

Chapter 6-15 WORKERS COMPENSATION CLAIMS ACT

GENERAL PROVISIONS

6-15-1 Purpose

This act shall be known and cited as the “workers compensation claims act” (hereinafter “the act”). The purpose of the act is to establish the rights and benefits of employees of the Confederated Tribes of the Colville Reservation (hereinafter “tribe”) for on-the-job bodily injuries due to accidents or occupational disease as set forth herein.

6-15-2 No Waiver of Sovereign Immunity

Nothing in the act shall be deemed or construed as waiver of sovereign immunity by the tribe and/or any of its affiliated entities. The State of Washington’s statutory workers’ compensation system shall not apply to employees of the tribe or any of its affiliated entities. The tribe does not consent to the jurisdiction of any state’s workers’ compensation appeals board or to the jurisdiction of any other court of law or equity.

6-15-3 Insurance

Every employer must provide for workers compensation benefits.

6-15-4 Definitions

Pronouns of the masculine gender used in the act shall apply to both sexes. Unless stated otherwise in a specific section of the act, time limits shall be calculated using calendar days.

Unless the context otherwise requires, the definitions which follow govern the construction and meaning of the terms used in the act:

- (a) “Administrator” shall mean the workers’ compensation program of the tribe, or its successor in duties.
- (b) “Attending physician” shall mean the physician, or other approved medical care provider responsible for planning, provision, and oversight of medical treatment to a covered worker who sustains a covered injury.
- (c) “Average weekly wage” shall be determined as follows:
 - (1) For a covered worker hired to a regular, full- or part-time position expected to last at least 13 weeks, the average weekly wage shall be calculated based on the preceding thirteen (13) weeks of the covered worker’s actual wage earning from a covered employer. In the case of a worker who has not worked for a covered employer within the immediate preceding thirteen (13) weeks, the average weekly wage shall be calculated based on the salary level the worker was hired at or is currently receiving.
 - (2) For covered worker hired on a temporary, emergency or special projects basis who has continuously worked for a minimum of thirteen (13) weeks, the average weekly wage shall be calculated as provided in paragraph (1) above.
 - (3) For covered workers hired on a temporary, emergency, or special projects basis who have not continually worked for the preceding 13 weeks, the average weekly wage shall be calculated by taking the expected total gross wages and divide by the expected number of work weeks.
 - (4) For covered workers serving as volunteers, the average weekly wage shall be the salary of similarly paid positions for the covered employer performing similar work.

- (5) For purposes of this definition, the work week shall be as defined by the personnel manual or policy applicable to the covered employee at the time of injury.
- (d) “Benefits” shall mean the indemnity and medical payments provided by this act. “Indemnity” shall mean total disability and partial disability income benefits and impairment payments; and “medical” shall mean medical expense, mileage, and other expenses associated with medical treatment.
- (e) “Child” includes dependent natural children, dependent stepchildren, adopted children; but does not include married children unless they are shown to be dependent.
- (f) “Claimant” means the injured covered worker, or in the event of death of the covered worker, dependents of the deceased.
- (g) “Consulting physician” shall mean the physician, other health care provider or other care expert that is retained by the administrator to assist the administrator in carrying out his duties and responsibilities under this act. Such activities may include, but are not limited to, determination of the validity of a claim; review of an attending physician’s diagnosis and treatment plans; determination of MMI; determination of impairment rating. At the discretion and expense of the administrator, an injured worker may be required to be seen by the consulting physician to assist in making any required recommendations to the administrator.
- (h) “Course and scope of employment” shall mean the employer’s employment of the covered worker at the time the injury occurred. An injury must arise out of and be in the course and scope of employment, and the worker must be acting in the furtherance of the employer’s interest at the time of the incident and/or accident, in order for a claim to be compensable.
- (i) “Covered employer” and “employer” shall mean the tribe and its agencies, and any tribal corporations and enterprises.
- (j) “Covered worker” and “worker” means every person who has entered into the employment of or performs work for an employer, works under contract of service, express or implied, or apprenticeship, for an employer, every executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a corporation, including a person holding an official position, or standing in a representative capacity of the employer, including officials (elders) elected or appointed by the tribe, compensated monetarily or otherwise, except as hereinafter specified. The terms covered worker and worker shall not include an independent contractor working under contract for an employer, whether that contract be express or implied. Covered workers shall include all persons employed by the employer regardless of where they work, whether it be on or off the Colville Reservation. Covered workers shall include volunteers or other persons providing work for an employer who do so without receiving compensation. Covered workers shall not include persons serving in the tribal police department reserve program or volunteer firefighters working for the tribal fire department or other volunteer positions covered by a tribal accident insurance policy.
- (k) “Death” is any fatality of the covered worker proximately and directly caused by work injury or occupational disease.
- (l) “Dependents” are the following persons, and they shall be deemed to be the only recognizable dependents under the provisions of this act:
- (1) The widow or widower, if legally married and living with the deceased at the time of deceased’s death and legally entitled to be supported by the deceased as a dependent defined by the most recent filed 1040 federal tax return. For purposes of this act, a covered worker may, in a written self-declaration to be provided by the employer, designate a person as their domestic partner, which person shall be treated as a dependent

