

# BAD RIVER BAND OF LAKE SUPERIOR TRIBE OF CHIPEWA INDIANS

CHIEF BLACKBIRD CENTER

P.O.Box 39 • Odanah, Wisconsin 54861

RESOLUTION NO. 1-3-10-151

## Adopting Chapter 1100 Worker's Compensation Plan

WHEREAS, the Bad River Band of the Lake Superior Tribe of Chippewa Indians is a federally recognized Indian tribe with a Constitution enacted pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. Sec. 476; and

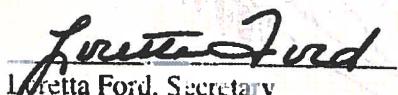
WHEREAS, the Bad River Band elects to offer health and disability benefits to Tribal employees as the sole remedy for claims and compensation resulting from work related injury or illness in the form and manner of the Chapter 1100 Worker's Compensation Plan presented at this meeting and attached hereto as Exhibit "A", and

WHEREAS, Chapter 1100 Worker's Compensation Plan presented at this meeting replaces Chapter 1100 Health and Disabilities Benefits (Worker's Compensation).

NOW THEREFORE, BE IT RESOLVED that the Bad River Tribal Council hereby adopts Chapter 1100 Worker's Compensation Plan presented at this meeting and attached hereto as Exhibit "A."

## CERTIFICATION

I, the undersigned, as Secretary of the Bad River Band of the Lake Superior Tribe of Chippewa Indians, an Indian Tribe organized under Section 16 of the Indian Reorganization Act, hereby certify that the Tribal Council is composed of seven members, of whom 7 members, constituting a quorum, were present at a meeting hereof duly called, noticed, convened, and held on the 13~~06~~ day of January, 2010; that the foregoing resolution was duly adopted at said meeting by an affirmative vote of 6 members; 0 against; and 0 abstaining, and that the said resolution has not been rescinded or amended.

  
Loretta Ford, Secretary

Bad River Tribal Council

*Purposed.*

## **HEALTH AND DISABILITY BENEFITS (WORKER'S COMPENSATION)**

### **CHAPTER 1100**

#### **1100.1 - Purpose.**

The Bad River Tribal Council may authorize the Tribe to offer health and/or disability insurance, including at its option, opting into the State of Wisconsin's Worker's Compensation system, to all employees, as defined in the Bad River Personnel and Policy Manual, of the Bad River Tribe, including it's enterprises.

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#### **1100.2 - Exclusive Remedy.**

If the Tribe elects to offer health and disability benefits to Tribal Employees, such benefits shall be the sole and exclusive remedy for claims and compensation resulting from any work related injury or illness. If the Tribe elects to offer a comprehensive health insurance coverage to its employees for off-duty injury or illness, the benefits and coverage contained in the policy shall be the exclusive remedy for claims and compensation resulting for any non-work related injury or illness. If the Tribe opts not to offer health and/or disability insurance to its employees then there shall be no remedy available from the Tribe for injury sustained at the workplace.

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Adopted Pursuant to Bad River

Tribal Council Resolution 12-05-01-195

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1100.27 Benefits Payable to Minors; How paid

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1100.4 - Definitions

(1) This chapter may be referred to as the "Workers Compensation Ordinance" and allowances, recoveries and liabilities under this chapter constitute "Worker's Compensation".

(2) In this chapter:

(a) "Compensation" means worker's compensation.

(b) "Injury" means mental or physical harm to an employee while working in the scope of their employment caused by accident or disease, and also means damage to or destruction of artificial members, dental appliances, teeth, hearing aids and eyeglasses, but in the case of hearing aids or eyeglasses, only if such damage or destruction resulted from accident which also caused personal injury entitling the employee to compensation therefore either for disability or treatment.

"Order" means any decision, rule, regulation, direction, requirement or standard of the Workers Compensation Team, Tribal Council or Tribal Court.

1100.5 - Conditions of Liability. (1) Liability under this chapter shall exist against an employer only where the following conditions concur:

(a) Where the employee sustains an injury.

(b) Where, at the time of the injury, both the employer and employee are subject to the provisions of this chapter.

(c)(1) Where, at the time of the injury, the employee is performing service growing out of and incidental to his or her employment.

2. Any employee going to and from his or her employment in the ordinary and usual way, while on the premises of the employer, or while in the immediate vicinity thereof if the injury results from an occurrence on the premises, any employee going between the employer's designated parking lot and the employer's work premises while on a direct route and in the ordinary and usual way or any firefighter or municipal utility employee responding to a call for assistance outside the limits of his or her village, unless that response is in violation of law, is performing service growing out of and incidental to employment. Lunch hours are not covered.

3. An employee is not performing service growing out of and incidental to his or her employment while going to or from employment in a private group or employer-sponsored car pool, van pool, commuter bus service or other ride-sharing program in which the employee participates voluntary and the sole purpose of which is the mass transportation of employees to and from employment. An employee is not performing service growing out of and incidental to employment while engaging in a program designed to improve the physical well-being of the employee, whether or not the program is located on the employer's premises, if participation in the program is voluntary and the employee receives no compensation for participation.

4. The premises of the employer include the premises of any other person on whose premises the employee performs service.

5. To enhance the morale and efficiency of Tribal employees and attract qualified personnel to work for the Band, it is the policy of the Bad River Band that the benefits of this chapter shall extend and be granted to employees in the service of the Band:

(a) Where the injury is not intentionally self-inflicted.

(b) Where the accident or disease causing injury arises out of the employee's employment.

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(c) Every employee whose employment requires the employee to travel shall be deemed to be performing service growing out of and incidental to the employee's employment at all times while on a trip, except when engaged in a deviation for a private or personal purpose. Acts reasonably necessary for living or incidental thereto shall not be regarded as such a deviation. Any accident or disease arising out of a hazard of such service shall be deemed to arise out of the employee's employment.

(d) Members of the Tribal Council are covered by chapter when they are engaged in performing their duties as Tribal Council members including:

1. While performing services growing out of and incidental to their function as Tribal Council members;
2. While performing their official duties as members of committees or other official bodies created by the Tribal Council;
3. While traveling to and from the Chief Blackbird Center to perform their duties as Tribal Council members; and
4. While traveling to and from any place to perform services growing out of and incidental to their function as Tribal Council members, regardless of where the trip originated, and including acts reasonably necessary for living but excluding any deviations for private or personal purposes except that acts reasonably necessary for living are not deviations.
5. Where such conditions exist the right to the recovery of compensation under this chapter shall be the exclusive remedy against the employer, any other employee of the same employer and the worker's compensation insurance carrier. This section does not limit the right of an employee to bring action against any co-employee for assault intended to cause bodily harm, or against a co-employee for negligent operation of a motor vehicle not owned or leased by the employer.
6. Providing or failing to provide any safety inspection or safety advisory service incident to a contract for worker's compensation insurance or to a contract for safety inspections or safety advisory services does not by itself subject an insurer, an employer, insurance service organization or any agent or employee of the insurer, employer, insurance service organization to liability for damages for an injury resulting from providing or failing to provide the inspection or services.
7. The right to compensation and the amount of the compensation shall in all cases be determined in accordance with the provisions of a tribal health and disability insurance policy in effect as of the date of the injury.

8. If an employee of the Band, while working outside the territorial limits of this Band, suffers an injury on account of which the employee, or in the event of the employee's death, his or her dependents would have been entitled to the benefits provided by this chapter.

**1100.6 - Joint Liability of Employer and Contractor.** An employee shall not recover compensation for the same injury from more than one party. If the Band pays compensation to an employee it may recover the same from the other employer for whom the employee was working at the time of the injury if such contractor, subcontractor or other employer was an employer as defined herein above.

**Section 1100.7 - Employee Defined.** "Employee" as used in the chapter means:

(a) Every person, including all officials, in the service of the Band whether elected or under any appointment, or express contract of hire, and whether a resident or employed or injured within or outside the boundaries of the Reservation.

(b) Every member of the Bad River Police Department or Volunteer Fire Department or Ambulance Service.

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- (c) An independent contractor is not an employee of an employer for whom the independent contractor performs work or services if the independent contractor meets all of the following conditions:
1. Maintains a separate business with his or her own office, equipment, materials and other facilities.
  2. Holds or has applied for a federal employer identification number with the federal internal revenue service or has filed business or self-employment income tax returns with the federal internal revenue service based on work or service in the previous year.
  3. Operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work.
  4. Incurs the main expenses related to the service or work that he or she performs contract.
  5. Is responsible for the satisfactory completion of work or services the he or she contracts to perform and is liable for a failure to complete the work or service.
  6. Receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis.
  7. May realize a profit or suffer a loss under contracts to perform work or service.
  8. Has continuing or recurring business liabilities or obligations.
  9. The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.
  10. The Tribal Council may by resolution, prescribe classes of volunteer workers who may, at the election of the person for whom the service is being performed, be deemed to be employees for the purposes of this chapter.
  11. A juvenile performing uncompensated community service work as a result of a disposition ordered by the Bad River Tribal Court is considered an employee. No compensation may be paid to that employee for temporary disability during the healing period.
  12. An adult performing uncompensated community service work under is considered an employee of the Band. No compensation may be paid to that employee for temporary disability during the healing period.
  13. A prisoner of a county jail who is assigned to the Huber Program who performs compensated work for the Band is considered an employee of the Band.
  14. A participant in a trial job or on probation is considered an employee of the Band and shall receive benefits under this chapter from the date of hire so long as he or she is otherwise eligible under this chapter.

**1100.8 - Health Benefits.** The Tribal Council, in its discretion may contract with an insurance carrier or offer a self-insured health insurance benefit plan to its employees. The health insurance plan, if any, shall constitute the health benefit made available by the Band to employees for work related injuries, injured workers.

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**1100.9 - Temporary Disability.** The Tribal Council may, in its discretion, contract with an insurance carrier or offer a self-insured disability benefit to its employees. The disability plan, if any, shall constitute the health benefit made available by the Band to employees for disability compensation.

**1100.10 - Earnings, method of computation.** The method of calculating disability payments shall be established by the Tribal Council and promulgated in the disability policy, if any, sponsored by the Band.

**1100.11 - Notice of Injury, Laches.** Eligibility for a claim for compensation is contingent upon an employee qualifying for health coverage and/or disability compensation. Criteria for qualification shall be approved by the Tribal Council and all benefits and eligibility requirements for compensation will be published and made widely available to all employees. At a minimum, the criteria shall include policies and procedures for timely notice from the employee to the Band of injury. The notice shall, at a minimum, include the date, time, nature of injury, and place of injury and any potential or actual witnesses to the injurious event. The notice shall be signed by the employee's supervisor. Further policies and procedures may be developed to supplement the above minimum requirements. When an employee has reached his/her end of healing, or has been released back to work with no restrictions; the Employer's responsibility for payment of all other benefits accruing under this Plan ceases immediately.

**1100.12 – Fraudulent claims reporting and investigation.**

(1) If the Band, Benefit Specialist, Workers Comp committee or an insurer has evidence that a claim is false or

Fraudulent the claim shall be denied and the tribal benefit specialist shall report the matter to the Tribal Council within 10 business days. The band may require an insurer or otherwise qualified Person to investigate an allegedly false or fraudulent claim and may provide the Band with any Records of the relating to that claim. An insurer investigating a claim under this sub-section shall Report on the results of that investigation to the Band. If based on the investigation, the Band has a reasonable basis to believe that a violation of a state or federal criminal code has occurred, the Band may refer the results of the investigation to the U.S. Attorney or Ashland county District Attorney for prosecution.

(2) Annually, the Tribal Benefit Specialist shall submit a report to the Tribal Council detailing the number of claims filed under this chapter the previous year including fraudulent claims and the nature of the disposition.

**1100.13 - Examination; Competent Witnesses; Exclusion**

**of Evidence; Autopsy** (1)(a) Whenever compensation is claimed by an employee, the employee shall, upon the written request of the Band or insurer, submit to reasonable examinations by physicians, chiropractors, psychologists, dentists or podiatrists provided and paid for by the Band or insurer. A claim may be denied if an employee refuses to submit to an examination under this paragraph.

