



HABEMATOLEL POMO OF UPPER LAKE

TITLE 7. EMPLOYMENT

CHAPTER 2. FAMILY MEDICAL LEAVE CODE

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Article 1. GENERAL PROVISIONS

This Chapter shall be codified as Chapter 2 of Title 7 of the Habematolet Pomo of Upper Lake Book of Codes.

Section 1.01 Short Titles.

This Act may be cited as the Family Medical Leave Code or the Tribal Family Medical Leave (“TFML”) Code.

Section 1.02 Purpose.

The Tribe, as an exercise of its inherent governmental authority, adopts this Code as a sovereign nation. The purpose of this Code is to establish the Tribal Family Medical Leave benefit and establish the terms through which eligible Employees may take reasonable leave for medical reasons in a manner that accommodates the legitimate interests of all affected persons and entities in accordance with the values and traditions of the Tribe.

Section 1.03 Scope of & Jurisdiction.

This Code applies to all Employers who employ Employees who are either working within the Tribal Territory or within entities under the Tribe’s control and ownership, whether such Employees are working in governmental, social service, administrative, commercial, business, or other contexts. This Code does not apply to vendors of the Tribe. To the extent there is any conflict between any policy and this Code, this Code shall govern.

Section 1.04 Construction of the TFML Code to Promote its Purposes and Policies.

- A. The TFML Code must be liberally construed and applied to promote its underlying purposes.
- B. Unless displaced by the provisions of the TFML Code, the principles of law and equity supplement its provisions.
- C. Although the federal Family Medical Leave Act (“FMLA”) exempts Indian tribes from its coverage, the Tribe wishes to establish a similar program. Unless this TFML Code conflicts with a particular provision of the FMLA, this Code shall be interpreted with same intent with the caveat that the procedures of the FMLA pertaining to the enforcement of any rights or the recovery of any remedy by an Employee under this Code or any associated policy, and the procedures provided by the Tribe, shall be the sole procedures available to an Employee seeking to enforce any provision of this Code.

Section 1.05 Sovereign Immunity.

The Tribe and all its constituent parts, officers, subordinate organizations and business entities, boards or committees are immune from suit in any jurisdiction except to the extent that such

immunity has been expressly and unequivocally waived by the Tribe or the United States. Nothing in this Code shall be construed as waiving the sovereign immunity of the Tribe or any of its officers, subordinate organizations and business entities, boards or committees except for the administrative remedies provided in Article 9 which allow an Employee aggrieved by the decision of a Tribal Employer to petition for review of the decision by the Tribal Employer.

Section 1.06 Construction Against Implied Repeal.

The TFML Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Section 1.07 Severability.

If any provision or clause of the TFML Code or its application to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the TFML Code which can be given effect without the invalid provision or application. To this end, the provisions of the TFML Code are severable.

Section 1.08 Use of Singular and Plural; Gender.

In the TFML Code, unless the statutory context otherwise requires: (1) words in the singular number include the plural, and those in the plural include the singular; and (2) words of any gender also refer to any other gender.

Section 1.09 Section Captions.

Section captions are part of the TFML Code.

Article 2. LEGISLATIVE FINDINGS

Section 2.01 Sovereign Power to Regulate Tribal Employment.

The power to regulate the employment criteria for its governmental and government-owned entities is an inherent and essential part of any government's authority. This power is therefore an aspect of the retained sovereignty of Indian tribes. except where it has been limited or withdrawn by Federal law. Article X of the Tribe's 2004 Constitution, as amended, authorizes the Executive Council to enact codes and ordinances, including those regulating employment.

Section 2.02 Tribal Need for Internal Regulation.

The Tribe has the primary responsibility for regulating employment within the government and governmental entities to ensure the continued operation and strengthening of the Tribal government and the delivery of essential governmental services, and the development of the Reservation economy in pursuit of tribal self-reliance and self-determination.

Section 2.03 Effect on the Economic Wellbeing, Political Stability, and Health and Welfare of the Tribe.

In addition to allowing Consumers to access the Reservation, Tribal employment affects the Tribal treasury for Employees choosing to be employed by the Tribe and has a substantial impact on the Tribe's economic wellbeing, political stability and health and welfare.

Article 3. DEFINITIONS AND PRINCIPLES OF INTERPRETATION

Section 3.01 Definition of terms.

