

**MINNESOTA CHIPPEWA TRIBE
OCCUPATIONAL INJURY BENEFIT ORDINANCE**

02.10.000 FORWARD

There shall be an Occupational Injury Benefit Ordinance for all *covered employees* and *workers* of the Minnesota Chippewa Tribe. The Minnesota Chippewa Tribe, exercising its inherent sovereign authority, adopts this system, establishing a Tribal Occupational Injury Ordinance.

02.10.001 ACKNOWLEDGMENT OF PROGRAM AND NOTICE TO EMPLOYEES

1. All *covered employees, workers* and persons asserting a claim shall be conclusively presumed to have elected to take *occupational injury benefits* in accordance with the tenets, conditions and provisions of this program (including the schedule of *benefits*) by virtue of employment with the Minnesota Chippewa Tribe, exclusive of any other claims the *employee* may have with regards to the *injury*. All *covered employees* and/or persons asserting a claim for *occupational injury benefits* acknowledge that the Minnesota Chippewa Tribe is, in fact, a federally recognized Indian Tribe and for the purposes of *occupational injury benefits*, is exercising its inherent sovereign authority. This Tribal Occupational Injury Ordinance applies regardless of location of *injury*.
2. The Minnesota Chippewa Tribe shall be responsible for posting a notice of this program in a conspicuous location (See Supplement I).
3. A copy of this program will be made available to the *employee* or the *employee's* representative upon request.

02.10.002 ADMINISTRATION OF PROGRAM

1. To provide *medical* treatment for injured *workers* and fair income *benefits* to injured *workers* and their dependents;
2. To provide an administrative system for the delivery of *medical* and financial *benefits* to injured *workers*;
3. To create a process whereby disputes over *compensation* can be resolved in a fair and unbiased manner; and
4. To restore the injured *worker* physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable.

02.10.003 DEFINITIONS

In this program, unless the context otherwise requires:

1. “*ADMINISTRATOR*” means the insurance company providing coverage or its designee, including any third party administrator.
2. “*ADOPTION*” means persons adopted by decree of a recognized Court of law.
3. “*AVERAGE WEEKLY WAGE*” means the average of the *employee’s* wages earned during the twenty-six (26) calendar weeks preceding the date of *injury*, not including unreported tips and/or bonuses. Overtime is not to be considered in computing wages unless it is regular and frequent throughout the year. The twenty-six (26) weeks prior to the date of *injury* are presumed representative, regardless of the wages earned. In the event that an *employee* is employed for less than twenty-six (26) consecutive calendar weeks immediately preceding the date of *injury*, the average weekly wage shall be determined by multiplying the *employee’s* daily wage by the number of days normally worked in the business of the *employer*. Daily wage is the actual daily wage of the *employee* in the employment engaged in at the date of the *injury*.

If the *employee’s* work week is fewer than five days per week or if there is an irregular number of days worked per week, the total number of days that an *employee* actually performed any of the duties of employment in the last 26 weeks is to be divided by the number of weeks in which the *employee* actually performed such duties, multiplied by the *employee’s* daily wage.

4. “*BENEFIT(S)*” means the findings or decision of the *Administrator* or designee regarding the amount of *medical* and lost time benefits due to an injured *employee* or the dependent of a deceased *employee* under the rules of the Tribal Occupational Injury Ordinance.
5. “*CHILD*” includes dependent biological child(ren) and dependent legally adopted child(ren), but does not include married child(ren).
6. “*CLAIMANT(S)*” means the injured *covered employee*, or in the event of death of the *covered employee*, dependents of the deceased.
7. “*COURSE OF EMPLOYMENT*” means the Minnesota Chippewa Tribe employment of the *covered employee* at the time the *injury* occurred. An *injury* must be directly related to their employment by the Minnesota Chippewa Tribe in order that a claim be payable. Claim for injuries that occur during social or recreational activities are not payable, unless the *employee* was paid for their attendance at the activity by the Minnesota Chippewa Tribe.
8. “*COMPENSATION*” means lost time wages while disabled or unable to work due to a work related *injury*. This also includes if the *employer* is unable to accommodate modified duty work within physical restrictions assigned by the treating physician.