(b) When compensation is claimed for loss of earning capacity the employee shall, on the written request of the Band, submit to reasonable examinations by vocational experts provided and paid for by the Band. The Band has the right to refer the employee to the Tribal Clinic for review.

(c) The employee is entitled to have physician, chiropractor, psychologist, dentist or podiatrist provided by himself or herself present at the examination and to receive a copy of all reports of the examination that prepared by the examining physician, chiropractor, psychologist, podiatrist, dentist or vocational expert immediately upon receipt of those reports by the Band or insurer. The Band's written request for examination shall notify the employee of all of the following:

(1) The proposed date, time and place of the examination and the identity and area of specialization of the examining physician, chiropractor, psychologist, dentist, podiatrist or vocational expert.

(2) The procedure for changing the proposed date, time and place of the examination.

(3) The employee's right to have his or her physician, chiropractor, psychologist, dentist or podiatrist present at the examination.

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(4) The employee's right to receive a copy of all reports of the examination that are prepared by the examining physician, chiropractor, psychologist, dentist, podiatrist or vocational expert within one week upon receipt of these reports by the employer or insurer.

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(d) So long as the employee, after a written request from the Band or insurer which complies with par. (c), refuses to submit to or in anyway obstructs the examination, the employee's right to begin or maintain any proceeding for the collection of compensation is suspended. If the employee refuses to submit to the examination after direction by the Band or in anyway obstructs the examination, the employee's right to the weekly indemnity which accrues and becomes payable during the period of that refusal or obstruction, is barred. Subject to paragraph (e):

1. Any physician, chiropractor, psychologist, dentist, podiatrist or vocational expert who is present at any examination under par. (a) may be required to testify as to the results thereof.
2. Any physician, chiropractor, psychologist, dentist or podiatrist who attended a worker's compensation claimant for any condition reasonably related to the condition for which the claimant claims compensation may be required to testify before the Tribal Council when it so directs.
3. Notwithstanding any chapter provisions except par. (e), any physician, chiropractor, psychologist, dentist or podiatrist attending a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may furnish to the employee, Band, insurer reports relative to a compensation claim.
4. The testimony of any physician, chiropractor, psychologist, dentist or podiatrist who is licensed to practice where he or she resides or practices in any state and the testimony of any vocational expert may be received in evidence in compensation proceedings.

(e) No person may testify on the issue of the reasonableness of the fees of a licensed health care professional unless the person is licensed to practice the same health care profession as the professional whose fees are the subject of the testimony.

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(2)(a) An employee who reports an injury alleged to be work-related or files an application for hearing waives any physician-patient, psychologist-patient or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Any physician, chiropractor, psychologist, dentist, podiatrist, hospital or health care provider shall, within a reasonable time after written request by the employee, employer, worker's compensation insurer or Band or its representative, provide that person with any information or written material reasonably related to any injury for which the employee claims compensation.

(2)(b) A physician, chiropractor, podiatrist, psychologist, dentist, hospital or health service provider shall furnish a legible, certified duplicate of the written material requested under par. (a) upon payment of the actual costs of preparing the certified duplicate, not to exceed the greater of 45 cents per page or \$7.50 per request, plus the actual costs of postage. Any person who refuses to provide certified duplicates of written material in the person's custody that is requested under par. (a) shall be liable for reasonable and necessary costs including reasonable attorney fees.

(3)(a) If 2 or more physicians, chiropractors, psychologists, dentists or podiatrists disagree as to the extent of an injured employee's temporary disability, the end of an employee's healing period, an employee's ability to return to work at suitable available employment or the necessity for further treatment or for a particular type of treatment, the Band may appoint another physician, chiropractor, psychologist, dentist or podiatrist to examine the employee and render an opinion as soon as possible. The Band shall promptly notify the claimant of this appointment.

(3)(b) If the employee has not returned to work, payment for temporary disability shall continue

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until the terms regarding length of disability payments expires or the Band receives the opinion. The Band or its insurance carrier or both shall pay for the examination and opinion. The Band or insurance carrier or both shall receive appropriate credit for any overpayment to the employee.

**1100.14 - Rules of Procedure; Transcripts.** (1) All testimony at any hearing held under this chapter shall be recorded by a recording machine.

**1100.15 - Submission of Claims** All claims made by employees for compensation under this chapter shall be submitted to the Tribal Benefit Specialist who shall forward the claim to the

Investigation Team for claim evaluation of eligibility of payment. The Tribal Benefit Specialist shall evaluate each claim for payment of benefits based on the eligibility criteria and available benefits established in this chapter and the health and disability plan which may be adopted by the Band. The Tribal Benefit Specialist shall promptly evaluate all claims and either voucher to pay out health and/or disability benefits to eligible employees or deny such claims based on information received from the Investigation Team. A complete explanation of benefits, or in the case of a denial of benefits statement shall be forwarded to the employee via certified mail

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**1100.16 - Disputes, Procedure; Notice of Hearing, Witnesses, Contempt;**

**Testimony, Medical Examination** (1)(a) Employees who dispute either the amount and nature of the benefit offered, or are denied benefits by the Tribal Benefit Specialist shall file a dispute as outlined under this section. The Band may bring in additional parties by service of a copy of the application. The Band shall cause notice of hearing on the application to be given to each party interested, by service of such notice on the interested party personally or by mailing a copy to the interested party's last-known address at least 10 days before such hearing. In case a party in interest is located outside the state, and has no post-office address within this state, the copy of the application and copies of all notices shall be filed and sent by registered or certified mail to the last known post office address of such party. Such filing and mailing shall constitute sufficient service, with the same effect as if served upon a party located within this state. A hearing may be adjourned in the discretion of the Band, and hearings may be held at such places as the Band designates.

(1)(b) In any dispute or controversy pending before the Band, the Band may direct the parties to appear before the Tribal Council for a conference to consider the clarification of issues, the joining of additional parties, the necessity or desirability of amendments to the pleadings, the obtaining of admissions of fact or of documents, records, reports and bills which may avoid unnecessary proof and such other matters as may aid in disposition of the dispute or controversy. After this conference the Tribal Council may issue an order requiring disclosure or exchange of any information or written material which it considers material to the timely and orderly disposition of the dispute or controversy. If a party fails to disclose or exchange within the time stated in the order, the Band may issue an order dismissing the claim without prejudice or excluding evidence or testimony relating to the information or written material. The Band shall provide each party with a copy of any order.

(1)(c) All parties shall have the right to be present at any hearing, in person or by attorney, or any other agent, and to present such testimony as may be pertinent to the controversy before the Tribal Council.

(1)(d) The contents of certified medical and surgical reports by physicians, podiatrists, surgeons, dentists, psychologists and chiropractors licensed in and practicing in this state and of certified reports by experts concerning loss of earning capacity presented by a party for compensation constitute *prima facie* evidence as to the matter contained in them, subject to any rules and limitations the Tribal Council prescribes. Certified reports of physicians, podiatrists, surgeons, dentists, psychologists and chiropractors, wherever licensed and practicing, who have examined

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or treated the claimant, and of experts, if the practitioner or expert consents to subject himself or herself to cross-examination also constitute *prima facie* evidence as to the matter contained in them. Certified reports of physicians, podiatrists, surgeons, psychologists and chiropractors are admissible as evidence of the diagnosis, necessity of the treatment and cause and extent of the disability. Certified reports by doctors of dentistry are admissible as evidence of the diagnosis and necessity for treatment but not of disability. The record of a hospital or sanatorium in this state operated by any department or agency of the federal or state government or by any municipality, tribe, or of any other hospital or sanatorium in the State of Wisconsin which is satisfactory to the Tribal Council, established by certificate, affidavit or testimony of the supervising officer or other person having charge of such records, or of a physician, podiatrist, surgeon, dentist, psychologist or chiropractor to be the record of the patient in question, and made in the regular course of examination of such patient, constitutes *prima facie* evidence in any worker's compensation proceeding as to the matter contained in it, to the extent that it is otherwise competent and relevant. The Tribal Council may, by rule, establish the qualifications of and the form used for certified reports submitted by experts who provide information concerning loss of earning capacity. The Tribal Council may not admit into evidence a certified report of a practitioner or other expert or a record of a hospital or sanatorium that was not filed with the Tribal Council and all parties in interest at least 7 days before the date of the hearing, unless the Tribal Council is satisfied that there is good cause for the failure to file the report.

(1)(e) The Tribal Council may, with or without notice to either party, cause testimony to be taken, or an inspection of the premises where the injury occurred to be made, or the time books and payrolls of the Band to be examined by any Tribal Council member examiner, and may direct any employee claiming compensation to be examined by a physician, chiropractor, psychologist, dentist or podiatrist. The testimony so taken, and the results of any such inspection or examination, shall be reported to the Tribal Council for its consideration upon final hearing. All ex parte testimony taken by the Tribal Council shall be reduced to writing and either party shall have opportunity to rebut such testimony on final hearing.

(1)(f) Whenever the testimony presented at any hearing indicates a dispute, or is such as to create doubt as to the extent or cause of disability or death, the Tribal Council may direct that the injured employee be examined or autopsy be performed, or an opinion of a physician, chiropractor, dentist, psychologist or podiatrist be obtained without examination or autopsy, by an impartial, competent physician, chiropractor, dentist, psychologist or podiatrist designated by the Tribal Council who is not under contract with or regularly employed by the Band or Insurer. The expense of such examination shall be paid by the Band. The report of such examination shall be transmitted in writing to the Tribal Council and a copy thereof shall be furnished by the Tribal Council to each party, who shall have an opportunity to rebut such report on further hearing.

(2) Any party, including the Tribal Council, may require any person to produce books, papers and records at the hearing by personal service of a subpoena upon the person.

(3) A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in the Bad River Tribal Code Section 115.1 and must be served in the manner provided in the Bad River Tribal Code Section 115.2. The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the Band responsible for conducting the proceeding.

(4) Any person who shall willfully and unlawfully fail or neglect to appear or testify or to

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produce books, papers and records as required, shall be fined not less than \$25 nor more than \$100.00 each day such person shall so refuse or neglect shall constitute a separate offense.

(5)The right of an employee, the employee's legal representative or dependent to proceed under this section shall not extend beyond 2 years from the date of the injury or death or from the date that compensation, other than treatment or burial expenses, was last paid, or would have been last payable if no advancement were made, whichever date is latest.

(6)This section does not limit the time within which the Band may bring an action to recover benefits fraudulently obtained.

(7)If an employee or dependent shall, at the time of injury, or at the time the employee's or dependent's right accrues, be under 18 years of age, the limitations of time within which the employee or dependent may file application or proceed under this chapter, if they would otherwise sooner expire, shall be extended to one year after the employee or dependent attains the age of 18 years. If, within part of the last of any such period of limitation, an employee, the employee's personal representative, or surviving dependent be insane or on active duty in the armed forces of the United States such period of limitation shall be extended to 2 years after the date that the limitation would otherwise expire. The provision hereof with respect to persons on active duty in the armed forces of the United States shall apply only where no applicable federal statute is in effect.

(8)(a)Testimony or certified reports of expert witnesses on loss of earning capacity may be received in evidence and considered with all other evidence to decide on an employee's actual loss of earning capacity.

(8)(b)Except as provided in par. (c), the Tribal Council shall exclude from evidence, testimony or certified reports from expert witnesses under par. (a) offered by the party that raises the issue of loss of earning capacity if that party failed to notify the Tribal Council and the other parties of interest, at least 60 days before the date of the hearing, of the party's intent to provide the testimony or reports and of the names of the expert witnesses involved. Except as provided in par. (c), the Tribal Council shall exclude from evidence testimony or certified reports from expert witnesses under par. (a) offered by a party of interest in response to the party that raises the issue of loss of earning capacity if the responding party failed to notify the Tribal Council and the other parties of interest, at 45 days before the date of the hearing, of the party's intent to provide the testimony or reports and of the names of the expert witnesses involved.

