

**JAMESTOWN S'KLALLAM TRIBE  
TRIBAL CODE  
TITLE 8 – WORKERS' COMPENSATION CLAIMS CODE**

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## **Chapter 8.01 General Provisions**

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### **Section 8.01.01 Purpose**

This Code shall be known and cited as the as the “Workers’ Compensation Claims Code”. The purpose of the Code is to establish the rights and benefits of employees of the Jamestown S’Klallam Tribe (“Tribe”) for on-the-job bodily injuries due to accidents or occupational disease as set forth herein.

### **Section 8.01.02 No Waiver of Sovereign Immunity**

Nothing in this Code shall be deemed or construed to be a waiver by the Tribe and/or any of its affiliated entities of the Sovereign Immunity of the Tribe, a federally recognized Indian tribe. The State of Washington’s statutory workers’ compensation system shall not apply to employees of the Tribe or any of its affiliated entities, unless otherwise indicated. The Tribe does not consent to the jurisdiction of any state’s Workers’ Compensation Appeals Board, or similar entity, or to the jurisdiction of any other court of law or equity. Any reference to state benefit schedules or rates shall not be construed as making state law applicable.

### **Section 8.01.03 Definitions**

- A. Pronouns of the masculine gender used in this Code shall apply to both sexes. Unless stated otherwise in specific section 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” shall mean either the insurance company providing coverage hereunder, any subcontractor appointed by said insurance company or as appointed by the employer, if the employer is self-insured for worker’s compensation.
  - 2. “Attending Physician” shall mean the physician, or other approved 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 a covered worker hired to a regular full or part time position that is expected to last at least 12 weeks, the average weekly wage shall be calculated based on the preceding twelve (12) weeks of the covered worker’s actual wages earned from a covered employer. In the case of a worker who has not worked for a covered employer within the immediate preceding twelve (12) weeks, the average weekly wage shall be calculated based on the salary level the worker is currently receiving.
    - b. For a covered worker hired on a temporary, emergency or special projects basis who has continuously worked for a minimum of twelve (12) weeks, the average weekly wage shall be calculated as provided in subparagraph a., above.

- c. For covered workers hired on a temporary, emergency, or special projects basis who have not continually worked for the preceding 12 weeks, the average weekly wage shall be calculated by taking the expected total gross wages divided 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 covered employees performing similar work.
  - e. For purposes of this definition, the work week shall be as defined by the personnel manual, policy or practice applicable to the covered employee at the time of injury.
4. "Benefits" shall mean the indemnity payments and medical payments provided for by this Code.
5. "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 a dependent, as defined in this Code.
6. "Claimant" means the injured covered worker, or in the event of death of the covered worker, dependents of the deceased.
7. "Compensable Injury" is an accidental injury, or accidental injury to prosthetic appliances, 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, if it is established by medical evidence supported by objective findings, subject to the following limitations:
- a. No injury or disease is compensable as a consequence of a compensable injury unless the compensable injury is the major contributing cause of the consequential condition; and
  - b. If an otherwise compensable injury combines at any time with a preexisting condition to cause or prolong disability or a need for treatment, the combined condition is compensable only if, so long as and to the extent that the otherwise compensable injury is the major contributing cause of the disability of the combined condition or the major contributing cause of the need for treatment of the combined condition.
8. "Consulting Physician" shall mean the physician, other health care provider or other care expert that is retained by the Administrator to assist the Administrator in carrying out their 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 maximal medical improvement ("MMI"), as defined herein; and determination of impairment rating. At the discretion and expense of the Administrator, an injured covered 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" means an activity of any kind or character engaged in by an employee that has to do with, and originates in, the work activities of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term does not include transportation to or from the place of employment unless the employee is directed by the employer, as part of the employee's employment, to proceed from one place of work to another. 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 Tribe, and its agencies, and any Tribal corporations and enterprises.
11. “Covered Worker” and “Worker” means (a) every person who has entered into the employment of or performs work for an employer, (b) every person who works under contract of service, express or implied, or in an apprenticeship for an employer, (c) 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, and (d) officials elected or appointed by the Tribe, compensated monetarily or otherwise, except as hereinafter specified. The terms covered worker and worker shall not include an 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 is on or off the Tribe’s trust or reservation lands. At the Tribe’s option, covered workers may include volunteers or other persons who provide work for an employer without receiving compensation, but in no event shall covered workers include persons serving in the Jamestown S’Klallam Tribe 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. “Dependent” is one or more of 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 legally 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 defined by the most recent federally filed 1040 tax return.
  - b. A child, natural or adopted, under 18 years of age, or incapable of self-support and unmarried; or a child under 26 years of age enrolled as a full-time student in an accredited education institute at the time of the covered worker’s death.
14. “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.
15. “Impairment” means any anatomic or functional abnormality or loss existing after 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.
16. “Incident” means a happening that is not expected, foreseen, or intended; an unpleasant and unintended happening which may result in harm, injury, damage or loss.
17. “Indemnity Payments” shall mean total disability and partial disability income benefits and impairment payments.
18. “Injury” shall mean any physical impairment, including, without limitation, death and/or occupational disease as further herein defined. “Arising out of and in the course of employment” excludes an injury sustained while a covered worker is at home or preparing for

