

WORKERS BENEFIT CODE

CONFEDERATED TRIBES
OF THE
UMATILLA INDIAN RESERVATION

WORKERS BENEFIT CODE

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WORKERS BENEFIT CODE

CHAPTER 1. GENERAL PROVISIONS

SECTION 1.01. CITATION AND PURPOSE

This Code shall be known and cited as the “Workers Benefit Code” and shall be administered by the Tribal Workers Benefit Advisory Council (“TWBAC”), or its successor. The purpose of this Code is to establish the rights and benefits of employees of the Confederated Tribes of the Umatilla Indian Reservation for on-the-job bodily injuries due to accidents or occupational disease as set forth herein.

SECTION 1.02. SOVEREIGN IMMUNITY

The Confederated Tribes of the Umatilla Indian Reservation ("Confederated Tribes") hereby provides a limited waiver of the sovereign immunity of the Confederated Tribes and its Tribal agencies and enterprises only to the extent necessary to enforce this Code and for no other purposes purportedly expressed or implied.

SECTION 1.03. INSURANCE REQUIREMENT

Every employer must insure for the benefits provided under this Code, but are allowed Self--Insured Retention levels in accordance with the rules of the TWBAC. Any insurance company issuing a policy insuring benefits hereunder shall: (1) require a loss prevention/control program sufficient to enable the Confederated Tribes to provide a safe workplace for all tribal workers; (2) assist the employer in reducing hazards in the workplace and in the implementation of continued safety policies and procedures.

SECTION 1.04. DEFINITIONS

- A. Pronouns of the masculine gender used in this Code shall apply to both sexes. Unless stated otherwise in specific sections of the Code, time limits shall be calculated using calendar days.
- B. Unless the context otherwise requires, the definitions which follow govern the construction and meaning of the terms used in this Code:
 - 1. “Administrator” or “Tribal Workers Benefit System Claim Administrator” shall mean either the Insurance Company providing coverage hereunder any subcontractor appointed by said Insurance Company, or subcontractor selected by the TWBAC, but shall not mean the TWBAC who shall administer the System.
 - 2. “Attending Physician” shall mean the Physician, or other medical care provider that is responsible for the planning, provision and oversight of medical treatment to a covered worker who sustains a covered injury.
 - 3. “Average Weekly Wage” shall be as follows:
 - a. For covered worker hired to regular full or part position expected to last at least 13 weeks, the average weekly wage shall be calculated based on the preceding thirteen (13) weeks of the covered worker's actual wage earnings from a covered employer. In the case of a worker who has not worked for a covered employer within the immediate preceding thirteen (13) weeks, the average weekly wage shall be calculated based on the salary level the worker was hired at or is currently receiving.
 - b. For covered worker hired on a temporary, emergency or special projects basis who has continuously worked for a minimum of 13 weeks, the average weekly wage shall be calculated as provided in subparagraph 1, above.

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- c. For covered worker hired on a temporary, emergency or special projects basis who has not continually worked for the preceding 13 weeks, the average weekly wage shall be calculated by taking the expected total gross wages and divide by the expected number of work weeks.
 - d. For covered workers serving as volunteers, the average weekly wage shall be the salary of similarly paid positions for the covered employer performing similar work.
 - e. For purposes of this definition, the work week shall be as defined by the personnel manual or policy applicable to the covered employee at the time of injury.
4. "Benefits" shall mean the indemnity and medical payments provided by this Code. "Indemnity" shall mean total disability and partial disability income benefits and impairment payments; and "Medical" shall mean medical expense, mileage and other expenses associated with medical treatment.
 5. "Confederated Tribes of the Umatilla Indian Reservation", "Tribes", and "Tribal" mean or refer to the Confederated Tribes of the Umatilla Indian Reservation, a federally recognized American Indian tribe, and its agencies, and any Tribal corporations and enterprises located within the boundaries of the Umatilla Indian Reservation.
 6. "Child" includes dependent natural legitimate children, dependent stepchildren, adopted children and acknowledged illegitimate children; but does not include married children unless they are shown to be dependents.
 7. "Claimant" means the injured covered worker or, in the event of death of the covered worker, dependents of the deceased.
 8. "Consulting Physician" shall mean the Physician, other health care provider or other health care expert that is retained by the Administrator to assist the Administrator in carrying out his duties and responsibilities under this Code. Such activities may include, but are not limited to, determination of the validity of a claim; review of an attending physician's diagnosis and treatment plans; determination of MMI; determination of impairment rating. At the discretion and expense of the Administrator, an injured worker may be required to be seen by the consulting physician to assist in making any required recommendations to the Administrator.
 9. "Course and Scope of Employment" shall mean the employer's employment of the covered worker at the time the injury occurred. An injury must arise out of and be in the course and scope of employment, and the worker must be acting in the furtherance of the employer's interest at the time of the incident and/or accident, in order for a claim to be compensable.
 10. "Covered Employer" and "Employer" shall mean the Confederated Tribes, and its agencies, and any Tribal corporations and enterprises located within the boundaries of the Umatilla Indian Reservation.
 11. "Covered Worker" and "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, for an employer, every executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a corporation, including a person holding an official position, or standing in a representative capacity of the employer, including officials (elders) elected or appointed by the Confederated Tribes, compensated monetarily or otherwise, except as hereinafter specified. The terms covered worker and worker shall not include an

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independent contractor working under contract for an employer, whether that contract be express or implied. Covered workers shall include all persons employed by the employer regardless of where they work, whether it be on or off the Umatilla Indian Reservation. Covered workers shall include volunteers or other persons providing work for an employer who do so without receiving compensation. Covered workers shall not include persons serving in the Umatilla Tribal Police Department Reserve Program or volunteer firefighters working for the Tribal Fire Department, or other volunteer positions covered by a tribal accident insurance policy.