(8)(c) Notwithstanding the notice deadlines provided in par.(b), the Tribal Council may receive in evidence testimony or certified reports from expert witnesses under par.(a) when the applicable notice deadline under par.(b) is not met if good cause is shown for the delay in providing the notice required under par.(b) and if no party is prejudiced by the delay.

(9)Unless otherwise agreed to by all parties, an injured employee shall file with the Tribal Council and serve on all parties at least 15 days before the date of the hearing an itemized statement of all medical expenses and incidental compensation claimed by the injured employee. The itemized statement shall include, if applicable, information relating to any travel expenses incurred by the injured employee in obtaining treatment including the injured employee's destination, number of trips, round trip mileage and meal and lodging expenses. The Tribal Council may not admit into evidence any information relating to medical expenses and incidental compensation claimed by an injured employee if the injured employee failed to file with the Band and serve on all parties at least 15 days before the date of the hearing an itemized statement of the medical expenses and incidental compensation claimed by the injured employee, unless the

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Tribal Council is satisfied that there is good cause for the failure to file and serve the itemized statement.

**1100.17 - Apportionment of Liability** (1) If it is established at the hearing that 2 or more parties have each contributed to a physical or mental condition for which benefits would be otherwise due, liability for such benefits shall be apportioned according to the proof of the relative contribution to disability resulting from the injury.

(2) If after a hearing or a pre-hearing conference the Tribal Council determines that an injured employee is entitled to compensation but that there remains in dispute only the issue of which of 2 or more parties is liable for that compensation and one the parties is the Band, the Tribal Council may order the Band to pay a prorated share in an amount, time and manner as

determined by the Tribal Council. If the Tribal Council later determines that another party is liable for compensation, the Tribal Council shall authorize the Band to seek reimbursement from the responsible party.

**1100.18 - Findings, Orders and Awards** (1)(a) All parties shall be afforded opportunity for full, fair, public hearing after reasonable notice, but disposition of application may be made by compromise, stipulation, agreement or default without hearing.

(1)(b) Within 45 days after the final hearing and close of the record, the Tribal shall make and file its findings upon the ultimate facts involved in the controversy, and its order, which shall state its determination as to the rights of the parties. Pending the final determination of any controversy before it, the Tribal Council may in its discretion after any hearing make interlocutory findings, orders and awards which may be enforced in the same manner as final awards. The Tribal Council may include in its final award, as a penalty for noncompliance with any such interlocutory order or award, if it finds that noncompliance was not in good faith, not exceeding 25% of each amount which shall not have been paid as directed thereby.

(2) A party in interest may petition the Tribal Council for reconsideration of its decision

(3) awarding or denying compensation if the Tribal Council receives the petition within 21 days after

(4) the Tribal Council mailed a copy of the findings and order to the party's last known address. The

(5) Tribal Council shall dismiss a petition for reconsideration which is not timely filed unless the

(6) petitioner shows probable good cause that the reason for failure to timely file was beyond the

(7) petitioner's control. If no petition is filed within 21 days from the date that a copy of the findings

(8) or order is mailed to the last known address of the parties in interest, the findings or order shall be considered final.

(2)(a) On its own motion, for reasons it deems sufficient, the Tribal Council may set aside any final order or award within one year the date of the order or award, upon grounds of mistake or newly discovered evidence, and, after further consideration, do any of the following:

(1) Affirm, reverse or modify, in whole or in part, the order or award.

(2) Reinstate the previous order or award.

**1100.19 - Employees Confined in Institutions; Payment**

of Benefits In case an employee is adjudged insane or incompetent, or convicted of a felony, and is confined in a public institution and has dependents wholly dependent upon the employee for support a person, whose dependency is determined as if the employee were deceased, compensation payable during the period of the employee's confinement may be paid to the employee and the employee's dependents, in such manner, for such time and in such amount as

the Tribal Council may determine.

1100.20 - Judicial Review (1)(a)The findings of fact made by the Tribal Council acting within its powers shall, in the absence of fraud, be conclusive. The order or award granting or denying compensation, either interlocutory or final, whether judgment has been rendered on it or not, is subject to review only as provided in this section. Within 30 days after the date of an order or award made by the Tribal Council either originally or after the filing of a petition for reconsideration any party aggrieved thereby may be serving a complaint as provided in Bad River Tribal Code Chapter 1100 and filing the summons and complaint with the clerk of the Bad River Tribal Court commence, in Tribal Court, an action against the Tribal Council for the review of

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the order or award, in which action the adverse party shall also be made a defendant. If the Tribal Court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any finding or order, it may extend the time in which an action may be commenced by an additional 30 days.

(1)(b)In such an action a complaint shall be served with an authenticated copy of the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon the Tribal Council or agent authorized by the Tribal Council to accept service constitutes complete service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the Tribal Court shall mail one copy to each other defendant.

(1)(c)The Tribal Council shall serve its answer within 45 days after the service of the complaint, and, within the like time, the adverse party may serve an answer to the complaint, which answer may, by way of counterclaim or cross complaint, ask for the review of the order or award referred to in the complaint, with the same effect as if the party had commenced a separate action for the review thereof.

(1)(d)The Tribal Council shall return to the court all of the documents and papers on file in the matter, and of all testimony which has been taken, and of the Council's order, findings and award. Executive sessions minutes shall not have to be made available to any party. The action may there-upon be brought on for hearing before the court upon the record by either party on 10 days' notice to the other; subject however, to the provisions of a law for a change of the place of trial or the calling in of another judge.

(1)(e)Upon such hearing, the court may confirm or set aside such order or award; and any judgment which may theretofore have been rendered thereon; but the same shall be set aside only upon the following grounds:

1. That the Tribal Council acted without or in excess of its powers.
2. That the order or award was procured by fraud.
3. That the findings of fact by the Tribal Council do not support the order or award by preponderance of the evidence presented before the Council.

(2)Upon the trial of any such action the court shall disregard any irregularity or error of the Tribal Council unless it is made to affirmatively appear that the plaintiff was damaged thereby.

(3)The record in any case shall be transmitted to the Band within 5 days after expiration of the time for appeal from the order or judgment of the court, unless appeal shall be taken from such

order or judgment.

(4) Whenever an award is made against the Band, the General Counsel may bring an action for review thereof in the same manner and upon the same grounds as are provided by sub. (1).

(5) The commencement of action for review shall not relieve the Band from paying compensation as directed, when such action involves only the question of liability as between the Band and one or more insurance companies or as between several insurance companies.

(6) If the Tribal Council's order or award depends on any fact found by the Tribal Council, the court shall not substitute its judgment for that of the Council as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the Tribal Council's order or award and remand the case to the Third Party Administrator or Tribal Benefits Specialist or if the Tribal Council's order or award depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.

**1100.21 - Appeal from Judgment on Award** (1) Any party aggrieved by a judgment entered upon the review of any order or award may appeal thereof within the time period specified in the Bad River Tribal Code Chapter 121.

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**Section 1100.22 - Fees and Costs** No fees may be charged by the clerk of any circuit court for the performance of any service required by this chapter, except for the entry of judgments and certified transcripts of judgments. In proceedings to review an order or award, costs as between parties shall be in the discretion of the court.

**Section 1100.23 - Third Party Liability** (1) The making of a claim for compensation against an employer or compensation insurer for the injury or death of an employee shall not affect the right of the employee, the employee's personal representative, or other person entitled to bring action, to make claim or maintain an action in tort against any party other than the Band for such injury or death, hereinafter referred to as a 3<sup>rd</sup> party; nor shall the making of a claim by any such person against a 3<sup>rd</sup> party for damages by reason of an injury affect the right of the injured employee or the employee's dependents to recover compensation. The employer or compensation insurer who shall have paid or is obligated to pay a lawful claim under this chapter shall have the same right to make claim or maintain an action in tort against any other party for such injury or death. If the Band pays or is obligated to pay a claim under this chapter the Band shall also have the right to maintain an action in tort against any other party for the employee's injury or death. However, each shall give to the other reasonable notice and opportunity to join in the making of such claim or the instituting of an action and to be represented by counsel.

(2) No employee who is loaned by his or her employer to the Band and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the Band who accepted the loaned employee's services.

(3) No participant in a community service job sponsored by the Band or is provided worker's compensation coverage by a Wisconsin works agency, as defined under Wis. Stat. §49.001(9), and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the Band.

**Section 1100.24 - Other Insurance Not Affected; Liability of Insured Employer** (1) This chapter does not affect the right of the Band to insure in mutual or other companies against such liability or against the liability for the compensation provided for by this chapter.

(2) The Band may provide by mutual or other insurance, by arrangement with employees or otherwise, for the payment to those employees, their families, their dependents or their representatives, of sick, accident or death benefits in addition to the compensation provided

under this chapter. Liability for compensation is not affected by any insurance, contribution or other benefit due to or received by the person entitled to that compensation.

(3) Unless an employee elects to receive sick leave benefits in lieu of compensation under this chapter, if sick leave benefits are paid during the period that temporary disability benefits are payable the Band shall restore sick leave benefits to the employee in an amount equal in value to the amount payable under this chapter. The combination of temporary disability benefits and sick leave benefits paid to the employee may not exceed the employee's weekly wage.

(4) Payment of compensation under this chapter by either the Band or the insurance company shall, to the extent thereof, bar recovery against the other of the amount so paid. As between the Band and the insurance company, payment by either the Band or the insurance company directly to the employee or the person entitled to compensation is subject to the conditions of the policy.

#### Section 1100.25 - Department Forms and Records; Public Access

(1) The Band shall print and furnish free to any employer or employee such blank forms as it shall deem requisite to facilitate efficient administration of this chapter; it shall keep such record books or records as it shall deem required for the proper and efficient administration of this chapter.

(2)(a) Except as provided in par. (b), the records of the Band related to the administration of this chapter are subject to inspection and copying. (2)(b) Notwithstanding par. (a), a record maintained by the Band that reveals the identity of an employee who claims worker's compensation benefits, the nature of the employee's claimed injury, the employee's past or present medical condition, the extent of the employee's disability, the amount, type or duration of benefits paid to the employee or any financial information provided to the Band is confidential and not open to public inspection or copying. The Band may deny a request made or refuse to honor a subpoena issued by an attorney of record in a civil or criminal action or special proceeding to inspect and copy a record that is confidential under this paragraph, unless one of the following applies:

1. The requester is the employee who is the subject of the record or an attorney or authorized agent of that employee. An attorney or authorized agent of an employee who is the subject of a record shall provide a written authorization for inspection and copying from the employee if requested by the Tribal Council for use pursuant to this Chapter.

2. The record that is requested contains confidential information concerning a worker's compensation claim and the requester is the Band or an insurance carrier or is a party to any worker's compensation claim involving the same employee or an attorney or authorized agent of that insurance carrier or Band, except that the Band is not required to do a random search of its records and may require the requester to provide the approximate date of the injury and any other relevant information that would assist the Band in finding the record requested. An attorney or authorized agent of a party to an employee's worker's compensation claim shall provide a written authorization for inspection and copying from the insurance carrier or employer if requested by the Band.

3. A court of competent jurisdiction orders the Band to release the record.

4. The requester is the subunit of the department that administers child and spousal support or a county child support agency under Wis. Stat. §59.53(5), the request is made under Wis. Stat. §49.22(2m) and the request is limited to the name and address of the employee who is the subject of the record, the name and address of the employee's employer and any financial information about that employee contained in the record.

6. The federal or state department of revenue requests the record for the purpose of locating a person, or the assets of a person, who has failed to file tax returns, who has under reported

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taxable income or who is a delinquent taxpayer; identifying fraudulent tax returns; or providing information for tax-related prosecutions.