9. “COVERED EMPLOYEE(S)”, “EMPLOYEE(S)” AND “WORKER(S)” means:
- a) Every person in the employment of the Minnesota Chippewa Tribe but does not include independent contractors or volunteers.
 - b) Excluded as not in the employ of the Minnesota Chippewa Tribe are consultants, independent contractors and all other persons not considered under common law to be employed by the Minnesota Chippewa Tribe unless a written contractual agreement between the Minnesota Chippewa Tribe and an entity provides for *occupational injury benefits*. In the event of such a contract, the contract shall be specific as to whom, when, where, and why this coverage is provided by the Minnesota Chippewa Tribe, and all third parties and/or covered employees shall agree to all terms, conditions and provisions of this program.
10. “EMPLOYER” under this ordinance refers to the Minnesota Chippewa Tribe, as well as any of its enterprises, subdivisions or other operations. The Minnesota Chippewa Tribe, a federally recognized Indian Tribe or any entity acting at all times pursuant to its Constitution and Bylaws in a governmental capacity.
11. “INJURY” means an injury directly related to their employment and includes *occupational disease* and death. Damage to or destruction of artificial member, dental appliances, teeth, hearing aids and eyeglasses, when a covered injury is sustained. Injury is defined in two categories: 1) traumatic and 2) cumulative. “TRAUMATIC” is defined as a sudden, specific incident. “CUMULATIVE” is defined as a repetitive motion injury occurring over a period of time. Where this plan contains conflicting references to injury and *occupational disease*, the references to *occupational disease* shall prevail.
12. “MAXIMUM MEDICAL IMPROVEMENT” means the date after which no significant recovery from or significant lasting improvement to a personal *injury* can reasonably be anticipated, based upon reasonable medical probability.
13. “NON-SCHEDULED INJURIES” mean injuries that result in permanent partial disability or permanent total disability which are not defined as *scheduled member injuries*.
14. “OCCUPATIONAL DISEASE” means a disease, which is directly related to the employment. A disease is not directly related to the *employee’s* employment if an *employee* would have been equally exposed to such a hazard outside of the employment.
15. “OCCUPATIONAL INJURY BENEFITS” include *weekly benefits* and *medical benefits* further defined as follows:
- a) “MEDICAL” means medical expense and other expenses associated with medical treatment reasonably related to the work *injury*. Medical mileage expense will be paid at the rate of \$.25 per mile.
 - b) “WEEKLY BENEFIT(S)” means $66 \frac{2}{3}$ percent of the *employee’s average weekly wage*. In the case of temporary partial disability, the weekly benefit amount is $66 \frac{2}{3}$ percent of the difference between the *employee’s average gross weekly*

earnings at the time of the *injury* and the *employee's* wages while temporarily working at the lesser paying job. The maximum weekly benefit payable is \$750.00.

- c) “*TEMPORARY TOTAL DISABILITY BENEFITS*” (*TTD benefits*) means the *weekly benefit* paid when an *injury* results in three (3) or more calendar days of disability with a two (2) week retroactive period.
 - d) “*TEMPORARY PARTIAL DISABILITY BENEFITS*” (*TPD benefits*) means the *weekly benefits* paid if the *employee* returns to work at a lesser paying job, because of the *injury* but before the *employee* reaches *maximum medical improvement*.
 - e) “*PERMANENT PARTIAL DISABILITY BENEFITS*” (*PPD benefits*) means the *weekly benefits* paid for the partial loss of a *scheduled member* or a *non-scheduled member*.
 - f) “*PERMANENT TOTAL DISABILITY BENEFITS*” (*PTD benefits*) means the *weekly benefits* paid for a *non-scheduled injury* when the job-related *injury* leaves an *employee* totally and permanently incapacitated. This means that the *employee's* physical disability causes the *employee* to be unable to secure anything more than sporadic employment resulting in an income of less than 90% of their *average weekly wage* at the time of *injury*.
 - g) “*DEATH BENEFITS*” means the *weekly benefits* paid to dependents as a result of any fatality of the *employee* as a direct result of their employment.
16. “*SCHEDULED MEMBER INJURIES*” mean injuries that result in permanent partial impairment to the shoulder, arm, hand, thumb, finger, hip, leg, foot, toes, eyes, or ears as defined in section 02.10.021.
17. “*SPOUSE*” means legally married.
18. “*TRIBAL COURT*” means the Minnesota Chippewa Tribe Court as established by the Tribal Executive Committee.

02.10.004 RIGHT TO OCCUPATIONAL INJURY BENEFITS

- 1. Every *covered employee*, or the *employee's* dependents in case of death, who sustains an *injury* directly related to their employment shall be entitled to receive *benefits* under this program.
- 2. Except in the case of acute *medical* emergencies, the Minnesota Chippewa Tribe has the right to select the *employee's* health care provider. The “Return To Work Recommendation Record” form (Form D) is required for ALL *medical* appointments. This form must be obtained prior to the appointment and returned to the *Administrator* in

an expeditious manner following each appointment.

3. The *Administrator* shall pay usual and customary expenses for necessary *medical* emergencies and/or authorized *medical* treatment reasonably related to the compensable *injury*.

02.10.005 EXCLUSIONS FROM COVERAGE

The following shall be excluded from coverage under this program:

