



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 10- 106

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

WHEREAS, the Squaxin Island Tribal Council previously passed Resolution No. 10-51 (May 13, 2010), which adopted a Workers Compensation Plan; and

WHEREAS, it has come to the attention of Tribal Council the Workers Compensation Plan is in need of technical amendments.

NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribal Council hereby amends the Workers Compensation Plan (Plan), as adopted by Resolution 10-51, as follows:

1. The following language shall be added to Section 6.01A of the Plan:

Section 6.01 A

3. No income benefits shall be paid under this section for the first three (3) calendar days from date of injury, unless the covered worker is hospitalized or is off work for more than fourteen (14) consecutive days.

2. The following language shall be added to Section 8 of the Plan:

Section 8.08 Reopening of Claims

A request to reopen a claim must be substantiated with objective medical evidence, and it must be for further treatment of the condition or conditions previously accepted and treated. In no event shall a claim be reopened after three (3) years from the date of the claim's closure. Further, reopened claims are limited only to covered workers who maintain continuous employment with their employer. Leaving the employment of the employer waives and precludes the right to reopen a claim.

CERTIFICATION

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 24 day of June, 2010, at which time a quorum was present and was passed by a vote of 4 for and 0 against, with 0 abstentions.



David Lopeman, Chairman

Attested by: Misti D. Saenz, Sr.
Peter Kruger, Sr., Secretary



Arnold Cooper, Vice Chairman

SQUAXIN ISLAND TRIBE

WORKERS COMPENSATION PLAN

CHAPTER 1. GENERAL PROVISIONS

Section 1.01 Title

This Document shall be known and cited as the Squaxin Island Tribe Workers Compensation Plan (Plan)

Section 1.02. Purpose

The purpose of this Plan is to establish the rights and benefits of employees of the Squaxin Island Tribe (Tribe) for on-the job bodily injuries due to accidents or occupational disease. This Plan also establishes procedures to administer and define the Plan in a manner that is fair to both employees and the Tribe.

Section 1.03 Scope

This Plan applies to all employees of the Tribe and all employees of other entities or enterprises of the Tribe, regardless whether or not such entities or enterprises are incorporated, unincorporated, or Tribally chartered. The Plan applies whether or not employee injuries occur within or without the territorial limits of the Tribe, provided said employee was acting in the course and scope of his or her employment.

Section 1.04 Exclusive Remedy

The remedies described in this Plan shall be the exclusive remedies allowed by the Tribe to employees and/or dependents for injuries sustained to employees in the course and scope of their employment. 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 herein.

Section 1.05. No Waiver of Sovereign Immunity

Nothing in this Plan shall be deemed or construed as waiver by the Tribe and/or any of its affiliated entities of the Sovereign Immunity of the Tribe, a federally recognized Indian tribe. 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 court, or to the jurisdiction of any other court of law or equity.

Section 1.06. Definitions

WORKERS COMPENSATION PLAN

- A. Pronouns of the masculine gender used in this Plan shall apply to both sexes. Unless stated otherwise in specific sections of the Plan, time limits shall be calculated using calendar days.
- B. Unless the context otherwise requires, the definitions which follow govern the construction and meaning of the terms used in this Plan:
1. "Administrator" shall mean the Third-Party Administrator, Agency, or Department that is responsible for managing the Plan.
 2. "Attending Physician" shall mean the Physician, or other approved medical care provider that is responsible for planning, provision, and oversight of medical treatment to a covered worker who sustains a covered injury. All physicians and other approved medical care providers providing treatment under the terms of the Plan shall: (1) be licensed by the State of Washington; (2) be in good standing with any and all State agencies that regulate the health care provider's professional activity; and (3) practice within the scope of their licensure.
 3. "Average Weekly Wage" shall be as follows:
 - a. For covered workers hired to regular full or part time position, or workers hired on a temporary, emergency or special needs projects basis, who has continuously worked for a minimum of ten (10) weeks, the average weekly wage shall be calculated based on the preceding ten (10) weeks from date of injury. In the case of a worker who has not worked for a covered employer within the immediate preceding ten (10) weeks, the average weekly wage shall be calculated based on the salary level the worker was hired at or is currently receiving.
 - b. For covered workers serving as volunteers, the average weekly wage shall be the wage of similarly paid employees performing similar work to the employer. In the event the volunteer is not employed, such volunteer shall be limited to receiving medical benefits only.
 - c. 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.
 4. "Benefits" shall mean the indemnity and medical payments provided by this Plan. "Indemnity" shall mean total disability and partial disability income benefits and impairment payments; and "Medical" shall mean medical expenses, and other expenses associated with medical treatment.
 5. "Child" includes dependent natural legitimate children, dependent stepchildren, adopted children and acknowledged illegitimate children; but does not include married children unless they are shown to be dependent.
 6. "Claimant" means the injured covered worker, or in the event of death of the covered worker, dependents of the deceased.

