



# Prairie Island Indian Community Worker’s Compensation Ordinance<sup>1</sup>

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<sup>1</sup> Note of Adoption and Amendment: The Community Council adopted the Workers’ Compensation Ordinance on May 14, 1992, by Resolution Number 92-49. It made technical changes to and/or restated the Ordinance:

- On September 5, 1995, by Resolution Number 95-9-5-94;
- On September 6, 1996, by Resolution Number 96-9-6-85;
- On November 12, 1997, by Resolution Number 97-11-12-124;
- On September 12, 2000, by Resolution Number 00-9-12-99; and
- On September 26, 2002, by Resolution Number 02-09-26-75.

The Community restated the Ordinance on October 1, 2009, affirming the Ordinance that was adopted by Resolution Number 02-09-26-75; the Community Council reconfirmed, ratified, adopted, and reauthorized the 2009 Ordinance on March 15, 2023, by Resolution Number 23-3-15-49. The Community Council amended this Ordinance on July 26, 2023, by Resolution Number 23-07-26-132, to reformat the Ordinance to increase the usability of this Ordinance and of tribal law, to make substantive changes to the Ordinance, and to add Notes of Amendment summarizing the legislative history of this Ordinance. The Notes of Amendment are for convenience only and should not be relied on as mandatory authority. The 2023 amendment includes notes of its non-technical changes to the Ordinance.

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

**Section 2. Statement of Purpose, Findings, and Authority.**

- a. Purpose.<sup>2</sup> Pursuant to the Constitution of the Prairie Island Indian Community, it is the responsibility of the Community Council to protect the health, safety, and welfare of persons within its jurisdiction. The purpose of this Ordinance is to provide for the protection of Employees in the event of an Injury arising out of the employment relationship with the Community by defining the compensation available to Employees who are injured while engaged in work for the Community. This Ordinance is not remedial in any sense and is not to be broadly construed in favor of any claimant or Employee, nor are the rights or interests of the Employer to be favored over those of the Employee.
- b. Findings.<sup>3</sup>
  - 1. The Community Council finds that it is necessary to provide for an injured Employee whose injuries arise out of the Employee’s work for the Community.
  - 2. The Community Council finds that adoption of this Ordinance advances and protects its interests and the interests of its Employees by providing a compensation structure for an Employee of the Community injured while engaged in work for the Community.
- c. Authority.<sup>4</sup> This Ordinance is enacted by the Community Council as the governing body of the Community and pursuant to the inherent authority of the Community to regulate activities, govern conduct, and provide workers’ compensation for its Employees.

**Section 3. Definitions.**<sup>5</sup>

- a. “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

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<sup>2</sup> Note of Amendment: The Community Council added this subsection on September 5, 1995, by Resolution Number 95-9-5-94. The Community Council amended this subsection on July 26, 2023, by Resolution Number 23-07-26-132, to include responsibility for “health, safety, and welfare,” and to clarify the balance of the rights and interests.

<sup>3</sup> Note of Amendment: The Community Council added this Section subsection on July 26, 2023, by Resolution Number 23-07-26-132.

<sup>4</sup> Note of Amendment: The Community Council added this Section on July 26, 2023, by Resolution Number 23-07-26-132.

<sup>5</sup> Note of Amendment: The Community Council amended this Section on September 5, 1995, by Resolution Number 95-9-5-94, to move the definitions of “Child,” “Dependent,” “Health care provider,” and “Maximum medical improvement,” to corresponding Sections of the Ordinance and Rules. The Community Council amended this Section again on July 26, 2023, by Resolution Number 23-07-26-132, to add definitions for “Community,” “Community Council,” “Hearing Examiner,” “Ordinance Administrator” or “Administrator,” “Tribal Court,” and “Workers’ Compensation Court” or “Court.”

actually worked, holiday and vacation days shall be included as working days. The determination of Average Weekly Wage shall consider only those Earnings from the Community from employment at the time of the Injury. Earnings from work performed by the Employee other than with the Employer shall be excluded for the purposes of calculating Average Weekly Wage.<sup>6</sup>

