

**PRAIRIE ISLAND INDIAN COMMUNITY
IN MINNESOTA**

**AN ORDINANCE GOVERNING
WORKERS' COMPENSATION
Effective October 1, 1996**

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PART A
ADMINISTRATION AND ENFORCEMENT

Section 1. Purpose. By adoption of this Ordinance, the Tribal Council of the Prairie Island Indian Community (herein after referred to as Tribal Council) intends to provide the compensation outlined herein to employees of the Community and its business enterprise located on the Community's reservation for injuries arising out of the employment relationship with the employer. The Tribal Council hereby declares this Ordinance is not remedial in any sense and is not to be given a broad liberal construction in favor of any claimant or employee.

Section 2. Enforcement. The Tribal Council is charged with the duty and authority to carry out and enforce the provisions of this Ordinance. The Tribal Council may make rules and regulations consistent with the provisions of this Ordinance, to carry out the provisions of this Ordinance. Rules adopted pursuant to this Ordinance shall be effective for one year after adoption.

Section 3. Administration. The Tribal Council may delegate claims administration, dispute resolution, record-keeping, loss management, reporting and related administration pursuant to this Ordinance to a third-party administrator. The Tribal Council shall have the authority to contract with such third party administrator for administrative services.

Section 4. Responsibility Assumed by Employer. The responsibility of the Prairie Island Indian Community in Minnesota is limited to the compensation provided by this Ordinance, and such responsibility shall not be expanded except by amendment of the Ordinance by the Tribal Council pursuant to the constitution and by-laws of the Prairie Island Community in Minnesota. Enactment of this Ordinance shall not be construed as a waiver of sovereign immunity except as to the limits of the compensation provided by this paragraph. The Prairie Island Indian Community hereby limits its annual financial responsibility pursuant to the terms of this Ordinance to an amount specified by rule for the total of all claims made hereunder and in no event shall one individual claim exceed the terms as delineated in Part D of this Ordinance.

PART B DEFINITIONS AND GENERAL PROVISION

Section 1. Citation. This Ordinance shall be known and cited as the “Prairie Island Indian Community Workers’ Compensation Ordinance.”

Section 2. Definitions.

“Average weekly wage” means the injured employee’s earnings over the 26 weeks prior to the date of injury, including holiday pay and vacation pay, divided by the number of calendar weeks during the 26-week period that the employee actually worked. For purposes of determining the number of weeks the employee actually worked, holiday and vacation days shall be included as working days. The determination of average weekly wage under this section shall consider earnings from only those employments engaged in at the time of injury, and earnings from employment at the time of injury other than with the employer shall be limited to \$200 per week for purposes of calculating average weekly wage.

Example: Employee, injured while in the course of employment with Prairie Island Indian Community, was contemporaneously employed on the date of injury with employer X. On the date of injury the employee earned \$175 per week with Prairie Island Indian Community and \$300 per week with employer X. Therefore, the average weekly wage under this ordinance was \$375.

“Earnings,” for purposes of calculating weekly wage only, means compensation for work performed, excluding the value of any fringe benefits (such as bonuses, profit sharing, insurance, or meals). Overtime earnings shall be included as earnings only if the employee earned overtime wages in more than half of the number of weeks the employee actually worked in the 26 weeks preceding the injury. Tips shall not be included unless reported by the employee to the employer or government revenue service prior to the date of injury.

“Injury” or “personal injury” means an injury arising out of and in the course of employment, including specific injury, repetitive traumatic injury, or occupational disease.

“Employee” means an individual hired by the Tribal Council, its agents or delegates, who was paid or owed actual wages.

“Employer” means the Prairie Island Indian Community in Minnesota or any economic enterprise thereof.

Section 3. Right of Action When a Third Person is Liable—Election by Employee. Whenever an injury for which benefits are payable under this Ordinance occurs under circumstances creating a legal liability in a person other than the employer, the injured employee may either claim benefits under this Ordinance or proceed at law against such other person to recover damages, but the employee shall not pursue claims against both.

Section 4. Compensation Paid by Employer—Reimbursement from Third Party. If benefits have been awarded or paid under this Ordinance, and the employee has suffered damages for which another person is legally liable on account of the same injury or condition for which benefits were paid, the employer may collect in its own name or that of the injured employee or may recover from the employee an amount equal to the amount of benefits paid by the employer to the employee. Acceptance of benefits under this section constitutes an assignment of the employee's rights to the employer to the extent of benefits paid or payable.