(3) TREATMENT REJECTED BY EMPLOYEE. It is recommended the employee be seen at the Bad River Clinic or MMC unless otherwise suggested by the Clinic Dr. or MMC, the employee should be seen elsewhere. If the employee refuses to be seen by a doctor, the claim shall be denied. Unless the employee shall have elected Christian Science treatment in lieu of medical, surgical, dental or hospital treatment, no

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compensation shall be payable for the death or disability of an employee, if the death be caused, or insofar as the disability may be aggravated, caused or continued by an unreasonable refusal or neglect to submit to or follow any competent and reasonable medical, surgical or dental treatment or, in the case of tuberculosis, by refusal or neglect to submit to or follow hospital or medical treatment when found by an independent medical doctor to be necessary. The right to compensation accruing during a period of refusal or neglect to submit to or follow hospital or medical treatment when found by a medical doctor to be necessary in the case of tuberculosis shall be barred, irrespective of whether disability was aggravated, caused or continued thereby.

**Section 1100.26 - Maximum Limitations** The maximum allowable benefits under this Chapter available to employees, if any, shall be outlined in the disability policy designated by the Band to be the disability policy for this Chapter. Once an employee is returned to full duty with no limitations, the workers' comp claim shall be deemed closed for all intent purposes. If an employee has pre-existing conditions, they will play a factor in the workers' comp claim. The Band has the right to receive pre-existing medical information from the employee's physician or facility.

**Section 1100.27 - Benefits Payable to Minors; How Paid Compensation and death benefit payable to an employee or dependent who was a minor when the employee's or dependent's right began to accrue, may, in the discretion of the department, be ordered paid to a bank, trust company, trustee, parent or guardian, for the use of such employee or dependent as may be found best calculated to conserve the employee's or dependent's interests. Such employee or dependent shall be entitled to receive payments, in the aggregate, at a rate not less than that applicable to payments of primary compensation for total disability or death benefit as accruing from the employee's or dependent's 18<sup>th</sup> birthday.**

**Section 1100.28 - Death Benefit** Where death proximately results from the injury and the deceased leaves a person wholly dependent upon him or her for support, the death benefit if obtained by the Band shall be limited to the amount specified in the policy for this purpose.

**Section 1100.29 - Burial Expenses** In all cases where death of an employee proximately results from the injury, the Band may provide burial expense insurance in which case the Band, through its insurer shall pay the reasonable expense for burial in the amount specified in the policy obtained by the Band.

**Section 1100.30 - Decreased Compensation** If injury is caused by the failure of the employee to use safety devices which are provided in accordance with any statute or lawful order of the Band and are adequately maintained, and the use of which is reasonably enforced by the Band, or if injury results from the employee's failure to obey any reasonable rule adopted and reasonably enforced by the Band for the safety of the employee and of which the employee has notice, or if injury results from the intoxication of the employee by alcohol beverages, as defined in Wis. Stat. § 125.02(1), or use of a controlled substance, as defined in Wis. Stat. § 961.01(4), or a controlled

substance analog, as defined in Wis. Stat. §961.01(4m), the compensation provided in this chapter shall be reduced 15% but the total reduction may not exceed \$15,000.

**Section 1100.31 - Sovereign Immunity**

By enacting this ordinance the Tribe in no way waives its inherent sovereignty and with all rights and privileges, including but not limited to sovereign immunity.

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Adopted Pursuant to Bad River  
Tribal Council Resolution 12-05-01-195

*Current Policy*

## HEALTH AND DISABILITY BENEFITS (WORKER'S COMPENSATION)

### CHAPTER 1100

#### Section 1100.1 Purpose

The Bad River Tribal Council may authorize the Tribe to offer health and/or disability insurance, including at its option, opting into the State of Wisconsin Worker's Compensation system, to a full time employees, as defined in the Bad River Personnel and Policy Manual, of the Bad River Tribe including its enterprises.

#### Section 1100.2 Exclusive Remedy

If the Tribe elects to offer health and disability benefits to Tribal employees, such benefits shall be the sole and exclusive remedy for claims and compensation resulting from any work related injury or illness. If the Tribe elects to offer a comprehensive health insurance coverage to its employees for off-duty injury or illness, the benefits and coverage contained in the policy shall be the exclusive remedy for claims and compensation resulting from any non-work related injury or illness. If the Tribe opts not to offer health and/or disability insurance to its employees then there shall be no remedy available from the Tribe for injury sustained at the work place.

#### Section 1100.3 Index

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- 1100.2 Exclusive remedy
- 1100.3 Index
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- 1100.5 Conditions of liability.
- 1100.6 Joint liability of employer and contractor.
- 1100.7 Employee defined.
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- 1100.9 Temporary disability
- 1100.10 Earnings, method of computation
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Adopted Pursuant to Bad River  
Tribal Council Resolution 12-05-01-195

1100.25 Department forms and records; public access.

1100.26 Maximum limitations.

1100.27 Benefits payable to minors; how paid.

1100.28 Death benefit.

1100.29 Burial expenses.

1100.30 Decreased compensation.

1100.31 Sovereign Immunity

1100.4 Definitions.

(1) This chapter may be referred to as the "Worker's Compensation Ordinance" and allowances, recoveries and liabilities under this chapter constitute "Worker's Compensation".

(2) In this chapter:

(a) "Compensation" means worker's compensation.

(b) "Injury" means mental or physical harm to an employee while working in the scope of their employment caused by accident or disease, and also means damage to or destruction of artificial members, dental appliances, teeth, hearing aids and eyeglasses, but, in the case of hearing aids or eyeglasses, only if such damage or destruction resulted from accident which also caused personal injury entitling the employee to compensation therefor either for disability or treatment.

(c) "Order" means any decision, rule, regulation, direction, requirement or standard of the Third Party Administrator, Tribal Council or Tribal Court.

1100.5 Conditions of liability. (1) Liability under this chapter shall exist against an employer only where the following conditions concur:

(a) Where the employee sustains an injury.

(b) Where, at the time of the injury, both the employer and employee are subject to the provisions of this chapter.

(c) 1. Where, at the time of the injury, the employee is performing service growing out of and incidental to his or her employment.

2. Any employee going to and from his or her employment in the ordinary and usual way, while on the premises of the employer, or while in the immediate vicinity thereof if the injury results from an occurrence on the premises, any employee going between an employer's designated parking lot and the employer's work premises while on a direct route and in the ordinary and usual way or any fire fighter or municipal utility employee responding to a call for assistance outside the limits of his or her city or village, unless that response is in violation of law, is performing service growing out of and incidental to employment.

3. An employee is not performing service growing out of and incidental to his or her employment while going to or from employment in a private or group or employer-sponsored car pool, van pool, commuter bus service or other ride-sharing program in which the employee participates voluntarily and the sole purpose of which is the mass transportation of employees to and from employment. An employee is not performing service growing out of and incidental to employment while engaging in a program designed to improve the physical well-being of the employee, whether or not the program is located on the employer's premises, if participation in the program is voluntary and the employee receives no compensation for participation.

4. The premises of the employer include the premises of any other person on whose premises the employee performs service.

5. To enhance the morale and efficiency of Tribal employees and attract qualified personnel to the work for the Band, it is the policy of the Bad River Band that the benefits of this chapter shall extend and be granted to employees in the service of the Band:

(a) Where the injury is not intentionally self-inflicted.

(b) Where the accident or disease causing injury arises out of the employee's employment.

(c) Every employee whose employment requires the employee to travel shall be deemed to be performing service growing out of and incidental to the employee's employment at all times while on a trip, except when engaged in a deviation for a private or personal purpose. Acts reasonably necessary for living or incidental thereto shall not be regarded as such a deviation. Any accident or disease arising out of a hazard of such service shall be deemed to arise out of the employee's employment.

(d) Members of the Tribal Council are covered by this chapter when they are engaged in performing their duties as Tribal Council members including:

1. While performing services growing out of and incidental to their function as Tribal Council members;

2. While performing their official duties as members of committees or other official bodies created by the Tribal Council;

3. While traveling to and from the Chief Blackbird Center to perform their duties as Tribal Council members; and

4. While traveling to and from any place to perform services growing out of and incidental to their function as Tribal Council members, regardless of where the trip originated, and including acts reasonably necessary for living but excluding any deviations for private or personal purposes except that acts reasonably necessary for living are not deviations.

(2) Where such conditions exist the right to the recovery of compensation under this chapter shall be the exclusive remedy against the employer, any other employee of the same employer and the worker's compensation insurance carrier. This section does not limit the right of an employee to bring action against any co-employee for an assault intended to cause bodily harm, or against a co-employee for negligent operation of a motor vehicle not owned or leased by the employer.

(3) Providing or failing to provide any safety inspection or safety advisory service incident to a contract for worker's compensation insurance or to a contract for safety inspections or safety advisory services does not by itself subject an insurer, an employer, an insurance service organization, or any agent or employee of the insurer, employer, insurance service organization to liability for damages for an injury resulting from providing or failing to provide the inspection or services.

(4) The right to compensation and the amount of the compensation shall in all cases be determined in accordance with the provisions of a tribal health and disability insurance policy in effect as of the date of the injury.

5) If an employee of the Band, while working outside the territorial limits of this Band, suffers an injury on account of which the employee, or in the event of the employee's death, his or her dependents, would have been entitled to the benefits provided by this chapter.

1100.6 Joint Liability of employer and contractor. An employee shall not recover compensation for the same injury from more than one party. If the Band pays compensation to an employee it may recover the same from the other employer for whom the employee was working

at the time of the injury if such contractor, subcontractor or other employer was an employer as defined herein above.

**1100.7 Employee defined.** "Employee" as used in this chapter means:

(a) Every person, including all officials, in the service of the Band whether elected or under any appointment, or express contract of hire, and whether a resident or employed or injured within or outside the boundaries of the Reservation.

(b) Every member of the Bad River Police Department or Volunteer Fire Department or Ambulance Service.

(c) An independent contractor is not an employee of an employer for whom the independent contractor performs work or services if the independent contractor meets all of the following conditions:

1. Maintains a separate business with his or her own office, equipment, materials and other facilities.

2. Holds or has applied for a federal employer identification number with the federal internal revenue service or has filed business or self-employment income tax returns with the federal internal revenue service based on that work or service in the previous year.

3. Operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work.

4. Incurs the main expenses related to the services or work that he or she performs under contract.

5. Is responsible for the satisfactory completion of work or services that he or she contracts to perform and is liable for a failure to complete the work or service.

6. Receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis.

7. May realize a profit or suffer a loss under contracts to perform work or service.

8. Has continuing or recurring business liabilities or obligations.

9. The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

10. The Tribal Council may by resolution, prescribe classes of volunteer workers who may, at the election of the person for whom the service is being performed, be deemed to be employees for the purposes of this chapter.

11. A juvenile performing uncompensated community service work as a result of a disposition ordered by the Bad River tribal Court is considered an employee. No compensation may be paid to that employee for temporary disability during the healing period.

12. An adult performing uncompensated community service work under is considered an employee of the Band. No compensation may be paid to that employee for temporary disability during the healing period.

13. A prisoner of a county jail who is assigned to the Huber Program who performs compensated work for the Band is considered an employee of the Band.

14. A participant in a trial job or on probation is considered an employee of the Band and shall receive benefits under this chapter from the date of hire so long as he or she is otherwise eligible under this chapter.

**1100.8 Health Benefits.** The Tribal Council, in its discretion may contract with an insurance

carrier or offer a self-insured health insurance benefit plan to its employees. The health insurance plan, if any, shall constitute the health benefit made available by the Band to employees for work related injuries injured workers.

**1100.9 Temporary Disability** The Tribal Council may, in its discretion, contract with a insurance carrier or offer a self-insured disability benefit to its employees. The disability plan, if any, shall constitute the health benefit made available by the Band to employees for disability compensation.

**1100.10 Earnings, method of computation.** The method of calculating disability payments shall be established by the Tribal Council and promulgated in the disability policy, if any, sponsored by the Band.

