

St. Croix Chippewa Indians of Wisconsin

24663 Angeline Avenue • Webster, WI 54893 • (715) 349-2195 • Fax (715) 349-5768

ST. CROIX TRIBAL COUNCIL RESOLUTION NO. 10.07.2021.01

ADOPTION OF AMENDMENTS TO TITLE 11, CHAPTER 1 “WORKER’S COMPENSATION ORDINANCE”

WHEREAS, the St. Croix Chippewa Indians of Wisconsin (the “**Tribe**”) is federally recognized Indian Tribe duly organized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, as amended, and established pursuant to the Constitution and By-Laws adopted by the Tribe on August 29th, 1942 and approved by the Secretary of the Interior on November 12, 1942; and

WHEREAS, pursuant to Article IV of the Tribal Constitution, the governing body of the Tribe shall be the St. Croix Tribal Council (the “**Tribal Council**”); and

WHEREAS, Article V of the Tribal Constitution grants the Tribal Council the authority to regulate, by enactment of ordinances, activities on lands and waters under the jurisdiction of the Tribe; and

WHEREAS, Article V, Section 1(f) of the Tribal Constitution grants the Tribal Council the authority to regulates its own procedure, appoint boards or committees, and to delegate to such subordinate agencies such powers as may be necessary in the performance of the duties assigned to them, reserving the right to review any action taken by virtue of such delegated power; and

WHEREAS, the Tribal Council has previously enacted the Title 11, Chapter 1, St. Croix Chippewa Indians of Wisconsin Worker’s Compensation Ordinance (the “**Ordinance**”) pursuant to Tribal Council Resolution No. 07.07.04.01, for the purpose of providing a system of compensation and medical benefits for employees of the Tribe and the Tribe’s enterprises who suffer injuries during the course of their employment with the Tribe; and

WHEREAS, the Tribal Council has determined that since its adoption, the Ordinance has not been amended despite the changing needs of the Tribe and the Tribe’s enterprises, and instructed the Worker’s Compensation Benefits Specialists and the Tribe’s Legal Department to work collaboratively in order to prepare suggested amendments for review by the Tribal Council; and

WHEREAS, the Tribal Council has had the opportunity to meet with the Tribe’s Legal Department in order to review the proposed amendments to the Ordinance, and is satisfied that the proposed amendments to the Ordinance address all current necessary needs of the Tribe and that adopting the proposed amendments to the Ordinance would be in the best interest of the Tribe and intends to adopt the proposed amendments to the Ordinance (attached) in their entirety;

NOW THEREFORE BE IT RESOLVED, that the Tribal Council hereby adopts the attached proposed amendments to the Title 11, Chapter 1 St. Croix Chippewa Indians of Wisconsin Worker’s Compensation Ordinance.

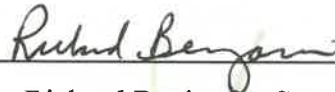
St. Croix Chippewa Indians of Wisconsin

24663 Angeline Avenue • Webster, WI 54893 • (715) 349-2195 • Fax (715) 349-5768

BE IT FINALLY RESOLVED, that the amendments to the Title 11, Chapter 1 St. Croix Chippewa Indians of Wisconsin Worker's Compensation Ordinance shall be effective immediately and shall be distributed to the Worker's Compensation Benefits Specialists, the St. Croix Casino General Managers, the St. Croix Tribal Government Department Directors, the St. Croix Tribal Clinic Health and Human Services Director, and the Fourwinds Market Manager for record keeping and informational purposes.

CERTIFICATION

I, the undersigned as Secretary/Treasurer of the St. Croix Tribal Council hereby certify that the Tribal Council is composed of five (5) members of whom 3 were present, constituting a quorum at a meeting duly called, convened and held this 7 day of OCTOBER, 2021 and that the foregoing resolution was adopted at said meeting by an affirmative vote of 3 members for 0 against and 0 member abstaining from the vote, and that said resolution has not been rescinded or amended in any way.



Richard Benjamin, Secretary/Treasurer
St. Croix Tribal Council
St. Croix Chippewa Indians of Wisconsin

RESOLUTION NO. 10.07.2021.01

Page 2 of 2

William Reynolds
Chairman
Sand Lake

Thomas Fowler
Vice-Chairman
Maple Plain

Richard Benjamin
Secretary/Treasurer
Danbury

Georgia Cobenais
Representative
Round Lake

Conrad St. John
Representative
Sand Lake

**ST. CROIX CHIPPEWA INDIANS OF WISCONSIN
TITLE 11
CHAPTER 1
WORKER'S COMPENSATION ORDINANCE**

Resolution No. 10.07.2021.01

Legislative History:

Established on July 7, 2004 via Resolution No. 07-07-04-01

Amended on October 7, 2021 via Resolution No. 10-07-2021-01

**ST. CROIX WORKER'S COMPENSATION ORDINANCE
TABLE OF CONTENTS**

ARTICLE I – GENERAL PROVISIONS.....	4
11 S.C.T.C. § 01.01(1) Title	4
11 S.C.T.C. § 01.01(2) Authority	4
11 S.C.T.C. § 01.01(3) Interpretation	4
11 S.C.T.C. § 01.01(4) Purpose	4
11 S.C.T.C. § 01.01(5) Scope	4
11 S.C.T.C. § 01.01(6) Severability and Non-Liability	5
11 S.C.T.C. § 01.01(7) St. Croix Tribal Court.....	5
ARTICLE II – DEFINITIONS.....	5
11 S.C.T.C. § 01.02(1) Definitions.....	5
ARTICLE III – REPORTING OBLIGATION.....	7
11 S.C.T.C. § 01.03(1) Reporting Time Limit.....	7
11 S.C.T.C. § 01.03(2) St. Croix Casinos Reporting Obligation.....	8
11 S.C.T.C. § 01.03(3) St. Croix Government Reporting Obligation	8
11 S.C.T.C. § 01.03(4) Fourwinds Market Reporting Obligation	8
11 S.C.T.C. § 01.03(5) St. Croix Enterprises Reporting Obligation	9
ARTICLE IV – MEDICAL BENEFITS.....	9
11 S.C.T.C. § 01.04(1) Medical Benefits	9
11 S.C.T.C. § 01.04(2) Volunteer Medical Benefits	10
ARTICLE V – TEMPORARY DISABILITY BENEFITS.....	11
11 S.C.T.C. § 01.05(1) Temporary Total and Partial Disability Benefits	11
11 S.C.T.C. § 01.05(2) Temporary Total Disability Defined	11
11 S.C.T.C. § 01.05(3) Temporary Partial Disability Defined	11
11 S.C.T.C. § 01.05(4) Light-duty Work.....	12
11 S.C.T.C. § 01.05(5) Temporary Disability Benefits Conclusion.....	12

ARTICLE VI – PERMANENT DISABILITY BENEFITS	12
11 S.C.T.C. § 01.06(1) Permanent Partial Disability Benefit.....	12
11 S.C.T.C. § 01.06(2) Permanent Partial Disability Schedule.....	13
11 S.C.T.C. § 01.06(3) Permanent Partial Disability Benefits Calculation.....	13
11 S.C.T.C. § 01.06(4) Permanent Partial Disability Benefits Payment	13
11 S.C.T.C. § 01.06(5) Permanent Total Disability Benefits	13
11 S.C.T.C. § 01.06(6) Permanent Total Disability Benefits Calculation.....	13
ARTICLE VII – EXCEPTIONS/LIMITATIONS	14
11 S.C.T.C. § 01.07(1) Limitations on Liability.....	14
11 S.C.T.C. § 01.07(2) Recurrence of Compensable Injury	14
11 S.C.T.C. § 01.07(3) Fraud.....	15
ARTICLE VIII – DEPENDENCY BENEFITS	15
11 S.C.T.C. § 01.08(1) Employee Death.....	15
11 S.C.T.C. § 01.08(2) Minor Dependent Children.....	15
11 S.C.T.C. § 01.08(3) Burial Benefits.....	15
ARTICLE IX – ELECTION OF REMEDIES	15
11 S.C.T.C. § 01.09(1) Contributing Parties.....	15
11 S.C.T.C. § 01.09(2) Failure to Subrogate	16
ARTICLE X – ADMINISTRATOR	16
11 S.C.T.C. § 01.10(1) Administrator Responsibility	16
ARTICLE XI – APPEALS	17
11 S.C.T.C. § 01.11(1) Appeals Panel.....	17
11 S.C.T.C. § 01.11(2) Appeals Process.....	17

ARTICLE I – GENERAL PROVISIONS

11 S.C.T.C. § 01.01(1) Title

The Ordinance, as amended and adopted pursuant to Resolution No. [10.07.2021.01] shall be referred to as the Worker's Compensation Ordinance (the "Ordinance") of the St. Croix Chippewa Indians of Wisconsin or the St. Croix Worker's Compensation Ordinance.

11 S.C.T.C. § 01.01(2) Authority

Pursuant to the powers vested to the Tribal Council by Article V, Section 1 of the Constitution and By-Laws of the St. Croix Chippewa Indians of Wisconsin, worker's compensation matters shall be governed by the provisions set forth herein.