- b. “Community” means the Prairie Island Indian Community in the State of Minnesota, a federally recognized tribe.
- c. “Community Council” means the constitutionally authorized governing body of the Community, also referred to as the “Tribal Council.”
- d. “Earnings,” for purposes of calculating Average 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.<sup>7</sup>
- e. “Employee(s)” means an individual hired by the Community Council, its agents, or delegates, who was paid or owed actual wages.
- f. “Employer” means the Community and its business enterprises.<sup>8</sup>
- g. “Hearing Examiner” means the person(s) appointed by the Community Council to the Workers’ Compensation Court.
- h. “Injury” means an actual physical injury to the body, which may arise by accident under circumstances arising out of the course and scope of employment.<sup>9</sup>
- i. “Ordinance Administrator” or “Administrator” means the person(s) or entity identified by the Community Council to handle claims of workers’ compensation made by an Employee of the Community or its business enterprises, or the designee of that person(s) or entity.
- j. “Tribal Court” means the Prairie Island Mdewakanton Dakota Community Tribal Court.
- k. “Workers’ Compensation Court” or “Court” means the Prairie Island Indian Community Workers’ Compensation Court.

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<sup>6</sup> Note of Amendment: The Community Council amended this subsection on November 12, 1997, by Resolution Number 97-11-12-124, to limit the definition to earnings from the Community.

<sup>7</sup> Note of Amendment: The Community Council amended this Section on September 5, 1995, by Resolution Number 95-9-5-94, to require reporting of tips before their allowance as “Earnings.”

<sup>8</sup> Note of Amendment: The Community Council amended this Section on September 5, 1995, by Resolution Number 95-9-5-94, to include economic enterprises of the Community within “Employer.”

<sup>9</sup> The Community Council amended this Section on September 26, 2002, by Resolution Number 02-09-26-75, to clarify the definition of “Injury.”

**Section 4. Applicability.**<sup>10</sup> This Ordinance applies to all Employees of the Community and its business enterprises located within the jurisdiction of the Community.

**Section 5. General Provisions.**<sup>11</sup>

- a. Rules.<sup>12</sup> The Community Council may make and amend rules consistent with the provisions of this Ordinance, to carry out the provisions of this Ordinance. Rules adopted pursuant to this Ordinance shall be effective upon adoption, unless otherwise provided in the rule.
- b. Administration. The Community 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 Community Council shall have the authority to contract with such third-party administrator for administrative services.
- c. Responsibility Assumed by Employer.<sup>13</sup> The responsibility of the Community is limited to the compensation provided by this Ordinance, and such responsibility shall not be expanded except by amendment of the Ordinance by the Community Council pursuant to the Constitution and By-Laws of the Prairie Island Community in Minnesota. The Community hereby limits its annual financial responsibility pursuant to the terms of this Ordinance to an amount specified by Rule 001 for the total of all claims made hereunder and in no event shall one individual claim exceed the terms as delineated in Section 7 of this Ordinance.
- d. Subrogation Rights of the Employer.<sup>14</sup> If benefits have been awarded or paid under this Ordinance, and the Employee has suffered damages for which another person is legally liable because of the same Injury or condition for which benefits were paid, the Employer may seek to recover its workers' compensation expenditures from the responsible party in a subrogation action.

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<sup>10</sup> Note of Amendment: The Community Council added this Section on July 26, 2023, by Resolution Number 23-07-26-132.

<sup>11</sup> Note of Amendment: The Community Council amended this on July 26, 2023, by Resolution Number 23-07-26-132, to delete the subsection "Right of Action When a Third Person is Liable—Election By Employee."

<sup>12</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to eliminate redundant language and provide that the Rules are effective for one year after adoption. The Community Council amended this subsection again on July 26, 2023, by Resolution Number 23-07-26-132, to provide that Rules are effective upon adoption unless otherwise provided in the Rule.

<sup>13</sup> Notes of Amendment: The Community Council added this subsection on September 5, 1995, by Resolution Number 95-9-5-94. The Community Council amended this subsection on July 26, 2023, by Resolution Number 23-07-26-132, to move the limited waiver of sovereign immunity to "Limited Waiver of Sovereign Immunity" and specify the Rule that applies.