12. "Death" is any fatality of the covered worker proximately and directly caused by work injury or occupational disease.
13. "Dependents" are the following persons, and they shall be deemed to be the only recognizable dependents under the provisions of this Code:
 - a. The widow or widower, if married and living with the deceased at the time of deceased's death and legally entitled to be supported by the deceased as a dependent. For purposes of this Code, a covered worker may, in a written self-declaration to be provided by the employer, designate a person as their dependent domestic partner because of a traditional Native American marriage, or for other reasons, which person shall be treated as a dependent widow(er) if the person was living with the deceased covered worker at the time of his/her death.
 - b. A child under 18 years of age, or incapable of self-support, unmarried and dependent upon the deceased; or a child under 25 years of age enrolled as a full-time student in an accredited education institution at the time of the covered worker's injury;
 - c. Any of the following persons who were wholly dependent on the earnings of the worker for support at the time of his injury. The relation of dependency must exist at the time of injury:
 - i. A parent or grandparent;
 - ii. A grandchild, brother or sister, niece or nephew only if under 18 years of age, or incapable of self-support and dependent upon the deceased.
 - d. "Disability" means the inability of the covered worker to obtain and/or retain wages equivalent to the pre-injury wage rate as a result of a direct loss of functional capacity compromising that individual's ability to perform the necessary duties of the job. This functional loss must be directly and materially attributable to a compensable work-related injury and/or occupational disease and must be supported by the worker's attending physician and, if requested by the Administrator, the consulting physician. "Partial Disability" is distinguished as any incapacity less than 100% inability as defined above.
14. "Impairment" means any anatomic or functional abnormality or loss existing after Maximum Medical Improvement (MMI) as defined herein that results from a compensable injury and/or occupational disease and is reasonably presumed to be permanent based on reasonable medical probability.
15. "Injury" shall mean any physical or mental impairment, including, without limitation, death and/or occupational disease as further herein defined.
16. "Intoxication" means blood alcohol content in excess of .05 percent or conviction of the offense of driving while intoxicated (or words to that effect) by any jurisdiction, or

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loss of the normal use of one's mental and/or physical faculties resulting from the voluntary introduction into the body of (1) an alcoholic beverage; (2) a controlled substance; (3) a mind-altering drug and/or hallucinogenic; (4) an abusable glue or aerosol paint; or (5) any other similar substance.

17. "Maximum Medical Improvement" (MMI) means the earlier of:
 - a. The point after which further material recovery from or last improvement to an injury can no longer reasonably be anticipated, based on the reasonable medical probability; or
 - b. The expiration of 36 months from the date Incapacity Income Benefits begin to accrue.
18. "Occupational Disease" shall be only those diseases which arise out of and in the course and scope of the worker's employment. Such diseases shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment. Such disease must be incidental to the character of the business, occupation, or process in which the worker was employed and not independent of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which a worker has or would have been equally exposed outside of said occupation is not compensable as an occupational disease.
19. "Parent or Grandparent" shall mean the natural or adoptive father or mother or the natural grandfather or grandmother of the covered worker.
20. "Policy" shall mean any Tribal Workers Benefit Policy of Insurance issued to the Confederated Tribes, or other employer.
21. "Quasi-Dependent" means those persons who were only partially dependent on the earnings of the covered worker for support at the time of the injury causing death.
22. "Scheduled Weeks" means 104 weeks and is the maximum number of weeks that a covered worker shall be entitled to Functional Impairment Benefits under this Code.
23. "Settlement" shall mean the date the release of all claims is executed and the monetary terms of the agreement met.
24. "Spouse" shall mean the person married to the covered worker at the time of the death or injury to the covered worker. Spouse shall include all persons legally married to the covered worker, married because of a traditional Indian marriage ceremony, or who is a domestic partner to the covered worker as declared by the covered worker in a written self-declaration to be provided by the employer.
25. "Tribal Court" shall mean the Umatilla Tribal Court.
26. "Tribal Member" shall mean any person listed on the Confederated Tribes' enrollment list, or any other person that the Confederated Tribes shall deem to be a member for purpose of this Code.
27. "Tribal Workers Benefit Advisory Council" ("TWBAC"), or its successor, shall mean the entity organized to administer the System in accordance with section 1.03 and chapter 2.

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28. "Tribal Workers Benefit System" shall mean this Code, any and all rules and regulations promulgated hereunder, as well as the functions of the Administrator, the TWBAC, and the arbitrator established to adjudicate disputes under chapter 9 of this Code.

SECTION 1.05. ACKNOWLEDGMENT OF CODE

- A. All covered workers and persons asserting a claim shall be conclusively presumed to have elected to take workers benefits in accordance with the tenants, conditions, and provisions of this Code by virtue of employment with the Confederated Tribes or other employers as defined herein. All covered workers and/or persons asserting a claim for workers benefits acknowledge that the Confederated Tribes is a federally recognized American Indian tribe and is exercising its inherent sovereign authority in providing workers benefits under this Code.
- B. The employer shall be responsible for and shall have posted in a conspicuous location a notice as follows:

NOTICE TO TRIBAL GOVERNMENT AND ENTERPRISE EMPLOYEES

AS EMPLOYEES OF THE CTUIR OR ITS ENTERPRISES, YOU ARE INSURED FOR ON-THE-JOB INJURIES UNDER THE CTUIR WORKERS BENEFIT CODE

If you are injured or sustain an occupational disease while at work, you may be entitled to benefits as provided by the Tribal Workers Benefit Code. NOTIFY YOUR EMPLOYER IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT. If you fail to do so, you may lose your benefits under the Tribal Workers Benefits System. In no event shall benefits be paid to a worker who failed to notify their employer within three (3) days after sustaining such work-related injury, excepting cases where an extraordinary reason prevented the worker from reporting the injury or occupational disease to the employer in a timely manner.

