

TRIBAL COURT CODE
CHAPTER 93
WORKERS' COMPENSATION

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TRIBAL COURT CODE

CHAPTER 93

WORKERS' COMPENSATION

93.101 Citation and Purpose.

This Code shall be known and cited as the "Workers' Compensation Code." The purpose of this Code is to establish the rights and benefits of employees of the Lac du Flambeau Band of Lake Superior Chippewa Indians and its affiliated entities including but not limited to the Lake of the Torches Resort & Casino, who suffer Compensable Injuries in the employment of the Tribe and/or its affiliated entities. Benefits under this Code are the employee's exclusive remedy.

93.102 No Waiver of Sovereign Immunity or Application of State Law.

Other than as provided in Section 93.113(10), nothing in this Chapter shall be deemed or construed as a waiver by the Lac du Flambeau Band of Lake Superior Chippewa Indians and/or any of its affiliated entities of the sovereign immunity of the Tribe. The Tribe or its affiliated entities are not subject to or bound by the State of Wisconsin's statutory workers' compensation system, regardless of the election of the Tribe, its affiliates, or the Administrator of the Code to draw upon certain elements or standards contained in Wisconsin's statutory workers' compensation system. The Tribe does not consent to the jurisdiction of any state administrative process or court for the resolution of workers' compensation disputes.

93.103 Definitions.

- (1) "Accidents" means a specific occurrence, neither expected nor intended, which causes bodily injury to an employee and arises under circumstances constituting a Compensable Injury.
- (2) "Administrator" means the person, company, office or entity whom the Tribal Council has chosen to act on behalf of the Tribe in the administration of this Code.
- (3) "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.

- (4) “Compensable Injury” means a bodily injury of an employee caused by an accident when that injury arises out of risk of employment, the injury occurs during a period of employment, and while performing duties of the employment in or on the premises of the Employer or whenever the Employer requires the employee to perform the employment activities.
- (5) “Compensation Rates” means 66⅔ percent of the Weekly Wage as defined in this Chapter, subject to the maximum rate adopted by the state's Department of Workforce Development. A reduction of 25 percent of weekly wage will be enforced when safety equipment is required, but not used. Rate of pay determined at the time of injury will be used throughout the term of loss.
- (6) “Covered Employee” or “Employee” means any person who performs labor services alone for the Tribe for hire at an established wage or salary.
- (7) “Employer” means the Tribe, arms of the Tribe or wholly-owned Tribal entities, where it has obtained the labor services of a person for hire.
- (8) “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.
- (9) “Tribal Council” means the Tribal Council of the Lac du Flambeau Band of Lake Superior Chippewa Indians.
- (10) “Tribe” means the Lac du Flambeau Band of Lake Superior Chippewa Indians.
- (11) “Code” means the Lac du Flambeau Band of Lake Superior Chippewa Indians Workers’ Compensation Code.
- (12) “Waiting Period” means the first three (3) scheduled days lost, for which no Workers’ Compensation benefits will be paid, counted from the first day of disability due to a Compensable Injury. If the disability continues beyond seven (7) calendar days, compensation is payable for scheduled days lost from the first day of disability. No annual or sick leave may be used for the first three (3) scheduled days lost. If the employee chooses to be paid annual or sick leave, it will be deducted from the loss time paid.
- (13) “Weekly Wage” means:
 - (a) 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.
 - (b) 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.

- (c) In no case are overtime wages considered in determining the Weekly Wage.
- (d) 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.

93.104 Reporting Obligation.

- (1) An employee must report any injury, no matter how slight, to his or her supervisor or other person designated to receive such reports no later than the end of the employee's workday on the day of the accident causing the Bodily Injury. Any employee determined to have been able, but who fails, to report in a timely manner within 24 hours shall result in the employee not being eligible for compensation and/or medical benefits under this Code.
- (2) If a work-related Accident causes serious Bodily Injury or death to an associate, the supervisor or department head will immediately notify the personnel department and the safety manager. Medical treatment for work-related injuries, if and when necessary, will be sought from a professional health care provider. In an emergency situation, the most convenient medical service may be used by the injured associate.
- (3) As soon as possible following a work-related injury, but by no later than the end of the first business day following the date of the accident/incident, the supervisor of the injured associate or other designated person will complete and file with the safety department a "Supervisor's Report of Injury" form.

