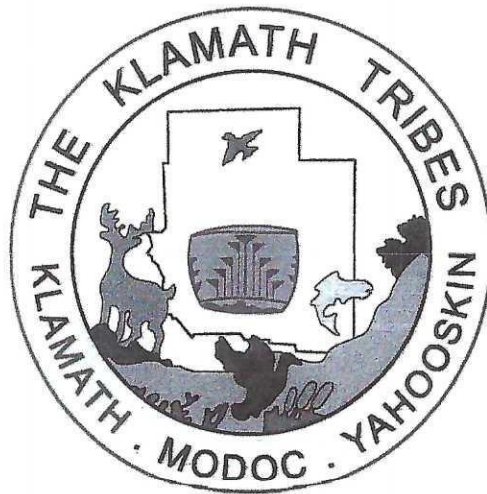


WORKER'S COMPENSATION CLAIM ORDINANCE

KLAMATH TRIBAL CODE

Title 6, Chapter 42



**Adopted 10/15/2021
By
General Council Resolution 2021-003**

WORKER'S COMPENSATION CLAIM ORDINANCE
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CHAPTER 42. GENERAL PROVISIONS

42.01 Sovereign Immunity

Nothing in this Ordinance shall be considered, construed, or interpreted as a waiver of Sovereign Immunity by The Klamath Tribes and/or any of its entities, enterprises, offices, agencies, branches, or any employees or officers thereof. The State of Oregon's statutory workers' compensation system shall not apply to any employees, nor shall any claims for workers' compensation benefits be subject to the Oregon workers' compensation laws, statutes, or regulations, or the Workers' Compensation Board of Oregon, or to the jurisdiction of any other court of law or equity.

42.02 Purpose

The purpose of this Ordinance is to:

- a) Reaffirm the existing policies and procedures recognized by The Klamath Tribes concerning redress of employee work-related injuries, illnesses, or conditions;
- b) Create and maintain a system for addressing workers' compensation claims fairly and in general conformity with accepted workers' compensation practices of the Tribe;
- c) Clearly define standards for compensability, available workers' compensation benefits at levels comparable to what is provided for in the State of Oregon;
- d) Establish a systemic and uniform procedure for the administration of workers' compensation benefits to employees.

42.03 Scope

This Ordinance shall apply to all "Employees" of The Klamath Tribes or any of its entities, enterprises, offices, agencies, or branches who sustain injuries, illnesses, or other conditions arising out of and occurring in the scope of employment, regardless of whether those injuries are sustained on or off the reservation, and to any "Dependents" who may be entitled to benefits or recovery under the terms of this Ordinance.

42.04 Exclusive Remedy

This Ordinance shall be the sole and exclusive method for obtaining compensation from the "Tribe" for any injuries, illnesses, conditions, or death arising out of and in the course of employment. The liability of the "Tribe" is limited to the compensation provided pursuant to this Ordinance, and shall not be expanded, broadened, enhanced, or otherwise increased except by express amendment of this Ordinance by the General Council.

42.05 Confidentiality

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a) The information in the claims files and records of "Covered Worker's" obtained pursuant to the filing of a claim or any provisions of this Ordinance shall be deemed the exclusive property of the "Tribe" and therefore is strictly confidential and shall not be open to public inspection. A Claimant, or his or her authorized representative upon the presentation of the signed authorization of the Claimant, may review the Claimant's medical file or receive copies of specific information therefrom.

b) The "Tribe", or its duly authorized representatives, may review any files of their own injured "Covered Worker" in connection with any pending claims. Physicians treating or examining or giving medical advice to or providing an opinion about "Covered Worker's" claiming benefits under this Ordinance as approved or authorized by the "Administrator" may, at the discretion of the "Administrator", inspect the claims files and records of the injured "Covered Worker", and other persons may make such inspection at the "Administrator's" discretion when such persons are rendering assistance to the "Administrator" at any stage of the proceedings on any matter pertaining to administration of this Ordinance.