widow(er) if the person was living with the deceased covered worker at the time of his/her death and listed on the most recently filed 1040 federal tax return.

(2) A child, natural or adopted, under 18 years of age, or incapable of self-support and unmarried; or a child under 25 years of age enrolled as a full-time student in an accredited education institute at the time of the covered worker's death.

(m) "Disability" means the inability of the covered worker to obtain and/or retain wages equivalent to the pre-injury wage rate as a result of a direct loss of functional capacity compromising that individual's ability to perform the necessary duties of the job. This functional loss must be directly and materially attributable to a compensable work-related injury and/or occupational disease and must be supported by the worker's attending physician and, if requested by the administrator, the consulting physician. "Partial disability" is distinguished as any incapacity less than 100% inability as defined above.

(n) "Impairment" means any anatomic or functional abnormality or loss existing after reaching maximum medical improvement (MMI) as defined herein that results from a compensable injury and/or occupational disease and is reasonably presumed to be permanent based on reasonable medical probability.

(o) "Injury" shall mean any physical impairment, including, without limitation, death and/or occupational disease as further herein defined. "Arising out of and in the course of employment" excludes an injury sustained while a covered worker is at home or preparing for work. "Injury" excludes any injury resulting primarily from the natural aging process, or normal daily activities, or an injury sustained during voluntary recreational or social activities. The injury must arise out of and in the course of employment, requiring medical services or resulting in disability or death; and is further defined as a specific, traumatic incident at a definite time and place, while in the course of employment, that produces an immediate onset of pain and is established by medical evidence supported by objective findings.

(p) "Intoxication" means blood alcohol content in excess of .02 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) an abusable glue or aerosol pain; or (5) any other similar substance.

(q) "Maximum medical improvement" (MMI) means the earlier of:

(1) The point at which further material recovery from or last improvement to an injury can no longer reasonably be anticipated, based on the reasonable medical probability; or

(2) The expiration of 36 months from the date incapacity income benefits begin to accrue.

(r) "Occupational disease" shall be only those diseases which arise out of an in the course and scope of the worker's employment. Such diseases 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 must be incidental to the character of the business, occupation, or process in which the worker was employed and not independent of the employment. Such disease 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 which follows from a hazard to which a worker has or would have been equally exposed outside of said occupation is not compensable as an occupational disease.

(s) "Settlement" shall mean the date the release of all claims is executed and the monetary terms of the agreement met.

(t) "Tribal Court" shall mean the Colville Tribal Court.

(u) "Tribal workers benefit system" shall mean this act, any and all rules and regulations promulgated hereunder.

(v) "Tribe" and "tribal" mean to refer to the Confederated Tribes of the Colville Reservation, a federally recognized Indian tribe, and its agencies, and any tribal corporation and enterprises.

6-15-5 Acknowledgement of Act

(a) All covered workers and persons asserting a claim shall be conclusively presumed to have elected to take workers benefits in accordance with the tenets, conditions, and provisions of this act by virtue of employment with the tribe or other employers as defined herein. The tribal workers benefits system is the exclusive remedy for any covered accidents and injuries. All covered workers and/or persons asserting a claim for workers benefits acknowledge that the tribe is a federally recognized American Indian tribe and is exercising its inherent sovereign authority in providing workers benefits under this code.

(b) The employer shall be responsible for and shall post in a conspicuous location a notice as follows:

NOTICE TO TRIBAL GOVERNMENT AND ENTERPRISE EMPLOYEES

AS EMPLOYEES OF THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION OR ITS ENTERPRISES, YOU ARE INSURED FOR ON-THE-JOB INJURIES UNDER THE TRIBAL WORKERS COMPENSATION CLAIMS ACT

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 Claims Act, Chapter 6-15 of the Colville Tribal Code. **NOTIFY YOUR EMPLOYER IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT.** If you fail to do so, you may lose your benefits under the tribal workers benefits system. In no event shall benefits be paid to a worker who failed to notify his or her employer within fourteen (14) working days after sustaining such work-related injury, excepting cases where an extraordinary reason prevented the worker from reporting the injury or occupational disease to the employer in a timely manner.