93.105 Medical Benefits.

This Code 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 Code. After this second visit, the employee may not change Primary Physician without the approval of the Administrator or the Tribe. A change not approved by the Tribe may result in termination of Benefits or payments of medical expenses under

this Code. The Tribe reserves the right to require care to be provided by a provider with whom the Tribe has a preferred or discount arrangement. If the Tribe elects that right and the employee chooses to see another provider, the Tribe will no longer provide benefits or medical expenses under this Code.

- (b) This Code will pay hospital and related charges only for services ordered by the Primary or Referral Physician.
- (c) This Code will pay the reasonable and necessary medical costs and the cost of medicines and supplies and equipment of a therapeutic nature to treat the Bodily Injury only if ordered by the Primary or Referral Physician.
- (d) This Code will pay surgical charges only if the surgery is done 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.
- (e) This Code will reimburse the employee for the reasonable cost of mileage and other related expense necessarily incurred to obtain medical treatment other than the cost of childcare. The mileage reimbursement rate shall be that rate as established by the State of Wisconsin for Workers' compensation purposes.
- (f) The Tribe has a right to request an Independent Medical Examination at any time.
- (g) If the employee unreasonably fails to appear for a scheduled Independent Medical Examination, the responsibility of the Employer for payment under this Code of medical expenses incurred after the scheduled date of that Examination ceases. Likewise, the Employer's responsibility for payment of all other benefits accruing under this Code ceases immediately upon that failure to appear.
- (h) 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 Code will cease.
- (i) 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 20 days of a written request

to do so, the responsibility of the Employer for payment of all benefits and medical expenses under this Code will cease.

- (j) When the employee has reached his or her end of healing, payments for medical costs will cease.
- (k) While the Tribe and its Administrator may have access to information regarding employee's treatment, progress and condition, it is the obligation of the employee, and not the Tribe or its Administrator, to fully communicate any and all information that may be relevant to the employee's ability to return to work for regular or light/restricted duty or receive Benefits under this Code.
- (l) If the employee has been offered temporary light or restricted duty and the employee refuses the duty without first establishing medical necessity, payments for medical costs may cease.

93.106 Return to Work.

- (1) Positions with a Compensable Injury 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.
- (2) In the event the associate does not have enough hours or extinguishes existing hours, Tribal Workers' Compensation of lost time benefits assistance will be provided. In cases where an associate has been absent under work-related injury leave for a period extending thirty (30) calendar days, the department manager and personnel director shall review the case's progress with the safety manager. The department manager shall take reasonable steps to return the individual to duty, temporarily restricted if necessary, in a comparable position for which he or she is qualified and able to perform the essential functions with or without reasonable accommodations. However, restricted duty may or may not be available at any given time, depending solely upon the needs of the manager at the time, and it may be utilized only for an associate who is recovering from an injury suffered while acting within the scope and in the course of his or her employment. Further, any authorized restricted duty must be under the guidelines of a health care provider and re-evaluated at least monthly and, prior to any re-authorization of restricted duty, measurable progress in the associate's condition must be identified by the department manager and the associate's health care provider. In the case of conflicting opinion, then the opinion of the health care provider shall prevail.

- (3) Also, in the event an associate sustains a work-related injury or illness during a temporary contract period, assistance will be provided which requires medical, surgical, or hospital treatment. Any change of employment status in regard to temporary contracts will negate further assistance in respect to Tribal Workers' Compensation of lost time benefits, thus not affecting medical, surgical, or hospital treatment assistance.

