



**ORDINANCE NO.
15-01**

**ORDINANCE OF THE BUSINESS COUNCIL OF THE BLUE LAKE
RANCHERIA PROHIBITING DISCRIMINATION IN EMPLOYMENT**

SECTION ONE. FINDINGS AND PURPOSE.

The Business Council finds and declares as follows:

1. This ordinance is adopted to (1) provide a safe, harassment-free work environment for employees of the Blue Lake Rancheria Casino and Hotel, including the casino, hotel and Play Station gas station/mini-mart and the tribal government and its agencies and departments and to any other entities owned, controlled or regulated by the Blue Lake Rancheria ("Tribe") to the extent authorized by resolutions adopted by the Business Council of the Tribe, (2) strengthen prohibitions against harassment, discrimination and retaliation, and (3) establish administrative procedures to receive, investigate and adjudicate complaints of discrimination.

2. While the Gaming Compact between the Tribe and the State of California requires the Tribe to adopt and comply with standards no less stringent than federal laws and state laws forbidding employers generally from discriminating in the employment of persons to work for the Gaming Operation or in the Gaming Facility, the Tribe independently considers these workplace protections vital to its interests as a federally recognized Indian tribe and an employer, while also maintaining a preference in hiring, training, and promoting Indians pursuant to the Blue Lake Rancheria Indian Preference Ordinance.

**SECTION TWO. ARTICLE 2, IN TITLE 3, CHAPTER 1 OF THE BLUE LAKE RANCHERIA
TRIBAL CODE IS HEREBY AMENDED TO READ AS FOLLOWS:**

TITLE 3. LABOR

CHAPTER 1. LABOR RELATIONS

ARTICLE 2

NON-DISCRIMINATION IN EMPLOYMENT

§ 03.01.02.01 Definitions

§ 03.01.02.02 Unlawful Employment Discrimination

§ 03.01.02.03 Equal Opportunity for Individuals with Disabilities

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§ 03.01.02.05 Effective Date

Sections:

§ 03.01.02.01 Definitions

The following words and phrases, as used in this Article, shall have the following meanings:

"Affirmative relief" or **"prospective relief"** includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this Article.

"Age" refers to the chronological age of any individual who has reached his or her 40th birthday.

"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.

"Business Council" means the governing body of the Tribe established by Article V, Section 4 of the Constitution of the Blue Lake Rancheria.

"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" means the Blue Lake Rancheria Casino and Hotel, including the hotel and Play Station gas station/mini-mart, the tribal government of the and any other government of the Tribe and its agencies and departments located on or business entity designated as an employer by resolution of the Business Council.

"Essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential functions" does not include the marginal functions of the position.

- (1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:
 - (A) The function may be essential because the reason the position exists is to perform that function.
 - (B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.
 - (C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

- (2) Evidence of whether a particular function is essential includes, but is not limited to, the following:
- (A) The employer's judgment as to which functions are essential.
 - (B) Written job descriptions prepared before advertising or interviewing applicants for the job.
 - (C) The amount of time spent on the job performing the function.
 - (D) The consequences of not requiring the incumbent to perform the function.
 - (E) The terms of a collective bargaining agreement.
 - (F) The work experiences of past incumbents in the job.
 - (G) The current work experience of incumbents in similar jobs.

"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.

"Indian" means any member of any federally recognized tribe, or any person who furnishes documentary proof that he or she is recognized as an Indian by either the United States pursuant to its trust responsibility to American Indians or by the Blue Lake Rancheria Tribal (Business) Council.

"Indian preference" means that to the greatest extent feasible preferences and opportunities for training and employment are given to Indians as further provided the Tribe's Indian Preference Ordinance, Ordinance No. 02-20 codified in Title 3, Chapter 1, Article 1 of the Blue Lake Rancheria Tribal Code.

"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 written job description and any amendments thereto shall be considered evidence of the essential functions of the job.

"Rancheria" means the Blue Lake Rancheria located in Humboldt County, California and all other lands owned by the United States of America in trust for the Tribe.

"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.

"Security regulations" means

"Supervisor" means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

"Tribal Court" means the Blue Lake Rancheria Tribal Court.

"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, enterprise or chartered entity involved in the provision of the reasonable accommodation and the impact on the department, enterprise or chartered entity resulting from such accommodation.

