

Gaming Enterprise Workers' Compensation

CHAPTER 21. SAN MANUEL GAMING ENTERPRISE WORKERS' COMPENSATION ACT¹

YSMNC 21.1 Short Title

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

YSMNC 21.2 Purpose

This Act is adopted by the Yuhaaviatam of San Manuel Nation, a federally recognized Indian Nation ("Nation"), in compliance with Section 12.6(b) of the Compact.

The Nation, 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and deaths sustained by employees of the Gaming Operation and Gaming Facility (collectively, "Gaming Enterprise") are withdrawn from private controversy, and shall be addressed pursuant to the provisions of this Act.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.

YSMNC 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. This Act does not constitute or effect a general waiver of Tribal sovereign immunity.

YSMNC 21.4 Exclusive Remedy

21.4.1 **Exclusive Remedy.** The remedies described in this Act shall be the exclusive method of compensation to Employees and Dependents by the Nation for Work Injuries arising out of and in the course and scope of employment.

21.4.2 **Limit of Liability.** The liability of the Nation for all Work Injuries arising out of and in the course and scope of employment is limited to the compensation provided to or on behalf of injured, ill, or deceased Employees (and where applicable, Dependents thereof) pursuant to this Act. Such liability shall not be expanded except by the Nation's written amendment of this Act.

YSMNC 21.5 Notice of Benefits

The Employer Representative shall post, in a conspicuous area inside the Gaming Facility that is open to and frequented by Employees, and provide to all new Employees, as well as existing Employees who report a Work Injury, a notice of benefits describing the Employees' right to

¹ 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; April 11, 2017; and on November 14, 2017. Amended by the Tribal Authorities on May 12, 2026.

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obtain medical treatment for injuries arising out of and in the course and scope of their employment pursuant to this Act.

YSMNC 21.6 Definitions

21.6.1 **“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 and 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 Nation's workers' compensation liabilities and making reports to the Nation regarding its program and individual claims. The Administrator's duties are more fully described in section 21.11 of this Act.

21.6.2 **“Agency”** shall mean any governmental agency or department of the Nation.

21.6.3 **“Child”** or **“Children”** means the child or children of an Employee, under the age of eighteen (18), or physically or mentally incapacitated from earning, and who is/are proven by a preponderance of verifiable evidence to be substantially dependent upon the Employee for support, including an unborn child, a child legally adopted prior to the injury, a child for whom the Employee is a legal guardian at the time of the injury, 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 an adult child who is married unless the adult child is a Dependent of an Employee.

21.6.4 **“Claimant”** for the purposes of this Act shall mean 1) any Employee of the Gaming Enterprise, except for independent contractors, who alleges that they suffered an injury, either specific or cumulative, or death, arising out of and in the course and scope of employment, or 2) a Dependent thereof, who files a claim pursuant to this Act.

21.6.5 **“Compact”** means the Class III Tribal-State Gaming Compact between the Nation and the State of California executed on or about August 15, 2016, with an effective date of April 10, 2017 (“Compact”), as amended on August 18, 2017, with an effective date of January 22, 2018, 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.

21.6.6 **“Compensable Work Injury”** means a Work Injury to an Employee when that injury arises during a period of employment, and in the course of 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 such duties, and when such Work Injury is compensable under this Act.

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

21.6.8 **“Conditional Denial”** means notice pursuant to section 21.7.10 that the Administrator will continue to investigate the claim for up to ninety (90) additional days after the date of its issuance setting forth the reason or reasons why the Administrator has been unable to issue a Provisional Claim Determination during the Investigative Extension.

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21.6.9 **"Days"** shall mean calendar days unless otherwise provided.

21.6.10 **"Dependency"** means Dependent or dependence on an Employee (see definition of "Dependent").

21.6.11 **"Dependent"** means the Employee's Spouse, Child, 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 Compensable Work Injury that causes the Employee's death is actually and necessarily dependent in whole or in substantial part upon the earnings of the Employee, as proven by a preponderance of verifiable evidence.

21.6.12 **"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.

21.6.13 **"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 Nation's Governing Council or Tribal Council (unless employed by the Gaming Enterprise), independent contractors, contractors, and outside consultants.

21.6.14 **"Employer Representative"** shall mean any person designated by the Gaming Enterprise to serve as its representative in processing claims under this Act, including without limitation serving as liaison with the Administrator and with Employees making claims under the Act, whose contact information shall be listed in the Team Member Handbook applicable to Employees.