It is your responsibility to file a claim for benefits under the Tribal Workers Benefit Code with the Administrator of the Tribal Workers Benefit System. You are required to file a claim for any injuries or occupational disease no more than thirty (30) days after you have knowledge thereof. It is your responsibility to obtain any necessary forms from the Tribal Workers Benefit System Claim Administrator at:

Your exclusive remedy for any work connected injury or disease is through the Tribal Workers Benefits System. The State's Worker Compensation System has no authority to accept a claim from you under the Tribal Workers Benefit Code as you are employed by the Confederated Tribes of the Umatilla Indian Reservation, a sovereign Indian nation employer, which is exclusively under the jurisdiction of its own Tribal Workers Benefit System.

SECTION 1.06. NOTIFICATION TO EMPLOYER OF INJURY BY WORKER

- A. Any covered worker and/or person claiming benefits under this Code must notify his supervisor, department director or the human resources director of any and all injuries immediately, and in no event later than three (3) days from the date of occurrence. Failure to report such on-the-job injury shall result in the worker's forfeiture of benefits under this Code, unless the claimant can demonstrate and extraordinary reason that prevented the reporting of the injury or occupational disease in a timely manner.
- B. The supervisor/department director/human resources director receiving the report of the incident or accident shall submit the report to the Administrator within seven (7) days of receipt from the covered worker. In addition, the supervisor/department director/human resources director receiving the report shall prepare, or have prepared by the covered worker's direct supervisor, and submit an incident report on the circumstances surrounding the on-the-job injury, including the identification of those who may have witnessed the incident or accident.

SECTION 1.07. TIME LIMIT FOR REPORTING OF INCIDENTS AND FILING OF CLAIMS

- A. Claims for injury shall be made by the covered worker to the Administrator within thirty (30) days of the date of occurrence. For purposes of this Code, a covered worker filing a claim for benefits under this Code with the human resources office shall constitute filing a claim with the Administrator.
- B. Claims for occupational disease shall be made by the covered worker to the Administrator within thirty (30) days from date of first notice to the claimant by a physician or from the date of manifestation of symptoms, whichever is earliest, but in no event longer than six (6) months from the date worker terminates his employment with the Confederated Tribes.
- C. Failure to give notice of injury to the employer as required by section 1.06, or to file a claim with the Administrator, within the time limit set forth in this section shall constitute a forfeiture by the covered worker, or his representatives in case of death, of all benefits available and payable under this Code.

SECTION 1.08. BURDEN OF PROOF

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

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

SECTION 1.09. RIGHT TO WAIVE DEFENSES

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

SECTION 1.10. GUARDIAN FOR MINOR OR INCOMPETENT

Any person who is mentally incompetent and/or under the age of 18 and is entitled to receive compensation under this Code, shall be appointed a guardian or other representative by the Umatilla Tribal Court if a guardian has not been appointed in a prior action.

CHAPTER 2. TRIBAL WORKERS BENEFIT ADVISORY COUNCIL

SECTION 2.01. ESTABLISHMENT

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

SECTION 2.02. MEMBERSHIP

The TWBAC shall be comprised of the members of the Employee Benefits Committee duly established by the tribal Executive Director. All duties and power of the TWBAC shall be carried out by the Employee Benefits Committee during their regular meetings as set forth in the Employee Benefits Charter.

SECTION 2.03. POWERS OF TWBAC

The TWBAC shall have the following duties and powers:

- A. To meet on a regular basis to carry out the duties and powers of the TWBAC.
- B. To promulgate rules and regulations for the implementation and administration of this Code.
- C. To periodically review the benefits provided under this Code and to make recommendations to the Board of Trustees for amendments to benefit levels or any other needed revisions to this Code deemed advisable by the TWBAC.
- D. To develop programs and to cooperate with the Administrator for the preparation and presentation of information and educational programs designed to prevent injuries and occupational diseases to covered workers.
- E. To take any and all other actions deemed reasonable and necessary for the implementation of this Code including, but not limited to, setting rates and establishing adequate reserve levels.
- F. To retain consultants deemed necessary by the TWBAC in order to carry out its duties as provided herein.
- G. To select the Administrator.
- H. To select an arbitrator to adjudicate the disputes regarding benefits provided under this Code as set forth in chapter 9 below.
- I. To select the insurance company to provide the workers benefits that are set forth in this Code.

CHAPTER 3. ADMINISTRATIVE DUTIES AND POWERS

SECTION 3.01. CUSTODIAN DUTIES

The Administrator or its designee shall be the payor of the workers benefits and all authorized disbursements therefrom shall be paid by the Administrator or a representative with its stated authority, and shall be the custodian of all claim files and related documents.

SECTION 3.02. PAYMENT AND DISTRIBUTION OF BENEFITS

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

SECTION 3.03. TRIBAL WORKERS BENEFIT SYSTEM ADMINISTRATOR POWERS AND DUTIES

- A. The Administrator for the Tribal Workers Benefit System 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 or to further this Code.
- B. In the case of death of a covered 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.

