



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 02-68
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 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, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; 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 with protecting and managing the lands and treaty resources and rights of the Tribe; 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 has determined that it shall provide a system of wage compensation and medical benefits for employees of the Tribe, its Unincorporated Divisions and Tribally Chartered Businesses.

NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribal Council hereby determines that an Employer shall not be liable to any action for damages on account of Injury sustained by an Employee arising out of and in the course of employment or on account of death resulting from Injury so sustained, but an Employer shall secure compensation for his employees as provided under this Code, except that compensation shall not be paid when the Injury has been caused by the willful and serious misconduct of the injured employee or as a result of being under the influence of alcohol or non-prescription drugs or narcotics.

NOW THEREFORE BE IT FURTHER RESOLVED, all rights and claims between employer and employees, or any representatives or dependents of such employees, arising out of Injury or death sustained in the course of employment are abolished other than rights and claims given by the Workers' Compensation Code, provided nothing shall prohibit any employee from securing, by agreement with his employer, additional compensation from his employer for the injury or from enforcing any agreement for additional compensation.


NOW THEREFORE BE IT FINALLY RESOLVED, that the Squaxin Island Tribal Council hereby adopts the Worker' Compensation Plan effective immediately.

CERTIFICATION


The Squaxin Island Tribal Council does hereby certify that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 18th day of July 2002, at which time a quorum was present, and was passed by a vote of 4 for and 0 against with 0 absentions.



Dave Lopeman, Chairman

Attested By: 

Pete Kruger, Secretary



Andy Whitener, Vice Chairman

SQUAXIN ISLAND TRIBE', ITS UNINCORPORATED DIVISIONS'
AND TRIBALLY CHARTERED BUSINESSES'

WORKERS' COMPENSATION PLAN

SECTION 1. PURPOSE AND SCOPE

1.001 The purpose of this Plan is to provide a system of wage compensation and medical benefits for Employees of the Employer who suffer Compensable Bodily Injury as an employee of the Squaxin Island Tribe, its Unincorporated Divisions and Tribally Chartered Businesses. An Employer shall not be liable to any action for damages on account of Injury sustained by an Employee arising out of and in the course of employment or on account of death resulting from Injury so sustained, but an Employer shall secure compensation for his employees as provided under this Code, except that compensation shall not be paid when the Injury has been caused by the willful and serious misconduct of the injured employee or as a result of being under the influence of alcohol or non-prescription drugs or narcotics. All rights and claims between employer and employees, or any representatives or dependents of such employees, arising out of Injury or death sustained in the course of employment are abolished other than rights and claims given by this Code, provided nothing in this section shall prohibit any employee from securing, by agreement with his employer, additional compensation from his employer for the injury or from enforcing any agreement for additional compensation.

1.002 All Employees of the Squaxin Island Tribe are covered for Compensable Bodily Injuries whether the Accident or Bodily Injury occurred on or off the Reservation. Benefits are further limited as indicated in the following Sections.

If an Employee is injured on the Squaxin Island Reservation but his Employer has not provided workers' compensation coverage for said injury, the Employee shall have a cause of action in the Tribal Court for the workers' compensation payments the Employee would have been entitled to had coverage been provided in accordance with the laws of the jurisdiction of Employer's principal place of business. The Tribal Court may award the present worth of any probable future benefits as well as costs and attorneys fees.

SECTION 2 – REPORTING OBLIGATIONS

2.001 Employee Obligation to Report - In conformance with the Safety Policy of the Employer, the management or management representative should be notified immediately of any Injury to Employees by the injured Employee or another Employee. An Employee should report any injury or Incident no matter how slight, to his/her supervisor by the end of the shift, but no later than seventy-two hours after the Incident causing the injury. An Injury must be reported within 7 calendar days of the Employee's first receiving medical treatment for the Injury or first losing time from work due to the Injury, whichever comes first. If the Injury incapacitates the Employee, the 7 days will not begin to run until the incapacity ends. In such cases, another person on behalf of the Employee may report an Injury. In order to be valid, an Incident Report must be converted to a claim within one year of the date of Injury.

2.002 Reporting Medical Treatment - If, after the initial medical care is rendered further treatment is required, the Primary Physician should report treatment within 7 days of recommending treatment. If more care is recommended by the Primary Physician authorization must be obtained from the Administrator. The Primary Physician should supply regular medical reports to inform the Administrator of the worker's current condition.