7. "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 its duties and responsibilities under this Plan. 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.
8. "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.
9. "Covered Employer" and "Employer" shall mean the Tribe, and all other entities or enterprises of the Tribe, regardless whether or not such entities or enterprises are incorporated, unincorporated, or Tribally chartered. It is recognized that the various entities and enterprises of the Tribe may be treated as independent entities for purposes of accounting, the payment of benefit, and management of claims.
10. "Covered Worker" or "Worker" means every person, other than an independent contractor, employed by the Tribe, its entities and enterprises, under any contract of hire, express or implied, oral or written, where the Tribe, its entities, or enterprise, has the power or right to control and direct such individual in return for which such individual receives a salary or wages. Covered Worker shall include members of the Squaxin Island Tribal Council. Covered Worker shall also include volunteers at employer sponsored functions, provided such volunteers were requested and approved to provide such services by the employer. For purposes of the Plan, Covered Worker shall not include independent contractors, contractors, and outside consultants.
11. "Death" is any fatality of the covered worker proximately and directly caused by work injury or occupational disease.
12. "Dependants" are the following persons, and they shall be deemed to be the only recognizable dependents under the provisions of this Plan:
 - a. 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 federally filed 1040 tax return. For purposes of the Plan, 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 federally filed 1040 tax return.

- b. 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.
13. "Disability" means the inability of the covered worker to perform the necessary duties of his job as a direct result of a loss of functional capacity. 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, a consulting physician. Disability may be temporary or permanent, partial or total.
 14. "Impairment" means any anatomic or functional abnormality or loss existing after 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.
 15. "Injury" shall mean any physical damage, 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.
 16. "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, paint or aerosol can; or (5) any other similar substance.
 17. "Maximum Medical Improvement" (MMI) means the earlier of:
 - c. The point which further material recovery or improvement to an injury can no longer reasonably be anticipated, based on the reasonable medical probability; or
 - d. The expiration of twenty-four (24) months from the date disability income benefits begin to accrue.
 18. "Occupational Disease" shall be only those diseases which arise out of and 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. 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.

19. "Policy" shall mean any Tribal Workers Benefit Policy of Insurance issued to the Tribe, or other employer.
20. "Settlement" shall mean the date the release of all claims is executed and the monetary terms of the agreement met.
21. "Transitional work" shall mean a work position that is either other than, or a modified variation, of the work position the injured worker was performing at the time of injury. Consistent with the diagnosis of an attending or consulting physician, transitional work may be offered to injured workers suffering from a temporary disability. Transitional work may last until such time as the injured worker has reached Maximum Medical Improvement.
22. "Tribe" and "Tribal" shall mean the Squaxin Island Tribe, a federally recognized Indian Tribe, and all other entities or enterprises of the Tribe, regardless whether or not such entities or enterprises are incorporated, unincorporated, or Tribally chartered.
23. "Tribal Court" shall mean the Squaxin Island Tribal Court.
24. "Workers Compensation Plan Committee" ("WCPC"), or its successor, shall mean the entity organized to administer the Plan in accordance with the terms and conditions as set out herein..