c) Notwithstanding the provisions herein, the "Administrator" and/or the "Tribe" shall have the right to request full and complete medical records or reports from any of Employee's physicians or health care providers at any time and in the form and details as deemed necessary and shall have the right to present specific questions required to evaluate the claim. All medical information and records shall be subject to disclosure to the "Administrator" and the "Tribe" in connection with any claim for workers' compensation benefits in order to properly understand and evaluate the claim. If the "Covered Worker" asserts his or her privilege to keep such information or records from being disclosed to the "Administrator" or "Tribe", the "Administrator" or the "Tribe" may suspend any applicable workers' compensation benefits, or can deny the claim on the basis of impeding Tribal right to discovery under section 42.35 of this Ordinance.

42.06 Medicare Set Asides

The Medicare/Medicaid SCHIP Extension Act sets forth reporting requirements for insurers where criteria established pursuant to the Act have been met. The "Tribe" recognizes those requirements, and nothing herein shall prevent the "Administrator" from protecting Medicare's interests where required to do so. Where a "Covered Worker" is entitled to supportive medical care after maximum medical improvement is achieved pursuant to section 42.40 of this Ordinance, such supportive care will only be provided as specified by a medical provider authorized by the "Administrator" and only for the duration specified by that medical provider. Where a claim has been closed due to abandonment, award, or settlement, neither the "Tribe", its insurer, or "Administrator" shall have any further obligation to pay benefits under this Ordinance, inclusive of any subsequent Medicare liens.

42.07 Effective Date

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This Ordinance shall be deemed to have taken effect as of 10/15/2021, and shall replace or supersede any prior workers' compensation ordinances, acts, or resolutions made by the "Tribe."

42.08 Severability

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

42.09 Definitions

Pronouns of the masculine gender used in this Ordinance shall apply to both sexes. Unless stated otherwise in specific section of the Ordinance, time limits shall be calculated using calendar days.

- a) "Administrator" or "Tribal Workers Benefit System Claim "Administrator" shall mean either the insurance company providing coverage hereunder, any subcontractor appointed by said Insurance Company, or subcontractor authorized by the Tribal Council.
- b) "Arise out of Employment" or "Arising out of Employment" means that an incident giving rise to occupational injury or illness must be causally related to the conditions and obligations of employment. Risks that are personal to the "Claimant", for purposes of determining compensability, will not be construed to arise out of employment.
- c) "Attending Physician" shall mean the Physician, or other approved medical care provider that is responsible for planning, provision, and oversight of medical treatment to a "Covered Worker" who sustains a covered injury.
- d) "Average Weekly Wage" shall be as follows:
 - (1) For "Covered Worker" hired to regular full or part time position expected to last at least 12 weeks, the average weekly wage shall be calculated based on the preceding twelve (12) weeks of the "Covered Worker's" actual wage earning from a covered employer. In the case of a worker who has not worked for a covered employer within the immediate preceding twelve (12) weeks, the average weekly wage shall be calculated based on the salary level the worker was hired at or is currently receiving.
 - (2) For "Covered Worker" hired on a temporary, emergency or special projects basis who has continuously worked for a minimum of twelve (12) weeks, the average weekly wage shall be calculated as provided in subparagraph 1, above.
 - (3) For "Covered Worker's" hired on a temporary, emergency, or special projects basis who have not continually worked for the preceding twelve (12) weeks,

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the average weekly wage shall be calculated by taking the expected total gross wages and divided by the expected number of work weeks.

- (4) For purposes of this definition, the work week shall be as defined by the personnel manual or policy applicable to the covered employee at the time of injury.
- e) "Benefits" shall mean the indemnity and medical payments provided by this Ordinance. "Indemnity" shall mean total disability and partial disability income benefits and impairment payments; and "Medical" shall mean medical expense, mileage, and other expenses associated with medical treatment.
- f) "Child" or "Children" means the offspring of a "Covered Worker", and shall also include an unborn child, a child legally adopted prior to the injury, a child toward whom the Employee stands in loco parentis, and a stepchild if such stepchild was, at the time of the injury, a member of the "Employee's" family and substantially dependent upon the "Covered Worker" for support. A person might also qualify as a child according to tribal custom as determined by the applicable Tribal Law as interpreted by the Tribal Council or its appointed legal representative.

