

TRIBAL COURT CODE  
CHAPTER 93  
WORKERS' COMPENSATION

**LDF Tribal Workers' Compensation Ordinance**

Section 1. Sovereign Immunity. ....	1
Section 2. Purpose. ....	2
Section 3. Scope. ....	2
Section 4. Exclusive Remedy. ....	2
Section 5. Definitions. ....	2
Section 6. Acknowledgement of Ordinance. ....	5
Section 7. Reporting Obligations. ....	6
Section 8. Statute of Limitations. ....	7
Section 9. Claims Administrator Duties. ....	7
Section 10. Compensability; Exclusions. ....	9
Section 11. Benefits. ....	10
Section 12. Cumulative Injury. ....	14
Section 13. Claim Closure. ....	14
Section 14. Dispute Resolution. ....	15
Section 15. Appeals. ....	16
Section 16. Subrogation/Appportionment/Recovery. ....	17
Section 17. Confidentiality. ....	18
Section 18. Medicare Set Asides. ....	18
Section 19. Effective Date. ....	19
Section 20. Severability. ....	19

**Section 1. Sovereign Immunity.**

The Tribal Court shall have exclusive jurisdiction over claims arising under this Ordinance, provided that all remedies have been exhausted. The Tribe and/or Employer hereby waives its sovereign immunity from suit for actions arising under this law and brought in Tribal Court against an Employer as that term is defined in this Ordinance. Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribe and/or Employer from suit in state or federal court, in any action before any state or federal agency, or in any other forum or context. The State of Wisconsin's statutory workers' compensation system shall not apply to any Employees, nor shall any claims for workers' compensation Benefits be subject to the Wisconsin workers' compensation laws, statutes, or regulations, or to the jurisdiction of any other court of law or equity.

## **Section 2. Purpose.**

The purpose of this Ordinance is to:

- a) Reaffirm the existing policies and procedures recognized by the Tribe concerning redress of Employee work-related injuries, illnesses, or conditions; and
- b) Create and maintain a system for addressing workers' compensation claims fairly and in general conformity with accepted workers' compensation practices of the Tribe; and
- c) Clearly define standards for: compensability, indemnity and medical Benefits, and redress for matters relating to actions arising under this law; and
- d) Establish a systematic and uniform procedure for the administration of workers' compensation Benefits to Employees.

## **Section 3. Scope.**

This Ordinance shall apply to all Employees of the Employer who sustain injuries, illnesses, or other conditions Arising Out of and in the Course of Employment, regardless of whether those injuries are sustained on or off the Lac du Flambeau Indian Reservation, and to any Dependents who may be entitled to Benefits or recovery under the terms of this Ordinance.

## **Section 4. Exclusive Remedy.**

This Ordinance shall be the sole and exclusive method for obtaining compensation from the Employer for any Compensable Injury. The liability of the Tribe and Employer is limited to the compensation provided pursuant to this Ordinance, and shall not be expanded, broadened, enhanced, or otherwise increased except by express amendment of this Ordinance by the Tribal Council.

## **Section 5. Definitions.**

- a) **"Administrator"** shall mean the agency responsible for managing the claims under the Tribal Workers' Compensation Ordinance. Managing the claims includes the duties set forth in Section 9 below.
- b) **"Arising Out of and in the Course of Employment"** means an accidental injury happening to an Employee or an Occupational Disease of an Employee originating while engaged in the line of duty in the business or affairs of the Employer upon the Employer's premises, or while engaged elsewhere for Employer's business or affairs by the direction, express or implied, of the Employer, provided:
  - (1) a personal injury shall not be deemed to arise out of the employment unless causally traceable to the employment other than through weakened resistance or lowered vitality;
  - (2) for aggravation of a pre-existing injury or Occupational Disease, compensation shall be allowed only for that proportion of the disability or death due to the aggravation of the pre-existing injury or Occupational Disease as may be reasonably attributed to the injury upon which the Claim is based.

- c) **“Benefits”** shall mean the Indemnity Payments and/or Medical Payments provided by this Ordinance. “Indemnity Payments” shall mean total disability and partial disability income Benefits; and “Medical Payments” shall mean actual costs, mileage, and other expenses associated with medical treatment.
- d) **“Child”** or **“Children”** includes dependent natural Children, dependent stepchildren, adopted Children, but does not include married Children unless they are shown to be dependent.
- e) **“Claimant”** means an Employee or Dependent who follows the appropriate protocol to submit a Claim for Benefits under this Ordinance, and who is determined to have sustained a Compensable Injury.
- f) **“Compensable Injury”** means a specific injury (resulting from one incident or exposure), Occupational Disease, Cumulative Trauma (result of repetitive or continuous activity or exposure) illness, or condition, including damage to artificial limbs, dentures, hearing aids, eyeglasses, and medical braces of all types (provided that such damage is incidental to an injury), where such injury, illness, or condition meets the standards set forth in Section 10 of this Ordinance.

Where the primary injury, illness, or condition meets the standards set forth in Section 10 of this Ordinance, consequential injuries alleged to be attributed to the Compensable Injury will be compensable only where there is objective medical evidence submitted by a physician or other medical professional approved by the Administrator which directly correlates such a consequence to the original injury, and where there is no intervening or superseding event.