It is your responsibility to file a claim for benefits under the act with the administrator of the system. You are required to file a claim for any injuries or occupational disease no more than thirty (30) days after you have knowledge thereof. It is your responsibility to obtain any necessary forms from the tribal workers benefits system claims administrator at:

Your exclusive remedy for any work connected injury or disease is through the tribal workers benefits system. The state's workers compensation system has no authority to accept a claim from you related to employment by the Confederated Tribes of the Colville Reservation, a sovereign Indian Nation employer, which is exclusively under the jurisdiction of the tribal workers benefits system.

6-15-6 Notification to Employer of Injury by Worker

(a) Any person claiming benefits under this act must notify his supervisor and the administrator of any and all injuries immediately, and in no event later than fourteen (14) working days from the date of occurrence. Failure to report such on-the-job injury shall result in the worker's forfeiture of benefits under this act, unless the claimant can demonstrate an extraordinary reason that prevented the reporting of the injury or occupational disease in a timely manner.

(b) The supervisor must submit a supervisor's report to the administrator within seven (7) days of receipt from the covered worker.

6-14-7 Time Limit for Reporting of Incidents and Filing of Claims

(a) Claims for injury shall be made by the covered worker to the administrator within thirty (30) days of the date of occurrence. For purposes of this act, a covered worker filing a claim for benefits under this act with the human resources office shall constitute filing a claim with the administrator.

(b) Claims for occupational disease shall be made by the covered worker to the administrator within thirty (30) days from the date of first notice to the claimant by a physician or from the date of manifestation of symptoms, whichever is earliest, but in no event longer than six (6) months from the date the worker terminates his employment with the tribe.

(c) Failure to give notice of injury to the employer as required by section 6-15-6 of the act or to file a claim with the administrator, within the time limit set forth in this section shall constitute a forfeiture by the covered worker, or his representatives in case of death, of all benefits available and payable under this act.

6-15-8 Burden of Proof

The burden of proof shall rest upon the covered person, or his dependents in the case of death, to prove:

- (1) That the injury alleged was a result of an incident, accident or occupational disease;
- (2) That it arose out of the covered person's employment;
- (3) That it arose while in the course and scope of employment and arose proximately out of covered employment; and
- (4) That it arose while in the furtherance of the employer's interests.

6-15-9 Right to Waive Defenses

The administrator shall have the right and power to waive any and all defenses affecting the compensability of a covered injury under this act.

6-15-10 Guardian for Minor or Incompetent

Any person who is mentally incompetent and/or under the age of 18 and is entitled to receive compensation under this act, shall be appointed a guardian or other representative by the tribe if a guardian has not been appointed in a prior action.

[6-15-20 to 6-15-39 RESERVED]

ADMINISTRATIVE DUTIES AND POWERS

6-15-40 Custodian Duties

The administrator or its designee shall be the payor of the workers benefits, and shall be the custodian of all claim files and related documents.

6-15-41 Payment and Distribution of Benefits

The administrator shall administer this act in accordance with the terms and conditions described herein and remit payment for all matters of benefit claims as provided for in this act. Further, the administrator shall have the authority to determine the distribution of benefit checks.

6-14-42 Administrator Powers and Duties

(a) The administrator shall be empowered to request medical reports, police reports, autopsy reports, and special investigations, engage the services of adjusters and consultants, and perform other activities as required to process any claim for benefits or to further this act.

(b) The administrator may retain a consulting physician for purposes of assisting the administrator to carry out the duties and powers of this act.

(c) The administrator shall maintain complete and accurate administrative records and claim files on all activities relating to the claims made under this act. All closed files shall be preserved for not less than seven (7) years.

6-15-43 Acceptance/Denial of Claim

Upon receiving a claim for benefits from an injured worker, the administrator shall promptly investigate the claim and begin payment of compensation within 21 days of a valid claim or the administrator shall send the claimant written notice, within 21 days, that further investigation is needed and the reasons for further investigation. The administrator shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant in writing that the claim is denied.

COVERAGE AND COMPENSABILITY

6-15-50 Entitlement of Benefits

(a) Any claimant for benefits under this act shall be responsible for filing his claim with the administrator.