A child will remain eligible for "Death Benefits" if:

- (1) He or she is under the age of eighteen (18).
 - (2) He or she is under the age of twenty-three (23) and enrolled as a full-time student in an accredited university, college, or vocational school.
 - (3) He or she is developmentally disabled and incapable of caring for his or herself and is totally dependent on the Employee for primary support and maintenance.
- g) "Claimant" means the injured "Covered Worker", or in the event of death of the "Covered Worker", dependents of the deceased.
- h) "Compensable Injury" means a specific (resulting from one incident or exposure) or cumulative (result of repetitive or continuous activity or exposure) injury, illness, disease, or condition, including damage to artificial limbs, dentures hearing aids, eyeglasses, and medical braces of all types (provided that such damage is incidental to an injury), where such injury, illness, or condition meets the standards set forth in this Ordinance.
- i) "Consulting Physician" shall mean the Physician, other health care provider or other care expert that is retained by the "Administrator" to assist the "Administrator" in carrying out his duties and responsibilities under this Ordinance. Such activities may include, but are not limited to, determination of the validity of a claim; review of an attending physician's diagnosis and treatment plans; determination of MMI;

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determination of impairment rating. At the discretion and expense of the "Administrator", an injured worker may be required to be seen by the consulting physician to assist in making any required recommendations to the "Administrator".

- j) "Course and Scope of Employment" means taking place within the period of employment, at a place where the "Covered Worker" is reasonably expected to be, and while fulfilling his or her occupational duties or engaged in something incidental thereto. Injuries sustained while going to or coming from work will not be covered unless the journey itself is part of the service to the employer and there was no substantial deviation. An injury must arise out of and be in the course and scope of employment, and the worker must be acting in the furtherance of the employer's interest at the time of the incident and/or accident, in order for a claim to be compensable.
- k) "Covered Employer" and "Employer" shall mean The Klamath Tribes and its agencies, and any Tribal corporations and enterprises.
- l) "Covered Worker" and "Worker" means every person who has entered into the employment of or performs work for an employer, works under contract of service, express or implied, or apprenticeship, for an employer, every executive elected or appointed and empowered under and in accordance with the charter and bylaws of a corporation, including a person holding an official position, or standing in a representative capacity of the employer, including officials elected or appointed by The Klamath Tribes compensated monetarily or otherwise, except as hereinafter specified. The terms "Covered Worker" and worker shall not include volunteers, outside consultant, or an independent contractor working under contract for an employer, whether that contract be express or implied. "Covered Worker's" shall include all persons employed by the employer regardless of where they work, whether it be on or off The Klamath Tribes' reservation.
- m) "Cumulative Trauma" or "Occupational Disease" shall be only those disease which arise out of an in the course and scope of the worker's employment. Such diseases shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment. Such disease must be incidental to the character of the business, occupation, or process in which the worker was employed and not independent of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which a worker has or would have been equally exposed outside of said occupation is not compensable as an occupational disease. "Occupational Disease" excludes any condition resulting primarily from the natural aging process, or normal daily activities, or a condition that could likely be developed during voluntary recreational or social activities.
- n) "Days" shall mean calendar days unless otherwise provided.