Section 1.07. Acknowledgement of Ordinance

- A. All employees of the Tribe shall be conclusively presumed to have acknowledged the exclusive applicability of the terms, conditions, and provisions of this Plan, and that the Tribe is a sovereign nation for the purposes of workers' compensation, governed by the laws set forth by the Squaxin Island Tribal Council and that no other workers compensation law, including but not limited to that of the State of Washington, is applicable to injuries, illness or death sustained by them.
- B. The Human Resource offices of the Tribe's entities and enterprises shall be responsible for explaining the provisions of the Plan to employees and shall be considered to have done so by posting in conspicuous locations with any other employment postings a notice as follows:

All employees of the Squaxin Island Tribe, its entities and enterprises, are hereby notified that the Squaxin Island Tribe is a sovereign nation for purposes of workers compensation, governed by the laws set forth by the Tribal Council of the Squaxin Island Tribe and that no other workers compensation law, including that of the State of Washington, is applicable to injuries, illness or death sustained by an employee. If you do not fully understand the terms, conditions, and provisions of the Squaxin Island Tribe Workers Compensation Plan, contact your supervisor or the Human

Resources office for further details. The right to receive worker compensation benefits pursuant to the provisions of the Workers Compensation Plan for injuries, illness or death sustained by a claimant shall be the exclusive remedy against your employer and the Squaxin Island Tribe.. Your employer shall not be required to pay for an injury, illness or death, or disability if (1) an injury is occasioned by willful intention of the injured employee to bring about injury to him or herself or another; or (2) if the injury is not reported to your supervisor or the Human Resource Department no later than seventy-two (72) hours from the time of the injury; or (3) such claim is otherwise excluded by the Workers Compensation Plan..

Section 1.08. Notification to Employer of Injury by Worker

- A. Any covered worker and/or person claiming benefits under the Plan must notify his supervisor, department director or the Human Resources Department of any and all injuries immediately, and in no event later than seventy-two (72) hours from the time of occurrence. Failure to report such on-the-job injury shall result in the worker's forfeiture of benefits under the Plan, 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, department director, or Human Resources Department receiving the report of the incident or accident shall submit the report to the Administrator within seventy-two (72) hours of receipt from the covered worker. In addition, the supervisor, department director, or Human Resource Department receiving the report shall prepare, or have prepared by the covered worker's director or supervisor, and submit, an incident report on the circumstances surrounding the on-the-job injury, including the identification of those who may have witnessed the incident or accident.

Section 1.09. Time Limit for Reporting of Incidents and Filing of Claims

- A. Claims for injuries shall be made by the covered worker to the Administrator within seventy-two (72) hours of the date of occurrence. For purposes of the Plan, a covered worker filing a claim for benefits under the Plan with his supervisor, department director, or the Human Resources Department shall constitute filing a claim with the Administrator.
- B. Claims for occupational disease shall be made by the covered worker to the Administrator and/or the Human Resources Department 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 1.08, 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 the Plan.

Section 1.10. Burden of Proof

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

- A. That the injury alleged was a result of an incident, accident or occupational disease;
- B. That it arose out of the covered worker's employment;
- C. That it arose while in the course and scope of employment; and
- D. That it arose while in the furtherance of the employer's interests.

Section 1.11. Right to Waive Defenses

The Administrator and/or Tribe shall have the right and power to waive any and all defenses affecting the compensability of a covered injury under the Plan.

Section 1.12. 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 the Plan shall be appointed a guardian or other representative, if a guardian has not been appointed in a prior action.

CHAPTER 2. WORKERS Compensation Plan Committee

Section 2.01. Establishment

There is hereby established a Workers Compensation Plan Committee (WCPC) whose purpose is to administer the Plan by promulgating rules and procedures of operations and to cooperate for the prevention of injuries and occupational diseases to workers and, in the event of injury or occupational disease, their rehabilitation or restoration to health and vocational opportunity.

Section 2.02. Membership

- A. The WCPC shall be comprised of six (6) persons holding the following positions:
 - 1. The Human Resources Director for Tribal Government, or designee.
 - 2. The Director of Finance for Tribal Government, or designee.
 - 3. The Squaxin Island Gaming Enterprises' Human Resource Director or designee.
 - 4. The Squaxin Island Gaming Enterprises' Director of Finance, or designee.
 - 5. The Island Enterprises, Inc.'s Director of Finance, or designee.

