

WORKER'S COMPENSATION CLAIM ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 42

- (3) The "Tribe" through its "Administrator" shall retain full medical control over workers' compensation claims for their duration. The "Administrator" shall determine the reasonableness and necessity of medical care and charges and shall determine amounts payable under this Ordinance. The "Administrator" shall promptly approve or disapprove any referrals, procedures, surgeries, or other medical requests made by approved and authorized medical providers. Disapproval of such requests shall not be arbitrary, but instead based upon sufficient justification, including but not limited to medical evidence to the contrary, peer review, utilization review, surveillance video, etc. An "Employee" may request a referral to an alternate medical provider selected from the Tribal Medical Provider Network, and such request must not be unreasonably disapproved by the "Administrator".
 - (4) The "Administrator" shall determine the eligibility and compensation rate payable for "Temporary Total Disability", "Temporary Permanent Disability", "Permanent Partial Disability", "Permanent Total Disability", "Vocational Rehabilitation", and/or "Death Benefits". In the case of "Death Benefits", the "Administrator" shall determine the eligibility of "Dependents" and the terms of any benefits payable. In the event of the need to allocate dependency benefits between Dependents living in different households, the "Administrator" shall make the necessary allocation, based on the obligations, legal or otherwise, of the deceased "Employee".
 - (5) The "Administrator" shall, on behalf of the "Tribe", vigorously pursue any cause of action for, or vigorously defend any cause of action or claim against, the "Tribe" under this Ordinance.
- c) The failure or alleged failure of the "Administrator" to perform any of the duties or responsibilities outlined above will not as a matter of law or operation create any cause of action by a third party, nor will the right to benefits or recovery for any "Employee" and/or "Claimant" be expanded or presumed in such an event. The "Administrator" as an agent of the "Tribe" is entitled to the same sovereign immunity protection from the jurisdiction of state or federal courts or administrative boards as the "Tribe" would be afforded.

42.18 Entitlement of Benefits

Any claimant contending benefits under this Ordinance shall be responsible for filing his claim with the "Administrator". In order for a claimant to receive any benefits for workers' compensation under this Ordinance, it must be demonstrated by a preponderance of evidence that he or she sustained a "Compensable Injury."

42.19 Employees with Pre-Existing Disabilities/Conditions

WORKER'S COMPENSATION CLAIM ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 42

- a) All "Covered Worker's" shall disclose any pre-existing physical or mental disorder and/or disability that could potentially affect or impair the worker's ability to perform in a reasonable and safe manner the activities involved in the position in which they work. Disclosure shall be made in the employment application or interview before commencing employment or before commencing new job duties after job reclassification, reassignment, promotion, demotion, or other change in job duties. The content of such disclosure shall be made promptly by the "Covered Worker" after submitting a claim for benefits under this Ordinance. Failure of the "Covered Worker" to disclose a pre-existing condition as described in this section will result in forfeiture of benefits under the Ordinance.
- b) If it is determined that an injured employee had, at the time of their injury, a pre-existing medical condition and that such medical condition delays or prevents complete recovery from the injury or contributes to the need for medical treatment, it shall be ascertained, as nearly as possible, the period over which the injury would have caused disability or need for treatment were it not for the pre-existing medical condition.
- c) No benefits shall be payable where the injury is determined to have been a flare-up or exacerbation of a pre-existing injury, illness, or condition where no aggravation or worsening of symptoms are attributable to any attribute of employment or where work just served as the stage for the incident to occur without specific industrial causation.

42.20 Mental Trauma Injuries

- a) Mental traumas, disorders, and/or conditions, even if manifested in physical symptoms and/or related to stress, are not compensable injuries under this Ordinance, except that mental trauma is only recoverable if resulting from accidental physical injury traceable to a definite time, place, and cause rather than from repetitive mental trauma.
- b) Regardless of section 42.20(a), a mental trauma or emotional injury that arises principally from a personal action, including, without limitation, a transfer, promotion, demotion, or termination is not a compensable injury under this code.