§ 03.01.02.02 Unlawful Employment Discrimination:

A. Discrimination Prohibited

It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the Blue Lake Rancheria:

- (a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status 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.
- (1) This Article does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability condition, is unable to perform his or her essential functions even with reasonable accommodations, or cannot perform those functions in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.
- (2) This Article does not prohibit Indian preference.
- (3) This Article does not prohibit and an employer shall not be subject to any legal liability resulting from refusing to hire or discharging an employee who, because of the employee's 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 the employee's health or safety or the health or safety of others even with reasonable accommodations.
- (4) Nothing in this Article relating to discrimination on account of marital status shall do either of the following:
 - (i) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the Tribal Council.
 - (ii) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.
- (5) Nothing in this Article relating to discrimination on account of sex shall affect the right of an employer to use Indian status or veteran status as a factor in employee selection or to give a preference in hiring, promotion and training to Indians or special consideration to Vietnam-era veterans.

- (6) (i) This Article does not prohibit an employer from refusing to employ an individual because of his or her age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.
- (ii) The provisions of this Article relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2015.
- (b) For any employer or employment agency on behalf of an employer to print or circulate or cause to be printed or circulated any publication, or to make any inquiry of an employee or applicant that is not job-related, either verbally 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, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, or any intent to make any such limitation, specification, or discrimination. This Article does not prohibit an employer or employment agency on behalf of the employer from inquiring into the age of an applicant, or from specifying age limitations, where the law compels or provides for that action.
- (c) Except as provided in Section § 03.01.02.03.B for any employer or employment agency on behalf of the employer to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.
- (d) (1) Except as provided in paragraph (2), for any employer or employment agency on behalf of the employer to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.
- (2) Notwithstanding paragraph (1), an employer or employment agency on behalf of the employer may require any examinations or inquiries that it can show to be job related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.
- (e) For any employer to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this Article or because the person has filed a complaint, testified, or assisted in any proceeding under this Article.
- (f) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this Article, or to attempt to do so.

- (g) (1) For an employer, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, to harass an employee, an applicant, or a person providing services pursuant to a contract.

Harassment of an employee, an applicant, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to sexual harassment of employees, applicants, or persons providing services pursuant to a contract in the workplace, where the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

- (2) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

- (3) (i) For purposes of this subdivision (g) only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly.

(ii) For purposes of this subdivision (g), "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

- (4) For purposes of this subdivision, "a person providing services pursuant to a contract" means a person who meets all of the following criteria:

(i) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(ii) The person is customarily engaged in an independently established business.

(iii) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

- (h) For an employer to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

- (i) (1) For an employer to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or

from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship. Religious belief or observance, as used in this subdivision (i), includes, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel prior and subsequent to a religious observance, and religious dress practice and religious grooming practice.

(2) An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

(3) An accommodation is not required under this subdivision if it would result in a violation of this Article or any other law prohibiting discrimination or protecting civil rights.

- (j) For an employer or other entity covered by this Article to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer to produce undue hardship to its operation.
- (k) For an employer or other entity covered by this Article to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.
- (l) For an employer or other entity covered by this Article, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.
- (m) Nothing in this section shall be interpreted as preventing the ability of employers to identify members of federally recognized tribes or of the military or veterans for purposes of awarding Indian or veteran's preference as permitted by law.

B. Indian Preference

Indian preference constitutes a permitted preference system based upon the political affiliations of Native Americans, and thus is completely exempted from the prohibitions of this Article.

C. Gender-based Clothing Requirements

An employer shall not refuse to permit an employee to wear pants on account of the employee's gender.

- (b) Nothing in this section shall prohibit an employer 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.

- (c) Nothing in this Article relating to gender-based discrimination affects the ability of an employer to require an employee to adhere to reasonable workplace appearance, grooming, and dress standards, provided that an employer shall allow an employee to appear or dress consistently with the employee's gender identity or gender expression.

D. Sexual Harassment

Sexual harassment is a form of discrimination, and is unlawful under this Article. Conduct constituting sexual harassment shall be set forth in regulations adopted from time to time by the Business Council.

E Exceptions

Notwithstanding Subsection A, when the following circumstances are present, they shall not constitute violations of this Article:

- (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.