1. No *benefit* of any nature shall be payable for *injury* and/or death resulting from self-inflicted *injury* or willful *injury* of another. If the *injury* follows repeated documented violations of work rules, it may be regarded as a self-inflicted *injury*. If the *injury* resulted from a documented violation of safety policies, determined after a thorough investigation by the Safety Director (if applicable), it may be regarded as a self-inflicted *injury* and therefore not compensable.
2. No *benefit* shall be payable for the death or permanent disability of an *employee* if the *employee's* death or permanent disability is caused by, aggravated or continued by, an unreasonable refusal or neglect to submit to or follow any competent or reasonable surgical treatment or *medical* aid or advice by a qualified health care provider.
3. No *benefit* shall be payable for *injury* where refusal or failure of the injured *employee* to obey written or verbal instructions by the *employer*, or failure or refusal to use a safety device or appliance furnished by the *employer*, which if obeyed or used, would have reasonably prevented or significantly reduced the likelihood of *injury* or death.
4. No *benefit* of any nature shall be payable for *injury* and/or death caused or contributed to by the *employee's* use of any illegal substance, including, but not limited to narcotics and hallucinogens, any gas or fumes taken or inhaled voluntarily, by voluntary poisoning, or abuse of any prescription medication.
5. No *benefit* shall be payable for any *covered employee* injured or killed while intoxicated regardless of whether or not the intoxicated condition was the proximate cause of the *injury* or death. Therefore, it is necessary only to prove that the *covered employee* was intoxicated at the time of the *injury* to deny *benefits* under this Tribal Occupational Injury Ordinance, but the burden to prove intoxication shall at all times rest with the *employer*.
6. No *benefit* shall be payable for psychological or mental injuries.
7. No *benefit* shall be payable if a *covered employee* suffers an *injury* at the place of employment outside the beginning and ending work time in which the *employee* receives wages.
8. An *injury* occurring to an *employee* while on the way to or from work is not within the

course of employment except when such travel is directly connected with the *employee's* work. This exception will not apply if the *employee* deviates from a reasonably direct route of travel, or is not acting in the interest of the *employer* at the time of *injury*.

9. For *traumatic injury*: The claim shall be denied if there is no specific incident which caused the *injury*, and if the *employee* is not performing employment related duties.
10. For *cumulative injury*: The claim shall be denied if the *employee* fails to report a claim within thirty (30) days from the initial onset of pain or *injury*. The claim shall also be reduced for *cumulative injury* based on the *employee's* length of employment. See section 02.10.027.
11. *Compensation* shall not be paid for any period during which the *employee* is incarcerated, regardless the nature of the penal institution in which the *employee* is incarcerated, and regardless the reasons for or period of such incarceration. Such incarceration shall not toll the running of any time period during which an *employee* is eligible for *benefits*.
12. *Compensation* shall not be paid for any period during which the *employee*:
 - a. does not have authorization from the company's physician provider to be off work;
 - b. is terminated for misconduct, declines or quits work offered by the *employer* within the *employee's* physical restrictions;
 - c. fails to cooperate with reasonable *medical* or vocational rehabilitation; and or fails to make a diligent effort to find employment;
 - d. fails to report any other employment or wages.
13. Non-Compliance: If the *Administrator* determines that there is an issue of non-compliance by the *employee* with authorized *medical* treatment, the *Administrator* will notify the *employee* in writing they have seven (7) days to contact them to resolve the non-compliant issue or the *Occupational Injury Benefits* will be denied from the date of the letter forward.
14. Documented evidence that the *employee* has failed to follow physician's restrictions on two or more occasions, while either at work or outside the work place will result in a denial of future *Occupational Injury Benefits*.
15. Any *employee* who leaves the employment of a covered *employer* and who later seeks employment with the same *employer* or another covered *employer* shall declare in writing whether the *employee* is claiming any *injury* under this section from the prior employment. Failure to declare a claim of prior *injury* shall be deemed a claim of no *injury* and any subsequent *injury* under this section shall be determined in accordance

with section 02.10.027

16. Claims due to tobacco use or second-hand smoke in the workplace shall not be compensable.
17. Claims due to injuries caused by mold in the workplace shall not be compensable.

This section shall not be construed to require the *employee* to undergo unreasonably invasive *medical* procedures, nor to require the *employer* to provide vocational rehabilitation.

02.10.006 AGGRAVATION OF PRE-EXISTING INJURY

For the purpose of settlement for permanent partial or permanent total disability, the amount of the *benefit* for that disability as set forth in the schedule of *benefits* may be reduced or denied in its entirety by the *Administrator* for pre-existing disability, whether work related or not. Apportionment for prior medically documented disability ratings may be used in calculating any *permanent partial* or *permanent total disability*.

02.10.007 DISCLOSURE OF PRE-EXISTING DISABILITIES

1. If requested, all *employees* of the Minnesota Chippewa Tribe shall disclose any pre-existing physical or mental disorder or disability known to the *employee* that would prevent them from performing in a reasonable and safe manner the activities involved in the position applied for or in which they work. Following such request, failure by the *employee* to disclose, prior to commencement of employment, a physical condition which prevented the *employee* from safely performing the work for which the *employee* was hired and which was a substantial contributing factor to the *injury* shall exclude the *employee* from coverage under the provisions of this Tribal Occupational Injury Ordinance.
2. Any claim resulting from an employment related aggravation of a pre-existing condition which was not disclosed as required under this program may be declined by the *Administrator* under this program if the *claimant* had knowledge of the pre-existing condition and failed to disclose the pre-existing condition as required by subsection (1).

02.10.008 BENEFITS AS AN EXCLUSIVE REMEDY

The right to receive *benefits* pursuant to the provisions of this program for injuries sustained by a covered injured *employee* regardless where the *injury* occurred shall be the exclusive remedy against the Minnesota Chippewa Tribe, its agents, officials and *employees*.

02.10.009 CHOICE OF REMEDY AS WAIVER OF ALTERNATE REMEDY

1. An *employee* or the *employee's* dependents or legal representative, who accepts *occupational injury benefits*, waives the right to exercise any other legal remedy.
2. An *employee* or the *employees'* dependents or legal representative, who exercises any other legal remedy against an *employee*, agent, or official of the Minnesota Chippewa Tribe, waives any right to *occupational injury benefits*.