- g) **“Course of Employment”** means an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the Employer and that is performed by an Employee while engaged in or about the furtherance of the affairs or business of the Employer.
- h) **“Days”** means calendar Days unless otherwise specified.
- i) **“Death Benefits”** shall mean funeral expenses and monetary compensation provided to a deceased Employee’s Dependents where the death of the Employee is the direct result of a Compensable Injury.
- j) **“Dependent(s)”** shall mean the “Spouse and/or Child or Children of the deceased Employee. Tribal custom may allow for the extension of dependency status to other family members if such family members were wholly dependent upon the deceased Employee at the time of death, at the sole decision of the Administrator after approval by the Tribe.
- k) **“Employee”** means a person employed by or in service of the Employer or Tribe under any contract of hire, express or implied, oral, or written, under which such individual receives a salary or wages. Employee shall not include any person who qualifies as an independent contractor, contractor, outside consultant, or volunteer.

- l) **“Employer”** shall mean the Tribe, and any of its entities, committees, councils, enterprises, offices, branches, agencies, and any Tribal corporations or enterprises which may be an arm of the tribal government established independently by the Tribe or Tribal Council.
- m) **“Idiopathic Injury”** shall mean an injury to an Employee that arises spontaneously from an unknown or obscure etiology or cause, or a risk or injury that is peculiar to the Employee, the cause of which is precipitated not by an event that can be causally linked to employment specifically, but rather an activity of daily living.
- n) **“Independent Medical Examination”** means an evaluation by a physician with Qualified Medical Examiner certification or equivalent qualifications, performed in order to determine causation, extent, medical status, work status, permanent and stationary status, level of impairment, Benefits, apportionment, or other similar attribute of an injury, illness, or condition, at the request of the Administrator at the Tribe’s expense in order to resolve a medical dispute and/or entitlement to Benefits.
- o) **“Intoxication”** means blood alcohol content in excess of 0.01% percent or conviction of the offense of driving while intoxicated (or words to that effect) by any jurisdiction or loss of the normal use of one’s mental and/or physical faculties resulting from the voluntary introduction into the body of (1) an alcoholic beverage; (2) a controlled substance; (3) a mind-altering drug and/or hallucinogenic; (4) a glue or aerosol paint; or (5) any other similar substance.
- p) **“Occupational Disease”** or **“Cumulative Trauma”** shall be only that disease or trauma which is Arising out of and in the Course of the Employment. Such diseases or trauma shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment. Such disease or trauma must be incidental to the character of the business, occupation, or process in which the Employee was employed and not independent of the employment. Such disease or trauma need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease or trauma which follows from a hazard to which an Employee has or would have been equally exposed outside of said occupation is not compensable as an Occupational Disease or trauma.
- q) **“Permanent Partial Impairment”** shall mean a level of permanent disability at the time a permanent and stationary status (P&S) and/or maximum medical improvement (MMI) is achieved, as opined by a treating physician or as the result of an “Independent Medical Examination using the most current edition of AMA Guides to the Evaluation of Permanent Impairment, which results in a whole person impairment rating of less than seventy percent (70%).
- r) **“Permanent Total Impairment”** shall mean a level of permanent disability at the time a permanent and stationary status (P&S) and/or maximum medical improvement (MMI) is achieved, as opined by a treating physician or as the result of an Independent Medical Examination using the most current edition of the AMA Guides to the Evaluation of Permanent Impairment, which results in a whole person impairment rating of seventy percent (70%) or higher. There shall be no presumptions of Permanent Total Impairment under this Ordinance.

- s) **“Psychiatric Injury”** means a mental disorder diagnosed pursuant to the most current edition of the *American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders*, which is medically attributable to employment by a preponderance of evidence, and which resulted in its entirety from a specific Compensable Injury.
- t) **“Spouse”** means the legally ordained husband or wife or domestic partner of the Employee, however a domestic partner will only be considered a Spouse under this Code if, at the time of the Compensable Injury the Employee and said domestic partner cohabitated and were registered with a governmental Domestic Partners Registry.
- u) **“Temporary Partial Disability”** means a non-permanent medical status that results in the Employee being able to perform modified or light work duties or reduced hours at the direction of or as opined by a physician approved by the Administrator, that results in diminished earnings when compared with the pre-injury average weekly wage.
- v) **“Temporary Total Disability”** means a non-permanent medical status that results in the Employee being physically unable to perform any work at the direction of or as opined by a physician approved by the Administrator that results in a complete loss of earnings.
- w) **“Tribe”** means the Lac du Flambeau Band of Lake Superior Chippewa Indians.
- x) **“Tribal Council”** means the governing body of the Tribe as provided for by Article III of the Lac du Flambeau Constitution.
- y) **“Tribal Court”** means the Lac du Flambeau Tribal Court as provided for by Article X of the Lac du Flambeau Constitution.
- z) **“Vocational Rehabilitation”** shall mean the amount payable to a Claimant who sustains Permanent Partial Impairment as the result of a Compensable Injury, who does not receive a bona fide offer of permanent modified or alternative work from the Employer, to help compensate that Claimant for the anticipated costs of vocational retraining or rehabilitation in order to return to gainful employment.
- aa) **“Written Decision”** shall mean any of the following when reduced to writing and sent to an Employee or Claimant:
  - (1) The finding(s) and/or decision(s) of the Administrator to accept or deny, in full or in part, any aspect of a Claim;
  - (2) Determinations of entitlement by the Administrator of any available Benefit; and
  - (3) Decisions made by the Administrator to close the Claim.