F. Continuation of Employment Beyond Usual Retirement Date

The employer 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.

- (a) Every employer 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 of work performed.

- (b) Any employee indicating this desire and continuing the employment shall give the employer written notice in reasonable time, of intent to retire or terminate when the retirement or termination occurs after the employee's retirement date.
- (c) Nothing in this Article 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 was 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, profit-sharing, savings or deferred compensation plan, or any combination of such plans, of the employer for such employee, which equals the greater of in the aggregate the higher value of (1) at least twenty-seven thousand dollars (\$27,000), or (2) that amount as required by applicable federal law.

§ 03.01.02.03 Equal Opportunity for Individuals with Disabilities

A. Discrimination

- (a) The employer 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 employer's qualified applicant or employee with a disability to the discrimination prohibited by this Article (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 employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer;

- (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 employer 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 Article.
- (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.

B. Medical Examinations and Inquiries

- (a) The prohibition against discrimination in Section 1 shall include medical examinations and inquiries. An employer 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 employer may make pre-employment inquiries into the ability of an applicant to perform job-related functions.
- (b) An employer 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 Article shall be provided relevant information on request; and

(4) the results of such examination are used only in accordance with this Title.

C. Prohibited and Acceptable Examinations and Inquiries

(a) An employer 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) An employer 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 is subject to the requirements of § 03.01.02.03.

D. 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 Article for the employer 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) An employer 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:

- (5) prohibit the use of a legal drug in the workplace if that drug impairs the performance of the employee's job duties and creates a significant risk of injury or property damage arising from that impairment.
- (d) For the purposes of this Article, a test to determine the illegal use of drugs shall not be considered a medical examination. Nothing in this Article 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.

E. Prohibition Against Retaliation and Coercion.

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

F. Limitations

- (a) Under this Article, the term "disability" shall not include: homosexuality and bisexuality (which are not "impairments"); temporary or transient impairments such as sprained or broken limbs;; pedophilia, exhibitionism, voyeurism or other sexual behavior disorders; compulsive gambling, kleptomania, pyromania or psychoactive substance use disorders resulting from current illegal use of drugs .

G. Pregnancy

- (a) In addition to the provisions that govern pregnancy, childbirth, or a related medical condition in Section 4.1, each of the following shall be an unlawful employment practice, unless based upon a bona fide occupational qualification:
 - (1) For an employer to refuse to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take an unpaid leave for a reasonable period of time not to exceed four months and thereafter return to work. The employee shall be entitled to utilize any accrued paid leave, including 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 a related medical condition.

An employer may require an employee who plans to take a leave pursuant to this subdivision to give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave.

- (2) An employer 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.

- (3) For an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.
- (b) An employer 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 employer shall not be required to provide a female employee disability leave on account of normal pregnancy, childbirth, or related medical condition for a period preceding twenty (20) working days. The employer 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 employer may require an employee who plans to take a leave pursuant to this subdivision to give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave.
- (c) Every employer 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 an employer 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) An employer 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 employer 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.

§ 03.01.02.04 Record-Keeping

It shall be an unlawful practice for employers, labor organizations, and employment agencies subject to the provisions of this Article to fail to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received, or for employers to fail to retain personnel files of applicants or terminated employees for a minimum period of two years after the date of the employment action taken.

Upon notice that a verified complaint against it has been filed under this Article, any such employer, labor organization, or employment agency shall maintain and preserve any and all records and files until the complaint is fully and finally disposed of and all appeals or related proceedings terminated.

§ 03.01.02.05 Enforcement

A. Enforcement of the ordinance

- (a) This ordinance is enacted by the Business Council, which does not have the authority under the Tribe's Constitution to waive the Tribe's sovereign immunity. Accordingly, this ordinance does not waive the Tribe's sovereign immunity or subject to the Tribe to suit in any court, including Tribal Court, to enforce the provisions of this Article.
- (b) The administrative remedies prescribed in § 03.01.02.05.C(a) are available to job applicants or employees who believe their rights under this Article have been violated by tribal officials.

B. Posting Requirement

Every employer shall post posters and distribute information sheets in accordance with regulations adopted by resolution of the Business Council.

C. Tribal Justice System

(a) Administrative Remedy

The employer's Human Resources department shall receive and investigate all alleged violations of this Article of which it receives notice from a Complainant within 180 days of the alleged violation.

