

**Employment Non-Discrimination Ordinance
of the Blue Lake Rancheria**

Ordinance No. **03-01**
Date Approved: January 15, 2003
Subject(s): Gaming, Employment

Title 1: Definitions

Throughout this Ordinance, the following words and phrases shall have the following meanings:

“Auxiliary aids and services” includes qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with vision impairments; acquisition or modification of equipment or devices; and other similar services and actions.

“Disability” means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such impairment; or being regarded as having such an impairment.

“Drug” means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C. § 812.

“Employee benefit plan” shall mean employee benefit plan as that phrase is defined in 29 U.S.C. § 1002(2).

“Employer” or “the gaming facility” means any gaming facility or gaming operation, as those terms are defined in Sections 2.8 and 2.9 of the Tribal-State Gaming Compact, which is wholly owned by the Blue Lake Rancheria, provided that it has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

“Illegal use of drugs” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. § 801 et seq.). *Such term does not include the use of a drug taken under supervision by a licensed health care professional*, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

“Qualified individual with a disability” means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires, with consideration for the employer’s judgment as to what functions of a job are essential. The employer’s and any amendments thereto shall be considered evidence of the essential functions of the job.

“Reasonable accommodation” may include making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and job restructuring, part-time or

modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of auxiliary aids and services, and other similar accommodations for individuals with disabilities.

“Tribe” means the Blue Lake Rancheria, a federally recognized Tribe.

“Undue hardship” means an action requiring significant difficulty or expense, when considered in light of the nature and cost of the accommodation needed under this Ordinance, the overall financial resources of the department within the Casino involved in the provision of the reasonable accommodation and the impact on the department resulting from such accommodation.

Title 2: Unlawful Employment Discrimination

Section 201: Discrimination Prohibited

(a) It shall be an unlawful employment practice for the gaming facility, because of the race, religious creed, color, national origin, physical disability, mental disability, or sex of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment unless based upon a bona fide occupational qualification.

(b) This part does not prohibit the gaming facility from refusing to hire or discharging an employee with a physical or mental disability, or because of his or her medical condition, or subject the gaming facility to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability or medical condition, where the employee, because of his or her physical or mental disability or medical condition, is unable to perform his or her essential duties even with reasonable accommodations or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.

(c) It shall be unlawful for the gaming facility, unless specifically acting in accordance with federal equal employment opportunity guidelines and regulations approved by an applicable federal agency with authority to do so, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, physical disability, mental disability, sex, or any intent to make any such limitation, specification or discrimination.

Section 202: Indian Preference

Indian preference in employment constitutes a permitted preference system based upon the

political affiliations of Native Americans, and thus is completely exempted from the prohibitions of this Title. In December 2002, the Blue Lake Rancheria adopted an Indian Preference Ordinance, which has been codified in Title 26 of the Tribe's Law & Order Code. That Ordinance, and any amendment(s) thereto, is incorporated herein by reference.

Section 203: Gender-based clothing requirements

(a) The gaming facility shall not refuse to permit an employee to wear pants on account of the employee's gender.

(b) Nothing in this section shall prohibit the gaming facility from requiring employees in a particular occupation to wear a uniform or from requiring an employee to wear a costume while that employee is portraying a specific character or dramatic role.

Section 204: Sexual harassment

Sexual harassment is a form of discrimination, and is unlawful under this Ordinance. In August, 2002, the Tribe's gaming facility adopted an anti-harassment policy as part of its employment Policies and Procedures. That Anti-Harassment Policy, and any amendment(s) thereto, is incorporated herein by reference.

Title 3: Prohibition of Age Discrimination

Section 301: Unlawful Employer Practices

It shall be unlawful for the gaming facility:

(a) to fail or refuse to hire, or to discharge any individual or otherwise discriminate against any individual with respect to his or her compensation, terms, conditions or privileges of employment, because of such individual's age;

(b) to limit, segregate or classify any employee in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of such individual's age;

(c) to reduce the wage rate of any employee in order to comply with this Ordinance; or

(d) to use salary as a basis for differentiating between employees when terminating employment if use of that criterion adversely impacts older workers as a group.

Section 302: Lawful Practices

It shall be lawful for the gaming facility:

(a) to take any action otherwise prohibited under Section 301 of this Ordinance where age is a bona fide occupational qualification reasonably necessary to the normal operation of the

particular business, or where the differentiation is based on reasonable factors other than age;

(b) to take any action otherwise prohibited under Section 301 of this Ordinance:

- (1) in order to promote legitimate performance-based business needs that are not intended to evade the purposes of this Ordinance, except that such needs shall not require or permit the involuntary retirement of any individual because of the age of such individual; or
- (2) in order to observe the terms of a bona fide employee benefit plan where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under federal law, or that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this Ordinance.

