

## **Gaming Enterprise Workers' Compensation**

### **CHAPTER 21. SAN MANUEL GAMING ENTERPRISE WORKERS' COMPENSATION ACT<sup>1</sup>**

#### **SMTC 21.1 Short Title**

This Chapter shall be known and cited as the San Manuel Gaming Enterprise Workers' Compensation Act (hereinafter the "Act").

#### **SMTC 21.2 Purpose**

This Act is adopted by the San Manuel Band of Mission Indians, a federally recognized Indian tribe ("Tribe") in compliance with Section 12.6(b) of the Compact.

The Tribe, exercising its sovereign regulatory powers, declares that all work-related injuries, illnesses, and deaths sustained by employees of the Gaming Operation and Gaming Facility (collectively, "Gaming Enterprise") are withdrawn from private controversy, and shall be addressed pursuant to the provisions of this Act. This Act is intended to establish procedures to administer and define the Gaming Enterprise's self-funded Workers' Compensation program, in a manner that is fair to both employees and the Gaming Enterprise.

#### **SMTC 21.3 Scope of Coverage**

This Act shall apply to all Employees of the Gaming Enterprise who sustain a Compensable Work Injury, whether the Work Injury occurred on or off Tribal Lands, and to any Dependents thereof who may be entitled to benefits or recovery under the terms of this Act. Benefits are limited as set forth in the Compact and this Act.

#### **SMTC 21.4 Exclusive Remedy**

- A. **Exclusive Remedy.** The remedies described in this Act shall be the exclusive method of compensation by the Tribe for injuries arising out of and in the course and scope of employment.
- B. **Limit of Liability.** The liability of the Tribe for all injuries arising out of and in the course and scope of employment is limited to the compensation provided to injured, ill, or deceased Employees (and where applicable, Dependents thereof) pursuant to this Act. Such liability shall not be expanded except by written amendment of this Act by the Tribe.

#### **SMTC 21.5 Notice of Benefits**

The Administrator shall post, in a conspicuous area inside the Gaming Facility that is open to and frequented by Employees, and provide to all new Employees and Employees who report a Work Injury, a notice of benefits describing the Employees' right to obtain medical treatment for injuries arising out of and in the course and scope of employment pursuant to this Act.

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<sup>1</sup> Adopted by the General Council on June 11, 2002. Amended by the General Council on August 1, 2006; February 12, 2008 with an effective date of January 18, 2008; March 14, 2017 with an effective date of April 10, 2017; and on April 11, 2017.

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### **SMTC 21.6 Definitions**

A. **“Administrator”** shall mean the agency, entity, or person responsible for managing the Gaming Enterprise’s Workers' Compensation Program. Responsibilities include, but are not limited to, determining the compensability of claims, making payments to injured employees, medical providers, and others entitled to compensation under this Act. Responsibilities may also include, managing a trust account for administering the Tribe's workers' compensation liabilities, and, making reports to the Tribe regarding its program and individual claims. The Administrator's duties are more fully described in SMTC 21.11 of this Act.

B. **“Agency”** shall mean any governmental agency or department of the Tribe.

C. **“Child or Children”** means the child or children of an Employee, under the age of eighteen (18), including an unborn child, a child legally adopted prior to the injury, a child for whom the Employee is a legal guardian, and a stepchild, if such stepchild was, at the time of the injury, a member of the Employee's family and substantially dependent upon the Employee for support. A child does not include any married children unless they are Dependents. A person might also qualify as a child according to tribal custom and tradition as determined by applicable Tribal Law.

D. **“Claimant”** for the purposes of this Act shall mean any Employee of the Gaming Enterprise, except for independent contractors, who suffers an injury, either specific or cumulative, or death, arising out of and in the course and scope of that employment, or Dependent thereof, who files a claim pursuant to this Act.

E. **“Compact”** means the Class III Tribal-State Gaming Compact between the Tribe and the State of California executed on or about August 15, 2016, with an effective date of April 10, 2017 (“Compact”), which supersedes the prior Tribal-State Gaming Compact executed September 10, 1999 as amended on August 28, 2006, further amended by letter of agreement dated September 25, 2007.

F. **“Compensable Work Injury”** means an injury to an Employee when that injury arises during a period of employment, and while performing the duties of the employment in or on the premises of the Gaming Enterprise, or wherever the Gaming Enterprise requires the Employee to perform the employment activities as more fully described in this Act.