A. Terms, as used in this Chapter mean:

- (1) "Armed Forces" means the military forces established, recognized and maintained by the United States of America, including the Army, Marine Corps, Navy, Air Force, Space Force and Coast Guard.
- (2) "Covered active duty" or "call to covered active duty" means, in the case of a member of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country and, in the case of a member of the Reserves, duty during the deployment of the member of the Armed Forces to a foreign country under a federal call or order to active duty in support of a contingency operation.
- (3) "Covered Service-member" means (i) a current member of the Armed Forces, a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or (ii) a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.
- (4) "Covered Veteran" means an individual who was a member of the Armed Forces and was discharged or released under conditions other than dishonorable at any time.
- (5) "Eligible Employee" is an Employee (1) has been employed by an Employer for at least 12 consecutive months immediately preceding that Employee's request for TFML; and (2) has worked for an Employer for at least 1,250 hours of service during the previous 12 months.
- (6) "Employee" means any person employed by an Employer as a W-2 employee and expressly excludes independent contractors, employees of other entities, volunteers, and interns employed by an Employer.
- (7) "Employer" means the Tribe or a Tribal Entity employing individuals who work within the Tribe's Territory or for an entity that is wholly owned and operated by the Tribe, specifically including but not limited to the Tribal

Government, including all its subdivisions, the Running Creek Casino, , Habemco, LLC, Upper Lake Processing Services, LLC, Generations, LLC and all future entities owned and operated by the Tribe in any context, whether commercial, governmental or other focus;

- (8) “Employment Benefits” means all benefits provided or made available to Employees by an Employer, including, but not limited to, group life insurance, health insurance, disability insurance, paid time off or sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an Employer;
- (9) “Federal Family Medical Leave Act” or “FMLA” means the Family Medical Leave Act, Title 29 of the United States Code, sections 2601 et seq., as amended, and regulations adopted by the United States Department of Labor pursuant to the FMLA;
- (10) "Health Care Provider" means a Doctor of Medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) or any other person capable of providing health care services. For purposes of this Code, “others capable of providing health care services” include only:
 - (a) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the state in which they operate and performing within the scope of their practice as defined under applicable law;
 - (b) Nurse practitioners, nurse mid-wives, clinical social workers and physician assistants who are authorized to practice in the state in which they operate and who are performing within the scope of their practice as defined under applicable law;
 - (c) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an Employee or family member is receiving treatment from a Christian Science Practitioner, an Employee may not object to any requirement from an Employer that the Employee or family member submit to examination (though not treatment) to obtain a second or third certification from a Health Care Provider other than a Christian Science Practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement; or
 - (d) Any Health Care Provider from whom an Employer or the Employer’s designated HR staff will accept certification of the existence of a serious health condition to substantiate a claim for health benefits.
- (11) “Intermittent Leave” means taking leave in separate blocks of time for a single qualifying reason.

- (12) “Key Employee” means an Employee who is a salaried Employee who is among the highest paid 10 percent of the Employees employed by the Employer.
- (13) “Military Caregiver Leave” means leave taken to care for a covered service-member with a serious injury or illness under this Code.
- (14) “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.
- (15) “Qualifying Exigencies” has the same meaning as set forth in 29 CFR Section 825.126. Generally speaking, qualifying exigencies are situations justifying leave from work arising out of the foreign deployment of an Employee’s spouse, son, daughter, or parent, such as (i) issues arising from a military member’s short notice deployment, (ii) the need to attend military events, (iii) the need to make arrangements for childcare or to transfer a child to a new school or day care, (iv) the need to care for the military member’s parent, (v) the need to make financial and legal arrangements, (vi) the need to attend counseling related to the covered active duty, or (vii) to spend time with the military member who is on a short-term, temporary rest and recuperation leave during deployment.
- (16) “Reduced Schedule Leave” means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an Employee.
- (17) “Reserves” means the Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, the Coast Guard Reserve, and retired members of the Armed Forces or Reserves who are called up in support of an official operation.
- (18) “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.
- (19) “Serious Injury or Illness” means:
 - (a) In the case of a current member of the Armed Forces, an injury or illness that was incurred by the covered service-member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the service-member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and
 - (b) In the case of a covered veteran, an injury or illness that is incurred by the member in the line of duty on active duty in the Armed Forces (or existed

before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces), and that is either:

- (i) A continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces; or
 - (ii) A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating of 50% or greater, and the need for Military Caregiver Leave is related to that condition; or
 - (iii) A physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or
 - (iv) An injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
- (20) "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 18 years of age; or (2) 18 years of age or older and incapable of self-care because of a mental or physical disability.
 - (21) "Spouse" means a person who is lawfully married to another person under the laws of any jurisdiction, regardless of the sex or gender of either party.
 - (22) "Tribe" means the Habematolel Pomo of Upper Lake, a federally recognized Indian tribe, and any of its departments, commissions, agencies or subdivisions.
 - (23) "Tribal Court" means the Habematolel Pomo of Upper Lake Tribal Court as described in Title 2, Chapter 1 of the Habematolel Pomo of Upper Lake Book of Codes.
 - (24) "Tribal Entity" means any entity or instrumentality of the Tribe, which, under principles of federal Indian law, enjoys the sovereign status of the Tribe exemplified by immunity from suit.
 - (25) "Tribal Territory" or the "Tribe's Territory" means the territory of the Tribe as set forth in Article II, Section 1 of the Tribe's Constitution.
 - (26) "Unable to Perform the Functions of the Position" means when an Employee is "unable to perform the functions of the position" where the Health Care Provider finds that the Employee is unable to work at all or is unable to perform any one of the essential functions of the Employee's position with or

without a reasonable accommodation.

Article 4. TRIBAL FAMILY MEDICAL LEAVE BENEFIT

Section 4.01 Eligibility and Leave Benefit.

- A. Every Employee Eligible Employee is entitled to up to 12 work weeks of unpaid Tribal Family Medical Leave in a rolling 12-month period, measured backward from the date an Employee uses any TFML, provided such leave is for one or more of the authorized reasons stated below in Section 4.02.
- B. An Eligible Employee who is a Spouse, Son, Daughter, Parent, or next of kin of a covered service-member shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the service-member with a serious injury or illness, as defined above. The leave described in this Section 4.01(B) shall be available only during a single 12-month period. For purposes of this Section 4.01(B), "Next of kin" means the employee is the servicemember's nearest blood relative, other than the servicemember's spouse, parent, or child, in the following order of priority:
 - (1) All blood relatives who have been granted legal custody of the current servicemember, or, if none,
 - (2) All brothers and sisters, or, if none,
 - (3) All grandparents, or, if none,
 - (4) All aunts and uncles, or, if none,
 - (5) All first cousins.

When a servicemember designates in writing a blood relative as next of kin for TFML purposes, that individual is deemed to be the servicemember's only TFML next of kin. When a current servicemember has not designated in writing a next of kin for TFML purposes, and there are multiple family members with the same level of relationship to the servicemember, all such family members are considered the servicemember's next of kin and may take TFML leave to provide care to the servicemember.

Section 4.02 Authorized Reasons for Tribal Family Medical Leave.

- A. Eligible Employees may use Tribal Family Medical Leave for one or more of the following reasons:
 - (1) Because of the birth of a Son or Daughter of the Employee, in order to care for such Son or Daughter;
 - (2) Because of the placement of a Son or Daughter with the Employee for adoption or foster care;
 - (3) In order to care for the Spouse, or a Son, Daughter, or Parent, of the Employee, if such Spouse, Son, Daughter, or Parent has a Serious Health Condition;
 - (4) Because of a Serious Health Condition that makes the Employee unable to

perform their job functions;

- (5) Because of any Qualifying Exigency, as defined in Section 3.01, above, arising out of the fact that the Spouse, or a Son, Daughter, or Parent of the Employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the U.S Armed Forces; or
- (6) To care for a Covered Service-member with a serious injury or illness if the Employee is the Spouse, Son, Daughter, Parent, or next of kin of the Covered Service-member.

B. The entitlement to leave under Sections 4.02(A)(1) and (2), above, 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. The right to take leave under this Code applies equally to all Employees, regardless of gender or gender identity (male, female, or non-binary). Thus, subject to the provisions of Section 4.04(G), below, a father, as well as a mother, can take family leave for the birth, placement for adoption, or foster care of a child provided that they are “caring” for the child.

Section 4.03 Pay During Leave.

Tribal Family Medical Leave granted under this Code is unpaid leave. An Eligible Employee may elect, or an Employer may require the Employee, to substitute any accrued paid time off (including vacation leave, sick leave, medical leave bank, extended illness bank, and floating holidays) of the Employee for leave provided under this section.