- 2.003 A Supervisor, receiving a report or notice of an Injury from the Employee or another acting in the Employees' behalf, must report the claim to the Administrator or to the Employer's designee for reporting within 3 working days of receipt of said report or notice.
- 2.004 Occupational Disease/Illness – An Employee must report any occupational disease, infection, or illness to his/her supervisor within 3 months of notification by a physician of said illness, disease or infection. No compensation or medical benefits will be paid if an occupational disease, infection or illness is not reported within 3 (three) months of notification by a medical physician.

SECTION 3 – MEDICAL BENEFITS

- 3.001 Emergent care – Emergent care will be rendered at Mason General Hospital or the most convenient medical facility available to protect the health and safety of the injured Employee. The Plan will pay the cost of all reasonable and necessary First Aid, Medical, Surgical and Hospital services incurred by the Employee as a direct result of a Compensable Injury.

All non-emergent workers' compensation injuries must be treated by the medical staff at the Squaxin Island Tribal Health Clinic (Sally Selvidge Health Center) if the Clinic is open at time of Injury. Referrals to other providers will be made from this facility.

- 3.002 An Employee who has a Primary Physician treating an Injury may not change Primary Physicians for a Compensable Injury without the prior written approval of the Administrator or the Employer.
- 3.003 Covered Charges - The Plan will pay hospital and medically related charges for services rendered or ordered by the Primary Physician or Referral Health Care Provider.
- 3.004 - The Plan will pay the cost of medicines and supplies and equipment of a therapeutic nature necessary to treat the Injury only if ordered by the Primary Physician or Referral Health Care Provider and approved by the Administrator.
- 3.005 Diagnostic Procedures - The Plan will pay the cost of diagnostic imaging such as CT and MRI scans only if prior approval is obtained from the Administrator, the Employer, or when the Primary Physician declares an emergency need.
- 3.006 The Plan will pay surgical charges only if the surgery is required on an emergency basis or if the Administrator or the Employer has previously approved it. The Administrator or the Employer may require a second opinion prior to approving any surgical procedure.
- 3.007 Expense Reimbursements - The Plan will reimburse the Employee for the reasonable expenses associated with receiving medical care. All reimbursement expenses, except mileage within a 75-mile radius of the Employee's place of work, must be pre-approved. Mileage reimbursement will be at the then current federal standard. Child-care costs will be paid at the rate not to exceed \$25.00 per day per child. Reimbursement for cost for hotel and meals will be paid as negotiated by the Administrator.
- 3.008 Medical Costs - Bills are subject to the then current Medical Fee Schedule adopted by the Plan Administrator.
- 3.009 Missed Appointments - If the Employee fails to appear for a scheduled Independent Medical Examination without just cause, the responsibility of the Employer for payment of medical expense ceases. Benefits will be suspended until, as determined by the Plan Administrator, the Employee resumes cooperation.
- 3.010 Non-cooperation with Return to Work Rehabilitation - The Administrator or Employer may contract for the services of a rehabilitation consultant to assist the Employee in rehabilitation and return to work efforts. If the Employee fails to cooperate with reasonable rehabilitation efforts without just cause, the responsibility of the Employer for payment of future wage benefits under this Plan will cease.

- 3.011 Release of Medical Information - The Employee shall provide the Administrator written authorization for his or her present and past medical records, except those protected by operation of law, when requested by the Administrator or the Employer. If the Employee fails to provide authorization within 20 days of a written request to do so, the responsibility of the Employer for payment of benefits under this Plan will cease.

