

**VIEJAS BAND OF KUMEYAAY INDIANS  
TRIBAL CODE**

**EMPLOYMENT DISCRIMINATION COMPLAINT ORDINANCE**

**Enacted on October 31, 2016**

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**EMPLOYMENT DISCRIMINATION COMPLAINT ORDINANCE**

**Enacted on October 31, 2016**

**Section 1 – General Provisions**

- 1.01 Title.** This Ordinance shall be entitled the “Viejas Band of Kumeyaay Indians Employment Discrimination Complaint Ordinance.”
- 1.02 Purpose.** The purposes of this Ordinance are:
- (A) To set forth the terms and conditions under which the Viejas Band will grant a limited waiver of its sovereign immunity solely for Claims seeking monetary damages resulting from alleged Employment Discrimination.
  - (B) To establish time limits, substantive standards and procedures for the filing and prompt and fair adjudication of Claims against the Viejas Band seeking monetary damages for Employment Discrimination alleged to have arisen out of a Claimant’s employment in connection with, or relating to the operation of the Viejas Band’s Gaming Operation, Gaming Facility, or Gaming Activities.
- 1.03 Governing Law.** All Claims under this Ordinance shall be decided in a manner consistent with California substantive law on workplace harassment, retaliation, or discrimination, excluding laws governing punitive damages, as limited by the Compact and the provisions of this Ordinance. This provision does not constitute general consent to California law, nor is it intended as a waiver of the Viejas Band’s sovereign immunity from unconsented suit or legal process.
- 1.04 Effective Date.** This Ordinance shall take effect immediately. The provisions of this Ordinance shall not apply retroactively to any Claim based on conduct alleged to have occurred before the effective date of this Ordinance.
- 1.05 Notification of Claim.** A person seeking monetary damages against the Viejas Band based upon a claim of Employment Discrimination must submit a written notice of such claim to the Claims Administrator within one year of the alleged occurrence of the Employment Discrimination.

**Section 2 – Definitions**

- 2.01 Claim** means a written document, together with supporting information and documentation, submitted by a Claimant pursuant to the procedures and requirements set

forth in Section 4 of this Ordinance, seeking monetary damages for Employment Discrimination.

- 2.02 Claimant** means an Employee who submits a Claim under this Ordinance alleging Employment Discrimination.
- 2.03 Claims Administrator** means the Viejas Human Resources Department, or such other designee of the Viejas Band, assigned to receive, investigate, evaluate, negotiate, and determine the resolution of Claims filed under this Ordinance.
- 2.04 Compact** means the Tribal-State Class III Gaming Compact between the State of California and the Viejas Band, including any amendments thereto.
- 2.05 Days** means all days of a calendar year inclusive of weekdays, weekends, and holidays.
- 2.06 Determination** means the written resolution, by the Claims Administrator, of a Claim timely filed under this Ordinance.
- 2.07 Employee** means a person who is employed by the Viejas Band 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 Viejas Band for services rendered. An independent contractor, outside consultant, or vendor is not an Employee
- 2.08 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, or disability; or retaliation against persons who oppose discrimination or participate in proceedings under this Ordinance, but only to the extent that such conduct would give rise to a cause of action under California law. Nothing herein shall preclude the Viejas Band from giving Indian preference in employment to members and descendants of federally recognized Indian tribes pursuant to the Viejas Band's Indian Hiring Preference Policy.
- 2.09 Gaming Activities** means the Class III gaming activities authorized under the Compact.
- 2.10 Gaming Facility** means any building in which Gaming Activities or Gaming Operations occur on Indian lands over which the Viejas Band exercises jurisdiction.
- 2.11 Gaming Operation** means the business enterprise that offers and operates Gaming Activities, whether exclusively or otherwise.
- 2.12 Intertribal Court of Southern California Court of Appeals** means the independent judiciary, with an appellate court panel consisting of three judges, established by members of participating Southern California tribes.

- 2.13 Judgment** means a judgment issued by the Viejas Tribal Court pursuant to this Ordinance.
- 2.14 Ordinance** means this Viejas Band of Kumeyaay Indians Employment Discrimination Complaint Ordinance.
- 2.15 Viejas Band** means the Capitan Grande Band of Diegueno Mission Indians of California: Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.
- 2.16 Viejas Tribal Court** means the tribal court established by the Viejas Band.

### **Section 3 – Covered Claims, Limits, and Exclusions**

- 3.01 Covered Claims.** Only those causes of action and remedies created by this Ordinance are cognizable hereunder, or are within the scope of the Viejas Band’s limited waiver of sovereign immunity. Nothing in this Ordinance creates any substantive right to relief or consents to the maintenance against the Viejas Band of any Claim based upon any act or omission of persons who are not officers, employees, or agents of the Viejas Band.
- 3.02 Limits.** The Viejas Band shall not be liable for interest prior to judgment. In no event shall the Viejas Band be held liable for damages in excess of \$3,000,000, and then only to the extent that such damages are covered by insurance required under the terms of the Compact.
- 3.03 Exclusions.**
- (A) 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.
  - (B) This Ordinance does not provide any remedy or forum for alleged Employment Discrimination that occurred more than one year prior to the filing of a Claim.
  - (C) This Ordinance does not provide any remedy or forum for claims against the Viejas Band for equitable indemnity or contribution arising from third-party litigation.
  - (D) This Ordinance does not provide any remedy or forum for claims against the Viejas Band to recover punitive damages or attorneys’ fees or costs.

### **Section 4 – Tribal Dispute Process**

- 4.01 Notice.** If the Viejas Band receives notice of a Claim timely submitted by an Employee in accordance with Section 1.05 of this Ordinance, the Viejas Band shall provide notice

to the Employee of its tribal dispute process, including the limitations period in which the Employee must file a Claim with the Claims Administrator. Notice shall be served upon the Employee either personally or by certified mail with return receipt requested no later than 14 Days from receipt of notification from the Employee.