## **Section 6. Acknowledgement of Ordinance.**

- a) All Employees and persons asserting a Claim shall be conclusively presumed to have elected to take Benefits in accordance with the tenants, conditions, and provisions of this Ordinance by virtue of employment with the Employer. All Employees and/or persons asserting a Claim for Benefits acknowledge that the Tribe is a federally recognized Tribe and is exercising its inherent sovereign authority in providing Benefits under this Ordinance.

- b) The Employer/Tribe shall be responsible for and shall have posted in a conspicuous location a notice as follows:

**NOTICE TO TRIBAL GOVERNMENT AND ENTERPRISE EMPLOYEES**

AS EMPLOYEES OF THE TRIBE OR ITS ENTERPRISES, YOU ARE INSURED FOR ON-THE-JOB INJURIES UNDER THE TRIBAL WORKERS' COMPENSATION CLAIM ORDINANCE.

If you are injured or sustain an Occupational Disease while at work, you may be entitled to Benefits as provided by the Tribal Workers Compensation Ordinance. NOTIFY YOUR EMPLOYER IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT.

It is your responsibility to file a Claim for Benefits under the Ordinance with the Administrator of the System. You are required to file a claim for any injuries or Occupational Disease no more than three Days after you have knowledge thereof, except in cases where an extraordinary reason prevented the Employee from reporting the injury or Occupational Disease to the Employer in a timely manner, it is your responsibility to obtain any necessary forms from Human Resources.

**Your exclusive remedy for any work connected injury or disease is through the Tribal Workers' Compensation Claim system. The State's Workers Compensation System has no authority to accept a claim from you under the Tribal Workers' Compensation Claim Ordinance as you are employed by the Lac Du Flambeau Band of Lake Superior Chippewa Indians, a federally recognized Tribe, which is exclusively under the jurisdiction of its own Tribal Workers' Compensation system.**

**Section 7. Reporting Obligations.**

- a) An Employee must report any injury, illness, and/or condition that is actually or is thought to be potentially Arising Out of and in the Course of Employment, no matter how slight, to his or her supervisor immediately. No Benefits will be paid under this Code if an Employee does not report the injury within thirty calendar Days after the injury occurs or within fourteen calendar Days after the Employee first receives medical treatment for the injury or first loses time from work due to the injury, whichever time period is shorter.
- b) If an Employee is incapacitated, another person may report the injury on the Employee's behalf, as soon as practicable. In no event will a claim for Benefits be accepted if filed or submitted after the expiration of the Statute of Limitations set forth in Section 8, below except in cases where an extraordinary reason prevented the Employee from reporting the injury or Occupational Disease to the Employer in a timely manner.
- c) Once the injury, illness, and/or condition is reported to the Supervisor, the requisite claim forms must be completed by the Employee. These claim forms include, but are not limited to:
- (1) An Employer's First Report of Injury;

- (2) A signed statement from the Employee as to how the incident occurred and the specific body parts affected, illness, or condition claimed in the Incident Report form
- d) A Supervisor, receiving a report or notice of a Work Injury from the Employee or on his or her behalf, must promptly report the claim to the Human Resources Department within 24 hours of receipt, or the next business day in the event of office closure. A failure of the supervisor to report an injury shall toll the statute of limitations when the Employee can verify to Human Resources that the Employee properly reported the injury.
- e) An Employee must cooperate in requests for post-injury or post-accident drug screens in order to qualify as a Claimant eligible to receive Benefits.

#### **Section 8. Statute of Limitations.**

- a) **Filing a Claim:** No proceedings for compensation under the provisions of this Ordinance shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident or within three years from the first manifestation of a symptom of the Occupational Disease, as the case may be, which caused the personal injury, provided if death has resulted within two years from the date of the accident or first manifestation of a symptom of the Occupational Disease, a dependent or Dependents, or the legal representative of the deceased Employee, may make a claim for compensation within the two year period or within one-year from the date of death, whichever is later.
- b) **Appealing a Decision:** Should an Employee, Claimant, Dependent or any representative thereof disagree with any Written Decision of the Administrator, he or she must appeal that decision in writing within 30 Days of the date of the Administrator's correspondence, in a manner and form consistent with the requirements set forth in Section 14 below. A failure to submit an appeal within this timeframe will render the decision of the Administrator final and binding, with no further rights to appeal.
- c) **Reopening a Claim:** Once a Claim has been closed pursuant to Section 13 below, after one year has passed from the last date of medical treatment, a Claim shall be presumed permanently closed with no opportunity to reopen it unless the Administrator should, in its discretion and with new, additional, or previously undiscovered medical findings, decide otherwise. A Claim that has been permanently closed will relieve the Tribe and/or Employer of any and all further liability associated with that Claim, including any Medicare liens.