(b) Coverage exists under the act for a covered worker's injury without regard to fault or negligence if the injury arises out of and in the course and scope of employment and if the worker was acting in furtherance of the employer's interest at the time of the injury and/or incident, including, without limitation, any covered worker whose work at the time of injury was subject to the Longshore and Harbor Workers Compensation Act (33 U.S.C. §§ 901-950), the Jones Act (46 U.S.C. § 30104 or any other federal workers compensation acts. If an injury is an occupational disease as defined herein, the employer in whose employ the worker was last injuriously exposed to the hazards of the disease is considered to be the employer of the worker for purposes of obtaining benefits under this act.

6-15-51 Disclosure of Preexisting Disabilities/Conditions

(a) All workers shall disclose any preexisting physical or mental conditions, disorders, and disabilities that could potentially affect or impair the worker's ability to perform in a reasonable and safe manner the activities involved in the position in which he or she works. Disclosure shall be made in the employment application or interview before commencing employment or before commencing new job duties after job reclassification, reassignment, promotion, demotion, or other change in job duties. The content of such disclosure shall be made promptly by the covered worker after submitting a claim for benefits under this act.

(b) When a worker has a preexisting disability or condition which is aggravated, the tribal workers benefit system shall only be responsible for the portion of the injury attributable to the aggravation.

6-15-52 Mental Trauma Injuries

(a) Mental traumas, disorders, and/or conditions, even if manifested in physical symptoms and/or related to stress, are not compensable injuries under this act, except that mental trauma is only recoverable if resulting from accidental physical injury traceable to a definite time, place, and cause rather than from repetitive mental trauma.

(b) Regardless of subsection 6-15-52(a), a mental trauma or emotional injury that arises principally from a personnel action, including, without limitation, a transfer, promotion, demotion, or termination is not a compensable injury under this act.

6-15-53 Going to and Returning from Work

An accident and/or incident occurring to a worker while on the way to or from work, including lunch break, is not within the course and scope of employment except when such traveling is directly connected with the worker's work and in furtherance of the employer's interest. This exception will not apply if the worker deviates from a reasonably direct route of travel and/or is not acting in the interests of the employer.

6-15-54 Benefits Precluded by Neglect and/or Refusal of Worker to Submit to Treatment

(a) No benefits shall be payable for the death and/or disability of a worker if the worker's death and/or disability is caused by, or the worker's disability aggravated, caused or continued by, an unreasonable refusal and/or neglect to submit to and/or follow any competent or reasonable surgical or medical treatment, medical aid, or advice. A worker who has refused and/or neglected to submit to medical and/or therapeutic treatment, or to take medications prescribed, will be deemed to have reached maximum medical improvement as defined herein. Any such existence of a disability that could have been reasonably treated to success with reasonable medical probability will be discontinued in determining the appropriate incapacity rating as described herein.

(b) Any covered worker entitled to benefits under this act shall be presumed to have reached maximum medical improvement if such claimant has refused and/or neglected to seek appropriate medical treatment within three (3) months from the date of occurrence or from the last date of prior treatment.

6-15-55 Injury or Death by Consumption and/or Application of Drugs and/or Chemicals

No benefits of any nature shall be payable for injury and/or death caused or contributed to by any drug, including narcotics and hallucinogens, whether organic or chemical in nature, or any gas, vapors, and/or fumes taken and/or inhaled voluntarily, or by voluntarily poisoning, except those drugs prescribed by a physician or other practitioner licensed to prescribe such medication.

6-15-56 Intoxication

No benefits of any nature shall be payable for any covered worker injured or killed while intoxicated as defined in section 6-15-4(p), regardless of whether or not the intoxicated condition was the proximate cause of the injury or death. It is only necessary to prove that the covered worker was intoxicated at the time of the incident or accident to deny benefits under this act. All workers accepting employment with an employer and under this act, agree to submit to post-incident/post-accident drug and alcohol screening as authorized in the applicable tribal personnel policies, and agree to waive any privilege associated with the results of said tests.

6-15-57 False Statement or Representation to Obtain Compensation; Penalty and Forfeiture

If, in order to obtain any benefits under the provisions of this act, any person willfully makes a false statement or representation, they shall forfeit all rights to compensation, benefits, or payment upon proof that the offense was committed. Any claim resulting from an employment-related aggravation of a preexisting condition which was not disclosed as required under this act will be declined by the administrator pursuant to section 6-15-51.

