out of and occurring in the course of employment at the Gaming Enterprise, regardless of whether those injuries are sustained on or off the Reservation, and to any Dependents who may be entitled to benefits or recovery under the terms of this Ordinance.

§ 6.604 **EXCLUSIVE REMEDY AND PROCEDURE**

This Ordinance establishes the sole and exclusive remedy for, and the sole and exclusive method for obtaining compensation, for any injuries, illnesses, conditions, or death arising out of and in the course of employment. The Gaming Enterprise's liability is limited to the compensation established in this Ordinance and shall not be expanded, broadened, enhanced, or otherwise increased except by express amendment of this Ordinance.

§ 6.605 **DEFINITIONS**

(a) “**Administrator**” shall mean the appointed agency(s) responsible for managing Claims under this Ordinance. Managing Claims includes the duties set forth in Section 6.609 below.

(b) “**Arise out of Employment**” or “**Arising out of Employment**” means that an incident giving rise to occupational injury or illness must be causally related to the conditions and obligations of employment. Risks that are personal to the “Claimant,” for purposes of determining compensability, will not be construed to arise out of employment.

(c) “**Child**” or “**Children**” means the offspring of an Employee, and shall also include an unborn child, a child legally adopted prior to the injury, a child toward whom the Employee stands in loco parentis, and a stepchild if such stepchild was, at the time of the injury, a member of the Employee's family and household, and substantially dependent upon the Employee for support. “**Child**” also includes any person deemed to be an Employee's child under Tribal custom as interpreted by the Tribal Council or its appointed representative.

(d) “**Claim**” means claim for workers' compensation benefits by a Gaming Enterprise Employee or Dependent under this Ordinance for a Compensable Injury.

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(e) “**Claimant**” means an Employee or qualified Dependent who, complying with the procedures established in this Ordinance, submits a Claim for workers' compensation benefits under this Ordinance, and who is determined to have sustained a Compensable Injury.

(f) “**Compensable Injury**” means a specific (resulting from one incident or exposure) or cumulative (resulting from repetitive or continuous activity or exposure) injury, illness, or condition including damage to artificial limbs, dentures hearing aids, eyeglasses, and medical braces of all types (provided that such damage is incidental to an injury), where such injury, illness, or condition meets the standards set forth in Section 11 of this Ordinance. Where the primary injury, illness, or condition meets the standards set forth in Section 6.610 of this Ordinance, consequential injuries alleged to be attributed to the Compensable Injury will be compensable only where there is objective medical evidence submitted by a physician or other medical professional approved by the Administrator which directly correlates such a consequence to the original injury, and where there is no intervening or superseding event.

(g) “**Course of Employment**” means taking place within the period of employment, at a place where the Employee is reasonably expected to be under the terms of his or her employment, and while fulfilling his or her occupational duties or engaging in an activity incidental thereto. Injuries sustained in transit to or from work are not covered unless the journey itself is part of the service to the employer and there was no substantial deviation from that service.

(h) “**Benefit**” means those benefits to which an Employee is entitled under Section 6.611 of this Ordinance.

(i) “**Days**” mean calendar days unless otherwise specified.

(j) “**Death Benefits**” shall mean funeral expenses and monetary compensation provided to a deceased Employee's Dependents where the Employee's death is the direct result of a Compensable Injury.

(k) “**Dependent(s)**” shall mean the Spouse and/or Child or Children of the deceased Employee. Tribal custom may allow for the extension of dependency status to other family members if such family members were wholly dependent upon the deceased Employee at the time of death. Extending the status of Dependent to persons other than an Employee, Spouse or Child is within the Administrator's discretion, subject to approval by the Tribal Council.

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(l) **“Employee”** means a person employed by or in service of the Gaming Enterprise, under any contract of hire, express or implied, oral or written, under which such individual receives a salary or wages for work performed for the Gaming Enterprise. Employee shall not include any person who qualifies as an independent contractor, contractor, outside consultant, vendor, or volunteer.

(m) **“Gaming Enterprise”** means the Harrah's Resort Southern California, or any other entity established and owned by the Tribe to conduct gaming operations pursuant to its Class III Gaming Procedures or any subsequent Class III gaming compact. Gaming Enterprise does not include any independently owned and operated vendor or entity that operates as a tenant inside the Gaming Enterprise facilities.

(n) **“Idiopathic Injury”** shall mean an injury to an Employee that arises spontaneously from an unknown or obscure etiology or cause, or a risk or injury that is peculiar to the Employee, the cause of which is precipitated not by an event that can be causally linked to employment specifically, but rather an activity of daily living.

(o) **“Independent Medical Examination”** means an evaluation by a physician who is on the State of California list of approved Independent Medical Examiners, a Qualified Medical Evaluator or an agreed upon Medical Examiner upon mutual agreement between the Employee and the Administrator with Qualified Medical Examiner certification or equivalent qualifications, performed in order to determine causation, extent, medical status, work status, permanent and stationary status, level of impairment, entitlement to benefits, apportionment, or other similar attribute of an injury, illness, or condition. An Independent Medical Examination shall be conducted upon request of the Administrator at the expense of the entity employing the Employee in order to resolve a medical dispute.

(p) **“Permanent Partial Impairment”** shall mean a level of permanent disability at the time a permanent and stationary status (“P&S”) and/or maximum medical improvement (“MMI”) is achieved, as opined by a treating physician or as the result of an Independent Medical Examination using the California 2005 Permanent Disability Rating Schedule, which results in a whole person impairment rating of less than seventy percent (70%).