#### **Section 9. Claims Administrator Duties.**

- a) The Administrator shall act on behalf of the Tribe and/or Employer in receiving, processing, and administering Claims, including payment of Benefits under this Ordinance. The Administrator's responsibilities include, but are not limited to:
  - (1) Determining the compensability of claims pursuant to Section 10 below;
  - (2) Making payments to Claimants pursuant to Section 11 below;
  - (3) Processing and paying bills and reports submitted by medical providers and other vendors;

- (4) Where applicable, managing a trust account for the purpose of dispensing workers' compensation liabilities;
  - (5) Making reports to the Human Resources Department regarding its program and individual Claims where required;
  - (6) Making reports to the excess insurance carrier regarding its program and individual claims where required.
  - (7) Providing a mechanism for reporting Claims on-line;
  - (8) Participate in file reviews at the request of or intervals established by the Tribe.
  - (9) Ensuring compliance with Medicare reporting where required.
- b) The responsibility of the Administrator to make determinations and decisions on behalf of the Tribe shall also entail the following duties:
- (1) Conduct a thorough review of each Claim filed, and complete initial contacts within 72 hours of receipt of the Claim;
  - (2) Administer a Written Decision and send to the Employee as to whether to accept, deny, or further investigate a Claim within 14 Days of receipt of the claim. Where the Claim is accepted, the Administrator shall establish a reserve on the file to reflect the anticipated exposure of the Claim, with a detailed analysis of how the reserve was calculated, including an estimate of the Benefits due and the duration and frequency of those Benefits. Where the Claim is denied, the Administrator shall include the specific basis for their Claim denial, and how to initiate the Dispute Resolution Process in Section 14 below. Should the Administrator determine, within the specified period, that further investigation is required, a detailed plan of action regarding the purpose of the investigation and what is sought to be discovered should be established, best efforts shall be made to complete the investigation expeditiously, and under such circumstances a final Written Decision outlining compensability should be made within 90 Days from the date the Claim was filed.
  - (3) The Tribe through its Administrator shall retain full medical control over Claims for their duration. The Administrator shall determine the reasonableness and necessity of medical care and charges and shall determine amounts payable under this Ordinance. The Administrator shall promptly approve or disapprove any referrals, procedures, surgeries, or other medical requests made by approved and authorized medical providers. Disapproval of such requests shall not be arbitrary, but instead based upon sufficient justification, including but not limited to medical evidence to the contrary, peer review, utilization review, surveillance video, etc.
  - (4) The Administrator shall determine the eligibility and compensation rate payable for Temporary Total Disability, Temporary Permanent Disability, Permanent Partial Disability, Permanent Total Disability, Vocational Rehabilitation, and/or Death Benefits. In the case of Death Benefits, the Administrator shall determine the eligibility of Dependents and the terms of any Benefits payable. In the event



of the need to allocate dependency Benefits between Dependents living in different households, the Administrator shall make the necessary allocation, based on the obligations, legal or otherwise, of the deceased Employee.

- (5) The Administrator shall, on behalf of the Employer, vigorously pursue any cause of action for, or vigorously defend any cause of action or claim against, the Employer under this Ordinance.
- c) The failure or alleged failure of the Administrator to perform any of the duties or responsibilities outlined above will not as a matter of law or operation create any cause of action by a third party, nor will the right to Benefits or recovery for any Employee and/or Claimant be expanded or presumed in such an event. The Administrator as an agent of the Tribe and/or Employer is entitled to the same sovereign immunity protection from the jurisdiction of state or federal courts or administrative boards as the Tribe and/or Employer would be afforded.

#### **Section 10.     Compensability; Exclusions.**

- a) In order for an Employee or a Claimant to receive any Benefits for workers' compensation under this Ordinance, it must be demonstrated by a preponderance of evidence that he or she sustained a Compensable Injury.
- b) A Compensable Injury must be initiated by filing a Claim pursuant to Section 7 and Section 8 above.
- c) A Compensable Injury must be Arising out of and in the Course of Employment with the Employer.
- d) A Claim for Benefits will not be accepted, nor will payment of any Benefits be continued, nor will any incident or accident be considered or qualify as a Compensable Injury upon the finding or discovery of the following:
  - (1) Where the Employee fails to adhere to the reporting requirements or reporting statute of limitations as established under Section 7 or Section 8 of this Ordinance;
  - (2) Where the injury is caused by Intoxication, by alcohol, illegal drugs, or the unlawful use of any other controlled substance;
  - (3) Where the injury is either intentionally self-inflicted; or an Employee unreasonably refused to obey written or verbal instructions which, if obeyed, would have reasonably prevented or significantly reduced the likelihood of injury or death;
  - (4) Suicide;
  - (5) Where the injury results from an altercation in which the injured Employee was the initial aggressor. This shall include instances where injuries are caused by a third person or fellow Employee who intended harm to the injured Employee for personal reasons;