Section 4.04 Administration. The following conditions apply to Tribal Family Medical Leave granted under this section:

- A. Notice. The Employee must provide at least 30 calendar days’ notice of the intended date on which the TFML leave will commence and the intended date upon which it will terminate, unless a reasonable medical emergency makes providing such notice impractical, in which case the Employee shall provide notice as soon as reasonably possible under the circumstances.

The following terms apply regarding this notice, which shall be provided on forms approved and maintained by the Tribe:

- (1) The Employee’s notice shall specify the reasons for the requested leave, the anticipated start date of the leave, and the anticipated duration of the leave;
- (2) The Employee shall submit this notice to their Human Resources contact; and
- (3) In any case in which the leave is due to the covered active duty of a family member, the Employee shall provide such notice as soon as reasonably possible.

B. Certification. The Employer may require that requests for leave for the Employee’s

own Serious Health Condition or to care for a family member's Serious Health Condition be supported by a certification issued by a Health Care Provider. The Health Care Provider shall not have a familial relationship with the Employee or have a close working relationship with the Employee as determined at the discretion of the applicable administrator(s). The Employer may also require that an Employee's leave for a Qualifying Exigency or to care for a Covered Service-Member with a Serious Injury or Illness be supported by a certification.

Upon request of the Employer, the Employee shall provide, in a timely manner, a certification containing all the following information:

- (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) For purposes of leave to care for a family member, (i) a statement that the Eligible Employee is needed to care for the Son, Daughter, Spouse, or Parent and (ii) an estimate of the amount of time that such Employee is needed to care for the Son, Daughter, Spouse, or Parent;
- (5) For purposes of leave for the Employee's own Serious Health Condition, a statement that the Employee is unable to perform the functions of the position of the Employee;
- (6) In the case of certification for Intermittent Leave or Reduced Schedule Leave, for planned medical treatment, (i) the dates on which such treatment is expected to be given and (ii) the duration of such treatment;
- (7) In the case of certification for Intermittent Leave or Reduced Schedule Leave, for the Employee's own Serious Health Condition, (i) a statement that the particular leave schedule is medically necessary and (ii) the expected duration of the leave schedule;
- (8) In the case of certification for Intermittent Leave or Reduced Schedule Leave, for the Employee to care for another with a Serious Health Condition, (i) a statement that the particular leave schedule is necessary for the care of the Son, Daughter, Parent, or Spouse with the condition, or (ii) a statement that the leave will assist in their recovery, and the expected duration of the leave schedule; and
- (9) In the case of leave taken to care for a Covered Service-Member, a certification completed by an authorized Health Care Provider of the covered service-member (Department of Defense provider, Veterans Affairs provider, TRICARE provider), (i) a statement as to whether the injury or illness was incurred in the line of duty on active duty, (ii) the approximate date on which

the serious injury or illness commenced, or was aggravated, and its probable duration, (iii) a statement or description of appropriate medical facts regarding the health condition for which Tribal Family Medical Leave is requested, (iv) information sufficient to establish that the covered service-member is in need of care;

(10) In the case of leave taken because of a Qualifying Exigency, (i) a copy of the military member's active-duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered activity status, and the dates of the military member's covered active-duty service, and (ii) a signed certification from the Employee setting forth:

- (a) the facts regarding the Qualifying Exigency for which leave is requested,
- (b) the approximate date on which the Qualifying Exigency commenced or will commence,
- (c) the beginning and end dates for such leave,
- (d) if Intermittent Leave, an estimate of the frequency and duration of the Qualifying Exigency,
- (e) if the Qualifying Exigency involves meeting with a third party, appropriate contact information for the individual with whom the Employee is meeting and a brief description of the purpose of the meeting, and
- (f) if the Qualifying Exigency involves rest and recuperation leave, a copy of the military orders which indicates that the military member has been granted such leave and the dates of the leave.

If an Employee fails to provide the required certification or fails to cure any defects (incomplete or vague entries) in a required certification within 7 calendar days after notice by the Employer of such defects, then the Employer shall be authorized to deny the leave request made by the Employee.

- C. Second Opinions. In any case in which the Employer has a reasonable basis to doubt the validity of the medical certification provided, the Employer may require, at its own expense, the Employee to obtain the opinion of a second Health Care Provider designated or approved by the Employer concerning any information certified under subsection B of this section for such leave. A Health Care Provider designated or approved under this Section 4.04(C) shall not be employed on a regular basis by the Employer. If the second opinion differs from the opinion in the original certification, the Employer and Employee shall jointly designate a third Health Care Provider to provide a third opinion, at the Employer's expense, which opinion shall be considered

final and binding on the Employee and the Employer.

