

CHAPTER 39
WORKERS' COMPENSATION

39-1 PURPOSE

The purpose of this Chapter is to establish a consistent procedure for administration of workers' compensation benefits to employees of the Kootenai Tribe of Idaho.

39-2 SCOPE

This Chapter applies to all employees of the Kootenai Tribe of Idaho, its departments and its subordinate entities. The relief provided in this Chapter is to the exclusion of every other remedy, proceeding or compensation, except those specifically provided in this Chapter.

39-3 DEFINITIONS

39-3.01 As used herein, except as may be specifically provided otherwise, the following definitions shall apply.

(1) "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.

(2) "Attending Physician" means the physician, or other medical care provider, who is responsible for the planning, provision and oversight of medical treatment to a covered worker who sustains a covered injury.

(3) "Average Weekly Wage" means the following:

(a) For a covered worker hired to a regular full-time or part-time position expected to last at least 13 weeks, the average weekly wage shall be calculated based on the preceding thirteen (13) weeks of the covered worker's actual wage earnings from a covered employer. In the case of a worker who has not worked for covered employer within the immediately preceding thirteen (13) weeks,

the average weekly wage shall be calculated based on the salary level the worker was hired at or is currently receiving.

(b) For a covered worker hired on a temporary, on-call, emergency, or special-project basis who has continuously worked for a minimum of 13 weeks, the Average Weekly Wage shall be calculated as provided in subparagraph (a) above.

(c) For a covered worker hired on a temporary, emergency, or special-project basis who has not continuously worked for the preceding 13 weeks, the Average Weekly Wage shall be calculated by taking the worker's expected total gross wages and dividing by the number of work weeks.

(4) "Benefits" means the indemnity and medical payments provided by this Chapter. "Indemnity benefits" shall mean total disability and partial disability income benefits and impairment payments. "Medical benefits" shall mean medical expenses, mileage, and other expenses associated with medical treatment.

(5) "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.

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

(a) He or she is under the age of eighteen (18).

(b) 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.

(c) 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.

(6) "Dependents" are the following persons, and they shall be deemed to be the only recognizable dependents under the provisions of this Ordinance:

(a) The widow or widower, if legally married and living with the deceased at the time of deceased's death and legally entitled to be supported by the deceased as a dependent defined by the most recent federally filed 1040 tax return. 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.

(b) 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.

(7) "Intoxication" means blood alcohol content in excess of .02 percent or conviction of the offense of driving while intoxicated (or words to that effect) by any jurisdiction or, loss of the normal use of one's mental and/or physical faculties resulting from the voluntary introduction into the body of (1) an alcoholic beverage; (2) a

controlled substance; (3) a mind-altering drug and/or hallucinogenic; (4) an abusable glue or aerosol paint; or (5) any other similar substance.

(8) "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.

(9) "Claimant" shall mean the covered worker, or in the event of death of the covered worker, dependents of the covered worker.

(10) "Consulting Physician" means the physician, other health care provider, or other health care expert that is retained by the Claims Administrator to assist in carrying out the Claim Administrator's duties and responsibilities of this Chapter. At the discretion and expense of the Claims Administrator, an injured worker may be required to be seen by the Consulting Physician to assist in making any required recommendations to the Claims Administrator.

(11) "Council" means the Kootenai Tribal Council as established by the Constitution and Bylaws of the Kootenai Tribe of Idaho.

(12) "Course and Scope of Employment" means the Employer's employment of the covered worker at the time the injury occurred. An injury must arise from the course and scope of the covered worker's employment in order for a claim to be compensable. An employee is in the course and scope of his or her employment while entering or leaving the Employer's buildings and parking areas within thirty minutes of the employee's assigned work schedule.

(13) "Claims Administrator" shall mean the entity designated by the Tribal Council that is responsible for managing the Workers' Compensation Program. Responsibilities include, but are not limited to, determining the compensability of claims, making payments to injured workers, medical providers and others; and, making reports to the Tribal Council regarding the program and individual claims.

(14) "Covered Employee" or "Covered Worker" means a person, other than an independent contractor, employed by or in the service of the Kootenai Tribe of Idaho, its

Departments or one of its subordinate entities. For purposes of this Chapter, "Employee" shall also include Members of Tribal Council.