Section 5. Assignability. No claim for benefits under this Ordinance is assignable, and all benefits are exempt from claims of creditors except those for child and spousal support obligations. If the employer is served with a valid child support order or spousal maintenance support order by a court of any jurisdiction of the United States, the employer shall deduct the child support or maintenance obligation from compensation otherwise payable under this Ordinance and pay the deducted amount directly to the court or its designated agent.

Section 6. Waiver of Privilege. Application for or acceptance of any benefits under this Ordinance shall constitute a waiver of privilege by the employee or the employee's dependents. Immediately upon request by the Ordinance Administrator, the employee shall provide such medical, employment, social security, state agency, educational, or other authorizations as may be requested by the Ordinance Administrator. Failure to provide the requested authorizations shall result in a delay of benefits until the authorizations are provided, or a dismissal of the claim, in the discretion of the Prairie Island Indian Community Worker's Compensation Court, hereinafter referred to as "the Court."

Section 7. Burden and Standard of Proof. Except where explicitly stated otherwise, the burden of proof is on the party advancing a particular claim or defense, and the standard of proof is by a preponderance (greater weight) of the evidence.

PART C
COVERED EMPLOYMENT AND EXCEPTIONS TO COVERAGE

Section 1. Limitation of Rights and Remedies of Employees. The rights and remedies of an employee or dependent covered by this Ordinance for personal injury or death arising out of and in the course of employment are limited to those described in this Ordinance, and shall exclude all other rights and remedies the employee or dependent may have under common law or the workers' compensation statutes of any state, including those of the employee's personal representative or next of kin for injury or death arising out of and in the course of employment against the employer or any employee. Any and all expenses incurred by the Prairie Island Indian Community, Ordinance Administrator, or the Prairie Island Indian Community Workers' Compensation Court resulting from an employee's pursuit of claims in such other jurisdictions shall be recouped from future payments of compensation to the employee, whether for the same injury or not, and from the employee's wages with the employer, if any. Credit applied against future payments shall not exceed 25 percent of each future payment except in cases of lump sum payment of permanent impairment benefits, or final payment of wages upon the employee's resignation or termination. Such recoupment of expenses shall not be construed to a waiver of the limitation of rights and remedies outlined in this section.

Section 2. Non-Waiver of Rights. Neither the Tribal Council nor its agents or delegates shall require any employee to waive the employee's rights and remedies under this Ordinance as a condition of employment, and no contract or agreement, express or implied and no rule or regulation shall operate to relieve the Prairie Island Indian Community in Minnesota in whole or in part of any obligation created by this Ordinance except as specifically provided herein.

Section 3. Exclusions. To qualify for workers' compensation benefits under this Ordinance, the injury or death must arise out of and in the course of employment with the Prairie Island Indian Community. No benefits under this Ordinance shall be allowed for any injury or death caused by or arising out of:

- (a) Gross negligence of the injured employee;
- (b) Disobedience by the employee of instructions, whether verbal or written, from the employer which instructions, if followed, would have reasonably prevented or significantly reduced the likelihood of the injury or death;
- (c) Refusal or failure of the injured employee to use a safety device or appliance furnished by the employer which if used would have reasonably prevented or significantly reduced the likelihood of injury or death;
- (d) Horseplay engaged in by the injured employee which significantly contributes to the injury or death;
- (e) The injured employee's intoxication, use of any illegal substance or abuse of any prescription medication which contributes to the employee's injury or death;
- (f) Self-inflicted injury, including suicide;

- (g) Idiopathic injury, meaning an injury or condition arising from an obscure or unknown cause;
- (h) Work performed by or as an independent contractor;
- (i) The injury or death of an employee of a subcontractor or independent contractor whether insured or uninsured for workers' compensation liability, even though the injury may occur on tribal lands;
- (j) Activities of the injured employee during meal/lunch/dinner breaks, or traveling to or from work. However, any injury directly and substantially related to business travel or injury occurring in the parking lots of the employer or an on- premise injury occurring while enroute to the employee's next shift shall be covered under this ordinance subject to all other defenses and exceptions;
- (k) Activities, personal or otherwise, of the injured employee which do not provide a substantial benefit to the employer and which contributed to the injury. Injuries during company gatherings are excluded unless the employer requires attendance;
- (l) Intentional acts other than those arising directly out of the employment relationship;
- (m) An emotional and/or mental condition, component or dysfunction;
- (n) A preexisting degenerative condition established by objective medical evidence, whether pre- or post-injury which causes, aggravates, or otherwise contributes to the disability or need for medical treatment;
- (o) The employee's failure, prior to commencement of employment, to disclose a physical condition which prevented the employee from safely performing the work for which the employee was hired or which was a substantial contributing factor to the injury;
- (p) Volunteer activities of the injured individual;
- (q) Environmental illness, or chemical sensitivity caused by agents to which the general public at the employer's premises are exposed.