**1100.11 Notice of injury, laches.** Eligibility for a claim for compensation is contingent upon an employee qualifying for health coverage and/or disability compensation. Criteria for qualification shall be approved by the Tribal Council and all benefits and eligibility requirements for compensation will be published and made widely available to all employees. At a minimum, the criteria shall include policies and procedures for timely notice from the employee to the Band of injury. The notice shall, at a minimum, include the date, time, nature of injury, and place of injury and any potential or actual witnesses to the injurious event. The notice shall be signed by the employee's supervisor. Further policies and procedures may be developed to supplement the above minimum requirements. Regardless of whether notice was received, if no payment of compensation, other than medical treatment or burial expense, is made, and no application is filed with the Third Party Administrator within 2 years from the date of the injury or death, or from the date the employee or his or her dependent knew or ought to have known the nature of the disability and its relation to the employment, the right to compensation therefore is barred, except that the right to compensation is not barred if the employer knew or should have known, within the 2-year period, that the employee had sustained the injury on which the claim is based. Issuance of notice of a hearing on the Band's own motion has the same effect for the purposes of this section as the filing of an application.

**1100.12 Fraudulent claims reporting and investigation.**

(1) If the Band, Third Party Administrator or an insurer has evidence that a claim is false or fraudulent the claim shall be denied and the tribal benefit specialist shall report the matter to the Tribal Council within 10 business days. The Band may require an insurer or otherwise qualified person to investigate an allegedly false or fraudulent claim and may provide the Band with any records of the relating to that claim. An insurer investigating a claim under this sub-section shall report on the results of that investigation to the Band. If based on the investigation, the Band has a reasonable basis to believe that a violation of a state or federal criminal code has occurred, the Band may refer the results of the investigation to the U.S. Attorney or Ashland County District Attorney for prosecution.

(2) Annually, the Tribal Benefit Specialist shall submit a report to the Tribal Council detailing the number of claims filed under this chapter the previous year including fraudulent claims and the nature of the disposition.

**1100.13 Examination; competent witnesses; exclusion of evidence; autopsy.**

(1.) (a) Whenever compensation is claimed by an employee, the employee shall, upon the written request of the Band or insurer, submit to reasonable examinations by

physicians, chiropractors, psychologists, dentists or podiatrists provided and paid for by the Band or insurer. A claim may be denied if an employee refuses to submit to an examination under this paragraph..

(b) When compensation is claimed for loss of earning capacity the employee shall, on the written request of the Band, submit to reasonable examinations by vocational experts provided and paid for by the Band.

(c) The employee is entitled to have a physician, chiropractor, psychologist, dentist or podiatrist provided by himself or herself present at the examination and to receive a copy of all reports of the examination that are prepared by the examining physician, chiropractor, psychologist, podiatrist, dentist or vocational expert immediately upon receipt of those reports by the Band or insurer. The Band's written request for examination shall notify the employee of all of the following:

1. The proposed date, time and place of the examination and the identity and area of specialization of the examining physician, chiropractor, psychologist, dentist, podiatrist or vocational expert.
2. The procedure for changing the proposed date, time and place of the examination.
3. The employee's right to have his or her physician, chiropractor, psychologist, dentist or podiatrist present at the examination.
4. The employee's right to receive a copy of all reports of the examination that are prepared by the examining physician, chiropractor, psychologist, dentist, podiatrist or vocational expert immediately upon receipt of these reports by the employer or insurer.

(d) So long as the employee, after a written request from the Band or insurer which complies with par. (c), refuses to submit to or in any way obstructs the examination, the employee's right to begin or maintain any proceeding for the collection of compensation is suspended. If the employee refuses to submit to the examination after direction by the Band or in any way obstructs the examination, the employee's right to the weekly indemnity which accrues and becomes payable during the period of that refusal or obstruction, is barred. Subject to paragraph (e):

1. Any physician, chiropractor, psychologist, dentist, podiatrist or vocational expert who is present at any examination under par. (a) may be required to testify as to the results thereof.
2. Any physician, chiropractor, psychologist, dentist or podiatrist who attended a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may be required to testify before the Tribal Council when it so directs.
3. Notwithstanding any chapter provisions except par. (e), any physician, chiropractor, psychologist, dentist or podiatrist attending a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may furnish to the employee, Band, insurer reports relative to a compensation claim.
4. The testimony of any physician, chiropractor, psychologist, dentist or podiatrist who is licensed to practice where he or she resides or practices in any state and the testimony of any vocational expert may be received in evidence in compensation proceedings.

(e) No person may testify on the issue of the reasonableness of the fees of a licensed health care

professional unless the person is licensed to practice the same health care profession as the professional whose fees are the subject of the testimony.

(2) (a) An employee who reports an injury alleged to be work-related or files an application for hearing waives any physician-patient, psychologist-patient or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Any physician, chiropractor, psychologist, dentist, podiatrist, hospital or health care provider shall, within a reasonable time after written request by the employee, employer, worker's compensation insurer or Band or its representative, provide that person with any information or written material reasonably related to any injury for which the employee claims compensation.

(b) A physician, chiropractor, podiatrist, psychologist, dentist, hospital or health service provider shall furnish a legible, certified duplicate of the written material requested under par. (a) upon payment of the actual costs of preparing the certified duplicate, not to exceed the greater of 45 cents per page or \$7.50 per request, plus the actual costs of postage. Any person who refuses to provide certified duplicates of written material in the person's custody that is requested under par. (a) shall be liable for reasonable and necessary costs including reasonable attorney fees.

(3) (a) If 2 or more physicians, chiropractors, psychologists, dentists or podiatrists disagree as to the extent of an injured employee's temporary disability, the end of an employee's healing period, an employee's ability to return to work at suitable available employment or the necessity for further treatment or for a particular type of treatment, the Band may appoint another physician, chiropractor, psychologist, dentist or podiatrist to examine the employee and render an opinion as soon as possible. The Band shall promptly notify the claimant of this appointment.

(b) If the employee has not returned to work, payment for temporary disability shall continue until the terms regarding length of disability payments expires or the Band receives the opinion. The Band or its insurance carrier or both shall pay for the examination and opinion. The Band or insurance carrier or both shall receive appropriate credit for any overpayment to the employee.

1100.14 Rules of procedure; transcripts. (1) All testimony at any hearing held under this chapter shall be recorded by a recording machine.

1100.15 Submission of Claims All claims made by employees for compensation under this chapter shall be submitted to the Tribal Benefit Specialist who shall forward the claim to the Third Party Administrator for claim evaluation. The Third Party Administrator shall evaluate each claim for payment of benefits based on the eligibility criteria and available benefits established in this chapter and the health and disability plan which may be adopted by the Band. The Third Party Administrator shall promptly evaluate all claims and either pay out health and/or disability benefits to eligible employees or deny such claims. A complete explanation of benefits, or in the case of a denial of benefits statement shall be forwarded to the employee and Tribal Benefit Specialist. In the instance that there is no Third Party Administrator, the tribal benefit specialist shall fulfill the benefit evaluation procedure as outlined in this section.

1100.16 Disputes, Procedure; notice of hearing; witnesses, contempt; testimony, medical examination. (1) (a) Employees who dispute either the amount and nature of the benefit offered, or are denied benefits by either the Third Party Administrator or tribal benefit specialist shall file a dispute as outlined under this section. The Band may bring in additional parties by service of a copy of the application. The Band shall cause notice of hearing

on the application to be given to each party interested, by service of such notice on the interested party personally or by mailing a copy to the interested party's last-known address at least 10 days before such hearing. In case a party in interest is located outside the state, and has no post-office address within this state, the copy of the application and copies of all notices shall be filed and sent by registered or certified mail to the last-known post-office address of such party. Such filing and mailing shall constitute sufficient service, with the same effect as if served upon a party located within this state. A hearing may be adjourned in the discretion of the Band, and hearings may be held at such places as the Band designates.

(b) In any dispute or controversy pending before the Band, the Band may direct the parties to appear before the Tribal Council for a conference to consider the clarification of issues, the joining of additional parties, the necessity or desirability of amendments to the pleadings, the obtaining of admissions of fact or of documents, records, reports and bills which may avoid unnecessary proof and such other matters as may aid in disposition of the dispute or controversy. After this conference the Tribal Council may issue an order requiring disclosure or exchange of any information or written material which it considers material to the timely and orderly disposition of the dispute or controversy. If a party fails to disclose or exchange within the time stated in the order, the Band may issue an order dismissing the claim without prejudice or excluding evidence or testimony relating to the information or written material. The Band shall provide each party with a copy of any order.

(c) All parties shall have the right to be present at any hearing, in person or by attorney, or any other agent, and to present such testimony as may be pertinent to the controversy before the Tribal Council..

(d) The contents of certified medical and surgical reports by physicians, podiatrists, surgeons, dentists, psychologists and chiropractors licensed in and practicing in this state and of certified reports by experts concerning loss of earning capacity presented by a party for compensation constitute prima facie evidence as to the matter contained in them, subject to any rules and limitations the Tribal Council prescribes. Certified reports of physicians, podiatrists, surgeons, dentists, psychologists and chiropractors, wherever licensed and practicing, who have examined or treated the claimant, and of experts, if the practitioner or expert consents to subject himself or herself to cross-examination also constitute prima facie evidence as to the matter contained in them. Certified reports of physicians, podiatrists, surgeons, psychologists and chiropractors are admissible as evidence of the diagnosis, necessity of the treatment and cause and extent of the disability. Certified reports by doctors of dentistry are admissible as evidence of the diagnosis and necessity for treatment but not of disability. The record of a hospital or sanatorium in this state operated by any department or agency of the federal or state government or by any municipality, tribe, or of any other hospital or sanatorium in the State of Wisconsin which is satisfactory to the Tribal Council, established by certificate, affidavit or testimony of the supervising officer or other person having charge of such records, or of a physician, podiatrist, surgeon, dentist, psychologist or chiropractor to be the record of the patient in question, and made in the regular course of examination or treatment of such patient, constitutes prima facie evidence in any worker's compensation proceeding as to the matter contained in it, to the extent that it is otherwise competent and relevant. The Tribal Council may, by rule, establish the qualifications of and the form used for certified reports submitted by experts who provide

information concerning loss of earning capacity. The Tribal Council may not admit into evidence a certified report of a practitioner or other expert or a record of a hospital or sanatorium that was not filed with the Tribal Council and all parties

in interest at least 7 days before the date of the hearing, unless the Tribal Council is satisfied that there is good cause for the failure to file the report.

(e) The Tribal Council may, with or without notice to either party, cause testimony to be taken, an inspection of the premises where the injury occurred to be made, or the time books and pay-rolls of the Band to be examined by any Tribal Council member examiner, and may direct any employee claiming compensation to be examined by a physician, chiropractor, psychologist, dentist or podiatrist. The testimony so taken, and the results of any such inspection or examination, shall be reported to the Tribal Council for its consideration upon final hearing. All ex parte testimony taken by the Tribal Council shall be reduced to writing and either party shall have opportunity to rebut such testimony on final hearing.

(f) Whenever the testimony presented at any hearing indicates a dispute, or is such as to create doubt as to the extent or cause of disability or death, the Tribal Council may direct that the injured employee be examined or autopsy be performed, or an opinion of a physician, chiropractor, dentist, psychologist or podiatrist be obtained without examination or autopsy, by an impartial, competent physician, chiropractor, dentist, psychologist or podiatrist designated by the Tribal Council who is not under contract with or regularly employed by the Band or Insurer. The expense of such examination shall be paid by the Band. The report of such examination shall be transmitted in writing to the Tribal Council and a copy thereof shall be furnished by the Tribal Council to each party, who shall have an opportunity to rebut such report on further hearing.

(2) Any party, including the Tribal Council, may require any person to produce books, papers and records at the hearing by personal service of a subpoena upon the person

(3) A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in Bad River Tribal Code Section 115.1 and must be served in the manner provided in Bad River Tribal Code Section 115.2. The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the Band responsible for conducting the proceeding.

(4) Any person who shall wilfully and unlawfully fail or neglect to appear or to testify or to produce books, papers and records as required, shall be fined not less than \$25 nor more than \$100.00 each day such person shall so refuse or neglect shall constitute a separate offense.