- C. Retain a consulting physician for purposes of assisting the Administrator to carry out the duties and powers in this Code.
- D. Complete and accurate administrative records and claim files shall be maintained on all activities relating to the claims made under the Policy. All closed files shall be preserved for not less than six (6) Years.

SECTION 3.04. 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 compensation within 21 days of a valid claim or the Administrator shall send the claimant written notice, within 21 days, that further investigation is needed and the reasons for further investigation. The Administrator shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant in writing that the claim is denied.

CHAPTER 4. COVERAGE AND COMPENSABILITY

SECTION 4.01. ENTITLEMENT TO BENEFIT

- A. Any claimant for benefits under this Code shall be responsible for filing his claim with the Administrator.
- B. Coverage exists under this Code for a covered worker's injury without regard to fault or negligence if the injury arises out of and in the course and scope of employment and if the worker was acting in furtherance of the employer's interest at the time of the injury and/or incident, including, without limitation, any covered worker whose work at the time of injury was subject to the Longshore and Harbor Workers Compensation Act (33 U.S.C. §§ 901-950), the Jones Act (46 U.S.A. appx. § 688), or any other Federal Workers Compensation Acts. If an injury is an occupational disease as defined herein, the employer in whose employ the worker was last injuriously exposed to the hazards of the disease is considered to be the employer of the worker for purposes of obtaining benefits under this Code.

SECTION 4.02. DISCLOSURE OF PRE-EXISTING DISABILITIES

- A. All workers shall disclose any pre-existing physical or mental disorder and/or disability that could potentially affect or impair the worker's ability to perform in a reasonable and safe manner the activities involved in the position in which they work. Disclosure shall be made in the employment application or interview before commencing employment or before commencing new job duties after job reclassification, reassignment, promotion, demotion, or other change in job duties. The content of such disclosure shall be made promptly by the covered worker after submitting a claim for benefits under this Code.
- B. Any claim resulting from an employment-related aggravation of a pre-existing condition which was not disclosed as required under this Code shall be declined by the Administrator under this Code if the claimant had knowledge of the pre-existing condition and failed to disclose such condition pursuant to section 4.02(A).

SECTION 4.03. MENTAL TRAUMA INJURIES

- A. Mental traumas, disorders, and/or conditions, even if manifested in physical symptoms and/or related to stress, are not compensable injuries under this Code, 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.
- B. Regardless of section 4.03(A), a mental trauma or emotional injury that arises principally from a personnel action, including, without limitation, a transfer, promotion, demotion, or termination is not a compensable injury under this Code.

SECTION 4.04. GOING TO AND RETURNING FROM WORK

An accident and/or incident occurring to a worker while on the way to or from work, including lunch break, is not within the course and scope of employment except when such traveling is directly connected with the worker's work and in furtherance of the employer's interest. This exception will not apply if the worker deviates from a reasonably direct route of travel and/or is not acting in the interests of the employer.

SECTION 4.05. BENEFITS PRECLUDED BY NEGLIGENCE AND/OR REFUSAL OF WORKER TO SUBMIT TO TREATMENT

- A. No benefits shall be payable for the death and/or disability of a worker if the worker's death 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. A worker who has refused and/or neglected to submit to medical and/or therapeutic treatment, or to take medications as prescribed, will be deemed to have reached Maximum Medical Improvement as defined herein. Any such existence of a disability that could have been reasonably treated to success with reasonable medical probability will be discounted in determining the appropriate incapacity rating as prescribed herein.
- B. Any covered worker entitled to benefits under this Code shall be presumed to have reached Maximum Medical Improvement if such claimant has refused and/or neglected to seek appropriate medical treatment within six (6) months from the date of occurrence or from the last date of prior treatment.

SECTION 4.06. INJURY OR DEATH BY CONSUMPTION AND/OR APPLICATION OF DRUGS AND/OR CHEMICALS

No benefits of any nature shall be payable for injury and/or death caused or contributed to 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.

SECTION 4.07. INTOXICATION

No benefits of any nature shall be payable for any covered worker injured or killed while intoxicated as defined in section 1.04(B)(16), regardless of whether or not the intoxicated condition was the proximate cause of the injury or death. It is only necessary to prove that the covered worker was intoxicated at the time of the incident or accident to deny benefits under this Code. All workers accepting employment with an employer and under this Code, agree to submit to post-incident/post-accident drug and alcohol screening as authorized in the applicable Tribal personnel policies, and agree to waive any privilege associated with the results of said tests.

SECTION 4.08. FALSE STATEMENT OR REPRESENTATION TO OBTAIN COMPENSATION; PENALTY AND FORFEITURE

If, in order to obtain any benefits under the provisions of this Code, any person willfully makes a false statement or representation, they shall forfeit all rights to compensation, benefits, or payment upon proof that the offense was committed. Any claim resulting from an employment-related aggravation of a pre-existing condition which was not disclosed as required under this Code may be declined by the Administrator pursuant to section 4.02.