<sup>14</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to limit the employees' pursuit of claims instead of their recovery. The Community Council again amended this subsection on July 26, 2023, by Resolution Number 23-07-26-132, to rename the subsection and clarify rights of subrogation.

- e. 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.
- f. Waiver of Privilege.<sup>15</sup> 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.
- g. Limitation of Time.<sup>16</sup> An Employee who has made an application for benefits under this Ordinance shall have 60 days from the date of the request to cooperate with the Ordinance Administrator’s request for authorizations and other records related to the claim for benefits. Failure by the Employee to cooperate with the Ordinance Administrator’s request within 60 days will result in a denial of the claim. An Employee whose claim is denied under this provision may appeal that decision to the Workers’ Compensation Court.
- h. Burden and Standard of Proof.<sup>17</sup> 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.

**Section 6. Covered Employment and Exceptions to Coverage.**<sup>18</sup>

- a. Limitation of Rights and Remedies of Employees.<sup>19</sup> The rights and remedies of an Employee or dependent covered by this Ordinance for personal Injury or death

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<sup>15</sup> Note of Amendment: The Community Council amended this subsection on July 26, 2023, by Resolution Number 23-07-26-132, to remove the Court’s discretion to dismiss claims for failure to provide authorizations.

<sup>16</sup> Note of Amendment: The Community Council added this subsection on July 26, 2023, by Resolution Number 23-07-26-132.

<sup>17</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to clarify the standard of proof.

<sup>18</sup> Note of Amendment: The Community Council amended this Section on September 5, 1995, by Resolution Number 95-9-5-94, to restate and recodify the previous Part D § 7 “Apportionment of compensation for a prior or subsequent injury” as Part C § 4 “Coverage in Cases of Prior or Subsequent Injuries.” On November 12, 1997, by Resolution Number 97-11-12-124, the Community Council deleted the subsection “Coverage in Cases of Prior or Subsequent Injuries.”

<sup>19</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to allow the Community to recoup its expenses. The Community Council amended this subsection again on July 26, 2023, by Resolution Number 23-07-26-132, to clarify that the Ordinance is the sole remedy, to limit recoupment to payments for the same injury, and to include a waiver of recovery for contribution claims.

arising out of the course and scope of employment are limited to those described in this Ordinance, are the Employee's sole remedy for a work-related Injury or illness, and shall exclude all other rights and remedies the Employee or dependent may have against the Employer or any Employee under common law or the workers' compensation statutes of any state, including those of the Employee's personal representative or next of kin. Any and all expenses incurred by the Community, Ordinance Administrator, or 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, for the same injury, 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 as a waiver of the limitation of rights and remedies outlined in this subsection. The Employee waives any and all recovery against the Community, its successors, and/or assigns for any claim or legal action for contribution brought by any third party.

- b. Non-Waiver of Rights. Neither the Community 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 shall operate to relieve the Community in whole or in part of any obligation created by this Ordinance except as specifically provided herein.
- c. Exclusions. To qualify for workers' compensation benefits under this Ordinance, the Injury or death must arise out of the course and scope of employment with the Community. No benefits under this Ordinance shall be allowed for any injury or death caused by or arising out of:
  1. Gross negligence of the injured Employee;
  2. 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 injury or death;
  3. 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;
  4. Horseplay engaged in by the injured Employee which significantly contributed to injury or death;
  5. The injured Employee's intoxication (including intoxication from use of alcohol, medical marijuana, hemp-derived tetrahydrocannabinol (THC), or another other legal intoxicating substance), use of any illegal substance, or abuse of any prescription medication which contributed to the Employee's injury or death, established by drug test results that show intoxication at the time of injury, and/or by circumstantial evidence of intoxication, including, but

is not limited to: observed or recorded use of intoxicating substances near the time of injury; observed or recorded behavioral indicators of intoxication; and a violation of the Employer's Drug and Alcohol Policy; a drug test that only shows past use of an intoxicating substance (e.g., currently available THC tests) may be considered as potentially relevant evidence, but is not sufficient to establish intoxication, except for positions designated as "zero-tolerance" in Rule 010 where the use of any intoxicating substance is prohibited;<sup>20</sup>

