

TRIBAL CODE

CHAPTER 45:

WORKER'S COMPENSATION CODE

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HISTORY NOTE

Current Ordinance:

Effective date: August 1, 1996

Adopted by Tribal Resolution No. 96 -105, July 16, 1996

Prior Board Actions:

The worker's compensation system embodied in the ordinance was approved by Resolution No. 96-98, June 4, 1996. This resolution was repealed by '45.105(2) of the current ordinance.

Amendments:

Tribal Resolution 2018-245, adopted October 16, 2018, amending §45.203, §45.205, §45.207, §45.302 §45.304, §45.305, §45.401, §45.402, §45.405, §45.406, §45.407 §45.409, §45.411, adding new § 45.412 Calculation of Employee's Average Weekly Wage, amending §45.501, §45.503, §45.504, §45.510, §45.511, §45.701.

Tribal Resolution 2017-211, adopted October 24, 2017, amends §45.606(2)(3), attorney fees.

Tribal Resolution 2001-122, adopted August 7, 2001 amended '45.401.

Tribal Resolution 98-45, adopted April 7, 1998 amended the code in the various locations referring to the Risk Management Department and amended it to read Sault Tribe Insurance Department.

TRIBAL CODE

CHAPTER 45:

WORKER'S COMPENSATION CODE

SUBCHAPTER I: PRELIMINARY MATTERS

45.101 Scope.

This Chapter governs compensation for accidental injuries sustained by Tribal workers arising out of and in the course of their employment which require medical services or result in disability or death.

45.102 Authority.

The authority for this Chapter is Article VII, Sections 1 (d), (g), (m) and (n) of the Tribal Constitution.

45.103 Interpretation.

In its interpretation and application the provisions of this Chapter shall be liberally construed in favor of the Tribe. In construing this chapter, the Tribal court shall not be bound by and need not look to interpretations of the worker's compensation laws of the State of Michigan or of any other jurisdiction.

45.104 Severability.

If any section, provision or portion of this Chapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter will remain unaffected.

45.105 Repealer.

(1) Tribal Resolution No. 96-98, adopted June 4, 1996, is hereby repealed in its entirety, as of the effective date of this Chapter.

(2) The provisions of this Chapter shall govern over any contradictory provisions of any other previously enacted Tribal ordinance, code or resolution.

45.106 Effective Date.

This chapter shall take effect on August 1, 1996, and shall govern any compensable injury of a Tribal worker which occurs on or after that date.

SUBCHAPTER II: WORKER'S COMPENSATION SYSTEM

45.201 Tribal Immunity From Liability.

(1) Except as otherwise provided in this Chapter, the Tribe shall be immune from all liability for compensation for injuries sustained by Tribal workers arising out of and in the course of their employment. Except as specifically provided in this Chapter, this Chapter shall not be construed as modifying or restricting the immunity of the Tribe from tort liability as it existed on the date of enactment of this Chapter, which immunity is affirmed.

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

(3) The Tribe by enactment of this Chapter consents to suit only and solely in Tribal Court, and only to the extent, and upon the terms and conditions, specified in this Chapter. By enactment of this Chapter 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.

45.202 Establishment of System.

This Chapter establishes a worker's compensation system for all Tribal workers as set out in this Chapter. In adopting this Chapter, the Board of Directors declares that the Tribe is a sovereign nation for purposes of worker's compensation, governed solely by the laws enacted by the Tribe, and that no state compensation law is applicable to injuries sustained by Tribal workers.

45.203 Purposes.

The purposes of this Chapter are declared as follows:

(1) To provide, without regard to fault, wage replacement and medical benefits to a Tribal worker suffering from a work-related injury or disease. Wage replacement benefits are not intended to make an injured worker whole; they are intended to assist a worker at a reasonable cost

to the Tribe. Within that limitation, the wage replacement benefit should bear a reasonable relationship to actual wages lost as a result of a work related injury or disease.

(2) To provide a fair and just administrative system for delivery of medical and wage replacement benefits to injured Tribal workers that reduces litigation and eliminates the adversary nature of the compensation proceedings to the greatest extent practicable.

45.204 Compensation as a Sole Remedy.

The right to receive compensation under the provisions of this Chapter for injuries sustained by a Tribal worker shall be the exclusive remedy against the Tribe and its employees, except as otherwise provided in this Chapter, and to that end, all civil causes of action against the Tribe and its employees for such personal injuries or death and all jurisdiction of the courts over such causes of action are hereby abolished.

45.205 Intentional Injuries.

(1) If injury or death results to a Tribal worker from the deliberate intention of that worker to produce such injury or death, neither the worker nor the widow, widower, child or dependent of the worker shall receive any payment whatsoever under this Chapter.

(2) If injury or death results to a Tribal worker from the deliberate intention of a fellow worker or other to produce such injury or death, the worker, the widow, widower, child or dependent of the worker may receive benefits under this Chapter and also have a cause of action against the fellow worker for damages over the amount payable under this Chapter. In such an action against a fellow worker, any award or settlement shall be distributed as provided in §45.517.

45.206 Application.

This Chapter applies to all Tribal workers, as defined in §45.207(29).

45.207 Definitions.

Unless the context otherwise requires, words and phrases employed in this Chapter have the following meanings:

(1) "**Accredited School**" means a school approved by the Tribe or the State of Michigan, or a school regulated, licensed or recognized by the Tribe as having approved course content.

(2) "**Beneficiary**" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury; however, if the injured worker and his or her spouse have been living apart and separate for more than one year at the time of the injury or subsequently, with no

intent to reunite, such a spouse is not a beneficiary and shall not qualify for compensation benefits as a spouse under this plan;

(b) An unmarried child under the age of 19 years;

(c) An unmarried child under the age of 23 years who is a full time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) An invalid child over the age of 19 years who is dependent upon the decedent for support at the time of injury;

(e) A parent who is dependent upon the decedent for support at the time of the injury if a beneficiary, as defined in subs. (a)-(d), does not exist; and

(f) A brother or sister under the age of 19 years of age if dependent upon the decedent for support at the time of the injury but only until the age of 19 years and only when a beneficiary, as defined in subs. (a)-(e), does not exist.

(3) "**Board of Directors**" means the Board of Directors of the Tribe, the Tribe's governing body elected as provided in the Tribal Constitution.

(4) "**Child**" includes a posthumous child (that is, a child born after the death of a parent), a child legally adopted prior to the injury, a child toward whom the worker stands *in loco parentis*, an illegitimate child, and a stepchild, if such stepchild was, at the time of the injury, a member of the worker's family and substantially dependent upon the worker for support. An "invalid dependent child" is a child, for purposes of benefits, regardless of age, so long as the child was an invalid at the time of the accident and thereafter remains an invalid substantially dependent on the worker for support. A child does not include any married children unless they are dependents. A person might also qualify as a child according to tribal custom as determined by the Committee.

(5) "**Claim**" means a written request for compensation from a worker or someone on the worker's behalf, or any compensable injury of which the Tribe has notice or knowledge.

(6) "**Committee**" means the Worker's Compensation Committee established by '45.208.