42.21 Going to and Returning from Work

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

42.22 Benefits Precluded by Neglect, Refusal, or Inability of Worker to Submit to Treatment

- a) No benefits shall be payable for the death and/or disability of a worker if the worker's death and/or disability is caused by, or the worker's disability aggravated, caused or

WORKER'S COMPENSATION CLAIM ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 42

continued by, an unreasonable refusal and/or neglect to submit to and/or follow any competent or reasonable surgical or medical treatment, medical aid, or advice. A worker who has refused and/or neglected to submit to medical and/or therapeutic treatment, or to take medications prescribed, will be deemed to have reached Maximum Medical Improvement as defined herein. In addition, any worker who is unable to participate in recommended treatment or testing due to an unrelated issue or condition will be deemed to have reached Maximum Medical Improvement. Any such existence of a disability that could have been reasonably treated to success with reasonable medical probability will be discontinued in determining the appropriate incapacity rating as described herein.

- b) Any "Covered Worker" entitled to benefits under this Ordinance shall be presumed to have reached Maximum Medical Improvement if such claimant has refused and/or neglected to seek appropriate medical treatment within thirty (30) days from the date of occurrence or from the last date of prior treatment.
- c) Where medical causation or compensability of the claim is an issue, the resolution of which depends on a medical determination made pursuant to an "Independent Medical Examination" and the "Covered Worker" without good cause, fails to present or appear for the scheduled appointment, will forfeit all rights to benefits under this Ordinance.

42.23 Injury or Death by Consumption and/or Application of Drugs and/or Chemicals

No benefits of any nature shall be payable for injury and/or death caused or contributed to by any drug, including narcotics and hallucinogens, whether organic or chemical in nature, or any gas, vapors, and/or fumes taken and/or inhaled voluntarily, or by voluntarily poisoning, except those drugs prescribed by a physician or other practitioner licensed to prescribe such medication.

42.24 Intoxication

No benefits of any nature shall be payable for any "Covered Worker" injured or killed while intoxicated as defined in section 42.09(v), regardless of whether or not the intoxicated condition was the proximate cause of the injury or death. It is only necessary to prove that the "Covered Worker's" post-accident testing was positive. All workers accepting employment with an employer and under this Ordinance, agree to submit to post-incident/post-accident drug and alcohol screening as authorized in the applicable Tribal personnel policies, and agree to waive any privilege associated with the results of said tests.

42.25 False Statement or Representation to Obtain Compensation; Penalty and Forfeiture

No benefits of any nature shall be payable where compensability is based on misrepresentation or willful omission of a material fact, where if such misrepresentation or omission were known by the "Administrator" or "Tribe", the claim would have been denied, or workers' compensation benefits would have been provided at lesser levels than what was actually paid in reliance upon the misrepresentation or willful omission.

WORKER'S COMPENSATION CLAIM ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 42

42.26 Injuries Resulting from Self-Inflicted Injuries, Willful Misconduct, "Horseplay", or Safety Violation

No benefits of any nature shall be payable for any "Covered Worker's" injury or death caused by a "Covered Worker's" willful intention to injure himself or another. An injury sustained during "horseplay" is not incurred in the course and scope of employment, and thus such an injury under this Ordinance is not compensable. In addition, the willful disregard of a safety order from the employer to the worker to wear or use a safety device and/or to perform work in a certain manner may cause such person to forfeit all rights to compensation, benefits, or payment upon proof that the offense was committed and that such disregard or performance was the direct and proximate cause of the injury, death, and/or occupational disease. A "Covered Worker's" willful disabling of safety devices on equipment constitutes a willful intention to injure himself thereby precluding eligibility for his benefits under this Ordinance.

42.27 Injuries Resulting from Natural Causes

No benefits of any nature shall be payable for any "Covered Worker" injured or killed when the injury or death results from natural causes, i.e., heart attack, stroke or other natural function failure, which does not arise out of the course and scope of employment while the worker was acting in furtherance of the employer's interest.

42.28 Recreational, Social or Athletic Activities

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

42.29 Injuries Caused by Third Parties

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

42.30 Secondhand Smoke

No benefits under this Ordinance shall be payable to or on behalf of any "Covered Worker" injured or killed as a result of exposure to or injury by secondhand smoke.

42.31 Idiopathic

WORKER'S COMPENSATION CLAIM ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 42

No benefits of any nature shall be payable for any injury deemed "idiopathic" in nature.

42.32 Felony, Crime, or Misdemeanor

No benefits of any nature shall be payable where the injury is caused by or during the commission by the "Covered Worker" of a felony, crime, or misdemeanor.

42.33 Termination or Layoff

No benefits of any nature shall be payable where the claim is filed after notice of termination or layoff, and it is determined by the "Administrator" that the filing of the claim was retaliatory in nature.