6. Self-inflicted injury, including suicide;
7. Cumulative trauma, repetitive, overuse, and idiopathic injury (meaning an injury or condition arising from an obscure or unknown cause);<sup>21</sup>
8. Work performed by or as an independent contractor;
9. 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;
10. Activities of the injured Employee during all breaks, or traveling to or from work. However, any Injury directly and substantially related to business travel or any Injury occurring in the parking lots of the Employer or an on premise Injury occurring while in route to the Employee's next shift shall be covered under this Ordinance subject to all other defenses and exceptions:<sup>22</sup>
11. 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;<sup>23</sup>
12. Intentional acts other than those arising directly out of the employment relationship;
13. An emotional and/or mental condition, component, or dysfunction;
14. A pre-existing degenerative condition established by objective medical evidence, whether pre- or post-injury, including a degenerative disease, congenital condition, traumatically induced condition, or chronic illness or injury, which is a significant and material factor contributing to the

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<sup>20</sup> Note of Amendment: The Community Council amended this subsection on July 26, 2023, by Resolution Number 23-07-26-132, to clarify this exception.

<sup>21</sup> The Community Council added this subsection on September 26, 2002, by Resolution Number 02-09-26-75.

<sup>22</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to clarify this exception. The Community Council amended this subsection again on November 12, 1997, by Resolution Number 97-11-12-124, to reach "all breaks."

<sup>23</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to clarify this exception.



- Employee's disability or need for medical treatment;<sup>24</sup>
15. 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;
  16. Volunteer activities of the injured individual;
  17. Environmental illness, viral or bacterial illnesses or diseases, or chemical sensitivity caused by agents to which the general public at the Employer's premises are exposed; or<sup>25</sup>
  18. Failure to work within current documented medical restrictions.<sup>26</sup>

The burden of proof under this subsection shall be on the Employer.

### **Section 7. Extent of Compensation.**

- a. Total Disability Benefits.<sup>27</sup>
  1. 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.
  2. Amount of Benefits. A totally disabled Employee shall receive compensation as established by Rule 002. The amount of compensation payable pursuant to this subsection 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.
  3. Commencement of Compensation. No compensation shall be paid for an Injury which does not totally disable the Employee for a period established by Rule 007.

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<sup>24</sup> Note of Amendment: The Community Council amended this subsection on September 6, 1996, by Resolution Number 96-9-6-85, to delete the qualifier that a preexisting condition "significantly" affect the injury. It amended the subsection again on November 12, 1997, by Resolution Number 97-11-12-124, to clarify the definition and scope of the exclusion.

<sup>25</sup> Note of Amendment: The Community Council added this subsection on September 5, 1995, by Resolution Number 95-9-5-94. The Community Council amended this subsection on July 26, 2023, by Resolution Number 23-07-26-132, to include "viral or bacterial illnesses or diseases."

<sup>26</sup> Note of Amendment: The Community Council added this subsection on November 12, 1997, by Resolution Number 97-11-12-124.

<sup>27</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to replace the benefits and time calculations with reference to the Rules and remove a paragraph providing for adjustment of benefits. The Community Council amended this subsection on July 26, 2023, by Resolution Number 23-07-26-132, to rename it, to specify the Rules that apply, and to provide for the adjustment of benefits.

4. Adjustment of Benefit. Permanent and Total disability benefits shall be adjusted over time, as established by Rule 003.
- b. Partial Disability Benefits.<sup>28</sup>
  1. Definition. An Employee is partially disabled from work, if the effects of the Injury render the Employee unable to earn the equivalent of the pre-Injury Average Weekly Wage.
  2. Amount of Benefit. The Employee shall receive compensation as established by Rule 004. If an Employee engages in employment for which the Employee is ill-suited, or which 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.
  3. No Adjustment of Benefit. Temporary Total and Temporary Partial disability benefits shall not be adjusted.<sup>29</sup>
- c. Duration of Total or Partial Disability Benefits.<sup>30</sup> Benefits paid under paragraphs (a) and (b) of this Section shall be subject to the following limitations:
  1. Temporary total disability benefits shall cease immediately 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.<sup>31</sup>

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<sup>28</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to replace the benefit calculation with reference to the Rules. The Community Council amended this subsection again on July 26, 2023, by Resolution Number 23-07-26-132, to provide paragraph headings and specify the Rule that applies.