(7) "**Compensable Injury**" is an accidental injury arising out of and in the course of employment requiring medical services or resulting in disability or death. An injury is accidental if the result is an accident, whether or not due to accidental means. The term "compensable injury" for purposes of this Chapter also encompasses the accidental contraction of an occupational disease. Damage to dentures, eyeglasses, prosthetic devices and artificial limbs may be included in this definition only when the accidental injury to the worker occurred while the device is in use. A "compensable injury" does not include injury to any active participant in assaults or combats which are not connected to the job assignment and which amount to a deviation from customary duties.

(8) "**Compensation**" means the compensation and benefits provided by this Chapter, and includes "Wage Replacement" (weekly disability payments) and "medical" (medical expense, mileage and other expenses associated with medical treatment).

(9) "**Death**" is any fatality of the worker from work injury or occupational disease; provided, however, that if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child or children, the surviving spouse, child or children shall receive benefits as if death resulted from the injury as provided in this Chapter.

(10) "**Department**" means the worker's compensation division or component of the Tribe's Sault Tribe Insurance Department.

(11) "**Dependent**" means any of the following named relatives of a worker whose death results from an injury or who leaves surviving no widow, widower or child under the age of eighteen years: father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half sister, half brother, niece or nephew or any other extended family member as approved by the Committee, who at the time of the injury is actually and necessarily dependent in whole or in part upon the earnings of the worker.

(12) "**Disability**" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury.

(13) "**Employment**" means the performance of services for remuneration as an employee in the hire of the Tribe. With regard to members of the Board of Directors and Tribal committees, "employment" includes engaging in the performance of any function or duties of the office or committee membership, and shall include travel to and from the place of performance of such function or duties.

(14) "**Fund**" means the worker's compensation fund established and maintained by the Committee as provided in '45.208(3).

(15) "**Independent Contractor**" is one who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

An individual performing services for remuneration is considered to be a worker under this Chapter unless the requirements of this definition are met. If the requirements of the definition are met, the person is not a Tribal worker.

(16) **"Injury or Injured."**

(a) "Injury or Injured" means:

(I) internal or external physical harm to the body;

(ii) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(iii) death.

(b) "Accidental Injury" means:

(I) an unexpected traumatic incident or unusual strain;

(ii) identifiable by time and place of occurrence;

(iii) identifiable by member or part of body affected; and

(iv) caused by specific event on a single day or during a single work shift.

(c) "Injury or Injured" does not include a physical or mental condition arising from:

(I) emotional or mental stress; or

(ii) a nonphysical stimulus or activity; or

(iii) a disease that was not caused by an accident.

(d) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical harm in relation to the physical harm.

(17) **"Intoxication"** means blood alcohol content in excess of .07 percent or behavior during work hours which results in conviction of the offense of driving while intoxicated or impaired, or a similar offense, by any jurisdiction, or the 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 as defined in Schedules 1 through 5 of the Michigan Controlled Substances schedules; (3) a mind-altering drug or hallucinogenic; (4) an abusable glue or aerosol paint;

(5) prescribed drugs in excess of the prescribed therapeutic amounts; or (6) any other similar substance.

(18) **"Invalid"** means one who is physically or mentally incapacitated.

(19) "**Maximum Medical Improvement**" means the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated.

(20) "**Occupational Disease**" means such disease or infection as arises naturally and proximately out of employment.

(21) "**Permanent Partial Disability**" means a condition which is a result of an injury sustained during the course of employment with the employer, that causes the employee to permanently be unable to earn the equivalent of the employee's average weekly wage. For the purposes of making this determination, permanence, or the lack thereof, shall be determined based upon reasonably available medical testimony, and shall not be based upon conjecture, inference, or presumption.

(22) "**Permanent Total Disability**" means a condition which is a result of an injury sustained during the course of employment with the employer, that causes the employee to be unable to perform any available work activities and which condition is of the type that medical professionals would not expect to end with additional medical treatment. Permanent Total Disability may be preceded by, or may be independent of, a period of Temporary Partial Disability.

(23) "**Supervisor**" means the person who has the authority to terminate a Tribal worker's employment, and any person who has direct authority over any such person.

(24) "**Temporary Partial Disability**" means a condition which is a result of an injury sustained during the course of employment with the employer, that causes the employee to temporarily be unable to earn the equivalent of the employee's average weekly wage. A Temporary Partial Disability shall continue for such period as the wage loss continues, or until maximum medical improvement is reached, whichever comes first. At such time as maximum medical improvement is reached, if the inability to earn the equivalent of the employee's average weekly wage continues, then the employee shall be evaluated for rating under the sections applicable to a Permanent Partial Disability.

(25) "**Temporary Total Disability**" means a condition which is a result of an injury sustained during the course of employment with the employer, that causes the employee to be unable to perform any available work activities. An employee may be deemed to have a Temporary Total Disability during the period of evaluation and assessment prior to determining that the employee is able to return to some level of work at a reduced or modified level, or that the employee is unable to return to work at all, and as such may be Permanently Totally Disabled. The determination by the employer of a Temporary Total Disability at any point shall not be evidence of a Permanent Partial Disability or a Permanent Total Disability at some other point in time.

(26) "**Tribal Court**" means the Sault Ste. Marie Chippewa Tribal Court established by Tribal Code Chapter 80.

(27) **"Tribal Entity"** means any entity created and owned by the Tribe for business, economic development, governmental or other purposes which is controlled by the Board of Directors. For purposes of this Chapter, an entity is controlled by the Board of Directors if a majority of the persons serving on the body that governs the entity are chosen by the Board of Directors or are required to be members of the Board of Directors. Tribal entities include, but are not limited to, the Housing Authority, the Building Authority, the Utility Authority, the Gaming Commission, the Economic Development Commission, and all Tribal enterprises owned and operated by the Tribe. The term "Tribal entity" does not, however, include any corporation, limited liability company, or partnership formed under the laws of the State of Michigan.

(28) **"Tribe"** means the Sault Ste. Marie Tribe of Chippewa Indians and includes all Tribal entities.

(29) **"Wages"** means all earnings of an employee, whether determined on the basis of time, task, piece, commission or other method of calculation, for labor or services, except for any fringe benefits. With regard to members of the Board of Directors or Tribal committees, "wages" includes the stipend or other remuneration (except reimbursement for expenses) paid as a result of services on the Board of Directors or committee.

(30) **"Worker or Tribal Worker"** means:

(a) every employee in the service of the Tribe hired and carried on the payroll of the Tribe (including Tribal entities); and

(b) every member of the Board of Directors; and

(c) every member of a Tribal committee created and appointed by the Board of Directors.

Not included in the term "worker" are consultants and independent contractors, which include individuals who agree to perform services for the Tribe or its enterprises without supervision or control, and all other persons not considered to be directly employed by the Tribe. The term "worker" also does not include any person employed by an independent contractor, including employees of contractors and subcontractors as those terms are used in Michigan Compiled Laws '418.271. The Tribe declares that it shall have no liability under this Chapter or otherwise to any employee of a contractor or subcontractor of the Tribe.

