

**WAGANAKISING ODAWAK STATUTE 2017-003**  
**WORKERS' COMPENSATION STATUTE**

**SECTION I.           SHORT TITLE**

This Statute shall be entitled "Workers' Compensation" Statute. This statute rescinds and replaces any and all previous Statutes, Resolution, Regulations and/or policies related to this subject matter, including WOS 2013-005.

**SECTION II.          PURPOSE**

To authorize such employment benefits for employees of the Tribe and its sub-entities to which the employee would be entitled to for accidental injuries sustained by the worker arising out of and in the course of their employment which require medical services or result in disability or death.

**SECTION III.         DEFINITIONS**

**A.**     "Average Weekly Wage" means the average of the highest 39 weeks of the last 52 weeks of gross wages prior to injury. In the case of a worker who has not worked for an employer within the immediate preceding twelve (12) months, the average weekly wage shall be calculated based on the salary level the worker was hired at or is currently receiving. For workers serving as volunteers, the average weekly wage shall be the salary of similarly paid positions for the employer performing similar work.

**B.**     "Child" includes dependent natural legitimate children, dependent stepchildren, adopted children and recognized illegitimate children; but does not include married children unless they are shown to be dependents.

**C.**     "Claim" means a claim filed with the administrator by or on behalf of a worker for benefits provided under this Statute.

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D. "Claimant" means the injured worker or, in the event of death of the worker, dependents of the deceased.

E. "Death" is any fatality of the worker proximately and directly caused by work injury or occupational disease.

F. "Dependents" means the following persons:

1. The widow or widower; if married; or in a relationship similar to that of a person related by marriage; and living with the deceased at the time of deceased's death and legally entitled to be supported by the deceased as a dependent.

2. A child under eighteen (18) years of age, or a dependent with a disability and is incapable of self-support, unmarried and dependent upon the deceased; or a child under twenty-five (25) years of age enrolled as a full-time student in an accredited education institution at the time of the worker's injury.

3. A grandchild, brother or sister, niece or nephew of the worker under eighteen (18) years of age, who were wholly dependent on the earnings of a deceased worker for support at the time of his on-the-job injury.

G. "Disability" means a limitation of an employee's wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work related disease. The establishment of disability does not create a presumption of wage loss.

H. "Employer" shall mean the Tribe, and its sub-entities, all departments and agencies of the Tribal Government Administration and commercial entities of the Little Traverse Bay Bands of Odawa Indians, including the Odawa Casino Resort and ancillary enterprises and activities.

I. "Injury" means an action that causes, contributes to or aggravates any physical or mental impairment, including, without limitation, death and/or occupational disease arising out of and in the course and scope of employment.

**J.** “Maximum Weekly Rate” means 90 percent of the state average weekly wage for the year prior to the injury; as listed by the State of Michigan, *State Average Weekly Wage & Maximum Benefit Amounts from 1982-Present* and not to exceed the maximum amount of state average weekly wage. The amount of the maximum weekly rate can be determined by using the State of Michigan Workers’ Compensation Calculator.

**K.** “Minimum Weekly Rate” means 25 percent of the state average weekly wage for the year prior to the injury; as listed by the State of Michigan, *State Average Weekly Wage & Minimum Benefit Amounts from 1982-Present*. The amount of the minimum weekly rate can be determined by using the State of Michigan Workers’ Compensation Calculator.

**L.** “Parent or Grandparent” shall mean the natural or adoptive father or mother or the natural grandfather or grandmother of the worker.

**M.** “Reservation” means all lands within the boundaries of the reservations for the Little Traverse Bay Bands of Odawa Indians as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse Bay Bands of Odawa Indians reservation by the U.S. Department of the Interior.

**N.** “Settlement” means full release and waiver of any and all claims and benefits associated with this Statute.

**O.** “Spouse” means the person married to the worker at the time of the death or injury to the worker.

**P.** “Tribe”, “Tribal” or “LTBB” means or refer to the Little Traverse Bay Bands of Odawa Indians.

**Q.** “Tribal Court” means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

R. "Wage Earning Capacity" means the wages the employee earns or is capable of earning at a job reasonably available to that employee, whether or not wages are actually earned.

S. "Wage Loss" means the amount of wages lost due to a disability. The employee shall establish a connection between the disability and reduced wages in establishing the wage loss.

T. "Weekly Rate Calculation" means weekly wage that can be determined by using the State of Michigan Workers' Compensation Calculator.