21.6.15 **"Final Claim Determination"** shall mean 1) a Managerial Review Decision pursuant to section 21.17.1(c), other than a Managerial Review Decision rescinding a Provisional Claim Determination, or 2) a deemed denial following a Managerial Review Request, pursuant to section 21.17.1(c)(iv).

21.6.16 **"First Report of Injury"** means the report or notice of a Work Injury provided to the Administrator as required by section 21.7.2.

21.6.17 **"Gaming Activities"** means the gaming activities authorized by the Compact.

21.6.18 **"Gaming Enterprise"** means the Nation's Gaming Operation and Gaming Facility.

21.6.19 **"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.

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

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21.6.21 **“Governing Council”** means the governing body of the Yuhaaviatam of San Manuel Nation pursuant to the Nation’s Constitution.

21.6.22 **“Idiopathic”** refers to an injury that arises from a non-work-related medical condition of the employee, or from an unknown cause, rather than from a work-related activity or environment.

21.6.23 **“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; provided that the Administrator shall have sole discretion and authority, and need not secure Employee’s agreement, to select any Independent Medical Reviewer on the State of California’s approved list or any Qualified Medical Evaluator on the State of California’s approved list.

21.6.24 **“Investigative Extension”** means notice pursuant to section 21.7.9 that the Administrator will continue to investigate the claim for up to ninety (90) days after the date of its issuance.

21.6.25 **“Managerial Review”** means the process set forth in section 21.17.1 whereby a Provisional Claim Determination is reconsidered by the Administrator, resulting in a Managerial Review Decision, or deemed denial pursuant to section 21.17.1(c)(iv).

21.6.26 **“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.

21.6.27 **“Medical Provider Network (MPN)”** shall mean an entity or group of health care providers approved by the Nation, through its Tribal Council or the Tribal Council’s designee, to treat injured workers.

21.6.28 **“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.

21.6.29 **“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.

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

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21.6.31 **“Provisional Claim Determination”** shall mean a written decision by the Administrator (1) advising the Claimant of the responsibility of the Gaming Enterprise for the injury, (2) accepting or denying a claim, (3) determining the reasonableness and necessity of medical care, (4) determining amounts payable under this Act, or (5) closing a claim, which shall set forth the time to seek Managerial Review and all contact information Claimant requires to request Managerial Review by email, U.S. Mail, overnight delivery, or personal delivery, and any other means by which Administrator routinely accepts claim-related written correspondence. An Investigative Extension pursuant to section 21.7.9, a Conditional Denial pursuant to section 21.7.10, an offer by the Administrator or Nation to settle a claim, or the failure to make an offer to settle, shall not be a Provisional Claim Determination or Final Claim Determination under this Act.

21.6.32 **“Referral Physician”** means a Physician to whom an Employee is referred to treat a Work Injury.

21.6.33 **“Tribal Council”** shall mean the Yuhaaviatam Tribal Council of San Manuel, the representative body duly elected from the Governing Council, established under the Yuhaaviatam of San Manuel Nation Constitution.

21.6.34 **“Tribal Court”** means the tribal court of the Yuhaaviatam of San Manuel Nation.

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

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

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

21.6.38 **“Supplemental Job Displacement Benefits”** means the amount payable to an injured Employee who sustains a Compensable Work Injury that causes permanent work restrictions 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.

21.6.39 **“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.

21.6.40 **“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 work 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.

21.6.41 **“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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21.6.42 **“Tribal Law”** means the statutory and common law of the Nation, including ordinances, rules, and regulations adopted by the governing authority of the Nation, and the traditions and customs of the Nation, whether or not codified.

21.6.43 **“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 damage to them is caused by a Compensable Work Injury covered by this Act.

Work Injuries under this section shall be either:

- (a) Specific occurring, which means that the injury is a result of one (1) incident or exposure which causes disability or need for medical treatment; or
- (b) 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 their present or prior employment.

21.6.44 **“Written Decision”** shall mean any finding, decision, or award reduced to written form by the Tribal Court.

YSMNC 21.7 Initiation of a Claim

21.7.1 **Claim Initiation.** A claim shall be initiated by the 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.

