

BAD RIVER BAND OF LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS

CHIEF BLACKBIRD CENTER

P.O. Box 39

Odanah, Wisconsin 54861

Resolution No. 6-22-11-431

Revising Chapter 1100 Worker's Compensation Plan and Worker's Compensation Procedures

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

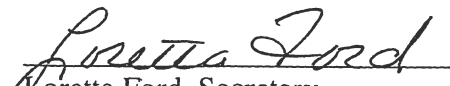
WHEREAS, the Bad River Band elects to offer health and disability benefits to Tribal employees as the sole remedy for claims and compensation resulting from work related injury or illness in the form and manner of the Chapter 1100 Worker's Compensation Plan approved by Resolution No. 1-13-10-151; and

WHEREAS, the Human Resources Office has prepared revisions to the Chapter 1100 Worker's Compensation Plan and to the Worker's Compensation Procedures.

NOW, THEREFORE, BE IT RESOLVED that the Bad River Tribal Council hereby adopts the revisions to the Chapter 1100 Worker's Compensation Plan and to the Worker's Compensation Procedures as attached to this Resolution, effective June 22, 2011.

Certification

I, the undersigned, as Secretary of the Bad River Band of 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 22 day of JUNE, 2011; 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meeting by an affirmative vote of 6 members; 0 against; and 0 abstaining, and that the said resolution has not been rescinded or amended.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

MEMORANDUM

To: Bad River Tribal Council Members
From: Loretta F. Livingston, Benefit Specialist *jlh*
Date: 5-3-11
RE: Workers' Compensation Plan & Procedures – Revisions

I am submitting the final draft of the revisions I propose for the Workers' Compensation Plan and Procedures for approval by the Tribal Council. Below is a list of the revisions made in the Workers' Compensation Plan and the Workers' Compensation Procedures.

The revisions were made to clarify the various responsibilities in the Plan and Procedure document. Further, the revisions were made in order to clarify certain language in both documents and eliminate the inconsistencies in the language of both the Plan document and the Procedure document.

In the Workers' Compensation Plan document:

1. Purpose & Scope Section – Added the word while in the 3rd line of the 1st paragraph.
2. a. Definitions Section – Added the words and/or in subsection "e." as indicated.
b. Subsection "f." – added language to include other reasons for possibly reducing the amount of disability paid. To clarify that Holiday pay must follow the Personnel Policies.
3. Reporting Obligation section, pg. 2 – language changes in subsections "a." and "b." First, sub "b." changes:
 - A. After consultation with Tribal Attorney Erick Arnold – I changed the language in sub "b." to make it the responsibility of the SUPERVISOR to notify the Benefit Specialist in the event that medical treatment is obtained by the employee. This was done to lessen the burden on an injured employee.
However, the employee also has the responsibility - or someone on the employee's behalf – to report medical treatment to the supervisor – in the event medical treatment becomes necessary after the initial 24 hours. So language was added to this effect in sub "a."
 - B. I also added language – that special arrangements for notification and completion of the proper paperwork can be made if necessary.
4. Subsection "c." – I changed Personnel Department to Human Resources Department.
5. The Medical Benefits Section, pg. 3. – I combined subsections "b." and "c."; now there is only subsections a. through e. - not subsections a. through f. I also changed some wording or added a word or two in each subsection.
6. Disability Benefits Section – subsection b. Temporary Partial Disability – I added subsections 3.), 4.) & 5.) – these subsections were originally in the Permanent Disability Section pgs 5 & 6. This was done to explain the difference between permanent disabilities and temporary disabilities, and to keep the sections on each type of disability – separate.

7. Disability Benefits Section, sub. "c." Permanent Disability – I rearranged the subsections and added some language to further clarify the processing of permanent total and permanent partial disabilities.

A. See subsection "c." Permanent Disability, sub. 1) An explanation of permanent total and permanent partial disabilities.