(c) to discharge or otherwise discipline an individual for good cause or other legitimate business need.

Section 303: Exceptions

Notwithstanding Section 301(b)(2) of this Ordinance, when the following circumstances are present, they shall not constitute violations of this Ordinance:

- (a) an employee pension benefit plan provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or
- (b) a defined benefit plan provides for payments that constitute the subsidized portion of an early retirement benefit; or social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. et seq.) or other federal law, and that do not exceed such old-age insurance benefits; or
- (c) following a contingent event unrelated to age, the value of any retiree health benefits received by an individual eligible for an immediate pension; or the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and following which the individual is eligible for not less than an immediate and unreduced pension, or both, are deducted from severance pay made available as a result of the contingent event unrelated to age; or
- (d) for an individual who receives immediate pension benefits that are actuarially reduced under paragraph (c), above, the amount of the deduction available pursuant to paragraph (c) shall be reduced by the same percentage as the reduction in the pension benefits. For the purposes of this paragraph, severance pay includes that portion of supplemental unemployment compensation benefits that constitutes additional benefits of up to 52 weeks, has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced

pension; and is discontinued once the individual becomes eligible for an immediate and unreduced pension.

Section 304: Age limits

(a) The prohibitions in this Title shall be limited to individuals who are at least forty (40) years of age.

(b) Nothing in this Ordinance shall be construed to prohibit compulsory retirement of any employee who has attained sixty-five (65) years of age and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such employee is entitled to an immediate non-forfeitable annual retirement benefit from a pension, savings or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, that amount as required by applicable federal law.

Section 305: Continuation of employment beyond usual retirement date

The gaming facility shall permit any employee who indicates in writing a desire in a reasonable time and can demonstrate the ability to do so, to continue his or her employment beyond any retirement date contained in any private pension or retirement plan. This employment shall continue so long as the employee demonstrates his or her ability to perform the functions of the job adequately and the employer is satisfied with the quality and volume of work performed.

Title 4: Equal Opportunity for Individuals with Disabilities

Section 401: Discrimination

(a) The gaming facility shall not discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) As used in this section, the term "discriminate" includes:

- (1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;
- (2) participating in a contractual or other arrangement or relationship that has the effect of subjecting the gaming facility's qualified applicant or employee with a disability to the discrimination prohibited under this Ordinance (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to employees, or an organization providing training and apprenticeship programs);
- (3) utilizing standards, criteria, or methods of administration that have the effect of

discrimination on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control;

- (4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;
- (5) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the gaming facility can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the gaming facility;
- (6) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of the gaming facility to make reasonable accommodation to the physical or mental impairment(s) of the employee or applicant.
- (7) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria is shown to be job-related for the position in question and is consistent with business necessity; and
- (8) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) It is a defense to a charge of discrimination under this Title that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this Title.

(d) Qualification standards may include a requirement that an individual not pose a direct threat to the health or safety of other individuals in the workplace.

Section 402: Medical examinations and inquiries

(a) The prohibition against discrimination as referred to in Section 401 shall include medical examinations and inquiries. The gaming facility shall not conduct a medical examination or

make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability. However, the gaming facility may make pre-employment inquiries into the ability of an applicant to perform job-related functions.

(b) The gaming facility may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination if all entering employees are subjected to such an examination regardless of disability; provided that all information regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that:

- (1) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
- (2) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
- (3) tribal officials investigating compliance with this Ordinance shall be provided relevant information on request; and
- (4) the results of such examination are used only in accordance with this Title.

Section 403: Prohibited and acceptable examinations and inquiries

(a) The gaming facility shall not require a medical examination and shall not make inquiries of an employee as to whether such an employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(b) The gaming facility may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site and may make inquiries into the ability of an employee or prospective employee to perform job-related functions. Information obtained under such an inquiry regarding the medical condition or history of any employee are subject to the requirements of Section 402.

Section 404: Illegal use of drugs and alcohol

(a) The term “qualified individual with a disability” shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the employer acts on the basis of such use. However, nothing in this section shall be construed to exclude as a qualified individual with a disability an individual who:

- (1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

- (2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or
- (3) is erroneously regarded as engaging in such use, but is not engaging in such use.

(b) Notwithstanding the above, it shall not be a violation of this Title for the gaming facility to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (a), subdivisions (1) or (2) is no longer engaging in the illegal use of drugs.

(c) The gaming facility may:

- (1) prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;
- (2) require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;
- (3) require that employees behave in conformance with the requirements of the federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.);
- (4) hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that it holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee.

(d) For the purposes of this Title, a test to determine the illegal use of drugs shall not be considered a medical examination. Nothing in this Title shall be construed to encourage, prohibit, restrict or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

Section 405: Prohibition against retaliation and coercion.