SECTION 4 – DISABILITY BENEFITS

- 4.001 Temporary Total Disability- (TTD) – That time, after the Waiting Period, when, solely as a direct result of the Injury, the Employee is totally disabled from performing the normal duties of employment engaged in at the time of the Injury, or of other transitional, restricted or modified work, which the Employer offers. Total Disability must be evidenced by a medical opinion based on examination and treatment rendered at the time of the claimed disability. The weekly benefit for Temporary Total Disability is limited to the applicable Compensation Rate under 10.003.
- 4.002 Temporary Partial Disability- (TPD) – Loss of actual earnings suffered after the waiting period by an Employee who has returned to transitional duty, restricted or modified work offered by the Employer solely because of the ongoing effects of the Bodily Injury/Occupational Disease/Illness and the Employees physical inability to return to the normal Employment engaged in at the time of the Bodily Injury. The weekly benefit for Temporary Partial Disability is 60% of the difference between the Weekly Wage at the time of the Injury as determined under 10.03 and the wage the Employee is able to earn in the transitional duty, restricted or modified work. Temporary Partial Disability benefits are limited to the maximum Compensation Rate under 10.003.
- 4.003 Refusal of Return to Work Offer - If an Employee refuses transitional, restricted or modified work offered by the Employer or becomes Voluntarily Unemployed without just cause, all benefits, except medical benefits, will cease.
- 4.004 Payment of Temporary Total Disability - Payments of Temporary Total disability benefits will be paid until Employee reaches maximum medical improvement, is employable or until Employee fails to cooperate with reasonable efforts or is removed from the workforce, whichever comes first.
- Payment of Temporary Partial Disability – Payments of Temporary Partial benefits will be paid until Employee is released by the Primary Physician for full duty, until Employee reaches maximum medical improvement or until Employee fails to cooperate with reasonable efforts or is removed from the workforce, whichever comes first.
- 4.005 Permanent Partial Disability –(PPD)- “Permanent partial disability” means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments were severed where repair is not complete, or any other injury known in surgery to be permanent partial disability.

This benefit is intended to compensate the injured Employee for any permanent loss of or loss of use to the body as a whole suffered directly as a result of a Compensable Injury. Preexisting disabilities are not to be considered in rating Permanent Partial Disability. A rating of Permanent Partial Disability must represent only that loss resulting solely from the Compensable Injury. All ratings for Permanent Partial Disability shall be based on the Permanent Disability Schedules adopted by the Squaxin Island Tribe. Compensation for loss of function of unscheduled body areas is based on category system used by the Administrator in effect at the date of the Injury.

In cases of Permanent Partial Disability the amount payable to the Employee shall be paid on a monthly basis at a rate equal to the weekly rate times 4.3 weeks. Payment will be made as soon as reasonably possible after receipt of the rating by the Administrator, but no later than 30 days after receipt unless the Administrator has scheduled an Independent Medical

Examination. Benefits paid for permanent partial disability are computed at 45% of the State Average weekly wage.

- 4.006 Permanent Partial Disability benefits are not payable concurrently with Temporary Total, Temporary Partial, or Dependency benefits. Benefits are not paid concurrently with health and accident benefits policies of the Squaxin Island Tribe.
- "Permanent total disability" means loss of both legs, or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from performing any work at any gainful occupation.
- 4.007 The Employer or the Administrator may, at their option, pay disability benefits in two-week increments.
- 4.008 If an Injury/Occupational Disease/Illness results in disability which is partially due to a congenital condition or a prior disease or Injury, the benefits payable for the disability will be reduced by the proportion of the disability which is due to the preexisting disability as determined by the Administrator utilizing the preponderance of the medical information.
- 4.009 Missed Medical Appointments - If the Employee fails to appear for a scheduled Independent Medical Examination without just cause, the responsibility of the Employer for payment of disability benefits ceases.
- 4.010 Social Security Retirement Benefits – Application and receipt by the Employee of Social Security Retirement Benefits after the Injury date will be considered conclusive evidence of retirement and the responsibility of the Employer for payment of further disability benefits will cease. This provision shall not apply if the Employee has been determined to be permanently and totally disabled.
- 4.011 Social Security Disability – The Plan will pay the difference between the benefits incorporated in the Plan and the payments made by Social Security.