93.107 Lost Time Benefits.

An employee who is scheduled for work-related injury leave they may be eligible to return to work, under the guidelines of a health care provider, to restricted or temporary light duty status for work. Should it become apparent that an employee on work-related injury leave will be unable to return to restricted or temporary light duty the employee may be eligible to receive Tribal Workers' Compensation of lost time benefits program for the duration of the work-related injury leave. However, the use of paid time off (PTO) hours will be utilized first to cover all periods of work-related injury leave.

93.108 Disability Benefits.

- (1) Temporary Total Disability. Temporary Total Disability is that time, after the Waiting Period when, solely as a direct result of the Bodily Injury, the employee is totally disabled from performing for the Employer the employee's normal duties which the employee was engaged in at the time of the Bodily Injury, or of other light, restricted or modified work that the Employer offers.
 - (a) Total Disability must be evidenced by medical opinion based on examination and treatment rendered at the time of the claimed disability.
 - (b) The weekly benefits for Temporary Disability are limited to the maximum compensation period of 200 weeks.
- (2) Temporary Partial Disability. Temporary Partial Disability is the loss of actual earnings suffered by an employee who has returned to light duty, restricted or modified work offered by the Employer solely because of the ongoing effects of the bodily injury and the employee's physical inability to return to employee's normal duties of Employment with the Tribe which the employee engaged in at the time of the Bodily Injury.
 - (a) The weekly benefits for Temporary Partial Disability is 66⅔ 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 that the Employer offers.
 - (b) Temporary Partial Disability benefits are limited to the maximum compensation period of 50 weeks.

- (3) Permanent Disability. This benefit is intended to compensate the injured employee for a permanent loss of or loss of use of a member suffered directly as a result of a Compensable Bodily Injury.
- (a) Preexisting disabilities are not to be included when rating a Permanent Partial Disability. A rating of Permanent Partial Disability must represent only that loss resulting solely from the Compensable Bodily Injury.
 - (b) All ratings of Permanent Partial Disability shall be based on the Permanent Disability Schedule adopted by the Tribe and published as Annex A to this Code.
 - (c) In cases of Permanent Partial Disability due to injury to a member resulting in less than total loss of the member, not otherwise compensated in this Schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the Schedule for the total loss of the member which the extent of the injury to the member bears its total loss.
 - (d) Benefits paid for Permanent Partial Disability shall be computed at two-thirds of the average weekly earnings of the employee, up to the maximum weekly benefit established the state's Department of Workforce Development, and multiplied by the calculated proportion of the number of weeks specified in the Schedule.
 - (e) The amount payable to the employee shall be paid in one lump sum.
 - (f) 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.
- (4) Permanent Partial Disability benefits are neither payable concurrently with Temporary Total or Temporary Partial benefits, nor payable to the employee's dependents or heirs, regardless of the cause of death of the employee.
- (5) The Tribe or Administrator will pay Temporary Total or Temporary Partial disability benefits on a weekly basis.
- (6) If an employee refuses light, restricted or modified work offered by the Employer, without first establishing medical necessity or becomes voluntary unemployed, or is dismissed for violation of any applicable employee policy, rule or requirement and/or violation of law, all benefits will cease.

- (7) 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 preexisting disability.
- (8) 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 Code ceases immediately upon the failure to appear.
- (9) 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.
- (10) When an employee has reached his or her end of healing, payment of loss of time will cease.

93.109 Dependent Benefits.

- (1) In the event of the death of the employee due to a Compensable Injury, payment of all disability and medical benefits shall cease and compensation varies according to the employee's wage up to the maximum wage in effect at time of injury. Dependents will receive monthly payments equal to the indicated percentage of the Weekly Wage under this Section. The maximum amount paid is four times the average annual earnings to a maximum of \$125,000, and may be reduced by the amount of benefits previously paid under this Chapter. Payments will be made as follows:
 - (a) Dependent Spouse alone: 50 percent of Weekly Wage. The legal spouse must have lived with the deceased at the time of death.
 - (b) Dependent Spouse and one (1) or more Dependent Children: 66 $\frac{2}{3}$ percent of Weekly Wage.
 - (c) One Dependent Child but no Dependent Spouse: 40 percent of Weekly Wage.
 - (d) Two or more Dependent Children but no Dependent Spouse: 60 percent of the Weekly Wage.
 - (e) Other Dependents will receive benefits in the percentage that their provable dependency on the decedent bears to the maximum benefits available and the dependency of the other Dependents. Regardless of the number of Dependents, the maximum benefits will not exceed 66 $\frac{2}{3}$ percent of the Weekly Wage at the time of injury.