**4.02 Filing of Claim.** Claimant shall file a Claim in writing with the Claims Administrator within 180 Days of receipt of written notice pursuant to Section 4.01. Claimant must present all information required under Section 4.03 and deliver such information to the following address by certified mail or any other form of delivery by which confirmation of receipt may be obtained: Viejas Claims Administrator, 5000 Willows Road, Alpine, CA 91901. Failure to timely file a Claim or meet the requirement of Section 1.05 shall result in the forfeiture of Claimant's opportunity to pursue a Claim under this Ordinance. This time limit is jurisdictional, and shall be strictly construed to preclude late-filed Claims.

**4.03 Contents of Claim.** A Claim must include the following information:

- (A) The name, mailing address, and telephone number of Claimant and Claimant's legal representative, if any;
- (B) The date, location, and detailed account of the alleged incident or occurrence that gave rise to the Claim;
- (C) The identity or description of all persons known to Claimant or believed by Claimant to be involved in the incident or occurrence that gave rise to the Claim;
- (D) 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 Claim, including without limitation, name, address, and phone number of such persons;
- (E) A detailed description of the nature and cause of the alleged damage or injury, including the identification of the type and amount monetary damages requested;
- (F) 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 incident or occurrence that gave rise to the Claim, including without limitation, name, address, and phone number of such persons;
- (G) Copies of all documentation in the possession or control of Claimant or his/her legal representative relating to the Claim, including without limitation, previously filed complaints of alleged Employment Discrimination with the Viejas Band, investigative reports and documentation of alleged Employment Discrimination, medical records and reports, security reports, witness statements, photographs, and police reports; and

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

- 4.04 Burden of Proof.** The Claimant bears the burden of proving, by a preponderance of the evidence, that Claimant was subjected to Employment Discrimination and that Claimant suffered actual damages caused by such Employment Discrimination.
- 4.05 Exhaustion of Tribal Dispute Process.** Claimant must first exhaust the Viejas Band's tribal dispute process for resolving a Claim as provided in this Section. 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 a Claim against the Viejas Band. The Viejas Band does not waive its sovereign immunity in any forum or for any Claim which does not strictly comply with the requirements of the tribal dispute process.
- 4.06 Investigation.** The Claims Administrator shall investigate the 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 given by an authorized notary public as to facts underlying the 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 Claim.
- 4.07 Claims Administrator Determination.** The Claims Administrator shall issue a Determination, which shall be sent by certified mail with return receipt requested, within 180 Days of receipt of the Claim, unless such time period is extended by Claimant and the Claims Administrator by mutual agreement. Any Determination shall be sent to Claimant at the address provided in the Claim. If the Claim is denied in whole or in part, the Claims Administrator shall include in the Determination notice to Claimant of the option to initiate a lawsuit in the Viejas Tribal Court pursuant to Section 5 within 30 Days of receipt of the Determination or 180 Days from the date when the Claim is filed under this section, whichever first occurs, unless the parties mutually agree to a longer time period.

### **Section 5 – Adjudication in the Viejas Tribal Court**

- 5.01 Initiating Lawsuit.** Following the exhaustion of the tribal dispute process in Section 4, a Claimant may initiate a lawsuit in Viejas Tribal Court challenging a Determination.
- 5.02 Costs and Awards.** The Viejas Band shall initially bear the cost of filing fees, but the Viejas Tribal Court may award costs, excluding attorneys' fees, to the prevailing party, not to exceed those allowable in a lawsuit in California superior court. Any Judgment issued by the Viejas Tribal Court shall be limited to the amount in controversy, or the

insurance limits under Section 3.02, whichever is less, and shall not include an award of punitive damages.

### **Section 6 – Appeal to Intertribal Court of Southern California Court of Appeals**

- 6.01 Initiating an Appeal.** Any party may appeal a Judgment entered by the Viejas Tribal Court under this Ordinance by filing such appeal with the Intertribal Court of Southern California Court of Appeals. The appeal must be filed within 30 Days of service of notice of entry of Judgment. The party filing the appeal must bear all costs and expenses associated with the appeal, regardless of the outcome.
- 6.02 Standard of Review.** The Intertribal Court of Southern California Court of Appeals shall review all legal determinations by the Viejas Tribal Court, but shall not set aside any factual determinations supported by substantial evidence. The Intertribal Court of Southern California Court of Appeals shall have no authority to award any Judgment exceeding the amount in controversy, or the insurance limits under Section 3.02, whichever is less, and shall not include an award of punitive damages. The Intertribal Court of Southern California Court of Appeals does not have the authority to award costs, including, without limitation, attorney’s fees, costs, lower court costs, or fees.
- 6.03 Final and Binding Decision.** The opinion of the Intertribal Court of Southern California Court of Appeals shall be final and not subject to further appeal.

### **Section 7 – Exclusive Remedy**

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

### **Section 8 – Enforcement**

A Judgment may only be enforced in the Viejas Tribal Court.

### **Section 9 – Limited Wavier of Sovereign Immunity**

The Viejas Band 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 Viejas Band expressly waives its sovereign immunity and its right to assert sovereign immunity, and all defenses based thereon, with respect to its consent to the jurisdiction of the Viejas Tribal Court and the Intertribal Court of Southern California Court of Appeals as provided in this Ordinance, and in any lawsuit under Section 8 to enforce or execute a Judgment; provided, however, this limited waiver shall not apply to punitive damages or for portions of a Claim or Judgment that exceed \$3,000,000 or the insurance limits under Section 3.02, whichever is less.