



Ordinance No. 13-07

**FAMILY MEDICAL LEAVE ORDINANCE
OF THE BLUE LAKE RANCHERIA**

The Business Council of the Blue Lake Rancheria hereby ordains as follows.

Sec. 1. Authority; Purpose; Applicability and Relation to Other Laws.

- (a) *Authority.* The Business Council of the Blue Lake Rancheria enacts this Ordinance governing family and medical leave for the employees of the Tribe and all of its entities, agencies and instrumentalities pursuant to Article V, Section 6(h)(i) and (r) of the Constitution of the Blue Lake Rancheria and its inherent sovereign authority.
- (b) *Purpose.* The purpose of this Ordinance is to provide uniform standards for consideration of employee requests for family and medical leave.
- (c) *Applicability of this Ordinance and Relation to Other Laws.*
 - (1) In adopting these provisions, the Blue Lake Rancheria Business Council does not consent to the applicability of the federal Family Medical Leave Act enacted by Congress of the United States, or to any other federal laws that do not expressly apply to Indian Tribes and their members, agents, and employees.
 - (2) The provisions of this Ordinance shall apply to employment by the Blue Lake Rancheria or by its entities, agencies and instrumentalities including but not limited to, commissions, authorities, and enterprises.

Sec. 2. Definitions.

- (a) *Domestic partner* means a partner of an employee who has an approved "Statement of domestic partnership" on file with his or her Human Resource Department.
- (b) *Eligible employee* means an employee of an employer covered by this Ordinance who has been employed:
 - (1) For at least twelve (12) months by the employer with respect to whom leave is requested; and

- (2) For at least one thousand two hundred fifty (1,250) hours of service with such employer during the previous twelve-month period.
- (c) *Employ* means suffering or permitting to work.
- (e) *Employer* means the Blue Lake Rancheria and its governmental entities, agencies and instrumentalities including, but not limited to the Tribal Gaming Commission, for-profit enterprises, and Tribal commissions.
- (f) *Employment Benefits* means all benefits provided or made available to employees by employer, including group life insurance, health insurance, disability insurance, sick leave, paid time off, annual leave, educational benefits, and retirement plans, regardless of whether such benefits are provided by a practice or written policy or through an "employee benefit plan."
- (g) *Health Care Provider* means:
 - (1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or
 - (2) Any other person determined by the Tribal Administrator to be capable of providing health care services.
- (h) *Parent* means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.
- (i) *Intermittent or Reduced Leave Time* means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.
- (j) *Serious health condition* means an illness, injury, impairment, or physical or mental condition that involves:
 - (1) Inpatient care in a hospital, hospice, or residential medical care facility; or
 - (2) Continuing treatment by a health care provider.
- (k) *Son or daughter* means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is:
 - (1) Under eighteen (18) years of age; or
 - (2) Eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.
- (l) *Spouse* means a husband or wife, as the case may be, or a partner of a civil union.

Sec. 3. Leave Requirement.

(a) General Provisions.

(1) *Entitlement to Leave.* An eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following reasons:

- a. The birth of a son or daughter of the employee and in order to care for such son or daughter.
- b. The placement of a son or daughter with the employee for adoption or foster care.
- c. To care for the spouse, domestic partner, or a son, daughter, or parent, of the employee, if such spouse, domestic partner, son, daughter, or parent has a serious health condition. If the serious health condition is caused in the line of active military duty, then the employee shall be entitled up to twenty-six (26) weeks total leave in the twelve-month period.
- d. For a serious health condition that makes the employee unable to perform the functions of the position of such employee.
- e. For any qualifying exigency arising out of the fact that the spouse, domestic partner, son, daughter, or parent of the employee is on active duty in the Armed Forces or has been notified of an impending call to active duty status.

(2) *Expiration of Entitlement.* The entitlement to leave under §1.3(a)(1)a. and b. for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

(b) *Reduced or Intermittent Schedule Leave.*

(1) In General. Leave under §1.3(a)(1)a. and b. shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer of the employee agree otherwise. Subject to §1.3 (e)(2), and §1.4(b)(5), leave under §1.3(a)(1)c. or d. may be taken intermittently or on a reduced leave schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under § 1.3(a) beyond the amount of leave actually taken.