6. The Island Enterprises, Inc.'s Human Resources Director or designee.

Section 2.03. Powers of WCPC

The WCPC shall have the following duties and powers:

- A. To meet on a sufficient basis to carry out the duties and powers of the WCPC..
- B. To promulgate rules and regulations for the implementation and administration of the Plan.
- C. To periodically review the benefits provided under the Plan and to make recommendation to the Squaxin Island Tribal Council for amendments to benefit levels or any other needed revisions to the Plan deemed advisable by the WCPC.
- D. To develop programs and to cooperate with the Administrator for the preparations and presentation of information and educational programs designed to prevent injuries and occupational diseases to covered workers.
- E. To take any and all other actions deemed reasonable and necessary for the implementation of the Plan, including, but not limited to, setting rates and establishing adequate reserve levels.
- F. To retain consultants deemed necessary by the WCPC in order to carry out its duties as provided herein.
- G. To recommend the selection of an Administrator, with approval from the Squaxin Island Tribal Council.
- H. To recommend the selection of the insurance company providing any benefits under the terms of the Plan, with approval from the Squaxin Island Tribal Council.
- I. To consider any appeals from a covered worker or Administrator, consistent with the terms of the Plan.

CHAPTER 3. ADMINISTRATOR DUTIES AND POWERS

Section 3.01. Custodian Duties

The Administrator shall be the custodian of any and all documents relating to all claims filed.

Section 3.02. Payment and Distribution of Benefits

The Administrator shall administer the Plan in accordance with the terms and conditions described herein, and any rules promulgated by the WCPC, and remit payment for all matters of benefit claims as provided for in the Plan. Further, the Administrator shall have the authority to determine the distribution of benefit checks.

Section 3.03. Management of Claims

The Administrator shall act on behalf of the Tribe in receiving and processing claims under the Plan. The responsibility of the Administrator to make determinations and decisions will include, but not be limited to, the following:

- A. Based upon investigation and available information, the Administrator will make a determination of the responsibility of the Employer and will either accept or deny a claim.
- B. The Administrator will determine the reasonableness and necessity of medical care and charges and will determine amounts payable under the Plan. The Administrator will also approve or disapprove any change of any attending physician, referral to another attending physician, or surgical procedure.
- C. Retaining consulting physicians to assist the Administrator to carry out all duties required under the Plan.
- D. Based on information supplied by the employer and/or injured worker, the Administrator will determine the length of time and compensation rates payable for all benefits under the Plan.
- E. The Administrator will determine the eligibility of injured worker dependents and the amount and term of any dependency benefits payable.

Section 3.04. Acceptance/Denial of Claim

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

CHAPTER 4. COVERAGE AND COMPENSABILITY

Section 4.01. Entitlement of Benefits

- A. Any claimant for benefits under the Plan shall be responsible for filing his claim consistent with the terms of this Plan.
- B. Coverage exists under the Plan 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. 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 the Plan.

Section 4.02. Disclosure of Pre-Existing Disabilities/Conditions

- A. All workers shall disclose any pre-existing physical or mental disorder and/or disability 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 they work. 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 the Plan.
- B. Any claim resulting from an employment-related aggravation of a pre-existing condition which was not disclosed as required under section 4.02(A) shall be declined by the Administrator if the claimant had knowledge of the pre-existing condition and failed to disclose such condition.

Section 4.03. 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 the Plan, except that mental trauma, disorders, and/or conditions are recoverable if resulting from accidental physical injury traceable to a definite time, place, and cause rather than from repetitive mental trauma.
- B. Regardless of section 4.03(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 the Plan.

Section 4.04. 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: provided, this exception shall not apply if the worker deviates from a reasonably direct route of travel and/or is not acting in the interests of the employer.

Section 4.05. 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, 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. Any existence of a disability that could have been reasonably treated to success with reasonable medical probability will be discounted in determining the appropriate incapacity rating as described herein.