SECTION 5 – DEPENDENCY BENEFITS

- 5.001 In the event of the death of an Employee due to a Compensable Injury, payment of all disability and medical benefits shall cease, and a maximum of 520 weeks will be payable to the Dependents of the deceased Employee. Dependents will receive weekly payments equal to the indicated percentage of the Weekly Wage as determined under 10.031. Weekly payments are subject to the maximum Compensation Rate under 10.003, and will be paid as described in this Section 5.
- 5.002 Dependent Spouse alone – 50% of the Weekly Wage at time of Injury.
- 5.003 Dependent Spouse and one or more Dependent Children – 60% of the Weekly Wage.
- 5.004 One Dependent Child, but no Dependent Spouse – 40% of the Weekly Wage.
- 5.005 Two or more Dependent Children, but no Dependent Spouse – 60% of the Weekly Wage. These benefits will be divided between the dependents.
- 5.006 Other Dependents will receive benefits in the percentage that their provable dependency on the deceased bears to the maximum benefit available and to the dependency of other Dependents. Regardless of the number of Dependents, the maximum benefit will not exceed 60% of the Weekly Wage at the time of the Injury.
- 5.007 If a Dependent Spouse remarries, no further benefits shall be payable to that Spouse. If one or more Children remain Dependent, benefits will continue to be paid for the benefit of the Dependent Child or Children, pursuant to this Section until they cease to be Dependent.

- 5.008 Benefits payable to Dependents shall be paid to them or to any legal guardian or other responsible party as directed by the Employer for the use and benefit of the Dependents.
- 5.009 If a Dependent Child, upon reaching the age at which that Child would cease to be Dependent, is totally disabled due to a physical or mental impairment, benefits will continue to be paid under the appropriate provision above until the disability ends or the maximum is paid, whichever comes first.
- 5.010 The Employer or the Plan Administrator may, at their option, pay Dependency benefits in 2-week increments; otherwise benefits will be paid monthly.
- 5.011 In all cases where an Employee's death results from a Compensable Injury, the reasonable expenses of burial, not to exceed \$3,500 will be paid.

SECTION 6 – AGGRAVATION

- 6.001 Aggravation of Original Compensable Injury - If, within one year from the date on which an Employee has returned to full-time, transitional, restricted or modified work, the Employee suffers an Aggravation not related to a new traumatic Injury of the original Compensable Injury, the Aggravation will be considered a continuation of the earlier claim and Injury and subject to any monetary and time limitations of the initial claim.
- 6.002 Reopening - A request to reopen a claim must be substantiated as needing further treatment of the condition or conditions previously accepted condition(s) by objective medical evidence. Reopening of a claim for a Compensable Injury under the Plan are prohibited 3 years from the date of first closure. All reopens are limited only to Employees who have continuous employment with the Employer. Leaving the employment of the Employer waives the right of reopening. The report requirements claims for a reopening are the same as the reporting requirements for an initial claim.

SECTION 7 – ELECTION OF REMEDIES

- 7.001 Third Parties - If an Employee's Compensable Injury is contributed to by a party other than the Employee, Employer, or another Employee of an Employer covered under this Plan and in the event of any recovery against a third party, the Plan shall have a lien to the extent that benefits have been paid to the Employee and/or their Dependents, less the proportionate share of attorneys fees and costs.
- 7.002 Assignment of Third Party Claims - If the Employee or their Dependents have a claim against a third party and seek benefits under the Plan, they must assign their cause of action against the third party to the Squaxin Island Tribe and cooperate with the Squaxin Island Tribe and the Plan Administrator in the pursuit of that action. If the Employee or their Dependents fail to assign the cause of action or fail to cooperate in the pursuit of that action, all benefits under this Plan will cease and the Employee or their Dependents will be required to reimburse the Squaxin Island Tribe for any benefits paid to or on behalf of the Employee or their Dependents or both.
- 7.003 Third Party Action - If the Employee or their Dependents elect to pursue a cause of action against a third party, no benefits will be payable under this Plan unless (a) within 180 days of the Injury, the Employee or their Dependents agree to reimburse the Squaxin Island Tribe for those costs incurred under this Plan from the funds recovered in such action and (b) the Plan Administrator agrees to such course.
- 7.004 If an Employee or their Dependents have assigned a cause of action to the Squaxin Island Tribe under this Section and if the recovery from that cause of action exceeds the amounts paid or payable to the Employee or their Dependents, any excess, after reimbursement to the Squaxin Island Tribe of the benefits paid or payable under this Plan and deduction of the costs of collection, will be paid over to the Employee or Dependents.