02.10.010 ACCESS TO MEDICAL RECORD AND MEDICAL REPORTS

1. An *employee*, by filing a claim under this program, waives any claim to doctor/patient privilege. The Authorization to Release Medical Records form (Form B) must accompany the First Report of Occupational Injury form (Form A).
2. The Minnesota Chippewa Tribe or the *Administrator* shall have the right to present specific questions required to evaluate the claim, and to request a full and complete report from the *employee's* physician or surgeon or other medical worker at any time and in the form and detail as deemed necessary.
3. The *employee* shall provide the Minnesota Chippewa Tribe or the *Administrator* with Form B to obtain any *medical* information. Failure to execute a waiver or release for such *medical* information will result in an automatic denial of all *benefits*.

02.10.011 REPORT OF INJURY

1. No *compensation* shall be due under this Ordinance unless the *employer* has clear reason to know of the *injury* or the *employee* provides the *employer* with notice of the *injury* within thirty (30) days after the occurrence of the *injury*. A *traumatic* or *cumulative injury* or *occupational disease* is deemed to have occurred when the *employee* knows or has reason to know that the *injury* or disease is related to the *employee's* work activities, or when the *injury* or disease causes the *employee* to be unable to work, whichever occurs first.
2. All incidents resulting in death must be reported to the *Administrator* within twenty-four (24) hours of the time of occurrence or knowledge of the alleged occurrence by the Minnesota Chippewa Tribe.
3. When an *injury* or *occupational disease* occurs, the *employee* or *claimant* must also file their claim with the *Administrator* within the time specified by Section 02.10.012.
4. Time limits shall be calculated using calendar days.

02.10.012 TIME LIMIT FOR FILING OF CLAIM

1. *Traumatic* and *Cumulative* injuries: No *compensation benefits* shall be paid or awarded

under this Ordinance unless the written claim for *benefits* is made within thirty (30) days from the date of the claimed *injury* or onset of symptoms in the case of *cumulative injury*. Within thirty (30) days of the date of the written notice of claim, the *employee* must seek treatment, or no *benefits* will be payable hereunder.

2. A claim for *benefits* will be precluded from being processed where more than one year has elapsed from the date of last *medical* treatment for a covered *injury* or where more than one year has elapsed from the date after the *employee* has reached *maximum medical improvements*, and the *employee* has not prosecuted the claim.
3. In the case of *occupational disease*, no *compensation benefits* shall be paid or awarded under this Ordinance unless the *employee* or the *employee's* dependents or representative file a claim within ninety (90) days from the date of discovery of the disease and its probable relationship to the employment, but in no event longer than ninety (90) days from the date *employee* terminates employment with the Minnesota Chippewa Tribe or ninety (90) days after the date of death, whichever occurs first.

02.10.013 FALSE STATEMENT OR REPRESENTATION TO OBTAIN BENEFITS AND FORFEITURE

Any person who willfully makes a false statement or representation in order to obtain any *benefits* under this program shall forfeit all rights to such *benefits*.

1. The *employee* shall repay such *compensation* that the *employee* is not entitled to and is received because of clerical error, mistaken identity, innocent misrepresentation mistakenly acted upon, or any other circumstance of a similar nature and not induced by fraud.
 - a. Recoupment may be made from any future payments due the *employee* on any workers benefit claim. Or if no future payments are due to the *employee* a payment plan shall be arranged between the *Administrator* and *employee*.
 - b. The *Administrator* or *employer* must make a claim for such repayment or recoupment within one year of when the *compensation* is paid or the repayment shall be barred.
 - c. The *Tribal Court* may waive, at its discretion and in whole or in part, the amount of such timely claim where the recovery would be against equity and good conscience.
2. Whenever the payment of *compensation* to a *worker* has been induced by proven fraud, the recipient shall repay any such *compensation* together with a penalty of fifty percent (50%) of the total of any such payments.

- a. Recoupment may be made from any future payments due the *worker* on any worker benefit claim. Or if no future payments are due to the *employee* a payment plan shall be arranged between the *Administrator* and *employee*.
3. The *Administrator* or *employer* shall make a claim for repayment or recoupment within one year of discovery of the fraud.

02.10.014 *MEDICAL EXAMINATION OF EMPLOYEE; PERIODIC INDEPENDENT MEDICAL EXAMINATIONS; EFFECT OF REFUSAL OR OBSTRUCTION OF EXAMINATION OR TREATMENT*