42.34 Environmental Illness/Chemicals

No benefits of any nature shall be payable where the claim is filed for an environmental illness or chemical sensitivity caused by agents to which the general public is exposed on the Employer's Premises or any other public location.

42.35 Right to Discovery

No benefits of any nature shall be payable where the "Covered Worker" refuses to cooperate in the investigation of the claim, thus impeding "Administrator's" right do discovery.

42.36 Subrogation/Appportionment/Recovery

- a) Although the "Tribe" is entitled to invoke the defense of sovereign immunity for any claims brought against it, nothing herein shall impair the rights of the "Tribe" or the "Administrator" on its behalf to file a subrogation lien in any action or to enter as a plaintiff to pursue any recovery to which the "Tribe" may be entitled.
- b) Whenever the "Administrator" pays any benefits pursuant to a "Compensable Injury" as a result of clerical error, mistaken identity, innocent misrepresentation, or other mistake or similar circumstance that does not arise to the level of fraud or intentional omission or misrepresentation of a material fact, the "Administrator" shall request and the recipient of such benefits shall reimburse any monies expended within one year. The "Administrator" shall have the discretion to waive, in whole or in part, any refund or reimbursement from a recipient where recovery would be futile, against equity, against good conscience, or under other similar circumstances.
- c) Whenever the "Administrator" has been fraudulently induced to make any benefit payment under this Ordinance, either by a willful omission of or intentional misrepresentation of a material fact, the recipient shall repay the payment, along with a penalty of fifty percent (50%) of the payment amount. The "Administrator" must demand the repayment within one (1) year of discovering the fraud.

WORKER'S COMPENSATION CLAIM ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 42

- d) For the purpose of settlement for "Permanent Partial Impairment" or Permanent Total Impairment" the amount of benefits due may be reduced or denied in its entirety by the "Administrator" for pre-existing impairment, whether work related or not, if apportionment is medically documented by a physician or as the result of an "Independent Medical Examination" approved by the "Administrator."

42.37 Assignability of Benefits – Attachment of Liens

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

- a) Court-ordered child support issued or recognized by The Klamath Tribes Court;
- b) A subrogation interest established under this Ordinance; and
- c) Debts owed to The Klamath Tribes

42.38 Waiting Period

An initial waiting period of seven (7) consecutive calendar days is to accrue before the "Covered Worker" shall be entitled to benefits under this chapter. If the "Covered Worker" misses more than fourteen (14) consecutive calendar days, the first seven (7) calendar days can be considered for benefits if the "Covered Worker" received no other compensation during this time including but not limited to, sick time, vacation time, and personal time off (PTO).

42.39 Total Disability and Partial Disability Income Benefits

- a) When the worker is disabled from work duty as determined by the consulting physician, or in the "Administrator's" discretion, the attending physician, by reason of a compensable injury or occupational disease, benefits shall be payable as follows:
 - (1) If the "Covered Worker" is 100% disabled, benefits are payable at 67 % of the worker's pre-injury average weekly wage.
 - (2) If the "Covered Worker" is less than 100% disabled, benefits are payable at 67% of the difference between the worker's pre-injury average weekly wage and the wage the "Covered Worker" is earning or capable of earning in his partially disabled condition.
- b) Except as provided herein, such benefits will continue to be paid in accordance with the terms of this Ordinance until which time the earliest of the following occur:

WORKER'S COMPENSATION CLAIM ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 42

- (1) The expiration of 36 months from the date of occurrence, or in the case of an occupational disease, 36 months from the earliest of the first manifestation of the symptoms or notification from a physician that the illness is inherent or related to the worker's occupation;
- (2) The consulting physician, or in the discretion of the "Administrator", the attending physician, declares that the worker has reached Maximum Medical Improvement;
- (3) The claimant is incarcerated;
- (4) A full, unrestricted release is provided by the consulting physician, or in the discretion of the "Administrator", the attending physician.
- (5) A modified or light duty release is provided by the consulting physician, or in the discretion of the "Administrator", the attending physician, and a bona fide job offer of suitable work consistent with the worker's disability is rejected;
- (6) A new or intervening incident is the proximate cause of disability;
- (7) Benefits are refused by the worker;
- (8) Presumption of MMI or abandonment of medical treatment as defined in this Ordinance;
- (9) There are no objective medical findings to support work restrictions;
- (10) Suspension of benefits by the "Administrator" for reasons authorized in this Ordinance or by the authority Tribal Council as established under this Ordinance;
- (11) The "Covered Worker's" earning capacity is reduced for reasons other than the disability from the work-related injury;
- (12) The "Covered Worker" dies from any cause not resulting from the injury for which he was entitled to compensation under this section, and the "Covered Worker's" estate is not entitled to any further benefits as defined by this Ordinance.
- (13) The "Covered Worker" received pay from their employer in the form of including but not limited to; salary, sick leave, vacation leave, annual leave, personal time off, and/or holiday pay.
- (14) The "Covered Worker" applied for, and received, unemployment compensation benefits.