- (6) Where the injury is caused by or during the commission by the injured Employee of a felony, crime, or misdemeanor;
- (7) Where the injury arises out of voluntary participation in an off-duty recreational, social, or athletic activity that is not part of the Employee's usual and customary duties;
- (8) Where the Claim is filed after notice of termination or layoff, and it is determined by the Administrator that the filing of the claim was retaliatory in nature;
- (9) Where the injury is deemed to have been Idiopathic in nature;
- (10) Where the injury results from participation in an activity deemed to have been horseplay;
- (11) 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, where such refusal or failure would be formally admonished by the Tribe if it were discovered, and the injury is caused by such a refusal or failure to wear or use that personal protective equipment or other safety apparatus;
- (12) Where the injury is a purely emotional or mental injury except when the injury qualifies as a "Psychiatric Injury" as defined in this Ordinance :
- (13) Where the injury results from or is attributable to second-hand smoke, which is considered an inherent risk of employment, which an Employee assumes by accepting a position with the Tribe;
- (14) Where the Employee refuses to cooperate in the investigation of the Claim, thus impeding the Administrator's right to discovery;
- (15) 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.
- (16) 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 Tribe, the claim would have been denied, or Benefits would have been provided at lesser levels than what was actually paid in reliance upon the misrepresentation or willful omission.
- (17) Where the injury is determined to have been a flare-up or exacerbation of a pre-existing injury, illness, or condition where no aggravation or worsening of symptoms are attributable to any attribute of employment or where work just served as the stage for the incident to occur without specific industrial causation.

**Section 11. Benefits.**

- a) Workers' Compensation Benefits payable to any Employee or Claimant under this Ordinance shall be comparable to those mandated for comparable Employees under

Wisconsin state law; provided however that nothing herein is intended to nor shall be construed as an express agreement to be subject to any provision thereof, nor is any waiver of sovereign immunity, express or implied, made.

b) No compensation shall be payable for total or partial incapacity under the provisions of this Ordinance on account of any injury which does not incapacitate the injured Employee for a period of more than three Days from earning full wages at his customary employment. If the incapacitation continues for a period of more than three Days but less than seven Days, compensation shall begin at the expiration of the first three Days of total or partial incapacity. If the incapacity continues for a period of seven Days, compensation shall begin from the date of the injury.

c) Workers' Compensation Benefits shall include the following:

**(1) Medical Benefits:**

(i) A Claimant shall be entitled to all medical, surgical, hospital, or dental treatment and any therapy, durable medical equipment, medications, diagnostic testing, radiology, and any other medical service related thereto a Compensable Injury, as requested or prescribed by a provider authorized and approved by the Administrator.

(ii) The Administrator on behalf of the Employer shall retain medical control for the life of the Claim, subject to the following:

**Life-threatening, Serious, or Severe Injury.** Where an Employee has sustained a serious or severe injury which requires immediate emergency medical attention, the Employee should go to the nearest emergency room or urgent care facility. All subsequent treatment is subject to the medical control of Tribe and/or Employer through its Administrator and/or preferred vendor medical facility.

**Minor Injury:** Where an Employee has sustained a minor Injury shall be directed to go to a health care provider designated by the Human Resources Department. The designated health care provider shall determine the Employee's initial treatment. If an Employee elects not go to the designated health care provider or seeks additional treatment not authorized by the Administrator, the Tribe and/or Employer shall not be financially responsible for any further medical treatment, or any treatment performed by any other health care provider.

(iii) Where deemed appropriate by an authorized and approved medical provider, when a condition reaches maximum medical improvement (MMI) and/or permanent and stationary (P&S), and future and/or supportive medical Benefits is necessary, such Benefits shall be provided for the duration provided for in the report, subject to the requirements set forth in Section 8 and Section 13 of this Ordinance.

(iv) The algorithms and treatment recommendations proscribed by the American College of Occupational and Environmental Medicine

(ACOEM) guidelines may be used to determine the appropriateness of a recommended treatment but shall have no binding affect upon the Tribe and/or Employer.

- (v) The Tribe, Employer, and/or Administrator shall not be responsible for any bill or amount in excess of what is allowable under the State of Wisconsin fee schedule for similar bills in the statutory system.

**(2) Temporary Disability Benefits:**

- (i) The Tribe has established a Return-to-Work program, such that best efforts will be made to accommodate recommendations for light duty or modified work duty as prescribed by an authorized and approved physician.
- (ii) In instances where light duty or modified duty results in diminished wages as compared to the pre-injury average weekly wage of the Claimant, the Claimant will be entitled to Temporary Partial Disability payments at a rate of 50% of the difference between actual weekly earnings during the period of modified and/or light duty and the pre-injury average weekly wage, at levels generally comparable to the Wisconsin statutory system.
- (iii) In instances where light duty or modified duty cannot be accommodated by the Tribe, or where a Claimant is deemed temporarily totally disabled (TTD) by an authorized and approved physician, the Claimant will be entitled to Temporary Total Disability Benefits at a rate 66.66% of the pre-injury average weekly wage, subject to the maximum rates generally recognized by the State of Wisconsin at the time such Temporary Total Disability is applicable. The maximum duration that Temporary Total Disability Benefits will be paid by the Tribe or its Administrator is 52 weeks.
- (iv) No Temporary Disability Benefits, whether Temporary Partial Disability or Temporary Total Disability shall be paid under circumstances where:
  - (aa) The Claimant is incarcerated, provided that such payments will only be withheld during the period of said incarceration; or
  - (bb) The Claimant does not have authorization from the medical provider assigned or designated by the Administrator to be off work; or
  - (cc) The Claimant is terminated for misconduct, or quits work, or declines a bona fide offer of light or modified duties by the Tribe where such a bona fide offer is for work within the physical limitations prescribed by the authorized or approved physician; or
  - (dd) The Claimant receives wages during a period where the Claimant was opined to have been temporarily totally disabled (TTD).
- (v) For purposes of this section, a Claimant's pre-injury average weekly wage shall be calculated by adding all reported earnings for one year preceding