1. An *employee* shall have only one treating health care provider at a time coordinating the *employee's* medical care. All *medical* appointments must be approved and authorized by the *employer*, except in acute emergency situations. Any change in a health care provider must be approved by the *Administrator* prior to engagement of a new health care provider, except in emergency situations. Services rendered by a health care provider prior to such approval shall not be the responsibility of the *employer* and shall not be paid.
2. The *Administrator* may reduce or suspend the *benefits* of an *employee* whose actions interfere with or prolong the *employee's* recovery, including where the *employee* fails to timely seek appropriate *medical* attention, or reports ongoing treatment by a treating physician when in fact such treatment is not occurring, or who fails or refuses to seek treatment with the *employer's* approved *medical* providers. If an *employee* has two consecutive, unexcused scheduled appointments without authorization from the *Administrator* it could result in a suspension of all *benefits*.
3. An *employee* entitled to *benefits* shall submit to independent *medical* examinations at a place reasonably convenient for the *employee*, if and when requested by the *Administrator*.
4. The request for *medical* examination shall fix a time and place for such examination, having regard to the convenience of the *employee*, the *employee's* physical condition and ability to attend. The *employee* may have a health care provider present at the examination if procured and paid for by the *employee*.
5. If the *employee* refuses to submit to the *medical* examination or obstructs the examination, the *employee's* right to *benefits* shall be suspended until the examination has been made, and no *benefits* shall be payable during or for such period of refusal.

02.10.015 *WAITING PERIOD*

No *weekly benefits* shall be allowed under the provisions of this program for any *injury* or *occupational disease injury*, which results in a disability lasting less than three (3) consecutive

days. If the *worker's* disability lasts for more than fourteen (14) days following the date of the *injury*, *weekly benefits* shall be allowed from the date of disability. The date of *injury* is not considered as a "date of disability" to count towards the waiting period. An *employee* may not recover *weekly benefits* for the period of time that they are compensated by annual or sick leave, at the *employee's* option. Annual or sick leave time taken shall apply against the waiting period of *weekly benefits*. If the *employee* files for and receives short term or long term disability *benefits* through their *employer* for a worker benefit claim, the *employee* has waived their rights to recover *compensation* under the Ordinance.

02.10.016 *TEMPORARY TOTAL DISABILITY (TTD)*

1. *Temporary Total Disability (TTD) benefits* are payable until an injured *employee* returns to work, is medically capable of returning to employment substantially similar to employment in which the *employee* was engaged at the time of *injury* or until the date the *employee* reaches *maximum medical improvement*, as defined in 02.10.020, whichever occurs first. If the *employer* offers work within the *employee's* restrictions and the *employee* refuses to accept the work, the *employee* shall not be paid *TTD benefits* during the period of refusal. *TTD benefits* will end on the date the physician releases an *employee* to full duty work, or in the case of modified duty work, the date the *employer* notifies the *employee* of work availability.
2. Where an *employee* is entitled to *benefits* under this section and death ensues from any cause unrelated to the *injury* for which *benefits* were paid, all unaccrued *benefits* shall cease and all liability of the Minnesota Chippewa Tribe shall terminate.
3. If an *employee* is terminated for a specific cause and the *employer* has documentation that they have light duty work available within the *employee's* physical restrictions, the *employee* is not entitled to *compensation* under the *Occupational Injury Benefits*.

02.10.017 *TEMPORARY PARTIAL DISABILITY (TPD)*

1. *Temporary Partial Disability (TPD) benefits* are payable when the *employee* returns to work at a lesser paying job, because of the *injury*. *TPD benefits* are payable pursuant to the following:
 - a) If the *employer* offers the *employee* work within the *employee's* restrictions, the *employee* shall accept the work and be paid temporary partial *benefits* based strictly on wage loss. If the *employee* refuses to accept the work, the *employee* shall not be paid *TPD benefits* during the period of the refusal.
 - b) If work is not offered by the Minnesota Chippewa Tribe and the *employee* elects to perform work with a different *employer*, the *employee* shall be paid *TPD benefits*.
2. As long as the *employer* allows the *employee* to make up any missed time for *medical* appointments, *TPD benefits* will not be paid for any missed time for those *medical*

appointments.

3. Where an *employee* is entitled to *benefits* under this section and death ensues from any cause unrelated to the *injury* for which *benefits* were paid, all unaccrued *benefits* shall cease and all liability of the Minnesota Chippewa Tribe shall terminate.

02.10.018 PERMANENT PARTIAL DISABILITY (PPD)

1. When an *injury* results in a permanent disability, the *employee* may be entitled *Permanent Partial Disability (PPD) benefits* based upon the degree of permanent disability. *Benefits* begin at the termination of *TTD* or *TPD benefits*. If all of the weeks have accrued at the time of the payment, a lump sum payment will be issued. If the weeks have not accrued, the *benefits* will be paid out weekly until all weeks owed are exhausted. There are two types of *permanent partial disability benefits*:
 - a) Scheduled member disabilities - An *employee's* entitlement to *PPD benefits* when a scheduled member is involved is based on functional impairment as assigned by a health care provider. The schedule shown in 02.10.021 represents the number of weeks of *benefits* payable for one hundred percent (100%) loss, or loss of use, of the body member. If the *PPD* rating is less than one hundred percent (100%), the percentage rating is multiplied by the number of weeks shown in the schedule of *benefits* to determine the *PPD benefits* payable.
 - b) Non-scheduled member disabilities - An *employee's* entitlement to *PPD benefits* when a scheduled member is involved is based on functional impairment as assigned by a health care provider. The number of weeks for a body as a whole are four hundred (400).
2. Where an *employee* is entitled to *benefits* under this section and death ensues from any cause unrelated to the *injury* for which *benefits* were paid, all unaccrued *benefits* shall cease and all liability of the Minnesota Chippewa Tribe shall terminate.