(15) "Covered Employer" or "Covered Employer" means the Kootenai Tribe of Idaho, its departments or one of its subordinate entities.

(16) "Days" shall mean calendar days unless otherwise expressly provided.

(17) "Death" means any fatality of the covered worker proximately and directly caused by an injury received during the course and scope of employment or by an occupational disease.

(18) "Disability" means the inability of the covered worker to obtain and/or retain wages equivalent to the worker's pre-injury wages as a result of a direct loss of functional capacity compromising that worker'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 Claims Administrator, the Consulting Physician. "Partial disability" refers to the amount by which the covered worker's ability to obtain and/or retain pre-injury wages is reduced as a result of a direct loss of functional capacity compromising that worker's ability to perform the necessary duties of the job.

(19) "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 resumed to be permanent based on reasonable medical probability.

(20) "Injury" means any physical or mental impairment, including, without limitation, death and/or occupational disease, arising in the course of the covered worker's employment.

(a) The term "injury" does not include an injury sustained while a covered worker is at home or preparing for work.

(b) The term "injury" does not include an injury resulting primarily from the natural aging process, or normal daily

activities, or an injury sustained during voluntary recreational or social activities.

(21) "Idiopathic Injury" means an injury which is either peculiar to the individual or arising spontaneously from an obscure or unknown cause. This includes epileptic attacks, diabetic seizures, heart disease, cardiovascular or respiratory conditions, heart attack, the failure or occlusion of any coronary blood vessels, stroke, thrombosis, allergic disorders, auto-immune diseases, etc.

(22) "Maximum Medical Improvement"

(a) Means the earlier of:

(i) The point after which no further material recovery from an injury, or the last improvement to an injury, can be anticipated based on reasonable medical probability; or

(ii) The expiration of 36 months from the date disability income benefits begin to accrue.

(b) MMI can be determined without regard to subjective complaints of pain by the patient. Once the date of MMI has been determined (except in cases in which a covered worker is medically unable to continue working) no further determinations of other dates of MMI for that injury are permitted. A determination of MMI is not rendered ineffective by the worsening of the covered worker's medical condition and recovery thereafter.

(23) "Occupational Disease" shall mean any disease resulting from exposure during employment to conditions or substances detrimental to the claimant's health which impairment of health is not caused by accident but by exposure to conditions incidental to and arising out of or in the course of the claimant's employment with the Kootenai Tribe of Idaho.

(24) "Workers' Compensation Benefit System" means this Chapter, any and all rules and regulations promulgated hereunder, and the functions of the Claims Administrator.

(25) "Policy" means any workers' compensation policy of insurance issued to the Tribe, or any other covered employer.

(26) "Scheduled Weeks" means 156 weeks and is the maximum number of weeks that a covered worker shall be entitled to disability benefits under this Chapter.

(27) "Settlement" means the date the release of all claims is executed and the monetary terms of the agreement met.

(28) "Tribal Court" shall mean the Kootenai Tribal Court.

(29) "Volunteer" means a person who gives his or her services to the Tribe without any express or implied promise of remuneration, including unpaid interns. A volunteer who suffers an Injury, as defined in this Chapter, that arises from the course and scope of that person's voluntary service to the Tribe may receive Medical Benefits, but will not receive Indemnity Benefits, if coverage is elected under the Tribe's insurance policy.

39-4 ACKNOWLEDGEMENT OF PROVISIONS IN THIS CHAPTER

All covered workers or persons asserting a claim under this Chapter shall be conclusively presumed to have elected to take worker's compensation benefits in accordance with the provisions of this Chapter by virtue of their employment by the Tribe or other covered employer. All covered workers or persons asserting a claim under this Chapter acknowledge that the Tribe is a sovereign Indigenous Nation, recognized by the United States, and is exercising its inherent sovereign authority in providing workers' compensation benefits under this Chapter.

39-5 INJURY NOTIFICATION PROCEDURE

39-5.01 All covered workers must immediately report all injuries, no matter how slight, to their Department Director, and no later than the next business day. Failure to timely report shall result in forfeiture of benefits under this Chapter, unless

the claimant can demonstrate an extraordinary reason that prevented the reporting of the injury or occupational disease in a timely manner.