(q) **“Permanent Total Impairment”** shall mean a level of permanent disability at the time a P&S and/or MMI is achieved, as opined by a treating physician or as the result of an Independent Medical Examination using the California 2005 Permanent Disability Rating Schedule, which results in a whole person impairment rating of seventy percent (70%) or higher. There shall be no presumptions of “Permanent Total Impairment” under this Ordinance.

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(r) **“Psychiatric Injury”** shall mean a mental disorder diagnosed pursuant to the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, which is medically attributable to employment by a preponderance of evidence, and which resulted in its entirety from a Compensable Injury.

(s) **“Reservation”** shall mean the Rincon Indian Reservation and all lands under the jurisdiction and control of the Tribe and its governing body.

(t) **“Spouse”** means the legally ordained husband or wife or domestic partner of the Employee, however a domestic partner will only be considered a Spouse under this Ordinance if, at the time of the Compensable Injury, the Employee and said domestic partner cohabitated and were registered with the California Secretary of State’s Domestic Partners Registry.

(u) **“Supplemental Job Displacement Benefit”** means the amount payable to a Claimant who sustains Permanent Partial Impairment as the result of a Compensable Injury, who does not receive a bona fide offer of permanent modified or alternative work from the Employer, to help compensate that Claimant for the anticipated costs of vocational retraining or rehabilitation in order to return to gainful employment.

(v) **“Temporary Partial Disability”** means a non-permanent medical status that results in the Employee being able to perform modified or light work duties or reduced hours at the direction of or as opined by a physician approved by the Administrator, that results in diminished earnings when compared with the Employee’s pre-injury average weekly wage.

(w) **“Temporary Total Disability”** means a non-permanent medical status that results in the Employee being physically unable to perform any work at the direction of or as opined by a physician approved by the Administrator, that results in a complete loss of earnings.

(x) **“Tribal Council”** means the elected governing body of the Tribe exercising authority pursuant to Section 6 of the Articles of Association of the Rincon Band of Luiseño Indians.

(y) **“Tribal Court”** is the Southern California Intertribal Court or any other entity explicitly designated by the Tribe to serve in that capacity for purposes of this Ordinance.

(z) **“Tribe”** is the Rincon Band of Luiseño Indians a federally recognized sovereign nation, including all incorporated and/or unincorporated Tribal governmental entities

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(including, without limitation, Tribal Council, Gaming Commission, any economic development corporations) and their officials, officers, managers, agents and employees. For purposes of the definitions used in this Ordinance the term "Tribe" does not include the entities included in the definition of "Gaming Enterprise".

(aa) "Written Decision" shall mean any of the following, when reduced to writing and sent to a Claimant:

- (1) The finding(s) and/or decision(s) of the Administrator to accept or deny, in full or in part, any aspect of a Claim hereunder;
- (2) Determinations of entitlement by the Administrator of any available workers' compensation benefit;
- (3) Decisions made by the Administrator to close the Claim; or
- (4) Any other finding, decision, or award rendered by the Administrator relative to the workers' compensation Claim.

§ 6.606 **REPORTING AND CLAIM OBLIGATIONS**

(a) An Employee must report any injury, illness, or condition that is actually or is thought to be potentially related to their employment, no matter how slight, to his or her supervisor within 24 hours. Failure to adhere to this requirement could subject the Employee to disciplinary action and/or affect the viability of his or her Claim.

(b) If an Employee is incapacitated, another person may report the injury on the Employee's behalf, as soon as practicable.

(c) Within thirty (30) days of the injury, illness, or condition, the Employee must complete and file the requisite Claim forms with the Administrator. The Administrator will create Claim forms that can include, but are not limited to:

- (1) An Employer's first report of injury;
- (2) A signed statement from the Employee as to how the incident occurred and the specific body parts affected or illness or condition claimed;
- (3) A medical authorization release and a list of past treating physicians; and/or

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(4) An occupational injury questionnaire.

(d) A supervisor that receives a report or notice of a work-related injury from an Employee, or on his or her behalf, must report the injury to the Administrator within twenty-four (24) hours of receipt, or the next business day in the event of office closure. A supervisor's failure to report an injury shall toll the statute of limitations defined in Section 6.607, provided that the Employee can demonstrate that the Employee properly reported the injury.

(e) An Employee must cooperate using their best good-faith efforts with all requests for post-injury or post-accident drug screens in order to qualify as a Claimant eligible to receive workers' compensation Benefits.

(f) The Gaming Enterprise shall post and keep posted in a conspicuous location frequented by Employees, where the notice can be easily read during the workday, a notice which shall state the name and contact information of the Administrator. The notice shall advise employees of their obligations under this Section 6.606. The notice shall also advise Employees that this Ordinance is the exclusive remedy for workers' compensation claims.

§ 6.607 **STATUTE OF LIMITATIONS**

(a) Filing a Claim. A Claim for workers' compensation Benefits that is not filed by the Employee pursuant to Section 6.606 above within thirty (30) days of the incident or accident giving rise to the alleged Compensable Injury will be rejected absent extenuating circumstances. If the specific date of incident or accident cannot be determined, or in the case of cumulative injury or trauma, no Claim for workers' compensation benefits will be accepted if the Claim is not filed within thirty (30) days from the date that the Employee either knew, or in the exercise of reasonable diligence should have known, that the injury, illness, or condition was related to his or her employment.