#### **SECTION IV. JUDICIAL INTERPRETATION**

For the purposes of interpreting, enforcing issues relating to the entitlement to benefits, ambiguity in relationship to benefits, and the nature and extent of benefits provided by this Statute, the Tribal Court may look to the substantive provision of the State of Michigan Worker's Disability Compensation Act of 1969, (Michigan Public Act No. 317 of 1969, as amended, being MCL 481.101 et seq.) or as may be amended, but the Tribal Court shall not be bound by State laws, regulations or case law, but may use same for guidance purposes only. Nothing in this Statute shall be construed as an adoption by the Tribe of the Worker's Disability Compensation Act of 1969, (Michigan Public Act No. 317 of 1969, as amended, being MCL 481.101 et seq.) nor a waiver of sovereign immunity from suit for any claims or process under the Michigan law.

#### **SECTION V. WAIVER OF SOVERIEGN IMMUNITY and EXCLUSIVE JURISDICTION**

A. The Tribe waives its sovereign immunity from suit only to the extent of and as provided in this Statute, strictly construed and applied. This waiver shall extend only to Tribal workers and other persons specifically entitled to benefits under this Statute, and shall not be construed to apply or extend to actions by any other party or actions beyond the scope of this Statute including tort liability.

B. The Tribe consents to suit only and solely in Tribal Court, and only to the extent, and

upon the terms and conditions, specified in this Statute. By enactment of this Statute the Tribe does not consent to suit in or submit to the jurisdiction of any other court or forum, including without limitation the courts of the State of Michigan or the federal courts.

C. The right to the recovery of benefits as provided in this Statute shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. The issue of whether an act was an intentional tort shall be a question of law for the Tribal Court.

D. A worker who pursues and recovers benefits under the workers' compensation laws of another jurisdiction is barred from recovering under this Statute. If a worker files suit or makes formal demands against a third party and compensation has been claimed and awarded, the employer having paid such compensation or having become liable therefore, shall be subrogated to the rights of the employee, to recover against such third party to the extent of the employer's compensation liability.

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

## **SECTION VI. WORKER**

A. The term "worker" and "employee" are interchangeable as applied within this Statute.

B. A worker means every person who has entered into the employment of or performs work for an employer, works under contract of service, express or implied, or apprenticeship.

C. For application of this Statute the definition of worker also includes every elected, appointed or assigned person by the Constitution, Statute, charter, bylaws of a corporation, or any other means, compensated monetarily or otherwise.

D. Workers shall include all persons employed by the employer regardless of where they work, whether it within the Reservation or outside of the Reservation. Workers shall include volunteers or other persons providing work for an employer who do so without receiving benefits.

E. The term worker shall not include an independent contractor working under contract for an employer, whether that contract is express or implied.

F. Workers shall include persons serving in any Tribal Police Department Reserve Program or any volunteer firefighters working for the Tribal Fire Department or other volunteer positions.

## **SECTION VII. REPORTING and CLAIMING**

A. An employee shall report any injury, oral or writing, no matter how slight, to his or her supervisor within ninety-six (96) hours after the injury has occurred. No benefit will be paid to the employee, if the employee does not report the injury within ninety-six (96) hours to their supervisor. If the injury incapacitates the employee, the time periods shall not begin to run until the incapacity ends. An injury may be reported by another on behalf of the employee.

B. A supervisor receiving a report or notice of an injury from the employee shall promptly report the claim to the Administrator in writing within seventy-two (72) hours of receipt of the report or notice of injury, or as soon as possible thereafter.

C. The employee must file with Tribal Court within three-hundred and sixty-five (365) days of the date of the injury or within three-hundred and sixty-five (365) days from the last payment, or failure to do so will bar any and all benefits.

## **SECTION VIII. NON-DEFENSE**

A. In an action to recover damages for personal injury sustained by an employee in the course of his employment or for death resulting from personal injuries so sustained it shall not be a defense:

1. That the employee was negligent, unless it shall appear that such negligence was a willful act.
2. That the injury was caused by the negligence of a fellow employee.
3. That the employee had assumed the risks inherent in or incidental to, or arising out of his employment, or arising from the failure of the employer to provide and maintain safe premises and suitable appliances.

**SECTION IX. BENEFITS and INJURIES**

A. It is the intent of this Statute to provide substantially similar benefits as provided in similar circumstances under the State of Michigan Worker's Disability Compensation Act of 1969, (Michigan Public Act No. 317 of 1969, as amended, being MCL 481.101 et seq.) or as it may be amended in the future.

1. In order to obtain medical benefits under this Statute, and employee must show an "Injury" as defined herein.
2. In order to obtain wage loss benefits under this Statute, and employee must show a "Disability" as defined herein.
3. Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions and degenerative arthritis are compensable if contributed to or aggravated or accelerated by the employment in a significant manner.
4. Mental disabilities are compensable if arising out of actual events of employment, not unfounded perceptions thereof, and if the employee's perception of the actual events is reasonably grounded in fact or reality.



5. Course and scope of employment shall mean an act or action within a worker's job duties or assignments, as set forth in the worker's job description or otherwise, which acts or actions are in the furtherance of the employer's interest.