work. "Injury" excludes any injury resulting primarily from the natural aging process, or normal daily activities, or an injury sustained during voluntary recreational or social activities. The injury must arise out of and in the course of employment, requiring medical services or resulting in disability or death; and is further defined as a specific, traumatic incident at a definite time and place, while in the course of employment, that produces an immediate onset of pain and is established by medical evidence supported by objective findings.

19. "Insurer" shall mean the insurance company or the employer, if the employer is self-insured.
20. "Intoxication" means blood alcohol content in excess of .02 percent or conviction of the offense of driving while intoxicated (or words to that effect) by any jurisdiction or, 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 spray or paint; or (5) any other similar substance.
21. "Maximum Medical Improvement" (MMI) means the earlier of:
  - a. The point at 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 of 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.
22. "Medical Payments" shall mean medical expense, mileage, and other expenses associated with medical treatment.
23. "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. The condition must arise naturally and proximately from the distinctive conditions of employment and requires there to be an affirmative showing supported by medical evidence the condition would not have developed in other types of employment or general life activities.
24. "Policy" shall mean any Tribal Workers Benefit Policy of Insurance issued to the Tribe, or an affiliated entity of the Tribe.
25. "Scheduled Weeks" means 156 weeks and is the maximum number of weeks that a covered worker shall be entitled to Impairment Benefits under this Code.
26. "Settlement" shall mean the date the release of all claims is executed and the monetary terms of the agreement met.

27. “Tribal Court” shall mean the Jamestown S’Klallam Tribe Court, which court services are provided by the Northwest Intertribal Court System (“NICS”) under an agreement with the Tribe.
28. “Tribal Citizen” shall mean any person listed on the Jamestown S’Klallam Tribe’s enrollment list, or any other person that the Jamestown S’Klallam Tribe shall deem to be a member for purposes of this Code.
29. “Tribal Workers Benefit System” shall mean this Code, any and all rules and regulations promulgated hereunder, as well as the functions of the Administrator.
30. “Tribe” and “Tribal” mean to refer to the Jamestown S’Klallam Tribe, a federally recognized Indian tribe, and its agencies, and any Tribal corporation, enterprises and affiliated entities.

#### **Section 8.01.04 Notification to Employer of Injury by Worker**

Any covered worker and/or person claiming benefits under this Code must notify their supervisor, department director or the human resources department of any and all incidents resulting in injuries immediately, and in no event later than two (2) days from the date of occurrence. Notification for occupational disease shall be made by the covered worker to the Administrator within two (2) days from the date of first notice to the claimant by a physician or from the date of manifestation of symptoms, whichever is earliest. Failure to report such on-the-job injury or occupational diseases within such deadline shall result in the worker’s forfeiture of benefits under this Code, unless the claimant can demonstrate an extraordinary reason that prevented the reporting of the injury or occupational disease in a timely manner.

#### **Section 8.01.05 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 department shall constitute filing a claim with the Administrator.
- B. Claims for occupational disease shall be made by the covered worker to the Administrator within two (2) days from the 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 thirty (30) days from the date the worker terminates their employment with the Tribe or an affiliated entity.
- C. Failure to give notice of injury to the employer as required by section 8.01.04, above, or to file a claim with the Administrator, within the time limit set forth in this section shall constitute forfeiture by the covered worker, or their representatives in case of death, of all benefits available and payable under this Code.