45.208 Worker's Compensation Committee.

(1) There is hereby established a Worker's Compensation Committee, whose responsibility it shall be to administer the worker's compensation system created by this Chapter and act as the first level of review in the case of a disputed claim. The committee shall be composed of five (5)

members, and shall include one representative from the Board of Directors, Legal Department, Accounting Department, Human Resources Department, and a person with an insurance background.

(2) The Committee members shall be appointed by and shall serve at the pleasure of the Board of Directors. A majority of the Committee members shall constitute a quorum, and a majority of those members present and constituting a quorum must concur in order for any decision of the Committee to be valid.

(3) The Committee shall have the power to:

(a) Establish and promulgate rules governing the administration of this Chapter.

(b) Determine all matters and perform all functions entrusted to the Committee by this Chapter. All orders, rules, findings, decisions and awards of the Committee are presumed reasonable and lawful until modified or set aside.

(c) Establish a Fund sufficient to pay the claims and costs of administration of the worker's compensation system, including a reserve sufficient to cover reasonably anticipated contingencies, and determine the amount necessary to maintain such fund.

(d) Levy, apportion, and collect assessments for the fund from the Tribe and Tribal entities.

(e) Oversee the investment of the Fund, and protect the integrity of the Fund and its segregation from other monies and accounts of the Tribe.

(f) Purchase excess insurance or reinsurance covering all claims arising under this Chapter in excess of those covered by the Fund.

45.209 Safety Officer.

(1) There is hereby established the position of Safety Officer, who shall be designated by Tribal administration from within the Sault Tribe Insurance Department. The primary responsibility of the Safety Officer shall be to assure that safety standards and guidelines are followed within the Tribe.

(2) The Safety Officer's specific duties shall be:

(a) To inspect buildings and grounds and note hazards or obstructions that need to be corrected per safety regulations.

(b) To schedule training on fire safety and educate staff on escape routes should a fire or disaster occur.

- (c) To schedule training for pertinent staff members for CPR and first aid.
- (d) To inspect vehicles, or schedule inspections by proper personnel to insure that vehicles and heavy duty road equipment are safe to drive.
- (e) To accept reports from workers in regard to any problem areas that arise and interview relevant workers.
- (f) To compile information using a log, noting areas for correction.
- (g) To write precise, accurate reports regarding safety standards for pertinent staff members and correspondence regarding safety.
- (h) To schedule times and dates for inspections on completions of renovations/additions.

SUBCHAPTER III: COVERAGE.

45.301 Persons Covered.

(1) Each worker injured or killed due to an accident or who has suffered an occupational disease in the course of his or her employment, or such worker's dependents or beneficiaries, shall receive compensation in accordance with this Chapter, except as otherwise provided in this Chapter. Such payment shall be in lieu of any and all causes of action whatsoever against the Tribe.

(2) If an injured worker, or the surviving spouse of a deceased worker, does not have the legal custody of a dependent child on account of whom payments are required to be made under this Chapter, such payment will be made to the person having legal custody of such child, but only for the periods of time after the Committee has been notified of the fact of such legal child.

45.302 Persons Not Covered.

(1) If injury or death results to a worker from the deliberate intention of that worker to produce such injury or death, neither the worker nor the widow, widower, child or dependent of the worker shall receive any payment whatsoever under this Chapter.

(2) An invalid child, while being supported and cared for in a Tribal, state or federal institution, shall not be a dependent or beneficiary or be counted as a beneficiary in fixing the amount of any monies to be received under this Chapter.

(3) A child may receive payments as either the natural child of a deceased worker, or the stepchild of another deceased worker, but shall not receive double payments as both.

(4) Any payments to or on account of a minor dependent or beneficiary of a deceased or temporarily or totally permanently disabled worker shall terminate when any such child reaches the age of nineteen years unless such child is a dependent invalid or is under twenty-three years of age and permanently enrolled as a full-time student in an accredited school. Payments to students who have attained age eighteen shall be made directly to the student. Payments to or on account of any dependent invalid child over the age of eighteen years shall continue in the amount previously paid on the account of such invalid child until he or she ceases to be a dependent. When permanently enrolled as a full-time student in an accredited school, payments to children who thereafter reach nineteen shall continue in the amount previously paid on the account of such student until he or she reaches the age of twenty-four or ceases to be so permanently enrolled, whichever comes first. Where the worker sustains an injury or dies when any of his or her offspring are over the age of nineteen years and is either a dependent invalid child or is permanently enrolled as a full-time student in an accredited school and is under age twenty-four, the payment to or on account of such beneficiary shall be made as provided in this Chapter.

(5) Minor children of the worker who are not dependents of the worker as defined in this Chapter are not covered by the provisions of this Chapter.

45.303 Workers With Preexisting Medical Conditions.

If it is determined that a worker at the time of sustaining an injury or occupational disease has a preexisting medical condition and that such condition delays or prevents complete recovery from such injury, it shall be ascertained as nearly as possible by the Department, the period over which the injury would have caused disability were it not for the preexisting condition and the extent of impairment which the injury would have caused were it not for the preexisting condition, and compensation shall be awarded after these determinations have been made.

45.304 Specific Medical Conditions.

(1) Hernias.

(a) In all claims for compensation for hernia resulting from a compensable injury it must be proven to the satisfaction of the Department that there was an injury resulting in hernia and that the hernia appeared suddenly, it was accompanied by pain, it immediately followed an accident, it did not exist prior to the accident for which the compensation is claimed and that the accident was reported within twenty-four hours.

(b) All hernias (inguinal, femoral or otherwise) so proved to be the result of an injury by an accident arising out of and in the course of the employment shall be treated at the expense of the Fund in a surgical manner. Compensation shall be paid for a maximum period of six weeks from the date of the operation. There will be no award of permanent disability for hernias. In case the injured worker refuses to undergo an operation to repair a hernia, no compensation shall be allowed during the time of refusal. Those workers who, because of religious belief, do not use surgery for the treatment of hernias shall be limited to

a maximum period of six weeks from the time they are unable to work due to hernia in which to receive compensation. Compensation shall be allowed for temporary total disability for hernia disability prior to the operation.

(2) Heart problems and strokes. Heart attacks and strokes and all their medical connotations are presumed not to have arisen out of the employment notwithstanding their having occurred during the course of employment absent substantial evidence of extraordinary physical stresses not normally associated with the performance of the worker's job in close temporal proximity to the clinical manifestations of the event.

(3) Psychological Problems. Mental, emotional, nervous or stress-related conditions, including but not limited to the creation, acceleration or aggravation of alcoholism or drug abuse, shall be deemed to be non-compensable.

(4) Injury or Death by Consumption or Application of Drugs or Chemicals. No benefits of any nature shall be payable to any worker whose injury or death is caused or contributed to by the worker's use of any drug except those drugs prescribed by a physician and used in accordance with the physician's instructions, including narcotics and hallucinogens, or any gas or fumes taken or inhaled voluntarily, or by voluntary poisoning.

(5) Intoxication. Benefits shall not be payable for any covered person injured or killed while intoxicated, regardless of whether or not the intoxicated condition was the proximate cause of the injury or death. It is necessary only to prove that the covered person was intoxicated at the time of the accident to deny benefits under this Chapter.