SECTION 4.09. INJURIES RESULTING FROM SELF-INFLICTED INJURIES, WILLFUL MISCONDUCT, OR "HORSEPLAY"

No benefits of any nature shall be payable for any covered worker's injury or death caused by a covered worker's willful intention to injure himself or another. An injury sustained during

“horseplay” is not incurred in the course and scope of the employment, and thus such an injury under this Code is not compensable. In addition, the willful disregard of a safety order from the employer to the worker to wear or use a safety device and/or to perform work in a certain manner may cause such person to forfeit all rights to compensation, benefit, or payment upon proof that the offense was committed and that such disregard or performance was the direct and proximate cause of the injury, death, and/or occupational disease. A covered worker’s willful disabling of safety devices on equipment constitutes a willful intention to injure himself thereby precluding eligibility for benefits under this Code.

SECTION 4.10. INJURIES RESULTING FROM "ACTS OF GOD"

No benefits of any nature shall be payable for any covered 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 4.11. RECREATIONAL, SOCIAL OR ATHLETIC ACTIVITIES

- A. No benefits of any nature shall be payable for any covered worker injured or killed if the injury or accident occurred as a result of the worker’s voluntary participation in an off-duty, recreational, social, or athletic activity not constituting part of the worker’s work-related duties, except where these activities are expressly required by the employment.
- B. No benefits under this Code shall be payable to any covered worker if the injury, disease, or death arises from participation in voluntary physical fitness activities during the regular work day, regardless of whether the employee is or is not compensated for the time in which the physical fitness activities take place.

SECTION 4.12. INJURIES CAUSED BY THIRD PARTIES

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

SECTION 4.13. SECONDHAND SMOKE CLAIMS

No benefits under this Code shall be payable to or on behalf of any covered worker injured or killed as a result of exposure to or injury by secondhand smoke unless and until the claimant demonstrates by a preponderance of the evidence the following:

- A. The covered worker has worked for the covered employer for the ten (10) years prior to the filing of the claim for benefits under this Code;
- B. The covered worker’s workplace during the ten (10) year period referenced in (A) above involved exposure to secondhand smoke;
- C. The covered worker has not smoked cigarettes, cigars, or other tobacco products, except on an infrequent basis where the covered worker can show, by reliable medical evidence, that such infrequent use of tobacco products was not a substantial cause of the covered worker’s injury or occupational disease; and
- D. The covered 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.

CHAPTER 5. BENEFITS - GENERAL PROVISIONS

SECTION 5.01. RIGHT TO COMPENSATION AND MEDICAL TREATMENT BENEFITS

Every covered worker coming within the provisions of this Code who is injured, and in the event of a worker's death, the dependents of every such covered worker, arising out of and in the course and scope of employment and while acting in the furtherance of the employer's interest at the time of the incident and/or accident, unless the injury is otherwise limited or excluded by the terms and conditions of this Code, shall be entitled to receive, and shall be paid, for loss sustained on account of the injury, death and/or occupational disease, such benefits as provided under this Code.

SECTION 5.02. WORKERS BENEFIT AS EXCLUSIVE REMEDY

The rights and remedies provided by the provisions of this Code for a worker on account of injury or occupational disease for which benefits under this Code are recoverable, shall be the exclusive and only rights and remedies of such worker, the worker's personal or legal representative, dependents, or next of kin, at common law or otherwise, on account of such injury and/or occupational disease against the employer, the employer's representative, insurer, guarantor or surety, for any matter relating to the occurrence of or payment for any injury or death covered under this Code and including any other benefits or compensation that a worker may attempt to obtain from a third party that may be able to seek indemnification from an employer.

SECTION 5.03. EFFECT OF COMPENSATION PAID IN OTHER JURISDICTIONS OR THIRD PARTY RECOVERY

A covered worker who pursues and recovers compensation under the workers compensation laws of another jurisdiction, in violation of section 5.02, is barred from recovering under this Code. If a covered worker files suit or makes formal demands against a third party for monetary damages due to accidental injury, occupational disease or death for which benefits are provided under this Code, the covered worker or, in the case of death, the dependents of the deceased, shall forfeit and waive any and all rights to compensation under this Code.

SECTION 5.04. LIABILITY OF THIRD PARTIES - SUBROGATION

- A. The employer and/or their representative, insurer, guarantor, or surety shall be subrogated to the common law rights of the worker to pursue any claims for compensation against any third party that is liable for the death of, or injuries to, said worker arising out of and in the course and scope of employment and while the worker was acting in the furtherance of the employer's interest to the extent of the benefits bestowed upon the said worker.
- B. In case of recovery, the Administrator or arbitrator established under chapter 9 of this Code shall enter judgment for distribution of the proceeds thereof as follows:
 - 1. A sum sufficient to repay the employer and/or the Administrator for the amount of compensation actually paid to the worker under this Code up to that time;
 - 2. A sum sufficient to pay the employer the present worth, computed at the current legal interest rate for court judgments and decrees, of the future payments of compensation for which the employer is liable, but the sum is not the final adjudication of the future payments which the worker is entitled to receive and if the sum received by the employer is in excess of the amount required to pay the compensation, the excess shall be paid to the worker.
 - 3. The balance, if any, shall be paid over to the worker.
- C. For subrogation purposes hereunder, any payment made to a covered worker, his guardian, parent, next of kin, or legal representative, by or on behalf of any third party, his or its principal or agent liable for, connected with, or involved in causing an injury to such worker

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shall be considered as having been so paid as damages resulting from and because said injury was under circumstances creating a legal liability against said third party, whether such payment be made under a covenant not to sue, compromise settlement, denial of liability, or otherwise.