- B. Any covered worker entitled to benefits under the Plan shall be presumed to have reached Maximum Medical Improvement, or has abandoned his claim, 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.

Section 4.06. 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 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.

Section 4.07. Intoxication

No benefits of any nature shall be payable for any covered worker injured or killed while intoxicated as defined in section 1.07(B)(15), 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 the Plan. All workers accepting employment with an employer and under the Plan, 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.

Section 4.08. False Statement or Representation to Obtain Compensation; Penalty and Forfeiture

If, in order to obtain any benefits under the provisions of the Plan, any person willfully makes a false statement or representation, they shall forfeit all rights to compensation, benefits, or payments, upon proof that the offense was committed.

Section 4.09. 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 such injury under the Plan 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 shall 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 his benefits.

Section 4.10. 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.

Section 4.11. 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 for employment.
- B. No benefits under the Plan 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.

Section 4.12. 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.

Section 4.13. Secondhand Smoke

No benefits under the Plan 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.

CHAPTER 5. BENEFITS – GENERAL PROVISIONS

Section 5.01. Right to Compensation and Medical Treatment Benefits

Every covered worker coming within the provisions of the Plan 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 the Plan, 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 herein. .

Section 5.02. 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 Plan in proportion to the recoveries from the other jurisdiction or third party.

Section 5.03. 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 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.
 - 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.

Section 5.04. Assignability of Benefits – Attachment of Liens

Benefits received under the Plan 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:

- A. Court-ordered child support issued or recognized by the Squaxin Island Tribal Court;
- B. A subrogation interest established under the Plan; and
- C. Debts owed to the Squaxin Island Tribe.

Section 5.05. Aggravation of Pre-Existing Disease or Condition

If a covered worker is suffering from a pre-existing disease and/or injury at the time an occupational incident, accident and /or disease occurs or arises in the course and scope of employment while the worker was acting in furtherance of the employer's interest, 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 the Plan. The amount of the award for the disability may be reduced or denied in its entirety by the Administrator in consideration of the following:

- A. A prior settlement from any source for the same impairment;
- B. 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
- C. 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 the Plan, benefits from the worker's compensation laws of any other jurisdiction or payments from third parties.

Section 5.06. Termination of Benefits Upon Death

Where a worker is entitled to compensation 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.

CHAPTER 6. BENEFITS

Section 6.01. 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 66-2/3 % of the worker's pre-injury average weekly wage.
 - 2. If the covered worker is less than 100% disabled, benefits are payable at 66-2/3% of the difference between the worker's pre-injury average weekly wage and the wage the covered worker is earning or capable of earning in his partially disabled condition.
 - 3. No income benefits shall be paid under this section for the first three (3) calendar days from date of injury, unless the covered worker is hospitalized or is off work for more than fourteen (14) consecutive days.
- B. Except as provided herein, disability income benefits will continue to be paid in accordance with the terms of the Plan until such time as the earliest of the following occur:

1. The expiration of twenty-four (24) months from the date of occurrence, or in the case of an occupational disease, twenty-four (24) 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. Consistent with the diagnosis of the consulting physician, or in the discretion of the Administrator, the attending physician, the injured worker is capable of performing modified or transitional work and a bona fide job offer of suitable work consistent with the worker's disability is offered, but rejected by the worker;
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 4.05 of the Plan;
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 the Plan.

Section 6.02. Impairment Benefits

- A. At the expiration of twenty-four (24) 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 only, the Plan shall mirror Washington State's award schedule for permanent disabilities.
- C. The Administrator may reserve issuance of payment of impairment benefits under the following conditions:
 - 1. Contribution of prior impairment rate; or
 - 2. Rating or MMI issues to be resolved by the consulting physician or, if necessary, the Tribal Court.
- D. Any rating recognized or applied by the Tribal Court shall be binding and final. Such 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 a compromise and release in any and all claims.