B. In sub. c. 2) Rearranged the wording and added the former sub. "g." to this paragraph.

C. In sub. c.4) I added an explanation.

D. In sub. c. 5) I added an explanation.

E. In sub. c.6) I added language "per agreement between" and "or designee" at the end of the sentence.

F. In sub. "d." I rearranged the wording and added some language to clarify.

G. In sub "e." I rearranged the order of the subsections – I put sub. "h." – in place of sub. "e."

H. In sub "f." I moved to the Temporary Partial Disability section – it is now subsection "b."3) in that Section.

I. In sub. "g." I added to sub. c. 2) above.

J. In sub. "h." I added in place of sub. e. – above.

K. In sub. "i." I added in place of sub. "f." – above.

L. In sub. "j." I rearranged the wording and sub. j. is now sub. "g."

8. Appeals Section beginning on pg. 8. – A significant change here - I changed the timelines, rearranged the order of the subsections and changed some of the wording.

A. I changed the name of the Appeals Body – from Workers' Compensation Investigation Team to Workers' Compensation Committee – or Compensation Committee for short.

B. I changed the timeline for filing an appeal from 30 days (in old subsection "f.") to 10 days – now subsection "a." This was done to speed up the appeal process for the employee.

C. I changed the timeline for scheduling of a hearing from 90 days (in old section "g.") to 10 days – now subsection "b." I also changed the length of the extension from 90 days to 5 days. This too was done to speed up the appeal process for the employee.

D. I changed the timeline for submitting evidence from 15 days (in old subsection "b.") to 5 days – which gives the employee 5 days after filing the appeal and 5 days before the hearing date to submit evidence the employee wants considered by the Compensation Committee. I also changed the wording that – employee has to submit evidence to the Human Resource Department not the Insurance Department (in old subsection "b.").

E. I added a five (5) day timeline for Compensation Committee to make its decision on the appeal and added this to subsection "i."

F. In subsection "j." I changed the wording to state that the Human Resources Department will "maintain a file of all Compensation Committee decisions in the Office of the Benefit Specialist/Administrator." This was done to clarify the language already contained in that subsection.

9. In the Return to Work Section, and the Disability Section I added the word "duty" after the word "light."

In the Workers' Compensation Procedures document:

1. The first five (5) paragraphs were reworded and some language deleted to clarify the procedures - for the benefit of the employees who are injured on the job.
2. In the Employee Responsibilities Section - subsection 3) was deleted; replaced by sub. 4; This was done to reflect the change in the Workers' Compensation Plan - it is now the responsibility of the SUPERVISOR to notify the Benefits Specialist within 24 hours of an employee injury - and notify the Benefit Specialist if the employee obtains medical attention.
3. In the Supervisor Responsibilities Section - old subsection 4) was deleted and replaced by the requirement - that the supervisor follow-up with the employee within that initial 24 hour period.
4. In the Tribal Benefit Specialist/Administrator Responsibilities Section - the order of the subsections were rearranged and language added to clarify the Benefit Specialist role.
5. In the Human Resource Manager Section - language was added to simply explain that role
6. In the Employee Appeal Process Section - the language was changed and wording added to reflect the changes in the Workers' Compensation Plan regarding timelines and the name change for the Appeals Body.

Attached are the Workers' Compensation Plan and Procedures documents. The changes are indicated in italics and underlined. However, the language from the "old" documents is not included - the changes are incorporated into the documents.

FINAL DRAFT - REVISION

Workers' Compensation Procedures

The purpose of workers' compensation is to provide a method to restore an injured worker as nearly as possible to the pre-injury earning capacity and potential.

The Bad River Tribe cares about their employees and wants to ensure that employee injuries will be addressed correctly and promptly. The Human Resource Department has established a procedure for investigating and processing workers compensation claims.

The Human Resource Department is responsible for processing employee incident reports to identify claims for worker's compensation and develop risk management assessments and recommendations.

The following procedure has been developed and will be implemented by Directors, Managers and other supervisory personnel, to decrease loss of productivity due to of employee injuries, to increase safety for all employees and assist with the determination of false claims.

This process begins with all Directors, Managers and other supervisory personnel within the tribal organization. The Tribal Benefits Specialist will be the Administrator (Benefits Specialist) and contact person for implementing the Worker's Compensation Plan.