- D. Recertification. Employers may require any Employee taking TFML to obtain recertifications on a reasonable basis and at reasonable intervals, and within the same scope and standards as original certifications.
- E. Scheduling Obligations. Employees utilizing TFML, including on an Intermittent Leave, shall make a reasonable effort to schedule treatments and leave so as not to disrupt operations of their Employer whenever the necessity for leave is foreseeable based on planned medical treatment.
- F. Intermittent Leave and Reduced Schedule Leave. The following conditions apply to leave taken on an intermittent basis or on a reduced schedule:
 - (1) Leave taken due to the birth of a Son or Daughter or as a result of placement of a Son or Daughter with the Employee for adoption or foster care may not be Intermittent Leave or Reduced Schedule Leave, unless the Employer agrees;
 - (2) Leave taken due to one's own serious health condition or to care for a family member with a Serious Health Condition may be Intermittent Leave or Reduced Schedule Leave, but only when it is medically necessary as certified by a Health Care Provider;
 - (3) If an Employee requests Intermittent Leave or Reduced Schedule Leave, for any reason stated in Section 4.02, the Employer may require the Employee to transfer temporarily to an alternative position for which the Employee is qualified if such new position: (i) is equal in pay and benefits (even if not equal in duties or prestige); and (ii) better accommodates recurring periods of leave as compared to Employee's regular position; and
 - (4) An Employee who is taking Intermittent Leave or Reduced Schedule Leave shall comply with the Employer's usual notice or procedural requirements for calling in absences and requesting leave. For example, an Employer (i) may require an Employee to call in, on a daily or less frequent basis, to speak with a particular individual or (ii) may require an Employee to sign a personal certification verifying that s/he took the leave for the medical reason provided.
- G. Spouses Employed by the Same Employer. In any case in which spouses entitled to leave under Section 4.02, subsection A are employed by the same Employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period if such leave is taken pursuant to Section 4.02(A)(1) or (2), or to care for a sick Parent under Section 4.02 (A)(3), or to a combined total of 26 weeks of leave during a 12-month period to care for a Covered Service-member with a serious injury or illness under Section 4.02 (A)(6).
- H. Substance Abuse. Substance abuse may be a Serious Health Condition in certain instances. However, leave under this Code may be taken only for treatment of

substance abuse by a Health Care Provider. Absence caused by an Employee's actual use of the substance, rather than for treatment, does not qualify for leave under this Code, and is grounds for discipline, up to and including termination of employment. The rules regarding substance abuse at work always apply.

- I. Domestic Partners. Any Employer may elect, by policy provided to (and acknowledged by) its Employees or by contract with an Employee, to provide Tribal Family Medical Leave under this Code for the care of domestic partners. In that event, such domestic partners shall be treated the same as spouses under this Code. To qualify for domestic partner coverage under this Section 4.04(I), an Employee must register their domestic partnership and their domestic partner's name with their human resources contact (or the equivalent Employer representative) with the Employer on such forms or affidavits as may be required by the Employer. Nothing in this Section 4.04(I) shall be interpreted to require the provision of Tribal Family Medical Leave benefits to Employees with domestic partners at any Employer that has not elected to provide it.
- J. Equal Treatment of Spouses and Domestic Partners who Work for the Same Employer. The restrictions upon Spouses of a single Employer under Section 4.04(G), above, for leave taken pursuant to Section 4.02(A)(1),(2),(3), or (6) shall apply to two Employees of a single Employer who consider themselves "domestic partners" whether or not the Employer has elected to provide Tribal Family Medical Leave to care for domestic partners pursuant to Section 4.04(H). Nothing in this Section 4.04(J) shall be interpreted to require the provision of Tribal Family Medical Leave benefits to Employees with domestic partners at any Employer that has not elected to provide it in accordance with Section 4.04(H).

Article 5. EMPLOYEE BENEFITS PROTECTION

Section 5.01 Job Protection/Restoration to Position or Equivalent.

- A. Except as provided herein, any Employee who exercises the right to Tribal Family Medical Leave under this Code is entitled, upon return from such leave, to be restored by the Employer to the position held by the Employee when the leave commenced or to an equivalent position with equivalent Employee benefits, pay and other terms and conditions of employment.