(a) The gaming facility shall not discriminate against any individual because such individual has opposed any act or practice made unlawful by this ordinance or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Title.

(b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or, on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Ordinance.

Section 406: Limitations

(b) Under this Ordinance, the term “disability” shall *not* include: homosexuality and bisexuality (which are not “impairments”); temporary or transient impairments such as sprained or broken limbs; transvestism, transsexualism, or gender identity disorders not resulting from physical impairments; pedophilia, exhibitionism, voyeurism or other sexual behavior disorders; compulsive gambling, kleptomania, pyromania or psychoactive substance use disorders resulting from current illegal use of drugs.

Section 407: Pregnancy

(a) The gaming facility shall not, unless based upon a bona fide occupational qualification, because of the pregnancy, childbirth, or related medical condition of any female employee, refuse to promote her, or to refuse to select her for a training program leading to promotion, provided she is able to complete the training program at least three months prior to the anticipated date of departure for her pregnancy leave, or to discharge her from employment or from a training program leading to promotion, or to discriminate against her in compensation or in terms, conditions or privileges of employment.

(b) The gaming facility shall not refuse to allow a female employee affected by pregnancy, childbirth or related medical conditions either:

- (1) To receive the same benefits or privileges of employment granted to other persons not so affected who are similar in their ability or inability to work, including to take disability or sick leave or any other accrued leave that is made available to temporarily disabled employees. For purposes of this section, pregnancy, childbirth and related medical conditions are treated as any other temporary disability. However, the gaming facility shall not be required to provide a female employee disability leave on account of normal pregnancy, childbirth, or related medical condition for a period exceeding twenty (20) working days. The gaming facility is not required to provide employees with health insurance coverage for the medical costs of pregnancy, childbirth or related medical conditions. The inclusion in any health insurance coverage of any provisions or coverage relating to medical costs of pregnancy, childbirth, or related medical conditions shall not be construed to require the inclusion of any other provisions or coverage, nor shall coverage of any related medical conditions be required by virtue of coverage of any medical costs of pregnancy, childbirth, or other related medical conditions.
- (2) To take a leave on account of pregnancy for a reasonable period of time not to exceed four months. The employee shall be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the female employee is disabled on account of pregnancy, childbirth, or related medical conditions. This paragraph shall not be construed to limit the provisions of paragraph (1) of subdivision (b). The gaming facility may require any employee who plans to take a leave pursuant to this provision to give reasonable notice of the date the leave shall commence and the estimated duration of the leave.

(c) The gaming facility shall provide reasonable accommodation for an employee for conditions related to pregnancy, childbirth, or related medical conditions, if she so requests, with the advice of her health care provider.

(d) If the gaming facility has or enters into a collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability, pregnant employees shall be eligible for such transfers upon the employee's request.

(e) The gaming facility shall not refuse to temporarily transfer a pregnant employee to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advice of her physician, where that transfer can be reasonably accommodated. However, the gaming facility is not required by this section to create additional employment that it would not otherwise have created, nor to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

Title 5: Enforcement

Section 501: Tribe is Sole Governmental Power Empowered to Enforce this Ordinance

(a) Nothing in this ordinance is intended to, nor shall anything in this ordinance in any way be construed to waive any aspect of the tribe's sovereign immunity.

(b) The tribe, as a sovereign nation on whose territory and under whose authority the gaming facility exists and operates, is the sole unit of government empowered to enforce this ordinance. Enforcement of this ordinance shall be possible solely by means of the enforcement mechanisms contained in this Title.

(c) The gaming facility shall act to ensure a workplace free of unlawful discrimination and sexual harassment by distributing to all of its employees an information sheet containing, at a minimum, components on the following:

- (1) the illegality of types of discrimination barred under this Ordinance;
- (2) the illegality of sexual harassment;
- (3) the internal complaint process of the gaming facility available to the employee; and
- (4) the legal remedies and complaint process available through the tribe.

(d) Tribal justice system

The Tribe's gaming facility has adopted and implemented a comprehensive grievance policy to address and resolve employment-related disputes as part of its Employee Handbook. That grievance policy, and any amendment(s) thereto, is incorporated herein by reference.

Certification

As the Chairperson of the Business Council for the Blue Lake Rancheria, I hereby certify that the Business Council adopted this Ordinance at a duly called meeting at which a quorum was present by a vote of 5 for, with 0 against, with 0 abstaining, with 0 absent, on this 15th day of January, 2003.

Claudia Brundin
Claudia Brundin, Chairperson

1/15/03
Date

Melanie Shelanskey
Melanie Shelanskey, Tribal Secretary

1/15/03
Date