11 S.C.T.C. § 01.01(3) Interpretation

The provisions of this Ordinance shall be liberally construed for accomplishment for this purpose. If this Ordinance is inconclusive on any matter, St. Croix Tribal law should be used as precedent. If this Ordinance and St. Croix Tribal law are inconclusive on any matter, federal law, tribal law from other Tribes, and the State of Wisconsin may be used as persuasive evidence and enforced.

11 S.C.T.C. § 01.01(4) Purpose

The purpose of this Ordinance is to provide a system of compensation and medical benefits for Employees of the Tribe who suffer Compensable Injuries in the employment of the Tribe. Benefits under this Ordinance are the Employee's exclusive remedy against the Tribe.

11 S.C.T.C. § 01.01(5) Scope

- (a) All Employees of the Tribe are covered for Compensable Injuries whether the Accident/Incident and/or Injury occur on or off the Reservation, with the exception of "Volunteers," as described below. Benefits are limited as indicated in the following Articles.
- (b) This Ordinance is a self-funded, self-insurance program of the Tribe, a sovereign Tribal Government, and is operated solely for the benefit of its Employees. This Ordinance complies with Wis. Stat. §638 for purposes of federal contracts.
- (c) Nothing in this Ordinance, including any assertion of right or privilege, shall waive or be construed to work as a waiver of the Tribe's sovereign immunity.
- (d) Benefits payable under this Ordinance are considered primary.

11 S.C.T.C. § 01.01(6) Severability and Non-Liability

If any section, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby. The Tribe further asserts immunity on its part and that of its employees and / or agents from any action or damage that may occur as a result of enforcement of this Ordinance.

11 S.C.T.C. § 01.01(7) St. Croix Tribal Court

The St. Croix Chippewa Indians of Wisconsin Tribal Court (the “St. Croix Tribal Court”) was established pursuant to Tribal Council Resolution No. 84.03.19.01. The St. Croix Tribal Court shall have authority to hear cases arising out of this Ordinance unless otherwise specified below.

ARTICLE II – DEFINITIONS

11 S.C.T.C. § 01.02(1) Definitions

In this Ordinance, except where otherwise specifically provided, or where the context otherwise requires, the following terms and expressions shall have the following meanings:

- (a) “*Administrator*” means the company or person with whom the Tribe has contracted with to act on their behalf in the administration of this Ordinance;
- (b) “*Appeal(s)*” means the challenge by an Employee of the determination of their being denied benefits under this Ordinance;
- (c) “*Appeals Panel*” means the panel made up of at least three members of the Tribal Council’s choosing who are tasked with the review and consideration of all Employee Appeals, and the decision to allow or disallow an Employee being provided benefits under this Ordinance;
- (d) “*Compensable*” or “*Compensable Injury*” means any physical injury or illness arising out of and in the course and scope of employment wherever the Tribe requires the Employee to perform employment activities. Injuries which the Administrator deems to be Compensable Injuries shall be either of the following:
 - 1. “*Cumulative Occupational Injury*” means the injury is due to repetitive or cumulative trauma resulting from exposure to specific employment over a period of time. Injuries due to overuse, repetitive or cumulative trauma may be deemed compensable only if the Employee has been employed in a particular position with the Tribe for a minimum of six (6) months and if the condition is established to be related to said employment.
 - 2. “*Specific Accident/Incident*” means the injury is the result of one specific incident or accident which causes disability or need for medical treatment.

- (e) “*Compensation Rate*” means the calculation of sixty-six and two-thirds percent (66 2/3%) of the Weekly Wage, determined as stated below, subject to a maximum of seven-hundred dollars (\$700.00) per week;
- (f) “*Dependent Child(ren)*” means a natural or adopted unmarried child(ren) of the Employee, including a posthumous child(ren), under eighteen (18) years old, or under twenty-two (22) years old if the child(ren) is regularly attending a high school, college, university, vocational, or technical school as a full-time student. Stepchildren, grandchildren, nieces and nephews may be considered dependents, but only if actual dependency can be shown;
- (g) “*Employee*” means any person who performs services for the Tribe at an established wage or salary. For purposes of this Ordinance, Employees include part-time and full-time Employees, temporary and seasonal Employees, new and minor Employees, and members of the Tribal Council. Employees shall not include independent contractors, scholarship recipients, or stipend recipients;
- (h) “*Employer*” means the Tribe where the Tribe has obtained the services of a person for hire;
- (i) “*IME*” or “*Independent Medical Examination*” means a medical examination and/or evaluation of the Employee schedule by the Tribe or Administrator, at the Tribe’s expense, for the purpose of obtaining medical information or opinion;
- (j) “*Injury*” means physical harm to an employee caused by accident or disease;
- (k) “*Primary Physician*” means a licensed medical doctor or chiropractor whom the Employee regularly sees for medical attention, and/or whom the Employee first visits following a Compensable Injury. The Primary Physician must be located within fifty (50) miles of the Employee’s home address;
- (l) “*Referral Physician*” means a licensed medical doctor or chiropractor to whom the Employee is referred by the Employee’s “Primary Physician”, or physician who first treats the Employee after injury, for further specialized treatment with the approval of the Administrator or the Tribe;
- (m) “*Reservation*” means lands proclaimed by the Secretary of the Interior to be reservation lands held in trust for the St. Croix Chippewa Indians of Wisconsin or any lands held in trust by the United States for the benefit of the Tribe;
- (n) “*Spouse*” means the lawful wife or husband of the Employee, unless voluntarily living apart from the Employee at the time of the Employee’s injury or death. This does include traditional marriages, “common law” spouses and those individuals who hold themselves out as spouses. The Tribe reserves the right to request additional information from an Employee to verify a spousal relationship exists for the purposes of this Ordinance;