Notwithstanding anything to the contrary contained in this Code, an Employer may deny restoration under this section to any Employee if the Employee obtains Tribal Family Medical Leave fraudulently, or in the following circumstances:

- (1) If the Employee would not otherwise have been employed at the time reinstatement is requested (for example, if an Employee is laid off, if the Employee's shift or position has been eliminated for reasons unrelated to his/her TFML, or if the Employee was hired for a specific term or only to perform work on a discrete project and that term / project has expired or been completed);

- (2) If the Employee is unable to perform an essential function of the position because of a physical or mental condition (including but not limited to the continuation of a Serious Health Condition), either with or without reasonable accommodation;
- (3) If the Employee fails to provide a requested fitness for duty certification;
- (4) In the case of a Key Employee, reinstatement may be denied if such denial is necessary to prevent substantial and grievous economic injury to the operations of the Employer. However, an Employer who believes that reinstatement may be denied to a Key Employee must give written notice to the Employee at the time the Employee gives notice of the need for TFML (or when the leave commences, if earlier) that the Employee qualifies as a “Key Employee.” At the same time, the Employer must also fully inform the Employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the Employer should determine that substantial and grievous economic injury to the Employer’s operations will result if the Employee is reinstated from Tribal Family Medical Leave.

As soon as an Employer makes a good-faith determination, based on the facts available, that substantial and grievous economic injury to its operations will result if a Key Employee is reinstated, the Employer shall notify the Employee in writing of its determination that it cannot deny Tribal Family Medical Leave but intends to deny restoration to employment on completion of the leave. The Employer must serve this notice either in person or by certified mail. This notice must explain the basis for the Employer’s determination, and, if leave has commenced, provide the Employee with a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the Employee’s return. If an Employee on leave does not return to work in response to the Employer’s notification of intent to deny restoration, the Employee remains entitled to maintenance of health benefits. A Key Employee’s rights under this Code shall continue unless and until the Employee either gives notice that he or she no longer wishes to return to work, or the Employer actually denies reinstatement at the conclusion of the leave period.

An Employee is still entitled to request reinstatement at the end of the leave period even if the Employee did not return to work in response to the Employer’s notice. The Employer must then again determine whether a substantial and grievous economic injury to its operations will result, based on the facts at that time. If the Employer so determines, the Employer shall notify the Employee in writing (in person or by certified mail) of the denial of restoration.

Section 5.02 Maintenance of Employee Benefits.

During any Tribal Family Medical Leave taken under this Code, the Employer shall maintain health insurance coverage for the duration of such leave at the level and under the conditions coverage would have been provided if the Employee had continued in employment. Thus, Employees must continue to pay for their share of benefits premiums, deductibles, co-payments,

etc. To the extent such amounts are automatically deducted from payroll checks when an Employee is working and an Employee stops receiving payroll checks at any point during their leave (e.g., they are not using accrued paid leave benefits as income replacement during an otherwise unpaid leave of absence), they must make arrangements to pay their portion of any amounts due (primarily premiums) in advance. Absent specific approval based on unique circumstances, Employers will not advance or otherwise cover, temporarily or permanently, such Employee-related obligations. Employees who fail to arrange for the advance payment of their portion owed for benefits continuation will experience a break in benefits coverage and possibly termination of benefits coverage. The taking of leave pursuant to this Code shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. However, nothing in this section shall be construed to entitle any Employee to the accrual of any employment benefits during any period of leave or to any right, benefit, or position of employment except those to which the Employee would have been entitled had the Employee not taken the leave.

Section 5.03 Return to Work Certification

As a condition of restoration to employment, the Employer may require the Employee to provide a Health Care Provider certification stating that the Employee is able to resume work and perform the essential functions of his/her position, with or without reasonable accommodation. Nothing in this Code shall be construed to prohibit an Employer from requiring an Employee on leave to report periodically to the Employer on the status and intention of the Employee to return to work.

Article 6. EFFECT ON EXISTING EMPLOYEE BENEFITS

- A. Benefit accrual. The taking of Tribal Family Medical Leave under this Code shall not result in the loss of any Employee benefit accrued before the date on which the leave commenced. However, an Employee has no greater right to benefits and conditions of employment than if the Employee had been continuously employed during the leave period. In accordance with the policies of the Tribe, Employees who are out on unpaid leave pursuant to this Code shall not be entitled to accrue paid time off while on leave.
- B. Limitations. Nothing in this Code shall be construed to entitle any restored Employee to the accrual of any seniority or employment benefits during any period of leave or 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.