02.10.019 PERMANENT TOTAL DISABILITY (PTD)

1. *Permanent Total Disability (PTD)* must be demonstrated by objective *medical* evidence. *PTD* applies only to *non-scheduled injuries* and the factors set forth in 02.10.018 are used to determine if an *employee* is entitled to *PTD benefits*.
2. Where an *employee* is entitled to *benefits* under this section and death ensues from any cause unrelated to the *injury* for which *benefits* were paid, all unaccrued *benefits* shall cease and all liability of the <CUST.INS.NAME> shall terminate.
3. *PTD benefits* could cease or be reduced once the *employee* is eligible for and receiving Social Security Income (SSI).

02.10.020 *MAXIMUM MEDICAL IMPROVEMENT AND RATING; TERMINATION OF BENEFITS*

When an injured or disabled *employee's* physical condition reaches the point after which no significant recovery from or significant lasting improvement to a personal *injury* can reasonably be anticipated, based upon reasonable *medical* probability, the following procedures will be applicable:

1. The *employee* is considered to have reached *maximum medical improvement* and the *employee's* condition shall then be considered stationary and ratable.
2. On claims where *compensation* has been paid, the *employee* shall be notified in writing by the *Administrator* that the *employee's* condition is stationary and ratable. If the physician assigns a permanent partial disability rating as a result of the *injury*, the notice shall also include whether a functional impairment rating has been assigned to the *injury* and the amount that the *Administrator* determines is due under 02.10.021. This notice is referred to as the notice of *maximum medical improvement*.
3. The *Administrator* shall make the initial permanent partial disability payment **within thirty (30) days of service of notice of *maximum medical improvement* unless the *Administrator* disputes the rating. If such a dispute exists, the *Administrator* shall notify the *employee* in writing regarding this.**
4. The *employee* may request an appeal of a notice of *maximum medical improvement* under the procedure for disputed claims in 02.10.023.

02.10.021 *SCHEDULE OF BENEFITS*

1. *Scheduled Member Injuries:*

1. SHOULDER	250 weeks
2. ARM	
a) 2/3 of arm between shoulder & elbow	250 weeks
3. HAND Total	190 weeks
4. THUMB	
a) Total	60 weeks
b) More than one phalange	60 weeks
c) At distal phalange	30 weeks
5. INDEX FINGER	
a) Including metacarpal	35 weeks
b) More than one phalange	35 weeks
c) At distal phalange	17.5 weeks

6. SECOND FINGER	
a) Including metacarpal	30 weeks
b) More than one phalange	30 weeks
c) At distal phalange	15 weeks
7. THIRD FINGER	
a) Including metacarpal	25 weeks
b) More than one phalange	25 weeks
c) At distal phalange	12.5 weeks
8. FOURTH FINGER	
a) Including metacarpal	20 weeks
b) More than one phalange	20 weeks
c) At distal phalange	10 weeks
9. HIP	220 weeks
10. LEG	
a) 2/3 of leg between hip & knee	220 weeks
11. FOOT	
a) At ankle	150 weeks
12. GREAT TOE	
a) Including metatarsal	40 weeks
b) Loss of more than one phalange	40 weeks
c) Loss of one phalange	20 weeks
13. OTHER TOES	
c) Including metatarsal	15 weeks
b) Loss of more than one phalange	15 weeks
c) Loss of one phalange	7.5 weeks
14. ONE EYE	
a) Total Blindness	140 weeks
b) With other eye lost prior to <i>injury</i>	200 weeks
15. EARS	
a) Total deafness, one ear	50 weeks
b) Total deafness, both ears	175 weeks
16. FOR LOSS OF BOTH SHOULDERS, OR BOTH ARMS, OR BOTH HANDS, OR BOTH FEET, OR BOTH LEGS, OR BOTH HIPS, OR BOTH EYES, OR ANY TWO THEREOF, CAUSED BY A SINGLE <i>INJURY</i>	400 weeks

If any portion of the *PPD* rating is attributable to a preexisting condition, whether previously rated or not, the *employee* shall receive *PPD* benefits only for that portion of the permanent *injury* attributable solely to the work *injury*.

2. *Non-Scheduled Injuries* / Industrial Disability shall be paid on the basis of four hundred (400) weeks. *Permanent total disability benefits* for *non-scheduled injuries* are payable as long as the *employee* remains permanently totally disabled or until age sixty-five (65) whichever occurs first.
3. *Permanent partial disability* ratings are to be secured from a qualified health care provider in accordance with the American Medical Association (AMA) guidelines or other nationally recognized rating method.
4. Once the *Administrator* has obtained a *permanent partial disability* rating the *employee* may obtain a *permanent partial disability* rating from a qualified health care provider of the *employee's* choice at the Tribe's expense, subject only to the approval of the fee by the *Administrator*. This opinion must be scheduled within thirty (30) days from the *employee's* notice of *maximum medical improvement*. Once the rating is received from the *employee's* physician of choice, if there is a difference between the two ratings, then the rating average will be taken. This will be the final rating.

