



Discrimination/Harassment Ordinance

Purpose

This Ordinance sets forth the terms and conditions under which the Tribe grants a limited waiver of sovereign immunity for claims resulting from harassment, discrimination or retaliation of Barona Resort & Casino employees. This Ordinance applies only to employees of the Barona Resort & Casino and to no others.

This Ordinance supersedes all prior ordinances, resolutions and policies on this subject.

This Ordinance adopts federal and state laws forbidding harassment, including sexual harassment, in the workplace, and discrimination in connection with the employment of both job applicants and employees of the Barona Resort & Casino on the basis of race, color, religion, ancestry, national origin, gender, marital status, medical condition, sexual orientation, age, or disability, and forbidding employers from retaliation against persons who oppose discrimination or participate in employment discrimination proceedings.

Availability of Ordinance

The claim forms and copies of this ordinance must be placed in the Barona Resort & Casino Staff Handbook and must be available on the gportal, at Human Resource, the Barona Gaming Commission Office and the Barona Gaming Commission Compliance Department.

A notice setting forth the key provisions of this Ordinance, including claims procedures, must be posted in the Employment Center, Human Resources, and any other areas where employee and applicant notices are customarily posted.

In addition, during staff orientation each employee will be provided a copy of this Ordinance and its claim forms, and must sign an acknowledgement of receipt of this Ordinance.

Effective Date

This Ordinance shall take effect on the date it is adopted by the Barona Tribal Council.

Indian Preference

Employment preference shall be given to members of federally recognized Indian tribes.

Deadlines

If a staff member believes that he/she has been the victim of sexual harassment, discrimination or retaliation, the staff member must file a claim within one hundred, eighty (180) days of the most recent harassing, discriminatory or retaliatory conduct. This time limit will be strictly construed to preclude any late-filed claims.

If there is a conflict of interest, or other good cause, not to contact Human Resources, a claim may be filed directly with the Barona Gaming Commission.

Claim Procedure

Human Resources Contact

- 1) The staff member must complete a Harassment/Discrimination Claim Form and submit it to Human Resources either in-person at Human Resources by placing it in a sealed envelope addressed to Human Resources Claims, or by mailing it to:

Human Resources Claims
Barona Resort & Casino
1932 Wildcat Canyon Rd.
Lakeside, CA 92040

- 2) Upon receipt of the claim form, a Human Resources staff member will contact the Barona General Counsel. If there is a reasonable basis for the claim, General Counsel will ask the Gaming Commission Compliance Director to assign a Gaming Commission representative to work with the Human Resources staff member to investigate the claim.
- 3) If there is a reasonable basis for the claim, the Human Resources staff member must coordinate with the Gaming Commission representative to contact the casino staff member within five (5) business days of receipt of the claim. The initial discussion shall include scheduling a meeting to discuss the claim, gathering additional information and explaining the process. All information shall remain confidential except to the extent disclosure is reasonably necessary to complete the investigation and provide due process to the accused party.

Gaming Commission Contact

- 1) If the staff member has a good reason to remove Human Resources from the claims process, he/she may submit a claim to the General Counsel, either in-person at the Barona Government Building, Gaming Commission Office, by giving it to a Compliance Officer, or by mailing it to:

General Counsel
Human Resources Claims
Barona Band of Mission Indians
1095 Barona Rd.
Lakeside, CA 92040

- 2) The claim form must include the reason(s) that Human Resources should not participate in the investigation.
- 3) Upon receipt of the claim form, the General Counsel will ask the Gaming Commission Compliance Director to assign a Gaming Commission representative to investigate the claim, if there is a reasonable basis for the claim.
- 4) If there is a reasonable basis for the claim, the Gaming Commission representative must contact the casino staff member within five (5) business days of receipt of the claim. If there is good cause to bypass Human Resources, a meeting will be scheduled to discuss the claim, gather additional information and explain the process.
- 5) If there is a reasonable basis for the claim, but there does not appear to be good cause to exclude Human Resources, the staff member will be contacted and advised of this finding. The Gaming Commission representative must share the claim with Human Resources within two (2) business days of speaking to the casino staff member unless the casino staff member states that he/she wants to dismiss the claim. If the claim is dismissed, written confirmation of the dismissal must be provided to the casino staff member.
- 6) All information shall remain confidential except to the extent disclosure is reasonably necessary to complete the investigation and provide due process to the accused party.

Summary Disposition

The requirements of this Ordinance only apply to claims for discrimination or harassment, including quid pro quo sexual harassment, or creation of a hostile work environment, based on race, color, religion, ancestry, national origin, gender, marital status, medical condition, sexual orientation, age, or disability.

If the information provided in the claim form, even if considered to be true and factual, does not rise to the level of quid pro quo sexual harassment, or creation of a hostile work environment, the General Counsel will prepare a summary opinion to be presented to the Tribal Council for approval.

If approved, the employee will be notified in writing of the decision and can appeal to the Tribal Claims Commission.

If the Tribal Council decides that the claim presents a question as to whether there was quid pro quo sexual harassment, or a hostile work environment, the matter will be returned to the Gaming Commission for investigation.