21.7.2 **First Report of Injury.** An Employee must report any Work Injury, no matter how slight, to their supervisor in writing within twenty-four (24) hours of the incident that is believed to have caused the Work Injury. The Administrator may consider the Employee's failure to promptly report a Work Injury in denying a claim, including without limitation whether the Employee's unreasonable delay supports denial because it caused evidence relevant to evaluation or defense of the claim to become unavailable or lapse; provided that, except as provided in section 21.8.2(b), failure to report a claim within twenty-four (24) hours shall not be the sole basis for denying a claim that is otherwise supported by a preponderance of evidence.

21.7.3 **Supervisor Reporting Obligations.** A supervisor, upon receiving a First Report of Injury, must promptly transmit the First Report of Injury to the Employer Representative, 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 section 21.8.2(b).

21.7.4 **Provision of Claim Form.** Once the Employer Representative has received a First Report of Injury, the Employer Representative shall provide a claim form to the injured Employee unless the injury 1) does not result in lost time beyond the Employee's work shift on the day of injury, or 2) only requires first aid treatment, which is any one-time treatment, and

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any follow-up visit for observation of minor scratches, cuts, burns, splinters, or other minor industrial injury, which does not ordinarily require medical care. Such one-time treatment and follow-up visit for observation is considered first aid even if provided by a Physician or registered professional personnel.

21.7.5 Filing a Claim. To make a claim under the Act, an Employee must complete the claim form provided by the Employer Representative and submit the claim form to the Employer Representative, via email, U.S. Mail, overnight delivery, or personal delivery to the Employer Representative, at the contact information included in the Team Member Handbook applicable to Employees covered by this Act, within the limitations period provided in section 21.8.1. 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 submit required documentation in a timely manner may lead to denial of the claim or closure of the claim for abandonment.

21.7.6 Presumption of Compensability.

- (a) *Presumption of Compensability Upon Failure to Issue a Provisional Claim Determination or Conditional Denial*. If the Administrator fails to issue a Provisional Claim Determination or Conditional Denial within ninety (90) days after initiation of an Investigative Extension, the Work Injury will be presumed compensable for purposes of Managerial Review. The presumption is rebuttable only by evidence discovered after the ninety (90) day Investigative Extension period.
- (b) *Prohibited Presumptions*. There shall be no presumption that cardiovascular disease, pneumonia, asthma, or emphysema are caused by employment; provided that this Act's silence as to a presumption afforded in another jurisdiction shall not be construed as requiring application of that presumption under the Act.

21.7.7 Exclusions. In addition to any other exclusions from, or prerequisites to, coverage set forth in this Act, coverage under this Act shall not be afforded:

- (a) Where the injury results from or is attributable to second-hand smoke;
- (b) Where the injury is determined to have been Idiopathic in nature;
- (c) Where the claim is filed for an environmental illness or chemical sensitivity caused by agents to which the general public is exposed on the Gaming Enterprise's premises or any other public location;
- (d) Where the injury claimed is Complex Regional Pain Syndrome I or II, formerly known as Reflex Sympathetic Dystrophy, or Fibromyalgia;
- (e) Where at the time of injury, an Employee refuses or fails to utilize or wear personal protective equipment or other safety apparatus that is considered a prerequisite of the job, and the injury is caused by such a refusal or failure to wear or use that personal protective equipment or other safety apparatus;

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- (f) Where the Employee refuses to cooperate in the investigation of the claim, thus impeding the Administrator's right to discovery and/or ability to determine causation or extent of the claimed injury;
- (g) Where causation or compensability of the claim is in issue, the resolution of which depends on a medical determination made pursuant to an Independent Medical Examination, and the Employee, without good cause shown, fails to present or appear for the scheduled appointment; or
- (h) Where compensability is based on misrepresentation or willful omission of a material fact, where if such misrepresentation or omission were known by the Administrator or the Gaming Enterprise, the claim would have been denied, or workers' compensation benefits would have been provided at lesser levels than what was actually paid in reliance upon the misrepresentation or willful omission.

21.7.8 Provisional Claim Determination or Investigative Extension. Within fourteen (14) days of the Employer Representative's receipt of a claim form pursuant to section 21.7.5, and based upon investigation and available information at the time, the Administrator shall investigate the responsibility of the Gaming Enterprise for the injury; either issue a Provisional Claim Determination or provide notice of an Investigative Extension for the claim; and advise the Employee and Gaming Enterprise of its Provisional Claim Determination or of its Investigative Extension.