SECTION 8 – PLAN ADMINISTRATOR

- 8.001 The Plan Administrator will act on behalf of the Employer in receiving and processing Workers' Compensation claims under this Plan. The responsibilities of the Plan Administrator to make determinations and decisions include, but are not limited to, the following areas:
- A) Based upon investigation and available medical information, the Plan Administrator will make a determination of the responsibility of the Employer and will either accept or deny a claim. Within 30 days of receipt of a First Report of Injury, the Plan Administrator will advise the Employee and Employer of its determination.
 - B) The Plan Administrator will determine the reasonableness and necessity of medical care and charges under Section 4, and will determine amounts payable under this Plan. The Plan Administrator will approve or disapprove any changes concerning Primary Physicians, referrals to a Referral Physician, or any Surgical Procedures.
 - C) Based on information supplied by the Employer and/or Employee, the Plan Administrator will determine the Compensation Rate payable for Temporary Total, Temporary Partial, or Permanent Partial Disability, and for any Dependency Benefits stemming therefrom.
 - D) The Plan Administrator will determine the length of time during which Temporary Total Disability or Temporary Partial Disability Benefits are payable.
 - E) The Plan Administrator will determine the amount of Permanent Partial Disability Benefits payable.
 - F) The Plan Administrator will determine the eligibility of Employee's Dependents and the term of any Dependency Benefits payable.
 - G) In the event of the need to allocate Employee's Dependency Benefits between Dependents living in different households, the Plan Administrator will make the necessary allocation, based on the obligations, legal or otherwise.
 - H) The Plan Administrator will, on behalf of the Employer, vigorously pursue any cause of action assigned to the Employer under Section 7.

SECTION 9 – APPEALS

- 9.001 Workers Compensation Review Board – After appeal to the Plan Administrator to reconsider a denial of benefits under this Plan, the Employer, Employee or their Dependents may utilize the Workers' Compensation Review Board to hear any issues and make any necessary final determination relative to compensability of a Injury, Medical care or charges, extent of Disability, Dependency or any other issues that may arise under this Plan.
- 9.002 The designated members of the Workers' Compensation Review Board will include the liaison for the Little Creek Casino, a member from tribal personnel and a community member appointed by Council.
- 9.003 The Workers' Compensation Review Board will consider evidence, hear witnesses, and receive exhibits in keeping with its goal of making a just and final determination.
- 9.004 Evidence - The Workers' Compensation Review Board will weigh all relevant evidence, testimony of witnesses and examine exhibits, and will make its decision on the basis of the preponderance of the evidence, credibility of the evidence and witnesses testimony.
- 9.005 The burden of proof in any hearing before the Workers' Compensation Review Board will be on the Appealing Party, with all reasonable doubts weighed in favor of the Employee.

- 9.006 The Employee or their Dependents may have legal representation at any hearing before the Workers' Compensation Review Board. The cost of legal representation will be borne solely by the Employee or his/her Dependents.
- 9.007 Mediation - Any Employee or his/her Dependent who disagrees with a determination made by the Plan Administrator may request a hearing before the Workers' Compensation Review Board. Any such request must be submitted in the form of a "Request For Hearing", the Employee or their Dependents must accept the jurisdiction of the Workers' Compensation Review Board and must disavow any alleged rights under the Workers' Compensation law of any state. To encourage mediated settlements prior to a hearing, the Board will appoint an independent mediator, within 45 days of an appeal or Request for Hearing, and set a date on which the parties or their representatives shall meet with a member of the Board and the appointed mediator to discuss and to attempt to resolve the issues. The Board member will moderate the discussion and may offer opinions and advice to the parties but will not reach any decision on the issues. If the Employee or their Dependents and the representative of the Employer reach an agreement on any of the issues, such an agreement will be reduced to writing by the parties and will be signed by all the parties and will be binding on all the parties. If the parties are unable to resolve their differences through mediation, the parties shall proceed to a hearing.
- 9.008 If no meeting is requested under 9.007 or if a meeting under Section 9.007 fails to resolve the issues, the matter will be scheduled for a hearing before the full Workers' Compensation Review Board within 90 days of the receipt of the Request for a Hearing from the Employee or his/her Dependents. The Employee or their Dependents may request an extension of up to 90 days, which must be granted by the Workers' Compensation Review Board.
- 9.009 Any final Decision of the Workers' Compensation Review Board must represent the concurrence of a majority of two members of the Workers' Compensation Review Board. All Decisions of the Workers' Compensation Review Board are final and not subject to appeal.
- 9.010 Final Written Decision of the Workers' Compensation Review Board - A decision of the Workers' Compensation Review Board must be issued in writing, and copies must be distributed by first class mail postage prepaid to all interested parties. The Decision need not recite nor review the evidence submitted or any oral or written testimony, nor need it compare the merits of the evidence presented or any witnesses' testimony of the opposing parties. The Decision should set out findings of fact and conclusions by the Board to support the final determination of the Workers' Compensation Review Board on all issues before it. The Workers' Compensation Review Board is the final arbiter of disputes under this Plan.