(5) The right of an employee, the employee's legal representative or dependent to proceed under this section shall not extend beyond 12 years from the date of the injury or death or from the date that compensation, other than treatment or burial expenses, was last paid, or would have been last payable if no advancement were made, whichever date is latest.

(6) This section does not limit the time within which the Band may bring an action to recover benefits fraudulently obtained.

(7) If an employee or dependent shall, at the time of injury, or at the time the employee's or dependent's right accrues, be under 18 years of age, the limitations of time within which the employee or dependent may file application or proceed under this chapter, if they would otherwise sooner expire, shall be extended to one year after the employee or dependent attains

the age of 18 years. If, within any part of the last year of any such period of limitation, an employee, the employee's personal representative, or surviving dependent be insane or on active duty in the armed forces of the United States such period of limitation shall be extended to 2 years after the date that the limitation would otherwise expire. The provision hereof with respect to persons on active duty in the armed forces of the United States shall apply only where no applicable federal statute is in effect.

(8) (a) Testimony or certified reports of expert witnesses on loss of earning capacity may be received in evidence and considered with all other evidence to decide on an employee's actual loss of earning capacity.

(b) Except as provided in par. (c), the Tribal Council shall exclude from evidence, testimony or certified reports from expert witnesses under par. (a) offered by the party that raises the issue of loss of earning capacity if that party failed to notify the Tribal Council and the other parties of interest, at least 60 days before the date of the hearing, of the party's intent to provide the testimony or reports and of the names of the expert witnesses involved. Except as provided in par. (c), the Tribal Council shall exclude from evidence testimony or certified reports from expert witnesses under par. (a) offered by a party of interest in response to the party that raises the issue of loss of earning capacity if the responding party failed to notify the Tribal Council and the other parties of interest, at least 45 days before the date of the hearing, of the party's intent to provide the testimony or reports and of the names of the expert witnesses involved.

(c) Notwithstanding the notice deadlines provided in par. (b), the Tribal Council may receive in evidence testimony or certified reports from expert witnesses under par. (a) when the applicable notice deadline under par. (b) is not met if good cause is shown for the delay in providing the notice required under par. (b) and if no party is prejudiced by the delay.

(9) Unless otherwise agreed to by all parties, an injured employee shall file with the Tribal Council and serve on all parties at least 15 days before the date of the hearing an itemized statement of all medical expenses and incidental compensation claimed by the injured employee. The itemized statement shall include, if applicable, information relating to any travel expenses incurred by the injured employee in obtaining treatment including the injured employee's destination, number of trips, round trip mileage and meal and lodging expenses. The Tribal Council may not admit into evidence any information relating to medical expenses and incidental compensation claimed by an injured employee if the injured employee failed to file with the Band and serve on all parties at least 15 days before the date of the hearing an itemized statement of the medical expenses and incidental compensation claimed by the injured employee, unless the Tribal Council is satisfied that there is good cause for the failure to file and serve the itemized statement.

**1100.17 Apportionment of liability.** (1) If it is established at the hearing that 2 or more parties have each contributed to a physical or mental condition for which benefits would be otherwise due, liability for such benefits shall be apportioned according to the proof of the relative contribution to disability resulting from the injury.

(2) If after a hearing or a pre-hearing conference the Tribal Council determines that an injured employee is entitled to compensation but that there remains in dispute only the issue of which of 2 or more parties is liable for that compensation and one of the parties is the Band, the Tribal Council may order the Band to pay its prorated share in an amount, time and manner as

determined by the Tribal Council. If the Tribal Council later determines that another party is liable for compensation, the Tribal Council shall authorize the Band to seek reimbursement from the responsible party.

**1100.18 Findings, orders and awards.** (1) (a) All parties shall be afforded opportunity for full, fair, public hearing after reasonable notice, but disposition of application may be made by compromise, stipulation, agreement, or default without hearing.

(b) Within 45 days after the final hearing and close of the record, the Tribal Council shall make and file its findings upon the ultimate facts involved in the controversy, and its order, which shall state its determination as to the rights of the parties. Pending the final determination of any controversy before it, the Tribal Council may in its discretion after any hearing make interlocutory findings, orders and awards which may be enforced in the same manner as final awards. The Tribal Council may include in its final award, as a penalty for noncompliance with any such interlocutory order or award, if it finds that noncompliance was not in good faith, not exceeding 25% of each amount which shall not have been paid as directed thereby.

(2) A party in interest may petition the Tribal Council for reconsideration of its decision awarding or denying compensation if the Tribal Council receives the petition within 21 days after the Tribal Council mailed a copy of the findings and order to the party's last-known address. The Tribal Council shall dismiss a petition for reconsideration which is not timely filed unless the petitioner shows probable good cause that the reason for failure to timely file was beyond the petitioner's control. If no petition is filed within 21 days from the date that a copy of the findings or order is mailed to the last-known address of the parties in interest, the findings or order shall be considered final.

(a) On its own motion, for reasons it deems sufficient, the Tribal Council may set aside any final order or award within one year after the date of the order or award, upon grounds of mistake or newly discovered evidence, and, after further consideration, do any of the following:

1. Affirm, reverse or modify, in whole or in part, the order or award.

2. Reinstate the previous order or award.

**1100.19 Employees confined in institutions; payment of benefits.** In case an employee is adjudged insane or incompetent, or convicted of a felony, and is confined in a public institution and has dependents wholly dependent upon the employee for support a person, whose dependency is determined as if the employee were deceased, compensation payable during the period of the employee's confinement may be paid to the employee and the employee's dependents, in such manner, for such time and in such amount as the Tribal Council may determine.

**1100.20 Judicial review.** (1) (a) The findings of fact made by the Tribal Council acting within its powers shall, in the absence of fraud, be conclusive. The order or award granting or denying compensation, either interlocutory or final, whether judgment has been rendered on it or not, is subject to review only as provided in this section. Within 30 days after the date of an order or award made by the Tribal Council either originally or after the filing of a petition for reconsideration any party aggrieved thereby may by serving a complaint as provided in Bad River Tribal Code Chapter 111 and filing the summons and complaint with the clerk of the Bad River Tribal Court commence, in Tribal Court, an action against the Tribal Council for the review of

the order or award, in which action the adverse party shall also be made a defendant. If the Tribal Court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any finding or order, it may extend the time in which an action may be commenced by an additional 30 days.

(b) In such an action a complaint shall be served with an authenticated copy of the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon The Tribal Council or agent authorized by the Tribal Council to accept service constitutes complete service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the Tribal Court shall mail one copy to each other defendant.

(c) The Tribal Council shall serve its answer within 45 days after the service of the complaint, and, within the like time, the adverse party may serve an answer to the complaint, which answer may, by way of counterclaim or cross complaint, ask for the review of the order or award referred to in the complaint, with the same effect as if the party had commenced a separate action for the review thereof.

(d) The Tribal Council shall return to the court of all documents and papers on file in the matter, and of all testimony which has been taken, and of the Council's order, findings and award. Executive session minutes shall not have to be made available to any party. The action may there-upon be brought on for hearing before the court upon the record by either party on 10 days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge.

(e) Upon such hearing, the court may confirm or set aside such order or award; and any judgment which may theretofore have been rendered thereon; but the same shall be set aside only upon the following grounds:

1. That the Tribal Council acted without or in excess of its powers.
2. That the order or award was procured by fraud.

3. That the findings of fact by the Tribal Council do not support the order or award by a preponderance of the evidence presented before the Council.

(2) Upon the trial of any such action the court shall disregard any irregularity or error of the Tribal Council unless it is made to affirmatively appear that the plaintiff was damaged thereby.

(3) The record in any case shall be transmitted to the Band within 5 days after expiration of the time for appeal from the order or judgment of the court, unless appeal shall be taken from such order or judgment.

(4) Whenever an award is made against the Band the General Counsel may bring an action for review thereof in the same manner and upon the same grounds as are provided by sub. (1).

(5) The commencement of action for review shall not relieve the Band from paying compensation as directed, when such action involves only the question of liability as between the Band and one or more insurance companies or as between several insurance companies.

(6) If the Tribal Council's order or award depends on any fact found by the Tribal Council, the court shall not substitute its judgment for that of the Council as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the Tribal Council's order or award and remand the case to the Third Party Administrator or Tribal Benefits Specialist or if the Tribal Council's order or award depends on any material and controverted finding of fact that is

not supported by credible and substantial evidence.

**1100.21 Appeal from Judgment on award.** (1) Any party aggrieved by a judgment entered upon the review of any order or award may appeal therefrom within the time period specified in the Bad River Tribal Code Chapter 121.

**1100.22 Fees and costs.** No fees may be charged by the clerk of any circuit court for the performance of any service required by this chapter, except for the entry of judgments and certified transcripts of judgments. In proceedings to review an order or award, costs as between the parties shall be in the discretion of the court.

**1100.23 Third party liability.** (1) The making of a claim for compensation against an employer or compensation insurer for the injury or death of an employee shall not affect the right of the employee, the employee's personal representative, or other person entitled to bring action, to make claim or maintain an action in tort against any party other than the Band for such injury or death, hereinafter referred to as a 3rd party; nor shall the making of a claim by any such person against a 3rd party for damages by reason of an injury affect the right of the injured employee or the employee's dependents to recover compensation. The employer or compensation insurer who shall have paid or is obligated to pay a lawful claim under this chapter shall have the same right to make claim or maintain an action in tort against any other party for such injury or death. If the Band pays or is obligated to pay a claim under this chapter the Band shall also have the right to maintain an action in tort against any other party for the employee's injury or death. However, each shall give to the other reasonable notice and opportunity to join in the making of such claim or the instituting of an action and to be represented by counsel.

(2) No employee who is loaned by his or her employer to the Band and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the Band who accepted the loaned employee's services.

(3) No participant in a community service job sponsored by the Band or is provided worker's compensation coverage by a Wisconsin works agency, as defined under Wis Stat. S. 49.001 (9), and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the Band.

**1100.24 Other insurance not affected; Liability of insured employer.** (1) This chapter does not affect the right of the Band to insure in mutual or other companies against such liability or against the liability for the compensation provided for by this chapter.

(2) The Band may provide by mutual or other insurance, by arrangement with employees or otherwise, for the payment to those employees, their families, their dependents or their representatives, of sick, accident or death benefits in addition to the compensation provided under this chapter. Liability for compensation is not affected by any insurance, contribution or other benefit due to or received by the person entitled to that compensation.

(3) Unless an employee elects to receive sick leave benefits in lieu of compensation under this chapter, if sick leave benefits are paid during the period that temporary disability benefits are payable, the Band shall restore sick leave benefits to the employee in an amount equal in value to the amount payable under this chapter. The combination of temporary disability benefits and sick leave benefits paid to the employee may not exceed the employee's weekly wage.

(4) Payment of compensation under this chapter by either the Band or the insurance company

shall, to the extent thereof, bar recovery against the other of the amount so paid. As between the Band and the insurance company, payment by either the Band or the insurance company directly to the employee or the person entitled to compensation is subject to the conditions of the policy.

**1100.25 Department forms and records; public access.**

(1) The Band shall print and furnish free to any employer or employee such blank forms as it shall deem requisite to facilitate efficient administration of this chapter; it shall keep such record books or records as it shall deem required for the proper and efficient administration of this chapter.

(2) (a) Except as provided in par. (b), the records of the Band related to the administration of this chapter are subject to inspection and copying. (b) Notwithstanding par. (a), a record maintained by the Band that reveals the identity of an employee who claims worker's compensation benefits, the nature of the employee's claimed injury, the employee's past or present medical condition, the extent of the employee's disability, the amount, type or duration of benefits paid to the employee or any financial information provided to the Band is confidential and not open to public inspection or copying. The Band may deny a request made or refuse to honor a subpoena issued by an attorney of record in a civil or criminal action or special proceeding to inspect and copy a record that is confidential under this paragraph, unless one of the following applies:

1. The requester is the employee who is the subject of the record or an attorney or authorized agent of that employee. An attorney or authorized agent of an employee who is the subject of a record shall provide a written authorization for inspection and copying from the employee if requested by the Tribal Council for use pursuant to this Chapter.
2. The record that is requested contains confidential information concerning a worker's compensation claim and the requester is the Band or an insurance carrier or is a party to any worker's compensation claim involving the same employee or an attorney or authorized agent of that insurance carrier or Band, except that the Band is not required to do a random search of its records and may require the requester to provide the approximate date of the injury and any other relevant information that would assist the Band in finding the record requested. An attorney or authorized agent of a party to an employee's worker's compensation claim shall provide a written authorization for inspection and copying from the insurance carrier or employer if requested by the Band.