The burden of proof under this section shall be on the employer.

Section 4. Coverage in Cases of Prior or Subsequent Injuries. In cases of multiple personal injuries, if an injury subject to this Ordinance is the material or principal cause of the employee's disability or need for medical treatment, the employer shall be liable for all benefits to which the employee may be entitled under this Ordinance. If an injury occurring with the employer is not the material or principal cause of the employee's disability or need for medical treatment, the employer shall not be liable for any benefits under this Ordinance. In the event of a dispute concerning apportionment, a neutral physician shall be appointed by the Court, and the opinion of the neutral physician shall be binding on the employee and the employer.

PART D
EXTENT OF COMPENSATION

Section 1. Total Disability—Entitlement and Nature of Benefits.

- a. Definition. An employee is totally disabled if the employee is unable to perform any available work activities, due to a work injury which occurred during employment with the employer.
- b. Amount of Benefits. A totally disabled employee shall received compensation pursuant in accordance with rules promulgated under this ordinance. The amount of compensation payable pursuant to this section to an employee who simultaneously received or is entitled to receive unemployment benefits, private disability benefits, social security disability benefits, PERA benefits, public or private retirement benefits or annuities, or social security retirement benefits, which benefits are paid for the same injury or condition as the work injury, shall be reduced dollar for dollar by such other benefits paid.
- c. Commencement of Compensation. No compensation shall be paid for an injury which does not totally disable the employee for a period to be established by rule.

Section 2. Partial Disability Benefits. If an injured employee is partially disabled from work, such that the effects of the injury render the employee unable to earn the equivalent of the pre-injury average weekly wage, the employee shall receive compensation as specified by rule promulgated hereunder. If an employee engages in employment for which the employee is ill-suited, or provides wages less than the employee's post-injury earning capacity, or at which the employee suffers a significant wage loss, partial disability benefit shall be paid based on the employee's post-injury earning capacity, not on the employee's actual earnings. Partial Disability Benefits shall not be adjusted.

Section 3. Duration of Total or Partial Disability Benefits. Benefits paid pursuant to Part D, Sections 1 or 2 shall be subject to the following limitations:

- a. Temporary total disability benefits shall cease 90 days following the date the medical records clearly evidence that a physician has made a reasonable determination that the employee has reached maximum medical improvement. "Maximum medical improvement" means the date after which no further significant recovery from or significant lasting improvement to a personal injury can reasonably be anticipated, based upon reasonable medical probability, irrespective of subjective complaints of pain. Once the date of maximum medical improvement has been determined, no further determination of other dates of maximum medical improvement for that personal injury is permitted. The determination that an employee has reached maximum medical improvement shall not be rendered ineffective by the worsening of the employee's medical condition and recovery therefrom.
- b. In no case shall temporary or partial disability benefits be paid beyond a specified number of weeks subsequent to the date of injury as specified by rule, or after the employee's planned date of retirement, whichever event occurs first.

However, an employee who proves by clear and convincing evidence an inability to engage in any employment as a substantial result of injury shall receive benefits during such disability until their presumed planned date of retirement as established by rule, or up to 20 years from the date of injury, whichever event occurs first.

An employee receiving such benefits has an ongoing obligation to apply for social security disability or retirement benefits or any other disability or retirement benefits to which the employee may be entitled. An employee's weekly benefits may be suspended for the employee's failure to apply for such benefits which are reasonably attainable.

- c. Compensation shall not be paid for any period during which the employee is incarcerated in a penal institution; such incarceration shall not toll the 90 day post-maximum medical improvement period following which total or partial disability benefits cease.
- d. Compensation shall be terminated, and shall not recommence if the employee declines or quits work within the employee's physical restrictions, is terminated for misconduct, fails to make a diligent effort to find employment, fails to maintain contact with the employer at least two times per month, or fails to cooperate with reasonable medical or vocational rehabilitation. This section shall not be construed to require the employee to undergo invasive medical procedures.