Article 7. FREEDOM TO UTILIZE TRIBAL FAMILY MEDICAL LEAVE BENEFITS

The following shall be considered prohibited acts for an Employer under this Code:

- A. Interference or Denial of Rights. An Employer may not interfere with, restrain or deny the exercise of or the attempt to exercise any right provided by this Code.

- B. Discrimination or Retaliation Against Those Who Exercise Rights. An Employer may not discharge, retaliate or otherwise discriminate against any Employee for exercising, or attempting to exercise, any right provided by this Code.
- C. Discrimination or Retaliation Against Those Who Oppose. An Employer may not discriminate or retaliate against any Employee for opposing or challenging, in good faith, any practice prohibited by this Code.

Article 8. IMPLEMENTATION

Employers subject to the provisions of this Code shall develop and adopt, subject to appropriate approval, as applicable, by the Executive Council, Board of Directors or other applicable governing body of a Tribal entity, policies, procedures, and forms to implement the provisions of this Code and educate Employees regarding them. In no event shall any policy or procedure allow the Eligible Employee for more than twelve (12) weeks of TFML, provided that, under extenuating circumstances documented by the Employer, a Discretionary Personal Leave of 30 days may be granted. At the expiration of all available leave periods, an Employee who is unable to return shall be separated from the Employer, with rehire eligibility as appropriate.

Article 9. REVIEW

Within 30 days after receipt of a final decision by an Employer regarding the administration of any benefit available under the TFML, the Employee may appeal such final decision to the Plan Administrative Committee (the “Committee”) charged with administering certain savings and benefits plans offered by the Tribe and certain of its entities by filing a written appeal the Committee. Any decision by the Committee shall be final and no further appeal shall be allowed.

Article 10. RECORDS AND CONFIDENTIALITY

Section 10.01 Record Preservation.

Every Employer subject to this Code shall make, keep, and preserve such Employee records set forth in Section 10.01(A) below. The Employer will preserve such records for the greater of three years or that period of time set forth in the Employer’s record retention policy.

A. Each Employer shall maintain records of the following:

- (1) Basic payroll and identifying Employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.

- (2) Dates TFML leave is taken by Eligible Employees (e.g., available from time records, requests for leave, etc., if so designated). Leave must be designated in records as TFML leave; leave so designated may not include leave allowed under an employer approved plan which is not also covered by TFML.

(3) If TFML leave is taken by Eligible Employees in increments of less than one full day, the hours of the leave.

(4) Copies of Employee notices of leave furnished to the Employer under TFML, if in writing, and copies of all written notices given to employees as required under TFML. Copies may be maintained in employee personnel files.

(5) Any documents (including written and electronic records) describing employee benefits or Employer policies and practices regarding the taking of paid and unpaid leaves.

(6) Premium payments of employee benefits.

(7) Records of any dispute between the Employer and an Eligible Employee regarding designation of leave as TFML leave, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.

Section 10.02 Separation of Certain Records.

Records and documents relating to certifications, recertifications or medical histories of employees or employees' family members, created for purposes of TFML shall be maintained as confidential medical records in separate files/records from the usual personnel files. Such records and documents shall be treated as confidential except that:

- A. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations; and
- B. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
- C. Government officials investigating compliance with TFML (or other pertinent law) shall be provided relevant information upon request.

Article 11. EFFECTIVE DATE, SEVERABILITY & AMENDMENTS

Section 11.01 Effective Date.

This Code shall take effect 30 calendar days after adoption by the Executive Council, though Employers may begin to implement this Code before that if they so choose.

Section 11.02 Severability.

If any provision of this Code is determined to be invalid by a body of competent jurisdiction, the remaining provisions of this Code shall remain unaffected.

CERTIFICATION

As a duly-elected official of the Habematolel Pomo of Upper Lake, I do hereby certify that, at a meeting duly called, noticed, and convened on the 10th day of July, 2026, at which time a quorum of 7 was present, this Title 7 Chapter 2 Family Medical Leave Code was duly adopted by a vote of _6_ FOR, _0_ AGAINST, _1_ ABSTAINED, and said Chapter has not been rescinded or amended in any form.

Danielle Cirelli, Executive Council Chairperson

Date

ATTEST:

Iris Picton, Executive Council Secretary

Date