02.10.022 **COMPENSATION FOR DEATH**

If an *injury* sustained by a *worker* results in the *worker's* death within two (2) years following the *injury*, *benefits* shall be paid in the amount and to the dependents (as defined in 02.10.022.2a,2b). (Death resulting from *occupational disease* shall be brought within the time limit of 02.10.012 (3)):

1. If there are no eligible dependents, *benefits* shall be limited to the burial expenses, not to exceed \$5,000, and the expenses provided for *medical* and hospital services for the deceased, together with any accrued *benefits* up to the time of death, and shall be payable to the estate of the deceased.
2. If there are eligible dependents, *death benefits* are payable equally on a monthly basis as follows:
 - a) The surviving *spouse* if living with the deceased *employee* at the time of deceased *employee's* death, until remarriage or until age sixty-five (65), whichever occurs first.
 - b) An unmarried *child* under eighteen (18) years of age; or an unmarried *child* under twenty-five (25) years of age who is wholly dependent on the deceased *employee* and is enrolled as a full-time student in an accredited educational institution; or an unmarried *child* who is physically or

mentally incapable of self support and wholly dependent on the deceased *employee* until age twenty-five (25).

4. **Death Benefit:**

- a) *Death benefits* are limited to a maximum of \$750.00 per week.
- b) Burial Expense not to exceed \$5,000.
- c) If the number of eligible dependents changes, *benefits* will be redistributed equitably to the remaining eligible dependents.

02.10.023 PROCEDURES FOR DISPUTED CLAIMS

1. In the event of any dispute over payment, denial or termination of *benefits* payable under this program, the *claimant* shall have the right to appeal the disputed claim as follows:

- a) *Claimant* must request reconsideration by the *Administrator*. The reconsideration request must be made in writing, specifying what action is in dispute, why the *claimant* disagrees with the *Administrator's* action and the desired result. Any additional supporting documentation or evidence to be considered must be submitted by the *claimant* with the reconsideration request unless an extension of time to submit such evidence is specifically requested in the reconsideration request. The request for reconsideration must be filed within thirty (30) calendar days of the date of the *Administrator's* adverse action or decision. A reconsideration request is deemed filed upon mailing by regular or certified mail. Failure to request reconsideration within the above time period shall be deemed a waiver of any further rights of appeal herein.
- b) Upon denial of the reconsideration request or an adverse decision of the reconsideration request, the *claimant* may request a hearing before the Tribal Court. The hearing request must be made in writing and shall contain a plain, concise statement of the disputed action of the *Administrator*, the date of the action and the *claimant's* reasons for appeal. Any issues not raised in the request for hearing application by either party are deemed waived. Any new supporting documentation or evidence to be considered must be submitted by the *claimant* with the hearing request unless an extension of time to do so is specifically requested in the hearing request. A request for hearing must be filed by mail or hand-delivered within fourteen (14) calendar days of the date of the *Administrator's* adverse decision to the Tribal Court. A hearing request is deemed filed upon mailing by regular or certified mail. Failure to request a hearing within the above time period shall be deemed a waiver of any further right of appeal herein.

2. The burden of proof, throughout the above appeal process, rests on the covered *worker* to

prove that the *worker* sustained an *injury* which is directly related to the employment and that the *employee* is entitled to the *benefits* claimed under this program.

3. A *claimant* may be represented in an appeal by any person. Attorney fees shall be limited to twenty-five percent (25%) of the first \$2,000 of increased *benefit* and twenty percent (20%) percent of the remaining increased *benefit* obtained by a *claimant* or the maximum fee of \$4,500. "Increased *benefit*" means any *benefits* above those provided by the original decision of the *Administrator*. It is the *claimant's* responsibility to pay the representative.
4. Hearing procedures before the Tribal Court:
 - a) Upon filing of a request for hearing before the Tribal Court, a copy of the hearing request and all supporting evidence submitted by the *employee* shall be sent by the Minnesota Chippewa Tribe Executive Director to the *Administrator* within fourteen (14) calendar days of receipt of the hearing request. The *Administrator*, as the adverse party in this proceeding, shall have fourteen (14) calendar days to file a written response with the *Tribal Court*, with a copy to the *employee*. Any issues not raised at the time of hearing by either party are deemed waived.
 - b) A *claimant* or the *claimant's* representative shall have the right, in all matters presented before the Minnesota Chippewa Tribe, to cross-examine all witnesses and to review all evidence of any nature, as may relate to the matter under consideration. However, attorney fees are limited as provided in 02.10.023(3).
 - c) The Minnesota Chippewa Tribe, the *Administrator* and the *claimant* shall have the right to cross-examine all witnesses and to perform such discovery activity as may be deemed necessary to fully explore all aspects surrounding the occurrence and *injury*.
 - d) The Tribal Court shall apply the rules of evidence and rules of procedure in such a manner that is best calculated to ascertain the substantial rights of the parties and to carry out the spirit of the Minnesota Chippewa Tribe Tribal Occupational Injury Ordinance. Either party may request development of further *medical* evidence. The *Administrator* has the right to designate an examining *medical* expert at the *Administrator's* expense. Failure of the *employee* to comply with any reasonable request for examination will result in dismissal of the *employee's* appeal with prejudice.
5. A full and complete record shall be kept of all proceedings held before the Tribal Court for investigation, appeals, or the taking of testimony by an electronic recording means. A party may request the proceeding be reported by a certified stenographer at the requesting party's expense.
6. The Tribal Court shall convene as necessary, but in no event will an *employee* be deprived of a hearing for more than forty-five (45) days after the Tribal Court's receipt of written hearing request, unless a request for extension of time has been filed by a party.