G. **“Compensation”** means compensation under this Act and includes every benefit or payment conferred by this Act upon an injured employee.

H. **“Days”** shall mean calendar days unless otherwise provided.

I. **“Dependency”** means dependent or dependence on another (see definition of “Dependent”).

J. **“Dependent”** means the father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half-sister, half-brother, niece, nephew, or any other extended family member as approved by the Administrator, who at the time of the

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Compensable Work Injury that causes the Employee's death is actually and necessarily dependent in whole or in part upon the earnings of the Employee.

K. **“Disability”** shall mean incapacity because of injury to earn wages in the same or any other employment. Disability may be temporary or permanent, partial or total.

L. **“Employee”** means a person, other than an independent contractor, employed by or in the service of the Gaming Enterprise, under any contract of hire, express or implied, oral or written, where the Gaming Enterprise has the power or right to control and direct such individual in return for which such individual receives a salary or wages. For purposes of this Act, Employee shall not include members of the Tribe's General Council or Business Committee (unless employed by the Gaming Enterprise), independent contractors, contractors, and outside consultants.

M. **“First Report of Injury”** means the report or notice of a Work Injury provided to the Administrator as required by SMTC 21.7.

N. **“Gaming Activities”** means the gaming activities authorized by the Compact.

O. **“Gaming Enterprise”** means the Tribe's Gaming Operation and Gaming Facility.

P. **“Gaming Facility”** means any building in which Gaming Activities or any Gaming Operations occur, or in which business records, receipts, or funds of the Gaming Operation are maintained (excluding offsite facilities primarily dedicated to storage of those records and financial institutions), and all rooms, buildings, and areas, including hotels, parking lots, and walkways, a principal purpose of which is to serve the activities of the Gaming Operation and Facility rather than providing them with an incidental benefit.

Q. **“Gaming Operation”** means the business enterprise that offers and operates Gaming Activities in any Gaming Facility located on the San Manuel Indian Reservation.

R. **“General Council”** means the General Council of the San Manuel Band of Mission Indians as established by Article III of the Tribe's Articles of Association.

S. **“Independent Medical Examination”** shall mean a medical examination and/or evaluation of the Employee scheduled by the Gaming Enterprise or Administrator, at the Gaming Enterprise's expense, to obtain medical information or opinion, which shall be conducted by an Independent Medical Reviewer on the State of California's approved list, a Qualified Medical Evaluator on the State of California's approved list, or an Agreed Medical Examiner upon mutual agreement of the Gaming Enterprise and the Employee.

T. **“Independent Tribunal”** means the San Manuel Tribal Court.

U. **“Maximum Medical Improvement”** means a medical status in which an injured Employee's medical condition is unlikely to change substantially in the following calendar year with or without medical treatment.

V. **“Medical Provider Network (MPN)”** shall mean an entity or group of health care providers approved by San Manuel to treat injured workers.

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W. **“Permanent Partial Disability”** means a level of permanent disability at the time a permanent and stationary status and/or Maximum Medical Improvement is achieved, as established by the assigned treating physician or from an Independent Medical Examination, which results in an impairment rating of less than seventy percent (70%) and is the result of a Compensable Work Injury.

X. **“Permanent Total Disability”** means a level of permanent disability at the time a permanent and stationary status and/or Maximum Medical Improvement is achieved, as established by the assigned treating physician or from an Independent Medical Examination, which results in an impairment rating of seventy percent (70%) or higher and is the result of a Compensable Work Injury.

Y. **“Physician”** includes physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and practicing within the scope of their licensure as defined by California state law.

Z. **“Referral Physician”** means a Physician to whom an Employee is referred because of an action under this Act.

AA. **“Tribal Lands”** shall mean all land occupied or owned by the Tribe, whether in fee or held in trust by the United States of America.

BB. **“Spouse”** shall mean a husband, wife, or registered domestic partner of the Employee.

CC. **“State”** shall mean the State of California.

DD. **“Supplemental Job Displacement Benefits”** means the amount payable to an injured Employee who sustains a Permanent Partial Disability caused by a Compensable Work Injury and who does not receive a bona fide offer of permanent modified or alternative work from the Gaming Enterprise. Such amount shall help compensate such Employee for the anticipated costs of vocational retraining or rehabilitation to permit the Employee to return to gainful employment.