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- o) "Death" is any fatality of the "Covered Worker" proximately and directly caused by work injury or occupational disease.
- p) "Dependants" are the following persons, and they shall be deemed to be the only recognizable dependents under the provisions of this Ordinance:
 - (1) The widow or widower, if legally married and living with the deceased at the time of deceased's death and legally entitled to be supported by the deceased as a dependent defined by the most recent federally filed 1040 tax return. For purposes of this Ordinance, a "Covered Worker" may, in a written self-declaration to be provided by the employer, designate a person as their domestic partner, which person shall be treated as a dependent widow(er) if the person was living with the deceased "Covered Worker" at the time of his/her death and listed on the most recently federally filed 1040 tax return.
 - (2) A child, natural or adopted, under 18 years of age, or incapable of self-support and unmarried; or a child under 25 years of age enrolled as a full-time student in an accredited education institute at the time of the "Covered Worker's" death.
- q) "Disability" means the inability of the "Covered Worker" to obtain and/or retain wages equivalent to the pre-injury wage rate as a result of a direct loss of functional capacity compromising that individual's ability to perform the necessary duties of the job. This functional loss must be directly and materially attributable to a compensable work-related injury and/or occupational disease and must be supported by the worker's attending physician and, if requested by the "Administrator", the consulting physician. "Partial Disability" is distinguished as any incapacity less than 100% inability as defined above.
- r) "Idiopathic Injury" shall mean an injury to an "Employee" that arises spontaneously from an unknown or obscure etiology or cause, or a risk or injury that is peculiar to the "Employee", the cause of which is precipitated not by an event that can be causally linked to employment specifically, but rather an activity of daily living.
- s) "Independent Medical Examination" means an evaluation by a physician with Qualified Medical Examiner certification or equivalent qualifications, performed in order to determine causation, extent, medical status, work status, permanent and stationary status, level of impairment, entitlement to benefits, apportionment, or other similar attribute of an injury, illness, or condition, at the request of the "Administrator" at the Tribe's expense in order to resolve a medical dispute.
- t) "Impairment" means any anatomic or functional abnormality or loss existing after Maximum Medical Improvement (MMI) as defined herein that results from a compensable injury and/or occupational disease and is reasonably presumed to be permanent based on reasonable medical probability.

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- u) "Injury" shall mean any physical impairment, including, without limitation, death and/or occupational disease as further herein defined. "Arising out of and in the course of employment" excludes an injury sustained while a "Covered Worker" is at home or preparing for work. "Injury" excludes any injury resulting primarily from the natural aging process, or normal daily activities, or an injury sustained during voluntary recreational or social activities. The injury must arise out of and in the course of employment, requiring medical services or resulting in disability or death; and is further defined as a specific, traumatic incident at a definite time and place, occurring from without, while in the course of employment, that produces an immediate onset of pain and is established by medical evidence supported by objective findings.
- v) "Intoxication" means blood alcohol content in excess of .02 percent or conviction of the offense of driving while intoxicated (or words to that effect) by any jurisdiction or, loss of the normal use of one's mental and/or physical faculties resulting from the voluntary introduction into the body of (1) an alcoholic beverage; (2) a controlled substance; (3) a mind-altering drug and/or hallucinogenic; or (4) any other similar substance.
- w) "Maximum Medical Improvement" (MMI) means the earlier of:
 - (1) The point which further material recovery from or last improvement to an injury can no longer reasonably be anticipated, based on the reasonable medical probability; or
 - (2) The expiration of 36 months from the date of occurrence, or in the case of an occupational disease, 36 months from the earliest of the first manifestation of the symptoms or notification from a physician that the illness is inherent or related to the worker's occupation.
- x) "Normal Daily Activities" include but are not limited to walking, standing, reaching, bending, kneeling, twisting, etc.
- y) "Objective Medical Findings" shall mean those findings which can be seen, felt, or measured by the examining physician. "Objective" is something, usually a physical finding or diagnostic test result; that can be perceived by an examiner using one or more senses without patient input.
- z) "Permanent Partial Impairment" shall mean a level of permanent disability at the time a permanent and stationary status (P&S) and/or maximum medical improvement (MMI) is achieved, as opined by a treating physician or as the result of an "Independent Medical Examination" using the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition.