6. An employee going to or from his or her work, while on the premises where the employee's work is to be performed, and within a reasonable time before and after his or her working hours, is presumed to be in the course of his or her employment. Notwithstanding this presumption, an injury incurred in the pursuit of an activity that the major purpose of which is social or recreational is not covered under this statute.

B. Wage loss may be established, among other methods, by demonstrating the employee's good-faith effort to procure work within his or her wage earning capacity. A partially disabled employee who establishes a good-faith effort to procure work but cannot obtain work within his or her wage earning capacity is entitled to weekly benefits as if totally disabled.

C. No compensation shall be paid under this Statute for any injury which does not incapacitate the employee from earning full wages, for a period of at least 1 week, but if incapacity extends beyond the period of 1 week, compensation shall begin on the eighth day after the injury. If incapacity continues for 2 weeks or longer or if death results from the injury, compensation shall be computed from the date of the injury.

D. Benefits continue so long the employee is disabled. Benefits are reduced by five (5) percent each year beginning with the year the employee receives funds under the Social Security Act, 42 U.S.C. 301 to 1397f. The reduction continues until for a period of 10 years and thereafter continues at the rate of fifty (50) percent so long as they are disabled. The five (5) percent reduction only applies if the employee is receiving social security benefits; or based on the preference of the Administrator, the benefit may be reduced by 50% of the amount received by the employee under the Social Security Act, 42 U.S.C. 301 to 1397f.

1. If the injured employee has been receiving old-age insurance benefit payments under the Social Security Act, Chapter 531, 49 Stat. 620, before the date of the personal injury or work-related disease, then the weekly benefits payable after the reduction provided by this subdivision (the fifty (50) percent reduction method) shall not be less than 50% of the weekly benefits otherwise payable without the reduction.

2. If the five percent reduction is utilized, then the weekly payments shall not be reduced below the minimum weekly rate.

3. The benefit may be reduced by the after-tax amount of the payments received or being received under a self-insurance plan, a wage continuation plan, or under a disability insurance policy provided by the same employer from whom benefits are received if the employee did not contribute directly to the plan or to the payment of premiums regarding the disability insurance policy.

4. The benefit may be reduced by the after-tax amount of the pension or retirement payments received or being received by the employee pursuant to a plan or program established or maintained by the same employer, if the employee did not contribute directly to the pension or retirement plan or program. Subsequent increases in a pension or retirement program shall not affect the coordination of these benefits.

5. The benefit may be reduced by the ratio of the employer's contributions to the total contributions made to a qualified profit sharing plan under section 401(a) of the internal revenue code or any successor to section 401(a) of the internal revenue code covering a profit sharing plan which provides for the payment of benefits only upon retirement, disability, death, or other separation of employment to the extent that benefits are vested under the plan provided that those employers do not provide a pension plan.

**E. Specific injuries:**

1. The employee shall establish an initial showing of disability, by the following:

a. Disclose his or her qualifications and training, including education, skills, and experience, whether or not they are relevant to the job the employee was performing at the time of the injury.

b. Provide evidence as to the jobs, if any, he or she is qualified and trained to perform within the same salary range as his or her maximum wage earning capacity at the time of the injury.

c. Demonstrate that the work-related injury prevents the employee from performing jobs identified as within his or her qualifications and training that pay maximum wages.

d. If the employee is capable of performing any of the jobs identified in section c., show that he or she cannot obtain any of those jobs. The evidence shall include a showing of a good-faith attempt to procure post-injury employment if there are jobs at the employee's maximum wage earning capacity at the time of the injury.

2. Once an employee establishes an initial showing of a disability, the employer bears the burden of production of evidence to refute the employee's showing. In satisfying its burden of production of evidence, the employer has a right to discovery if necessary for the employer to sustain its burden and present a meaningful defense. The employee may present additional evidence to challenge the evidence submitted by the employer.

3. If a personal injury arising out of the course of employment causes total disability and wage loss and the employee is entitled to wage loss benefits, the employer shall pay or cause to be paid to the injured employee weekly compensation equal to 80% of the employee's after-tax average weekly wage, but not more than the maximum weekly rate. Compensation shall be paid for the duration of the disability.

4. If a personal injury arising out of the course of employment causes partial disability and wage loss and the employee is entitled to wage loss benefits, the employer shall pay or cause to be paid to the injured employee as provided in this section weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the employee's wage earning capacity after the personal injury, but not more than the maximum weekly rate. Compensation shall be paid for the duration of the disability.