<sup>29</sup> Note of Amendment: The Community Council added this subsection on November 12, 1997, by Resolution Number 97-11-12-124.

<sup>30</sup> Note of Amendment: The Community Council amended this subsection on July 26, 2023, by Resolution Number 23-07-26-132, to specify the Rules that apply and clarify that the "planned date of retirement" is the "presumed" date.

<sup>31</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to adjust the date of benefits termination and to relocate the definition of "Maximum medical improvement" from the Definitions Section. The Community Council amended this subsection again on November 12, 1997, by Resolution Number 97-11-12-124, to cease benefits immediately in the specified circumstances.

2. In no case shall temporary or partial disability benefits be paid beyond a specified number of weeks subsequent to the date of Injury as established by Rule 005, or after the employee's presumed planned date of retirement as established by Rule 006, whichever event occurs first.<sup>32</sup>

However, an Employee who proves by clear and convincing evidence an inability to engage in any employment as a substantial result of the Injury shall receive benefits during such disability until their presumed planned date of retirement as established by Rule 006, or up to 20 years from the date of the 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.

3. Compensation shall not be paid for any period during which the Employee is incarcerated in a penal institution.<sup>33</sup>
4. 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 their supervisor or manager at least once per week, or fails to cooperate with reasonable medical or vocational rehabilitation. This paragraph shall not be construed to require the Employee to undergo invasive medical procedures.<sup>34</sup>
5. When a period of total or partial disability occurs subsequent to treatment with a health care provider or physician other than those identified by Rule 008 hereunder, compensation will be denied in its entirety.<sup>35</sup>

d. Permanent Partial Disability Benefits.<sup>36</sup>

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<sup>32</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to reference the benefits period set by Rule and clarify the circumstances of benefits suspension.

<sup>33</sup> Note of Amendment: The Community Council amended this subsection on November 12, 1997, by Resolution Number 97-11-12-124, to remove an inconsistent internal cross reference.

<sup>34</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to clarify that discontinued benefits are terminated and will not recommence. It again amended this subsection on November 12, 1997, by Resolution Number 97-11-12-124, to adjust the contact frequency and point of contact.

<sup>35</sup> Note of Amendment: The Community Council added this subsection on November 12, 1997, by Resolution Number 97-11-12-124.

<sup>36</sup> Note of Amendment: The Community Council amended this subsection on November 12, 1997, by Resolution Number 97-11-12-124, to: rename it; replace internal references to "permanent impairment" with "permanent partial disability;" and replace paragraphs regarding total and partial loss of body parts, special partial loss criteria, permanent disfigurement and scarring, and limitation of the aggregate permanent impairment benefits with citation to a disability scheduled attached to the Ordinance as an

1. Amount of Disability. Permanent Partial Disability shall be limited to objective-based findings and per the Minnesota Schedule for permanent partial disability rating as found in Minnesota Administrative Rules, Chapter 5223, Disability Schedules 5223.0300 through 5223.0650.<sup>37</sup>
2. Method of Rating.<sup>38</sup> The permanent partial disability rating must be based upon objective evidence, meaning reproducible and consistent clinical findings. No permanent partial disability ratings shall apply to soft tissue, strain, and sprain injuries.
3. Apportionment.<sup>39</sup> If any portion of the permanent partial disability rating is attributable to a preexisting condition, whether previously rated or not, the Employee shall receive permanent partial disability benefits only for that portion of the permanent injury attributable to the work Injury.
4. Method of Payment.<sup>40</sup> When the extent of permanent partial disability is not disputed, payment of partial disability benefits shall be made in a lump sum within 30 days of receipt of the medical report containing the non-disputed 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 partial disability is assessed, permanent partial disability benefits shall be paid periodically at the same rate and at the same intervals as compensation was originally paid, provided that periodic permanent partial disability 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 partial disability benefits, the remaining unpaid permanent partial disability benefits shall be paid in a lump sum.