Section 4. Permanent Impairment Benefits.

a. Amount of Disability. For injuries described in the following schedule, an employee shall receive the following weeks of compensation paid at the non-adjusted temporary benefit rate, but in no case less than thirty-five percent of the Minnesota statewide average weekly wage in effect on the date of injury:

1. For Total Loss Of The Following Body Parts, (whether by amputation or loss of use), the following number of weeks of compensation:

<u>Body Part</u>	<u>No. of Weeks</u>
Thumb	50
Index Finger	35
Middle Finger	30
Ring Finger	20
Small Finger	15
Great Toe	30
One or more of the toes other than the great toe	10
Hand	150
Arm	200
Foot	125
Leg	160
Back	300
Internal Organ (Based on disability to body as a whole but maximum of 300 weeks)	300
Sight of one eye	150
Sight of both eyes	300
Hearing in one ear	50
Hearing in both ears	150
Hernia if two or more surgical repairs with residual objective findings on examination	12

2. Partial Loss of Body Parts: Where the loss of use is permanent but less than total, the permanent impairment compensation paid shall bear such relation to the maximum amount for the total loss of use as the partial loss of use bears to the complete loss of use.

3. Special Partial Loss Criteria Are As Follows:

- a. Loss of first phalange of the thumb or of any finger or any toe shall be compensated at one-half of the thumb or finger and compensated at one-half of the amount specified for total loss; the loss of less than the first phalange of a thumb, finger or any toe shall not be compensated;
- b. The loss of more than one phalange shall be considered as the loss of the entire thumb, finger or toe, but in no case shall the amount received for the loss of more than one finger or thumb exceed the amount provided in this schedule for the loss of a hand;
- c. Amputation of the arm below the elbow shall be considered the loss of a hand, if enough of the forearm remains to permit the use of an effective artificial member; otherwise, such amputation shall be considered the loss of an arm;
- d. Amputation of the leg below the knee shall be considered as the loss of a foot if enough of the lower leg remains to permit the use of an effective artificial member; otherwise it shall be considered as the loss of a leg;

4. For Permanent Disfigurement or Scarring, Compensation for that portion of 100 weeks which is represented by the percentage that such permanent disfigurement bears to the body as a whole.

5. Limitation of Aggregate Permanent Impairment Benefits. Regardless of the foregoing section, the maximum permanent impairment benefits payable for a single injury, regardless of the number of body parts injured, shall be 300 weeks.

- b. Apportionment. If any portion of the permanent impairment rating is attributable to a preexisting condition, whether previously rated or not, the employee shall receive permanent impairment benefits only for that portion of the permanent injury attributable to the work injury.

- c. Method of Payment. When the extent of permanent impairment is not disputed, payment of impairment benefits shall be made in a lump sum within 30 days of receipt of the medical report containing the nondisputed rating if the employee consistently worked at least part time for a period in excess of 30 days. If the employee is not working at the time the permanent impairment is assessed, permanent impairment benefits shall be paid periodically at the same rate and at the same intervals as compensation was originally paid, provided that periodic permanent impairment benefits, and temporary total disability benefits shall not be paid concurrently. However, if the employee begins working and continues working for a period of 30 days after the commencement of periodic permanent impairment benefits, the remaining unpaid permanent impairment benefits shall be paid in a lump sum.

If the extent of permanent impairment is disputed, the party disputing the permanency rating may request appointment of a neutral medical examiner by the Court, to determine the extent of permanent impairment. The determination of the neutral medical examiner shall be binding on both parties and payment of the permanent impairment shall be made within 30 days after receipt by the Ordinance Administrator of the neutral medical examiner's report.

In the event that an employee dies prior to the payment of permanent impairment benefits pursuant to this section, unpaid permanent impairment benefits survive the employee and are payable to the employee's dependents only if the permanency was ascertainable from medical records existing at the time of the employee's death.

- d. Method of Rating. Permanent partial disability rating must be based upon objective evidence, meaning reproducible and consistent clinical findings.

Section 5. Health Care Benefits.