SECTION 10 – DEFINITIONS

- 10.000 Accident shall mean a specific occurrence or series of occurrences, neither expected nor intended, which may be definitely located as to the time when and the place where the accident occurred that causes Injury to an Employee. Accident does not include a self-inflicted injury or injury suffered while the Employee is under the influence of alcohol or non-prescription drugs or narcotics.
- 10.001 Bodily Injury or Injury shall mean an accident, an injury to an employee which is causally connected with his employment and is the direct result of trauma or repetitive acts incident to such employment or occupational disease.

An Injury shall not be construed to include: (a) an injury to an employee which results from his voluntary participation in any activity the major purpose of which is social or recreational, including, but not limited to, athletic events, parties and picnics, whether or not the employer pays some or all of the cost of such activity; (b) a mental or emotional impairment unless such impairment arises from a physical injury; or (c) a mental or emotional impairment which results from a personnel action, including, but not limited to, a transfer, promotion, demotion, grievance or termination.

- 10.002 Compensable Injury shall mean an Injury to an Employee which: (a) Arises out of a risk or distinct condition of Employment; (b) occurs during a period of employment; and (c) while performing the duties of the Employment in or on the premises of the Employer or wherever the Employer requires the Employee to perform the Employment activities.
- 10.003 Compensation Rate shall mean 60% of the Weekly Wage as determined under 10.031. An additional 2% of the Weekly Wage may be added for each non-spousal dependent up to 5 dependents. The maximum is equal to 90% of average state wage as defined by the Department of Employment Security State of Washington under the then current schedule of benefits adopted by the Plan Administrator.
- For Example 7-1-99 through 6-30-2000
- Daily Max Rate: \$109.54
- Monthly Maximum Rate: \$3,286.20
- 10.004 Covered Employers shall mean the Squaxin Island Tribe, its Unincorporated Divisions and its Tribally Owned Businesses when entered in an employment relationship under this Plan.
- 10.005 Dependent Child shall mean a natural born or an adopted unmarried child of the Employee including a posthumous (conceived before and born after death of Employee) child, under eighteen years of age, or under the age of twenty-three, if the child is regularly attending a high school, college, university, or vocational or technical school as a full-time student; foster children; children in Employee's legal custody; or natural born children who are mentally or physically disabled.
- 10.006 Dependent Spouse shall mean the wife or husband of the Employee, regardless of employment status, unless voluntarily living apart from the Employee in a state of abandonment for more than a year at the time of the Employee's Injury or death. A "common law" spouse is not considered a dependent spouse.
- 10.007 Employee shall mean any person who performs full or part-time labor services for the Squaxin Island Tribe, its Unincorporated Divisions and Tribally Owned Businesses hired at an established wage or salary.
- 10.008 Employers shall mean the Squaxin Island Tribe, its Unincorporated Divisions and Tribally Owned Businesses when entered in an employment relationship.
- 10.009 Employment shall mean a full or part time master-servant relationship.
- 10.010 Incapacity shall mean physically incapable of reporting.
- 10.011 Incident shall mean an Accident for which no medical treatment has been sought.
- 10.012 Independent Medical Examination shall mean a medical examination and/or evaluation of the Employee scheduled by the Employer or Administrator, at the Employers' expense, for the purpose of obtaining medical information or opinion. The Administrator must approve Independent Medical Examinations scheduled by the Employee for second opinions when requested by the Primary Physician.
- 10.013 Meaning. Unless otherwise specified in this section, the words in this Plan must be given their normal meaning and effect.
- 10.014 Missed Medical Appointments. If the Employee fails to appear for a scheduled Independent Medical Examination without just cause, the responsibility of the Employer for payment of disability benefits ceases.
- 10.015 Occupational Disease/Illness shall mean such disease or infection or illness that arises naturally and proximately out of the distinct condition or activities of employment caused during

the period of Employment and while performing the duties of the Employment in or on the premises of the Employer or wherever the Employer requires the Employee to perform the Employment activities.