- (o) “*St. Croix Chippewa Indians of Wisconsin*” means a federally recognized Indian Tribe pursuant to the provisions of the Indian Reorganization Act of 1934, 25 U.S.C. 461;
- (p) “*Supervisor*” means the Employee delegated the authority by the Tribe to oversee another Employee or a group of Employees based on their specific job duties;
- (q) “*Tribal Council*” means the elected governing body of the St. Croix Chippewa Indians of Wisconsin in accordance with the Constitution and By-Laws of the Tribe;
- (r) “*Tribe*” means the St. Croix Chippewa Indians of Wisconsin. Also referred to within this Ordinance as the “Employer;”
- (s) “*Volunteer*” means a volunteer firefighter of the St. Croix Hertel Fire Department, St. Croix Hertel First Responders, or other similar volunteer service of the Tribe, and for the purposes of this Ordinance only is to be considered an Employee and is therefore covered by the provisions of this Ordinance, subject to the limitations described herein;
- (t) “*Waiting Period*” means the first three scheduled work days lost due to Compensable Injury, for which no workers’ compensation benefits will be paid, counted from the first day of disability or medical treatment, whichever occurs later. If the disability continues beyond seven calendar days, compensation is payable for scheduled days lost from the first day of disability. The date of Accident/Incident is not included in the Waiting Period; and
- (u) “*Weekly Wage*” means the average gross weekly wage earned over the past twenty-six (26) weeks of employment for the Tribe and is used to calculate temporary disability benefits.

ARTICLE III – REPORTING OBLIGATION

11 S.C.T.C. § 01.03(1) Reporting Time Limit

An Employee must provide notice of any Injury or Accident/Incident, no matter how slight, within five (5) calendar days of the specific occurrence. Failure to report within the five (5) calendar day deadline will result in no compensation or medical benefits being paid to the Employee. The employee may use email to notify of any Injury or Accident/Incident.

- (a) Holidays. The five (5) calendar days does include any holidays recognized by the Tribe.
- (b) Cumulative Occurring Injury. No compensation or medical benefits will be paid for Cumulative Occurring Injury if the Injury or Accident/Incident is not reported within the required five (5) calendar days of the Employee first receiving medical treatment or first losing time from work due to Injury.

- (c) Incapacity. If the Injury or Accident/Incident incapacitates the Employee, the five (5) calendar days will not begin to run until the incapacity ends.

11 S.C.T.C. § 01.03(2) St. Croix Casinos Reporting Obligation

An Employee must provide notice of any Injury or Accident/Incident, no matter how slight, to their direct supervisor and the Security Medical Officer within twenty-four (24) hours of the Injury or Accident/Incident.

- (a) Security Medical Officer. The Security Medical Officer is an Employee within each location of the St. Croix Casinos who works within the Security Department or the Shift Manager if the Security Department is unavailable. The Security Medical Officer will be the first point of contact for reporting Injuries or Accidents/Incidents and is charged with completing medical reports.
- (b) Received Reports. The Security Medical Officer who has received a reported Injury or Accident/Incident must inform the Workers Compensation Specialist via electronic reporting or other appropriate methods as soon as practical.

11 S.C.T.C. § 01.03(3) St. Croix Government Reporting Obligation

An Employee must provide notice of any Injury or Accident/Incident, no matter how slight, to their direct supervisor and the Tribal Designee within twenty-four (24) hours of the Injury or Accident/Incident.

- (a) Tribal Designee. The Tribal Designee is an Employee who has been designated by the Tribal Council to be the first point of contact for reporting Injuries or Accidents/Incidents.
- (b) Supervisors. Whenever possible, an Employee should report their Injury or Accident/Incident to their Supervisor. The Supervisor must then report the Injury or Accident/Incident as soon as practical to the Benefits Department via appropriate methods. If a Supervisor is unavailable an Employee can report an Injury or Accident/Incident directly to the Benefits Department.
- (c) Benefits Department. After receiving a report of an Injury or Accident/Incident the Benefits Department should then report the Injury or Accident/Incident to the Workers Compensation Specialist.