39-5.02 Department Directors must immediately notify the Finance Department of an on-the-job injury no later than the next business day after receiving the report for the employee.

39-5.03 The Finance Department must submit reports of on-the-job injuries to the Claims Administrator no later than two business days after receiving a report.

39-6 CLAIM PROCEDURE

39-6.01 Claims for injury shall be made by the employee with the Finance Department within thirty (30) days of the occurrence.

39-6.02 Claims for occupational disease shall be made by the employee within thirty (30) days from date of first notice to the employee by a physician.

39-6.03 Failure to give notice of injury to the employer or to file a claim with the Finance Department within the time limits set forth in this Chapter shall constitute forfeiture by the employee, or in the case of death the employee's representatives, of all benefits available and payable under this Chapter.

39-7 BURDEN OF PROOF

The burden of proof shall rest upon the claimant to prove that any injury arose in the course and scope of the covered worker's employment.

39-8 DUTIES AND POWERS OF THE CLAIMS ADMINISTRATOR

39-8.01 The Claims Administrator or its designee shall be the payor of the workers' compensation benefits and all authorized disbursements therefore shall be paid by the Claims Administrator or a representative with its stated authority. The Claims Administrator shall be the custodian of all claim files and related documents.

39-8.02 The Claims Administrator shall administer this Chapter in accordance with the terms and conditions described herein and any rules or regulations adopted by the Tribal Council, shall remit all benefit payments providing for in

this Chapter, and shall have the authority to determine the distribution of benefit checks.

39-8.03 The State of Idaho benefits guidelines may be used as a guideline for benefits under this Chapter, provided that such guidelines are consistent with this Chapter and provided further that use of the benefits as guidelines does not constitute an adoption of those benefit levels. Use of the guidelines shall not be construed as a waiver of the Tribe's sovereign immunity.

39-8.04 The Claims Administrator is empowered to request medical reports, police reports, autopsy reports, and special investigations, engage the service of adjusters and consultants, and perform other activities as required to process any claim for benefits.

39-8.05 In the case of death of a covered worker, the Claims Administrator shall have the right to request the performance of an autopsy on the decedent from an appropriate official licensed to perform autopsies, and shall have the right to request any and all reports made from such autopsies. If requested, the legal beneficiaries of the deceased worker are entitled to have a representative present at any autopsy ordered by the Claims Administrator.

39-8.06 The Claims Administrator shall have the power to retain a consulting physician for purposes of assisting in carrying out the duties and powers herein.

39-8.07 The Claims Administrator shall have the duty to maintain complete and accurate administrative records and claim files on all activities relating to the claims made under the Policy. The Claims Administrator shall retain and preserve all closed files for not less than six years.

39-9 CLAIMS DECISION

39-9.01 The Claims Administrator shall complete its investigation and make a written decision on all claims within thirty (30) calendar days of the date a claim was filed. The decision shall be delivered to the claimant and the Finance Director no less than three days after the decision is made. If the Claims Administrator determines the claim is valid, benefit payments shall begin immediately.

39-9.02 If the Claims Administrator cannot complete its investigation within thirty (30) days:

(1) The Claims Administrator shall send the claimant and the Finance Director written notice that further investigation and the reasons for further investigation. The written notice must be sent within thirty (30) days of the claim.

(2) The Claims Administrator shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant in writing the claim is denied.

39-9.03 The Claims Administrator decision is final.

39-10 BENEFITS PRECLUDED BY NEGLIGENCE OR REFUSAL OF WORKER TO SUBMIT TO TREATMENT

39-10.01 No benefits shall be payable for the death or disability of a worker if the worker's death is caused by, or the worker's disability aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or follow reasonable surgical or medical treatment, medical aid, or advice. A worker who has refused or neglected to submit to or follow medical or therapeutic treatment, or to take medications as prescribed, will be presumed to have reached Maximum Medical Improvement. Any disability that could have been treated with a reasonable medical probability of success will be discounted in determining the appropriate impairment rating.

39-10.02 Any covered worker otherwise entitled to benefits shall be presumed to have reached Maximum Medical Improvement if such worker has refused or neglected to seek appropriate medical treatment within six (6) months from:

(1) The date the injury or occupational disease occurred; or

(2) The date on which the worker last received medical treatment for the injury or occupational disease.