(2) *Alternative position.* If an employee requests intermittent leave, or leave on a reduced leave schedule, under §1.3(a)(1) c. or d., that is foreseeable based on planned medical treatment, the employer may require such employee to

transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that:

- a. Has equivalent pay and benefits; and
 - b. Better accommodates recurring periods of leave than the regular employment position of the employee.
- (c) *Unpaid Leave Permitted.* Except as provided in § 1.3(d), leave granted under § 1.3(a) may consist of unpaid leave. Where an employee is otherwise exempt under the Fair Labor Standards Act, the compliance of an employer with this Ordinance by providing unpaid leave shall not affect the exempt status of the employee under such Section.
- (d) *Relationship to Paid Leave.*
- (1) *Unpaid Leave.* If an employer provides paid leave for fewer than twelve (12) workweeks, the additional weeks of leave necessary to attain the twelve (12) workweeks of leave required under this title may be provided without compensation.
 - (2) *Substitution of Paid Leave.*
 - a. *In General.* An eligible employee may elect, or an employer may require, substitution of any accrued paid time off ("PTO"), sick leave, or vacation leave of the employee for leave provided under §1.3(a)(1) a., b., or c. for any part of the twelve-week period of such leave under such Subsection.
 - b. *Serious health condition.* An eligible employee may elect, or an employer may require, the substitution of any accrued PTO, vacation leave, or sick leave of the employee for leave provided under §1.3(a)(1) c. or d. for any part of the twelve-week period, except that nothing in this Ordinance shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.
- (e) *Foreseeable Leave.*
- (1) *Requirement of Notice.* In any case in which the necessity for leave under §1.3(a)(1) a. or b. is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than thirty (30) days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement

requires leave to begin in less than thirty (30) days, the employee shall provide such notice as is practicable.

(2) *Duties of Employee.* In any case in which the necessity for leave under §1.3(a)(1) c. or d. is foreseeable based on planned medical treatment, the employee:

- a. Shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, domestic partner or parent of the employee, as appropriate; and
- b. Shall provide the employer with not less than thirty (30) days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than thirty (30) days, the employee shall provide such notice as is practicable.

(f) *Working for the Same Tribal Entity.* In any case in which both spouses or domestic partners are employed by an employer and both are entitled to leave under §1.3(a), the aggregate number of workweeks of leave to which both may be entitled may be limited to twelve (12) workweeks during any twelve-month period, if such leave is taken:

- (1) Under §1.3(a)(1) a. or b.; or
- (2) To care for a sick parent under §1.3(a)(1)c.

Sec. 4. Certification.

(a) *In General.* An employer may require that a request for leave completed under §1.3(a)(1) c. or d. be supported by a certification completed by the health care provider of the eligible employee or of the son, daughter, spouse, domestic partner or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employer.

(b) *Sufficient Certification.* Certification provided under § 1.4(a) shall be sufficient if it states:

- (1) The date on which the serious health condition commenced;
- (2) The probable duration of the condition;
- (3) The appropriate medical facts within the knowledge of the health care provider regarding the condition;

- (4)
 - a. For purposes of leave under § 1.3(a)(1)c., a statement that the eligible employee is needed to care for the son, daughter, spouse, domestic partner or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, domestic partner or parent; and
 - b. For purposes of leave under § 1.3(a)(1)d., a statement that the employee is unable to perform the functions of the position of the employee;
 - (5) In the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;
 - (6) In the case of certification for intermittent leave, or leave on a reduced leave schedule, under §1.3(a)(1)d., a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and
 - (7) In the case of certification for intermittent leave, or leave on a reduced leave schedule, under § 1.3(a)(1)c., a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent, spouse, or domestic partner who has a serious health condition, or will assist in his or her recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.
 - (8) As a convenience to assist the tribe or by its entities, agencies, and instrumentalities including but not limited to commissions, authorities, and enterprises in documenting information needed to processes family or medical leave requests or certifications, it may use a U.S. Department of Labor form developed for the Family and Medical Leave Act.
- (c) *Second Opinion.*
- (1) *In General.* In any case in which the employer has reason to doubt the validity of the certification provided under §1.3(a)(1)c. or d., the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under §1.4(b) for such leave.
 - (2) *Limitation.* A health care provider designated or approved under §1.4(1) shall not be employed on a regular basis by the employer.
- (d) *Resolution of Conflicting Opinions.*
- (1) *In General.* In any case in which the second opinion described in §1.4(c) differs from the opinion in the original certification provided under §1.4(a), the

employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under §1.4(b).