EE. **“Temporary Disability”** means a physical incapacity caused by a Compensable Work Injury that is expected to be completely cured or improved with proper medical attention. This term includes both a Temporary Partial Disability and a Temporary Total Disability.

FF. **“Temporary Partial Disability”** means a non-permanent medical status caused by a Compensable Work Injury that results in the Employee being able to perform modified or light duty work assignments or reduced hours at the direction of a physician approved by the Administrator, which results in diminished earnings as compared to the pre-injury average weekly wage.

GG. **“Temporary Total Disability”** means a non-permanent medical status caused by a Compensable Work Injury that results in the Employee being physically unable to perform any work in the judgment of a physician approved by the Administrator, which results in a complete loss of earnings.

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HH. **“Tribe”** means the San Manuel Band of Mission Indians, a federally recognized Indian tribe.

II. **“Tribal Law”** means the statutory and common law of the San Manuel Band of Missions Indians, including ordinances, rules and regulations adopted by the governing authority of the Tribe; and the traditions and customs of the Tribe, whether or not codified.

JJ. **“Work Injury”** shall include any physical injury or disease arising out of and in the course and scope of employment, including injuries to artificial limbs, dentures, hearing aids, eyeglasses, and medical braces of all types; provided, however, that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated for, unless injury to them is incident to a Compensable Injury covered by this Act.

Work Injuries under this section shall be either:

1. Specific occurring, which means that the injury is a result of one incident or exposure which causes disability or need for medical treatment; or

2. Cumulative occurring, which means that the injury is a result of repetitive mental or physical activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of a cumulative injury is the date upon which the Employee first suffered disability and knew, or in the exercise of reasonable diligence should have known, that the disability was caused by his present or prior employment.

KK. **“Written Decision”** shall mean the following:

1. The finding(s) and decision(s) of the Administrator to accept in full or in part, or deny in full or in part, any Claim submitted by a Claimant regarding a Work Injury; or

2. The finding(s) and decision(s) of the Administrator to close a claim, determine whether an Employee is entitled to a benefit, or determine the scope of a benefit level to which an Employee may be entitled;

3. Any finding, decision, or award reduced to written form by the Independent Tribunal.

### **SMTC 21.7 Initiation of a Claim**

A. **Claim Initiation.** A claim shall be initiated by immediate reporting of a Work Injury to a Supervisor, the Gaming Enterprise, and the Administrator pursuant to the reporting obligations set forth in this section.

B. **First Report of Injury.** An Employee must report any Work Injury, no matter how slight, to his/her Supervisor in writing within twenty-four (24) hours of the incident that caused the Work Injury. Failure to promptly report a Work Injury within the required timeframe may lead to denial of a claim.

C. **Supervisor Reporting Obligations.** A Supervisor, upon receiving a First Report of Injury, must promptly transmit the First Report of Injury to the Gaming Enterprise, who shall then report the claim to the Administrator. Failure of a Supervisor to promptly report a notice of a Work Injury may result in disciplinary action against the Supervisor and shall toll the Statute of Limitations for the claim as set forth below in SMTC 21.8.B.2.

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**D. Provision of Claim Form.** Once the Administrator has received a First Report of Injury, the Administrator shall provide a claim form to the injured Employee unless the injury i) does not result in lost time beyond the Employee's work shift on the day of injury, or ii) only requires first aid treatment, which is any one-time treatment, and any follow-up visit for observation of minor scratches, cuts, burns, splinters, or other minor industrial injury, which do not ordinarily require medical care. Such one-time treatment and follow-up visit for observation is considered first aid even though provided by a physician or registered professional personnel. The Employee shall promptly complete all forms and provide any other documentation required by the Administrator to process the claim. Failure of an Employee to timely submit required documentation may lead to denial of the claim or closure of the claim for abandonment.

**E. Presumption of Compensability.** If the Employee or Dependent properly files a claim pursuant to the terms of this Act, and the Administrator fails to reject liability within 90 days after the claim is filed, the Injury will be presumed compensable. The presumption is rebuttal only by evidence discovered after the 90-day period.

**F. Conditional Denial.** If, after exercising due diligence, the necessary information to accept or deny a claim is not available to the Administrator by the 90<sup>th</sup> day, the Administrator may issue a "conditional denial" which permits the Administrator to continue to investigate the claim for an additional 90 days.

### **SMTC 21.8 Statute of Limitations**

**A. Statute of Limitations.** Except as otherwise provided herein, the right to benefits under this Act shall be barred unless a claim is filed with the Administrator within thirty (30) days after the occurrence of the Compensable Work Injury.