21.7.9 Investigative Extension. If the necessary information to accept or deny a claim is not available to the Administrator by the fourteenth (14th) day following the receipt of a claim form pursuant to section 21.7.5, the Administrator may issue an Investigative Extension, providing notice that the Administrator will continue to investigate the claim for up to ninety (90) days after the date of its issuing notice of the Investigative Extension. The Administrator's failure to issue a Provisional Claim Determination or an Investigative Extension within fourteen (14) days of the Employer Representative's receipt of a claim form pursuant to section 21.7.5 shall have the legal effect of an Investigative Extension issued on the fourteenth (14th) day. An Investigative Extension is not a Provisional Claim Determination or Final Claim Determination subject to dispute resolution or appeal under section 21.17. Should the Administrator fail to issue a Provisional Claim Determination or Conditional Denial during the ninety (90) day Investigative Extension period, the claim shall proceed to immediate Managerial Review. An injured Employee shall be eligible for usual and customary medical costs under section 21.9.2(b) during the Investigative Extension period.

21.7.10 Conditional Denial. If, after exercising due diligence, the necessary information to accept or deny a claim is not available to the Administrator by the ninetieth (90th) day after issuing an Investigative Extension, the Administrator may issue a Conditional Denial, providing notice that the Administrator will continue to investigate the claim for up to ninety (90) additional days after the date of its issuing notice of the Conditional Denial and setting forth the reason or reasons why the Administrator has been unable to issue a Provisional Claim Determination during the Investigative Extension. A Conditional Denial is not a Provisional Claim Determination or Final Claim Determination subject to dispute resolution or appeal under section 21.17. Should the Administrator fail to issue a Provisional Claim Determination during this additional ninety (90) day period, the claim shall proceed to immediate Managerial Review.

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An injured Employee shall not be eligible for usual and customary medical costs under section 21.9.2(b) after Conditional Denial; provided that nothing in this paragraph shall preclude payment of medical treatment approved by the Administrator or ordered by the Tribal Court in accordance with this Act.

YSMNC 21.8 Statute of Limitations

21.8.1 Statute of Limitations. Except as otherwise provided herein, the right to benefits under this Act shall be barred unless a claim form is received by the Employer Representative pursuant to section 21.7.5 within thirty (30) days after the occurrence of the Compensable Work Injury.

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

- (a) *Incapacity of Employee*. If a Work Injury incapacitates a Claimant who is 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 pursuant to section 21.7, and the Statute of Limitations will begin to run.
- (b) *Failure of Supervisor to Report*. If a supervisor fails to promptly report a notice or report of Work Injury to the Gaming Enterprise and the Employer Representative, 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 establish that the Employee reported the Work Injury to their supervisor in writing within the twenty-four (24) hour period required by section 21.7.2.

YSMNC 21.9 Benefits

Workers' Compensation benefits payable to Claimants 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:

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

21.9.2 Usual and Customary Medical Costs.

- (a) Medical benefits will be provided under the Nation's Medical Provider 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.
- (b) 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 Administrator makes a Provisional Claim Determination, a Final Claim Determination, or a Conditional Denial, including but not limited to during the time between the Administrator's Investigative Extension on a claim and the Administrator's Conditional Denial or Provisional Claim Determination of that claim.

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21.9.3 Temporary Disability.

- (a) *Benefits.* The benefits payable and the timing on when those benefits are paid to an injured Employee for 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.
- (b) *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 Employee's average weekly earnings. No payment is due during the first three (3) days after medical certification of the Compensable Work Injury. If Temporary Disability continues for more than fourteen (14) days after the Employee files a claim form with the Employer Representative and before the Administrator issues a Provisional Claim Determination or Investigative Extension, 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 first full day of work missed because 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 as of the date they become effective by the State.
- (c) *Modified Duty Position.* The Gaming Enterprise may offer an injured Employee a temporary modified duty position on a case-by-case basis. An Employee's refusal of an offer of a modified duty position despite having been cleared by their assigned Physician to return to the modified duty position shall operate to terminate the Temporary Disability Benefits.
- (d) *Reduction of Benefit Payments.* Temporary Disability Benefits 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 be unlawful, and action may be taken against the Employee to recoup any benefits paid.
- (e) *Cessation of Benefit Payments.* Temporary Disability Benefits payments shall cease when the Employee:
 - i. has reached Maximum Medical Improvement; or
 - 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 despite having been cleared by the Employee's assigned Physician to perform the light or modified duties; or
 - iv. the Employee's assigned Physician has not recommended their absence from work.

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- (f) *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.

21.9.4 Permanent Partial Disability.

- (a) Permanent Partial Disability benefits will be paid at a level comparable to that paid to comparable employees under State law.
- (b) In determining the percentage of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the Employee, 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.
- (c) 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.