6-15-58 Injuries Resulting from Self-Inflicted Injuries, Willful Misconduct, "Horseplay", or Safety Violation

No benefits of any nature shall be payable for any covered worker's injury or death caused by a covered worker's willful intention to injure himself or another. An injury sustained during "horseplay" is not incurred in the course and scope of employment, and thus such an injury under this act is not compensable. In addition, the willful disregard of a safety order from the employer to the worker to wear or use a safety device and/or to perform work in a certain manner may cause

such person to forfeit all rights to compensation, benefits, or payment upon proof that the offense was committed and that such disregard or performance was the direct and proximate cause of the injury, death, and/or occupational disease. A covered worker's willful disabling of safety devices on equipment constitutes a willful intention to injure himself thereby precluding eligibility for her benefits under this act.

6-15-59 Injuries Resulting from Natural Causes

No benefits of any nature shall be payable for any covered worker injured or killed when the injury or death results from natural causes, i.e., heart attack, stroke or other natural function failure, which does not arise out of the course and scope of employment while the worker was acting in furtherance of the employer's interest.

6-15-60 Recreational, Social or Athletic Activities

(a) No benefits shall be payable for any covered worker injured or killed if the injury or accident occurred as a result of the worker's voluntary participation in an off-duty, recreational, social, or athletic activity not constituting part of the worker's work-related duties, except where these activities are expressly required by the employment.

(b) No benefits under this act shall be payable to any covered worker if the injury, disease, or death arises from participation in voluntary physical fitness activities during the regular work day, regardless of whether the employee is or is not compensated for the time in which the physical fitness activities take place.

6-15-61 Injuries Caused by Third Parties

No benefits of any nature shall be payable for any covered worker injured or killed as the result of an act of a third party, including co-workers, who intended to injure the worker because of reasons personal to that worker and not directed at the worker for reasons related/relevant to his employment.

6-15-62 Secondhand Smoke

No benefits under this act shall be payable to or on behalf of any covered worker injured or killed as a result of exposure to or injury by secondhand smoke.

BENEFITS – GENERAL PROVISIONS

6-15-70 Right to Compensation and Medical Treatment Benefits

Every covered worker coming within the provisions of the act who is injured, and in the event of a worker's death, the dependents of every such covered worker, arising out of and in the course and scope of employment and while acting in furtherance of the employer's interest at the time of the incident and/or accident, unless the injury is otherwise limited or excluded by the terms and conditions of this act, shall be entitled to receive, and shall be paid, for loss sustained on account of the injury, death and/or occupational disease, such benefits as provided under the act.

6-15-71 Workers Benefit as Exclusive Remedy

The rights and remedies provided by the provisions of the act for a worker on account of injury or occupational disease for which benefits under the act are recoverable, shall be the exclusive and only rights and remedies of such worker, the worker's personal or legal representative, dependents, or next of kin, at common law or otherwise, on account of such injury and/or occupational disease against the employer, the employer's representatives, insurer, guarantor or surety, for any matter relating to the occurrence of or payment for an injury or death covered under this act. To that end, all civil causes of action against the covered employer and its employees, arising from said injuries or death, and the jurisdiction of all courts over such causes of action are hereby abolished and barred, except as specifically provided by this act.

6-15-72 Effect of Compensation Paid in Other Jurisdictions or Third Party Recovery

An injured worker who pursues and recovers compensation under laws of another jurisdiction or

from a third party shall notify the administrator. The injured worker forfeits compensation under this act in proportion to their recoveries from the other jurisdiction or third party.

6-15-73 Liability of Third Parties - Subrogation

(a) The employer and/or their representative, insurer, guarantor, or surety shall be subrogated to the common law rights of the worker to pursue any claims for compensation against any third party that is liable for the death of, or injuries to, said worker arising out of and in the course and scope of employment and while the worker was acting in the furtherance of the employer's interest to the extent of the benefits bestowed upon the said worker.

(b) In case of recovery, the administrator shall enter judgment for distribution of the proceeds thereof as follows:

- (1) A sum sufficient to repay the employer and/or the administrator for the amount of the compensation actually paid to the worker under this act up to that time;
- (2) A sum sufficient to pay the employer the present worth, computed at the current legal interest rate for court judgments and decrees, of the future payments of compensation for which the employer is liable, but the sum is not the final adjudication of the future payments which the worker is entitled to receive and if the sum received by the employer is in excess of the amount required to pay the compensation, the excess shall be paid to the worker.
- (3) The balance, if any, shall be paid over to the worker.