(6) Carpal Tunnel Syndrome. Claims based on carpal tunnel syndrome are presumed not to have arisen out of the employment absent substantial evidence that the syndrome was caused by job-related direct physical trauma.

(7) Second Hand Smoke. Claims based on second hand smoke are presumed not to have arisen out of the employment absent substantial evidence that would constitute job-relation.

45.305 Workers Injured During Break.

No compensation shall be paid to any worker receiving an injury during the worker's lunch period or scheduled break unless the injury occurred while the worker was undertaking activity within the scope of the worker's employment.

45.306 Workers Awarded Other Compensation.

The payment or award of compensation under the workers= compensation law of another political entity, territory, province or foreign nation to a worker or his or her beneficiaries otherwise entitled on account of such injury or compensation under this Chapter shall not be a bar to a claim for compensation under this Chapter. However, the claim under this Chapter must be timely filed, and if compensation is paid or awarded under this Chapter, the total amount of compensation paid or

awarded to the worker or his or her beneficiary under the other workers= compensation law shall be credited against the compensation due the worker or his or her beneficiary under this Chapter.

45.307 Payment of Awards After Death.

(1) When any worker suffers a permanent, partially disabling injury and dies from some cause other than the accident which produced such injury, the amount of such permanent partial disability benefits shall be paid to the worker=s surviving spouse, or to the child or children of the worker if there is no surviving spouse.

(2) When any worker suffers an injury and dies as a result before he or she has received payment of any installment covering time loss for any period of time prior to his or her death, the amount of such monthly payment shall be paid to the surviving spouse, or to the child or children of the worker if there is no surviving spouse.

(3) When a worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as provided in "45.401(2) and (3). Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in '45.401 when the surviving spouse of a deceased worker remarries.

45.308 Entitlement for Incarcerated Workers.

Any worker receiving benefits under this Chapter who is subsequently confined in, or who subsequently becomes eligible for benefits while confined in any penal institution, under conviction of sentence, shall have all payments of temporary total or temporary partial disability compensation canceled during the period of confinement, but after discharge from the institution, payment of benefits henceforth due shall be paid.

SUBCHAPTER IV: COMPENSATION.

45.401 Death.

If death results from the accidental injury, payment shall be made as follows:

(1) The cost of burial, shall be paid upon submission of proof of expense, including transportation of the body, and shall not exceed \$6,000.00 in any case.

(2) If death results from an injury to an employee, the dependents of the employee who were

wholly dependent upon the employee's earnings for support at the time of the injury shall receive an amount equal to 4.35 times 50% of the average weekly gross pay of the deceased employee, paid once monthly, subject to the maximum of the state of Michigan workers compensation table, and subject to the following conditions:

(a) If the surviving dependent was a spouse of the employee, such payment shall continue for no more than five (5) years or until remarriage, whichever occurs sooner;

(b) If the surviving dependent is a child of the employee, such payment shall continue until the child reaches the age of 19 years. If the child becomes a full time student in an accredited institution of higher learning, then such payments shall continue until the child reaches the age of 24 years, provided, the child remains a full time student (12 or more credit hours per semester) for every year following their 19th birthday until their 24th birthday;

(c) If the surviving dependent is an incapacitated adult, such payment shall continue for no more than five (5) years or until marriage, whichever occurs sooner. In this event, the worker's compensation benefits shall be coordinated with any social security benefits; other than retirement benefits;

(d) If there is more than one surviving wholly dependent person, the survivors shall share equally in the benefit. Benefits shall continue to be paid past the expiration of entitlement of a sharing survivor but only to those survivors eligible for benefits under the code.

(3) If the deceased employee leaves dependents only partially dependent upon his/her earnings for support at the time of death, the compensation paid shall be equal to 50% of the percentage of the person's partial dependency, as it impacted the deceased employee's total earnings.

(a) Where a deceased employee leaves a person wholly dependent upon him or her for support, such person shall be entitled to the whole death benefit. Persons partially dependent, if any, shall receive no part thereof, while the person wholly dependent is living.

(b) If there is no person wholly dependent or if the death of all persons wholly dependent shall occur before all compensation is paid, and there is one (1) person partially dependent, that person shall be entitled to compensation according to the extent of his or her dependency. If there are two (2) or more partial dependents, the death benefit shall be divided among them according to the extent of his or her dependency.

(4) The following person shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A legally married spouse dependent upon the deceased employee with whom

he/she lives at the time of death, or from whom, at the time of death, the committee shall find the spouse was living apart for justifiable cause or because the deceased had abandoned the spouse;

(b) A child under the age of 19 years;

(5) In all cases mentioned in this section the total sum due a surviving spouse and his or her own children shall be paid directly to the surviving spouse for his or her own use, and for the use and benefit of the child(ren).

(a) In the event the employee was not married to the parent of the employee's children, payment shall be to the parent, as legal guardian of the child, for the use and benefit of the child(ren);

(b) In any event, if it is determined the parent is not using the payment for the use and benefit of the child or children, a court of competent jurisdiction may order that the children's share be paid to a legal representative or guardian other than the surviving parent;

(c) A parent or legal guardian of the child or children may direct the payment of the child's portion of any benefits be paid to a conservator or trust for the benefit of the surviving children.

(6) In all cases where the total sum due is to an incapacitated adult, payment shall be made to the person's legal guardian for the use and benefit of the incapacitated adult.

(7) In all cases where dependency is not presumed, dependency shall be determined in accordance with the facts, as the facts may be at the time of death.

(8) Except in cases involving minor children, benefits shall not be paid beyond five (5) years in total.

45.402 Permanent Total Disability.

(1) When permanent total disability results from the injury, the worker shall receive during the period of that disability wage replacement compensation benefits equal to 66 2/3 percent of the employee's average weekly wage, not less than the amount of \$50.

(2) The worker has the burden of proving permanent total disability status and must establish that the worker is willing to seek regular gainful employment and that the worker has made reasonable efforts to obtain such employment.

(3) When requested by the Department, a worker who receives permanent total disability

benefits shall file, on a form provided by the Department, a sworn statement of the worker's gross annual income for the preceding year along with such other information as the Department considers necessary to determine whether the worker regularly performs work at a gainful and suitable occupation.

(4) The Department shall reexamine periodically each permanent total disability claim for which the Department has current payment responsibility to determine whether the worker is currently permanently incapacitated from regularly performing work at a gainful and suitable occupation. Reexamination shall be conducted every two years or at such other more frequent interval as the Department may prescribe. Reexamination shall include such medical examination, report and other records as the Department considers necessary or may require.

Once begun, permanent total disability benefits may not be terminated by the employer unless:

- (a) the employee has returned to work, with any employer in a similar position;
- (b) the employee has died;
- (c) the employee has unreasonably refused to undergo a reasonable medical examination as prescribed by the employer;
- (d) the employee has unreasonably refused modified, early return to work, light duty or transitional job assignment;
- (e) the employee is unable or unavailable to work for reasons unrelated to the compensable injury;
- (f) the employee is terminated for misconduct, including off-duty misconduct and/or misconduct which occurred prior to the injury but which was not investigated to completion prior to the date of injury; or
- (g) the employee fails to cooperate with reasonable medical or vocational rehabilitation.