**B. Tolling of Statute of Limitations.** The Statute of Limitations is tolled under the following conditions:

1. Incapacity of Employee. If a Work Injury incapacitates an Employee, the Statute of Limitations will not begin to run until the incapacity ends. Notwithstanding the foregoing, another person on behalf of the Employee may report a Work Injury to the injured Employee's Supervisor, at which time the claim shall be initiated.
2. Failure of Supervisor to Report. If a Supervisor fails to promptly report a notice or report of Work Injury to the Gaming Enterprise, the Statute of Limitations shall be tolled until the Supervisor actually reports the injury to the Gaming Enterprise. In such event, the Employee or if applicable, a Dependent thereof, must verify that the Employee reported the Work Injury to his or her Supervisor within the twenty-four (24) hour period required by SMTC 21.7.B.

### **SMTC 21.9 Benefits**

Workers' Compensation benefits payable to Employees pursuant to this Act shall be comparable to benefits mandated for comparable employees under the California Labor Code, and this section shall be interpreted to provide such comparable benefits, which include:

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**A. Medical Treatment.** Gaming Enterprise shall provide quality and timely medical treatment comparable to the California Medical Treatment Utilization Schedule.

### **B. Usual and Customary Medical Costs.**

1. Medical benefits will be provided under the San Manuel Medical Providers Network and will be comparable to those established by the California Department of Industrial Relations, Division of Workers' Compensation and the California Medical Treatment Utilization Schedule.

2. An injured Employee's medical treatment, up to a maximum of Ten Thousand dollars (\$10,000.00), will be provided for an alleged injury until the date that liability for a claim is accepted or rejected.

### **C. Temporary Disability.**

1. Comparability of Benefits. The benefits payable, and the timing those benefits are paid, to an injured Employee from a Compensable Work Injury resulting in Temporary Disability of the Employee shall be comparable to those Temporary Disability benefits recognized as recoverable by the California Department of Industrial Relations, Division of Workers' Compensation.

2. Rate of Compensation. If the Compensable Work Injury causes Temporary Partial or Temporary Total Disability, the disability payment shall be two-thirds (2/3) of the average weekly earnings. No payment is due during the first three (3) days after the Employee leaves work as a result of the Compensable Work Injury. If Temporary Disability continues for more than fourteen (14) days, or the Employee is hospitalized as an inpatient for treatment as a result of the Compensable Work Injury, Temporary Disability shall be payable as of the date of the disability. If the temporary disability compensation rates established by the State change after the enactment of this Act, such new rates established by the State shall apply.

3. Modified Duty Position. The Gaming Enterprise may offer an injured Employee a temporary modified duty position on a case-by-case basis. If the Employee refuses the modified duty position despite having been cleared by the assigned physician to return to the modified position, then the Temporary Disability Benefits shall cease.

4. Reduction of Benefit Payments. Temporary Disability payments shall be reduced by the sum of unemployment compensation benefits, automobile insurance payments and recoveries, health insurance benefits, other payments from third parties related to the Compensable Work Injury, and extended duration benefits received by the Employee for a Compensable Work Injury during the period of such disability. The injured Employee shall report any pensions, disability payments or earnings to the Administrator within ten (10) days of receipt of such funds. Failure to do so shall constitute fraud and action may be taken against Employee to recoup any benefits paid.

5. Cessation of Benefit Payments. Temporary Disability payments shall cease where the Employee:

- i. has reached Maximum Medical Improvement; or

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- ii. becomes incarcerated; or
- iii. is terminated for misconduct, quits work, or declines a bona fide offer by the Gaming Enterprise of light or modified duties and the Employee is cleared by the assigned treating physician to engage in such modified position; or
- iv. the Employee is not authorized by the assigned treating physician to miss work.

6. Supplemental Payments. An Employee who sustains a Compensable Work Injury may choose to supplement Temporary Disability payments with available leave credits to receive a benefit that is comparable to their full net pay. Leave credits include any accumulated sick leave, vacation, annual leave, compensated overtime, or any other form of paid leave offered by the Gaming Enterprise that is available to the injured Employee.

### **D. Permanent Partial Disability.**

1. Permanent Partial Disability benefits will be paid at a level comparable to that paid to comparable employees under State law.