Employee Responsibilities:

When an employee is injured in the workplace, they must:

- 1) Notify the supervisor on duty within 24 hours of the incident.
- 2) Complete an "Employee Incident Report Form" within 24 hours of the incident.
- 3) Identify any witnesses and request that they complete an incident report.

Failure to report the incident to the supervisor within the 24-hour period may result in loss of benefits.

Supervisor Responsibilities:

- 1) Complete an "Employer Incident Report Form" within 24 hours of receiving the **oral** report of the incident.

Failure to complete the "Employer Incident Report Form" within the 24-hour period will result in disciplinary action.

- 2) Upon completing the Incident Report Form, make two copies, one for the employee and the other for your records.
- 3) Forward the original form to the Benefits Specialist within 24 hours of receiving information regarding the incident.
- 4) Follow up with employee within that same 24 hour period to determine if employee sought medical treatment, to inform employee that if medical treatment was received that the employee

may be responsible for payment pending determination of incident as a worker's compensation claim.

Failure to report the incident to the Benefit Specialist within the 24-hour period will result in disciplinary action.

Tribal Benefits Specialist (Administrator) Responsibilities:

- 1) Complete a worker's compensation packet with the employee, which includes the Worker Compensation Benefit Request Form and the Release of Medical Information Form.
- 2) Review both Employer and Employee Incident Report Forms within five (5) days of receipt to determine whether the incident may qualify as a worker's compensation claim in accordance with Chapter 1100 "Worker's Compensation Plan":
 - a) Were the forms filed with the Benefit Specialist within the 24 hours time line?
 - b) Did the employee seek and/or received medical treatment? If so, was the Benefit Specialist notified within the 24 hour time line?
 - c) Were any witnesses identified, or were any witnesses incident reports provided?
- 3) If incident qualifies as a worker's compensation claim, the Benefit Specialist will commence an investigation.
 - a) A letter to the medical provider(s) along with the Medical Release form will be sent to obtain the pertinent medical information.
 - b) If necessary, the Benefit Specialist will request additional information from the supervisor on duty at the time of the incident, from any witness(es) and/or will investigate the site of the incident.
 - c) Upon review of all pertinent information, the Benefit Specialist will file a report with the Human Resource Manager with a recommendation(s), within five (5) after review of above mentioned reports.

Human Resource Manager (HRM) Responsibilities:

- 1) Review the report submitted by the Benefit Specialist.
- 2) Approve or modify recommendation, Sign the report,
- 3) Return to Tribal Benefits Specialist within 24 hours

Approved Workers' Compensation Claims:

Tribal Benefits Specialist will contact the employee, via certified mail, to inform the employee that the claim has been approved (or not) as a Worker's Compensation Claim. If approved, the employee will be notified that she/he is eligible for either medical or disability benefits or both.

Denied Workers' Compensation Claims:

Tribal Benefits Specialist will contact the employee, via certified mail, to inform them that the claim was denied. An information sheet will be attached informing the employee of the appeal process.

Employee Appeal Process:

- 1) Employee will notify HRM in writing, requesting an appeal within 10 days of the date of denial.
- 2) HRM will schedule a hearing with the Workers' Compensation Committee within 10 working days of request. (The WC Committee is a (3)-member committee.)
- 3) HRM will coordinate hearing with committee, but will not sit on the review committee.
- 4) Expert witnesses can be called by the committee to review the technical documentation for i.e., physicians, neurologists etc.
- 5) If necessary, Committee will have up to 5 working days to review information before making a decision.
- 6) Committee will submit a written decision to the HRM.
- 7) HRM will notify the employee of the final decision via certified mail.

FINAL DRAFT - REVISION
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 *while* 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 benefit 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 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 *and/or* the injury occurs during a period of employment *and/or* while performing the duties of the employment, 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*. A reduction of 25 percent of weekly wage will be enforced when safety equipment is required, but not used, *or a comparable reduction may be enforced if required by the actual medical circumstances of a claim. Holiday pay during the period of disability will be paid*

according to *Personnel Policies & Procedures*. 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 but only if actual dependency can be shown.

h. "Employee" means any person who performs labor services alone for the Tribe for hire at an 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 *Human Resources* Department 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.