- (2) *Finality.* The opinion of the third health care provider concerning the information certified under §1.4(b) shall be considered to be final and shall be binding on the employer and the employee.
- (e) *Subsequent Recertification.* The employer may require that the Eligible Employee obtain subsequent recertification on a reasonable basis.

Sec. 5. Employment and Benefits Protection.

- (a) *Restoration to Position.*
 - (1) *In General.* Except as provided in §1.3(b), any eligible employee who takes leave for the intended purpose of the leave shall be entitled, on return from such leave:
 - a. To be restored by the employer to the position of employment held by the employee when the leave commenced; or
 - b. To be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.
 - (2) *Loss of Benefits.* The taking of leave under §1.3 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.
 - (3) *Limitations.* Nothing in this Section shall be construed to entitle any restored employee to:
 - a. The accrual of any seniority or employment benefits during any period of leave; or
 - b. Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.
 - (4) *Certification.* As a condition of restoration under §1.5(a)(1) for an employee who has taken leave under §1.3(a)(1)d., the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this paragraph shall supersede a valid collective bargaining agreement entered into under Blue Lake Rancheria Ordinance that governs the return to work of such employees.

- (5) *Construction.* Nothing in this Subsection shall be construed to prohibit an employer from requiring an employee on leave under §1.3 to report periodically to the employer on the status and intention of the employee to return to work.
- (b) *Exemption Regarding Highly Compensated Employees.*
 - (1) *Denial of Restoration.* An employer may deny restoration under §1.5 (a) to any Highly Compensated eligible employee described § 1.5(b)(2) if:
 - a. Such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;
 - b. The employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that such economic injury would occur; and
 - c. In any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.
 - (2) *Affected Employees.* A Highly Compensated eligible employee described in §1.5(a)(1) is a salaried eligible employee who is among the highest paid ten (10) percent of the employees employed by the employer.
- (c) *Maintenance of Health Benefits.*
 - (1) *Coverage.* Except as provided in §1.5(a)(2), during any period that an eligible employee takes leave under §1.3, the employer shall maintain coverage under any "group health plan" (as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986) for the duration of such leave at the level and under the conditions coverage, including, but not limited to, the employee's usual cost, that would have been provided if the employee had continued in employment continuously for the duration of such leave.
 - (2) *Failure to Return From Leave.* The employer may recover the premium that the employer paid for maintaining coverage for the employee under such group health plan during any period of unpaid leave under §1.3, if:
 - a. The employee fails to return from leave under §1.3 after the period of leave to which the employee is entitled has expired; and
 - b. The employee fails to return to work for a reason other than:
 - 1. The continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under §1.3(a)(1)c. or d.; or

2. Other circumstances beyond the control of the employee.

(3) *Certification.*

- a. *Issuance.* An employer may require that a claim that an employee is unable to return to work because of the continuation, recurrence, or onset of the serious health condition described in § 1.5(d)(2)b. be supported by:
 1. A certification issued by the health care provider of the son, daughter, spouse, domestic partner or parent of the employee, as appropriate, in the case of an employee unable to return to work because of a condition specified in §1.3(a)(1)c.; or
 2. A certification issued by the health care provider of the eligible employee, in the case of an employee unable to return to work because of a condition specified in §1.3(a)(1)d.
- b. *Copy.* The employee shall provide, within three (3) weeks or twenty (20) days following receipt of a certified letter from the employer requesting such certification, a copy of such certification to the employer.
- c. *Sufficiency of Certification.*
 1. *Leave due to a serious health condition of Employee.* The certification described in §1.5(c)(3)a.2. shall be sufficient if the certification states that a serious health condition prevented the employee from being able to perform the functions of the position of the employee up to the date that the leave of the employee expires.
 2. *Leave due to a serious health condition of Family Member.* The certification described in §1.5(c)(3)a.1. shall be sufficient if the certification states that the employee is needed to care for the son, daughter, spouse, domestic partner or parent who has a serious health condition up to the date that the leave of the employee expired.