(c) For subrogation purposes hereunder, any payment made to a covered worker, his guardian, parent, next of kin, or legal representative, by or on behalf of any third party, his or its principal or agent liable for, connected with, or involved in causing an injury to such worker shall be considered as having been so paid as damages resulting from and because said injury was under circumstances creating a legal liability against said third party, whether such payment be made under a covenant not to sue, compromise settlement, denial of liability, or otherwise.

6-15-74 Assignability of Benefits – Attachment of Liens

Benefits received under this act are not assignable, except that a legal beneficiary may, assign the right to death benefits. Income from death benefits are subject only to the following liens or claims, to the extent of any income or death benefits that are unpaid on the date the administrator receives written notice of the lien, judgment, or claim in the following order of priority:

- (1) Court-ordered child support issued or recognized by the Courts of the Confederated Tribes of the Colville Reservation;
- (2) A subrogation interest established under this act; and
- (3) Debts owed to the tribe.

6-15-75 Aggravation of Preexisting Disease or Condition

If a covered worker is suffering from a preexisting disease and/or injury at the time an occupational incident, accident and/or disease occurs or arises in the course and scope of employment and the worker was acting in furtherance of the employer's interest at the time of the injury and/or incident, and the pre-existing disease and/or injury is aggravated thereby, the aggravation of the disease or injury is, subject to provisions herein, compensable under this act. The amount of the award for that disability as set forth in this act may be reduced or denied in its entirety by the administrator in consideration of the following:

- (1) A prior settlement from any source for the same impairment;

(2) The difference between the degree of impairment of the worker before the covered accident and/or occupational disease and the degree of impairment after the covered accident or occupational disease; or

(3) The benefits to be paid for impairments and/or disabilities would be in excess of 100% of the whole person. For purposes of this subsection, benefits include those benefits or payments made under this act, benefits from the worker's compensation laws of any other jurisdiction or payments from third parties.

6-15-76 Termination of Benefits Upon Death

Where a worker is entitled to compensation under this act for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability for such compensation thereafter shall terminate.

BENEFITS

6-15-80 Vocational Rehabilitation

(a) Vocational rehabilitation benefits or training are not mandatory under this act, but may at the discretion of the administrator, be ordered pursuant to his authority established herein, or as required under rules promulgated by the administrator.

(b) The administrator is authorized to consider and, if appropriate develop a "return to work" or similar program designed to allow injured employees to return to active employment as quickly as possible.

6-15-81 Waiting Period

An initial waiting period of three (3) consecutive calendar days is to accrue before the covered worker shall be entitled to benefits under this act. If the covered worker misses more than fourteen (14) consecutive calendar days, the first three (3) calendar days can be considered for benefits if the covered worker received no other compensation during this time including but not limited to, sick time, and vacation time.

6-15-82 Total Disability and Partial Disability Income Benefits

(a) When the worker is disabled from work duty as determined by the consulting physician, or in the administrator's discretion, the attending physician, by reason of a compensable injury or occupational disease, benefits shall be payable as follows:

(1) If the covered worker is 100% disabled, benefits are payable at 60% of the worker's pre-injury average weekly wage. However, this amount will be increased by 5% if the covered worker is married, and by 2% for each minor dependent living with the covered worker, up to a maximum of 75% of the worker's preinjury average weekly wage.

(2) If the covered worker is less than 100% disabled, benefits are payable at 60% of the difference between the worker's preinjury average weekly wage and the wage the covered worker is earning or capable of earning in his partially disabled condition.

(b) Except as provided herein, such benefits will continue to be paid in accordance with the terms of this act until which time the earliest of the following occur:

(1) The expiration of 12 months from the date of occurrence, or in the case of an occupational disease, 36 months from the earliest of the first manifestation of the symptoms or notification from a physician that the illness is inherent or related to the worker's occupation;

- (2) The consulting physician, or in the discretion of the administrator, the attending physician, declares that the worker has reached maximum medical improvement;
- (3) The claimant is incarcerated;
- (4) A full, unrestricted release is provided by the consulting physician, or in the discretion of the administrator, the attending physician.
- (5) A modified or light duty release is provided by the consulting physician, or in the discretion of the administrator, the attending physician, and a bona fide job offer of suitable work consistent with the worker's disability is rejected;
- (6) A new or intervening incident is the proximate cause of disability;
- (7) Benefits are refused by the worker;
- (8) Presumption of MMI or abandonment of medical treatment as defined by section 10-4-54 of this act;
- (9) The worker's earning capacity is reduced for reasons other than the disability from the work-related injury;
- (10) The covered worker dies from any cause not resulting from the injury for which he was entitled to compensation under this section, and the covered worker's estate is not entitled to any further benefits as defined by this act.