3. A court of competent jurisdiction orders the Band to release the record.

4. The requester is the subunit of the department that administers child and spousal support or a county child support agency under Wis Stat. S 59.53 (5), the request is made under Wis Stat. S. 49.22 (2m) and the request is limited to the name and address of the employee who is the subject of the record, the name and address of the employee's employer and any financial information about that employee contained in the record.

6. The federal or state department of revenue requests the record for the purpose of locating a person, or the assets of a person, who has failed to file tax returns, who has under reported taxable income or who is a delinquent taxpayer; identifying fraudulent tax returns; or providing information for tax-related prosecutions.

(3) **TREATMENT REJECTED BY EMPLOYEE.** Unless the employee shall have elected Christian Science treatment in lieu of medical, surgical, dental or hospital treatment, no

compensation shall be payable for the death or disability of an employee, if the death be caused, or insofar as the disability may be aggravated, caused or continued by an unreasonable refusal or neglect to submit to or follow any competent and reasonable medical, surgical or dental treatment or, in the case of tuberculosis, by refusal or neglect to submit to or follow hospital or medical treatment when found by an independent medical doctor to be necessary. The right to compensation accruing during a period of refusal or neglect to submit to or follow hospital or medical treatment when found by a medical doctor to be necessary in the case of tuberculosis shall be barred, irrespective of whether disability was aggravated, caused or continued thereby.

**1100.26 Maximum Limitations.** The maximum allowable benefits under this Chapter available to employees, if any, shall be outlined in the disability policy designated by the Band to be the disability policy for this Chapter.

**1100.27 Benefits payable to minors; how paid.** Compensation and death benefit payable to an employee or dependent who was a minor when the employee's or dependent's right began to accrue, may, in the discretion of the department, be ordered paid to a bank, trust company, trustee, parent or guardian, for the use of such employee or dependent as may be found best calculated to conserve the employee's or dependent's interests. Such employee or dependent shall be entitled to receive payments, in the aggregate, at a rate not less than that applicable to payments of primary compensation for total disability or death benefit as accruing from the employee's or dependent's 18th birthday.

**1100.28 Death benefit.** Where death proximately results from the injury and the deceased leaves a person wholly dependent upon him or her for support, the death benefit if obtained by the Band shall be limited to the amount specified in the policy for this purpose.

**1100.29 Burial expenses.** In all cases where death of an employee proximately results from the injury, the Band may provide burial expense insurance in which case the Band, through its insurer shall pay the reasonable expense for burial in the amount specified in the policy obtained by the Band..

**1100.30 Decreased compensation.** If injury is caused by the failure of the employee to use safety devices which are provided in accordance with any statute or lawful order of the Band and are adequately maintained, and the use of which is reasonably enforced by the Band, or if injury results from the employee's failure to obey any reasonable rule adopted and reasonably enforced by the Band for the safety of the employee and of which the employee has notice, or if injury results from the intoxication of the employee by alcohol beverages, as defined in Wis Stat S. 125.02 (1), or use of a controlled substance, as defined in Wis Stat S. 961.01 (4), or a controlled substance analog, as defined in Wis Stat s.961.01 (4m), the compensation provided in this chapter shall be reduced 15% but the total reduction may not exceed \$15,000.

**Section 1100.31 Sovereign Immunity**

By enacting this ordinance the Tribe in no way waives its inherent sovereignty and with all rights and privileges, including but not limited to sovereign immunity.

*Complete New  
Policy*

## CHAPTER 1100 WORKER'S COMPENSATION PLAN

### Purpose and Scope

- a. The purpose of this Worker's Compensation Plan (Plan) is to provide a system of Compensation and medical benefits for the employees of the Tribe who suffer Compensable Injuries in the employment of the Tribe. Benefits under the Plan are the employee's exclusive remedy against the Tribe.
- b. All employees, as of the first day of employment with the Tribe, are covered for Compensable Bodily Injuries whether the Accident and Bodily Injury occur on or off the Tribe's lands. Benefits are limited as indicated in this Plan.
- c. This Plan is a self-funded, self-insurance program of the Tribe, a sovereign tribal government and is operated for the benefits of its employees.
- d. Nothing in this Plan, including any assertion of right of privilege, shall waive, or be construed to work as a constructive waiver of the Tribe's sovereign immunity from suit by any party.

### Definitions As used in this Plan, the following terms have the meaning indicated:

- a. "Accidents" mean a specific occurrence, neither expected nor intended, which causes bodily injury to an employee and arises under circumstances constituting a compensable Injury.
- b. "Administrator" means the department or person who is assigned by duties by the Tribe to act on behalf of the Tribe in the administration of this Plan.
- c. "Bodily Injury" or "Injury" means actual physical injury to the body that arises by accident under circumstances that constitute a Compensable Injury. Injuries due to a repetitive or cumulative trauma may be deemed compensable if the condition is established to be solely related to the employment with the Tribe and if the employee has no history of a preexisting condition, as established by medical evidence.
- d. "Commission" means the Bad River Tribe's Insurance Review Commission or Committee.
- e. "Compensable" or "Compensable Injury" means a bodily injury of an employee caused by an accident when that injury arises out of risk of employment, the injury occurs during a period of employment, and while performing the duties of the employment in or on the premises of the Employer or whenever the Employer requires the employee to perform the employment activities.
- f. "Compensation Rates" means 66 2/3 percent of the weekly wages as determined under Paragraph O, below, subject to the maximum rate adopted by the state's Department of Workforce Development. A reduction of 25 percent of weekly wage will be enforced when safety equipment is required, but not used. Rate of pay determined at the time of injury will be used throughout the term of loss.

**g. Dependents**

- 1) "Dependent Child" means a natural or legally adopted unmarried child of the employee, including a posthumous child, under eighteen years of age, or under the age of twenty-two (22) if the child is regularly attending a high school, college, university, vocational, or technical school as a full-time student.
  - 2) "Dependent Spouse" the lawful wife or husband of the employee, unless voluntary living apart from the employee at the time of the employee's injury or death. A dependant spouse does not include a "common law" spouse.
  - 3) "Other Dependents" means that stepchildren, grandchildren, nieces, and nephews may be considered dependent buy only if actual dependency can be shown.
- h. "Employee" means any person who performs labor services alone for the Tribe for hire at established wage or salary. This also includes Tribal Council members.
- i. "Employer" means the Tribe where it has obtained the labor services of a person for hire.
- j. "Independent Medical Examination" means the medical examination and/or evaluation of the employee scheduled by the Tribe or Administrator at the Tribe's expense for the purpose of obtaining medical information or opinion.
- k. "Tribe" means the Bad River Band of Lake Superior Tribe of Chippewa Indians, also referred to as the Employer or its designee. Unless otherwise provided herein, the Department of Personnel shall act for the Tribe/Employer.
- l. "Plan" means the Bad River Tribe Worker's Compensation Plan.
- m. "Primary Physician" means a Tribe approved health care provider within 75 miles of the employee's home at the time of the injury and from whom the employee receives medical treatment for a Compensable Bodily Injury.
- n. "Referral Physician" means a licensed medical doctor or chiropractor to whom the employee is referred by the Primary Physician for further specialized treatment with the approval of the Administrator or the Tribe.
- o. "Waiting Period" means the first fourteen (14) scheduled days lost, for which no Worker's Compensation benefits will be paid, counted from the first day of disability due to a Compensable Injury. If the disability continues beyond fourteen (14) calendar days, compensation is payable for scheduled days lost from the fifteenth (15) day of disability. Annual or Sick leave must be used for the first (14) days of disability.
- p. "Weekly Wage" means:
- 1) For a full-time employee, it is the weekly salary or wage normally earned in a normal full-time week of employment by the Tribe.

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- 2) If the hours worked are irregular or difficult to determine, the average daily wage is determined by totaling the earnings from employment by the Tribe over the 26 calendar weeks prior to the injury and dividing the sum by the number of calendar weeks within the 26 week period in which the employee had earnings from employment by the Tribe to determine the average work week. The average workweek is then multiplied by the average daily wage to arrive at the Weekly Wage.
- 3) In no case are overtime wages considered in determining the Weekly Wage.
- 4) If an employee is employed in more than one capacity by the Tribe, the earnings of the employee in each will be considered in determining Weekly Wage.

### **Reporting Obligation**

- a. An employee must report any injury, no matter how slight, to his or her supervisor no later than the end of the employee's workday on the day of the accident causing the bodily injury. In any case, the incident should be reported within 24 hours. A bodily injury may be reported by another on behalf of the employee. Failure to report a job related injury no later than the end of the employee's workday or 24 hours shall result in the employee not being eligible for compensation and/or medical benefits under this Plan.
- b. It is the employee's responsibility to notify the Benefit Specialist within 24 hours if the injury is treated by a physician, or time off work will be required due to the bodily injury. This will insure proper paperwork can be filled out in a timely manner. Once the Benefit Specialist is notified, Worker's Compensation Request Forms must be filled out within 48 hours.
- c. A supervisor, upon a report of an injury, shall immediately complete an Employer Injury Report Form and forward the Report to the Department of Personnel and the Benefit Specialist within 24 hours of the report of an injury.
- d. A supervisor upon receiving a report or notice of an employee claim for compensation or benefits under this Plan shall immediately report the claim to the Benefit Specialist.

**Medical Benefits** This Plan will pay the cost of all reasonable and necessary first aid, medical, surgical and hospital services incurred by the employee as direct result of a Compensable Bodily Injury subject to the following restrictions:

- a. Once an employee has made a second visit to a physician, that physician is the employee's Primary Physician under the Plan. After this second visit, the employee may not change Primary Physician without the approval of the Administrator or the Tribe. The Tribe reserves the right to require care to be provided by a provider with whom the Tribe has a preferred or discount arrangement; such as the Tribal Clinic or MMC.
- b. This Plan will pay hospital and related charges only for services ordered by the Primary or Referral Physician.
- c. This Plan will pay the reasonable and necessary medical costs and the cost of medicines and supplies and equipment of a therapeutic nature to treat the Bodily Injury only if ordered by the Primary or Referral Physician.

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- d. This Plan will pay surgical charges only if the surgery is done on an emergency basis or has been previously approved by the Administrator or the Employer. The Administrator or the Employer may require a second opinion before approving any surgical procedure.
- e. This Plan will reimburse the employee for the reasonable cost of mileage and other related expense necessarily incurred to obtain medical treatment other than the cost of childcare. The mileage reimbursement rate shall be that rate as established by the State of Wisconsin for worker's compensation purposes.
- f. If the employee unreasonably fails to appear for a scheduled Independent Medical Examination, the responsibility of the Employer for payment under this Plan of medical expenses incurred after the scheduled date of that Examination ceases. Likewise, the Employer's responsibility for payment of all other benefits accruing under this Plan ceases immediately upon that failure to appear.
- g. The Administrator or the Tribe may contract for the services of a rehabilitation consultant to assist the employee in rehabilitation and return to work efforts. If the employee fails to cooperate in rehabilitation efforts the responsibility of the Employer for payment of all benefits and medical expenses under this Plan will cease.
- h. The employee must provide written authorization for present and past medical records when requested by the Administrator or the Tribe. If the employee fails to provide authorization within 10 days of a written request to do so, the responsibility of the Employer for payment of all benefits and medical expenses under this Plan will cease.