WORKER'S COMPENSATION CLAIM ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 42

42.40 Impairment Benefits

- a) At the expiration of 36 months from the date of the incident, accident and/or occupational disease, the worker is presumed to have reached MMI regardless of disability and/or current medical status. The consulting physician, or in the discretion of the "Administrator", the attending physician, is to provide an impairment rating in accordance with the most current edition of the American Medical Association (AMA) based on reasonable medical probability and objective medical findings. In addition, at this time the consulting physician, or in the discretion of the "Administrator", the attending physician, is required to provide a treatment plan for reasonable and necessary future medical needs. The attending physician's impairment rating and treatment may be subject to review and revision by the consulting physician at the discretion of the "Administrator".
- b) For purposes of converting the impairment rating into a monetary figure only, this Ordinance will mirror the Oregon award schedule for permanent partial disability.
- c) A rating may not be issued prior to the declaration of MMI. The "Administrator" may reserve issuance of payment under the following conditions:
 - (1) Contribution of prior impairment ratings;
 - (2) Clarification by the "Administrator" of this Ordinance as to the validity of the date for MMI;
 - (3) Similar rating or MMI issues to be resolved by the consulting physician or, if necessary, the arbitration panel established under this Ordinance.
- d) The rating recognized by the arbitration panel is binding. The rating will not be retroactively paid for weeks accrued in resolving the rating issue subsequent to the date of MMI. Such benefits will become effective the date of the ruling and commence at that time.
- e) Notwithstanding provisions herein, the "Administrator" shall retain the right and discretion to order Lump Sum Settlements by way of Compromise and Release.

42.41 Benefit Issuance Period

Except as provided herein:

- a) All benefits under this chapter are to be issued bi-weekly.
- b) There shall be no acceleration of benefits under this Ordinance.
- c) Any settlement issued on behalf of a "Covered Worker" shall be executed by signed memorandum only.

WORKER'S COMPENSATION CLAIM ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 42

42.42 Not to Exceed Pre-Injury Average Weekly Wage

In no event may the worker's incapacity income benefits, or other income sources supplement the loss income exceed 100% of the worker's pre-injury average weekly wage.

42.43 Benefit Offsets

The "Administrator" is entitled to reduce benefits payable to "Covered Worker's" under this Ordinance in an amount equal to employee payments paid for by the employer for any pecuniary wages paid in the form of but not limited to social security, long-term and short term disability, employer elected salary contribution, vacation or sick leave, or any other entitlement of a similar nature paid in whole or in part by the employer. Further, if any overpayment is made under this chapter to the "Covered Worker" of any disability income benefits, such shall be deducted from any benefits payable under any impairment benefits as set forth in this Ordinance; or in the case where no impairment benefits are payable, then such overpayment of benefits may be deducted through payroll deductions.

42.44 Vocational Rehabilitation

Vocational rehabilitation benefits or training are not mandatory under this Ordinance, but may; at the discretion of the "Administrator", be ordered pursuant to his authority established herein, or as required under rules promulgated by the Tribal Council.