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

21.9.6 Vocational Rehabilitation Services. If an Employee's Permanent Partial Disability prevents an Employee who has suffered a Compensable Work Injury from returning to their usual and customary work, or to a permanent modified or alternate position, the Gaming Enterprise shall offer Supplemental Job Displacement Benefits comparable to those required by the California Department of Industrial Relations, Division of Workers' Compensation.

21.9.7 Death Benefits.

- (a) When a Compensable Work Injury causes death within five (5) years from the date of a Work Injury, the Gaming Enterprise shall be liable for compensation to any Dependent of the injured Employee as provided for in this section; provided that the Dependent, at the time of the injury and at the time of death, is a Spouse or a Child, who is proven by a preponderance of verifiable evidence to be substantially dependent upon the injured Employee for support at the time of the injury and at the time of death to qualify for benefits.
- (b) The death benefit payable based on an Employee's death that 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.
- (c) The compensation shall be divided between the qualifying Dependents in proportion to the percentage of support each received from the deceased Employee prior to Employee's

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death. Absent a contrary showing, it will be presumed under this Act that each qualifying Dependent received equal support from the deceased Employee as of the time of the Employee's death, and such payments shall be made accordingly.

YSMNC 21.10 Acts Outside Course or Scope of Employment

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

- (a) 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;
- (b) 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;
- (c) Where the Employee has willfully, deliberately, and/or recklessly caused their own injury or death;
- (d) Where the injury arises out of an altercation in which the injured Employee is the initial physical aggressor;
- (e) Where the injury is caused by the commission of a criminal act by the injured Employee for which they have been convicted by a court of competent jurisdiction;
- (f) Where the injury is completely caused by a pre-existing condition or illness;
- (g) Where a psychiatric injury occurs and:
 - i. the actual events of employment were not the predominant cause, i.e., fifty-one percent (51%) or greater, among all the combined causes of the psychiatric injury; or
 - ii. 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, i.e., thirty-five percent (35%) or greater, of the injury; or
 - iii. the psychiatric injury was substantially caused by lawful, non-discriminatory, good faith personnel actions (including but not limited to being subject to lawful disciplinary action).
- (h) 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 the Gaming Enterprise, except where the activities are a reasonable expectancy of or are expressly or impliedly required by the Gaming Enterprise.

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YSMNC 21.11 Workers' Compensation Administrator

21.11.1 Administrator Authority. The Administrator shall act on behalf of the Gaming Enterprise in processing and administering Workers' Compensation claims under this Act.

21.11.2 Administrator Responsibilities. The responsibilities of the Administrator shall include, but are not limited to, the following:

- (a) Determining the compensability of claims pursuant to the provisions of this Act, including but not limited to the following:
 - i. eligibility for Employee and Dependency Benefits;
 - ii. applicable Benefit amounts;
 - iii. compensation rate and duration; and
 - iv. allocation of Dependency benefits.
- (b) Approving or rejecting any change of an injured Employee's primary Physician, referral to a Referral Physician, or surgical procedure;
- (c) Making payments to Claimants;
- (d) Processing reports and paying bills submitted by medical care providers and other vendors;
- (e) Managing a trust account for managing and paying the Gaming Enterprise's Workers' Compensation liabilities;
- (f) Providing reports to the Nation regarding the Workers' Compensation program and individual claims, where required;
- (g) Providing reports to the insurance carrier regarding the Workers' Compensation program and individual claims, where required;
- (h) In coordination with appropriate representatives of the Nation, as designated by the Tribal Council or its designee, appearing on behalf of the Nation at proceedings before the Tribal Court; and
- (i) Providing notice to Employees/Claimants of the following:
 - i. 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 their 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 their choice of Physician after thirty (30) days have elapsed from the date the injury is reported.

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- ii. Notice of Administrator's Provisional Claim Determination or Investigative Extension. The Administrator is responsible for issuing notice of a Provisional Claim Determination or Investigative Extension under section 21.7.8. The Administrator is responsible for determining the reasonableness and necessity of medical care and will determine amounts payable under this Act.

21.11.3 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.