6-15-83 Impairment Benefits

(a) At the expiration of 12 months from the date of the incident, accident and/or occupational disease, the worker is presumed to have reached MMI regardless of disability and/or current medical status. The consulting physician, or in the discretion of the administrator, the attending physician, is to provide an impairment rating in accordance with the most current edition of the American Medical Association (AMA) based on reasonable medical probability. In addition, at this time the consulting physician, or in the discretion of the administrator, the attending physician is required to provide a treatment plan for reasonable and necessary future medical needs. The attending physician's impairment rating and treatment may be subject to review and revision by the consulting physician at the discretion of the administrator.

(b) For purposes of converting the impairment rating into a monetary figure the administrator will issue, and periodically update as necessary, an award schedule for permanent partial disability.

(c) A rating may not be issued prior to the declaration of MMI. The administrator may reserve issuance of payment under the following conditions:

- (1) Contribution of prior impairment ratings;
- (2) Clarification by the administrator of this act as to the validity of the date for MMI;
- (3) Similar rating or MMI issues to be resolved by the consulting physician or, if necessary, the arbitration panel established under this act.

(d) The rating recognized by the arbitration panel is binding. The rating will not be retroactively paid for weeks accrued in resolving the rating issue subsequent to the date of MMI. Such benefits will become effective the date of the ruling and commence at that time.

(e) Notwithstanding provisions herein, the administrator shall retain the right and discretion to order lump sum settlements by way of compromise and release.

6-15-84 Benefit Issuance Period

Except as provided herein:

- (a) All benefits under this act are to be issued biweekly.
- (b) There shall be no acceleration of benefits under this act.
- (c) Any settlement issued on behalf of a covered worker shall be executed by signed memorandum only.

6-15-85 Not to Exceed Preinjury Average Weekly Wage

In no event may the worker's impairment benefits exceed 100% of the worker's preinjury average weekly wage except as may be increased by a tribally approved cost of living adjustment.

6-15-86 Benefit Offsets

The administrator is entitled to reduce benefits payable to covered workers under this act in an amount equal to employee payments paid for by the employer for any pecuniary wages paid in the form of social security, long-term and short-term disability, employer elected salary contribution, vacation or sick leave, or any other entitlement of a similar nature paid in whole or in part by the employer. Further, if any overpayment is made under this chapter to the covered worker of any disability income benefits as set forth in section 6-15-82 of this act, such shall be deducted from any benefits payable under functional impairment benefits as set forth in section 6-15-83 of this act; or in the case where no functional impairment benefits are payable, then such overpayment of benefits may be deducted through payroll deductions.

DEATH BENEFITS

6-15-90 Distribution of Death Benefits

(a) When death ensues to the covered worker by reason of a compensable injury or occupational disease, benefits shall be payable to the dependents who were dependent as defined in section 10-4-4 on the earnings of the worker for support at the time of his injury, compensation upon the basis of 65% of the worker's average weekly wage, commencing from the date of death as follows:

(1) If there are no children entitled to benefits, then all to the surviving spouse for the projected probable life span of the decedent based on established mortality tables. To be an eligible "surviving spouse" under this act, the surviving spouse must have been married and living with the decedent at the time of the compensable injury, proof of eligibility may be required. If there are surviving eligible dependents, the surviving spouse shall be entitled to one-half of death benefits. If there is a surviving spouse, one-half of death benefits paid to each surviving eligible dependent in equal shares.

(2) If there is no surviving spouse, equal share of all to dependents as defined in section 6-15-4.

(3) Notwithstanding any other provisions of the act, the maximum amount payable as a death benefit under section 90 is \$100,000.

(b) Where a worker is entitled to compensation under this act for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability thereafter shall terminate.

6-15-91 Redistribution of Death Benefits

(a) If a legal beneficiary as defined in section 10-4-90 dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with section 6-15-90.

(b) If all legal beneficiaries cease to be eligible, any duty to pay the remaining death benefits payable under section 6-15-90 shall cease immediately.

6-15-92 Verification of Eligibility of Death Benefits

Upon request from the administrator, all persons claiming to be eligible for death benefits shall furnish all necessary documentation to support their claim of eligibility.