All timely verbal and written complaints of alleged harassment, retaliation, and discrimination will be taken seriously and will be investigated thoroughly and promptly through the office of the Human Resources Manager. The investigative team will include both a male and female to not only provide a reasonable person standard, but also a reasonable woman standard.

All investigations will be done in a confidential and objective fashion and will include interviewing the complainant, the alleged harasser, and any witnesses. In addition, all parties involved will be asked to give written statements, using their own words, describing, in detail, the alleged incident(s).

The investigative team, after weighing the evidence, will submit a written report finding each allegation as either sustained, not-sustained, unfounded, or exonerated. (See (a)(5) below.) An Executive, with oversight responsibility of that employer, shall make the final decision as to whether the allegation is or is not sustained, including any corrective action that is imposed or required. If the complaint involves the Executive with such oversight responsibility, the final decision shall be made by the Business Council.

The Claimant and alleged offender shall receive a final written decision. If the Tribe's General Council waives the Tribe's sovereign immunity to an action in Tribal Court, the written decision shall include information of how to file an appeal to Tribal Court.

The process for administrative investigation and remedy shall be:

- (1) Make a Record - Prepare a memorandum of all meetings and interviews related to the investigation. Keep all such memoranda, notes and written statements in a separate file (not the personnel file of either the complainant or the alleged harasser).
- (2) Interview the Claimant – Once an Employee complains of harassment, immediately begin the investigation by discussing the matter thoroughly with the complainant.
- (3) Interview the Alleged Harasser – The discussion should be non-accusatory. Advise the alleged harasser that due to the sensitive nature of the complaint, he/she should not discuss it with co-workers or others. Ensure that the same investigators are present during the interview.
- (4) Interview Any Witnesses - Do not make any accusations or give any indication of what either party has said or implied. The same investigators should be present during these interviews.
- (5) Weigh the Evidence – The Investigation Team will submit a written report which will give an opinion of the credibility of all parties, specify the allegation(s), and findings of the investigation. Further, all written statements and all notes taken during interviews shall be attached to the Investigation Report forwarded to an Executive who shall make the final decision, including any required corrective action. The Investigation Team findings shall be summarized as one of the following four categories:
 - I. Sustained: The investigation clearly establishes the harassment or discrimination did occur and was unlawful, inappropriate, or in violation of policy.
 - II. Not Sustained: The Investigation does not clearly establish if the allegation(s) did occur, was unlawful, inappropriate, or in violation of policy.
 - III. Unfounded: The investigation clearly establishes that the allegation did not occur, or was not unlawful, inappropriate, or in violation of policy.
 - IV. Exonerated: The investigation clearly establishes that the allegation did occur, but was lawful, appropriate, or within policy.

- (6) Determine Action to be Taken - Once the Executive is comfortable that all of the facts have been gathered, (s)he shall make the final decision and prescribe a remedy, with the assistance of the employer's Human Resources Manager.
- (7) Inform the Claimant - A memorandum to Complainant shall be written, by the employer's Human Resources Manager, which will inform the Complainant that the investigation has concluded, specify the finding of each allegation, and specify the nature of the remedy.

(b) Appeal Process/Tribal Court

If authorized by the Tribe's General Council, the Tribal Court may hear appeals of the final administrative decision under subsection (a) above.

If the Claim is denied or the Claimant is dissatisfied with the resolution, then the Claimant will have one-hundred eighty (180) days from the receipt of the memorandum from the Human Resources Manager to file an action in Tribal Court.

All Tribal Court rules and procedures shall apply to said action.

The decision of the Tribal Court shall be final and binding on both parties.

§ 03.01.02.06 Severability

If any part of this Article is found void and without legal effect, the remainder of the Article shall continue to remain in full force and effect, as though such part had not been contained therein.

§ 03.01.02.05 Effective Date

This ordinance shall become effective upon adoption of the Business Council but shall apply to any alleged violations occurring prior to or after its effective date. The ordinance replaces all existing Employment Non-Discrimination Ordinances.

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 5th day of January, 2015.



Claudia Brundin, Chairperson

1/5/15

Date



Bonnie Mobbs, Tribal Secretary

1/5/15

Date