5. If disability and wage loss are established, entitlement to weekly wage loss benefits shall be determined as applicable pursuant to this section and as follows:

a. If an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan unemployment insurance agency and the employee refuses that employment without good and reasonable cause, the employee shall be considered to have voluntarily removed himself or herself from the work force and is not entitled to any wage loss benefits under this Statute during the period of refusal.

b. If an employee is terminated from reasonable employment for fault of the employee, the employee is considered to have voluntarily removed himself or herself from the work force and is not entitled to any wage loss benefits under this Statute.

c. If an employee is employed and the weekly wage of the employee is less than that which the employee received before the date of injury, the employee shall receive weekly benefits under this Statute equal to 80% of the difference between the injured employee's after-tax weekly wage before the date of injury and the after-tax weekly wage that the injured employee earns after the date of injury, but not more than the maximum weekly rate of compensation. Maximum rate of benefits is 90 percent of the state average weekly wage for the year prior to the injury.

d. If an employee is employed and the average weekly wage of the employee is equal to or more than the average weekly wage the employee received before the date of injury, the employee is not entitled to any wage loss benefits under this Statute for the duration of that employment.

e. If the employee, after having been employed pursuant to this subsection loses his or her job through no fault of the employee and the employee is still disabled, the employee shall receive compensation under this Statute as follows:

i. If the employee was employed for less than 100 weeks, the employee shall receive compensation based upon his or her average weekly wage at the time of the original injury.



- ii. If the employee was employed for 100 weeks or more but less than 250 weeks, then after exhausting unemployment benefit eligibility, the Tribal Court may determine that the employment since the time of the injury has not established a new wage earning capacity and, if the Court makes that determination, benefits shall be based on his or her average weekly wage at the original date of injury. If the Court does not make that determination, the employee is presumed to have established a post-injury wage earning capacity and benefits shall not be paid based on the wage at the original date of injury.
- iii. If the employee was employed for 250 weeks or more, the employee is presumed to have established a post-injury wage earning capacity.

**F.** For occupational injuries:

- 1. To establish an initial showing of disability, an employee shall do the following:
  - a. Disclose his or her qualifications and training, including education, skills, and experience, whether or not they are relevant to the job the employee was performing at the time of the injury.
  - b. Provide evidence as to the jobs, if any, he or she is qualified and trained to perform within the same salary range as his or her maximum wage earning capacity at the time of the injury.
  - c. Demonstrate that the work-related injury prevents the employee from performing jobs identified as within his or her qualifications and training that pay maximum wages.
  - d. If the employee is capable of performing any of the jobs identified in subdivision (c), show that he or she cannot obtain any of those jobs. The evidence

shall include a showing of a good-faith attempt to procure post injury employment if there are jobs at the employee's maximum wage earning capacity at the time of the injury.

2. Once an employee establishes an initial showing of a disability, the employer bears the burden of production of evidence to refute the employee's showing. In satisfying its burden of production of evidence, the employer has a right to discovery if necessary for the employer to sustain its burden and present a meaningful defense. The employee may present additional evidence to challenge the evidence submitted by the employer.
3. If a personal injury arising out of the course of employment causes total disability and wage loss and the employee is entitled to wage loss benefits, the employer shall pay or cause to be paid to the injured employee as provided in this section weekly compensation equal to 80% of the employee's after-tax average weekly wage, but not more than the maximum weekly rate. Compensation shall be paid for the duration of the disability.
4. If a personal injury arising out of the course of employment causes partial disability and wage loss and the employee is entitled to wage loss benefits, the employer shall pay or cause to be paid to the injured employee as provided in this section weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the employee's wage earning capacity after the personal injury, but not more than the maximum weekly rate. Compensation shall be paid for the duration of the disability.
5. If disability and wage loss are established, entitlement to weekly wage loss benefits shall be determined as applicable pursuant to this section and as follows:
  - a. If an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan unemployment insurance agency and the employee refuses that employment without good and reasonable cause, the employee shall be considered to have voluntarily removed

himself or herself from the work force and is no longer entitled to any wage loss benefits under this Statute during the period of refusal.

**b.** If an employee is terminated from reasonable employment for fault of the employee, the employee is considered to have voluntarily removed himself or herself from the work force and is not entitled to any wage loss benefits under this Statute.

**c.** If an employee is employed and the average weekly wage of the employee is less than that which the employee received before the date of injury, the employee shall receive weekly benefits under this Statute equal to 80% of the difference between the injured employee's after-tax weekly wage before the date of injury and the after-tax weekly wage that the injured employee earns after the date of injury, but not more than the maximum weekly rate of compensation.

**d.** If an employee is employed and the average weekly wage of the employee is equal to or more than the average weekly wage the employee received before the date of injury, the employee is not entitled to any wage loss benefits under this Statute for the duration of that employment.