45.403 Death During Permanent Total Disability.

(1) If the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a spouse or any dependents, payment shall be made in the same manner in the same amounts as provided in '45.401(2).

(2) If any surviving spouse to whom the provisions of '45.401(2) apply remarries, the payment on account of a child or children shall continue to be made to the child or children the same as before the remarriage.

45.404 Offsetting Against Social Security Benefits.

(1) Upon the authorization of the Department, the amount of any permanent total disability benefits payable to an injured worker shall be reduced by the amount of any disability benefits the worker receives from federal social security.

(a) If the benefits amount to which the worker is entitled pursuant to this Chapter exceed the worker's federal disability benefit limitation determined pursuant to 42 U.S.C. 424(a), the reduction in worker's compensation benefits authorized by this subsection shall not be administered in such a manner as to lower the amount the worker would have received pursuant to this code had such reduction been made.

(b) If the benefit amount to which the worker is entitled under this Chapter is less than the worker's federal disability benefit limitation determined pursuant to 42 U.S.C. 424(a), the reduction in worker's compensation benefits authorized by this subsection shall not be administered in such manner as to lower the amount of combined benefits the worker received below the federal benefit limitation.

(2) No reduction of permanent total disability benefits shall be made under this section unless authorized by the Department.

(3) No reduction of benefits shall be authorized under this section except upon actual receipt of federal social security disability benefits by the injured worker.

(4) The effective date of the operation of any offset provided in this section shall be the date established in the authorization provided in sub. (1)(a).

45.405 Temporary Total Disability.

Wage replacement compensation payments for injuries producing temporary total disability shall begin with the eighth calendar day of disability. Compensation will be allowed for the first seven calendar days only if the disability continues for longer than 14 days after the date of injury. The first weekly installment of compensation for temporary total disability is due 14 days after the disability begins. The employee may receive wage replacement compensation for temporary total disability equal to $66 \frac{2}{3}$ percent of the average weekly wage, not to exceed 200 weeks.

Once begun, temporary total disability benefits may not be terminated by the employer unless:

(a) the employee has returned to work, with any employer in a similar position;

(b) the employee has died;

(c) the employee has unreasonably refused to undergo a reasonable medical examination as prescribed by the employer;

(d) the employee has received 200 weeks of benefits or has been paid the maximum compensation allowed;

(e) the employee has unreasonably refused modified, early return to work, light duty or transitional job assignment;

(f) the employee is unable or unavailable to work for reasons unrelated to the compensable injury;

(g) the employee is terminated for misconduct, including off-duty misconduct and/or misconduct which occurred prior to the injury but which was not investigated to completion prior to the date of injury; or

(h) the employee fails to cooperate with reasonable medical or vocational rehabilitation.

45.406 Temporary Partial Disability.

(1) Wage replacement compensation payments for injuries producing temporary partial disability shall begin with the eighth calendar day of disability. Compensation will be allowed for the first seven calendar days only if the disability continues for longer than 14 days after the date of injury. The first weekly installment of compensation for temporary partial disability is due 14 days after the disability begins.

(2) The employee may receive wage replacement compensation for temporary partial disability equal to $66 \frac{2}{3}$ percent of the average weekly wage, not to exceed 104 weeks average weekly wage.

45.407 Permanent Partial Disability.

(1) Wage replacement compensation payments for injuries producing Permanent Partial Disability shall be in the amount of $66 \frac{2}{3}$ percent of wages for specified periods, or if the injury is not scheduled, a period proportionate to the degree of disability but not over 500 weeks or \$150,000 whichever is lesser. Reduction shall be made for wage replacement payments made during any period of Temporary Total Disability which resulted from the same injury.

(2) In cases included in the following schedule of permanent partial disabilities indemnity shall be paid for the healing period and in addition, for the period specified, at the rate of 66 2/3 percent of the average weekly earnings of the employee.

<u>DISABILITY</u>	<u>BENEFIT</u>
<u>Loss of arm at shoulder</u>	<u>500 weeks</u>
<u>Loss of arm at elbow</u>	<u>450 weeks</u>
<u>Loss of a non-dominant hand</u>	<u>400 weeks</u>
<u>Loss of the dominant hand</u>	<u>450 weeks</u>
<u>Loss of a palm where the thumb remains</u>	<u>325 weeks</u>
<u>Loss of a thumb and the metacarpal bone thereof</u>	<u>160 weeks</u>
<u>Loss of a thumb at the proximal joint</u>	<u>120 weeks</u>
<u>Loss of a thumb at the distal joint</u>	<u>50 weeks</u>
<u>Loss of all fingers on one hand at their proximal joints</u>	<u>225 weeks</u>
<u>Loss of index finger and the metacarpal bone thereof</u>	<u>60 weeks</u>
<u>Loss of index finger at the proximal joint</u>	<u>50 weeks</u>
<u>Loss of index finger at the second joint</u>	<u>30 weeks</u>
<u>Loss of index finger at the distal joint</u>	<u>12 weeks</u>
<u>Loss of middle finger and the metacarpal bone thereof</u>	<u>45 weeks</u>
<u>Loss of middle finger at the proximal joint</u>	<u>35 weeks</u>
<u>Loss of middle finger at the second joint</u>	<u>20 weeks</u>
<u>Loss of middle finger at the distal joint</u>	<u>8 weeks</u>
<u>Loss of ring finger and the metacarpal bone thereof</u>	<u>26 weeks</u>
<u>Loss of ring finger at the proximal joint</u>	<u>20 weeks</u>
<u>Loss of ring finger at the second joint</u>	<u>15 weeks</u>
<u>Loss of ring finger at the distal joint</u>	<u>6 weeks</u>
<u>Loss of little finger and the metacarpal bone thereof</u>	<u>28 weeks</u>
<u>Loss of little finger at the proximal joint</u>	<u>22 weeks</u>
<u>Loss of little finger at the second joint</u>	<u>16 weeks</u>
<u>Loss of little finger at the distal joint</u>	<u>6 weeks</u>
<u>Loss of leg at the hip</u>	<u>500 weeks</u>
<u>Loss of leg at the knee</u>	<u>425 weeks</u>
<u>Loss of a foot at the ankle</u>	<u>250 weeks</u>
<u>Loss of great toe with the metatarsal bone thereof</u>	<u>84 weeks</u>
<u>Loss of great toe at the proximal joint</u>	<u>25 weeks</u>
<u>Loss of great toe at the distal joint</u>	<u>12 weeks</u>
<u>Loss of second toe with the metatarsal bone thereof</u>	<u>25 weeks</u>
<u>Loss of second toe at the proximal joint</u>	<u>8 weeks</u>
<u>Loss of second toe at the second joint</u>	<u>6 weeks</u>
<u>Loss of second toe at the distal joint</u>	<u>4 weeks</u>
<u>Loss of the third, fourth or little toe with the metatarsal</u>	<u>20 weeks</u>

bone thereof	
Loss of the third, fourth or little toe at the proximal joint	6 weeks
Loss of the third, fourth or little toe at the second or distal joints	4 weeks
Loss of an eye by enucleation or evisceration	275 weeks
Total impairment of one eye for industrial use	250 weeks
Total deafness from accident or sudden trauma	330 weeks
Total deafness of one ear from accident of sudden trauma	55 weeks
Paralysis due to injury to spine (Monoplegia, diplegia, paraplegia, or quadriplegia)	500 weeks

45.408 Compensation For Additional Accident.

Should a further accident occur to a worker who is receiving compensation for a temporary disability, or who has been paid or awarded compensation for a permanent disability, the award of compensation for such further accident shall be made with regard to the combined effect of the injuries of the worker and past receipt of money for such disabilities.