(b) Appealing a Decision. Should an Employee, Claimant, Dependent or any legal representative thereof disagree with any Written Decision of the Administrator, he or she may appeal that decision in writing within thirty (30) days of the date of the Administrator's correspondence, in a manner and form consistent with the requirements set forth in Section 6.613 below. Failure to submit an appeal within this timeframe will render the decision of the Administrator final and binding, with no further rights to appeal.

(c) Reopening a Claim. Once a Claim has been closed pursuant to Section 6.612 below, after one (1) year has passed from the last date of medical treatment, a Claim shall be presumed permanently closed with no opportunity to reopen it unless the Administrator

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should, in its discretion and with new additional, or previously undiscovered medical findings decide otherwise. A Claim that has been permanently closed will relieve the Gaming Enterprise of any and all further liability associated with that Claim, including any Medicare liens.

§ 6.608 **INSURANCE**

The Gaming Enterprise shall procure and maintain in effect worker's compensation insurance with sufficient coverage and policy limits to provide the benefits authorized by this Ordinance.

§ 6.609 **ADMINISTRATOR DUTIES AND RESPONSIBILITIES**

The Administrator shall act on behalf of the Gaming Enterprise in receiving, processing, and administering Workers' Compensation Claims, including payment of benefits under this Ordinance. The Administrator's responsibility to make determinations and decisions on the Gaming Enterprise's behalf shall include, without limitation, the following duties:

- (a) Conduct a thorough investigation of each Claim filed, and complete initial contacts with all relevant parties within seventy-two (72) hours of receipt of the Claim.
- (b) Until such time as a Claim is accepted or rejected pay up to \$10,000.00 in medical treatment for Claimant's alleged injury.
- (c) Determine whether to accept, deny, or further investigate a Claim and issue a Written Decision notifying the Employee of such determination within thirty (30) days of receipt of the Claim.
 - (1) If the Claim is accepted, the Administrator shall report to the insurance company, pursuant to the insurance policy required under Section 6.608, the Claim's anticipated exposure, with a detailed analysis of how the Claim was calculated, including an estimate of the benefits due and the duration and frequency of those benefits.
 - (2) If the Claim is denied, the Administrator shall include the specific basis for denial, and provide information about the Claimant's rights under the Dispute Resolution Process in Section 6.613 below.
 - (3) Should the Administrator determine, within the specified period, that further investigation is required, the Administrator shall establish a detailed plan of action regarding the purpose of the investigation and what is sought to be

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discovered, and shall make best efforts to complete the investigation expeditiously, and under such circumstances shall make a final Written Decision outlining compensability within ninety (90) days from the date the Claim was filed. The Administrator may extend the time period for rendering a final Written Decision beyond ninety (90) days when warranted under the circumstances, in the Administrator's sole discretion.

(d) The Administrator shall retain full medical control over Claims for their duration. The Administrator shall determine the reasonableness and necessity of medical care and charges and shall determine whether and to what extent compensation is due under this Ordinance. The Administrator shall promptly approve or disapprove any referrals, procedures, surgeries, or other medical requests made by approved and authorized medical providers. Disapproval of such requests shall be based on sufficient justification including, but not limited to, medical evidence to the contrary, peer review, utilization review, surveillance video, and similar considerations.

(e) The Administrator shall determine the eligibility and compensation rate payable for Temporary Total Disability, Temporary Permanent Disability, Permanent Partial Disability, Permanent Total Disability, Supplemental Job Displacement, and/or Death Benefits.

(1) In the case of Permanent Partial Disability or Permanent Total Disability, the Administrator is authorized, through Compromise and Release, to settle and pay Claims in a lump sum based on a reasonable present value calculation as determined by the Administrator.

(2) In the case of Death Benefits the Administrator shall determine the eligibility of Dependents and the terms of any benefits payable. In the event of a need to allocate dependency benefits between Dependents living in different households the Administrator shall make the necessary allocation, based on the obligations, legal or otherwise, of the deceased Employee.

(f) The Administrator shall provide a quarterly report to the Tribal Council regarding the Workers' Compensation program and individual claims.

(g) The Administrator shall provide reports to the insurance carrier regarding the Workers' Compensation program and individual claims.

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(h) The Administrator shall, on behalf of the Gaming Enterprise, pursue any cause of action for, or defend any cause of action or Claim against, the Gaming Enterprise under this Ordinance.

(i) The failure or alleged failure of the Administrator to perform any of the duties or responsibilities outlined above will not, as a matter of law or operation, create any cause of action for any third party, nor will the right to benefits or recovery of any Employee and/or Claimant be expanded or presumed in such an event. The Administrator, as an official of the Gaming Enterprise, is entitled to the Tribe's sovereign immunity from suit in state or federal courts or administrative agencies for his or her actions undertaken pursuant to this Ordinance.

§ 6.610 **COMPENSABILITY; EXCLUSIONS**

(a) In order for a Claimant to receive any benefits for workers' compensation under this Ordinance, the Claimant must demonstrate by a preponderance of evidence that he or she sustained a Compensable Injury.

(b) A Claim for a Compensable Injury must be initiated by reporting the injury and filing a Claim pursuant to Section 6.606 and 6.607 above.

(c) A Compensable Injury must both Arise out of Employment and occur within the Course of Employment. An injury that does not meet these and any other applicable requirements is not a Compensable Injury.