- a. The employer shall pay for reasonable and necessary services provided by health care providers as identified by rule hereunder. A claim will be disallowed in its entirety if the employee is not treated by a designated health care provider. Medical mileage shall be paid at the same rate per mile as business travel for the tribe is reimbursed, not to exceed one hundred miles per trip unless pre-authorized by the Administrator. Purchase, repair or replacement of prosthetic or orthotic devices, splints, braces, hearing aids, prescription eyeglasses, eyeglass frames or contact lenses shall be considered a service provided by a health care provider under this section if such items were necessitated by, damaged or destroyed in a work accident resulting in personal injury compensable under this Ordinance. The employee shall have only one treating health care professional at a time coordinating the employee's medical care. Any change in health care provider shall be approved by the Ordinance Administrator prior to engagement of a new health care provider, except in emergency situations. Services rendered by a health care provider prior to such approval shall not be the responsibility of the employer. The Administrator and employee may agree to a trial change of physician of such duration as the Administrator shall determine, at the end of which the Administrator shall make a final decision regarding the change of physician.
- b. An employee may not be compelled to undergo surgery or other invasive procedures. If an employee desires a second opinion on the necessity of recommended surgery or other invasive procedure, the employer shall pay the cost of obtaining one second opinion. Except in cases of emergency surgery, the employer, at its expense, may require the employee to obtain a second opinion on the reasonableness and the necessity of the surgery before the employee undergoes surgery and the employee shall submit to recommended pre-surgery test which are generally accepted in the Minnesota medical community to determine the reasonableness, necessity or advisability of the surgery the employee desires.
- c. The employer's responsibility for health care expenses pursuant to this section shall be limited to charges adopted by the Minnesota Department of Labor and Industry for medical services in Minnesota workers' compensation cases, unless the service is not addressed by the same, in which case the administrator shall pay only for reasonable and customary charges.
- d. The liability of the employer for chiropractic treatment expenses is limited to care rendered within 60 days of the date of the injury, or 26 treatments, whichever is less, except for good cause clearly shown. The burden of proving the reasonableness and necessity of additional chiropractic care shall be on the employee.

- e. The employer shall not be responsible for payment of health care expenses until the health care provider has furnished the Ordinance Administrator with copies of medical records or reports substantiating the nature of the charges for services, and the relationship of the services to the work injury, as well as an itemized statement of the charges in sufficient detail to allow application of the Minnesota Department of Labor and Industry schedules for fees for medical services.
- f. A health care provider shall not collect, attempt to collect, refer a bill for collection, or commence an action for collection against the employee, employer, or any other party until the information required by this section has been furnished by the health care provider to the Ordinance Administrator. The health care provider shall not attempt to collect the balance over the amount allowed by the Minnesota Department of Labor and Industry for medical services from either the employer or the employee.
- g. The employer shall provide in-home health care services if prescribed and clearly reasonable and necessary, by a licensed health care provider selected by the Administrator.

Section 6. Injury Resulting in Death.

- a. Definitions.
 - “Dependent” means one who derived more than half of his or her support from the employee.
 - “Child” means a person entitled to inherit as a child of a deceased person under the Minnesota Intestacy Law, one adjudged by a pre-injury adjudication in a court of competent jurisdiction to be a child of an employee, or a stepchild. Any such child must have been living with and dependent upon the employee for support at the time of injury.
- b. If, as a result of an injury otherwise compensable under this Ordinance, the employee dies leaving a spouse, or dependent child or children, compensation shall be paid pursuant to this section:

- (1) If the employee dies leaving (a) a spouse or one child, the spouse or child shall receive 60 percent of the compensation to which the employee was entitled at the time of the employee's death. (b) If the employee is survived by a spouse and one child, the spouse and one child shall be entitled to 80 percent of the compensation to which the employee was entitled at the time of the employee's death. (c) If the employee is survived by a spouse and/or two or more children, the spouse and/or children shall be entitled to 100 percent of the compensation to which the employee was entitled at the time of the employee's death.
 - (2) Payments to the spouse shall be made for a maximum of ten years, terminating upon the remarriage of the spouse. Payments to children shall be made until each child reaches age 20 unless the child is a full-time student or physically or mentally incapable of self-support, in which case payment shall be made to age 22.
 - 3) The amount of compensation to which a spouse or a particular child is individually entitled shall be determined by the Ordinance Administrator, subject to appeal to the Court.
 - (4) The employer may require the appointment of a guardian or conservator to receive payments on behalf of minor children under this section in the event that the employee leaves no surviving spouse.
- b. The employer has a right to request an autopsy in the case of an injury to the employee resulting in death to determine if the death was work related. The employer shall pay the cost of any such autopsy.
 - c. The employer shall pay burial expense, including the expense of a headstone or grave marker, for an employee whose death resulted from a work-related injury in an amount not to exceed \$5,000.

Section 7. Rehabilitation. If an employee suffers disability as a result of a work injury with the employer and because of the effects of the work injury is unable to return to that employee's usual and customary type of employment with or without modification, or other suitable work available with the employer, but has been release to other work with restrictions, the employee shall be eligible to receive total compensation for a period of up to 90 days following a determination of maximum medical improvement as long as the employee is engaged in a reasonable and diligent search for work. Thereafter the employee shall receive total compensation up to the maximum period for temporary benefits as delineated by rule while the employee is actively engaged in a program of rehabilitation which is reasonably necessary and designed to restore the employee to gainful employment. At the sole option and cost of the Ordinance Administrator, rehabilitation and vocational services may be provided to the employee.