SECTION 5.05. ASSIGNABILITY OF BENEFITS - ATTACHMENT OF LIENS

Benefits received under this Code are not assignable, except that a legal beneficiary may, assign the right to death benefits. Income from death benefits are subject only to the following liens or claims, to the extent of any income or death benefits that are unpaid on the date the Administrator receives written notice of the lien, judgment, or claim in the following order of priority:

- A. Court-ordered child support issued or recognized by the Umatilla Tribal Court;
- B. A subrogation interest established under this Code; and
- C. Debts owed to the Confederated Tribes.

SECTION 5.06. AGGRAVATION OF PRE-EXISTING DISEASE OR CONDITION

If a covered worker is suffering from a pre-existing disease and/or injury at the time an occupational incident, accident and/or disease occurs or arises in the course and scope of employment and while the worker was acting in furtherance of the employer's interest at the time of the injury and/or incident, and the pre-existing disease and/or injury is aggravated thereby, the aggravation of the disease or injury is, subject to provisions herein, compensable under this Code. The amount of the award for that disability as set forth in this Code may be reduced or denied in its entirety by the Administrator in consideration of the following:

- A. A prior settlement from any source for the same impairment;
- B. The difference between the degree of impairment of the worker before the covered accident and/or occupational disease and the degree of impairment after the covered accident or occupational disease; or.
- C. The benefits to be paid for impairments and/or disabilities would be in excess of 100% of the whole person. For purposes of this subsection, benefits include those benefits or payments made under this Code, benefits from the worker's compensation laws of any other jurisdiction or payments from third parties.

SECTION 5.07. TERMINATION OF BENEFITS UPON DEATH

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

CHAPTER 6. BENEFITS

SECTION 6.01. VOCATIONAL REHABILITATION

Vocational rehabilitation benefits or training are not mandatory under this Code, but may, in the discretion of the Administrator, be ordered pursuant to his authority established herein, or as required under rules promulgated by the TWBAC.

SECTION 6.02. WAITING PERIOD

An initial waiting period of seven (7) consecutive calendar days is to accrue before the covered worker shall be entitled to benefits under this chapter.

SECTION 6.03. TOTAL DISABILITY AND PARTIAL DISABILITY INCOME BENEFITS

- A. When the worker is disabled from work duty as determined by the consulting physician, or in the Administrator's discretion, the attending physician, by reason of a compensable injury or occupational disease, benefits shall be payable as follows:
1. If the covered worker is 100% disabled, benefits are payable at 66-2/3% of the worker's pre-injury average weekly wage.
 2. If the covered worker is less than 100% disabled, benefits are payable at 66-2/3% of the difference between a worker's pre-injury average weekly wage and the wage the covered worker is earning or capable of earning in his partially disabled condition.
- B. Except as provided herein, such benefits will continue to be paid in accordance with the terms of this Code until which time the earliest of the following occurs:
1. The expiration of 36 months from the date of the occurrence, or in the case of an occupational disease, 36 months from the earliest of the first manifestation of the symptoms or notification from a physician that the illness is inherent or related to the worker's occupation;
 2. The consulting physician, or in the discretion of the Administrator, the attending physician, declares that the worker has reached Maximum Medical Improvement;
 3. The claimant is incarcerated;
 4. A full, unrestricted release is provided by the attending physician;
 5. A modified or light duty release is provided by the attending physician and a bona fide job offer of suitable work consistent with the worker's disability is rejected;
 6. A new or intervening incident is the proximate cause of disability;
 7. Benefits are refused by the worker;
 8. Presumption of MMI or abandonment of medical treatment as defined by section 4.05 of this Code;
 9. Suspension of benefits by the Administrator for reasons authorized in this Code or by the authority of the arbitrator established under chapter 9 of this Code.
 10. The worker's earning capacity is reduced for reasons other than the disability from the work-related injury.
 11. The covered worker dies from any cause not resulting from the injury for which he was entitled to compensation under this section, and the covered worker's estate is not entitled to any further benefits as defined in this Code.

SECTION 6.04. IMPAIRMENT BENEFITS

- A. At the expiration of 36 months from the date of the incident, accident and/or occupational disease, the worker is presumed to have reached MMI regardless of disability and/or current medical status. The attending physician is to provide an impairment rating in accordance with the most current edition of the American Medical Association (AMA) based on reasonable medical probability. In addition, at this time the attending physician is required to provide a treatment plan for reasonable and necessary future medical needs. The attending physician's impairment rating and treatment may be subject to review and revision by the consulting physician at the discretion of the Administrator.

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- B. The impairment ratings are to be converted to the covered worker as a whole. Those ratings assigned to a specific body part are to be converted in accordance with the AMA guidelines.
- C. A rating may not be issued prior to the declaration of Maximum Medical Improvement. The Administrator may reserve issuance of payment under the following conditions:
 - 1. Contribution for prior impairment ratings;
 - 2. Clarification by the Administrator of this Code as to the validity of the date for MMI;
 - 3. Similar rating or Maximum Medical Improvement issues to be resolved by the consulting physician or, if necessary, the arbitrator established under chapter 9 of this Code.
- D. The rating recognized by the arbitrator established under chapter 9 of this Code shall be final, subject to the parties' right to appeal the arbitrator's decision to the Umatilla Tribal Court as set forth in chapter 9 of this Code. The rating will not be retroactively paid for weeks accrued in resolving the rating issue subsequent to the date of Maximum Medical Improvement. Such benefits will become effective the date of the ruling and commence at that time. Benefits will not be withheld beyond a reasonable time period in clarification of the rating and MMI date.
- E. Benefits will be payable based on the impairment rating issued to the covered worker multiplied by \$200,000 and divided by the total number of scheduled weeks (104). Benefits payable under this section are limited to a total of \$200,000 regardless of the impairment rating issued and regardless of the number of body parts involved.
- F. A Lump Sum Settlement for Impairments will be given for those covered workers who receive a rating of 15% of the covered worker as a whole or less. Notwithstanding provisions herein, the Administrator shall retain the right and discretion to order Lump Sum Settlements in those cases with a rating of greater than 15% of the covered worker as a whole.