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 *before* the end of the workday in which the incident or accident causing the bodily Injury occurred; in any event the incident should be reported within 24 hours. A bodily Injury may be reported by another on behalf of the employee *within that same 24 hour period*. Failure to report a job related injury *within 24 hours* will result in denial of disability or medical benefits under this Plan. *The employee must also report medical treatment to the supervisor, if medical treatment related to the injury is obtained.*

b. It is the *supervisor's* responsibility to notify the Benefit Specialist/Administrator within 24 hours if the employee's injury is treated by a physician *and/or if* time off work will be required due to the bodily injury. This will insure that proper paperwork, *including the Worker's Compensation Request for Benefits Form*, is completed by the employee with the Benefit Specialist/Administrator, within 48 hours of the incident or accident. *Special arrangements can be made to accommodate an employee's injury or medical condition in order to ensure compliance with the 48 hours timeline.*

c. A supervisor, upon receiving a report of injury, shall immediately complete an Employer Injury Report Form and forward the Report to the Benefit Specialist/Administrator in the *Human Resources* Department, and 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 *other tribally designated medical facility.*

b. This Plan will pay the reasonable and necessary medical costs *including the cost of* hospitalization and related charges, medicines and supplies and equipment of a therapeutic nature to treat the Bodily Injury, only if ordered by the Primary or Referral Physician.

c. This Plan will pay surgical charges only if the surgery is *performed* on an emergency basis or if it 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.

d. This Plan will reimburse the employee for the reasonable cost of mileage and other related expense necessarily incurred to obtain medical treatment *not to include* the cost of childcare. The mileage reimbursement rate shall be that rate as established by the *Tribe* for worker's compensation purposes. 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.

e. 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 that 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 and cannot perform for the Employer the *regular* duties *in* which the employee was engaged at the time of the Bodily Injury.

1. *Temporary* 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 *Total* Disability are limited to the applicable Compensation Rate.

b. **Temporary Partial Disability.** Temporary Partial Disability is the loss of actual earnings by an employee who has returned to light duty, restricted or modified work, due solely to the ongoing effects of the bodily injury and the physical inability of the employee to return to *regular* duties, in which the employee was engaged at the time of the bodily injury.

1. The weekly benefit for Temporary Partial Disability is 66 2/3 percent of the difference between the weekly wage at the time of the Bodily Injury and the wage the employee is able to earn in the light duty, restricted or modified work offered by the Employer. *This benefit is in addition to the weekly wage earned for light duty, restricted or modified work.*

2. *The Tribe or Administrator will pay Temporary Total or Temporary Partial disability benefits on a weekly basis; the disability benefits are limited to the maximum length of time during which Disability Benefits are payable, as indicated in the Plan Section entitled, Administrator, subsection d., Page 8.*

3. *If an employee refuses light duty, restricted or modified work offered by the Employer or becomes voluntary unemployed, or is dismissed for violation of the Employment Relations Act all medical and/or disability benefits will cease.*

4. *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.*

5. *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.*

c. **Permanent Disability.**

1. a. **Permanent Total Disability.** This benefit is intended to compensate the injured employee for a permanent loss or loss of use of a *bodily* member suffered directly as a result of a Compensable Bodily Injury,

b. **Permanent Partial Disability.** *This benefit is intended to compensate the injured employee for a less than total loss or loss of use of a bodily member, not otherwise covered by the schedule in Annex A, and directly the result of a Compensable Bodily Injury.*

2. *The rate determined to compensate an employee for a Permanent Total or Partial Disability must represent only that loss resulting solely from the Compensable Bodily Injury. Pre-existing disabilities are not to be included when rating a Permanent Total or Partial Disability. If a Bodily Injury results in a disability that is partially due to a 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.*

3. All ratings of Permanent *Total and* 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 or not otherwise compensated in this Schedule, compensation will be determined by the percentage that the extent of the injury bears to its total loss. *[For example, a*

head injury – is an example of a permanent partial disability not covered by the schedule; it is not listed in Annex A. A head injury may result in a 10% loss of function which may be vital to performing work duties, (as opposed to total loss of that function).]