11 S.C.T.C. § 01.03(4) Fourwinds Market Reporting Obligation

An Employee must provide notice of any Injury or Accident/Incident, no matter how slight, to the Store Manager within twenty-four (24) hours of the Accident/Incident or Injury.

- (a) Store Manager. When possible, an Employee should report their Injury or Accident/Incident to the Store Manager. The Store Manager must then report the Injury

or Accident/Incident as soon as practical to the Benefits Department via appropriate methods. If the Store Manager is unavailable an Employee can report an Injury or Accident/Incident directly to the Benefits Department.

- (b) Benefits Department. After receiving a report of an Injury or Accident/Incident the Benefits Department should then report the Injury or Accident/Incident to the Workers Compensation Specialist.

11 S.C.T.C. § 01.03(5) St. Croix Enterprises Reporting Obligation

For all other entities, businesses, or locations an Employee must provide notice of any Injury or Accident/Incident, no matter how slight, to their Supervisor within twenty-four (24) hours of the Accident/Incident or Injury.

- (a) Supervisors. When possible, an Employee should report their Injury or Accident/Incident to their Supervisor. The Supervisor must then report the Injury or Accident/Incident as soon as practical to the Benefits Department via appropriate methods. If a Supervisor is unavailable an Employee can report an Injury or Accident/Incident directly to the Benefits Department.
- (b) Benefits Department. After receiving a report of an Injury or Accident/Incident the Benefits Department should then report the Injury or Accident/Incident to the Workers Compensation Specialist.

ARTICLE IV – MEDICAL BENEFITS

11 S.C.T.C. § 01.04(1) Medical Benefits

Pursuant to this Ordinance, the Tribe 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 as stated below:

- (a) The Tribe will pay the cost of **medicines, supplies, and equipment** of a therapeutic nature necessary to treat the Compensable Injury only if ordered by the Primary or Referral Physicians. This includes the replacement of items such as hearing aids and eyeglasses if damaged due to the work Compensable Injury or Accident/Incident.
- (b) The Employee is permitted to seek medical treatment and opinion from two physicians of their choosing, but must designate a Primary Physician from those two (excluding emergency room treatment). The Employee may not thereafter change the physician that they have designated at their Primary Physician without the approval of the Administrator or the Tribe. If the injured Employee's condition requires emergency medical treatment at any local emergency facility, including ambulance transportation, this treatment will be covered by the Tribe.

- (c) The Tribe will pay **hospital and related charges** only for services ordered by the Primary or Referral Physicians (excluding emergency room treatment).
- (d) The Tribe will pay **surgical charges** only if the surgery is done on an emergency basis or it has been previously approved by the Administrator or the Tribe. The Administrator or the Tribe may require a second opinion before approving payment for any surgical procedure.
- (e) The Tribe will reimburse the Employee for the reasonable cost of **mileage** in excess of the Employee's first fifty (50) miles accumulated and reported, as determined by the Workers' Compensation Mileage Rate by the Wisconsin Department of Workforce Development.
- (f) The Tribe will compensate the Employee for the **hours missed from work for medical appointments** provided the Employee is unable to schedule the medical appointments outside of work hours.
- (g) The Administrator or the Tribe 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 in rehabilitation efforts as prescribed, the responsibility of the Tribe for payment of all disability benefits under this Ordinance will cease.
- (h) The Employee must provide **written authorization for present and past medical records** when requested by the Administrator or the Tribe. If the Employee fails to provide authorization within twenty (20) days of a written request to do so, the responsibility of the Tribe for payment of all benefits and medical expenses under this Ordinance will cease.
- (i) **Pre-existing Conditions.** If Compensable Injury results in disability that is partially due to a congenital condition or prior disease or Compensable Injury, the benefits payable for the disability will be reduced by the proportion of the disability that is due to the pre-existing condition.
- (j) **Independent Medical Examination.** If the Employee unreasonably fails to appear for and/or fails to cooperate with a scheduled IME, the responsibility of the Tribe under this Ordinance for payment of disability and medical expenses and all other benefits under this Ordinance incurred after the scheduled date of the IME will cease.

11 S.C.T.C. § 01.04(2) Volunteer Medical Benefits

Pursuant to this Ordinance, the Tribe will pay the cost of all reasonable and necessary first aid, medical, surgical, and hospital services incurred by the Volunteer as a direct result of a Compensable Injury as previously stated within 11 S.C.T.C. § 01.04(1), above, with the following limitations:

- (a) The Tribe will not be responsible for payment of Medical Benefits of Volunteers when the Compensable Injury occurs when the Volunteer is responding to a service call off of Tribal Reservation land.
- (b) The Tribe will not be responsible for payment of any Temporary or Permanent Disability Benefits to Volunteers.
- (c) The Volunteer will be required to obtain insurance policy(ies) for any claim(s) not otherwise covered under this Ordinance.