**e.** If the employee, after having been employed pursuant to this subsection, loses his or her job through no fault of the employee and the employee is still disabled, the employee shall receive compensation under this Statute as follows:

- i.** If the employee was employed for less than 100 weeks, the employee shall receive compensation based upon his or her wage at the time of the original injury.
- ii.** If the employee was employed for 100 weeks or more but less than 250 weeks, then after the employee exhausts unemployment benefit eligibility, Tribal Court may determine that the employment since the time of the injury has not established a new wage earning capacity and, if the Court makes that determination, benefits shall be based on the employee's wage at the original date

of injury. If the Court does not make that determination, the employee is presumed to have established a post-injury wage earning capacity and benefits shall not be paid based on the wage at the original date of injury.

- iii. If the employee was employed for 250 weeks or more, the employee is presumed to have established a post-injury wage earning capacity.

**SECTION X. MEDICAL BENEFIT**

**A.** The employer shall furnish, or cause to be furnished, to an employee who receives a personal injury arising out of and in the course of employment, reasonable medical, surgical, and hospital services and medicines, or other attendance, when they are needed. Attendant or nursing care shall not be ordered in excess of 56 hours per week if the care is to be provided by the employee's spouse, brother, sister, child, parent, or any combination of these persons.

**B.** The employer shall also supply to the injured employee dental service, crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatus, and other appliances necessary to cure, so far as reasonably possible, and relieve from the effects of the injury.

**SECTION XI. VOCATIONAL REHABILITATION**

**A.** An employee who has suffered an injury covered by this Statute shall be entitled to prompt rehabilitation services. If he or she is unable to perform work for which he or she has previous training or experience.

**B.** Vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him or her to useful employment, including additional payments for transportation or any extra and necessary expenses during the period and arising out of his or her program of vocational rehabilitation.

C. Vocational rehabilitation training, treatment, or service shall not extend for a period of more than fifty-two (52) weeks except in cases when, after review by Tribal Court the period may be extended for an additional fifty-two (52) weeks or portion thereof.

D. There may be a loss or reduction of compensation if there is an unjustifiable refusal by the employee to accept rehabilitation for each week of the period of refusal.

E. Payments received for education through the Tribe or any Tribal program may be offset and paid to the employee for actual costs only.

## **SECTION XII. PAYMENT FOR SPECIFIC LOSS**

A. In cases included in the following schedule, the disability in each case shall be considered to continue for the period specified, and the compensation paid for the personal injury shall be 80% of the after-tax average weekly wage subject to the weekly maximum and minimum rates of compensation under this Statute.

B. The effect of any internal joint replacement surgery, internal implant, or other similar medical procedure shall be considered in determining whether a specific loss has occurred. The specific loss period for the loss shall be considered as follows:

1. Thumb, 65 weeks.
2. First finger, 38 weeks.
3. Second finger, 33 weeks.
4. Third finger, 22 weeks.
5. Fourth finger, 16 weeks.

C. The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of 1/2 of that thumb or finger, and compensation shall be 1/2 of the amount above specified.

D. The loss of more than 1 phalange shall be considered as the loss of the entire finger or thumb. The amount received for more than 1 finger shall not exceed the amount provided in this schedule for the loss of a hand.

1. Great toe, 33 weeks.
2. A toe other than the great toe, 11 weeks.
3. The loss of the first phalange of any toe shall be considered to be equal to the loss of 1/2 of that toe, and compensation shall be 1/2 of the amount above specified.
4. The loss of more than 1 phalange shall be considered as the loss of the entire toe.
5. Hand, 215 weeks.
6. Arm, 269 weeks.
7. An amputation between the elbow and wrist that is 6 or more inches below the elbow shall be considered a hand, and an amputation above that point shall be considered an arm.
8. Foot, 162 weeks.
9. Leg, 215 weeks.
10. An amputation between the knee and foot 7 or more inches below the tibial table (plateau) shall be considered a foot, and an amputation above that point shall be considered a leg.
11. Eye, 162 weeks.

12. Eighty percent loss of vision of 1 eye shall constitute the total loss of that eye.

E. The amounts specified in this clause are all subject to the same limitations as to maximum and minimum as above stated. In case of the loss of 1 member while compensation is being paid for the loss of another member, compensation shall be paid for the loss of the second member for the period provided in this section. Payments for the loss of a second member shall begin at the conclusion of the payments for the first member.

F. Benefits for wage loss and a specific loss cannot be received at the same time.

### **SECTION XIII. ADMINISTATOR DUTIES and AUTHORITY**

A. The Administrator shall mean either the Insurance Company providing coverage hereunder, or any subcontractor appointed by said Insurance Company.

B. The Administrator shall be the payer of the worker's benefits. The Administrator shall administer this Statute in accordance with the terms and conditions described herein, and remit payment for all benefits as provided in this Statute and the Administrator shall have the authority to determine the distribution of benefits checks.

C. The Administrator shall be empowered to request medical reports, police reports, autopsy reports, and special investigations, engage the services of adjusters and consultants, and perform other activities as required to process any claim for benefits.