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- aa) "Permanent Total Impairment" shall mean a level of permanent disability at the time a permanent and stationary status (P&S) and/or maximum medical improvement (MMI) is achieved, as opined by a treating physician or as the result of an "Independent Medical Examination" using the AMA Guides to the Evaluation of Permanent Impairment, (most recent addition). There shall be no presumptions of "Permanent Total Impairment" under this Ordinance.
- bb) "Policy" shall mean any Tribal Workers Benefit Policy of Insurance issued to The Klamath Tribes, or other employer.
- cc) "Pre-Existing Medical Condition" means any injury, disease, congenital abnormality, or medical condition that contributes or predisposes an employee to a disability or the need for treatment that precedes the injury or occupational disease that forms the basis for a claim under this Ordinance.
- dd) "Scheduled Weeks" means 156 weeks and is the maximum number of weeks that a "Covered Worker" shall be entitled to Functional Impairment Benefits under this Ordinance.
- ee) "Settlement" shall mean the date the release of all claims is executed and the monetary terms of the agreement met.
- ff) "Spouse" means the legally ordained husband or wife or domestic partner of the "Employee", however a domestic partner will only be considered a "Spouse" under this Ordinance if, at the time of the "Compensable Injury" the "Employee" and said domestic partner cohabitated and were registered with the Oregon Secretary of State's Domestic Partners Registry.
- gg) "Temporary Partial Disability" means a non-permanent medical status that results in the "Employee" being able to perform modified or light work duties or reduced hours at the direction of or as opined by a physician approved by the "Administrator", that results in diminished earnings when compared with the pre-injury average weekly wage.
- hh) "Temporary Total Disability" means a non-permanent medical status that results in the "Employee" being physically unable to perform any work at the direction of or as opined by a physician approved by the "Administrator", that results in a complete loss of earnings.
- ii) "Tribal Court" shall mean The Klamath Tribes Court.
- jj) "Tribal Medical Provider Network" or "MPN" means the list of medical providers who are approved by the "Tribe" or the "Administrator" to render professional medical treatment, care, or services under this Ordinance.

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- kk) "Tribal Workers Benefit System" shall mean this Ordinance, any and all rules and regulations promulgated hereunder, as well as the functions of the "Administrator".
- ll) "Tribe" and "Tribal" refer to The Klamath Tribes, a federally recognized Indian tribe, and its agencies, and any Tribal corporation and enterprises.
- mm) "Vocational Rehabilitation" shall mean benefits for a "Covered Worker" who sustains "Permanent Partial Impairment" as the result of a "Compensable Injury", who as a result of the "Compensable Injury" may require assistance with returning to gainful employment.
- nn) "Written Decision" shall mean any of the following, when reduced to writing and sent to an "Employee" or "Claimant":
- (1) The finding(s) and/or decision(s) of the "Administrator" to accept or deny, in full or in part, any aspect of a workers' compensation claim; or
 - (2) Determinations of entitlement by the "Administrator" of any available workers' compensation benefit; or
 - (3) Decisions made by the "Administrator" to close the claim; or
 - (4) Any other finding, decision, or award rendered by the risk management or human resources department relative to the workers' compensation claim

42.10 Acknowledgement of Ordinance

- a) All "Covered Worker's" and persons asserting a claim shall be conclusively presumed to have elected to take workers benefits in accordance with the tenants, conditions, and provisions of this Ordinance by virtue of employment with The Klamath Tribes or other employers as defined herein. All "Covered Worker's" and/or persons asserting a claim for workers benefits acknowledge that The Klamath Tribes is a federally recognized American Indian Tribe and is exercising its inherent sovereign authority in providing workers benefits under this code.
- b) The employer shall be responsible for and shall have posted in a conspicuous location a notice as follows:

NOTICE TO TRIBAL GOVERNMENT AND TRIBAL ENTERPRISE EMPLOYEES

AS EMPLOYEES OF THE TRIBE OR ITS ENTERPRISES, YOU ARE INSURED FOR ON-THE-JOB INJURIES UNDER THE KLAMATH TRIBES WORKERS COMPENSATION CLAIM ORDINANCE.

If you are injured or sustain an occupational disease while at work, you may be entitled to benefits as provided by the Tribal Worker's Compensation Ordinance. NOTIFY YOUR EMPLOYER IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT. If you fail to do so, you may lose your benefits under the Tribal Workers Benefits System. In no event shall benefits be paid to a worker who failed to notify Human Resources or agent

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serving in this capacity within three (3) days after sustaining such work-related injury, except in cases where an extraordinary reason prevented the worker from reporting the injury or occupational disease to the employer in a timely manner.