42.45 Distribution of Death Benefits

- a) When death ensues to the "Covered Worker" by reason of a compensable injury or occupational disease, benefits shall be payable to the dependents who were dependant as defined in section 42.09(p) on the earnings of the worker for support at the time of his injury, compensation upon the basis of 67% of the worker's average weekly wage, commencing from the date of death as follows:
 - (1) If there are no children entitled to benefits, then all to the surviving spouse for the projected probable life span of the decedent based on established mortality tables, the life of the surviving spouse or until remarriage., whichever comes first, provided that upon remarriage two years' benefits shall be paid to the surviving spouse in a lump sum. To be an eligible "surviving spouse" under this Ordinance, the surviving spouse must have been married and living with the decedent at the time of the compensable injury, proof of eligibility may be required. If there are surviving eligible dependents, the surviving spouse shall be entitled to one-half of death benefits. If there is a surviving spouse, one-half of death benefits paid to each surviving eligible dependent in equal shares.
 - (2) If there is no surviving spouse, equal share of all to dependents as defined in section 42.09 (p)(2)

WORKER'S COMPENSATION CLAIM ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 42

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

42.46 Re-Distribution of Death Benefits

- a) If a legal beneficiary as defined in section 42.45 dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with section 42.45.
- b) If all legal beneficiaries cease to be eligible, any duty to pay the remaining death benefits payable under section 42.45 shall cease immediately.

42.47 Verification of Eligibility of Death Benefits

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

42.48 Burial Benefits

If death results from a compensable injury, the person and/or entity who incurred the liability for the costs of the burial shall be reimbursed for either the actual costs incurred for such reasonable burial expenses, or \$5,000, whichever is less.

42.49 Termination of Benefits upon Death

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

42.50 Entitlement to Medical Benefits

Workers' Compensation Benefits payable to any "Employee" or "Claimant" under this Ordinance shall be comparable to those mandated for comparable employees under Oregon state law; provided however that nothing herein is intended to nor shall be construed as an express agreement to be subject to any provision thereof, nor is any waiver of sovereign immunity, express or implied, made.

- a) Workers' Compensation Benefits shall include the following:

(1) Medical Benefits:

- (i) A "Covered Worker" shall be entitled to all medical, surgical, hospital, or dental treatment and any therapy, durable medical

WORKER'S COMPENSATION CLAIM ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 42

equipment, medications, diagnostic testing, radiology, and any other medical service related thereto, as requested or prescribed by a provider authorized and approved by the "Administrator" and/or on the "Tribal Medical Provider Network."

- (ii) The "Administrator" on behalf of the Tribe shall retain medical control for the life of the claim, subject to the following:

Life-threatening, Serious, or Severe Injury. Where a "Covered Worker" has sustained a serious or severe injury which requires immediate emergency medical attention, the "Covered Worker" should go to the nearest emergency room or urgent care facility. All subsequent treatment is subject to the medical control of the "Tribe" through its "Administrator" and/or its preferred vendor medical facility pursuant to its "MPN".

Minor Injury: Where a "Covered Worker" has sustained a minor Injury the "Covered Worker" shall be directed to go to a health care provider designated by the Human Resources Department. The designated health care provider shall determine the Employee's initial treatment. If an Employee elects not go the designated health care provider, The Klamath Tribes shall not be financially responsible for any further medical treatment, or any treatment performed by any other health care provider.

- (iii) Where it is deemed appropriate by an authorized and approved medical provider, when a condition reaches maximum medical improvement (MMI) and/or permanent and stationary (P&S), and future and/or supportive medical benefits is necessary, such benefits shall be provided for the duration provided for in the report, subject to the requirements set forth in this Ordinance.
- (iv) The algorithms and treatment recommendations proscribed by the American College of Occupational and Environmental Medicine (ACOEM) guidelines may be used to determine the appropriateness of a recommended treatment, but shall have no binding affect upon the "Tribe".
- (v) Neither the "Tribe" nor the "Administrator" shall be responsible for any bill or amount in excess of what is allowable under the Oregon fee schedule for similar bills in the statutory system.
- (vi) An Employee may receive **chiropractic care** when recommended by the Primary Healthcare Provider, but such chiropractic care shall be limited to sixty (60) days from the date of referral by the Primary Healthcare Provider or twenty-four (24) treatments, whichever is

WORKER'S COMPENSATION CLAIM ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 42

less, except for good cause clearly shown. The burden of proving the reasonableness and necessity of additional chiropractic care shall be on the "Covered Worker".

- (vii) **Mileage reimbursement** for approved travel to and from medical appointments will be reimbursed comparable to those mandated for comparable employees under Oregon state law; provided however that nothing herein is intended nor shall be construed as an express agreement to be subject to any provisions thereof, nor is any waiver of sovereign immunity, express or implied, made.