D. In the case of death of a worker, the Administrator shall have the right to request the performance of an autopsy on the decedent from an appropriate official licensed to perform autopsies, and further the Administrator shall have the right to request any and all reports made from such autopsies. If requested, the legal beneficiaries of the deceased worker are entitled to have a representative present at any autopsy ordered by the Administrator.



E. The Administrator shall maintain complete and accurate administrative records and claim files shall be maintained on all activities relating to the claims. All closed files shall be preserved for not less than six (6) years.

**SECTION XIV. ACCEPTANCE/DENIAL OF CLAIM**

Upon receiving a claim for benefits from an injured worker, the Administrator shall promptly investigate the claim and begin payment of benefits within twenty-one (21) days of a valid claim or the Administrator shall send the claimant written notice of dispute within twenty-one (21) days. The Administrator shall complete its investigation within forty-five (45) days of receipt of the claim and shall commence the payment of benefits or notify the claimant in writing that the claim is disputed.

**SECTION XV. TOTAL AND PARTIAL DISABILITY INCOME BENEFITS**

A. Except as provided herein, such benefits will continue to be paid in accordance with the terms of this Statute until which time the earliest of the following occurs:

1. Where a worker is entitled to benefits under this Statute for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the benefits, payments of the unpaid balance for such injury shall cease and all liability for such benefits thereafter shall terminate.
2. The worker claimant is incarcerated;
3. A full, unrestricted medial release from care;
4. A new or intervening incident is the proximate cause of disability;
5. Benefits will cease when the employee has been released to regular duty work status whether the employee is regular, temporary or seasonal;
6. Benefits are refused by the worker;

7. The worker's earning capacity is reduced for reasons other than the disability from the work-related injury;
8. The worker dies from any cause not resulting from the injury for which he was entitled to benefits under this section, and the worker's estate is not entitled to any further benefits as defined by this Statute.
9. If the worker is offered a bona fide offer of employment, for equal or higher pay, and the employee refuses the offer, then benefits cease.

## **SECTION XVI. DEATH BENEFITS**

**A.** When death ensues to the worker by reason of a compensable injury or occupational disease, benefits shall be payable to the dependents who were wholly dependent on the earnings of the worker for support at the time of his or her injury of the worker's average weekly wage, commencing from the date of death. Payment of benefits will be made as follows:

1. If there are no children entitled to benefits, then all death benefits to be paid to the surviving spouse for the projected probable life span of the decedent based on current mortality tables as published by the Center for Disease Control/National Center for Health Statistics, not to exceed a cap of benefits at five-hundred (500) weeks, the life of the surviving spouse or until remarriage, whichever comes first, provided that upon remarriage two years' benefits shall be paid to the surviving spouse in a lump sum. To be an eligible "surviving spouse" under this Statute, the surviving spouse must have been married and living with the decedent at the time of the compensable injury. If there are surviving eligible children, the surviving spouse shall be entitled to one-half of death benefits.
2. If there is a surviving spouse, one-half of death benefits paid to each surviving eligible child in equal shares.

3. If there is no surviving spouse, benefits are to be paid to each surviving eligible child and dependent grandchildren equally until the child shall reach the age of eighteen (18), or until the child dies, whichever comes first.

a. Any child will be eligible for continued benefits beyond the age of eighteen (18) should they become enrolled as a full-time student in an accredited educational institution within six (6) months of graduating from high school. They shall be eligible for continued benefits to the age of twenty-one (21) as long as they continue as a full-time student; and

b. Any child who was physically or mentally incapacitated from earning wages at the time of the compensable injury causing death for the duration of the incapacity or the incapacitated child's death, whichever earlier.

4. If the worker is not survived by any legal beneficiaries, any duty to pay such benefits, but not including burial benefits with a maximum benefit of \$6,000.00, under this Statute shall cease immediately;

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

C. If a legal beneficiary as defined in this section dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with this section.

D. If all legal beneficiaries cease to be eligible, any duty to pay the remaining death benefits payable under this section shall cease immediately.

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



F. If death results from a compensable injury, the person and/or entity who incurs liability for the costs of the burial shall be paid \$6,000.00 to cover burial expenses. This burial benefits payment shall not be reduced as a result of any burial benefits paid by any other source.

## **SECTION XVII. MEDICAL BENEFITS**

No benefits are payable for any part of a charge for confinement, treatment, or service that exceeds reasonable and customary (prevailing) charges or that exceeds the State of Michigan fee schedule, whichever is least. Over-the-counter medications are not covered unless prescribed by a physician.

## **SECTION XVIII. FILING A CLAIM TO TRIBAL COURT**

A. Any dispute or decision made by the Administrator can be protested by filing a claim in Tribal Court.

B. The employee must file with Tribal Court within three-hundred and sixty-five (365) days of the date of the injury or within three-hundred and sixty-five (365) days from the last payment, or failure to do so will bar any and all benefits.