If the extent of permanent partial disability 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 partial disability. The determination of the neutral medical examiner shall be binding on both parties

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Exhibit. The Community Council amended this subsection again on July 26, 2023, by Resolution Number 23-07-26-132, to replace the Exhibit citation with a citation to the Minnesota Administrative Rules Disability Schedules.

<sup>37</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to: provide for a minimum dollar amount to be paid; clarify ratings for internal organs and hernias; clarify Partial Loss of Body Parts; and adjust Special Partial Loss Criteria.

<sup>38</sup> Note of Amendment: The Community Council added this subsection on September 5, 1995, by Resolution Number 95-9-5-94. It amended the subsection on November 12, 1997, by Resolution Number 97-11-12-124, to exclude soft tissue, strain, and sprain injuries.

<sup>39</sup> Note of Amendment: The Community Council amended this subsection on September 6, 1996, by Resolution Number 96-9-6-85, to remove the requirement that an impairment be attributed “solely” to the work injury.

<sup>40</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to clarify the method of payment when the extent of disability is in dispute.

and payment of the permanent partial disability 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 partial disability benefits pursuant to this subsection, unpaid permanent partial disability 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.

e. Medical Care Benefits.<sup>41</sup>

1. The Employer shall pay for reasonable and necessary services provided by the health care providers designated in Rule 008. A claim will be disallowed in its entirety if the Employee is not treated by a designated health care provider. Benefits will be paid if medical treatment by an outside medical provider is a referral from a designated medical provider/physician and is approved by the Ordinance Administrator prior to treatment. The first visit to a designated health care clinic (which does not include emergency room or ambulance service) for medical treatment for a possible work-related Injury will be paid even if the claim is denied.<sup>42</sup>

Medical mileage shall be paid where medical treatment is outside the designated health care providers. Medical mileage shall be paid at the same rate per mile as business travel for the Community is reimbursed, not to exceed one hundred miles per trip unless pre-authorized by the Administrator.<sup>43</sup>

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 subsection if such items were necessitated by, damaged, or destroyed in a work accident resulting in personal Injury compensable under this Ordinance. Additional medical cost associated with the purchase of exercising equipment, joining a health club, special beds, and/or whirlpools/spas, if recommended by the health care physician, are not compensable under this Ordinance.<sup>44</sup>

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<sup>41</sup> Note of Amendment: The Community Council amended this subsection on July 26, 2023, by Resolution Number 23-07-26-132, to rename it and specify the Rule that applies.

<sup>42</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to clarify reasonable and necessary services, including by reference to Rule. The Community Council amended this subsection again on September 6, 1996, by Resolution Number 96-9-6-85, to require treatment with a designated provider.

<sup>43</sup> Note of Amendment: The Community Council amended this subsection on November 12, 1997, by Resolution Number 97-11-12-124, to clarify when treatment with an outside provider and mileage is covered.

<sup>44</sup> Note of Amendment: The Community Council amended this subsection on November 12, 1997, by Resolution Number 97-11-12-124, to exclude coverage of certain costs, even when recommended by the physician.

The Employee shall have only one treating health care physician at a time coordinating the Employee's medical care. Any change in health care provider or physician 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 or physician 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.

2. 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 tests which are generally accepted in the Minnesota medical community to determine the reasonableness, necessity, or advisability of the surgery the Employee desires.<sup>45</sup>
3. The Employer's responsibility for health care expenses pursuant to this subsection 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.<sup>46</sup>
4. Request for chiropractic treatment must be referred by a designated medical provider/physician and approved by the Ordinance Administrator prior to treatment. The liability of the Employer for chiropractic treatment expenses is limited to care rendered within 30 days of the date of the injury, or 12 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.<sup>47</sup>
5. 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

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<sup>45</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to require pre-surgery testing in certain circumstances.

<sup>46</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to update an external reference.

<sup>47</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to increase the allowable benefit for chiropractic care. The Community Council decreased the allowable chiropractic benefit on November 12, 1997, by Resolution Number 97-11-12-124.

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.