An Injury due to repetitive or cumulative trauma is compensable only if substantial medical evidence indicates the Injury is due predominantly to verifiable employment activities and is not contributed to by any other activity, outside cause, or physical condition or ailment. Exclusions include but are not limited to second hand smoke unless the employment conditions were the predominant cause of the illness and conditions caused by stress and mental conditions.

An Injury caused by a third person or fellow Employee intended to injure the Employee for personal reasons unrelated to the work does not arise out of the Employment and is not compensable under this Plan. An Injury sustained while participating in horseplay is not compensable under this Plan.

- 10.016 Other Dependents – Stepchildren, grandchildren, nieces, nephews and elders may be considered dependent only to the extent that actual dependency can be shown.
- 10.017 Payment of Temporary Partial Disability – Payments of Temporary Partial benefits will be paid until Employee is released by the Primary Physician for full duty, until Employee reaches maximum medical improvement or until Employee fails to cooperate with reasonable efforts, whichever comes first.
- 10.018 Payment of Temporary Total Disability - Payments of Temporary Total disability benefits will be paid until Employee reaches maximum medical improvement, is employable or until Employee fails to cooperate with reasonable efforts to rehabilitate them, whichever comes first.
- 10.019 Permanent Partial Disability –(PPD)- “Permanent partial disability” means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments were severed where repair is not complete, or any other Injury known in surgery to be permanent partial disability.

This benefit is intended to compensate the injured Employee for any permanent loss of or loss of use to the body as a whole suffered directly as a result of a Compensable Injury. Preexisting disabilities are not to be considered in rating Permanent Partial Disability. A rating of Permanent Partial Disability must represent only that loss resulting solely from the Compensable Bodily Injury. All ratings for Permanent Partial Disability shall be based on the Permanent Disability Schedules adopted by the Squaxin Island Tribe. Compensation for loss of function of unscheduled body areas is based on category system as used by The State of Washington Department of Labor and Industries.

In cases of Permanent Partial Disability the amount payable to the Employee shall be paid on a monthly basis at a rate equal to the weekly rate times 4.3 weeks. Payment will be made as soon as reasonably possible after receipt of the rating by the Administrator, but no later than 30 days after receipt unless the Administrator has scheduled an Independent Medical Examination. Benefits paid for permanent partial disability are computed at 45% of the State Average weekly wage.

Permanent Partial Disability benefits are not payable concurrently with Temporary Total, Temporary Partial, or Dependency benefits. Benefits are not paid concurrently with health and accident benefits policies of the Squaxin Island Tribe.

- 10.020 Permanent Total Disability (PTD) - “Permanent total disability” means loss of both legs, or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from performing any work at any gainful occupation. The Employer or the Administrator may, at their option, pay disability benefits in two-week increments. If an Injury/Occupational Disease/Illness results in disability which is partially due to a congenital condition or a prior disease or Injury, the benefits payable for the disability will be reduced by the proportion of the disability which is due to the preexisting disability.