the date of injury and dividing the resulting amount by 52. In the event the Claimant has been employed for less than a year, the pre-injury average weekly wage shall be calculated by adding all reported earnings for the actual period worked prior to the date of injury and dividing the resulting amount by the number of applicable weeks worked. In the event the Claimant has worked for less than a week, the pre-injury average weekly wage will be calculated by multiplying the Claimant's hourly rate by the number of hours he or she is expected to or was hired to work.

**(3) Permanent Impairment Benefits:**

- (i) Permanent Partial Disability Benefits will be paid pursuant to the schedule of Benefits recognized for similar injuries under comparable State of Wisconsin workers' compensation law.
- (ii) Permanent Total Disability Benefits will be paid to a Claimant for life or until a settlement is reached but shall not inure to any Dependent upon death of the injured Claimant.
- (iii) The Tribe shall not be responsible for any portion of Permanent Partial Disability or Permanent Total Disability that is attributable to a condition, disease, illness or injury that is deemed pre-existing or non-industrial in nature.
- (iv) In no event shall Permanent Partial Disability for any and all injuries combined exceed an aggregate total of 100%.

**(4) Vocational Rehabilitation:**

Vocational Rehabilitation Benefits or training are not mandatory under this Ordinance, but may, at the discretion of the Administrator, be ordered pursuant to the authority established herein, or as required under rules promulgated by the Tribe.

**(5) Death Benefits:**

- (i) If death results from a Compensable Injury, the person and/or entity who incurred the liability for the costs of the burial shall be reimbursed for either the actual costs incurred for such reasonable burial expenses, or \$10,000, whichever is less.
- (ii) Death Benefits are only payable to Dependents of the deceased Claimant as determined by the Administrator.
- (iii) A Child will remain eligible for Death Benefits if:
  - (aa) He or she is under the age of eighteen (18).

- (bb) He or she is under the age of twenty-three (23) and enrolled as a full-time student in an accredited university, college, or vocational school.
- (cc) He or she is developmentally disabled and incapable of caring for his or herself and is totally dependent on the Employee for primary support and maintenance.
- (iv) Death Benefits will be paid at levels generally comparable to those provided to similar Dependents under Wisconsin law.
- (v) Death Benefits can either be issued on a bi-weekly basis, at a rate commensurate to what would have been paid under Temporary Total Disability Benefits but for the death or can be paid in a lump sum at a reasonable present day value calculation as determined by the Administrator and subject to the acquiescence of the Dependents.

**Section 12. Cumulative Injury.**

- a) Benefits for a Claim due to Cumulative Injury will be reduced if the Employee has been employed for a limited time as follows:
  - (1) Employees are not eligible for Benefits when employed full-time for a period up to 4 months.
  - (2) Employees receive 25% of eligible Benefits for a Claim made while employed full-time for a period of 4 to 8 months.
  - (3) Employees shall receive 50% of eligible Benefits for a Claim made while employed full-time for a period of 8 to 12 months.
  - (4) Employees receive 75% of eligible Benefits for a Claim made while employed full-time for a period of 12 to 18 months.
  - (5) Employees eligible for full compensation after being employed full-time more than 18 months.
- b) The time frames, which are provided in this section, shall be lengthened appropriately for Employees who are employed on a part-time basis.

**Section 13. Claim Closure.**

A Claimant's claim for Benefits shall be closed when any of the following circumstances occur:

- a) The Administrator has paid a settlement to the Claimant that has been agreed upon by both the Claimant and the Administrator in exchange for a general release of any and all further liability;
- b) The Administrator has extended all Benefits due under this Ordinance to any Claimant or Dependents;
- c) The Employee or Dependent fails to appeal a Written Decision within the time-frame prescribed in Section 14 below;

- d) The Claimant has either unreasonably failed to follow-up with medical treatment, or has abandoned medical treatment as evidenced by failure to present for two consecutive medical appointments without good cause shown, or, with respect to supportive medical care, a failure to treat within one year from the last date of authorized medical care under his or her claim;
- e) The Claimant has reached the point where no further material improvement would reasonably be expected from medical treatment, where all other Benefits have been exhausted and/or otherwise paid;
- f) Upon the discovery of any issues impacting compensability or continuing Benefits as more fully described in Section 10 above;
- g) Pursuant to an order following a hearing under Section 14;
- h) Any other reason set forth in this Ordinance as determined by the Administrator.

Nothing in this Ordinance shall impair the rights of the parties to compromise any liability that is claimed to exist under this Ordinance on account of injury, disease or death, subject to the provisions herein. No Compromise and Release settlement shall be paid without a general release signed by both parties.