## **SECTION XIX. HEARINGS**

A. The claimant shall have the right to be represented by an attorney or other spokesperson in all matters presented to the Tribal Court, to cross-examine all witnesses and review all evidence of any nature, as may relate to the matter under consideration.

B. The Tribal Court shall have the right to cross-examine the worker claimant and all witnesses and to perform such discovery activity as may be deemed necessary to fully explore all aspects surrounding the occurrence and injury.

C. The Tribal Court shall not be bound by the rules of evidence or by technical or formal rules of procedure and may conduct investigations in such a manner as in his or her judgment is best calculated to ascertain the substantial rights of the parties and to carry out the spirit of this Statute.

D. A full and complete record shall be kept of all proceedings before the Tribal Court by means of a recording device or by a stenographer.

**SECTION XX. APPEALS of TRIBAL COURT DECISIONS**

The decision of the Tribal Court may be appealed to the Tribal Appellate Court.

**SECTION XXI. RELEASE OF MEDICAL-RELATED INFORMATION**

Any worker, employer or insurance carrier or its agents making or defending a claim for benefits agrees to the release of all information to which the worker, employer, carrier, or its agents have access concerning the worker's physical or mental condition relative to the claim and further waives any privilege for the release of such information.

**SECTION XXII. SETTLEMENTS**

A. The employer and worker may negotiate settlement of future medical expenses, income loss, impairment, death benefits and other benefits under this Statute that are owed to the worker, or his/her estate.

B. If the worker is represented by an attorney, any settlement issued on behalf of a worker will be properly executed by signed memorandum or release and such settlements shall not need Tribal Court approval.

C. If the worker is not represented by an attorney, then such settlement shall need Tribal Court approval.

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**SECTION XXIII. MENTAL TRAUMA INJURIES**

A. Mental disabilities are compensable if arising out of actual events of employment, not unfounded perceptions thereof, and if the employee's perception of the actual events is reasonably grounded in fact or reality.

B. Mental traumas, disorders, and/or conditions, even if manifested in physical symptoms and/or related to stress, are not compensable injuries under this Statute, except that mental trauma is only recoverable if resulting from accidental injury traceable to a definite time, place, and cause rather than from repetitive mental trauma, or from an unusual traumatic event as established by a licensed psychiatrist or psychologist, and the mental injury was caused by or occurs subsequent to or simultaneous with such accidental injury or unusual traumatic event.

**SECTION XXIV. BENEFITS PRECLUDED BY NEGLIGENCE AND/OR REFUSAL OF WORKER TO SUBMIT TO TREATMENT**

No benefits shall be payable for the death and/or disability of a worker if the worker's death is caused by, or the worker's disability aggravated, caused or continued by, an unreasonable refusal and/or neglect to submit to and/or follow any competent or reasonable surgical or medical treatment, medical aid, or advice and there is substantial likelihood that the medical treatment would be successful, provided that there is no risk of mortality.

**SECTION XXV. INJURY OR DEATH BY CONSUMPTION AND/OR APPLICATION OF DRUGS AND/OR CHEMICALS AND/OR INTOXICATION**

A. No benefits of any nature shall be payable for injury and/or death caused to by any drug, including narcotics and hallucinogens, whether organic or chemical in nature, or any gas, vapors, and/or fumes taken and/or inhaled voluntarily, or by voluntarily poisoning, except those drugs prescribed by a physician or other practitioner licensed to prescribe such medication. However, no benefits under this Statute shall be payable in the event the worker claimant's injury or death



was caused by the intentional abuse of prescribed drugs in excess of the prescribed therapeutic amounts.

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

**C.** No benefits of any nature shall be payable for any worker injured or killed while in a state of intoxication regardless of whether or not the intoxicated condition was the proximate or contributing cause of the injury or death. It is only necessary to prove that the worker was intoxicated at the time of the incident or accident to deny benefits under this Statute. All workers accepting employment with an employer and under this Statute, agree to submit to post-incident/post-accident drug and alcohol screening as authorized in the applicable employer/employee personnel policies, and agree to waive any privilege associated with the results of said tests.

**SECTION XXVI. FALSE STATEMENT OR REPRESENTATION TO OBTAIN BENEFITS; PENALTY AND FORFEITURE**

If, in order to obtain any benefits under the provisions of this Statute, any person who knowingly makes a false statement or representation in connection with their claim, shall forfeit all rights to benefits under this Statute. The employer shall be entitled to take any action permitted by law to recover any payment or benefits paid under this Statute to a worker where the payment or benefits was based upon the fraudulent or false statements or misrepresentation by the worker.

**SECTION XXVII. INJURIES RESULTING FROM SELF-INFLICTED INJURIES, WILLFUL MISCONDUCT, OR "HORSEPLAY"**

No benefits of any nature shall be payable for any worker's injury or death caused by a worker's willful intention to injure himself or another. An injury sustained during "horseplay" is not



incurred in the course and scope of employment and thus such an injury under this Statute is not compensable.