SECTION 6.05. BENEFIT ISSUANCE PERIOD

Except as provided herein:

- A. All benefits under this chapter are to be issued weekly.
- B. There shall be no acceleration of benefits under this Code.
- C. Any settlement issued on behalf of a covered worker shall be executed by signed memorandum only.

SECTION 6.06. NOT TO EXCEED PRE-INJURY AVERAGE WEEKLY WAGE

In no event may the worker's incapacity income benefits, or other income sources supplement the loss income exceed 100% of the worker's pre-injury average weekly wage, as may be increased by a Tribally approved cost of living adjustment..

SECTION 6.07. BENEFIT OFFSETS

The Administrator is entitled to reduce benefits payable to covered workers under this Code in an amount equal to employee payments paid for by the employer for any pecuniary wages paid in the form of social security, long-term and short-term disability, employer elected salary contribution, vacation or sick leave, except for sick or paid administrative leave in the first seven (7) calendar days after an accident or onset of an occupational disease, or any other entitlement of a similar nature paid in whole or in part by the employer. Further, if any overpayment is made under this chapter to the covered worker of any disability income benefits as set forth in section 6.03 of this Code, such shall be deducted from any benefits payable under functional impairment benefits as set forth in section

6.04 of this Code; or in the case where no functional impairment benefits are payable, then such overpayment of benefits may be deducted through payroll deductions.

CHAPTER 7. DEATH BENEFITS

SECTION 7.01. DISTRIBUTION OF DEATH BENEFITS

- A. When death ensues to the covered 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 injury, compensation upon the basis of 66-2/3% per week of the worker's average weekly wage, commencing from the date of death as follows:
1. If there are no children entitled to benefits, then all to the surviving spouse for the projected probable life span of the decedent based on established mortality tables, the life of the surviving spouse or until remarriage, whichever comes first, provided that upon remarriage two years' benefits shall be paid to the surviving spouse in a lump sum. To be an eligible "surviving spouse" under this Code, 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 no surviving spouse, equal shares of all to:
 - a. Any child of the deceased until the child shall reach the age of 18, or until the child dies, whichever occurs first;
 - b. Any child beyond eighteen years of age if such child older than 18 years of age is enrolled as a full-time student in any accredited educational institution at the time of the injury to the covered worker. That child shall be entitled to benefits until the earliest of: the date on which the child dies, the date on which the child reaches 25, or the date on which the child ceases, for a second consecutive academic term, to be enrolled as such a student;
 - c. Any child who was physically or mentally incapacitated from earning at the time of the compensable injury causing death for the duration of the incapacity or the incapacitated child's death, whichever is earlier;
 - d. 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, nor any surviving eligible children, death benefits shall be paid to any surviving minor and dependent grandchildren equally, until such time as the grandchild dies or ceases to be a minor.
 4. If there is no surviving spouse, child or grandchild, the death benefits shall be paid to a surviving dependent who is a parent, sibling, or grandparent of the deceased and who were wholly dependent on the earnings of the worker for support at the time of the compensable injury. If more than one of these dependents survives the deceased, the death benefits shall be divided among them in equal shares.
 5. If the worker is not survived by any of the above dependents and is survived by quasi-dependents who were only partially dependent upon the earnings of the covered worker at the time of his death, then weekly compensation payable under this section shall be equal to the same proportion of the weekly benefits for the benefit of the person wholly dependent as the amount contributed by the worker to such quasi-dependents bears to the annual earnings of the deceased at the time of injury.

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6. If the worker is not survived by any legal beneficiaries any duty to pay such benefits, but not including burial benefits, under this chapter shall cease immediately;
- B. Where a worker is entitled to compensation under this Code for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability thereafter shall terminate.

SECTION 7.02. REDISTRIBUTION OF DEATH BENEFITS

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

SECTION 7.03. VERIFICATION OF ELIGIBILITY OF DEATH BENEFITS

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

SECTION 7.04. BURIAL BENEFITS

If death results from a compensable injury, the person and/or entity who incurs liability for the costs of the burial shall be paid \$5,000.00 to cover burial expenses. This burial benefit payment shall not be reduced as a result of any burial benefit paid by any other source.

CHAPTER 8. MEDICAL BENEFITS

SECTION 8.01. ENTITLEMENT TO MEDICAL BENEFITS

All covered workers are entitled to reasonable health care, supplies and reasonably necessary transportation incurred for such services. Medical benefits are payable from the date the compensable injury or accident occurred.