Section 8. Examinations. The injured employee must submit to reasonable examinations by a physician or other health care provider if requested by the Administrator. Reasonable travel expenses incurred by the employee in attending the examination shall be paid by the Administrator at the same rate per mile as business travel for the tribe is reimbursed, not to exceed one hundred miles per trip unless pre-authorized by the Administrator. If an employee fails to attend without good cause such a scheduled examination, the employee shall be held responsible to pay any cancellation fee.

PART E
NOTICE OF INJURY, LIMITATION OF CLAIMS AND REPORTS

Section 1. Notice of Injury. No compensation shall be due under this ordinance unless the employee provides the employer with notice of the injury pursuant to rules promulgated under this ordinance, within 30 days after the occurrence of the injury. A repetitive traumatic injury or occupational disease is deemed to have occurred when the injury or disease causes the employee to be unable to work, or seek medical treatment whichever event occurs first. The employer shall post notices conspicuously on its premises regarding an employee's obligations under this Ordinance.

Section 2. First Report of Injury. Upon notice from the employee as specified by rule, the employer shall complete a First Report of Injury and file the form with the Ordinance Administrator within 48 hours of receiving notice.

Section 3. Limitation of Claims. No compensation benefits shall be paid or awarded under this Ordinance unless the written claim for benefits is made within two years of the date of the claimed injury. In case of mental or physical incapacity or minority, the period of limitation shall be extended for two years from the date that the incapacity ceases.

PART F CLAIMS PROCEDURES

Section 1. Time and Method of Payment.

- (a) Payment of compensation shall be commenced within 14 days of notice to or knowledge by the employer of an injury compensable under this Ordinance or new period of lost time compensable under the Ordinance.
- (b) Once temporary total or permanent total disability benefits have been commenced, they must continue to be paid on a regular basis on the date the employee would have received wages from the employer had the employee continued working subject to discontinuance and the limitations otherwise provided for under this Ordinance. Payment of temporary partial disability benefits is due 10 days following the date the employer or employee sends wage verification to the Ordinance Administrator.
- (c) Medical expenses shall be paid within 30 days after receipt by the Ordinance Administrator of itemized billings and medical records or reports documenting the reasonableness and necessity of the medical services.

Section 2. Denial of Claim. Denial of Liability. A denial of primary liability or denial of a new period of total or partial disability, permanent impairment disability or medical benefits must be made in writing served on the employee and contain the specific reason for the denial in language easily readable and understandable to a person of average intelligence and education and must clearly state the facts forming the basis for the denial. The denial must include information identifying the employee, the date of claimed injury, claim number, the name and telephone number of the person making the decision, and instructions to the employee of the rules and time limitations for challenging the denial.

Section 3. Discontinuance of Benefits. The Ordinance Administrator may discontinue weekly compensation benefits by serving a written notice on the employee. The notice must identify the employee, the date of claimed injury, claim number, the type of benefits being reduced or discontinued, the effective date of the discontinuance and the reason for the discontinuance. The notice must be written in language easily readable and understandable to a person of average intelligence and education and contain sufficient detail to inform the employee of the factual basis for the discontinuance. The notice must also include an itemization of previous benefits paid, the name and telephone number of the person discontinuing the benefits, and copies of any evidence, medical or otherwise upon which the discontinuance is based. The Ordinance Administrator shall enclose a claim petition with instructions for completion and filing.

Section 4. Establishment of Court. The Tribal Council hereby establishes the Prairie Island Indian Community Workers' Compensation Court. Hearing examiners serving on the Court shall be impartial, objective and qualified persons, licensed to practice law in the State of Minnesota and who are learned in workers' compensation law. The Tribal Council shall determine the number of hearing examiners needed to resolve disputes arising under this Ordinance and shall have the contractual authority to appoint and establish the compensation and terms of office of such persons. Authority to resolve disputes concerning claims arising from injuries controlled by this Ordinance shall be vested in the Court. The Prairie Island Indian Community Workers' Compensation Court shall have the power to subpoena witnesses, administer oaths and examine books and records of the parties to a proceeding or otherwise investigate any matters in dispute. The Court may enforce the provisions of this Ordinance relating to the attendance and testimony of witnesses in the examination of books and records.