42.51 Claim Closure

A "Covered Worker's" claim for workers' compensation benefits shall be closed when any of the following circumstances occur:

- a) The "Administrator" has paid a settlement to the "Covered Worker" that has been agreed upon by both the "Covered Worker" and the "Administrator" in exchange for a general release of any and all further liability;
- b) The "Administrator" has extended all workers' compensation benefits due under this Ordinance to any "Covered Worker" or "Dependents";
- c) The "Covered Worker" or "Dependent" fails to appeal a "Written Decision" within the time-frame prescribed in section 42.55
- d) The "Covered Worker" has either unreasonably failed to follow-up with medical treatment within thirty (30) days as described in this Ordinance, or has abandoned medical treatment as evidenced by failure to present for two consecutive medical appointments without good cause shown, or, with respect to supportive medical care, a failure to treat within one year from the last date of authorized medical care under his or her claim;
- e) The "Covered Worker" has reached the point where no further material improvement would reasonably be expected from medical treatment, where all other benefits have been exhausted and/or otherwise paid;
- f) Upon the discovery of any issues impacting compensability or continuing benefits as more fully described in Chapter 4 above;
- g) Pursuant to an order following a hearing under section 42.56;
- h) Any other reason set forth in this Ordinance as determined by the "Administrator".

Nothing in this Ordinance shall impair the rights of the parties to compromise any liability that is claimed to exist under this Ordinance on account of injury, disease or death, subject to the

WORKER'S COMPENSATION CLAIM ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 42

provisions herein. No Compromise and Release settlement shall be paid without a general release signed by both parties.

42.52 Settlement of Future Medical

The worker may petition and negotiate settlement of future medical expenses. For purposes of settling the future medical expenses, the basis for settlement will be the value of the current and future medical plan. Settlements under this section are not to exceed \$100,000.

42.53 Re-Opening Rights

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

42.54 Managerial Review

Whenever a "Written Decision" has been made on a claim, in the event of any disagreement or dispute arising there from, a "Covered Worker" or "Claimant" or "Dependent" must request a managerial review of such "Written Decision" at the "Administrator" level, and the following shall apply:

- a) Such a request must be submitted in writing to the "Administrator" and made within thirty (30) days of the "Written Decision". The failure to adhere to this requirement shall render the "Written Decision" of the "Administrator" final and binding, and shall constitute a waiver to any subsequent appeals or dispute resolution processes set forth under this Ordinance.
- b) Upon receipt of a timely request for managerial review, the "Administrator" shall respond in writing via certified mail as to whether the "Written Decision" being appealed shall be upheld, amended, or overturned and the justification for same, within a reasonable time not to exceed ninety (90) days. If the "Administrator" fails to respond within the timeframe proscribed herein, an aggrieved "Employee" or "Claimant" or "Dependent" may proceed with the process set forth under section 42.55

42.55 Appeals from Decisions of the "Administrator"

- a) The "Administrator" shall administer this Ordinance in accordance with the terms and conditions set forth in this Ordinance. Any appeals from final decisions of the "Administrator" shall follow the procedures as set forth in this Ordinance.

WORKER'S COMPENSATION CLAIM ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 42

b) Appeal – Tribal Court. Any and all appeals from a decision of Administrator shall be heard by the Tribal Court under the laws of The Klamath Tribes but shall be limited to the documentation reviewed by the Administrator. Any appeal of The Administrator's decision shall be filed with the Tribal Court within 30 calendar days of the decision. The Administrator's decision shall be upheld unless the Tribal Court finds the decision was:

- (1) Unsupported by evidence;
- (2) Arbitrary and capricious;
- (3) An abuse of discretion by the "Administrator"; or
- (4) Contrary to the Ordinance or other applicable law.

42.56 Hearings

- a) A claimant and the "Administrator" shall have the right to be represented by an attorney in all matters presented before Tribal Court, if applicable, to cross-examine all witnesses and to review all evidence of any nature, as may be related to the matter under consideration. However, attorney fees are limited by section 42.57. All hearings will be conducted in a manner that does not violate due process.
- b) An appeal under this Ordinance shall not be bound by formal rules of evidence or by technical or formal rules of procedure and Tribal Court may conduct investigations in such a manner as its judgment is best calculated to ascertain the substantial rights of the parties and promote the spirit and the intent of the Tribal Workers Benefits System.
- c) A full and complete record of all proceeding shall be kept by the Tribal Court by method provided in their rules and regulations and shall be available to any party who requests the record in writing, demonstrating reasonable need for such record, and by paying the fee set forth in the rules and regulations of Tribal Court.