- 10.021 Plan Administrator – Berkley Risk Administrators Company, LLC, whom the Employer has contracted with to act on behalf of the Employer in the administration of this Plan.
- 10.022 Primary Physician – A licensed medical doctor located and practicing within 100 miles of the Squaxin Island Indian Reservation and from whom the Employee receives medical treatment for a Compensable Bodily Injury.
- 10.023 Referral Health Care Provider – A Referral Health Care Provider shall include licensed medical doctor, chiropractor, nurse practitioner, physical therapist, or massage therapist to whom the Employee is referred by the Primary Physician or by the Plan Administrators for further specialized treatment and in the case of a chiropractor, physical therapist or massage therapist, approved by the Plan Administrator.
- 10.024 Refusal of Return to Work Offer - If an Employee refuses transitional, restricted or modified work offered by the Employer or becomes voluntarily unemployed without just cause, all benefits, except medical benefits, will cease.
- 10.025 Social Security Retirement Benefits – Application and receipt by the Employee of Social Security Retirement Benefits after the Bodily Injury date will be considered conclusive evidence of retirement and the responsibility of the Employer for payment of further disability benefits will cease. This provision shall not apply if the Employee has been determined to be permanently and totally disabled.
- 10.026 Temporary Partial Disability (TPD) – Loss of actual earnings suffered after the waiting period by an Employee who has returned to transitional duty, restricted or modified work offered by the Employer solely because of the ongoing effects of the Bodily Injury/Occupational Disease/Illness and the Employees physical inability to return to the normal Employment engaged in at the time of the Bodily Injury. The weekly benefit for Temporary Partial Disability is 60% of the difference between the Weekly Wage at the time of the Bodily Injury as determined under 10.031 and the wage the Employee is able to earn in the transitional duty, restricted or modified work. Temporary Partial Disability benefits are limited to the maximum Compensation Rate under 10.003.
- 10.027 Temporary Total Disability (TTD) – That time, after the Waiting Period, when, solely as a direct result of the Bodily Injury/Occupational Disease/Illness, the Employee is totally disabled from performing the normal duties of the employment engaged in at the time of the Injury, or of other transitional restricted or modified work, which the Employer offers. Total Disability must be evidenced by medical opinion based on examination and treatment rendered at the time of the claimed disability. The weekly benefit for Temporary Total Disability is limited to the applicable Compensation Rate under 10.003 above. Waiting period shall mean three consecutive days from the date the Bodily Injury kept the Employee from working full time based on the Primary Physician's opinion.
- 10.028 Voluntarily Unemployed shall mean leaving work voluntarily without good cause. In order for an individual to establish good cause for leaving work voluntarily it must be satisfactorily demonstrated: (a) that he or she left work primarily because of a work connected factor(s); (b) that said work connected factor(s) was (were) of such a compelling nature as to cause a reasonably prudent person to leave his or her employment; and (c) that he or she first exhausted all reasonable alternatives prior to termination: Provided, that the individual asserting 'good cause' may establish in certain instances that pursuit of the otherwise reasonable alternatives would have been a futile act, thereby excusing the failure to exhaust such reasonable alternatives.

Notwithstanding the provisions of subsection (1) above, neither the distance of the work from the individual's residence, if known at the time of hire nor any other work factor which was generally known and present at the time of hire will provide good cause for voluntarily leaving work unless the individual demonstrates to the satisfaction of the department: (a) that the distance from the individual's residence at time of hire is substantially greater than the distance customarily traveled by workers in the individual's job classification and labor market; (b) that the related work connected circumstances have so changed as to amount to a substantial

involuntary deterioration of the work factor; or (c) that other work related circumstances would work an unreasonable hardship on the individual if he or she were required to continue in the employment.

For purposes of this subsection: (a) 'Distance customarily traveled' means a distance normally traveled by a significant portion of the work force in the individual's job classification in the labor market area; (b) 'Generally known' means commonly known without reference to specific cases or individuals; and (c) 'Individual's job classification' means the job classification in which the individual was working when the individual voluntarily left work; and (e) 'Substantial involuntary deterioration' means an actual and considerable worsening of the work factor outside the control of the individual; and (f) 'Unreasonable hardship' means a result, not due to the individual's voluntary action, that would cause a reasonable person to leave that employment.

- 10.029 Volunteers and Interns – Volunteers and Interns are considered Employees. Interns will receive medical and disability benefits, but no time loss benefits, unless the Intern is receiving a wage from the Tribe. Interns that are paid by the Tribe are Employees. Volunteers will receive medical, disability and lost time benefits in any event but time loss benefits only if they sustain a loss in wages due to the Injury.
- 10.030 Waiting Period. No workers' compensation benefit will be paid for the first 3 calendar days lost unless the injured Employee is hospitalized or is off work more than 14 days due to the Compensable Injury.
- 10.031 Weekly Wage. For a full-time Employee, the Weekly Wage is the salary earned in a normal 40 hours during a seven-day week, including tips if reported for tax purposes. If the hours worked are irregular, the average weekly wage is determined by adding the total wages earned from all employment with the Employer in any twelve consecutive calendar months preceding the Bodily Injury which fairly represents the injured worker's employment pattern and divide the total by fifty-two to obtain a gross weekly wage. If the Employee has not worked for twelve consecutive calendar months for the Employer, the average weekly wage is determined by adding the actual time worked and dividing by the number of weeks presented. Overtime wages are not considered in determining Weekly Wage. If an Employee is employed in more than one capacity by the Employer, the earnings of the Employee in each capacity will be considered in determining Weekly Wage.