YSMNC 21.12 Compromise and Release

21.12.1 Employee's Authority to Compromise and Release. Nothing in this Act shall impair the rights of the Employee, through an agreement with the Nation, an agreement with the Administrator, or otherwise, to settle, on the Employee's own behalf or on behalf of the Employee's past, present, or future Dependents, any liability that is claimed to exist at the time of settlement, or that might in the future arise, under this Act from any injury, disease, or death covered under the provisions herein. By way of example and without limiting the foregoing, the Employee may compromise any and all interest that any of the Employee's Dependents possess, or may in the future possess, in any death benefit allegedly due under this Act by virtue of the Employee's Work Injury.

21.12.2 Compromise and Release by Administrator. Should the Administrator, with the approval of Tribal Council or its designee, reach a compromise with the Employee, a copy of the settlement agreement signed by both the Claimant and the Administrator shall be presented to the Nation's representatives designated by the Tribal Council or its designee for that purpose. An offer by the Administrator or Nation to settle a claim, or failure to make such an offer, shall not be a Final Claim Determination subject to dispute resolution or appeal under section 21.17.

YSMNC 21.13 Claim Closure

21.13.1 A claim shall be closed when any of the following occurs:

- (a) The Administrator has paid a settlement to the injured Employee in exchange for a general release of any and all further liability;
- (b) The Administrator has extended all Benefits due under this Act to the injured Employee or the Dependent(s);
- (c) The injured Employee or their Dependent(s) fails to file a timely request for review of a Provisional Claim Determination or a timely appeal of a Final Claim Determination;
- (d) The injured Employee unreasonably fails to follow up with required or recommended medical treatment, fails to respond to the Administrator's reasonable request for information required to determine compensability, or has abandoned medical treatment as evidenced by failure to attend one (1) or more medical appointments without a showing of good cause or the passage of one (1) year without any medical treatment;
- (e) No material improvement can be reasonably expected from continued medical treatment, and all other benefits have been exhausted or otherwise paid;

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- (f) Upon discovery that the injury occurred due to an act outside the course or scope of employment;
- (g) Upon discovery that the injured Employee committed fraud with respect to the claim;
- (h) Upon incarceration of an Employee; or
- (i) Pursuant to an order of the Tribal Court.

YSMNC 21.14 Medicare

The Medicare/Medicaid SCHIP Extension Act ("MMSEA") sets forth reporting requirements for insurers when criteria have been established pursuant to the MMSEA. Nothing herein shall prevent the Administrator from, where applicable, 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, nor the Administrator shall have any further obligation to pay benefits under this Act, inclusive of any subsequent Medicare liens.

YSMNC 21.15 Recovery of Payments Made Due to Error, Mistake, Erroneous Adjudication, Fraud, etc.

21.15.1 Whenever any Compensation is made because of clerical error, mistaken identity, innocent misrepresentation, 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 (1) 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.

21.15.2 Whenever any Compensation has been made pursuant to a Provisional Claim Determination by the Administrator, and timely protest or appeal therefrom has been made, which results in a Final Claim Determination that the Claimant is not entitled to such payments, the Claimant shall repay such sums. Subject to approval by the Nation's representative authorized by the Tribal Council or its designee, 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.

21.15.3 Whenever any Compensation has been determined by the Administrator or the Tribal Court 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 one (1) year after discovery of the fraud, or any such payment or any such claim shall be deemed to have been waived.

YSMNC 21.16 Claims Files and Records Confidential

All Gaming Enterprise and Administrator records shall remain under the ownership of the Nation at all times. Information contained in the claim files and record of injured Employees under the provisions of this Act shall be deemed confidential and shall not be open to public

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inspection. An Employee, Dependent, or representative of the same, whether 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.