45.409 Accelerating Award Payments.

(1) Where a worker has been awarded compensation for permanent partial disability, and the award has become final by operation of law or waiver of the right to appeal its adequacy, the Department may, in its discretion, upon the worker's application, order all or any part of the remaining unpaid award to be paid to the worker in a lump sum.

(2) In all cases where the award for permanent partial disability does not exceed \$20,000 (Twenty Thousand Dollars and 00/00), the Department shall pay all of the award to the worker in a lump sum.

45.410 Compensation Not Assignable or Alienable.

Except as provided in this section, no monies payable under this Chapter on account of injuries or death are subject to assignment prior to their receipt by the beneficiary entitled to them, nor shall they pass by operation of law. All such monies and the right to receive them are exempt from seizure on execution, attachment, or garnishment, or by the process of any court, except as required by a provision of the Tribal Code or by a federal law applicable to the Tribe, and except for income assignments imposed or executed under the direction of a court of competent jurisdiction for the payment of child support (subject to the limits contained in 15 U.S.C. 1673).

45.411 Medical Services and Supplies.

(1) Upon the occurrence of any injury to a worker entitled to compensation, the worker shall receive proper and necessary medical and surgical services at the hands of a physician chosen by the Department for the first 28 days of an injury. Change of physicians at the request of the worker shall be approved or disapproved by the Department. A physician-to-physician referral does not require the approval or disapproval of the Department.

(2) The physician chosen by the worker must be a medical doctor licensed to practice medicine in the State of Michigan or traditional healers recognized by the Sault Tribe. Payment for treatment of the worker by chiropractors, naturopaths, physical therapists, nurse practitioners, and medical doctors licensed to practice medicine in other states must be approved by the Department.

(3) When the injury to any worker is so serious as to require transportation from the place of injury to a place of treatment, the Tribe shall furnish appropriate transportation to the nearest place of proper treatment.

(4) All mechanical appliances necessary in the treatment of an injured worker, such as braces, belts, casts and crutches, shall be provided, and all mechanical appliances required as permanent equipment after treatment has been completed shall continue to be provided or replaced without regard to the date of injury or date treatment was completed.

45.412 Calculation of Employee's Average Weekly Wage.

(a) Employees Average Weekly Wage.

Earnings of the injured employee in the employment in which the employee was working at the time of the injury during highest paid 39 weeks of the immediately 52 weeks immediately preceding the date of the injury, divided by the number of weeks worked. Whenever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, those allowances will be considered as part of the employee's earnings as well as any compensation to the employee which is subject to Federal income tax. All earned income, from any source, shall be considered when calculating Average Weekly Wage, except that no income shall be considered unless supported by proof such as pay stubs, tax forms, or other similarly reliable documentation. Compensation for seasonal work shall only be included in the calculation for compensation if the wage loss occurs during a time period when such work would normally be pursued. Losses of income for self-employment or family businesses shall only be allowed upon a showing that: (a) reasonable efforts were undertaken to mitigate the loss, (b) that the loss occurred despite the reasonable efforts, (c) that the income was actually lost and not simply deferred until a time when the employee became able to perform the work, and (d) that the income level had been realized for at least one full year prior, as documented by tax filings submitted in all applicable jurisdictions.

- (1) If the injured employee lost seven or more days during this period although not in the same week, the earnings for the remainder of the 39 weeks will be divided by the number of weeks and parts thereof remaining after the time lost have been deducted.
- (2) If the employment prior to the injury extended over a period of less than 52 weeks, the aforementioned method of computation will apply if the results are just and fair to both parties.
- (3) If the employee has worked for the employer a short period of time or if the employment is of a casual nature, average weekly wage will be determined by using the average weekly amount during the 39 weeks prior to the injury that was being earned by a person in the same grade employed at the same work by the same employer.

(b) Employee's Average Daily Wage.

If the disability period involves a fractional week, the indemnity shall be paid for each day of such week at the rate of one-seventh of the weekly indemnity.

SUBCHAPTER V: CLAIMS PROCEDURES.

45.501 Notice of Accident; Notification of Rights.

(1) Whenever any accident occurs to any worker and where the worker has received treatment from a physician, has been hospitalized, disabled from work, or has died as the apparent result of such accident and injury, it shall be the duty of the worker or someone on the worker's behalf to immediately report such accident or death to the supervisor in charge of the worker within 24 hours and that person shall at once report such accident and the resulting injuries to the Department.

(2) Upon receipt of such notice of accident, the Department shall immediately forward to the worker or the worker's beneficiaries or dependents notification, in nontechnical language, of their rights under this Chapter within 24 hours.

45.502 Prompt Action on Claims.

Claims of injured workers shall be promptly acted upon by the Department. Where temporary disability compensation is payable, the first payment shall be mailed within fourteen days

after receipt of the claim and shall continue at regular biweekly intervals. The payment of these or any other benefits under this Chapter prior to the entry of an order by the Department shall not be considered a binding determination of the obligations of the Tribe under this Chapter. The acceptance of compensation by the worker or the worker's beneficiaries prior to such order shall likewise not be considered a binding determination of their rights under this Chapter.

45.503 Medical and Rehabilitation Expenses.

(1) The Tribe shall establish a primary provider network to provide treatment to injured workers. In the absence of a bona-fide emergency requiring an immediacy or level of care unavailable through the primary provider network or an injury occurring in the source and scope of employment away from The Tribe's service area, all treatment and referrals to specialists and other providers shall be through the primary provider network. In cases involving the exceptions stated above, after the emergency or return to the Tribe's service area, the primary provider network shall either assume the worker's care or endorse continued treatment elsewhere. If a worker chooses to be treated outside the primary provider network without permission, he or she will be responsible for the treatment expense and the Department shall not be bound by any opinions of such outside providers.

(2) For periods of lost wages due to medical treatment in excess of one full shift, compensation will be paid in the same manner as temporary total disability benefits but only if the medical treatment could not be scheduled during non-working hours. Reasonable mileage for medical treatment shall be reimbursed but other expenses such as parking, meals, child care or lost wages of others are not covered.

(3) The Department, in consultation with the physicians assigned to the worker's case or on its own initiative, may assign a rehabilitation provider to conduct a vocational assessment, assist in job modification or provide job placement services. While the worker may request vocational services, the final decision to engage these services rests with the Department with no right of appeal. The refusal of the Department to provide such services does not relieve the worker of the duty to diligently seek or to accept employment within his or her restrictions.

45.504 Application for Compensation.

(1) Where a worker is entitled to compensation under this Chapter, such worker shall file with the Department an application for benefits and shall identify his or her treating physician.