39-10.03 If an injured covered worker undertakes activities on or off the job that exceed recommendations of the treating physician and cause the condition to worsen, the covered

worker may not receive benefits for the aggravation.

39-11 INJURY OR DEATH FROM CONSUMPTION OR APPLICATION OF DRUGS OR CHEMICALS

39-11.01 No benefits of any nature shall be payable for injury or death caused or contributed to by any drug, including narcotics and hallucinogens, whether organic or chemical in nature, or any gas, vapors, or fumes taken or inhaled voluntarily, or by voluntary poisoning, except those drugs prescribed by a physician or other practitioner licensed to prescribe such medication. However, no benefits shall be payable in the event the worker's injury or death was caused by the intentional abuse of prescribed drugs in excess of the prescribed therapeutic amounts.

39-11.02 No benefits of any nature shall be payable for, or on behalf of, any covered worker who is injured or killed while intoxicated or if the covered worker has any controlled substance in his or her body at the time of the injury or death, regardless of whether the intoxicated condition was the proximate cause of the injury or death. It is only necessary to prove that the covered worker was intoxicated at the time of the incident or accident to deny benefits under this Chapter. All covered workers agree: to submit to post-incident/post-accident drug and alcohol screening as authorized in the applicable Personnel Act and policies; and to waive any confidentiality or other privilege associated with the results of those tests.

39-12 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.

39-13 ENVIRONMENTAL ILLNESS OR 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.

39-14 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 the Claims Administrator's right to discovery.

39-15 PENALTIES FOR FALSE STATEMENT OR REPRESENTATION TO OBTAIN COMPENSATION

39-15.01 If, in order to obtain any benefits under the provisions of this Chapter, any person willfully makes a false statement or representation, they shall forfeit all rights to compensation, benefits, or payment.

39-15.02 The employer is entitled to take any action permitted by law to recover any payment or benefits paid under this Chapter to a covered worker where the payment or benefit was based upon the fraudulent or false statements or misrepresentation by the covered worker.

39-15.03 The employer's recovery of all, or a portion of, benefits paid based upon the fraudulent or false statements or misrepresentation by the covered worker will not preclude prosecution of the covered worker under any applicable criminal statutes.

39-16 CONFIDENTIALITY

39-16.01 The information in the Claim files and records of Covered Worker's obtained pursuant to the filing of a claim or any provisions of this Chapter 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.

39-16.02 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 Chapter 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 Chapter.

39-16.03 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 our right to discovery under Section 39-14 of this Chapter.

39-17 INJURIES RESULTING FROM SELF-INFLICTED INJURIES OR WILLFUL MISCONDUCT

No benefits of any nature shall be payable for a worker's injury or death caused by the worker's willful intention to injure himself or another. The willful disregard of an order from the employer to the worker to wear or use a safety device or to perform work in a certain manner may cause such person to forfeit all rights to compensation, benefit, or payment upon proof that such disregard or performance was the direct and proximate cause of the injury, death, or occupational disease. A worker's willful disabling of safety devices on equipment constitutes a willful intention to injure himself.

39-18 RECREATIONAL, SOCIAL OR ATHLETIC ACTIVITIES

39-18.01 No benefits shall be payable under this Chapter if the injury, occupational disease, or death 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 such activities are expressly required by the employer.

3918.02 No benefits shall be payable under this Chapter if the injury, occupational disease, or death arises from participation in voluntary physical fitness activities during the regular workday, regardless of whether the covered worker is compensated for the time in which the physical fitness activities take place.

39-19 INJURIES CAUSED BY THIRD PARTIES

No benefits shall be payable under this Chapter 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 because of reasons related to his or her employment.

39-20 IDIOPATHIC CLAIMS

39-20.01 Injury or death resulting from a natural cause such as a heart attack, stroke or other natural function failure that does not arise in the course and scope of employment and while the worker was acting in the furtherance of the employer's interest is not compensable.

39-20.02 Respiratory, heart, and cardiovascular conditions and related injuries are not compensable unless the work being performed was extraordinary and unusual compared with the covered worker's regular work, and the work being performed is found to be the primary cause of the condition. "Primary cause" means that the work being performed was responsible for more than 50% of the resulting injury or condition.