6. 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 subsection 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.
  7. 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.<sup>48</sup>
  8. Notwithstanding any other provisions of this Ordinance, coverage, if available, for participating in a state or tribal medical marijuana program or purchasing medical marijuana is established by Rule 011.<sup>49</sup>
- f. Injury Resulting in Death.<sup>50</sup>
1. Definitions.
    - A. “Dependent” means one who derived more than half of his or her support from the Employee.
    - B. “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 receiving support and dependent upon the Employee for support at the time of the Injury.<sup>51</sup>
  2. If, as a result of an Injury otherwise compensable under this Ordinance, the Employee dies leaving a spouse, and/or dependent child(ren), compensation shall be paid pursuant to this subsection:
    - A. If the Employee dies leaving (a) a spouse or one child, the spouse or child shall receive 60 percent of the workers’ 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

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<sup>48</sup> Note of Amendment: The Community Council added this subsection on September 5, 1995, by Resolution Number 95-9-5-94.

<sup>49</sup> Note of Amendment: The Community Council added this subsection on July 26, 2023, by Resolution Number 23-07-26-132.

<sup>50</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to move the definitions of “Dependent” and “Child” from the Definitions Section to this Section.

<sup>51</sup> Note of Amendment: The Community Council amended this definition on July 26, 2023, by Resolution Number 23-07-26-132, to include any child “receiving support” from the Employee.

shall receive 80 percent of the workers' 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 receive 100 percent of the workers' compensation to which the Employee was entitled at the time of the Employee's death.<sup>52</sup>

- B. Payments to the spouse shall be made for a maximum of ten years, or the remarriage of the spouse, whichever comes first. The spouse must submit an affidavit annually in a form prescribed by the Ordinance Administrator in order to receive benefits. If any benefits under this subsection are received by fraud or error, the Ordinance Administrator shall take action to recover those benefits.<sup>53</sup>
  - C. Payments to children shall be made until the child reaches age 18 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. School transcripts or records of physical or mental incapability of support shall be provided annually as proof of eligibility.<sup>54</sup>
  - D. The amount of compensation to which a spouse or a child is individually entitled shall be determined by the Ordinance Administrator. The Administrator's determination of compensation under this subsection may be appealed to the Workers' Compensation Court.
  - E. The Employer may require the appointment of a guardian or conservator to receive payments on behalf of minor children under this subsection in the event that the Employee leaves no surviving spouse.
- 3. 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.
  - 4. The Employer shall pay funeral expenses, 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 \$10,000 in actual paid funeral expenses.<sup>55</sup>

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<sup>52</sup> Note of Amendment: The Community Council amended this subsection on November 12, 1997, by Resolution Number 97-11-12-124, to clarify that it applies to "workers' compensation" otherwise due.

<sup>53</sup> Note of Amendment: The Community Council amended this subsection on July 26, 2023, by Resolution Number 23-07-26-132, to require annual documentation.

<sup>54</sup> Note of Amendment: The Community Council amended this subsection on November 12, 1997, by Resolution Number 97-11-12-124, to end payments to children when they reach age 18. The Community Council amended this subsection again on July 26, 2023, by Resolution Number 23-07-26-132, to require annual documentation.

<sup>55</sup> Note of Amendment: The Community Council amended this subsection on November 12, 1997, by Resolution Number 97-11-12-124, to increase the burial benefit to \$7,500. The Community Council amended the subsection again on July 26, 2023, by Resolution Number 23-07-26-132, to clarify that the benefit applies to all funeral expenses actually incurred, up to an increased benefit of \$10,000.



- g. Rehabilitation.<sup>56</sup> 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 released to other work with restrictions, the Employee shall be eligible to receive total compensation until the Employee reaches maximum medical improvement as long as the Employee is engaged in a reasonable and diligent search for work. At the sole option and cost of the Ordinance Administrator, rehabilitation and vocational services may be provided to the Employee.
- h. Examinations.<sup>57</sup> The injured Employee must submit to reasonable examinations by a physician or other health care provider, if requested by the Ordinance 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 Community 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.