ARTICLE V – TEMPORARY DISABILITY BENEFITS

11 S.C.T.C. § 01.05(1) Temporary Total and Partial Disability Benefits

To obtain Temporary Disability Benefits an Employee's disability must be evidenced by a medical opinion of the Primary Physician or Referral Physician based on an examination and treatment. Payments are limited to the applicable Compensation Rate and Workers' Compensation shall:

- (a) Run concurrently with the Tribe's Family and Medical Leave Act Policy ("FMLP");
- (b) Have compensation based on the date of the Compensable Injury; and
- (c) Payments will not be paid for more than a total of one-hundred and four (104) weeks and will cease at that time or upon the rating and commencement of Permanent (Partial or Total) disability occurs, whichever comes first.

11 S.C.T.C. § 01.05(2) Temporary Total Disability Defined

Temporary Total Disability is defined as that time after the Waiting Period when, solely as a direct result of the Compensable Injury, the Employee is totally disabled from performing the normal duties of the job engaged in at the time of the Compensable Injury, or other light, restricted or modified work offered by the Tribe.

11 S.C.T.C. § 01.05(3) Temporary Partial Disability Defined

Temporary Partial Disability is defined as that time after the Waiting Period when, solely as a direct result of the Compensable Injury, the Employee is partially disabled from performing the normal duties of the job engaged in at the time of the Compensable Injury but can perform other light, restricted or modified work offered by the Tribe.

11 S.C.T.C. § 01.05(4) Light-duty Work

A Temporary Partial Disability may result in an Employee's reassignment to "light-duty" or "transitional" work until medically able to return to the regular schedule and duties of employment the Employee was engaged in at the time of the Compensable Injury

- (a) "Light-duty" may include positions at any tribal facility and will be limited to a maximum of six (6) months, during which time the Administrator will reevaluate.
- (b) In instances where "light-duty" or modified duty results in diminished wages as compared to the weekly wage at the time of the Compensable Injury of the Employee, the Employee shall be entitled to Temporary Partial Disability payments at a rate of sixty-six and two-thirds percent (66 2/3%) of the difference between actual weekly earnings during the period of "light-duty" or modified and the pre-injury weekly wage.

11 S.C.T.C. § 01.05(5) Temporary Disability Benefits Conclusion

Temporary Total or Temporary Partial Disability benefits as to that body part, except Medical as provided under this Ordinance, will cease upon the Employee's receiving Maximum Medical Improvement status by a licensed physician, or any of the following:

- (a) The Employee returns to work in the original position engaged in at the time of the Compensable Injury;
- (b) The Employee refuses light, restricted or modified work offered by the Tribe;
- (c) The Employee returns in another permanent position at no less than eighty-five percent (85%) of the pre-Compensable Injury wage or declines the offer of such work therefore voluntarily terminating;
- (d) The Employee voluntarily terminates their employment with the Tribe;
- (e) The Employee is issued payment of Permanent Partial or Permanent Total Disability; or
- (f) The Employee becomes incarcerated. Resumption of Temporary Total or Temporary Partial Disability benefits will resume when the Tribe receives notice of release from incarceration provided the Employee still qualified to receive those benefits.

ARTICLE VI – PERMANENT DISABILITY BENEFITS

11 S.C.T.C. § 01.06(1) Permanent Partial Disability Benefit

This benefit is intended to compensate the injured Employee for any permanent loss of a body part or loss of use of a body part suffered directly as a result of a Compensable Injury. Pre-existing disabilities are not to be included when rating a Permanent Disability.

11 S.C.T.C. § 01.06(2) Permanent Partial Disability Schedule

All rating of Permanent Disability shall be based on the Wisconsin Workers' Compensation Permanent Partial Disability Schedule (the "Schedule" in effect on the date of the Compensable Injury).

- (a) In cases of Permanent Partial Disability due to Compensable Injury to a body part not otherwise compensated in the Schedule, compensation shall be paid at the prescribed rate and applicable time as specified for the total loss of the body part bearing the closest relation.

11 S.C.T.C. § 01.06(3) Permanent Partial Disability Benefits Calculation

Benefits paid for Permanent Partial Disability shall be based on the date of the Compensable Injury and computed at two-thirds (2/3) of the average weekly earnings of the Employee, up to the maximum weekly benefit according to the Wisconsin Department of Workforce Development Maximum Wage and Rate Chart. This amount is multiplied by the permanent partial disability rate and then by the number of applicable weeks in the Schedule.