(2) A worker shall not be entitled to recover any amount expended by the worker for medical or other treatment or services unless he or she shall have requested the employer to furnish such treatment or services, or unless the employer, having knowledge of such injury, neglected to provide or authorize same; nor shall any claim for medical or surgical treatment be valid and enforceable, as against any employer, unless within ten days following the first treatment the worker furnishes to the Department a report of the injury on a form prescribed by the Department. No medical service covered in this Chapter shall be paid for at rates exceeding those promulgated by the

State of Michigan. The Department may, however, excuse the failure to furnish this report within ten days when they find it to be in the interest of justice to do so.

45.505 Occupational Diseases.

The compensation and benefits for occupational diseases shall be paid in the same manner as compensation and benefits for other injuries under this Chapter.

45.506 Statutes of Limitation.

(1) Except as otherwise provided in this Chapter, the right to compensation for disability or death under this Chapter shall be barred unless a claim is filed within one year after the injury or death. The time for filing shall not begin to run until the worker or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment.

(2) If compensation has been paid under the provisions of this Chapter, a claim may be reopened within one year after the date of claim closure based on an objective material worsening of the underlying condition.

(3) If a person who is entitled to compensation under this Chapter is mentally incompetent or a minor, the provisions of this section shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before the minor becomes of age, from the date such minor becomes of age.

(4) Claims for occupational disease or infection to be valid and compensable must be filed within one year following the date the worker or beneficiary had notice from a physician of the existence of the worker's occupational disease without reference to its date of origin, or until the worker or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the disease or death and the employment, but in no event longer than three years from the date the worker terminates his or her employment with the Tribe.

45.507 Burden of Proof.

The burden of proof to establish entitlement to benefits under this Chapter, except as set forth in '45.508, shall rest upon the worker, or his or her dependents in the case of death. The burden extends to disputes over continuing entitlement to benefits which have been discontinued by the Department.

45.508 Presumptions.

When a worker is found dead by accident under circumstances indicating that the accident

took place within time and place limits of employment and no conclusive evidence is present to exclude coverage as provided in this Chapter, it shall be the presumption that death arose out of employment, and benefits shall be paid.

40.509 Proof of Dependency.

A dependent shall at any time upon request furnish the Department with proof satisfactory to the Department of the nature, amount and extent of the contribution by the worker for such dependent's support.

45.510 Compromise and Release.

Nothing in this Chapter shall impair the rights of the parties to compromise, in accordance with this Chapter, any liability which is claimed to exist under this Chapter on account of injury, disease or death.

45.511 Claim Closure.

A worker's claim shall be closed when the Department determines that the injured worker has reached the point where no further improvement could reasonably be expected from medical treatment or the passage of time.

45.512 Service of Notices, Orders, and Warrants.

For all claims under this Chapter, the claimant's written notices, orders or warrants shall not be forwarded to, or sent in care of, any representative of the claimant, but shall be forwarded to the claimant unless satisfactory proof has been presented to the Department that the worker's condition prevents the worker from being able to personally conduct his or her affairs.

45.513 Recovery of Erroneous Payments.

(1) Whenever any payment of benefits under this Chapter is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient mistakenly acted upon, or any other circumstances of a similar nature not induced by fraud, the recipient shall repay it. Recoupment may be made from any future payments due the recipient on any claim against the Fund. The Department must make a claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed that any claim has been waived. The Department may exercise its discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever any payment of benefits under this Chapter has been induced by fraud, the recipient shall repay any such payment together with a penalty of 50 percent of the total of any such payments, and the amount of such total sum may be recouped from any future payments due the recipient on any claim against the Fund. Such repayment or recoupment must be demanded within

one year of the discovery of fraud.

45.514 Medical Examination.

(1) When medical questions arise, a worker entitled to or claiming compensation under this Chapter shall, if requested by the Department, submit to medical examination at a time, and from time to time, and by a physician selected by the Department.

(2) If the worker refuses to submit to a medical examination or obstructs the same, or if any injured worker shall persist in unsanitary or injurious practices which tend to imperil or retard such worker's recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to the worker's recovery, the Department, with notice to the worker, may reduce or suspend the worker's compensation so long as such refusal or practice continues.

(3) If the worker necessarily incurs traveling expenses in attending an examination pursuant to the request of the Department, such traveling expenses shall be repaid to the worker by the Fund upon proper voucher and audit.

(4) Medical evaluations for purposes of determining permanent disability under " 45.402 and 45.407, or for claim reopening under this Chapter, shall not be made by the worker's treating physician. Such evaluations shall be made by an evaluating physician selected by the worker from a list of evaluating physicians approved by the Department.

45.515 Testimony of Physicians Not Privileged.

(1) Information obtained by the attending physician or surgeon while in attendance of the injured worker shall not be a privileged communication if such information is required by the Department for a proper understanding of the case and a determination of the rights involved.

(2) The Department shall have the right to request a full and complete report from the physician or surgeon at times and in the form and detail deemed necessary, and to present questions required to evaluate the claim.

45.516 Confidentiality.

Information contained in the claims files and records of injured workers under the provisions of this Chapter shall be deemed confidential and shall not be open to public inspection. A representatives of the claimant may review a claim file or receive specific information from it upon the presentation of a signed authorization of the claimant. The Tribe or its duly authorized representatives may review any files of injured workers in connection with any pending claims. Physicians treating or examining workers claiming benefits under this Chapter, or physicians giving medical advice to the Department regarding any claim may, at the discretion of the Department, inspect the claims files and records of the injured worker; and other persons may make such inspection, at the Department's discretion, when such persons are rendering assistance to the

Department at any stage of the proceedings on any matter pertaining to the administration of this Chapter.

45.517 Actions Against Third Persons.

(1) If the injury to a worker is due to the negligence of wrong of a third party who is not a Tribal worker, the injured worker, or beneficiary, may also elect to seek damages from the third party. The injured worker, or beneficiary, shall be entitled to the full compensation and benefits provided by this Chapter regardless of any such third-party action.

(2) An election not to proceed against the third party operates as an assignment of the cause of action to The Tribe, which may prosecute or compromise the action in its discretion in the name of the injured worker, beneficiary or legal representative. If such an election is made, the injured worker, or beneficiary, shall be entitled to the remaining balance of any award or settlement recovered by the Tribe after deduction of the expenses incurred in making the recovery, including reasonable costs of legal services and the compensation and benefits already paid and those anticipated to be paid in the future on behalf of the injured worker, or beneficiary, by the Tribe.

(3) The Committee may require the injured worker or beneficiary to exercise the right of election provided for in this section by serving a written demand sent by mail or making personal service on the worker or beneficiary.

(a) Unless an election is made within thirty days of the receipt of the demand, the injured worker, or beneficiary, is deemed to have assigned the action to The Tribe.

(b) If the injured worker, or beneficiary, elects to seek damages from the third party, notice of the election must be given to the Committee, and the injured worker, or beneficiary, shall be allowed ninety days from this election to institute the action, or that right to proceed is deemed assigned to the Tribe. The notice shall be by mail or personal service. When an action is filed by the injured worker, or beneficiary, a copy of the complaint shall be sent to the Committee. A return showing service of the notice on the Committee may be filed with the court to give notice to the defendant of the lien imposed as authorized in this Chapter.