39-20.03 An injury resulting directly from idiopathic causes is not compensable unless the employment places the covered worker in a position of increased danger. This would include falls from unprotected heights (ladders, scaffolds, roofs), falls involving the hazardous attributes of industrial machinery or equipment, or episodes occurring while driving during the course and scope of employment.

39-20.04 In the event of a claim that the worker's employment was a contributing cause of the idiopathic injury, the work being performed would have had to have been extraordinary and unusual compared with the covered worker's

regular work in order to be considered compensable. In addition, medical evidence must establish that the extraordinary and unusual work was the primary cause of the condition. "Primary cause" means that the work being performed was responsible for more than 50% of the resulting injury or condition.

39-21 MENTAL TRAUMA

39-21.01 Mental traumas, disorders, or conditions, even if manifested in physical symptoms or related to stress, are not compensable injuries under this Chapter, except those that result from accidental injury traceable to a definite time, place, and cause (rather than from repetitive mental trauma), or from an unusual traumatic event as established by a licensed psychiatrist or psychologist, and the mental injury was caused by or occurs subsequent to or simultaneous with such accidental injury or unusual traumatic event.

39-21.02 Regardless of section 39-21.01, a mental trauma or emotional injury that arises principally from a personnel action is not a compensable injury under this Chapter. Personnel actions include, but are not necessarily limited to transfers, promotions, demotion, disciplinary actions, work performance evaluations, and terminations.

39-21.03 Treatment for mental injury determined compensable under this Chapter shall be limited to six (6) months after the covered worker's physical injury has healed to maximum medical improvement.

39-22 GOING TO AND RETURNING FROM WORK

39-22.01 An accident or incident occurring while a worker is on the way to or from work, including lunch break, is not within the course and scope of employment, except when such travel is directly connected with the worker's employment and in furtherance of the employer's interest. Travel is not directly connected with the worker's employment and in furtherance of the employer's interest:

(1) If the worker deviates from a reasonably direct route of travel; or

(2) If the worker is not acting in the interests of the employer.

39-23 OTHER LIMITATIONS ON BENEFITS

39-23.01 No benefits shall be payable under this Chapter for secondhand smoke claims.

39-23.02 Benefits will be paid for a maximum of twelve (12) visits for physical therapy, chiropractic, or any other treatment for any injury caused by repetitive motion or any other condition that does not have a clear physical manifestation including, but not limited to: soft tissue damage; carpal tunnel syndrome; tennis elbow; and lower back pain.

39-24 RIGHT TO COMPENSATION AND MEDICAL TREATMENT BENEFITS

Every covered worker who is injured, and in the event of a worker's death, the dependents of every covered worker who is killed, in the course and scope of employment and while acting in the furtherance of the employer's interest at the time of the incident or accident, unless the injury is otherwise limited or excluded by the terms and conditions of this Chapter, is entitled to receive, and shall be paid, for loss sustained on account of the injury, death or occupational disease, the benefits provided under this Chapter.

39-25 EXCLUSIVE REMEDY

The rights and remedies provided to workers in this Chapter are the exclusive and only rights and remedies of such workers, their personal or legal representative(s) or dependent(s), on account of injuries arising out of and in the course and scope of employment. Workers have no other remedies against the employer, the employer's representative, insurer, guarantor or surety, for any matter relating to the occurrence of an injury or payment for any injury covered under this Chapter, including any other benefits or compensation that a worker may attempt to obtain from a third party that may be able to seek indemnification from the covered employer.

39-26 WAITING PERIOD

An initial waiting period of five (5) 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 five (5) calendar days can be considered for benefits if the Covered Worker received no other

compensation during this time, including but not limited to leave provided under the Personnel Act.

39-27 EFFECT OF WORKERS' COMPENSATION PAID IN OTHER JURISDICTIONS

A covered worker who pursues and recovers compensation under the workers' compensation laws of another jurisdiction is barred from recovering under this Chapter.

39-28 LIABILITY OF THIRD PARTIES – SUBROGATION

39-28.01 A covered worker may pursue a complaint against a third party for damages resulting from a work-related injury caused by the negligence of the third party or by negligence attributable to the third party, but the employer (or its insurer, guarantor, or surety) shall be subrogated to the common law rights of the worker to pursue such complaint. Therefore, a covered worker may not bring such a suit without first notifying the employer.