Section 6.03. Benefit Issuance Period

Except as provided herein:

- A. All benefits under this chapter are to be issued bi-weekly (twice a month).
- B. There shall be no acceleration of benefits under the Plan.
- C. Any settlement or compromise issued on behalf of a covered worker shall be by way of an executed agreement or memorandum signed by the covered worker and Administrator.

Section 6.04. Not to Exceed Pre-Injury Average Weekly Wage

In no event shall the worker's incapacity income benefits, or other income sources, exceed 100% of the worker's pre-injury average weekly wage.

Section 6.05. Benefit Offsets

The Administrator is entitled to reduce benefits payable to covered workers in an amount equal to any payments made to a covered worker, paid in the form of unemployment compensation, automobile insurance benefits, social security benefits, long-term and short term disability, vacation or sick leave, or any other entitlement of a similar nature paid in whole or in part by the employer. Further, if any overpayments of benefits are made to a covered worker, such overpayments shall be deducted from any future benefits payable to the injured worker, or in the alternative, deducted through payroll deductions.

CHAPTER 7. DEATH BENEFITS

Section 7.01. Distribution of Death Benefits

A. When death ensues to a covered worker by reason of a compensable injury or occupational disease, benefits shall be payable to the dependents of the worker. The benefits will be based upon the earnings of the worker at the time of his injury, and shall be comprised of 66-2/3% 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, the life of the surviving spouse or until remarriage., whichever comes first, provided that upon remarriage, two years' benefits shall be paid to the surviving spouse in a lump sum. To be an eligible surviving spouse under the Plan, 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.
2. If there are both a surviving spouse and qualifying children, the benefits shall be paid one-half to the surviving spouse, and one half to the qualifying children, in equal amounts.
3. If there is no surviving spouse, benefits shall be paid to qualifying children in equal shares.

B. Where a worker is entitled to compensation under the Plan 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.

Section 7.02. Redistribution of Death Benefits

- A. If a legal beneficiary under section 7.01 dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries.
- B. If all legal beneficiaries cease to be eligible, any duty to pay the remaining death benefits payable under section 7.01 shall cease immediately.

Section 7.03. 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.

Section 7.03. 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.

CHAPTER 8. MEDICAL BENEFITS

Section 8.01. 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.

Section 8.02. 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 WCPC may, but is not required to, and upon application and the submission of appropriate information, allow and order such other care. Any non-authorized treatment of the covered worker is not payable under the Plan and shall be at the worker's sole expense.
- B. Chiropractic, osteopathic, naturopathic, acupuncture, or other non-traditional forms of treatment must be pre-approved 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.
- C. After notice and opportunity for hearing, the WCPC may issue a decision relieving the Administrator of the duty to pay for health care furnished by a health care provider or any other person selected in a manner inconsistent with the requirements of the Plan.

Section 8.03. 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. The WCPC and the Squaxin Island Tribal Court are also entitled to review and consider such medical records in any matters coming before them. 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. Refusal of the injured worker to release medical information relative to his covered injury shall terminate any and all rights and benefits the injured worker is entitled under the Plan.

Section 8.04. 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 the Plan 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.

Section 8.05. Vocational Rehabilitation

If, after reaching MMI, a covered worker is permanently impaired and unable to return and perform his job at the time of injury, the employer is not obligated to either offer him a different job, or retrain him for another job. Vocational rehabilitation benefits or training are not mandatory under the Plan, but may, at the sole discretion of the Administrator, be ordered and/or allowed, subject to any and all conditions and restrictions deemed appropriate by the Administrator.

SECTION 8.06. Transitional Work

The Tribe and any of its entities may develop a transitional work program whereby covered workers suffering from a temporary disability can return to work. Any transitional work offered to a covered worker shall be consistent with any and all medical limitations placed on the covered worker by the attending or consulting physician. While in transitional work, the covered worker shall receive loss of income benefit in an amount calculated as follows: 66 2/3% of the difference between the worker's average weekly wage at the time of injury and the amount the worker is earning in the transitional work position. Refusal of the covered worker to accept a transitional work position shall result in the termination of all benefits due the covered worker under the terms of the Plan.