YSMNC 21.17 Dispute Resolution

21.17.1 Managerial Review.

- (a) *Automatic Managerial Review.* "Automatic Managerial Review" shall be initiated without the need for a request immediately upon the Administrator's failure to render a decision, following an Investigative Extension, within the time provided in section 21.7.9 or, following a Conditional Denial, within the time provided in section 21.7.10.
- (b) *Managerial Review Request.* An injured Employee or Dependent may request the Administrator's Managerial Review of a Provisional Claim Determination as set forth in this Act ("Managerial Review Request").
 - i. *Timing of Managerial Review Request.* A Managerial Review Request must be in writing and sent by email, U.S. Mail, overnight delivery, or personal delivery to the Administrator, or by any other means set forth in the Provisional Claim Determination, at the contact information of the Administrator provided in the Employee's Team Member Handbook or in the Provisional Claim Determination, within thirty (30) days of issuance of the Provisional Claim Determination.
 - ii. *Effect of Failure to Request Managerial Review.* The failure to file a timely Managerial Review Request constitutes a waiver of any subsequent appeal, including without limitation, appeal to the Tribal Court.
 - iii. *Content of Managerial Review Request.* Requests for Managerial Review shall contain a detailed explanation for any disagreement with the Provisional Claim Determination and shall be sent directly to the Administrator for review and consideration.
- (c) *Managerial Review Decision.*
 - i. *Timing of Managerial Review Decision.* In response to a request for Managerial Review or following initiation of Automatic Managerial Review pursuant to section 21.17.1(a), the Administrator shall issue a decision (the "Managerial Review Decision") in writing via certified mail within a reasonable time, not to exceed thirty (30) days from receipt of the request or initiation of Automatic Managerial Review.
 - ii. *Contents of Managerial Review Decision.* The Managerial Review Decision may uphold the Provisional Claim Determination; modify the Provisional Claim Determination; rescind the Provisional Claim Determination to permit further

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proceedings before the Administrator, which may in the Administrator's discretion include an Independent Medical Examination; or set forth a new decision. A Managerial Review Decision, except for a Managerial Review Decision that is not a Final Claim Determination pursuant to section 21.17.1(c)(iii), shall set forth the time limit, and all contact information the Claimant requires, to request a Tribal Court hearing and to serve a copy of such request on Administrator.

- iii. **Effect of Managerial Review Decision.** A Managerial Review Decision that does not rescind a Provisional Claim Determination shall constitute a Final Claim Determination for purposes of Tribal Court review under section 21.17.3.
- iv. **Effect of Failure to Issue Managerial Review Decision.** Should the Administrator fail to issue a Managerial Review Decision within the time period established by section 21.17.1(c)(i), the claim shall be deemed to have been denied on the last day of that period, which deemed denial shall constitute a Final Claim Determination for purposes of Tribal Court review under section 21.17.3.

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

21.17.3 **Tribal Court Hearing.**

- (a) ***Right to a Hearing.*** Any injured Employee or Dependent thereof who disagrees with a Final Claim Determination may request a hearing before the Tribal Court, which shall have exclusive jurisdiction to review such determination as authorized by this Act.
- (b) ***Timeframe for Filing a Request for a Hearing.*** A request for a hearing before the Tribal Court must be filed by the Employee or Dependent thereof and received by the Tribal Court within thirty (30) days of a Final Claim Determination, including without limitation a deemed denial following Managerial Review pursuant to section 21.17.1(c)(iv). Failure to request a hearing within the time specified herein renders the Final Claim Determination final and unappealable.
- (c) ***Request for a Hearing.*** Requests for a hearing before the Tribal Court shall be made by filing a written request with the San Manuel Tribal Court and serving a copy to the Administrator. Up-to-date mailing and email addresses of the San Manuel Tribal Court and Administrator shall be included in the Team Member Handbook applicable to Employees.
- (d) ***Scheduling and Extension of Initial Hearing Date.*** The Tribal Court shall set the matter for an initial pretrial hearing within sixty (60) days of receipt of the request for a hearing from the Employee or Dependent.
- (e) ***Written Notice of Hearing Date.*** The Tribal Court shall send written notice to each party informing them of any pretrial, trial, or evidentiary hearing date at least thirty (30) days prior to the hearing.

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- (f) *Discovery.* All medical reports relating to the claimed Work Injury must be filed with the Tribal Court and served on all parties the later of fifteen (15) days prior to the trial hearing date or twenty-one (21) days after the Tribal Court serves notice of the trial 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 trial or evidentiary hearing date.
- (g) *Depositions.* Upon written request by a party, depositions may be ordered by the Tribal Court. The Tribal Court 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. The refusal of the Employee or Dependent to submit to any deposition ordered by the Tribal Court shall be grounds for denial of the appeal.
- (h) *Conduct of Hearing.* The Tribal Court shall consider relevant evidence, hear witnesses, and receive exhibits, as needed to make a just and final determination.
- (i) *Notice of Evidence.* When written evidence is offered in lieu of oral testimony, one (1) copy of said written evidence shall be filed with the Tribal Court and one (1) copy shall be served on all parties the later of fifteen (15) days prior to the trial or evidentiary hearing date or twenty-one (21) days after the Tribal Court serves notice of the trial or evidentiary hearing date. The Tribal Court may waive this time requirement.
- (j) *Medical Evidence.* Medical evidence must be in the form of a written report by a health care provider within the Nation's Medical Provider Network. The reports should include the following information, where applicable:
 - i. Date of the examination;
 - ii. History of the injury;
 - iii. Patient's complaints;
 - iv. A listing of all documents reviewed, or relied upon that support the Physician's opinion;
 - v. Patient's medical history and residuals thereof, if any;
 - vi. Findings on examination;
 - vii. Diagnosis;
 - viii. Opinion as to the nature, extent, and duration of disability and work limitations, including whether or not the disability is permanent and/or stationary;
 - ix. Cause of the disability;
 - x. Treatment indicated;
 - xi. Apportionment of disability, if any;