39-28.02 In case of a recovery against a third party, the Claims Administrator shall distribute the proceeds of such recovery as follows:

(1) To the employer, a sum sufficient to repay the employer for the benefits actually paid to the worker under this Chapter up to that time;

(2) To the employer, a sum sufficient to pay the employer the present worth, computed at the current legal interest rate for court judgments and decrees, of the future payments of compensation for which the employer is likely to be liable to the worker, even though that sum is not the final adjudication of the future payments that the worker is entitled to receive, and if the sum received by the employer is in excess of the amount the employer is actually required to pay in compensation to the worker, the excess shall be paid to the worker; and

(3) The balance, if any, shall be distributed to the worker or, in the case of death, to the worker's dependents, if any.

39-29 BENEFIT OFFSETS

The Claims Administrator is entitled to reduce benefits payable to Covered Workers under this Chapter 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, 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 Chapter; or in the case where no impairment benefits are payable, then such overpayment of benefits may be deducted through payroll deductions.

39-30 ASSIGNABILITY OF BENEFITS – ATTACHMENT OF LIENS

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

(1) Court-ordered child support issued or recognized by the Tribal Court;

(2) A subrogation interest established under this Chapter; and

(3) Debts owed to the Tribe.

39-31 AGGRAVATION OF PRE-EXISTING DISEASE OR CONDITION

If a covered worker is suffering from a pre-existing injury or disease at the time of an injury or occupational disease that arises in the course and scope of the worker's employment and while the worker was acting in furtherance of the employer's interest, and the pre-existing injury or disease is aggravated thereby, the aggravation is subject to the provisions of this Chapter. The amount of the disability award under this Chapter may be reduced or denied in its entirety by the Claims Administrator in consideration of the following:

(1) A prior settlement from any source for the same impairment;

(2) The difference between the degree of impairment of the worker before the covered injury or occupational disease and the degree of impairment after the covered injury or occupational disease; and

(3) The benefits to be paid for impairments and/or disabilities would be in excess of 100% of the whole person. For purposes of this subsection, benefits include those benefits or payments made under this Chapter, benefits from the workers' compensation laws of any other jurisdiction, and payments from third parties.

39-32 PRESUMPTIONS REGARDING OCCUPATIONAL ILLNESS AND DISEASE

Full-time firefighters and law enforcement officials, after five (5) years of continuous employment with the Tribe, shall receive the benefit of a rebuttable presumption that the following occupational illnesses or diseases are caused by their employment and are therefore compensable injuries or illnesses pursuant to this Chapter: heart trouble, pneumonia, hernia, tuberculosis, hepatitis, acquired immune deficiency syndrome, and cancer. The presumption is controlling absent any evidence that the illness or disease is caused other than by the worker's employment with the Tribe. The Tribe shall require firefighters and law enforcement officers to have an annual physical to be eligible for this presumption. The presumption will be nullified if a firefighter or law enforcement officer uses tobacco products.

39-33 TERMINATION OF BENEFITS UPON DEATH

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

39-34 DISABILITY BENEFITS

39-34.01 When a worker is disabled from work as determined by the consulting physician, or in the Claims Administrator's discretion, the

attending physician, by reason of a compensable injury or occupational disease, disability benefits shall be payable as follows:

(1) If the covered worker is 100% disabled, disability benefits are payable at 70% of the worker's pre-injury average weekly wage; or

(2) If the covered worker is less than 100% disabled, disability benefits are payable at 70% of the difference between a worker's pre-injury average weekly wage and the wage the covered worker is earning or capable of earning in his/her partially disabled condition.