5. Benefits paid for Permanent Partial Disability shall be calculated at two-thirds of the average weekly earnings of the employee, up to the maximum weekly benefit established by *in the Tribe's Worker's Compensation Plan or \$158.00. \$158.00 would then be multiplied by (the number of weeks specified in the Schedule for the permanent total disability, multiplied by the proportion explained in subsection 4., above). [Given the example in sub. 4., above, the injured employee's weekly wage is \$9.00/hr. X 40 hrs./wk. = \$ 360.00. $360.00 \times .667 = \$240.12$, but, the maximum is \$158.00. 1000 weeks is the number of weeks applicable to a permanent partial disability not covered by the schedule. 10% is the proportion in subsection 4. $1000 \text{ weeks} \times 10\% = 100$. So, $\$158.00$ multiplied by 100 = \$15,800.00. This is the payment for this permanent partial disability.]*

6. The amount payable to the employee shall be paid in one lump sum or *can be made in monthly payments per agreement between the employee and employer or his designee.*

7. Payment will be made as soon as reasonably 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. *Neither Permanent Total or Partial Disability benefits are payable concurrently with Temporary Total or Temporary Partial benefits, nor would such benefits be payable to the employee's dependents or heirs, regardless of the cause of death of the employee.*

e. 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.

f. 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.

g: When an employee 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.

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 \$139,800.00 will be payable to the Dependents of the deceased employee. *Dependent benefits will be paid on a weekly basis, in an amount determined in accordance with the weekly wage definition in paragraph p. of the Definition Section, and subject to the definition of Compensation Rate in paragraph f. of the Definitions Section. Dependent benefits 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 according to the percentage that their verifiable 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 3. and 4. 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 at 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 provision 5. above until the disability ends or the maximum benefits are paid, whichever comes first.
- i. 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 *duty*, 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, subject to the monetary and time limitations of the initial claim. A recurrence occurring in employment *for more than one year from the date the employee return to regular or light duty* 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 *Total and 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 Dependent Benefits payable.

f. In the event of the need to allocate Dependent 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 Committee (Compensation Committee)* to hear *the* issues and make *the* final determination relative to the Compensability of a

Bodily Injury, medical care or charges, the extent of Disability, Dependency, or other issues that may arise under this Plan.

- a. An employee or Dependent who disagrees with the determination made by the Administrator may request in writing a hearing before the *Workers' Compensation Committee*. The request for appeal must be returned within 10 days of the date on the denial.
- b. The matter will be scheduled for a hearing before the full *Compensation Committee* within 10 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 5 days, which must be granted by the *Compensation Committee*.
- c. The employee or Dependents may have legal representation at any hearing before the *Compensation Committee*. The cost of representation will be borne by the employee or Dependents.
- d. The burden of proof in any hearing before the *Compensation Committee* will be on the employee or Dependents.
- e. The *Compensation Committee* will consider evidence, hear witnesses and receive exhibits in keeping with its goal of making a just final determination.
- f. The *Compensation Committee* shall not consider any information that has not been provided to the *Human Resource Department* at least 5 days prior to the scheduled hearing.
- g. The *Compensation Committee* 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.
- h. Any decision of the *Compensation Committee* must have the concurrence of a majority of the *Committee* members to have legal effect. All decisions of the *Compensation Committee* are final.
- i. The *Compensation Committee's* decision must be in writing and filed with the *Human Resource Department* within five (5) days of the hearing; copies shall be mailed to all interested parties. The decision need not recite nor review the evidence or testimony nor compare the merits of the evidence or testimony of the opposing parties. The decision need only set out the final determination of the *Compensation Committee* on all issues before it.
- j. The *Department of Human Resources* shall maintain a file of all *Compensation Committee* decisions in the *Office of the Benefit Specialist/Administrator*.