#### **Section 14. Dispute Resolution.**

- a) **What Can Be Protested.** Any final order, decision, or award made by the Administrator can be protested to the Hearing Officer. Whenever such a final order, decision, or award is made by the Administrator, the Employee, beneficiary, Employer, and any other person affected by the decision shall be sent a copy of the decision by registered mail 30 Days after the Administrator's decision.
- b) **Exhaustion of Administrative Appeals.** If the Administrator establishes any administrative appeals process, which extends beyond 90 Days from the time the affected person files an administrative appeal, any Benefits suspended during the pendency of the administrative appeals shall be reinstated from that date forward until the Administrator issues a final decision. The person affected by a final decision shall be sent a copy of the decision by mail.
- c) **Procedure for Protest.**
  - (1) **Notice of Protest.** Any Employee, beneficiary, Employer, or other person aggrieved by a final order, decision, or award as initially made by the Administrator must file a notice of protest with the Hearing Officer within 30 Days after receipt of the Administrator's final decision following exhaustion of administrative appeals. Such notice of protest need be in no particular form, but must be in writing. Any additional evidence, proof, or claim shall be submitted along with the notice of protest. A notice of protest is barred if it is not timely filed.
  - (2) **Hearing Officer Decision.** The protest shall be considered by the Hearing Officer, and a decision shall be rendered within 45 Days of receipt of the notice of protest and additional evidence. The Hearing Officer shall hold no hearing but shall review the matter on the basis of the claim files and records. The Hearing Officer may also seek opinions from attending or outside physicians, if necessary, and consider any supplementary materials submitted by the protestor. The Written Decision containing findings of fact and conclusions of law shall be sent

to the protestor and the Employer by registered mail as soon as it is rendered. The notice of decision shall inform the protestor and the Employer of their right appeal the decision to the Tribal Court.

- (3) **Scope of Decision.** The Hearing Officer has the power to approve, deny, or modify any order, decision, or award of the Administrator upon protest.
- (4) **Hearing Officer Appointment.** The Tribal Council shall contract with and/or appoint one or more persons to serve as Hearing Officer(s) to review and decide protests filed under this Code. The person(s) so designated by the Tribal Council shall be persons with experience and training in handling or resolving worker's compensation claims under the worker's compensation laws of the Tribe, the State of Wisconsin, or any other jurisdiction, including other Indian Tribes in the State of Wisconsin.

## **Section 15. Appeals.**

- a) A final decision of the Hearing Officer concerning the provision of Benefits under this Article may be appealed to the Tribal Court by filing a Notice of Appeal with the Tribal Court and serving such Notice on the other party within five Days after the filing. Any notice of appeal under this Section shall be filed within 45 Days after the Hearing Officer has, given the Employee and the Administrator actual written notice of the final decision, or has mailed such written notice to the Employee by United States mail. The notice of appeal shall set forth in detail the grounds upon which the person appealing considered the decision of the Hearing Officer unjust or unlawful and shall include every issue to be considered by the Court. It must contain a detailed statement of the facts upon which the appellant relies in support of the appeal. The appellant shall be deemed to have waived all objections or irregularities other than those specifically set forth in the notice of appeal or appearing in the accompanying records of the Hearing Officer's review and decision. The Hearing Officer shall promptly transmit the Hearing Officer's original records, or legible copies produced by mechanical, photographic, or electronic means, in such matter to the Tribal Court and certify their accuracy. The respondent shall serve and file their notice of appearance within twenty Days after receipt of the notice of appeal and such appeal shall then be deemed at issue.
- b) The Tribal Court shall hold a hearing on the appeal within 45 Days from the date of the filing of the respondent's appearance in which both the appellant and respondent will be permitted to present arguments. The appellant and respondent shall have the right to be represented by an attorney or other spokesperson in all matters presented to the Tribal Court.
- c) Proceedings before the Tribal Court are not trials de novo, they are instead proceedings in which judicial review is conducted on the basis of the information considered by the Hearing Officer. The findings and decisions of the Hearing Officer shall be deemed prima facie correct, and the burden of proof shall be upon the appellant to demonstrate that the Hearing Officer's findings of fact were arbitrary and capricious or that the Hearing Officer's application of the law was erroneous. If the Tribal Court determines that the Administrator acted within its power and that the Hearing Officer correctly construed the law and found the facts, the decision of the Hearing Officer shall be affirmed; otherwise, the decision of the Hearing Officer shall be reversed or modified. In the case of modification or reversal, the Tribal Court shall remand the matter to the Hearing Officer with an order directing the Hearing Officer to proceed in accordance



with the Judge's findings. An award made by the Tribal Court shall be in accordance with the Benefits and compensation set forth in this Article and the Court shall not have the power to award any additional or different Benefits or compensation.