39-34.02 Except as provided in this Chapter, disability benefits will continue to be paid in accordance with the terms of this Chapter until the time at which the earliest of the following occurs:

(1) The expiration of 156 weeks from the date of the occurrence, or in the case of an occupational disease, 156 weeks from the earlier of either the first manifestation of the symptoms or notification from a physician that the illness is inherent in or related to the worker's occupation;

(2) The consulting physician, or in the discretion of the Claims Administrator, the attending physician, declares that the worker has reached Maximum Medical Improvement;

(3) The covered worker is incarcerated;

(4) The attending physician provides a full, unrestricted release;

(5) The attending physician provides a modified or light duty release, and the worker rejects a bona fide job offer of suitable work consistent with the worker's disability;

(6) A new or intervening incident is the proximate cause of disability;

(7) The worker refuses benefits;

(8) A presumption of MMI based on neglect or refusal to submit to medical treatment as set forth in this Chapter;

(9) A suspension of benefits by the Claims Administrator for reasons authorized in this Chapter;

(10) A reduction of the worker's earning capacity for reasons other than the disability from the work-related injury; or

(11) The covered worker dies from any cause not resulting from the injury for which the worker was entitled to compensation under this section, and the worker's estate is not entitled to any further benefits as defined in this Chapter.

39-35 IMPAIRMENT BENEFITS

39-35.01 At the expiration of 156 weeks from the date of the injury, the worker is presumed to have reached MMI regardless of disability or current medical status. At that time, the attending physician is to provide: an impairment rating based on reasonable medical probability and in accordance with the most current edition of the *Guides to the Evaluation of Permanent Impairment* published by the American Medical Association (the "AMA Guidelines"); and a treatment plan for reasonable and necessary future medical needs. The attending physician's impairment rating and treatment plan may be subject to review and revision by a consulting physician at the discretion of the Claims Administrator.

39-35.02 Impairment ratings are to be converted to the covered worker as a whole, and impairment ratings assigned to a specific body part are to be converted in accordance with the *AMA Guidelines*.

39-35.03 A rating may not be issued prior to the declaration of Maximum Medical Improvement. The Claims Administrator may reserve issuance of payment under the following conditions:

(1) Contribution for prior impairment ratings;

(2) Clarification by the Claims Administrator as to the validity of the date for MMI;

(3) Similar impairment rating issues or MMI issues remain to be resolved by the consulting physician.

39-35.04 The rating recognized by the Claims Administrator is binding. The rating will not be retroactively paid for weeks accrued in resolving the rating issue subsequent to the date

of Maximum Medical Improvement. Such benefits will become effective the date of the ruling and commence at that time. Benefits will not be withheld beyond a reasonable time period in clarification of the rating and MMI date.

39-35.05 Benefits will be payable based on the impairment rating issued to the covered worker multiplied by \$300,000, provided the total claims cost does not exceed \$5,000,000 per claim or such other amount of insurance coverage in the policy then in effect, subject to the limitations contained in the Policy.

39-35.06 A lump sum settlement for impairments will be given for those covered workers who receive an impairment rating of 15% or less of the covered worker as a whole.

39-36 BENEFIT ISSUANCE PERIOD

Except as provided herein:

(1) Disability and impairment benefits under this Chapter are to be issued bi-weekly and shall not exceed 100% of the worker's pre-injury average weekly wage.

(2) Except as otherwise provided in this Chapter, there shall be no acceleration of disability or impairment benefits.

39-37 ENTITLEMENT TO DEATH BENEFITS

When a covered worker dies as a result of a compensable injury, the worker's dependents are entitled to death benefits.

39-37.01 Death benefits shall be payable to the worker's dependents based on 70% of the worker's average weekly wage per week for a maximum of \$300,000.00, provided the total claims cost does not exceed \$5,000,000 per claim or such other amount of insurance coverage in the policy then in effect, commencing from the date of death.

(1) If there are no children entitled to death benefits, then all to the surviving spouse for the life of the surviving spouse, or until the spouse remarries, whichever occurs first.

(2) If there are surviving dependent children and a surviving spouse, the surviving spouse shall be entitled to one-half of death benefits for the life of the surviving spouse, or

until the spouse remarries, whichever occurs first, and the other half of the death benefits shall be paid to each dependent child in equal shares.

(3) If there is no surviving spouse, then the death benefits shall be paid to the worker's surviving dependent children in equal shares.

(4) If there is no surviving spouse or surviving dependent child, death benefits shall be paid to any surviving dependent grandchildren in equal shares until the grandchild is no longer a dependent, or until the grandchild dies, whichever occurs first.

(5) If there is no surviving spouse, dependent child, or dependent grandchild, the death benefits shall be paid in equal shares to any other surviving dependent(s).

(6) If a deceased worker is not survived by any eligible dependents, the Employer's duty to pay death benefits under this Chapter, except burial benefits, shall cease immediately.