(d) Upon occurrence of any of the following a Claim will be rejected, payment of any workers' compensation Benefits will be discontinued, and/or any incident or accident will not qualify as a Compensable Injury, as appropriate:

(1) The Employee fails to adhere to the reporting requirements, filing requirements or statute of limitations established under Section 6.606 or 6.607 of this Ordinance;

(2) The injury is caused by intoxication, alcohol, illegal drugs, or the unlawful use of any other controlled substance;

(3) The injury is either intentionally self-inflicted, or an Employee unreasonably refused to obey written or verbal instructions which, if obeyed, would have reasonably prevented or significantly reduced the likelihood of injury or death;

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- (4) Suicide;
- (5) The injury results from an altercation in which the injured Employee was the initial aggressor, whether or not those injuries are caused by a third person or fellow Employee;
- (6) The injury is caused by or during the commission by the injured Employee of any crime, including any misdemeanor or felony;
- (7) The injury arises out of voluntary participation in any off-duty recreational, social, athletic, or other activity that is not part of the Employee's usual and customary employment-related duties;
- (8) The Claim is filed after notice of suspension, termination or layoff, and it is determined by the Administrator that the filing of the Claim was retaliatory in nature;
- (9) The injury is deemed by the Administrator to have been an Idiopathic Injury;
- (10) The injury results from participation in an activity deemed to have been horseplay;
- (11) At the time of injury, an Employee refuses or fails to utilize or wear personal protective equipment or other safety apparatus that is considered a prerequisite of the job where such refusal or failure would be admonished or not permitted by the Gaming Enterprise if it were discovered, and the injury is caused by such a refusal or failure to wear or use that personal protective equipment or other safety apparatus;
- (12) The injury is a purely emotional or mental injury, except:
 - (A) When the injury qualifies as a "Psychiatric Injury" as defined in this Ordinance; or
 - (B) Where such injury is the direct result of a severe, extreme, or abnormal Compensable Injury, as determined by a medical provider authorized by the Administrator;

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- (13) The injury results from or is attributable to second-hand smoke, which is considered an inherent risk of employment, which an Employee assumes by accepting a position with the Gaming Enterprise;
- (14) The Employee refuses to cooperate or fails to use his or her good faith best efforts in cooperating in the investigation of the Claim, thus impeding the Administrator's right to discovery;
- (15) The Employee, without good cause shown, fails to present or appear for a scheduled Independent Medical Examination, and the Employee received sufficient prior notice of the appointment;
- (16) Compensability is based on misrepresentation or willful omission of a material fact which, if known to the Administrator or Gaming Enterprise would have resulted in denial of the Claim or provision of workers' compensation benefits at lesser levels than what was actually paid in reliance upon the misrepresentation or willful omission;
- (17) The injury is determined to have been a flare-up or exacerbation of a pre-existing injury, illness or condition where no aggravation or worsening of symptoms are attributable to employment or where work merely served as the stage for the incident to occur without specific industrial causation;
- (18) Benefits for a Claim due to Cumulative Injury will be reduced if the Employee has been employed for a limited time as follows:
- (A) Employees are not eligible for Benefits when employed full-time for a period up to 4 months;
 - (B) Employees receive 25% of eligible Benefits for a Claim made while employed full-time for a period of 4 to 8 months;
 - (C) Employees shall receive 50% of eligible Benefits for a Claim made while employed full-time for a period of 8 to 12 months;
 - (D) Employees receive 75% of eligible Benefits for a Claim made while employed full-time for a period of 12 to 18 months; and
 - (E) Employees eligible for full compensation after being employed full-time more than 18 months; or

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(19) Injury occurring while an Employee travels to or from work, unless such travel is in connection with the performance of employment duties.

§ 6.611 **WORKERS' COMPENSATION BENEFITS**

Benefits payable to any Claimant under this Ordinance shall be comparable to those mandated for comparable claimants under the California Labor Code, including quality and timely medical treatment consistent with the policies, purposes and provisions of this Ordinance; provided, however, that nothing herein is intended to be, nor shall be construed as, an express agreement to be subject to any provision of California state law. This provision does not waive the Tribe's or Gaming Enterprise's sovereign immunity or the immunity of any of their entities, agencies, offices or branches. Benefits under this Ordinance shall include the following:

(a) Medical Benefits.

(1) A Claimant found to have a Compensable Injury in conformance with this Ordinance and entitled to benefits hereunder shall be entitled to all medical, surgical hospital, or dental treatment and any therapy, durable medical equipment, medications, diagnostic testing, radiology, and any other medical service related thereto, as requested or prescribed by a provider selected by Claimant within thirty (30) days from the date of the injury is reported or, if a medical provider network is established by the Administrator, then within the medical provider network; provided that medical benefits will be comparable to those established by the California Department of Industrial Relations, Division of Worker's Compensation and the California Medical Treatment Utilization Schedule.

(2) The Administrator shall retain medical control for the life of the Claim, as set forth in Section 6.609(d), subject to the following:

(A) Life-threatening, Serious, or Severe Injury. Where an Employee has sustained a serious or severe injury which requires immediate emergency medical attention, the Employee should go to the nearest emergency room or urgent care facility. All subsequent treatment is subject to the medical control of the Administrator and/or preferred vendor medical facility.

(B) Minor Injury. Where an Employee has sustained a minor Injury the Employee shall be directed to go to a health care provider designated by the Administrator. The designated health care provider shall determine the Employee's initial treatment. If an Employee elects not to go the designated health care provider, the Gaming Enterprise shall not be financially

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responsible for any further medical treatment, including any treatment performed by any other health care provider.

(3) Where deemed appropriate by an authorized and approved medical provider, when a condition reaches MMI and/or P&S, and future and/or supportive medical benefits are necessary, such benefits shall be provided for the duration established in the medical service provider's report, subject to the requirements set forth in Sections 6.607 and 6.612 of this Ordinance.