SECTION 8.02. RIGHT TO SELECT DOCTOR; EMPLOYER SELECTION

- A. Except in an emergency where the employer, Administrator or his agent cannot be reached immediately, all health care must be approved or recommended by the employer or Administrator. Health care treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the worker. If the worker has reason to be dissatisfied with the care offered, he should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the worker may agree to alternate care reasonably suited to treat the injury. If the employer and the worker cannot agree on alternate care, the arbitrator established under chapter 9 of this Code may, upon application and the reasonable proofs of the necessary thereof, allow and order other such care. Any non-authorized treatment of the covered worker is not payable under this section and shall be at the worker's sole expense.
- B. Chiropractic, osteopathic, naturopathic, acupuncture, or other non-traditional forms of treatment must be approved by the Administrator and approved by the attending physician. Duration of treatment and/or number of visits to such medical providers shall be subject to Administrator's approval, who may rely upon the advice of the consulting or attending physician.
- C. After notice and opportunity for a hearing, the arbitrator established under chapter 9 of this Code may issue a decision relieving the Administrator of the duty to pay for health care

SECTION 8.03. RELEASE OF MEDICAL-RELATED INFORMATION

Any worker, employer or insurance carrier or its agents making or defending a claim for benefits agrees to 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. The information shall be made available to any party or the party's representative upon request, and includes any third-party health care providers. Any institution or person releasing the information to a party or the party's representative shall not be liable criminally for civil damages by reason of the release of the information.

SECTION 8.04. MEDICAL EXPENSES

Expenses shall be limited to those usual and customary charged in the community, or like community, for similar services. Charges believed to be excessive or unnecessary may be denied by the Administrator. Any institution or person rendering treatment to a worker under this Code agrees to be bound by such charges as allowed by the Administrator and shall not recover in law or equity any amount in excess of that set by the Administrator.

SECTION 8.05. SETTLEMENT OF FUTURE MEDICAL TREATMENT

The worker may negotiate settlement of future medical expenses which will be paid in weekly installments to the worker. The basis for settlement will be the value of the current and future medical treatment plan. Settlements under this section are not to exceed \$100,000 and must be approved by the TWBAC.

CHAPTER 9. ADJUDICATION OF DISPUTES

SECTION 9.01. APPEALS FROM DECISIONS OF THE ADMINISTRATOR

- A. The Administrator shall administer this Code in accordance with the terms and conditions set forth in this Code, and specifically in accordance with chapter 3 of this Code. Any appeals from final decisions of the Administrator shall follow the procedures as set forth in this Code and in accordance with any and all rules and regulations of the TWBAC.
- B. First Level - Arbitration. Any claimant may appeal a decision of the Administrator by filing a contested claim in writing with the Administrator within thirty (30) days of the date of the Administrator's decision. Upon receipt of such appeal, the TWBAC shall appoint an arbitrator to hear the appeal. Further, the Administrator may seek a declaratory decision that the actions of the Administrator are in compliance with this Code, and may request a hearing in writing. Any claimant appealing the decision of the Administrator shall bear the burden of proof that the Administrator's decision was not in compliance with, or was in violation of, this Code. The arbitrator will conduct all hearings in accordance with the established rules adopted by TWBAC and render a written decision in the appeal. The decision of the arbitrator shall be final and binding on all parties except for an appeal to the Umatilla Tribal Court as provided herein.
- C. Second Level - Tribal Court. Any and all appeals from a decision of the arbitrator shall be heard by the Umatilla Tribal Court. An appeal of the arbitrator decision must be in writing and filed in the Umatilla Tribal Court within thirty (30) days of the date of the arbitrator decision. Any such appeal shall state the elements of the arbitrator decision being appealed and the factual and legal basis for the appeal. The arbitrator's decision shall be upheld unless the Tribal Court finds that the decision was:
 1. Unsupported by evidence;

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2. Arbitrary and capricious;
3. An abuse of discretion by the Administrator or arbitrator; or
4. Contrary to this Code or other applicable law.

SECTION 9.02. HEARINGS

- A. A claimant and the Administrator shall have the right to be represented by an attorney in all matters presented before an arbitrator and/or Tribal Court, if applicable, to cross-examine all witnesses and to review all evidence of any nature, as may be related to the matter under consideration. However, attorney fees are limited by section 9.03.
- B. An arbitrator hearing appeals under this Code shall not be bound by formal rules of evidence or by technical or formal rules of procedure and may conduct investigations in such a manner as its judgment is best calculated to ascertain the substantial rights of the parties and to promote the spirit and intent of the Tribal Workers Benefit System.
- C. A full and complete record of all arbitration proceedings shall be kept by the TWBAC by the method provided in their rules and regulations and shall be available to any party who requests the record in writing, demonstrating reasonable need for such record, and by paying the fee set forth in the rules and regulations of the TWBAC.

SECTION 9.03. CLAIMANT ATTORNEY'S FEES AND OTHER RELATED ARBITRATION COSTS

- A. If the arbitrator authorized under section 9.01 awards benefits to the claimant in excess of the Administrator's original benefit determination (as communicated to the claimant), the claimant's attorney's fees will be approved with a maximum limit of 10% of the total benefit award, or \$5,000, whichever is less. The award of attorney's fees to the claimant shall be over and above any benefits paid or provided to the claimant pursuant to this Code. Disputes over attorney fees must be filed with the arbitrator in accordance with TWBAC established rules and regulations.
- B. The claimant or Administrator may engage the services of physicians or experts for hearing purposes at the respective parties' costs which are not reimbursable regardless of the ultimate outcome of the dispute. The opinions of such consultants will be considered in a contested case, notwithstanding the provisions of this Code limiting the outside or unauthorized treatment.

APPENDIX A

LEGISLATIVE HISTORY

WORKERS BENEFIT CODE

LEGISLATIVE HISTORY

The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation enacted the Workers Benefit Code in Resolution No. 00-15 (March 6, 2000).

The Board enacted a revised Workers Benefit Code in Resolution No. 04-078 (November 1, 2004).

The Board amended the Workers Benefit Code in Resolution No. 06-101 (October 23, 2006).