Section 5. Claim Petition. The Administrator shall provide the employee with a claim petition form with every notice of denial or discontinuance of benefits. If an employee objects to the denial of a claim, or to a reduction or discontinuance of benefits, the employee may file a claim petition with the Court within 90 days of the date the denial or discontinuance was served upon the employee. The claim petition shall contain the name of the employee, the date of injury, claim number, the type of benefits being sought, the basis of the claim for benefits, and any evidence, medical or otherwise, in support of the employee's claim. The claim petition must make concurrent claim for all outstanding disputed issues. The claim petition with supporting evidence must be served upon the Ordinance Administrator. Failure to file the claim petition within 90 days will result in loss of the right of the employee to pursue those benefits affected by the denial or discontinuance.

Section 6. Determination of Claim. A Hearing Examiner shall make a review of the denial of claim or discontinuance of benefits by the Administrator, the claim petition of the employee, and any other written evidence submitted by the Administrator or the employee. The Hearing Examiner may solicit or obtain such additional written evidence as the Hearing Examiner deems necessary or equitable to render its decision. The Hearing Examiner shall make a written determination of the claim on the basis of the written evidence. The determination of the Hearing Examiner shall be final upon the issues presented by the evidence unless either party files with the Hearing Examiner a written request for a hearing within 30 days of the date of the Hearing Examiner's written determination. If a hearing is requested, no benefits shall be paid until the dispute is resolved by hearing.

Section 7. Right to on the Record Hearing. Either party may request an oral hearing on the record following determination of a claim within 30 days of the date of the Hearing Examiner's written determination. Prior to scheduling an oral hearing, at the option of a Hearing Examiner, the parties shall submit to a compulsory mediation session to be presided over by a Hearing Examiner other than the hearing examiner who made the written determination. Upon receipt of request for hearing, the Court shall schedule a hearing before the Court at the earliest date available. At the option of the Tribal Council, the hearing may be conducted before a panel of three individuals, one of whom shall be Hearing Examiner and the remaining two shall be members of the Prairie Island Indian Community. Each panel member has an equal vote in determining the outcome of the hearing. If the Tribal Council does not elect to provide a panel in a case, the hearing will be conducted by a Hearing Examiner. Each party shall have the right to call and cross-examine witnesses under oath, and submit exhibits. The Hearing Examiner shall not be bound by formal rules of evidence and shall conduct the hearing in as informal manner as possible. The hearing shall be conducted in an impartial manner, and shall be tape recorded. The determination of the Hearing Examiner, or panel as the case may be, on the factual issues presented shall be final.

Section 8. Appeal. There should be no further review of factual decisions made by the panel or hearing examiner. A decision concerning legal issues may be appealed by either party to the Prairie Island Indian Community (herein after referred to as Tribal Court). The appeal must be filed with the Administrator and the Tribal Court in writing within 30 days of the date of the decision on which the appeal is based, and shall be served on all parties. The Tribal Court may remand the matter to the Hearing Examiner or panel for additional factual determination if the Tribal Court determines that factual record is inadequate. The decision of the Tribal Court shall be final.

Section 9. Settlement. If after filing a claim petition the Ordinance Administrator and employee reach an agreement to settle the employee's benefits under this Ordinance, a written memorandum of the agreement shall be filed with the Court. The memorandum shall recite the terms and conditions of the agreement and shall be signed by the parties to the agreement. Upon filing of the memorandum with the Court, the agreement becomes binding and enforceable by the parties.

Section 10. Method of Service—Notices, Orders, and Decisions. All notices, decisions or orders provided for in this Ordinance may be served personally or by United State mail. Time periods shall be calculated starting on the day following the beginning of the period, and shall include weekends and holidays. However, if the last day of the period falls on a weekend or a holiday, the time shall be extended to the next business day. When a party is represented by an attorney, service must also be made on the attorney. Where service is by mail, service is effected on the time mailed if properly addressed and stamped.

Section 11. Employee Advocate. At tribal expense, the Tribal Council shall provide an Employee Advocate experienced with the Prairie Island Indian Community Workers' Compensation Ordinance. The Employee Advocate will provide information, advice, and assistance to employees who request it concerning rights, duties, benefits and proceedings under this Ordinance. No employee shall be obligated to use the services of the Employee Advocate.

Section 12. Right to Legal Counsel. Employees may be represented by an attorney at any stage of the proceedings outlined in this part. Attorneys' fees shall be based solely upon disputed benefits awarded and shall be subject to the approval of the Hearing Examiner making the determination under sections 6, 7, or 8. Costs shall be borne by the party incurring them. Reasonable attorney fees shall be deducted from compensation awarded to the employee in an amount to be determined by the Court or Hearing Examiner. In determining a reasonable attorney fee, factors to be considered are: the amount involved, the time and expense necessary to prepare for the proceedings involved, the responsibility assumed by counsel, the counsel's expertise in the area of workers' compensation, the complexity of the disputed issues, the nature of proof needed to be adduced, and the results obtained.