(4) Neither the Gaming Enterprise nor the Administrator shall be responsible for, nor shall any Claimant be entitled to compensation for, any bill or amount in excess of what is allowable under the California Medical Treatment Utilization Schedule.

(b) Temporary Disability Benefits

(1) The Gaming Enterprise has established a return-to-work program, such that best efforts will be made to accommodate recommendations for light duty, modified work duty, or alternate duty as prescribed by an approved physician.

(2) In instances where light duty, modified duty, or alternate duty results in diminished wages as compared to the pre-injury average weekly wage of the Claimant, the Claimant will be entitled to Temporary Partial Disability payments at a rate of two-thirds of the difference between actual weekly earnings during the period of modified and/or light duty and the pre-injury average weekly wage.

(3) In instances where light duty or modified duty cannot be accommodated by the Gaming Enterprise, or where a Claimant is deemed temporarily totally disabled by an authorized and approved physician the Claimant will be entitled to Temporary Total Disability benefits at a rate of two thirds of the pre-injury average weekly wage, subject to the maximum rates established by the State of California at the time such Temporary Total Disability is applicable. Temporary Total Disability benefits shall not be paid during the first three (3) days of lost earnings unless a Claimant is hospitalized, or is eligible for Temporary Total Disability benefits for fourteen (14) days or more. The maximum duration that Temporary Total Disability benefits will be paid is one-hundred and four (104) weeks.

(4) No Temporary Disability Benefits, whether Temporary Partial Disability or Temporary Total Disability, shall be paid where:

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(A) The Claimant is incarcerated, provided that such payments will only be withheld during the period of said incarceration;

(B) The Claimant does not have authorization from the approved medical provider to be off work;

(C) The Claimant is terminated for misconduct, or quits work, or declines a bona fide offer of light or modified duties by the Gaming Enterprise where such a bona fide offer is for work within the physical limitations prescribed by the approved physician; or

(D) The Claimant receives wages from any source during a period where the Claimant was opined to have been temporarily totally disabled.

(E) For purposes of this Section, a Claimant's pre-injury average weekly wage shall be calculated by adding all reported earnings for one year preceding the date of injury, and dividing the resulting amount by fifty-two (52). In the event the Claimant has been employed for less than a year, the pre-injury average weekly wage shall be calculated by adding all reported earnings for the actual period worked prior to the date of injury, and dividing the resulting amount by the number of applicable weeks worked. In the event the Claimant has worked for less than a week, the pre-injury average weekly wage will be calculated by multiplying the Claimant's hourly rate by the number of hours he or she is expected to or was hired to work.

(c) Permanent Impairment Benefits

(1) Permanent Partial Impairment benefits will be paid at a level comparable to that paid to comparable employees pursuant to the schedule of benefits recognized for similar injuries under comparable California law.

(2) Permanent Total Impairment benefits will be paid to a Claimant until age sixty-five (65) or until a settlement is reached but shall not inure to any Dependent upon death of the injured Claimant.

(3) The Gaming Enterprise shall not be responsible for any portion of Permanent Partial Impairment or Permanent Total Impairment that is attributable to a condition, disease, illness or injury that is deemed pre-existing in nature.

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(4) In no event shall Permanent Partial Impairment for any and all injuries combined exceed an aggregate total of one hundred percent (100%).

(5) No Permanent Impairment Benefits, whether Permanent Partial Impairment or Permanent Total Impairment, shall be paid under circumstances where the Claimant is incarcerated, provided that such payments will only be withheld during the period of said incarceration.

(d) Supplemental Job Displacement Benefits

(1) Supplemental Job Displacement Benefit is awarded where the Gaming Enterprise is either unable to accommodate the permanent modified duties prescribed by the physician authorized by the Administrator at the time MMI is opined, or would not have been able to accommodate had the Employee still been employed at the time MMI was reached.

(2) Benefits shall be paid in an amount comparable to similar benefits as established in the California workers' compensation law in effect at the time the benefit is awarded.

(3) Where the Administrator permits, in lieu of Subpart(2) above, Supplemental Job Displacement Benefits may be paid in the form of a voucher paid directly to a Claimant.

(4) However, if a Claimant's permanent impairment rating equals one hundred percent (100%), the Claimant will be considered permanently and totally disabled, and therefore ineligible for Supplemental Job Displacement Benefits.

(e) Death Benefits

(1) Death Benefits are only payable to Dependents of the deceased Claimant if an Employee dies from a Compensable Injury, as determined by the Administrator.

(2) Death Benefits will be paid at levels generally comparable to those provided to similar dependents under California Department of Industrial Relations, Division of Worker's Compensation.

(3) Death Benefits can either be issued on a bi-weekly basis, at a rate commensurate to what would have been paid under Temporary Total Disability benefits but for the death, or can be paid in a lump sum at a reasonable present value

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calculation as determined by the Administrator and subject to the acquiescence of the Dependents.

- (4) If paid on a bi-weekly basis, Death benefits will cease upon remarriage or death of the Spouse or upon the Child or Children reaching the age of eighteen (18).
- (5) A Child will remain eligible for Death Benefits if and so long as:
 - (A) He or she is under the age of eighteen (18) at the time of a work-related Compensable Injury; or
 - (B) He or she is developmentally disabled and incapable of caring for him or herself and is totally dependent on the Employee for primary support and maintenance.