2. In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured worker, and the Employee's age at the time of the Compensable Work Injury, with consideration given to the diminished ability of the Employee to compete in an open labor market.

3. The schedule of the California Department of Industrial Relations, Division of Workers' Compensation shall be used as a comparable guideline in determining the percentage of permanent disability but is not prima facie evidence of a percentage of disability.

### **E. Permanent Total Disability.**

1. Permanent Total Disability benefits will be paid at a level comparable to that paid to comparable employees under State law.

**F. Vocational Rehabilitation Services.** If an Employee who has suffered a Compensable Work Injury is unable to return to his or her usual and customary work due to a Permanent Disability, or in the alternative, a permanent modified or an alternate position, the Gaming Enterprise will work with the injured Employee to provide the means necessary to return the Employee to suitable gainful employment. This may include either:

i. Vocational Rehabilitation Maintenance Allowance (VRMA) to be paid at the rate comparable to that provided to an injured worker under the California Department of Industrial Relations, Division of Workers' Compensation, at the time of the injury; or

ii. A provision as a part of any permanent disability compromise and release settlement to cover for Supplemental Job Displacement Benefits.

When an injured Employee agrees to accept, or is ordered to receive vocational rehabilitation services, the Employee thereby admits that he or she is incapable of performing the job duties of his or her former position. Upon written agreement accepting vocational rehabilitation

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services or upon the filing of an order to enter vocational rehabilitation services, whichever comes first, the Employee shall be deemed to have voluntarily resigned his or her job position.

### **G. Death Benefits.**

1. When a Compensable Work Injury causes death within five (5) years from the date of the injury, the Gaming Enterprise shall be liable for compensation to the Dependent of the injured Employee as provided for in this section. The Dependent must be a spouse or a minor child totally or partially dependent upon the injured worker at the time of the injury and at the time of death to qualify for benefits.
2. The death benefit payable to an Employee whose death is proximately caused by a Compensable Work Injury shall be comparable to those benefits recoverable under the California Department of Industrial Relations, Division of Workers' Compensation at the time the Compensable Work Injury was sustained.
3. The weekly compensation will be divided between the qualifying Dependents in proportion to the percentage of support each received from the deceased Employee. It will be presumed that each qualifying Dependent received equal support from the deceased Employee.

### **SMTC 21.10 Acts Outside Course or Scope of Employment**

Benefits, coverage, and compensation under this Act shall not be paid when the Administrator determines that an Employee's injury arose from the Employee acting outside of the course or scope of his or her employment. Examples of acts outside of the course and scope of employment shall include, but are not limited to, the following situations:

- i. Where the injury occurs while the Employee is commuting to or from work, except where such injury occurs during a side trip during the commute that was 1) requested by the Gaming Enterprise and 2) directly connected to the Employee's work duties;
- ii. Where the injury is caused by the intoxication of the injured Employee, whether such intoxication is caused by alcohol, marijuana, or any other drug or controlled substance;
- iii. Where the Employee has willfully, deliberately, and/or recklessly caused his or her own injury or death;
- iv. Where the injury arises out of an altercation in which the injured Employee is the initial physical aggressor;
- v. Where the injury is caused by the commission of a criminal act by the injured Employee for which he or she has been convicted by a court of competent jurisdiction;
- vi. Where the injury is completely caused by a pre-existing condition or illness;

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- vii. Where a psychiatric injury occurs and
  - a) the actual events of employment were not the predominate cause (51 percent or greater) among all the combined causes of the psychiatric injury; or
  - b) the psychiatric injury was the result of a violent act, or resulted from direct exposure to a significant violent act, and the actual events of employment were not a substantial cause (35 percent or greater) of the injury; or
  - c) the psychiatric injury was not substantially caused by lawful, non-discriminatory, good faith personnel actions (including but not limited to being subject to lawful disciplinary action).
- viii. Where the injury is actually or proximately caused by the inhalation of second hand smoke; or
  - ix. Where the injury arises out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting a part of the Employee's work related duties, including but not limited to, activities sponsored by Gaming Enterprise, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment.