SUBCHAPTER VI: PROTESTS AND APPEALS.

45.601 Protests.

(1) Any order, decision or award made by the Department can be protested. Whenever such an order, decision, or award is made, the worker, beneficiary, the worker's supervisor, and any other person affected by the decision shall be sent a copy of the decision by mail.

(2) Any worker, beneficiary, the worker's supervisor or other person aggrieved by an order,

decision or award as initially made by the Department must file a notice of protest with the Committee within forty-five days from the receipt of the Department's decision. Such notice of protest need be in no particular form but must be in writing. Any additional evidence, proofs or claim shall be submitted along with the notice of protest by the protestor. A notice of protest is barred if it is not timely filed.

(3) The protest shall be considered and a decision rendered by the Committee within forty-five days of the receipt of the notice of protest and additional evidence. The Committee shall hold no hearing, but shall review the matter on the basis of the files and the records, and then shall consider any supplementary materials submitted by the protestor. A written report of the Committee decision shall be mailed to the protestor as soon as it is rendered.

45.602 Appeals to Tribal Court.

(1) Appeals from the final decision of the Committee concerning protests shall be heard by the Tribal court as provided in this Subchapter. The judge assigned to the appeal shall be a person with experience and training in handling worker's compensation claims under the worker's compensation law of the Tribe, the State of Michigan or any other jurisdiction.

45.603 Notice of Appeal.

(1) Any worker, beneficiary, the worker's supervisor or other person aggrieved by the protest decision of the Committee may appeal that determination to the Tribal Court by filing a notice of appeal within sixty days from the receipt of the notification of the Committee's decision. Such appeal shall be perfected by filing with the Department a notice of appeal and by serving a copy by mail, or personally, on the person whose position was upheld by the decision of the Committee (the respondent). Filing of a notice of appeal with the Department shall be done by certified mail, return receipt requested or personally, with the appellant receiving a file-stamped copy of the notice of appeal.

(2) The notice of appeal to the Tribal Court shall set forth in full detail the grounds upon which the person appealing considered the decision of the Committee unjust or unlawful and shall include every issue to be considered by the Tribal Court. It must contain a detailed statement of the facts upon which the appellant relies in support of the appeal. The appellant shall be deemed to have waived all objections or irregularities other than those specifically set forth in the notice of appeal or appearing in the accompanying records of the Committee.

(3) The Committee shall promptly transmit the Committee's original records, or legible copies produced by mechanical, photographic or electronic means, in such matter to the Tribal Court and certify their accuracy.

(4) The respondent, within twenty days of receipt of such notice of appeal, shall serve and file their notice of appearance and such appeal shall then be deemed at issue.

45.604 Hearings.

(1) The Tribal court shall conduct a *de novo* hearing on the appeal as provided in this section.

(2) The appellant and the respondent 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.

(3) 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.

(4) 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 Chapter.

(5) 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.

(6) The Tribal Court shall hold a hearing within forty-five (45) days from the date of the filing of respondent's appearance; provided that:

(a) The issue to determine is whether the claim is compensable or noncompensable;

(b) The worker's condition is stationary for rating and award purposes. That is, the worker is not under treatment, and the necessary factual information has been obtained, making a decision of the Tribal Court possible; and

(c) The issue relates to the permanent and stationary condition of the claimant.

(7) The Tribal Court may continue the hearing, at the request of any party or on his own motion, after it is first convened for the purpose of further developing evidence.

(8) In all proceedings before the Tribal Court, the findings and decisions of the Committee shall be prima facie correct, and the burden of proof shall be upon the appellant. If the Tribal Court determines that the Committee has acted within its power and has correctly construed the law and found the facts, the decision of the Committee shall be affirmed; otherwise, it shall be reversed or modified. In the case of a modification or reversal, the Tribal Court shall remand the matter to the Committee with an order directing the Committee to proceed in accordance with the Judge's findings. An award made by the Tribal Court shall be in accordance with the compensation set forth in Subchapter IV. The Tribal court shall not have the power to award any additional or different compensation.

45.605 Appeal of Tribal Court Decision.

The decision of the Tribal Court may be appealed to the Appellate Division as provided in Tribal Code Chapter 82.

45.606 Attorney's Fees and Costs.

(1) If, upon protest or appeal, additional relief is granted to the worker or beneficiary; or in cases where a party other than the worker or beneficiary is the protesting or appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the Committee or the Tribal Court as provided in this section.

(2) In connection with either a protest or an appeal of permanent disability, any attorney engaged in the representation of a worker or beneficiary shall not charge for services any fee in excess of a reasonable fee, which in the case of a protest or an appeal lodged by the worker or beneficiary shall not be more than 25 percent of the increase in the award secured by the attorney's services, and in no case shall exceed a total of \$20,000.

(3) In all cases except those involving permanent disability, when a worker or a beneficiary prevails in an appeal by the supervisor or when the worker or beneficiary is the appellant and additional relief is granted, then the Fund shall pay the worker or beneficiary for reasonable attorney's fees as determined by the Committee or the Tribal Court, and in no case shall exceed \$20,000.

SUBCHAPTER VI: PROHIBITED ACTIVITIES.

45.701 Preference in Employment and Returning to Work.

When an injured worker is capable of returning to work and has received a medical release to return to work, the worker shall be referred to the Department Return to Work Program for assistance and work rehabilitation assistance. Any worker suffering temporary disability for less than 90 days shall be accommodated by their department to the extent possible. To the extent a worker is unable to be accommodated within their department, they shall be afforded other reasonable work through the Return to Work Program at the expense of their original department. Any worker whose position has been terminated due to the passage of time shall be given a preference over other applicants for any position that becomes vacant if the position is consistent with the worker's physical condition and vocational abilities and the worker is otherwise qualified.

45.702 Protection From Discharge.

A supervisor shall not terminate a worker because of or in retaliation for the filing of a claim for compensation under this Chapter.

45.703 Obtaining Benefits Through Fraud.

It is unlawful and a violation of this Chapter for a person to obtain or assist in obtaining benefits to which the person is not entitled or to obtain or assist another person in obtaining benefits to which the other person is not entitled. This section includes but is not limited to a person who is receiving temporary total disability benefits, permanent total disability benefits, or rehabilitation benefits while working without the knowledge or concurrence of the Tribe. As used in this section, "person" includes but is not limited to a worker, other beneficiary, supervisor or medical provider.

45.704 Remedies.

(1) Jurisdiction is hereby conferred upon the Tribal Court over criminal and civil actions for violations of this Subchapter.

(2) The Tribal Court may grant equitable relief and appropriate back pay for the violations of §45.701 or §45.702.

(3) A violation of '45.703 shall be punishable by a fine of up to \$5,000.00, or up to one year in jail, or both.

(4) The remedies in this section are not intended to be exclusive, but shall be in addition to:

(a) any applicable contractual remedy;

(b) any disciplinary action taken against a violator as an employee;

(c) any restitution ordered by the Tribal Court; or

(d) any prosecution or other enforcement action taken under federal or state law or under the provisions of any other chapter of the Tribal Code.