#### **Section 8.01.06 Burden of Proof**

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

- A. That the injury alleged 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 8.01.07 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 8.01.08 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 Tribal Court or other court of competent jurisdiction, if a guardian has not been appointed in a prior action.



**Chapter 8.02**  
**Tribal Workers Benefit Advisory Council**

**Sections:**

**Section 8.02.01 Establishment**

**Section 8.02.01 Establishment**

The Tribe and its affiliated entities reserve the right and ability to established a Tribal Workers Benefit Advisory Council (“TWBAC”) whose purpose is to administer the Tribal Workers Benefits System by promulgating rules and procedures and to cooperate for the prevention of injuries and occupational diseases to workers and, in the event of injury or occupational disease, assuring their rehabilitation or restoration to health and vocational opportunity.

## **Chapter 8.03 Administrative Duties and Powers**

### **Sections:**

#### **Section 8.03.01 Custodian Duties**

#### **Section 8.03.02 Payment and Distribution of Benefits**

#### **Section 8.03.03 Tribal Workers Benefit System Administrator Powers and Duties**

#### **Section 8.03.04 Acceptance/Denial of Claim**

#### **Section 8.03.01 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 8.03.02 Payment and Distribution of Benefits**

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

#### **Section 8.03.03 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 the intent of this Code.
- B. In the case of death of a covered worker for which a claim is made under this Code related to the death, 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. The Administrator may retain a consulting physician for purposes of assisting the Administrator to carry out the duties and powers of this Code.
- D. The Administrator shall keep complete and accurate administrative records and claim files on all activities relating to the claims made under this Code. All closed files shall be preserved for not less than six (6) years.

#### **Section 8.03.04 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 8.04**  
**Coverage and Compensability**

**Sections:**

**Section 8.04.01 Entitlement of Benefits**

**Section 8.04.02 Disclosure of Pre-Existing Disabilities/Conditions**

**Section 8.04.03 Mental Trauma Injuries**

**Section 8.04.04 Going to and Returning from Work**

**Section 8.04.05 Benefits Precluded by Neglect and/or Refusal of Worker to Submit to Treatment**

**Section 8.04.06 Injury or Death by Consumption and/or Application of Drugs and/or Chemicals**

**Section 8.04.07 Intoxication**

**Section 8.04.08 False Statement or Representation to Obtain Compensation; Penalty and Forfeiture**

**Section 8.04.09 Injuries Resulting from Self-Inflicted Injuries, Willful Misconduct, "Horseplay," or Safety Violations**

**Section 8.04.10 Injuries Resulting from Natural Causes**

**Section 8.04.11 Recreational, Social or Athletic Activities**

**Section 8.04.12 Injuries Caused by Third Parties**

**Section 8.04.13 Secondhand Smoke**

**Section 8.04.01 Entitlement of Benefits**

- A. Any claimant for benefits under this Code shall be responsible for filing their claim with the Administrator.
- B. Coverage exists under the 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 8.04.02 Disclosure of Pre-Existing Disabilities/Conditions**

- A. The Tribe reserves the right to require applicants and employees to disclose whether they can safely perform the essential functions of their job. Disclosure shall be made on the employment application and, at the discretion of the Tribe, by having employees sign off on the job description stating they can physically and mentally perform the job without limitation.
- 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 8.04.02 A., above.
- C. A covered worker with a disclosed and/or approved pre-existing condition as set forth in this section 8.04.02 is not entitled to compensation for a subsequent injury.
- D. "Pre-existing condition" is defined as an injury, disease, congenital abnormality, personality disorder, or similar condition that contributes or predisposes a worker to disability or need for treatment.
- E. 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 8.04.02 A., above.

### **Section 8.04.03 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 physical injury traceable to a definite time, place, and cause rather than from repetitive mental trauma.
- B. Regardless of section 8.04.03 A., above, 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 8.04.04 Going to and Returning from Work**

An accident and/or incident occurring to a worker while on the way to or from work, including all breaks, 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 8.04.05 Benefits Precluded by Neglect 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 and/or disability is caused by, or the worker's disability was 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, examination, or to take medications prescribed, will be deemed to have reached MMI, 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 described herein.
- B. Any covered worker entitled to benefits under this Code shall be presumed to have reached MMI if such claimant has refused and/or neglected to seek appropriate medical treatment within three (3) months from the date of occurrence or from the last date of prior treatment.