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- xii. Basis for all medical opinions; and
 - xiii. Signature of Physician.
- (k) *Weight of Evidence.* When considering evidence, the Tribal Court shall give greater weight to medical reports that contain more pertinent information than to those reports that do not contain such information.
- (l) *Additional Rules of Evidence.* Additional evidentiary rules may be promulgated as needed by the Tribal Court.
- (m) *Standard of Proof.* The Tribal Court shall weigh the evidence, testimony of witnesses, and exhibits and make its decision based on the preponderance of the evidence. The Tribal Court shall be the sole judge of the credibility of witnesses and the relevancy of proffered evidence.
- (n) *Burden of Proof.* The burden of proof in any trial hearing before the Tribal Court 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. The Dependent shall have the burden of proof on such issue in any trial or evidentiary hearing before the Tribal Court.
- (o) *Right to Counsel.* The Employee or Dependent may have legal representation at any hearing before the Tribal Court at the Employee or Dependent's own expense.
- (p) *Order of Authorities.* In resolving issues presented in a case, the Tribal Court shall look to and give weight as precedent to the following mandatory authorities in the following order:
- i. This Act;
 - ii. Other applicable laws of the Nation, including any direction or authorization under applicable law of the Nation to consider or apply the laws or rules of another jurisdiction;
 - iii. Common law of the Tribal Court; and
 - iv. Customs, traditions, and generally accepted practices of the Nation.
- If an issue cannot be resolved by reliance on mandatory authorities, the Tribal Court may look to the following sources as persuasive authority only (in no particular order):
- i. Common law of other tribes;
 - ii. Federal common law;
 - iii. Common law of the State of California; and/or
 - iv. Common law of other states.

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- (q) *Procedural Rules.* The Tribal Court may promulgate procedural rules governing the adjudication of contested matters arising under this Act.
- (r) *Final Binding Decision.* Upon hearing the matter and making a determination of liability under this Act, the Tribal Court shall issue a final Written Decision. The Written Decision shall state the final determination of the Tribal Court on all issues before it. All Written Decisions of the Tribal Court shall be binding and enforceable upon the Nation 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. Where the Tribal Court determines that an error in the Administrator's Final Claim Determination prevented the Administrator from reaching issues necessary to resolving the claim, the Tribal Court, considering the interests of justice and administrative and judicial efficiency, may retain jurisdiction or remand the matter for the Administrator to decide these issues in the first instance and issue a new Final Claim Determination. Matters remanded to the Administrator shall be resolved pursuant to the procedures of this Act.
- (s) *Provision of Approved Benefits During Tribal Court Review.* During pendency of a Tribal Court proceeding, the Employee or Dependent shall continue to receive all benefits approved by the Administrator, but shall not receive any new benefits claimed before the Tribal Court, unless ordered by the Tribal Court 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 section 21.15 or by order of the Tribal Court.
- (t) *Plain Language Instructions.* No later than the effective date of any amendments to this Act, the Tribal Court shall make publicly available, the Risk Management Department shall make available to all Employees, and the Employer Representative shall provide to any Employee making a claim under this Act, or in the case of a deceased employee, to any known Dependents of the Employee, plain language instructions describing the claim and dispute resolution procedures under this Act, which shall be approved by the Tribal Council or its designee.

YSMNC 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.

YSMNC 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.

YSMNC 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 for any Claims filed on or after the one hundred and eightieth (180th) day after such amendments are adopted by the Nation.

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YSMNC 21.21 Sovereign Immunity

Subject to section 21.17.3 herein, nothing contained within this Act shall be deemed to constitute a waiver or diminution of any type whatsoever of the Nation's sovereign immunity from unconsented suit, which sovereign immunity is hereby expressly reaffirmed. Nor may any provision of this Act be construed as consent to the assertion of power or authority by, or the application of any laws of, any other jurisdiction or entity.