11 S.C.T.C. § 01.06(4) Permanent Partial Disability Benefits Payment

The amount payable to the Employee shall be paid on a monthly installment (annuity) basis commencing as soon as reasonably possible after receipt of the rating by the Administrator, but no later than ninety (90) days after receipt unless the Administrator has scheduled an IME.

- (a) The amount payable to the Employee may be paid in a lump sum payment when:
 - 1. The payment is an appropriate amount for a lump sum payment as determined by the Tribe; and/or
 - 2. The Employee and the Employer reach a settlement or agreement which allows for the payment of a lump sum amount.
- (b) Permanent Partial Disability benefits are not payable to the Employee's Dependents or heirs, regardless of the cause of death of the Employee.

11 S.C.T.C. § 01.06(5) Permanent Total Disability Benefits

A Permanent Total Disability is a disability that precludes the injured Employee from any and all gainful employment. Pre-existing disabilities are not to be included when rating a Permanent Disability.

11 S.C.T.C. § 01.06(6) Permanent Total Disability Benefits Calculation

Compensation shall be paid at the same rate as is paid Temporary Disability benefits, described above, or a settlement shall be negotiated using the U.S. Life Expectancy Tables.

ARTICLE VII – EXCEPTIONS/LIMITATIONS

11 S.C.T.C. § 01.07(1) Limitations on Liability

Liability for compensation shall not exist against the Tribe for any Injury or death if the Injury is caused by any of the following:

- (a) The Employee's willful misconduct, as defined by Wisconsin law;
- (b) The Employee's intentional self-inflicted injury;
- (c) The Employee's attempt to injure another;
- (d) The Employee's intoxication, by alcohol or the unlawful use of a controlled substance;
- (e) The Employee's commission of a crime;
- (f) The Employee's voluntary participation in an off-duty recreational, social, or athletic activity including but not limited to Tribally-sponsored activities;
- (g) Stress or mental anguish, unless the Employee's standard job duties are those that include regular or expected exposure to actual or threatened death, serious injury or sexual violence, or regular or expected exposure to high trauma experiences, or unless attributable by a preponderance of evidence to a sudden and extraordinary employment event;
- (h) The Employee's failure to properly use Tribally-provided safety equipment or to follow specified Safety Procedures and Regulations;
- (i) The Employee did/does not seek medical evaluation or treatment within thirty (30) days of filing the written report;
- (j) Benefits shall not be paid for additional body parts the Employee claims to be included in the Compensable Injury not identified at the time of the Compensable Injury or within thirty (30) days of the date of the Compensable Injury; and/or
- (k) Environmental tobacco (second-hand smoke) claims.

11 S.C.T.C. § 01.07(2) Recurrence of Compensable Injury

If an Employee suffers a **recurrence** of a Compensable Injury while employed by the Tribe within one year from the date on which the Employee returned to full-time, light, restricted, or modified work, the recurrence will be considered a continuation of the earlier claim and Compensable Injury, and subject to the monetary and time limitations of the initial claim. A

recurrence occurring in another non-Tribal employment is not compensable under this Ordinance.

11 S.C.T.C. § 01.07(3) Fraud

Any Employee who, with intent to defraud, receives Workers' Compensation benefits under this Ordinance by knowingly misrepresenting, misstating, or failings to disclose any material fact may be required to reimburse the Tribe for all benefits received and may be subject to immediate termination or other disciplinary action. An action to recover amounts unlawfully received may be commenced with the filing of an action in the St. Croix Tribal Court.

ARTICLE VIII – DEPENDENCY BENEFITS

11 S.C.T.C. § 01.08(1) Employee Death

In the event of the death of an Employee due to a Compensable Injury, a payment of one-hundred thousand dollars (\$100,000.00) will be payable to the Spouse or Dependent Child(ren) of the deceased Employee.

11 S.C.T.C. § 01.08(2) Minor Dependent Children

Benefits payable to minor Dependent Child(ren) shall be paid to a parent, guardian, or other responsible party as directed by the Tribe and held in trust for the use of and benefit of the Dependent Child(ren).

11 S.C.T.C. § 01.08(3) Burial Benefits

In cases where the Employee's death proximately results from the Compensable Injury, the reasonable expenses for burial or other appropriate services, for an amount not exceeding ten-thousand dollars (\$10,000.00), shall be paid directly to the funeral home unless otherwise covered.

ARTICLE IX – ELECTION OF REMEDIES

11 S.C.T.C. § 01.09(1) Contributing Parties

If an Employee's Compensable Injury or death is caused by or contributed to a party other than the Employee or the Tribe, the Administrator may recover from the contributing (liable) party/parties the amount paid on behalf of the Employee for Medical and Disability under this Ordinance. The Employee shall sign any document to reflect this subrogation.