7. All parties shall have the right to request a continuance of the hearing after it has first convened for the purpose of further developing evidence.
8. A written decision will be issued by the Tribal Court within ninety (90) days of the hearing, which will become final and binding on the parties.
9. During the pendency of the appeal, *claimant* shall continue to receive all *benefits* approved by the *Administrator* in its original written decision, but shall not receive any new *benefits* claimed in the appeal. Payments made to *claimant* during the pendency of an appeal shall not be recouped or recovered by the *Administrator* or the Minnesota Chippewa Tribe.
10. Any award agreed to by the *claimant* for *benefits* under this program shall constitute a full and final settlement and all *benefits* shall cease upon settlement, except where the award provides for other than a lump sum settlement. If other than a lump sum settlement, the terms of the award agreement shall apply.

02.10.024 EXPERTS

1. The *employee* may engage the services of *medical* or vocational experts for purposes of a disputed claim, at the *employee's* cost, which is not reimbursable regardless of the ultimate outcome of the dispute. The opinions of such experts will be considered in a disputed case, notwithstanding the lack of authorization under this system.

02.10.025 LIABILITY OF THIRD PERSON TO INJURED EMPLOYEE; SUBROGATION POWERS

1. If a *covered employee* entitled to *benefits* under this system is injured or killed by the negligence or wrongful actions of another person(s) not in the employ of the Minnesota Chippewa Tribe, such injured *employee*, or dependents in the event of death, may pursue a remedy against such other person while receiving *benefits* under this system. If the *employee* entitled to *benefits* under this system or dependents do not pursue a remedy against such other person by instituting an action within one year after the cause of action accrues, the claim against such other person shall be deemed assigned to the Tribal Occupational Injury Ordinance. Such a claim so assigned may be prosecuted or compromised by the *Administrator* for *benefits* paid. **Acceptance of *benefits* under this Ordinance constitutes an assignment of the *employee's* rights to the *employer* to the extent of *benefits* paid or payable.**
2. If *employee* or dependents proceed against such other person, *occupational injury benefits* shall be paid as provided in this program and the Tribal Occupational Injury Ordinance shall have a lien on the amount recovered from such other person to the extent *occupational injury benefits* were owed or paid. Compromise of any claim by the *covered employee* or the *employee's* dependents at an amount less than the *weekly benefits* owed or paid shall be made only with written approval of the *Administrator* of the Tribal Occupational Injury Ordinance.

3. The *Administrator* of the Tribal Occupational Injury Ordinance shall have the right of subrogation for the amount of *occupational injury benefits* paid under this program, upon the resolution of a claim or completion of a settlement with the *claimant*.

02.10.026 SCHEDULE OF *BENEFITS* PAYABLE FOR *CUMULATIVE* OR *REPETITIVE ARM INJURY*, INCLUDING *CARPAL TUNNEL SYNDROME*

Benefits for *cumulative* or *repetitive arm injury*, including carpal tunnel syndrome will be reduced if the *worker* has been employed (based on date of hire) for a limited time as follows:

1. *Workers* are not eligible for *compensation* when employed full-time for a period up to 4 months.
2. *Workers* receive twenty-five percent (25%) of eligible *compensation* for a claim made while employed full-time for a period of 4-8 months.
3. *Workers* receive fifty percent (50%) of eligible *compensation* for a claim made while employed full-time for a period of 8-12 months.
4. *Workers* receive seventy-five percent (75%) of eligible *compensation* for a claim made while employed full-time for a period of 12-18 months.
5. *Workers* are eligible for full *compensation* for a claim made after being employed full-time more than 18 months.
6. The time frames, which are provided above, should be lengthened appropriately for *workers* who are employed on a part-time basis.

SUPPLEMENT I (See 02.10.001)

NOTICE TO EMPLOYEES

YOUR EMPLOYER IS INSURED UNDER THE MINNESOTA CHIPPEWA TRIBE TRIBAL OCCUPATIONAL INJURY ORDINANCE

If you have an injury or occupational disease arising out of and in the course of your employment with the Tribe, you may be entitled to benefits as provided by the Minnesota Chippewa Tribe Tribal Occupational Injury Ordinance.

NOTIFY YOUR SUPERVISOR IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT.

If you fail to do so, you may lose your benefits under the Tribal Occupational Injury Ordinance. In no event shall benefits be paid to an employee who failed to notify their employer within thirty (30) days after sustaining such work related injury.

Your exclusive remedy for any such work related injury or disease is through the Minnesota Chippewa Tribe Tribal Occupational Injury Ordinance. The State Workers Compensation Commissioner will not accept a claim from you as you are employed by a sovereign Indian Nation which has exclusive jurisdiction over this Tribal Occupational Injury Ordinance.