- (f) If a Dependent Spouse remarries, no further benefits shall be payable to that Spouse. If one or more children remain Dependent, benefits will continue to be paid for the benefit of the Child, or Children, pursuant to paragraphs c and d, above, until they cease to be Dependent.
- (g) Benefits payable to Dependents shall be paid to them or to any guardian or other responsible party as directed by the Tribe for the use and benefit of the Dependents.
- (h) If a Dependent Child, upon reaching the age of which that Child would cease to be Dependent, is totally disabled due to a physical or mental impairment, benefits will continue to be paid under the appropriate provision above until the disability ends or the maximum is paid, whichever comes first.
- (i) The Tribe or the Administrator will pay Dependency benefits on a weekly basis.
- (j) In cases where an employee's death results from Compensable Injury, the reasonable expense of burial, not to exceed \$4,000.00, will be paid in addition to any other benefits payable under this Section.

93.110 Recurrence.

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

93.111 Election of Remedies.

- (1) 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 Code and against the other party.
- (2) If the employee or Dependents elect to claim benefits under this Code, 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 Code 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 Code.

- (3) If the employee or Dependents elect to pursue a cause of action against the other party, no benefits will be payable under this Code 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 Code.
- (4) 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 Code and deduction of the costs of collection, will be paid over to the employee or Dependents.

93.112 Administrator.

The Administrator will act on behalf of the Tribe in receiving and processing Workers' Compensation claims under this Chapter, and in applying the terms of this Chapter as delegated by the Tribe. The responsibility of the Administrator to make determinations and decisions will include, but is not limited to, the following areas.

- (1) 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.
- (2) The Administrator will determine the reasonableness and necessity of medical care and charges and will determine amounts payable under the Code. The Administrator will also approve or disapprove any change of Primary Physician, Referral Physician, or surgical procedure.
- (3) Based on information supplied by the Employer and/or employee, the Administrator will determine the Compensation Rate payable for Temporary Total, Temporary Partial, Permanent Partial Disability, and for Dependency.
- (4) The Administrator will determine the eligibility of Dependents and the term of any Dependency Benefits payable.
- (5) In the event of the need to allocate Dependency Benefits between Dependents living in different households, the Administrator will make necessary allocation, based on the obligations, legal or otherwise of the decedent.

- (6) If an employee claim is subject to any limitations, the Administrator will advise the employee and Employer of the effect of this limitation in writing.

93.113 Tribal Court Appeal.

- (1) A final decision of the Administrator concerning the provision of benefits under this Chapter may be appealed to the Tribal Court by filing a Notice of Appeal with the Tribal Court and serving such Notice on the Administrator within five days after the filing. Any appeal under this Section shall be filed within thirty days after the Administrator has given the employee actual written notice of the final decision, or has mailed such written notice to the employee at his or her last known address by United States mail.
- (2) The matter will be scheduled for a hearing within 120 days of receipt of the request for a hearing from the employee or Dependents. The employee or Dependents may request an extension of up to 90 days, which must be granted by the Tribal Court.
- (3) The Tribal Court will consider evidence, hear witnesses and receive exhibits in keeping with its goal of making a just final determination.
- (4) The Tribal Court shall not consider any information that has not been produced at least 15 days prior to date that the Tribal Court has scheduled a hearing.
- (5) The burden of proof in any hearing before the Tribal Court will be on the employee or Dependents.
- (6) The employee or Dependents may have legal representation at any hearing before the Tribal Court. The cost of representation will be borne by the employee or Dependents.
- (7) The Tribal Court may affirm or reverse the decision of the Administrator, or may modify such decision as the Tribal Court in its sound discretion deems appropriate. The decision of the Administrator shall be affirmed unless it is arbitrary and capricious. The Tribal Court shall not award attorneys' fees, costs, or extraordinary or punitive damages against the employer.
- (8) The Tribal Court shall make its decision on any appeal under this Section within forty-five days (45) days after the hearing.
- (9) The Tribe's Court of Appeals shall have exclusive jurisdiction over appeals of the Tribal Court's decisions. All decisions of the Tribe's Court of Appeals are final.