6-15-93 Burial Benefits

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 \$5,000, whichever is less.

MEDICAL BENEFITS

6-15-100 Entitlement to Medical Benefits

All covered workers are entitled to reasonable health care, supplies and reasonably necessary transportation incurred for such services. Medical benefits are payable from the date the compensable injury or accident occurred and will cease effective the date the claim closes.

6-15-101 Right to Select Physician; Employer Selection

(a) Except in an emergency, all health care must be approved or recommended by the employer or administrator. Health care treatment must be offered promptly and be reasonably suited to treat the injury. If the worker has reason to be dissatisfied with the care offered, he should communicate the basis of such dissatisfaction to the administrator, in writing, following which the administrator may agree to alternate care reasonably suited to treat the injury. If the administrator and the worker cannot agree on alternate care, the worker may request review by an administrative law judge, who may, upon application and the reasonable proofs of the necessity thereof, allow and order other such care. Any nonauthorized treatment of the covered worker is not payable under this section and shall be at the worker's sole expense.

(b) Chiropractic, osteopathic, naturopathic, acupuncture, or other nontraditional forms of treatment must be preapproved by the administrator and approved by the attending physician. Duration of treatment and/or number of visits to such medical providers shall be subject to administrator's approval, who may rely upon the advice of the consulting or attending physician.

6-15-102 Release of Medical-Related Information

Any worker, employer or insurance carrier or its agents making or defending a claim for benefits agrees to release all information to which the worker, employer, carrier, or its agents have access concerning the worker's physical or mental condition relative to the claim and further waives any privilege for the release of such information. The information shall be made available to any party or the party's representative upon request, and includes any third-party health care providers. Any institution or person releasing the information to a party or the party's representative shall not be liable for criminal or civil damages by reason of the release of the information.

6-15-103 Medical Expenses

Expenses shall be limited to those usual and customarily charged in the community, or like community, for similar services. Charges believed to be excessive or unnecessary may be denied by the administrator. Any institution or person rendering treatment to a worker under this act agrees to be bound by such charges as allowed by the administrator and shall not recover in law or equity any amount in excess of that set by the administrator.

6-15-104 Settlement of Future Medical

The worker may negotiate settlement of future medical expenses. For purposes of settling the future medical expenses, the basis for settlement will be the value of the current and future medical plan.

ADJUDICATION OF DISPUTES

6-15-120 Appeals from Decisions of the Administrator

(a) The administrator shall administer this act in accordance with the terms and conditions set forth in this act. Any appeals from final decisions of the administrator shall follow the procedures as set forth in this act and in accordance with any and all applicable rules and regulations.

(b) First Level – Any claimant may appeal a decision of the administrator by filing a contested claim in writing to the administrator within 30 calendar days of the administrator’s final decision. The administrator will forward the appeal to an administrative law judge who will receive all the pertinent documents concerning the case, and may hold hearings to obtain more information as necessary. The claimant appealing the final decision of the administrator shall bear the burden of proof that the administrator’s decision was not in accordance with, or was in violation of, this act. The decision of the administrative law judge shall be final and binding on all parties except for an appeal to the Tribal Court as provided herein.

(c) Second Level – Tribal Court. Any and all appeals from a decision of the administrative law judge shall be heard by the Tribal Court under the laws of the tribe. The administrative decision shall be upheld unless the Tribal Court finds the decision was:

- (1) Unsupported by evidence;
- (2) Arbitrary and capricious;
- (3) An abuse of discretion by the administrator; or
- (4) Contrary to the act or other applicable law.

6-15-121 Hearings

(a) A claimant and the administrator shall have the right to be represented by an attorney or spokesperson in all matters presented before the administrative law judge and/or Tribal Court, if applicable, to cross-examine all witnesses and to review all evidence of any nature, as may be related to the matter under consideration. All hearings will be conducted in a manner that does not violate due process.

(b) Administrative appeals under this act shall not be bound by formal rules of evidence or by technical or formal rules of procedure.

6-15-122 Claimant Attorney’s Fees and Other Related Costs

(a) No attorney fees will be available or awarded to any claimant under this act.

(b) The claimant or administrator may engage the services of physicians or experts for hearing purposes at the respective parties’ costs which are not reimbursable regardless of the ultimate outcome of the dispute. The opinions of such consultants may be considered in a contested case, notwithstanding the provisions of this act limiting the outside or unauthorized treatment.

(Enacted 3/10/11, Resolution 2011-138)