Investigation

- 1) An investigation will be conducted and the results will be presented to the Personnel Claims Board, which will consist of one Tribal Council representative, one Gaming Commission representative and one Barona Casino representative, none of whom shall be the individuals that conducted the investigation.
- 2) The Personnel Claims Board will review the evidence gathered thus far and make a determination.
- 3) The parties will be notified within three business days of the decision which, unless good cause exists, shall be no later than sixty (60) days after receipt of the claim.
- 4) If either party wishes to appeal the decision, an appeal may be filed with the Tribal Claims Commission within thirty (30) days of receipt of the decision. This time limit shall be strictly construed to prohibit any late-filed appeals.

Tribal Claims Commission

The Tribal Claims Commission consists of a three (3)-member panel that includes at least one tribal government representative and at least one (1) non-tribal member. No member of the commission may be employed by the Barona Resort & Casino.

Appeal to the Tribal Claims Commission shall be at no cost to the claimant (excluding claimant's attorney's fees, if any).

Filing a Claim

If either party is dissatisfied with the results of the Personnel Claims Board decision, the party may appeal the matter to the Tribal Claims Commission by submitting a written request to:

Tribal Claims Commission
1095 Barona Rd.
Lakeside, CA 92040.

Claims will not be accepted more than thirty (30) days after the Personnel Claims Board decision was received.

Applicable Law

Tribal law provisions that are the same as California law shall govern all claims of harassment, retaliation, or employment discrimination arising out of the claimant's employment at the Barona Resort & Casino, excepting punitive damages. Punitive damages shall not be awarded in any case falling under this ordinance.

Nothing in this Ordinance shall be construed as a submission of the Tribe to the jurisdiction of the California Department of Fair Employment and Housing or the California Fair Employment and Housing Commission, or any successor agencies.

Case Management Conference

The Tribal Claims Commission shall hold a Case Management Conference within thirty (30) days of receipt of the claim.

Unless good cause exists to conduct the Case Management Conference in-person, it shall be conducted telephonically by one or more members of the Tribal Claims Commission, at their discretion.

The purpose of the Case Management Conference shall be to prepare a schedule for the case and to identify issues. The parties may stipulate to submit the matter based on the evidence presented thus far, in which case a decision shall be rendered without a hearing.

Hearing

If requested by either party, a hearing will be calendared. Additional evidence, including witnesses, may be introduced at this time.

Recording

Hearings before the Tribal Claims Commission shall be recorded. Recordings may be either electronic, or by a court reporter, at the discretion of the Tribal Claims Commission members.

Discovery

Depositions, and discovery that is relevant to the dispute, may be taken after acknowledgement of the claim has been received from the Tribal Claims Commission.

The Tribal Claims Commission may enforce or protect the rights, remedies, procedures, duties, liabilities, and obligations of discovery by the imposition of the same procedures, terms, conditions, consequences, liabilities, sanctions, penalties and fines as may be imposed in a civil action by a California superior court, except the power to order the arrest or imprisonment of a person.

Awards

Awards may not exceed \$3,000,000 or the limits of the Tribe's employment practices liability insurance policy, whichever is greater. The Tribe's insurer shall be obligated to pay awards within thirty (30) days after a judgment becomes final and unappealable. If an award is appealed, payment shall be deferred until final disposition of the appeal.

No punitive damages, attorney's fees or costs shall be awarded.

JAMS Appeal

If either party is dissatisfied with the decision of the Tribal Claims Commission, he/she may file an appeal with JAMS, following the JAMS Optional Arbitration Appeal Procedure, (which may be found at <http://www.jamsadr.com>).

JAMS appeals must be filed within thirty (30) days of receipt of the Tribal Claims Commission's written decision.

Cost of the appeal shall initially be borne equally by the parties; but the prevailing party shall be awarded costs and expenses.

The JAMS appeal shall take place in San Diego County and shall use one (1) arbitrator, agreed upon by the parties.

The appeal shall not be a de novo review, but shall be based solely upon the record developed in the Tribal Claims Commission proceeding. The JAMS appeal shall review all determinations of the Tribal Claims Commission on matters of law, but shall not set aside any factual determinations of the Tribal Claims Commission if such determination is supported by substantial evidence. If there is a conflict in the evidence and a reasonable fact-finder could have found for either party, the decision of the Tribal Claims Commission will not be overturned on appeal.

Enforcement of Award

Any judgments that remain unpaid, more than thirty (30) days after they become final, may be enforced in state or federal court in San Diego County.

Exclusive Remedy

This Ordinance provides the exclusive procedure, forum and remedy for claims of employment harassment, discrimination or retaliation. This Ordinance constitutes a waiver of sovereign immunity only as expressly provided herein.



HARASSMENT/DISCRIMINATION CLAIM

Name: _____ Phone Number: _____

Department Name: _____ Job Title: _____

Action: (circle one) Harassment Discrimination Retaliation

Supervisor: _____ Date of Action: _____

Note: This claim form must be filed within one hundred eighty (180) days of the most recent harassment, discrimination or retaliatory action. You may deliver it to Human Resources, or if there is good cause to bypass Human Resources, it may be delivered to the Gaming Commission office, in-person, via U.S. mail or overnight delivery, or given to a Compliance Officer. You will be contacted within five (5) business days of receipt of the claim.

Brief Description of Action: (Use additional sheets, if necessary)

If you are filing with the Barona Gaming Commission, list the reason(s) below that you do not want Human Resources involved in this investigation.

Employee Signature: _____ Date: _____