Sec. 6. Administration.

- (a) *Administrator.* The provisions of the Ordinance shall be administered and enforced by employers' Human Resources Manager and, ultimately, the Tribal Administrator, who is selected by the Blue Lake Rancheria Business Council.

- (b) *Powers.* The Tribal Administrator shall have the power to investigate complaints pursuant to this Ordinance.
- (c) *Regulations.* The Tribal Administrator shall recommend for approval of the Tribal Council any regulations that he or she deems necessary in order to carry out the provisions of this Ordinance. Such regulations shall be made available to Employees upon request.

Sec. 7. Complaint process.

- (a) *Administrative Action.*
 - (1) *Complaint.* Any employee or former employee whose rights were affected in a manner which violates the provisions of this Ordinance may file a written complaint with the Tribal Administrator within one (1) year from the last date upon which the employee was subject to the alleged violation giving rise to the complaint.
 - (2) *Service and investigation.* Upon receipt of a complaint filed in accordance with §1.7(a), the Tribal Administrator shall serve a copy of the complaint upon the respondent employer and investigate the complaint. Within sixty (60) days following receipt of the complaint, the Tribal Administrator shall conclude the investigation and, within thirty (30) days thereafter, make a written determination ("Determination"). If the Tribal Administrator determines that there is a violation of this Ordinance, he or she may order remedies pursuant to §1.8.
 - (3) *Appeal.* Either party may appeal the Determination within thirty (30) days of the date of the Determination by filing a written appeal with the Tribal Court. Within ten (10) days of receiving a written appeal, the Tribal Court shall (1) order the employer to provide an administrative record consisting of all documents created by or submitted to the Tribal Administrator; and (2) assign the appeal to be heard by a Hearing Officer. The Hearing Officer shall be the Tribal Court Judge. The Hearing Officer will have the parties argue whether the Tribal Administrator's decision was supported by substantial evidence and does not contain any legal error.
 - (4) *Hearing; Subpoenas.* If the Tribal Court assigns the Complaint to the Hearing Officer shall, within thirty (30) days after the assignment, conduct a hearing on the record with respect to such Administrative Appeal. The Hearing Officer shall have the authority to issue subpoenas directing any party to submit specifically defined testimonial and/or documentary evidence. Such subpoenas shall be enforceable in Tribal Court.

- (5) *Burden of Proof.* In any such proceeding before the Hearing Officer, the employee shall have the burden of establishing a prima facie case in support of the Administrative Appeal. The Hearing Officer shall define the elements of such a prima facie case at the outset of the proceedings. If the employee establishes a prima facie case, the employer shall present evidence in defense of the Administrative Appeal. If the Hearing Officer determines that the employee has failed in his or her case-in-chief to establish a prima facie case, the Hearing Officer shall dismiss the Administrative Appeal.
- (6) *Decision.* Upon conclusion of the testimony and presentation of evidence relevant to the Complaint and its defense, the Hearing Officer shall determine whether a preponderance of the evidence supports the Complaint on the record as a whole. If the Hearing Officer finds that the Complaint is not supported by a preponderance of the evidence on the record as a whole, the Hearing Officer shall dismiss the Complaint. If the Hearing Officer finds that the Complaint is supported by a preponderance of the evidence on the record as a whole, he or she shall order remedies as set forth in §1.8.

Sec. 8. Remedies/Sovereign Immunity.