#### Return to Work

- a. Positions with a compensable injury or illness will be held for up to three (3) months. At the time the position may be filled by a regular employee. An equivalent position with comparable wage/salary will be offered when the employee is released to return to work.
- b. Light duty positions will be restricted up to three (3) months, provided light duty work is available. At the completion of the three (3) months a reevaluation will be conducted by the Administrator.
- c. A Fitness for Duty form must be signed by the Primary Care Provider before the employee can return to work.

#### Disability Benefits

- a. **Temporary Total Disability.** Temporary Total Disability is that time, after the Waiting Period when, solely as a direct result of the Bodily Injury, the employee is totally disabled from performing for the Employer the employee's normal duties which the employee was engaged in at the time of the Bodily Injury, or of other light, restricted or modified work that the Employer offers.
  - 1) Total Disability must be evidenced by medical opinion based on examination and treatment rendered at the time of the claimed disability.
  - 2) The weekly benefits for Temporary Disability are limited to the applicable Compensation Rate.

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- b. **Temporary Partial Disability.** Temporary Partial Disability is the loss of actual earnings suffered by an employee who has returned to light duty, restricted or modified work offered by the Employer solely because of the ongoing effects of the bodily injury and the employee's physical inability to return to employee's normal duties of Employment with the Tribe which the employee engaged in at the time of the bodily Injury.
- 1) The weekly benefits for Temporary Partial Disability is 66 2/3 percent of the difference between the Weekly Wage at the time of the Bodily Injury as determined and the wage the employee is able to earn in the light duty, restricted or modified work that the Employer offers.
  - 2) Temporary Partial Disability benefits are limited to the maximum compensation rate.
- c. **Permanent Disability.**
- 1) This benefit is intended to compensate the injured employee for a permanent loss of or loss of use of a member suffered directly as a result of a Compensable Bodily Injury.
  - 2) Pre-existing disabilities are not to be included when rating a Permanent Partial Disability. A rating of Permanent Partial Disability must represent only that loss resulting solely from the Compensable Bodily Injury.
  - 3) All ratings of Permanent Partial Disability shall be based on the Permanent Disability Schedule adopted by the Tribe and published as Annex A to this Plan.
  - 4) In cases of Permanent Partial Disability due to injury to a member resulting in less than total loss of the member, not otherwise compensated in this Schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the Schedule for the total loss of the member which the extent of the injury to the member bears its total loss.
  - 5) Benefits paid for Permanent Partial Disability shall be computed at two-thirds of the average weekly earnings of the employee, up to the maximum weekly benefit established by the state's Department of Workforce Development, and multiplied by the calculated proportion of the number of weeks specified in the Schedule.
  - 6) The amount payable to the employee shall be paid in one lump sum or monthly as agreed upon by both employee and employer.
  - 7) Payment will be made as soon as reasonable possible after receipt of the rating by the Administrator, but no later than thirty (30) days after receipt unless the Administrator has scheduled an Independent Medical Examination.
- d. Permanent Partial Disability benefits are neither payable concurrently with Temporary Total or Temporary Partial benefits, nor payable to the employee's dependents or heirs, regardless of the cause of death of the employee.
- e. The Tribe or Administrator will pay Temporary Total or Temporary Partial disability benefits on a weekly basis.

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- f. If an employee refuses light, restricted or modified work offered by the Employer or becomes voluntary unemployed, or is dismissed for violation of the Employment Relation Act all indemnity benefits will cease.
- g. If a Bodily Injury results in disability that is partially due to congenital condition or a prior disease or injury, the benefits payable for the disability will be reduced by the proportion of the disability that is due to the pre-existing disability.
- h. If the employee unreasonably fails to appear for a scheduled Independent Medical Examination, the liability of the Employer for payment of disability benefits ceases. Likewise, the Employer's responsibility for payment of all other benefits accruing under this Plan ceases immediately upon the failure to appear.
- i. Receipt by the employee of Social Security Retirement Benefits will be considered conclusive evidence of retirement and the liability of the Employer for payment of further disability benefits will cease.
- j. When an employee has reached his or her end of healing, or has been released back to work with no restrictions; the Employer's responsibility for payment of all other benefits accruing under this Plan ceases immediately.
- k. **Dependent Benefits.** In the event of the death of the employee due to a Compensable Injury, payment of all disability and medical benefits shall cease and a maximum of \_\_\_\_\_ will be payable to the Dependents of the deceased employee. Dependents will receive weekly payments equal to the indicated percentage of the Weekly Wage as determined under Dependents paragraph p. weekly payments are subject to the maximum Compensation Rate under Compensation Rates paragraph f, and will be paid as follows:
  - a. Dependent Spouse alone: 50% of Weekly Wage
  - b. Dependent Spouse and one (1) or more Dependent Children: 66 2/3% of Weekly Wage.
  - c. One Dependent Child but no Dependent Spouse: 40% of Weekly Wage.
  - d. Two or more Dependent Children but no Dependent Spouse: 60% of the Weekly Wage.
  - e. Other Dependents will receive benefits in the percentage that their provable dependency on the decedent bears to the maximum benefits available and the dependency of the other Dependents. Regardless of the number of Dependents, the maximum benefits will not exceed 66 2/3% of the Weekly Wage at the time of injury.
  - f. If a Dependent Spouse remarries, no further benefits shall be payable to that Spouse. If one or more children remain Dependent, benefits will continue to be paid for the benefit of the Child, or Children, pursuant to paragraphs c and d, above, until they cease to be Dependent.
  - g. Benefits payable to Dependents shall be paid to them or to any guardian or other responsible party as directed by the Tribe for the use and benefit of the Dependents.
  - h. If a Dependent Child, upon reaching the age of which that Child would cease to be Dependent, is totally disabled due to a physical or mental impairment, benefits will continue to be paid under the appropriate provision above until the disability ends or the maximum is paid, whichever comes first.

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- i. The Tribe or the Administrator will pay Dependency benefits on a weekly basis.
- j. In cases where an employee's death results from Compensable Injury, the reasonable expense of burial, not to exceed \$4,000.00, will be paid in addition to any other benefits payable under this section.

**Recurrence.** If, within one (1) year from the date on which the employee has returned to full time, light, restricted or modified work, the employee, in course of employment by the Tribe, suffers a Recurrence of the original compensable Injury, the Recurrence will be considered a continuation of the earlier claim and injury and subject to the monetary and time limitations of the initial claim. A recurrence occurring in employment other than for present claims is not compensable under this plan.

**Election of Remedies.**

- a. If an employee's Compensable Bodily Injury or death is contributed to or caused by a party other than the employee or the Employer and the employee or Dependents could file a claim or lawsuit against the other party, the employee or Dependents may not present claims under this Plan and against the other party.
- b. If the employee or Dependents elect to claim benefits under this Plan, the employee or Dependents must assign their cause of action against the other party to the Tribe and cooperate with the Tribe and the Administrator in pursuit of the action. Once assigned, the Tribe shall bear all costs of collections. If the employee or Dependents fail to assign the cause of action or fail to cooperate in the pursuit of that action, all benefits under this Plan will cease and the employee or Dependents will be required to reimburse the Tribe for any benefits paid to or on behalf of the employee or the Dependents under the Plan.
- c. If the employee or Dependents elect to pursue a cause of action against the other party no benefits will be payable under this Plan unless, within a 180 days of the injury, the employee or Dependents assign their claim to the Tribe and agree to cooperate in the pursuit of the action. In that event, only benefits accruing or medical or collection expenses incurred after the date of the assignment will be paid under this Plan.
- d. If an employee or Dependents have assigned a cause of action to the Tribe under this section and if the recovery from that cause of action exceeds the amount paid or payable to the employee or Dependents, any excess, after reimbursement to the Tribe of the benefits paid or payable under this Plan and deduction of the costs of collection, will be paid over to the employee or Dependents.

**Administrator.** The Administrator will act on behalf of the Tribe in receiving and processing Worker's Compensation claims under this Plan. The responsibility of the Administrator to make determinations and decisions will include, but not limited to, the following areas.

- a. Based upon investigation and available medical information, the Administrator will make a determination of the responsibility of the Tribe and will either accept or deny a claim. Within thirty (30) days of receipt of an Injury Report Form, the Administrator will advise the employee and the Tribe of its determination.
- b. The Administrator will determine the reasonableness and necessity of medical care and charges under the Medical Benefits section and will determine amounts payable under the

Plan. The Administrator will also approve or disapprove any changes to Primary Physician Referral Physician, or surgical procedure.

- c. Based on information supplied by the Employer and/or employee, the Administrator will determine the Compensation Rate payable for Temporary Total, Temporary Partial, Permanent Partial Disability, and for Dependency.
- d. The Administrator will determine the length of time during which Temporary Total Disability or Temporary Partial Disability benefits are payable. Not to exceed 26 weeks.
- e. The Administrator will determine the eligibility of Dependents and the term of any Dependency Benefits payable.
- f. In the event of the need to allocate Dependency Benefits between Dependents living in different households, the Administrator will make necessary allocation, based on the obligations, legal or otherwise of the decedent.
- g. If an employee's claim is subject to the limitations under the Recurrence section, the Administrator will advise the employee and Employer of the effect of this limitation in writing.
- h. The Administrator will, on the behalf of the Tribe, vigorously pursue any cause of action assigned to the Tribe under section heading Election of Remedies.

**Appeals.** The Bad River Tribe will establish a Worker's Compensation Investigation Team to hear any issues and make any necessary final determination relative to Compensability of Bodily Injury, medical care or charges, extent of Disability, Dependency, or other issues that may arise under this Plan.

- a. The Investigation Team will consider evidence, hear witnesses and receive exhibits in keeping with its goal of making a just final determination.
- b. The Investigation Team shall not consider any information that has not been provided to the Tribe's Insurance Department at least 15 days prior to the Investigation Team scheduling a hearing.
- c. The Investigation Team will weigh the evidence, testimony of witnesses and exhibits and will make its decision on the basis of the preponderance of evidence and credibility of the evidence and witnesses.
- d. The burden of proof in any hearing before the Investigation Team will be on the employee or Dependents.
- e. The employee or Dependents may have legal representation at any hearing before the Investigation Team. The cost of representation will be borne by the employee or Dependents.
- f. Any employee or Dependent who disagrees with the determination made by the Administrator may request in writing a hearing before the Investigation Team. The Appeal of Insurance Denial Form must be signed, witnessed and returned within 30 days of the date on the denial.
- g. The matter will be scheduled for a hearing before the full Investigation Team within 90 days of receipt of the request for a hearing from the employee or Dependents. The employee or

Dependents may request an extension of up to 90 days, which must be granted by the Investigation Team.

- h. Any decision of the Investigation Team must have the concurrence of a majority of the Commission members to have a legal effect. All decisions of the Investigation Team are final.
  - i. An Investigation decision must be issued in writing and copies must be mailed to all interested parties. The decision need not recite nor review the evidence or testimony nor need compare the merits of the evidence or testimony of the opposing parties. The decision need only set out the final determination of the Investigation Team on all issues before it.
  - j. The Department of Benefit Specialist shall maintain a file of all Investigation Team decisions.
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## ANNEX A – Permanent Disability Schedule

### Disability

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

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<b>Loss of second toe at the distal joint</b>	<b>4 weeks</b>
<b>Loss of third, fourth or little toe with the metatarsal thereof</b>	<b>20 weeks</b>
<b>Loss of third, fourth or little toe at the proximal joint</b>	<b>6 weeks</b>
<b>Loss of third, fourth or little toe at the second or distal joints</b>	<b>4 weeks</b>
<b>Loss of an eye by enucleation or evisceration</b>	<b>275 weeks</b>
<b>Total impairment of one eye for industrial use</b>	<b>250 weeks</b>
<b>Total deafness from accident or sudden trauma</b>	<b>330 weeks</b>
<b>Total deafness of one ear from accident or sudden trauma</b>	<b>55 weeks</b>

For permanent partial disability not covered by the above schedule, the total number of weeks of indemnity shall be 1,000 weeks and shall be payable at the rate of 66 2/3% of the average week earnings of the employee up to a maximum of \$158.00, the earnings to be determined in section Definitions; paragraph O of the Plan.