### **SMTC 21.11 Workers' Compensation Administrator**

- A. **Administrator Authority.** The Administrator shall act on behalf of the Gaming Enterprise in receiving, processing, and administering Workers' Compensation claims under this Act.
- B. **Administrator Responsibilities.** The responsibilities of the Administrator shall include, but are not limited to, the following:
  - i. Determining the compensability of claims pursuant to the provisions of this Act, including but not limited to the following:
    - a. eligibility for Employee and Dependency Benefits;
    - b. applicable Benefit amounts;
    - c. compensation rate and duration; and
    - d. allocation of Dependency benefits.
  - ii. Approving or disapproving any change of an injured Employee's primary Physician, referral to a Referral Physician, or surgical procedure;
  - iii. Making payments to Claimants;
  - iv. Processing reports and paying bills submitted by medical care providers and other vendors;

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- v. Managing a trust account for managing and paying the Gaming Enterprise's Workers' Compensation liabilities;
- vi. Providing reports to the Tribe's Human Resources Department regarding the Workers' Compensation program and individual claims, where required;
- vii. Providing reports to the insurance carrier regarding the Workers' Compensation program and individual claims, where required;
- viii. Providing notice to Employees/Claimants of the following:
  - a. Notice of Choice of Physician. The Administrator shall notify an Employee who has submitted a First Report of Injury that the Employee is entitled to his or her choice of physician within the Gaming Enterprise's Medical Provider Network. If the Gaming Enterprise does not have a Medical Provider Network, the Employee is entitled to his or her choice of physician after thirty (30) days have elapsed from the date the injury is reported.
  - b. Notice of Administrator's Determination. Within ninety (90) days of receipt of a First Report of Injury, and based upon investigation and available information at the time, the Administrator shall determine the responsibility of the Gaming Enterprise for the injury; either accept or deny a claim; and advise the Employee and Gaming Enterprise of its determination or the necessity of postponing that decision for another ninety (90) day period to obtain additional information necessary to rendering a decision. The Administrator will determine the reasonableness and necessity of medical care and charges and will determine amounts payable under this Act.

**C. Causes of Action on Behalf of Gaming Enterprise.** The Administrator shall, on behalf of the Gaming Enterprise, vigorously pursue any cause of action related to a Compensable Work Injury assigned to the Gaming Enterprise under this Act.

### **SMTC 21.12 Compromise and Release**

Nothing in this Act shall impair the rights of the parties to compromise any liability that is claimed to exist under this Act from an injury, disease, or death covered under the provisions herein. After reaching a compromise, a copy of the release or compromise agreement signed by both the Claimant and the Administrator shall be presented to the General Council, or a designated representative, for approval. If approved, the Administrator shall enter an award based on the release or compromise agreement.

### **SMTC 21.13 Claim Closure**

A claim shall be closed when any of the following occur:

- 1) The Administrator has paid a settlement to the injured Employee in exchange for a general release of any and all further liability;

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- 2) The Administrator has extended all Benefits due under this Act to the injured Employee or the Dependent(s);
- 3) The injured Employee or his or her Dependents fails to appeal a Written Decision within the required thirty (30) day time period;
- 4) The injured Employee unreasonably fails to follow up with required or recommended medical treatment, or has abandoned medical treatment as evidenced by failure to attend two (2) consecutive medical appointments without a showing of good cause;
- 5) No material improvement can be reasonably expected from continued medical treatment, and all other Benefits have been exhausted or otherwise paid;
- 6) Upon discovery that the injury occurred due to an act outside the course or scope of employment;
- 7) Upon discovery that the injured Employee committed fraud with respect to the claim;
- 8) Upon incarceration of an Employee;
- 9) Pursuant to an order of the Independent Tribunal;

### **SMTC 21.14 Medicare**

The Medicare/Medicaid SCHIP Extension Act (MMSEA) sets forth reporting requirements for insurers when criteria has been established pursuant to the MMSEA. The Gaming Enterprise recognizes those requirements and nothing herein shall prevent the Administrator from protecting Medicare's interests where required to do so. When a Claimant is entitled to supportive medical care after maximum medical improvement is achieved pursuant to this Act, such supportive care will only be provided as specified by a Physician authorized by the Administrator. Where a claim has been closed due to abandonment, award, or settlement, neither the Gaming Enterprise, its insurer, or the Administrator shall have any further obligation to pay benefits under this Act, inclusive of any subsequent Medicare liens.