### **Section 8.04.06 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 8.04.07 Intoxication**

No benefits of any nature shall be payable for any covered worker injured or killed while intoxicated as defined in section 8.01.03 B. 18., above, 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 or Tribal entities personnel policies, and agree to waive any privilege associated with the results of said tests.

### **Section 8.04.08 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 will be declined by the Administrator pursuant to section 8.04.02, above.

#### **Section 8.04.09 Injuries Resulting from Self-Inflicted Injuries, Willful Misconduct, “Horseplay”, or Safety Violations**

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 themselves or another. An injury sustained during “horseplay” is not incurred in the course and scope of 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, benefits, 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 themselves thereby precluding eligibility for their benefits under this Code.

#### **Section 8.04.10 Injuries Resulting from Natural Causes**

No benefits of any nature shall be payable for any covered worker injured or killed when the injury or death results from natural causes, 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 furtherance of the employer’s interest.

#### **Section 8.04.11 Recreational, Social or Athletic Activities**

- A. No benefits 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 8.04.12 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 their employment.

#### **Section 8.04.13 Secondhand Smoke**

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.

**Chapter 8.05**  
**Benefits – General Provisions**

**Sections:**

**Section 8.05.01 Right to Compensation and Medical Treatment Benefits**

**Section 8.05.02 Workers Benefit as Exclusive**

**Section 8.05.03 Effect of Compensation Paid in Other Jurisdictions or Third Party Recovery**

**Section 8.05.04 Liability of Third Parties - Subrogation**

**Section 8.05.05 Assignability of Benefits – Attachment of Liens**

**Section 8.05.06 Aggravation of Pre-Existing Disease or Condition**

**Section 8.05.07 Termination of Benefits Upon Death**

**Section 8.05.01 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 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 8.05.02 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 representatives, insurer, guarantor or surety, for any matter relating to the occurrence of or payment for an injury or death covered under this Code. To that end, all civil causes of action against the covered employer and its employees, arising from said injuries or death, and the jurisdiction of all courts over such causes of action are hereby abolished and barred, except as specifically provided by this Code.

**Section 8.05.03 Effect of Compensation Paid in Other Jurisdictions or Third Party Recovery**

An injured worker who pursues and recovers compensation under laws of another jurisdiction or from a third party shall notify the Administrator. The injured worker forfeits compensation under this Code in proportion to their recoveries from the other jurisdiction or third party.

**Section 8.05.04 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 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 the compensation actually paid to the worker under this Code up to that time; and
  2. The balance, if any, shall be paid over to the worker.
- C. For subrogation purposes hereunder, any payment made to a covered worker, their guardian, parent, next of kin, or legal representative, by or on behalf of any third party, their or its principal or agent

liable for, connected with, or involved in causing an injury to such worker 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 8.05.05 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 Tribal Court;
- B. A subrogation interest established under this Code; and
- C. Debts owed to the Tribe or one of its affiliated entities.

#### **Section 8.05.06 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 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; or
- 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 if they 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 8.05.07 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 they were entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability for such compensation thereafter shall terminate.

## **Chapter 8.06 Benefits**

### **Sections:**

#### **Section 8.06.01 Vocational Rehabilitation**

#### **Section 8.06.02 Waiting Period**

#### **Section 8.06.03 Total Disability and Partial Disability Income Benefits**

#### **Section 8.06.04 Impairment Benefits**

#### **Section 8.06.05 Benefit Issuance Period**

#### **Section 8.06.06 Not to Exceed Pre-Injury Average Weekly Wage**

#### **Section 8.06.07 Benefit Offsets**

#### **Section 8.06.08 Re-Opening Rights**

### **Section 8.06.01 Vocational Rehabilitation**

Vocational rehabilitation benefits or training are not mandatory under this Code, but may, at the discretion of the Administrator, be ordered pursuant to their authority established herein.

### **Section 8.06.02 Waiting Period**

An initial waiting period of three (3) consecutive calendar days is to accrue before the covered worker shall be entitled to benefits under this chapter. If the covered worker misses more than fourteen (14) consecutive calendar days, the first three (3) calendar days can be considered for benefits if the covered worker received no other compensation during this time including, but not limited to, sick time, vacation time, and personal time off (PTO).