§ 6.612 CLAIM CLOSURE

A Claim shall be closed when any of the following circumstances occur:

- (a) The Administrator has paid a settlement to the Claimant that has been agreed upon by both the Claimant and the Administrator in exchange for a general release of any and all further liability ("Compromise and Release");
- (b) The Administrator has extended all workers' compensation Benefits due under this Ordinance to any Claimant or Dependents;
- (c) The Employee or Dependent fails to appeal a Written Decision denying benefits within the time-frame prescribed in Sections 6.607 and 6.613;
- (d) The Claimant has either unreasonably failed to follow-up with medical treatment, or has abandoned medical treatment as evidenced by failure to present for two consecutive medical appointments without good cause shown, or, with respect to supportive medical care, fails to treat within one (1) year from the last date of authorized medical care under his or her Claim;
- (e) The Claimant has reached the point where no further material improvement would reasonably be expected from medical treatment as determined by the approved physician, where all other benefits have been exhausted and/or otherwise paid;

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- (f) Discovery of any circumstance impacting compensability or continuing benefits as more fully described in Section 6.610;
- (g) Pursuant to an order following arbitration under Section 6.613(b); or
- (h) Any other reason set forth in this Ordinance as determined by the Administrator.

Nothing in this Ordinance shall impair the rights of the Claimant or Gaming Enterprise to compromise any liability that is claimed to exist under this Ordinance on account of injury, disease or death, subject to the provisions herein. No Compromise and Release settlement shall be paid without a general release signed by both parties.

§ 6.613 **DISPUTE RESOLUTION**

(a) Informal Process. In the event of any disagreement or dispute arising from a Written Decision, a Claimant or Dependent must request a reconsideration of such Written Decision to the Administrator subject to the following requirements:

(1) Written appeals must be submitted to the Administrator within thirty (30) days of the Written Decision. Failure to timely file a written appeal shall render the Written Decision final and binding, and shall constitute a waiver to any subsequent appeals or dispute resolution processes set forth under this Ordinance.

(2) Upon receipt of a timely written appeal, the Administrator shall respond within ninety (90) days in writing via certified mail as to whether the Written Decision being appealed shall be upheld, amended, or overturned and the justification for same. If the Administrator does not respond within ninety (90) days, the Written Decision shall be deemed upheld by the Administrator and an aggrieved Employee, Claimant or Dependent may proceed to Subsection (b) below.

(3) Where the initial appeal is based on a dispute regarding medical evidence, an Independent Medical Examination shall be allowed; provided however that no prior Independent Medical Examination had previously taken place in review of the Claim in question; and further provided that a failure by an Employee or Claimant to submit to such an examination will render the Administrator's Written Decision final and binding.

(b) Final Arbitration. If an Employee or Dependent or Claimant exhausts his or her appeal pursuant to Subsection (a) and continues to disagree with Written Decision, or if the Administrator fails to respond to a timely request within ninety (90) days, final binding

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arbitration may be requested. Such a request must be made in writing, stating with specificity all grounds supporting the request, including without limitation, all documents, witness statements and other evidence Claimant intends to use to support the Claim at arbitration, within thirty (30) days of the Administrator response under Step One above, or thirty (30) days from the ninety-first (91st) day should the Administrator fail to respond within ninety (90) days of the submission of a request for review where a timely written request has been made. Failure to make a timely written request for arbitration under this Section for any reason, and/or failure to include all supporting evidence, will forever bar further appellate remedy and will render the Administrator's Written Decision final and binding. Where a timely request for arbitration is made pursuant to this Section, an independent arbitrator appointed by the Gaming Enterprise shall be selected, and an arbitration shall be scheduled within sixty (60) days of the request.

(1) The arbitrator shall:

(A) Be bound by this Ordinance, and any other Tribal laws, civil procedures, regulations, and practices, but may at his or her discretion look to California law or other workers' compensation law as a non-binding source of reference or information. The arbitrator shall not have jurisdiction to issue any awards for damages other than those specifically and explicitly available under Section 6.611. This limitation on the arbitrator's jurisdiction deprives the arbitrator of jurisdiction to award, among other remedies, punitive damages, treble damages, fines or penalties, attorneys' fees, costs, and equitable relief.

(B) Take all action necessary to ensure an equitable, orderly, and expeditious review.

(C) Regulate all aspects of the arbitration including but not limited to applicable oaths and affirmations, admissibility of evidence, and admissibility of expert or lay witness testimony.

(2) Any evidence that either party wishes to submit or have reviewed pursuant to or in consideration of the arbitration hearing must be submitted as true copies thereof to the opposing parties no later than fifteen (15) days prior to the date of the arbitration conference; provided, however, that the Claimant may not present evidence that was not included in his or her arbitration request, as provided in subsection (b).

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(3) Both parties agree to abide by the arbitrator's findings. Except as specifically expressed herein, nothing shall be deemed or interpreted as a waiver of the Gaming Enterprise's sovereign immunity nor does the Gaming Enterprise consent to enforcement of this provision by any other court, forum, or venue, except as provided by this Ordinance. The Gaming Enterprise expressly waives its immunity from suit only as to participation in the Final Arbitration hearing described above, and to enforcement of an arbitrator's award in Tribal Court.

(4) Cost of Arbitration. The parties shall bear their own costs, including attorney's fees, in the arbitration. Initially, the Gaming Enterprise shall pay the arbitrator's fees, but if the Gaming Enterprise is the prevailing party in arbitration, the arbitrator may award up to fifty percent (50%) of his or her fees and costs to the Gaming Enterprise.