- (10) The sovereign immunity of the Tribe and the Administrator to suit in the Tribal Court is hereby waived for the limited purpose of appeals of final decisions of the Administrator under this Section and for the limited purpose of enforcing the Tribal Court's decision on such appeals.

93.114 Fraud.

It is unlawful and a violation of this Code for a person to obtain or assist in obtaining benefits to which the person is not entitled. As used in this section, "person" includes but is not limited to an employee, other beneficiary, supervisor or medical provider. Benefits shall not be granted and may be terminated if obtained by fraud. The Tribe shall have a cause of action in Tribal Court for the termination of any benefits received under this Code by fraudulent means.

93.115 Severability.

If any section, provision or portion of this Code is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, then the remainder of this Code will remain in full force and effect.

ANNEX A – Permanent Disability Schedule

Disability.....	Benefits
Loss of arm at shoulder.....	500 weeks
Loss of arm at elbow	450 weeks
Loss of hand.....	400 weeks
Loss of palm where the thumb remains	325 weeks
Loss of thumb and the metacarpal bone thereof.....	160 weeks
Loss of thumb at the proximal joint.....	120 weeks
Loss of thumb at the distal joint.....	50 weeks
Loss of all fingers on one hand at their proximal joints	225 weeks
Loss of index finger and the metacarpal bone thereof.....	60 weeks
Loss of index finger at the proximal joint.....	50 weeks
Loss of index finger at the second joint.....	30 weeks
Loss of index finger at the distal joint	12 weeks
Loss of middle finger and the metacarpal bone thereof.....	45 weeks
Loss of middle finger at the proximal joint	35 weeks
Loss of middle finger at the second joint.....	20 weeks
Loss of middle finger at the distal joint	8 weeks
Loss of ring finger and the metacarpal bone thereof	26 weeks
Loss of ring finger at the proximal joint	20 weeks
Loss of ring finger at the second joint	15 weeks
Loss of ring finger at the distal joint.....	6 weeks
Loss of little finger and the metacarpal bone thereof	28 weeks
Loss of little finger at the proximal joint	22 weeks
Loss of little finger at the second joint.....	16 weeks
Loss of little finger at the distal joint.....	6 weeks
Loss of leg at hip.....	500 weeks
Loss of leg at the knee	425 weeks
Loss of foot at ankle.....	250 weeks

Loss of great toe with the metatarsal bone thereof	84 weeks
Loss of great toe at the proximal joint	25 weeks
Loss of great toe at the distal joint	12 weeks
Loss of second toe with the metatarsal bone thereof	25 weeks
Loss of second toe at the proximal joint	8 weeks
Loss of second toe at the second joint	6 weeks
Loss of second toe at the distal joint	4 weeks
Loss of third, fourth or little toe with the metatarsal thereof	20 weeks
Loss of third, fourth or little tow at the proximal joint	6 weeks
Loss of third, fourth or little toe at the second or distal joints	4 weeks
Loss of an eye by enucleation or evisceration	275 weeks
Total impairment of one eye for industrial use	250 weeks
Total deafness from accident or sudden trauma	330 weeks
Total deafness of one ear from accident or sudden trauma	55 weeks

For permanent partial disability not covered by the above schedule, the total number of weeks of indemnity shall be determined by the Administrator but shall not exceed 500 weeks and shall be payable at the rate 66 $\frac{2}{3}$ percent of the average weekly earnings of the employee up to a maximum of \$ 200,000.