Section 13. Recoupment of Overpayment. Payment of compensation made under a mistake of fact or law by the employer or third party administrator may be recouped from future payments of compensation to the employee, whether for the same injury or not. Credit applied against future payments shall not exceed 25 percent of each future payment except in cases of lump sum payment of permanent impairment benefits. Overpayment may not be recouped against medical expenses due or payable. Intentional misrepresentation by an employee resulting in benefits paid under this Ordinance allows the Tribal Council to bring an action at law in this state against the employee to collect benefits paid as a result of the intentional misrepresentation.

Section 14. Discovery. In addition to the right of the Ordinance Administrator to request and obtain authorizations from the employee or the employee's dependents, either party may engage in pre-hearing discovery, including, but not limited to, requests for medical and employment records, depositions of parties or witnesses, requests for statements, and identification of witnesses and exhibits expected at hearing. Such discovery shall be conducted in an informal manner. Refusal to respond to reasonable discovery requests may result in the imposition of sanctions, including delay or dismissal of claims or defenses, in the discretion of the court. Reasonable discovery requests shall not include financial information of the Prairie Island Indian Community or its economic enterprises.

Section 15. Intervention. No third party which has paid benefits of any kind to or on behalf of an employee whose injury is compensable under this Ordinance shall have the right to intervene in any proceedings under this Ordinance or to otherwise be reimbursed by the Prairie Island Indian Community in Minnesota or its Tribal Council.

**RULES PROMULGATED PURSUANT TO
PRAIRIE ISLAND INDIAN COMMUNITY
WORKERS' COMPENSATION ORDINANCE
EFFECTIVE 10-1-96**

Rule 001. Responsibility Assumed by Employer. Pursuant to Part A.3., the limited waiver of sovereign immunity is valid only for an annual amount of one million dollars. The annum for purpose of this rule shall run from October 1 through September 30.

Rule 002. Amount of Benefits - Total Liability. Pursuant to Part D.1.b., a totally disabled employee shall receive compensation equal to 70% of the employee's average weekly wage subject to a maximum of \$615.

Rule 003. Adjustment of Benefits. Benefits payable under Section D shall be increased at a rate of 4% per year with the increase to be effective on the anniversary date of the injury. The first increase shall not be made until the fourth anniversary of the date of injury.

Rule 004. Amount of Benefits - Partial Disability. Pursuant to Part D.2., a partially disabled employee shall received compensation equal to 70% of the difference between the pre-injury average weekly wage and the amount of the employee's earning capacity in the employee's partially disable condition, subject to the maximum amount payable for total disability.

Rule 005. Duration of Benefits. Pursuant to Part D.3.b., benefits for temporary or partial disability shall not be paid beyond two years (104 weeks) subsequent to the date of injury.

Rule 006. Employee's Presumed Planned Date of Retirement. The employee's presumed planned date of retirement shall be determined according to the following chart:

<u>Age on Date of Injury</u>	<u>Retirement Presumed</u>
<u>After</u>	
60	60 months
61	48 months
62	42 months
63	36 months
64	30 months
65	24 months
66	21 months
67	18 months
68	15 months
69+	12 months

Rule 007. Commencement of Compensation. Pursuant to Part D.1.c., no compensation shall be paid for an injury which does not totally disable the employee for a period of at least seven consecutive days. However, if the total disability extends beyond seven consecutive days, compensation shall be computed from the first date of disability.

Rule 008. Health Care Benefits-Provider. Pursuant to Part D.5.a., "health care provider" means providers associated with the Interstate Medical Clinic, Red Wing, MN; River Falls Medical Clinic, River Falls, WI; Lake City Clinic, Lake City, MN; Airport Medical Clinic, Bloomington, MN; Indian Health Services and River Valley Clinic, Hastings, MN.

For emergency medical services, "health care provider" may also mean St. Johns Regional Health Center, Red Wing, MN.

Rule 009. Notice of Injury. Pursuant to Part E. Section 1, employees must follow these three steps when giving notice of injury:

1. Inform your supervisor of your injury.
2. Proceed to the Treasure Island EMT Office for necessary treatment and to complete the First Report of Injury Form.
3. To seek outside medical care, obtain the proper forms and physicians instructions from the Treasure Island EMT Office. These forms must be presented to the medical provider upon your first visit.