### **SMTC 21.15 Recovery of Payments Made Due to Error, Mistake, Erroneous Adjudication, Fraud, etc.**

- A. Whenever any Compensation is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstances of a similar nature not induced by fraud, the recipient thereof shall repay it. The Administrator must make a claim for such repayment or recoupment within one year of making any such payment or it will be deemed that any claim therefor has been waived. The Administrator may waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.
- B. Whenever any Compensation has been made pursuant to a determination by the Administrator, and timely protest or appeal therefrom has been made, which results in a final decision that the Claimant is not entitled to such payments, the Claimant shall repay such sums. Subject to approval by the General Council or their authorized

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representative, the Administrator may waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

- C. Whenever any Compensation has been determined by the Administrator or the Independent Tribunal to be induced by fraud, the recipient thereof shall repay any such payment together with a penalty of fifty percent (50%) of the total of any such payments. The Administrator must make a claim for such repayment or recoupment within (1) one year after discovery of the fraud, or any such payment or any such claim shall be deemed to have been waived.

### **SMTC 21.16 Claims Files and Records Confidential**

All Gaming Enterprise and Administrator records shall remain under the ownership of the Tribe at all times. Information contained in the claims files and record of injured Employees under the provisions of this Act shall be deemed confidential and shall not be open to public inspection. The Employee, Dependents, or representatives of the same, be it an individual or an organization, may review the claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant. The Gaming Enterprise or its duly authorized representatives may review any files of their own injured Employees in connection with any pending claims. Physicians treating or examining Employees claiming benefits under this Act, or Physicians giving medical advice to the Administrator regarding any claim may, at the discretion of the Administrator, inspect the claims files and records of the injured Employee; and other persons may make such inspection, at the Administrator's discretion, when such persons are rendering assistance to the Administrator pertaining to administration of this Act.

### **SMTC 21.17 Dispute Resolution**

- A. **Mediation.** The Administrator may, at its sole discretion, require that a disputed determination made by the Administrator be subject to mediation prior to a hearing before the Independent Tribunal. Mediation is binding only upon all parties executing a written agreement. The Administrator shall appoint an independent mediator for this purpose.

#### **B. Independent Tribunal Hearing.**

1. **Right to a Hearing.** Any injured Employee or Dependent thereof who disagrees with a determination made by the Administrator may request a hearing before the Independent Tribunal.
2. **Timeframe for Filing a Request for a Hearing.** A request for a hearing before the Independent Tribunal must be filed by the Employee or Dependent thereof within thirty (30) days of receipt of the Administrator's final Written Decision. Failure to request a hearing within the time specified herein renders the Administrator's decision unappealable. An Employee or Dependent may also request a hearing pursuant to this section if the Administrator has not issued a Written Decision within ninety (90) days of the Administrator's receipt of a First Report of Injury.

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3. Request for a Hearing. Requests for a hearing before the Independent Tribunal may be made by sending a written request by first class, certified, or overnight mail to:

Claims Administrator  
Workers' Compensation Administration  
777 San Manuel Blvd., Highland, CA 92346

4. Scheduling and Extension of Initial Hearing Date. The Independent Tribunal shall set the matter for hearing within ninety (90) days of receipt of the request for a hearing from the Employee or Dependent. The Employee or Dependent may request in writing one extension of the initial hearing date of up to ninety (90) days, which, if filed during the pendency of the initial ninety (90) day period, must be granted by the Independent Tribunal.
5. Written Notice of Hearing Date. The Independent Tribunal shall send written notice to each party informing them of the hearing date at least thirty (30) days prior to the hearing.
6. Discovery. All medical reports relating to the claimed Work Injury must be filed with the Independent Tribunal and served on all parties at least fifteen (15) days prior to the hearing date, if the reports have not been previously disclosed. Either party may request disclosure of witness statements, if any such statements exist, at least fifteen (15) days prior to the hearing date.
7. Depositions. Upon written request by a party, depositions may be ordered by the Independent Tribunal. The Independent Tribunal shall have authority to order depositions of party witnesses, including current Employees of the Gaming Enterprise. Fees incurred in taking any such deposition shall be borne by the party requesting the deposition. Claimant's refusal to submit to any deposition ordered by the Independent Tribunal shall be grounds for denial of the appeal.
8. Conduct of Hearing. The Independent Tribunal shall consider relevant evidence, hear witnesses and receive exhibits to fulfill its goals of making a just and final determination.
9. Notice of Evidence. When written evidence is offered in lieu of oral testimony, one copy of said written evidence shall be filed with the Independent Tribunal and one copy shall be served on all parties at least thirty (30) days prior to the hearing of Claimant's appeal. The Independent Tribunal may waive this time requirement.
10. Medical Evidence. Medical evidence must be in the form of a written report. The reports should include the following information, where applicable:
  - a. Date of the examination;
  - b. History of the injury;
  - c. Patient's complaints;