42.57 Claimant Attorney's Fees and Other Related Costs

- a) If Tribal Court awards benefits to the claimant in excess of the "Administrator's" original benefit determination, the claimant's attorney's fees will be approved with a maximum limit of 10% of the total benefit awarded, or \$3,500, whichever is less. The award of attorney's fees to the claimant shall be over and above any benefits paid or provided to the claimant pursuant to this Ordinance. Disputes over attorney fees must be filed with in accordance with Tribal Court established rules and regulations.
- b) The claimant or "Administrator" may engage the services of physicians or experts for hearing purposes at the respective parties' costs which are not reimbursable regardless of the ultimate outcome of the dispute. The opinions of such consultants will be considered in a contested case, notwithstanding the provisions of this Ordinance limiting the outside or unauthorized treatment.

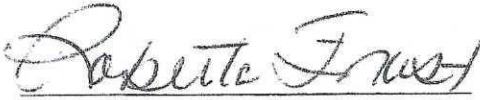
WORKER'S COMPENSATION CLAIM ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 42

TRIBAL COUNCIL CERTIFICATION

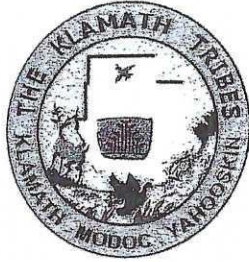
We, the undersigned, Tribal Council Chairman and Secretary of the Klamath Tribes, do hereby certify that by Referendum vote of The Klamath Tribes General Council held on the 15th day of October, 2021, the Klamath Tribes General Council adopted this Ordinance to be effective as of October 15th, 2021 by a vote of for 419, 83 opposed.



Donald C. Gentry
Chairman
The Klamath Tribes



Roberta Frost
Secretary
The Klamath Tribes

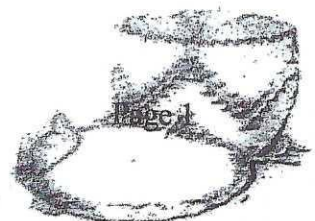


The Klamath Tribes
Tribal Council
GENERAL COUNCIL RESOLUTION #2021-003

**GENERAL COUNCIL RESOLUTION APPROVING THE
WORKERS COMPENSATION ORDINANCE, TITLE 6,
CHAPTER 42 OF THE KLAMATH TRIBAL CODE**

- Whereas,** The Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians signed the Treaty of 1864 establishing the Klamath Reservation; and
- Whereas,** The General Council of the Klamath membership is the governing body of the Tribes, by the authority of the Constitution of the Klamath Tribes (Article VI, & VII, Section IV E) as approved and/or adopted by the General Council amended on November 19, 2011; and
- Whereas,** The Klamath Indian Tribes Restoration Act of August 27, 1986 (P.L. 99-398) restored to federal recognition the Sovereign Government of the Tribes' Constitution and By-laws; and
- Whereas,** The Klamath Tribes have the inherent sovereign authority to enact laws that provide for a fair and productive working environment for employers and employees within the territorial jurisdiction of the Klamath Tribes; and
- Whereas,** The Klamath Tribes have prepared a Worker's Compensation Claim Ordinance to reaffirm the existing policies and procedures recognized by The Klamath Tribes concerning redress of employee work-related injuries, illnesses, or conditions; and
- Whereas,** The Klamath Tribes General Council has determined that the Worker's Compensation Claim Ordinance as drafted best meets the needs of the Klamath Tribes to establish basic guidelines and procedures for the Klamath Tribal entities to follow when Worker's Compensation is granted and claimed;

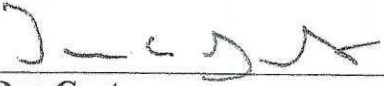
GCR 2021-003



Now therefore be it resolved, The Klamath Tribes General Council hereby adopts the Klamath Tribes Worker's Compensation Claim Ordinance, Klamath Tribal Code Title 6, Chapter 42 as presented to the General Council via referendum ballot.

Certification

We, the undersigned, Tribal Council Chairman and Secretary of the Klamath Tribes, do hereby certify that by a duly held referendum vote of the General Council held on the 15th day of October, 2021, the General Council duly adopted this resolution by a vote of 419 for, and 83 opposed.



Don Gentry
Chairman
The Klamath Tribes



Roberta Frost
Secretary
The Klamath Tribes