SECTION 8.07. Compromise and Release

Nothing in the Plan shall impair the rights of the parties to compromise any liability that is claimed to exist on account of injury, disease or death. After reaching a compromise, a copy of the release or compromise agreement signed by both the covered worker and the Administrator shall be presented to the WCPC for approval. If approved, the Administrator shall enter an award based on the release or compromise agreement.

Section 8.07 Compensation Limits

In no event shall compensation payable pursuant to this Plan exceed the per occurrence limits set out in any Policy issued to the Tribe.

Section 8.08 Reopening of Claims

A request to reopen a claim must be substantiated with objective medical evidence, and it must be for further treatment of the condition or conditions previously accepted and treated. In no event shall a claim be reopened after three (3) years from the date of the claim's closure. Further, reopened claims are limited only to covered workers who maintain continuous employment with their employer. Leaving the employment of the employer waives and precludes the right to reopen a claim.

CHAPTER 9. ADJUDICATION OF DISPUTES

Section 9.01. Appeals from Decisions of the Administrator

Any appeals from final decisions of the Administrator shall follow the procedures as set forth below:

A. First Level – WCPC: On forms provided by the Administrator, a covered worker may appeal a final decision of the Administrator by filing a written notice of appeal with the WCPC. Such written notice of appeal must be received by the WCPC within ten (10) calendar days of the Administrator's final decision. Any 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, the Plan. The covered worker and Administrator shall submit all relevant materials regarding the appeal to the WCPC within thirty (30) days date of the notice of appeal. The WCPC shall conduct an informal hearing in accordance with their established rules and render a written decision in the dispute. The decision of WCPC shall be final and binding on all parties except for an appeal to the Squaxin Island Tribal Court as provided below.

B. Second Level – Tribal Court: Any and all appeals from a decision of the WCPC shall be heard by the Tribal Court pursuant to the terms of Section 9.02 below.

Section 9.02. Hearings

- A. A covered worker and the Administrator shall have the right to be represented by an attorney in all matters presented before the Tribal Court, and to cross-examine all witnesses and to review all evidence of any nature. Attorney fees and any other fees or costs associated with pursuing the appeal shall not be awarded to any party, regardless of the decision by the Tribal Court.
- B. To initiate an appeal from the WCPC, the appealing party shall file a notice of appeal with the Squaxin Island Tribal Court Clerk's Office. The notice of appeal shall be filed no later than ten (10) days from date of the WCPC decision, and shall also be served on the opposing party.. Failure to timely file a notice of appeal shall preclude the Tribal Court from considering the appeal.
- C. The Tribal Court shall schedule a hearing on the appeal, such hearing to occur within forty-five (45) days from date of filing the notice of appeal. For good cause shown, either party may ask for a continuance of the hearing.
- D. The Tribal Court shall not be bound by formal rules of evidence or procedure. The hearing shall be conducted in such a manner as to promote justice and to apply the spirit and intent of the Plan.
- E. The appealing party shall have the burden of proving by a preponderance of the evidence that the WCPC decision was either unsupported by evidence, arbitrary and capricious, or contrary to the terms and provisions of the Plan.
- F. The parties to the appeal should stipulate to the admission of evidence when there is no genuine issue of relevance or authenticity. All bills, medical reports, charts, examinations, statements, opinions and other health care materials, including materials of or relating to a worker's ability to perform work, are presumed

admissible in the Tribal Court hearing, without the testimony of a witness, provided: (1) such materials have a letterhead or other distinctive mark indicating the name, date, address and telephone number of its author; and (2) such materials are provided to the Tribal Court and the opposing party at least ten (10) days prior to date of hearing.

- G. A written decision by the Tribal Court shall be filed within fourteen (14) days after completion of the hearing, and such decision shall be final and binding upon the parties

SECTION 9.03. EFFECTIVE DATE

This Plan shall become effective on the date in which Tribal Council approves the Plan and shall apply to all claims filed after date of approval: provided, however, the "Adjudication of Disputes" provisions of this Plan shall retroactively apply to any and all claims open, or subject to being re-opened, prior to date of approval of the Plan.

SECTION 9.04. SEVERABILITY

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