(5) Enforcement of Arbitration Award. The Gaming Enterprise expressly waives its immunity from suit in Tribal Court to enforce an award of compensation and/or workers' compensation benefits by arbitration; provided, however, that the arbitrator and/or Tribal Court shall have no authority or jurisdiction to order execution against any assets or revenues of the Gaming Enterprise except: (a) what is provided for under a valid policy of workers' compensation insurance, but only up to the available limit therein; (b) funds specifically set aside or designated by the Gaming Enterprise for payment of such compensation and/or workers compensation benefits; or (c) any other proceeds of any applicable insurance policies. In no instance shall any enforcement of any kind whatsoever be allowed against any assets of the Gaming Enterprise other than the limited assets of the Gaming Enterprise specified in this Section. This limited waiver of sovereign immunity applies only as to actions in Tribal Court, and only as to the Gaming Enterprise.

§ 6.614 **SUBROGATION OF CLAIMS**

(a) As used in this Section:

(1) "Employee" includes the person injured and any other person to whom a claim accrues by reason of the injury or death of the former.

(2) "Employer" includes the Gaming Enterprise, the Administrator, and/or the insurer providing the insurance required by Section 6.608.

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(b) Although the Gaming Enterprise is entitled to invoke the defense of sovereign immunity for any claims brought against it, nothing herein shall impair the rights of the Gaming Enterprise, or the Administrator on its behalf, at the Gaming Enterprise's sole discretion, to file a subrogation lien in any action or to enter as a plaintiff, in any court of competent jurisdiction, to pursue any recovery to which the Gaming Enterprise may be entitled.

(c) The death of the Employee or of any other person, does not abate any right of action established by this Ordinance.

(d) The claim of an Employee does not affect his or her claim or right of action for all damages proximately resulting from the injury or death against any person other than the Employer. Any Employer who pays, or becomes obligated to pay compensation, or who pays, or becomes obligated to pay salary in lieu of compensation, may likewise make a claim or bring an action against the third person in the Tribal Court or court of competent jurisdiction. The Employer may recover in the same suit, in addition to the total amount of compensation, damages for which he or she was liable including all salary, wage, pension, or other benefits paid to the Employee or to his or her Dependents.

(e) If either the Employee or the Employer brings an action against such third person in Tribal Court, he shall forthwith give to the other a copy of the complaint by personal service or certified mail. Proof of such service shall be filed in such action. If the action is brought by either the Employer or Employee, the other may, at any time before trial on the facts, join as party plaintiff or shall consolidate his action, if brought independently.

(f) If the action is prosecuted by the Employer alone in Tribal Court, evidence of any amount which the Employer has paid or become obligated to pay by reason of the injury or death of the employee is admissible, and such expenditures or liability shall be considered as proximately resulting from such injury or death in addition to any other items of damage proximately resulting therefrom.

(g) If the Employee joins in or prosecutes such action in Tribal Court, either the evidence of the amount of disability indemnity or death benefit paid or to be paid by the Employer or the evidence of loss of earning capacity by the Employee shall be admissible, but not both. Proof of all other items of damage to either the Employer or Employee proximately resulting from such injury or death is admissible and is part of the damages.

(h) In the event of suit against such third party in Tribal Court:

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(1) If the action is prosecuted by the Employer alone, the Tribal Court shall first order paid from any judgment for damages recovered the reasonable litigation expenses incurred in preparation and prosecution of such action, together with a reasonable attorney's fee which shall be based solely upon the services rendered by the Employer's attorney in effecting recovery both for the benefit of the Employer and the Employee. After the payment of such expenses and attorney's fees, the Tribal Court shall apply out of the amount of such judgment an amount sufficient to reimburse the Employer for the amount of his expenditure for compensation and shall order any excess paid to the injured employee or other person entitled thereto; provided that in no event shall Employer be entitled to recover any Benefits paid as a result of under insured motorists claims.

(2) If the action is prosecuted by the Employee alone, the Tribal Court shall first order paid from any judgment for damages recovered the reasonable litigation expenses incurred in preparation and prosecution of such action, together with a reasonable attorney's fee which shall be based solely upon the services rendered by the Employee's attorney in effecting recovery both for the benefit of the Employee and the Employer. After the payment of such expenses and attorney's fee the Tribal Court shall, on application of the Employer, allow as a first lien against the amount of such judgment for damages, the amount of the Employer's expenditure for compensation.

(3) If the action is prosecuted both by the Employee and the Employer, in a single action or in consolidated actions, and they are represented by the same agreed attorney or by separate attorneys, the Tribal Court shall first order paid from any judgment for damages recovered, the reasonable litigation expenses incurred in preparation and prosecution of such action or actions, together with reasonable attorneys' fees based solely on the services rendered for the benefit of both parties where they are represented by the same attorney, and where they are represented by separate attorneys, based solely upon the service rendered in each instance by the attorney in effecting recovery for the benefit of the party represented. After the payment of such expenses and attorneys' fees the Tribal Court shall apply out of the amount of such judgment for damages an amount sufficient to reimburse the Employer for the amount of his expenditures for compensation.

(4) The amount of reasonable litigation expenses and the amount of attorneys' fees under subparts (1), (2), and (3) of this subsection shall be fixed by the Tribal Court. Where the Employer and Employee are represented by separate attorneys

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they may propose to the court, for its consideration and determination, the amount and division of such expenses and fees.

§ 6.615 **RECOVERY; OVERPAYMENTS**

(a) Whenever the Administrator pays any benefits as a result of clerical error, mistaken identity, innocent misrepresentation, or other mistake or similar circumstance that does not arise to the level of fraud or intentional omission or misrepresentation of a material fact, the Administrator shall request and the recipient of such benefits shall reimburse any monies expended within one (1) year of discovering the error. The Administrator shall have the discretion to waive, in whole or in part, any refund or reimbursement from a recipient where recovery would be futile, against equity, against good conscience, or under other similar circumstances.