### **Section 8.06.03 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 67% of the worker's pre-injury average weekly wage.
  2. If the covered worker is less than 100% disabled, benefits are payable at 67% of the difference between the worker's pre-injury average weekly wage and the wage the covered worker is earning or capable of earning in their 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 occur:
1. The expiration of 36 months from the date of 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 MMI;
  3. The claimant is incarcerated;
  4. A full, unrestricted release is provided by the consulting physician, or in the discretion of the Administrator, the attending physician.



5. A modified or light duty release is provided by the consulting physician, or in the discretion of the Administrator, the attending physician, and a bona fide job offer of suitable work consistent with the worker's disability is rejected by the worker;
6. A new or intervening incident is the proximate cause of disability;
7. Benefits are refused by the worker;
8. There is a presumption of MMI or abandonment of medical treatment as defined by section 8.04.05 of this Code;
9. There is a suspension of benefits by the Administrator for reasons authorized in this Code or by the authority of the Tribal Court;
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 they were entitled to compensation under this section, and the covered worker's estate is not entitled to any further benefits as defined by this Code.

#### **Section 8.06.04 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 consulting physician, or in the discretion of the Administrator, 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 and objective medical findings. In addition, at this time the consulting physician, or in the discretion of the Administrator, 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.
- B. For purposes of converting the impairment rating into a monetary figure only, this Code will utilize the Washington State award schedule for permanent partial disability.
- C. A rating may not be issued prior to the declaration of MMI. The Administrator may reserve issuance of payment under the following conditions:
  1. Consideration of prior impairment ratings;
  2. Clarification by the Administrator of this Code as to the validity of the date for MMI;
  3. Similar rating or MMI issues to be resolved by the consulting physician or, if necessary, the Tribal Court.
- D. The rating will not be retroactively paid for weeks accrued in resolving the rating issue subsequent to the date of MMI. Such benefits will become effective the date of the ruling and commence at that time.
- E. Notwithstanding provisions herein, the Administrator shall retain the right and discretion to order Lump Sum Settlements by way of Compromise and Release.

#### **Section 8.06.05 Benefit Issuance Period**

Except as provided herein:

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

#### **Section 8.06.06 Not to Exceed Pre-Injury Average Weekly Wage**

In no event may the worker's incapacity income benefits, or other income sources which 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 8.06.07 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, 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 8.06.03 of this Code, such shall be deducted from any benefits payable under functional impairment benefits as set forth in section 8.06.04 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.

#### **Section 8.06.08 Re-Opening Rights**

A claim may be re-opened upon an application by a claimant based upon a change in condition for the worse as supported by objective medical findings. Re-opening rights are forever barred if 1) The application is not filed within three (3) years from the date of initial claim closure, 2) if a Lump Sum Settlement by way of Compromise and Release is issued, or 3) there is a separation of employment with the employer or employment is not continuous.

## **Chapter 8.07 Death Benefits**

### **Sections:**

#### **Section 8.07.01 Distribution of Death Benefits**

#### **Section 8.07.02 Redistribution of Death Benefits**

#### **Section 8.07.03 Verification of Eligibility of Death Benefits**

#### **Section 8.07.04 Burial Benefits**

### **Section 8.07.01 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 dependent, as defined in Section 8.01.04, on the earnings of the worker for support at the time of their injury, compensation upon the basis of 67% 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 benefits will be paid 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 of the surviving spouse, 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, proof of eligibility may be required. If there are surviving eligible dependents other than the surviving spouse, the surviving spouse shall be entitled to one-half of the death benefits. If there is a surviving spouse, then one-half of death benefits will be paid to each surviving eligible dependent in equal shares.
  2. If there is no surviving spouse, equal shares of the benefits will be paid to all dependents as defined in Section 8.01.04, above.
- 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 they were entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability thereafter shall terminate.

### **Section 8.07.02 Redistribution of Death Benefits**

- A. If a legal beneficiary, as defined in section 8.07.01, above, dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with section 8.07.01.
- B. If all legal beneficiaries cease to be eligible, any duty to pay the remaining death benefits payable under section 8.07.01 shall cease immediately.