11 S.C.T.C. § 01.09(2) Failure to Subrogate

If the Employee, a person acting on behalf of the Employee (the “Agent”), or surviving Dependents fail to subrogate recovery or fail to cooperate in the pursuit of that action, all benefits under this Ordinance will cease and the Employee, Agent, or Dependents will be required to reimburse the Tribe for any benefits paid to or on behalf of the Employee, Agent, or Dependents under this Ordinance.

ARTICLE X – ADMINISTRATOR**11 S.C.T.C. § 01.10(1) Administrator Responsibility**

The Administrator will act on behalf of the Tribe in receiving and processing Workers’ Compensation claims under this Ordinance. The Administrator’s authority to review, negotiate, and pay settlements of Workers’ Compensation claims filed by Employees is governed and limited solely by the contract agreement between the Tribe and the Administrator. The responsibility of the Administrator to make determinations and decisions will include, but not be limited to, the following areas:

- (a) Based upon investigation and available medical information, the Administrator will make a determination of the responsibility of the Tribe, and will either accept or deny a claim. Within thirty (30) days of the receipt of a First Report of Injury, the Administrator will advise the Employee and the Tribe of its determination. If denied, the Administrator will inform the Employee in writing of their right to Appeal the determination.
- (b) The Administrator will determine the reasonableness and necessity of medical care and charges and will determine amounts payable under this Ordinance. The Administrator will also approve or disapprove any surgical procedure, change of Primary Physician, or Referral Physician.
- (c) Based on information submitted by the Tribe’s Workers Compensation Specialist and/or medical professionals, the Administrator will determinate the Compensation Rate payable for Temporary Total Disability, Temporary Partial Disability, Permanent Partial Disability, and dependency.
- (d) The Administrator will seek pre-approval from the Tribe’s Benefit/Compensation Office for all bills or payments above seven thousand five hundred dollars (\$7,500).
- (e) The Administrator will determine the length of time during which Temporary Total Disability or Temporary Partial Disability benefits are payable, not to exceed one-hundred and four (104) weeks.
- (f) The Administrator will determine eligibility of Dependents and the term of any Dependency Benefits payable.

- (g) In the event of the need to allocate Dependency Benefits between Dependents living in different households, or burial expense, the Administrator will make the necessary allocation, based on the obligations, legal or otherwise, of the Employee.
- (h) If an Employee claim is subject to the limitation of recurrence, the Administrator will advise the Employee and the Tribe of the effect of this limitation in writing.
- (i) The Administrator will cooperate with the Tribe in protecting subrogation rights under Article IX, above.

ARTICLE XI – APPEALS

11 S.C.T.C. § 01.11(1) Appeals Panel

The Appeals Panel will hear any issues and make any necessary final determination relative to Compensability of an injury, medical care or charges, extent of disability, dependency, or any other issue that may arise under this Ordinance.

11 S.C.T.C. § 01.11(2) Appeals Process

The following shall be the procedure for Employees to Appeal a decision:

- (a) Any Employee or Dependent who disagrees with a determination made by the Administrator must, within thirty (30) days of the determination, send a written request to the Administrator or the Tribe's Workers Compensation Specialist requiring a hearing before the Appeals Panel and the reason for Appeal.
 - 1. For purposes of this Ordinance, a written request shall include an email, fax, or other written form of communication.
- (b) The matter will be scheduled for a hearing before the full Appeals Panel within ninety (90) days of the receipt of the request for a hearing from the Employee or Dependents. The Tribe or Dependents may request an extension of up to ninety (90) days, which must be granted by the Appeals Panel.
- (c) If the reports have not been previously disclosed, all documentation relating to the claimed injury must be filed with the Appeals Panel and served on all parties at least fifteen (15) days prior to the hearing date, in order to be considered during the appeal.
- (d) The burden of proof in any hearing before the Appeals Panel will be on the Employee or Dependents.

- (e) The Appeals Panel will weigh the evidence, including hearing testimony, and considering exhibits, and will make its decision on the basis of the preponderance of the evidence and creditability of the evidence presented.
- (f) The Employee or Dependents may have legal representation at any hearing before the Appeals Panel. The cost of representation and the responsibility of obtaining representation will be borne by the Employee or Dependents.
- (g) Any decision of the Appeals Panel must have the concurrence of a majority of the Appeals Panel to have legal effect. All decisions are final and are not subject to further Appeal.
- (h) An Appeals Panel decision must be issued in writing within thirty (30) days of the hearing, and copies must be mailed to all interested parties. The decision does not need to recite or review the evidence or testimony, or compare the merits of the evidence or testimony of the opposing party. The decision only needs to specify the final determination of the Appeals Panel.