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- d. A listing of all documents reviewed, or relied upon that support the physician's opinion;
  - e. Patient's medical history and residuals thereof, if any;
  - e. Findings on examination;
  - f. Diagnosis;
  - g. Opinion as to the nature, extent, and duration of disability and work limitations, including whether or not the disability is permanent and/or stationary;
  - h. Cause of the disability;
  - i. Treatment indicated;
  - j. Apportionment of disability, if any;
  - k. Basis for all medical opinions;
  - l. Signature of physician.
11. Weight of Evidence. When considering evidence, the Independent Tribunal shall give greater weight to medical reports that contain more pertinent information than to those reports that do not contain such information.
12. Standard of Proof. The Independent Tribunal shall weigh the evidence, testimony of witnesses, and exhibits and make its decision based on the preponderance of the evidence. The Independent Tribunal shall be the sole judge of the credibility of witnesses and the relevancy of proffered evidence.
13. Burden of Proof. The burden of proof in any hearing before the Independent Tribunal shall be on the Employee or Dependent to prove by a preponderance of the evidence that compensation under this Act is warranted. Upon request, a Dependent who has filed a claim must furnish the Administrator with proof, satisfactory to the Administrator, of the nature, amount, and extent of the contribution Employee made to Dependent's support. Dependent shall have the burden of proof on such issue in any hearing before the Independent Tribunal.
14. Right to Counsel. The Employee or Dependent may have legal representation at any hearing before the Independent Tribunal at the Employee or Dependent's own expense.
15. Order of Authorities. In resolving issues presented in a case, the Independent Tribunal shall look to and give weight as precedent to the following mandatory authorities in the following order:
- a. This Act;
  - b. Other applicable laws of the Tribe;

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- c. Common law of the Independent Tribunal; and
- d. Customs, traditions, and generally accepted practices of the Tribe.

If an issue cannot be resolved by reliance on mandatory authorities, the Independent Tribunal may look to the following sources as persuasive authority only (in no particular order):

- a. Common law of other tribes;
- b. Federal common law;
- c. Common law of the State of California; and/or
- d. Common law of other states.

16. Procedural Rules. The Independent Tribunal may promulgate procedural rules governing the adjudication of contested matters arising under this Act.
17. Final Binding Decision. Upon hearing the matter and making a determination of liability under this Act, the Independent Tribunal shall issue a final Written Decision. The Written Decision shall state the final determination of the Independent Tribunal on all issues before it. All Written Decisions of the Independent Tribunal are final, and shall be binding and enforceable upon the Tribe and the Employee or Dependent. No attorney's fees, costs, or punitive damages shall be awarded to any Employee or Dependent in such an action.
18. Provision of Approved Benefits During Independent Tribunal Review. During pendency of an Independent Tribunal proceeding, the Employee or Dependent shall continue to receive all benefits approved by the Administrator in its original written decision, but shall not receive any new benefits claimed before the Independent Tribunal, unless ordered by the Independent Tribunal pursuant to a provision of this Act. Payments made to Claimant during the pendency of the proceeding shall not be recouped or recovered by the Administrator or the Gaming Enterprise, except where such payments qualify for recovery under SMTC 21.15 or by order of the Independent Tribunal.

### **SMTC 21.18 Severability**

If any part of this Act is held to be invalid by a court of competent jurisdiction, the remainder shall continue to be in full force and effect to the maximum extent possible, unless otherwise provided herein.

### **SMTC 21.19 Effective Date**

This Act shall be deemed to have taken effect no later than the effective date of the Compact or sixty (60) days prior to the commencement of gaming activities under the Compact.

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### **SMTC 21.20 Amendments**

This Act may be amended in accordance with applicable Tribal law, provided any such amendments must comply with the applicable terms of the Compact. Any amendments to this Act shall become effective on the date such amendments are adopted by the Tribe.

### **SMTC 21.21 Sovereign Immunity**

Nothing hereunder is intended to be or shall be interpreted to be a waiver of sovereign immunity of the San Manuel Band of Mission Indians, its agencies or enterprises, from unconsented suit in Tribal, Federal, or state courts (in any state in the United States, including California), or in any administrative proceedings not expressly set forth in this Act.