(b) Whenever the Administrator has been fraudulently induced to make any benefit payment under this Ordinance, either by a willful omission of or intentional misrepresentation of a material fact, the recipient shall repay the payment, along with a penalty of fifty percent (50%) of the payment amount. The Administrator must demand the repayment within one (1) year of discovering the fraud.

(c) For the purpose of settlement for Permanent Partial Impairment or Permanent Total Impairment the amount of benefits due may be reduced or denied in its entirety by the Administrator for pre-existing impairment, whether work related or not, if apportionment is medically documented by a physician or as the result of an Independent Medical Examination approved by the Administrator.

§ 6.616 **CONFIDENTIALITY**

(a) The information in the Claims files and records of Employees or Claimants obtained pursuant to the filing of a Claim or any provisions of this Ordinance shall be deemed the exclusive property of the Gaming Enterprise, and therefore is strictly confidential and shall not be open to public inspection. A Claimant, or his or her authorized representative upon the presentation of the signed authorization of the Claimant, may review the Employee's medical file or receive copies of specific information therefrom.

(b) The Gaming Enterprise may review any files of its injured Employees in connection with any pending Claims. Physicians treating or examining or giving medical advice to or providing an opinion about Employees claiming benefits under this Ordinance as approved or authorized by the Administrator may, at the discretion of the Administrator, inspect the Claims files and records of the injured Employee, and other persons may make such

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inspection at the Administrator's discretion when such persons are rendering assistance to the Administrator at any stage of the proceedings on any matter pertaining to administration of this Ordinance.

(c) Notwithstanding the provisions herein, the Administrator and/or the Gaming Enterprise shall have the right to request full and complete medical records or reports from any of Employee's physicians or health care providers at any time and in the form and details as deemed necessary and shall have the right to present specific questions required to evaluate the Claim. All medical information and records shall be subject to disclosure to the Administrator and the Gaming Enterprise, in connection with any Claim for workers' compensation benefits in order to properly understand and evaluate the Claim. If the Employee asserts his or her privilege to keep such information or records from being disclosed to the Administrator or Gaming Enterprise, the Administrator or Gaming Enterprise may suspend any applicable workers' compensation Benefits, or can deny the Claim on the basis of violation of this Ordinance, including the Gaming Enterprise's and Administrator's rights to discovery hereunder, including without limitation, Section 6.610(d)(14).

§ 6.617 **MEDICARE**

The Medicare/Medicaid SCHIP Extension Act (MMSEA) sets forth reporting requirements for insurers where criteria established pursuant to the Act have been met. The Tribe recognizes those requirements, and nothing herein shall prevent the Administrator or Insurer from protecting Medicare's interests where required to do so. Where a Claimant is entitled to supportive medical care after MMI is achieved pursuant to Section 6.611(a) of this Ordinance, such supportive care will only be provided as specified by an approved physician and only for the duration specified by that approved physician. Where a Claim has been closed due to abandonment, award, or settlement, neither the Gaming Enterprise, its insurers, nor Administrator shall have any further obligation to pay benefits under this Ordinance, inclusive of any subsequent Medicare liens.

§ 6.618 **CALIFORNIA WORKERS' COMPENSATION LAW AND SYSTEM**
INAPPLICABLE

The State of California's statutory workers' compensation system does not apply to the Gaming Enterprise or its Employees, nor shall any Claims for workers' compensation benefits be subject to the California workers' compensation laws, statutes, or regulations, or the Workers' Compensation Board of California, or to the jurisdiction of any other court of law or equity. Nothing herein constitutes, or may be interpreted as constituting, the Tribe's consent to California's workers' compensation laws.

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§ 6.619 **SOVEREIGN IMMUNITY**

(a) Limited Waiver. The Tribe hereby expressly provides this limited waiver of the Gaming Enterprise's sovereign immunity from (i) arbitration under Section 6.613 above, and (ii) actions to enforce arbitration awards under Section 6.613(b)(5) filed with the Tribal Court; provided, however, that this limited waiver shall not apply to any action that does not satisfy the requirements of this Ordinance.

(b) No Waiver. This limited waiver does not apply to:

(1) A Claimant or any other person that seeks any remedy not explicitly authorized by this Ordinance,

(2) Any Claim that does not strictly comply with all provisions of this Ordinance.

(3) Abandoned claims.

(4) Any Tribe or Gaming Enterprise assets other than those specifically identified in this Ordinance.

(c) This limited waiver shall be strictly and narrowly construed.

(d) Nothing in this Ordinance shall be considered, construed, or interpreted as a waiver of Sovereign Immunity by the Tribe, including, without limitation to, the Tribal Council, Gaming Commission, the Tribe's officials, employees, entities, enterprises, offices, and agencies.

§ 6.620 **SEVERABILITY**

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

§ 6.621 **AMENDMENTS**

This Ordinance may be amended in accordance with Tribal law.

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§ 6.622 **EFFECTIVE DATE**

This Ordinance, as amended, shall be effective as of June 14, 2018; provided that the provisions of this Ordinance, as amended, shall not apply to any Claim timely filed before effective date of this Ordinance, as amended, but all Claims arising or filed on or after the effective date of this Ordinance, as amended, shall be subject to the procedural and substantive provisions of this Ordinance, as amended.

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