39-37.02 Where a worker is entitled to compensation under this Chapter for an injury, and death ensues from any cause not resulting from the injury for which the worker was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability of the employer shall terminate.

39-37.03 In the event a covered worker's death occurs after a period of disability, any disability benefits paid to the worker shall be deducted from the death benefits to which the worker's dependents may be entitled.

39-38 VERIFICATION OF ELIGIBILITY OF DEATH BENEFITS

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

39-39 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.

39-40 MEDICARE SET ASIDES

The Medicare/Medicaid SCHIP Extension Act (MMSEA) sets forth reporting requirements for insurers where criteria established pursuant to the Act have been met. The Tribe recognizes those requirements (see, e.g. Section 7.1 of the NGHP User Guide), and nothing herein shall prevent the Claims 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 39-35.01 of this Chapter, such supportive care will only be provided as specified by a medical provider authorized by the Claims 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 Claims Administrator shall have any further obligation to pay benefits under this Chapter, inclusive of any subsequent Medicare liens.

39-41 ENTITLEMENT TO MEDICAL BENEFITS

All covered workers are entitled to reasonable health care, supplies, and reasonably necessary transportation incurred for such services. Medical benefits are payable from the date the compensable injury or accident occurred.

39-42 EMPLOYER'S RIGHT TO SELECT DOCTOR

39-42.01 Except in an emergency where the employer or Claims Administrator agent cannot be reached immediately, the employer retains the right to approve or recommend all health care treatment. Health care treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the worker. If the worker has reason to be dissatisfied with the care offered, the worker should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the worker may agree to alternate care reasonably suited to treat the injury. If the employer and the worker cannot agree on alternate care, the Claims Administrator may allow and order such alternate care upon application and reasonable proof of the necessity thereof. Any non-authorized treatment of the covered worker is not

payable under this section and shall be at the worker's sole expense.

39-42.02 Employer retains the right to approve all chiropractic, osteopathic, naturopathic, acupuncture, or other non-traditional forms of treatment and to have such forms of treatment approved by the attending physician. Duration of treatment or number of visits to such medical providers shall be subject to the approval of the Claims Administrator, who may rely upon the advice of the consulting or attending physician.

39-43 RELEASE OF MEDICAL-RELATED INFORMATION

Any worker, employer, or insurance carrier or their agents making or defending a claim for benefits agrees to the release of all information to which the worker, employer, insurance carrier, or their agents have access concerning the worker's physical or mental condition relative to the claim and further waives any privilege for the release of such information. The information shall be made available to any party or the party's representative upon request, including any third-party health care providers. Any institution or person releasing such information to a party or the party's representative shall not be liable criminally or for civil damages by reason of the release of the information.

39-44 MEDICAL EXPENSES

Medical expenses shall be limited to the usual and customary amounts charged in the community, or like community, for similar services. Charges believed to be excessive or unnecessary may be denied by the Claims Administrator.

39-45 SETTLEMENT OF BENEFIT AMOUNTS

The covered employer and the claimant may negotiate settlement of future medical expenses, income loss, impairment, death benefit and other benefits under this Chapter that are owed to the covered worker or to the worker's estate. For purposes of settling future medical expenses, the basis for settlement will be the value of the current and future medical treatment plan, but will not exceed \$100,000, provided the total claims cost does not exceed \$5,000,000 per claim or such other amount of insurance coverage in the

policy then in effect, unless approved by the Tribal Council.

39-46 PETITION TO REOPEN CLAIM

Once a claim for medical benefits or disability benefits under this Chapter has been closed, the worker may petition the Claims Administrator to re-open the claim for benefits within one (1) year after the date of claim closure based upon an objective material worsening of the underlying condition. The Claims Administrator will investigate and accept or deny the petition to re-open in the same manner as new claims submitted.

39-47 RIGHT TO WAIVE DEFENSES

The Claims Administrator shall have the right and power to waive any and all defenses affecting the compensability of a covered injury under this Chapter.

39-48 SEVERABILITY

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

39-49 SOVEREIGN IMMUNITY

Nothing hereunder is intended to be or shall be interpreted to be a waiver of sovereign immunity of the Kootenai Tribe of Idaho from unconsented suit in Tribal, Federal or State court.