- (a) *Remedies.* If an eligible employee proves by a preponderance of the evidence that his or her employer interfered with, restrained or denied him or her rights under this Ordinance, the following remedies may be ordered:
 - (1) Payment of wages, salary or Employment Benefits lost by such employee by reason of the employer's violation of this Ordinance, plus interest at the prevailing rate; or
 - (2) In a case in which wages, salary, and/or Employment Benefits have not been denied or lost to such employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to twelve (12) weeks of wages or salary for such employee plus interest at the prevailing rate; and
 - (3) Liquidated damages in an amount equal to the above compensatory damages, unless the employer proves by a preponderance of the evidence that the act or omission leading to the violation of this Ordinance was made in good faith and the employer had, at the time its decision was made, reasonable grounds for believing it was not violating this Ordinance; and
 - (4) Reinstatement of such employee, either into the same position or into a comparable position that such employee is qualified to hold that is of equivalent status, wages and benefits, as determined by the Tribal Administrator; and

- (5) Reasonable attorney's fee and costs.
 - (6) The remedies enumerated in this Section shall be the sole and exclusive remedies for any violation of this Ordinance.
- (b) *Limited Waiver of Sovereign immunity.* The Blue Lake Rancheria expressly waives its sovereign immunity and any sovereign immunity enjoyed by any employer subject to this Ordinance solely to permit an eligible employee to bring an action in Tribal Court seeking only the remedies enumerated in §1.8 of this Ordinance for claims of violations of this Ordinance brought pursuant to the complaint process of §1.7 of this Ordinance. The Tribe does not waive sovereign immunity or consent to suit in any other forum other than the Blue Lake Rancheria Tribal Court, including, but not limited to, a state or federal court, or administrative agency. This limited waiver shall not be construed nor shall such grant be deemed consent by the Blue Lake Rancheria to the levy of any judgment, lien, attachment or other procedure to enforce a judgment, court order or other obligation upon any property, real or personal, tangible or intangible, whether owned in fee or by the United States in trust of the Blue Lake Rancheria, any other employer subject to this Ordinance, or their officers, agents or employees.
- (c) Nothing contained in this Ordinance is intended or shall be construed or applied to create a private right of action in any person or private or governmental entity other than the right of an employee or a parent or legal guardian of a minor employee to file a complaint with the Tribal Administrator as provided under §1.7

Sec. 9. Notice.

Each employer shall post and keep posted, in a conspicuous place, on the premises where notices to employees and applicants for employment are customarily posted, a notice setting forth the pertinent provisions of this Ordinance and information pertaining to filing a complaint.

Sec. 10. Effect on employers' leave policies/collective bargaining agreements.

- (a) *Policies.* Nothing in this Ordinance shall be construed to discourage employers from adopting, retaining, or agreeing to family and medical leave policies more generous than any policies that comply with the requirements of this Ordinance. However, this Ordinance shall not be construed as providing for the enforcement of policies that provide family and medical leave benefits more generous than those set forth herein.
- (b) *Collective Bargaining Agreement/More Protective.* Nothing in this Ordinance or any amendment made by this Ordinance shall be construed to diminish the obligation of an employer to comply with any collective bargaining agreement made under Blue Lake Rancheria Ordinance that provides greater family or medical leave rights to employees than the rights established under this Ordinance.

- (c) *Less Protective.* The rights established for eligible employees under this Ordinance or any amendment made by this Ordinance shall not be diminished by any collective bargaining agreement entered into pursuant Blue Lake Rancheria Ordinance.

Sec. 11. Effective date. Amendment.

This law shall be applicable to all claims pending on the enactment date and to all claims that accrued one (1) year prior to the enactment date. This Ordinance may be amended in accordance with the tribal law.

Sec. 12. Severability.

If any provision of this Ordinance or its application to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect the remaining provisions or applications of this Ordinance, and the same shall continue in full force and effect.

Sect. 13. Sovereign Immunity.

Nothing hereunder is intended to be or shall be interpreted to be a waiver of Sovereign Immunity of the Tribe from unconsented in Tribal, Federal or State court, or administrative proceeding except to the extent expressly stated herein.

CERTIFICATION


As the Chairperson of the Business Council for the Blue Lake Rancheria, I hereby certify that the Business Council adopted the Blue Lake Rancheria's family medical Leave Ordinance by a vote of 5 for, with against, with 0 abstaining, with 0 absent at a duly called meeting of the Business Council with a quorum present on November 1st, 2013 .



Chairperson

11-1-13

Date of Approval

ATTEST:


Secretary

Nov - 1 - 2013

Date of Approval