It is your responsibility to file a claim for benefits under the Ordinance with Human Resources. You are required to file a claim for any injuries or occupational disease no more than thirty (30) days after you have knowledge thereof. It is your responsibility to obtain any necessary forms from Human Resource or agent serving in this capacity.

ENTER CONTACT INFORMATION HERE

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

42.11 Notification to Employer of Injury by Worker

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

42.12 Time Limit for Reporting of Incidents and Filing of Claims

- a) Claims for injury shall be made by the "Covered Worker" to the "Administrator" within thirty (30) days of the date of occurrence. For purposes of this Ordinance, a "Covered Worker" filing a claim for benefits under this Ordinance with the Human Resources Director shall constitute filing a claim with the "Administrator".
- b) Claims for occupational disease shall be made by the "Covered Worker" to the "Administrator" within thirty (30) days from the date of first notice to the claimant by a physician or from the date of manifestation of symptoms, whichever is earliest, but in no event longer than three (3) months from the date the worker terminates his employment with The Klamath Tribes.

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- c) Failure to give notice of injury to the employer as required by section 42.11, or to file a claim with the "Administrator", within the time limit set forth in this section shall constitute a forfeiture by the "Covered Worker", or his representatives in case of death, of all benefits available and payable under this Ordinance.

42.13 Time Limit for Seeking Medical Attention

- a) Treatment for any and all injuries shall be sought by the "Covered Worker" within thirty (30) days from the date of occurrence.
- b) Treatment for occupational disease shall be sought by the "Covered Worker" within thirty (30) days from the date of manifestation of symptoms.
- c) Failure to seek treatment as required by "Administrator" shall constitute forfeiture by the "Covered Worker" of all benefits available and payable under this Ordinance.

42.14 Burden of Proof

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

- a) That the injury alleged was a result of an incident, accident or occupational disease;
- b) That it arose out of the covered person's employment;
- c) That it arose while in the course and scope of employment and arose proximately out of covered employment; and
- d) That it arose while in the furtherance of the employer's interests.

42.15 Right to Waive Defenses

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

42.16 Guardian for Minor or Incompetent

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

42.17 Administrative Duties and Powers

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- a) The "Administrator" shall act on behalf of the "Tribe" in receiving, processing, and administering Workers' Compensation claims, including payment of benefits under this Ordinance. The "Administrator's" responsibilities include, but are not limited to:
- (1) Determining the compensability of claims;
 - (2) Making payments to "Claimants";
 - (3) Processing and paying bills and reports submitted by medical providers and other vendors;
 - (4) Managing a trust account for the purpose of dispensing the "Tribe's" workers' compensation liabilities;
 - (5) Making reports to the Human Resources Department regarding its program and individual claims where required;
 - (6) Making reports to the excess insurance carrier regarding its program and individual claims where required.
 - (7) Providing a mechanism for reporting claims on-line;
 - (8) Participate in file reviews at the request of or intervals established by the "Tribe".
 - (9) Ensuring compliance with Medicare reporting where required.
- b) The responsibility of the "Administrator" to make determinations and decisions on behalf of the Tribe shall also entail the following duties:
- (1) Conduct a thorough investigation of each claim filed, and complete initial contacts within seventy-two (72) hours of receipt of the claim;
 - (2) Administer a "Written Decision" and send to the "Covered Worker" as to whether to accept, deny, or further investigate a claim within twenty-one (21) days of receipt of the claim. Where the claim is accepted, the "Administrator" shall establish a reserve on the file to reflect the anticipated exposure of the claim, with a detailed analysis of how the reserve was calculated, including an estimate of the benefits due and the duration and frequency of those benefits. Where the claim is denied, the "Administrator" shall include the specific basis for their claim denial, and how to initiate the Dispute Resolution Process. Should the "Administrator" determine, within the specified period, that further investigation is required, a detailed plan of action regarding the purpose of the investigation and what is sought to be discovered should be established, best efforts shall be made to complete the investigation expeditiously, and under such circumstances a final "Written Decision" outlining compensability should be made within ninety (90) days from the date the claim was filed.