### **Section 8.07.03 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 8.07.04 Burial Benefits**

If death results from a compensable injury, the person and/or entity who incurred the liability for the costs of the burial shall be reimbursed for either 1) the actual costs incurred for such reasonable burial expenses, or 2) the Washington State award schedule for burial benefits, whichever is less.

## **Chapter 8.08 Medical Benefits**

### **Sections:**

#### **Section 8.08.01 Entitlement to Medical Benefits**

#### **Section 8.08.02 Right to Select Physician; Employer Selection**

#### **Section 8.08.03 Release of Medical-Related Information**

#### **Section 8.08.04 Medical Expenses**

#### **Section 8.08.05 Settlement of Future Medical**

#### **Section 8.08.01 Entitlement to Medical Benefits**

All covered workers are entitled to reasonable health care, supplies and reasonably necessary transportation incurred for such services when receiving benefits under this Code. Medical benefits are payable from the date the compensable injury or accident occurred and will cease effective the date the claim closes.

#### **Section 8.08.02 Right to Select Physician; Employer Selection**

Except in an emergency, the employer reserves the right to select the physician and direct the covered workers care/treatment. If the worker has reason to be dissatisfied with the care offered, they should communicate the basis of such dissatisfaction to the Administrator, in writing, following which the Administrator may agree to alternate care reasonably suited to treat the injury. Any non-authorized treatment of the covered worker is not payable under this section and shall be at the worker's sole expense.

#### **Section 8.08.03 Release of Medical-Related Information**

Any worker, employer or insurance carrier or its agents making or defending a claim for benefits agrees to release 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 or for civil damages by reason of the release of the information.

#### **Section 8.08.04 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 8.08.05 Settlement of Future Medical**

The worker may negotiate settlement of future medical expenses. For purposes of settling the future medical expenses, the basis for settlement will be the value of the current and future medical plan. Settlements under this section are not to exceed One Hundred Thousand Dollars (\$100,000.00) unless approved, in writing, by the Tribe or one of its affiliated entities.

**Chapter 8.09**  
**Adjudication of Disputes**

**Sections:**

**Section 8.09.01 Protests from Decisions of the Administrator**

**Section 8.09.02 Appeals from Decisions of the Administrator**

**Section 8.09.01 Protests from Decisions of the Administrator**

Any order, decision, or award made by the Administrator can be protested by the covered worker. Any order, decision or award of the Administrator must be protested within thirty (30) days. The Administrator shall respond to the protest within 21 days.

**Section 8.09.02 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. Any appeals from final decisions of the Administrator shall follow the procedures as set forth in this Code.
  
- A. After initial administrative protests with the Administrator have been exhausted, the covered worker may appeal such decision to the Tribal Court provided such appeal is filed with the court within thirty (30) days from receipt of the adverse administrative decision. The Tribal Court shall review the matter subject to the terms of this Code and Tribal law. The decision of the Tribal Court shall be final.

**Chapter 8.10**  
**Miscellaneous Provisions**

**Sections:**

**Section 8.10.01 Effective Date; Severability; Amendments**

**Section 8.10.01 Effective Date; Severability; Amendments**

- A. The provisions of this Chapter shall take effect ten (10) days after adoption by the Tribal Council.
- B. If any provision of this Chapter is ruled illegal by a court of competent jurisdiction, the remaining provisions of the Chapter shall remain unaffected.
- B. The provisions of this Chapter may be amended from time-to-time by the Tribal Council.

**Chapter 8.11**  
**Codification and Amendments**  
**CODIFICATION AND AMENDMENTS**

**Sections:**

**Section 8.11.01 Codification**

**Section 8.11.02 Amendments**

**Section 8.11.01 Codification**

Title 8 Workers' Compensation was approved by the Tribal Council on April 6, 2004 and codified as a Title on February 18, 2005 by Resolution #11-05.

**Section 8.11.02 Amendments**

Title 8, as adopted on April 6, 2004, and as amended on February 18, 2005, was repealed in total and substitute provisions were adopted by the Tribal Council on December 6, 2011 by Resolution #50-11.

Tribal Council reviewed and approved miscellaneous technical amendments (typo corrections, formatting, etc.) to the title by Resolution #03-16, adopted by the Tribal Council on February 4, 2016.