#### **SECTION XXVIII. INJURIES RESULTING FROM "ACTS OF GOD"**

No benefits of any nature shall be payable for any worker injured or killed when the injury arose out of an act of God, unless the employment exposes the worker to a greater risk of injury from an act of God than ordinarily applies to the general public. Further, injury or death which results from a natural cause, i.e., heart attack, stroke or other natural function failure, which does not arise out of the course and scope of employment while the worker was acting in the furtherance of the employer's interest, shall not be compensable.

#### **SECTION XXIX. RECREATIONAL, SOCIAL OR ATHLETIC ACTIVITIES**

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

**B.** No benefits under this Statute shall be payable to any worker if the injury, disease, or death arises from participation in voluntary physical fitness activities during the regular workday, regardless of whether the worker is or is not compensated for the time in which the physical fitness activities take place.

#### **SECTION XXX. INJURIES CAUSED BY THIRD PARTIES**

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

**SECTION XXXI. SECONDHAND SMOKE CLAIMS**

- A. No benefits under this Statute shall be payable to or on behalf of any worker injured or killed as a result of exposure to or injury by second-hand smoke unless and until the claimant demonstrates by a preponderance of the evidence the following:
- B. The worker has worked for the employer for the ten (10) years prior to the filing of the claim for benefits under this Statute;
- C. The worker's workplace during the ten (10) year period referenced in (A) above involved exposure to second-hand smoke;
- D. The worker has not smoked cigarettes, cigars, or other tobacco products, in the last ten (10) years; and
- E. The worker has not shared a residence or previously worked in an area where family members, in the case of the residence, or fellow workers, in the case of prior employment, smoked in the home or workplace in the last ten (10) years.

**SECTION XXXII. IDIOPATHIC CLAIMS**

Idiopathic injury and related injuries are not compensable. "Idiopathic Injury" means an injury which is either peculiar to the individual or arising spontaneously from an obscure or unknown cause. This includes epileptic attacks, diabetic seizures, heart disease, cardiovascular or respiratory conditions, heart attack, the failure or occlusion of any coronary blood vessels, stroke, thrombosis, allergic disorders, auto-immune diseases, *etc.*

**SECTION XXXIII. WAR AND MILITARY ACTION EXCLUSION**



**A.** No benefits under this Statute shall be payable for injury caused directly or indirectly by the following events. Such injury is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

1. War, including undeclared or civil war; or
2. Warlike action by a military force. Including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
3. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
4. With respect to any action that comes within the terms of this exclusion and involves nuclear reaction or radiation, or radioactive contamination, this War and Military Action Exclusion supersedes the Nuclear Hazard Exclusion.

#### **SECTION XXXIV. TERRORISM EXCLUSION**

**A.** No benefits under this Statute shall be payable for injury caused directly or indirectly by terrorism, including action in hindering or defending against an actual or expected incident of terrorism. Such loss or damage is excluded regardless of any other cause or even that contributes concurrently or in any sequence to the loss.

**B.** Terrorism means activities against persons, organizations or property of any nature that involve the following or preparation for the following:

1. Use of threat of force or violence; or
2. Commission or threat of a dangerous act; or
3. Commission or threat of an act that interferes with or disrupts an electronic communication, information, or mechanical system; and

4. When one or both of the following applies:

a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy, or

b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

C. But with respect to any such activity that also comes within the terms of the War and Military Action Exclusion, that exclusion supersedes this Terrorism Exclusion.

#### **SECTION XXXV. SAVINGS CLAUSE**

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted, the entirety of the balance of the statute remain in full and binding force and effect.

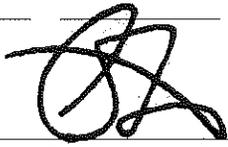
#### **SECTION XXXVI. EFFECTIVE DATE**

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval whichever comes first, or, if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

**CERTIFICATION**

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly adopted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on June 8, 2017 at which a quorum was present, by a vote of 9 in favor, 0 opposed, 0 abstentions, and 0 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Frank Bernard	X			
David Harrington	X			
Beatrice A. Law	X			
Dexter McNamara	X			
Michael Naganashe	X			
Emily Proctor	X			
Marcella R. Reyes	X			
Julia Shananaquet	X			
Aaron Otto	X			

Date: 6-9-2017   
 \_\_\_\_\_  
 Aaron Otto, Legislative Leader

Date: 6-9-17   
 \_\_\_\_\_  
 Julie Shananaquet, Secretary

Received by the Executive Office on 6-9-17 by JL. Jilk

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005, the Executive concurs with this action of the Tribal Council.

Date: 7-7-17   
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 Regina Gasco Bentley, Tribal Chairperson