- d) The decision of the Tribal Court on an appeal under this Section shall be final and shall not be subject to appeal to the Lac du Flambeau Court of Appeals or any other court.
- e) The sovereign immunity of the Tribe, Employer, the Administrator, and the Hearing Officer, as to suit in the Tribal Court is hereby waived for the limited purpose of appeals of final decisions of the Hearing Officer under this Section and for the limited purpose of enforcing the Tribal Court's decision on such appeals.
- f) Attorney Fees and Costs. If, upon protest or appeal, additional relief is granted to the worker or beneficiary, who is represented by counsel, the Employee or beneficiary may be entitled to an additional award of attorney fees, the amount of which shall not exceed the greater of \$1,500.00 or 25% of the increase in the award secured by the attorney services.

#### **Section 16. Subrogation/Appportionment/Recovery.**

- a) Although the Tribe and/or Employer is entitled to invoke the defense of sovereign immunity for any claims brought against it, nothing herein shall impair the rights of the Tribe or the Administrator on its behalf to file a subrogation lien in any action or to enter as a plaintiff to pursue any recovery to which the Tribe may be entitled. In no event shall Employer be entitled to recover any Benefits paid resulting from Employee's death or as a result of under insured motorist claims.
- b) Whenever the Administrator pays any Benefits pursuant to a Compensable Injury as a result of clerical error, mistaken identity, innocent misrepresentation, or other mistake or similar circumstance that does not arise to the level of fraud or intentional omission or misrepresentation of a material fact, the Administrator shall request and the recipient of such Benefits shall reimburse any monies expended within one year. The Administrator shall have the discretion to waive, in whole or in part, any refund or reimbursement from a recipient where recovery would be futile, against equity, against good conscience, or under other similar circumstances.
- c) Whenever the Administrator has been fraudulently induced to make any benefit payment under this Ordinance, either by a willful omission of or intentional misrepresentation of a material fact, the recipient shall repay the payment, along with a penalty of 50% of the payment amount. The Administrator must demand the repayment within one year of discovering the fraud.
- d) For the purpose of settlement for Permanent Partial Impairment or Permanent Total Impairment, the amount of Benefits due may be reduced or denied in its entirety by the Administrator for pre-existing impairment, whether work related or not, if apportionment is medically documented by a physician or as the result of an Independent Medical Examination approved by the Administrator.

## **Section 17. Confidentiality.**

- a) The information in the claims files and records of Employees or Claimants obtained pursuant to the filing of a Claim or any provisions of this Ordinance shall be deemed the exclusive property of the Tribe and therefore is strictly confidential and shall not be open to public inspection. A Claimant, or his or her authorized representative upon the presentation of the signed authorization of the Claimant, may review the Claimant's medical file or receive copies of specific information therefrom. In the event of an arbitration hearing pursuant to Section 14(b) above, any evidence that either party wishes to submit or have reviewed pursuant to or in consideration of the arbitration hearing, which shall include any medical or non-medical information present in the claim file, must submit true copies thereof to the opposing parties no later than 15 Days prior to the date of the arbitration conference.
- b) The Tribe, or its duly authorized representatives, may review any files of their own injured Employees in connection with any pending Claims. Physicians treating or examining or giving medical advice to or providing an opinion about Employees claiming Benefits under this Ordinance as approved or authorized by the Administrator 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 at any stage of the proceedings on any matter pertaining to administration of this Ordinance.
- c) Notwithstanding the provisions herein, the Administrator and/or the Tribe shall have the right to request full and complete medical records or reports from any of Employee's physicians or health care providers at any time and in the form and details as deemed necessary and shall have the right to present specific questions required to evaluate the Claim. All medical information and records shall be subject to disclosure to the Administrator and the Tribe in connection with any Claim for Benefits in order to properly understand and evaluate the Claim. If the Employee asserts his or her privilege to keep such information or records from being disclosed to the Administrator or Tribe, the Administrator or the Tribe may suspend any applicable Benefits or can deny the Claim on the basis of impeding our right to discovery under Section 10 (d)(14) of this Ordinance.

## **Section 18. Medicare Set Asides.**

The Medicare/Medicaid SCHIP Extension Act (MMSEA) sets forth reporting requirements for insurers where criteria established pursuant to the Act have been met. The Tribe recognizes those requirements (*see, e.g. Section 7.1 of the No-Fault Insurance, and Workers' Compensation User Guide aka NGHP User Guide*), and nothing herein shall prevent the Administrator from protecting Medicare's interests where required to do so. Where a Claimant is entitled to supportive medical care after maximum medical improvement is achieved pursuant to Section 11(c)(1)(iii) of this Ordinance, such supportive care will only be provided as specified by a medical provider authorized by the Administrator and only for the duration specified by that medical provider. Where a claim has been closed due to abandonment, award, or settlement, neither the Tribe its insurer nor Administrator shall have any further obligation to pay Benefits under this Ordinance, inclusive of any subsequent Medicare liens.

**Section 19.     Effective Date.**

This Ordinance shall be deemed to have taken effect as of 08/22/2023, and shall replace or supersede any prior workers' compensation ordinances, acts, or resolutions made by the Tribe.

**Section 20.     Severability.**

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

**HISTORY NOTE:**

**Current Ordinance:**

Adopted September 15, 2014, Resolution No. 487B (14).  
Secretarial approval October 7, 2014.  
Effective December 1, 2014

**Amendments:**

Approved by Tribal Referendum held on August 22, 2023 and changed in its entirety, Resolution No. 281(23).