**Section 8. Notice of Injury, Report of Injury, and Limitation of Claims.**<sup>58</sup>

- a. Notice of Injury.<sup>59</sup> No compensation shall be due under this Ordinance unless the Employee provides the Employer with notice of the Injury pursuant to Rule 009, within 7 days after the occurrence of the Injury. The employer shall post notices conspicuously on its premises regarding an Employee's obligations under this Ordinance.
- b. First Report of Injury.<sup>60</sup> Upon notice from the Employee as specified by Rule 009, the Employer shall complete a First Report of Injury and file the form with the Ordinance Administrator within 48 hours of receiving notice.

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<sup>56</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to modify the duration and conditions of compensation and reference the Rules. The Community Council amended this subsection again on November 12, 1997, by Resolution Number 97-11-12-124, to change the eligibility period.

<sup>57</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to adjust the covered expenses for examinations.

<sup>58</sup> Note of Amendment: The Community Council amended this Section again on July 26, 2023, by Resolution Number 23-07-26-132, to specify the Rule that applies.

<sup>59</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to change the notice period and require that the Employee provide notice. The Community Council amended this subsection again on September 6, 1996, by Resolution Number 96-9-6-85, to change the notice period. The Community Council amended this subsection to change the notice period again on November 12, 1997, by Resolution Number 97-11-12-124. The Community Council again amended this subsection on September 26, 2002, by Resolution Number 02-09-26-75, to delete deemed-occurrence language that is no longer applicable.

<sup>60</sup> Note of Amendment: The Community Council amended this Section on September 5, 1995, by Resolution Number 95-9-5-94, to reference notice specified by Rule.

- c. Limitation of Claims.<sup>61</sup> No compensation benefits shall be paid or awarded under this Ordinance unless the Employee seeks initial treatment within 30 days of Injury. If treatment lapses for a period of 60 days, the Employee shall be considered at Maximum Medical Improvement (MMI) and no further compensation shall be paid or awarded under this Ordinance.

**Section 9. Claims Procedures.**<sup>62</sup>

a. Time and Method of Payment.<sup>63</sup>

1. Payment of compensation shall commence 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.
2. Once temporary total or permanent total disability benefits have 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 Ordinance Administrator receives the Employee's wage verification.<sup>64</sup>
3. 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.

- b. Denial of Claim—Denial of Liability.<sup>65</sup> 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, and the name and telephone number of the person making the decision. The Ordinance Administrator shall enclose a claim petition with the denial with instructions to the Employee of the time limitations for challenging the denial.

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<sup>61</sup> Note of Amendment: The Community Council amended this Section on September 5, 1995, by Resolution Number 95-9-5-94, to require a written claim for benefits.

<sup>62</sup> Note of Amendment: The Community Council amended this Section on July 26, 2023, by Resolution Number 23-07-26-132, to delete the "Employee Advocate" subsection.

<sup>63</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to remove the paragraph regarding timing for payment of permanent impairment benefits.

<sup>64</sup> Note of Amendment: The Community Council amended this subsection on November 12, 1997, by Resolution Number 97-11-12-124, to calculate the time for payment from the date of wage-verification receipt.

<sup>65</sup> Note of Amendment: The Community Council amended this subsection on November 12, 1997, by Resolution Number 97-11-12-124, to require that a claim petition be enclosed with a denial.

- c. Discontinuance of Benefits.<sup>66</sup> 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 the notice with instructions to the Employee of the time limitations for challenging the denial.
- d. Workers' Compensation Court. There is established 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 Community 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 Court shall have the power to subpoena witnesses, administer oaths, and examine the 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.
- e. Claim Petition.<sup>67</sup> 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 30 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 claims for all outstanding disputed issues. The claim petition with supporting evidence must be served upon the Ordinance

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<sup>66</sup> Note of Amendment: The Community Council amended this subsection on November 12, 1997, by Resolution Number 97-11-12-124, to require notice to the Employee of the time limitations for challenging a denial of benefits.

<sup>67</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to require the Administrator to provide a claim petition with every notice of benefits denial or discontinuance. The Community Council amended this subsection again on November 12, 1997, by Resolution Number 97-11-12-124, to change the period for filing the claim petition.

Administrator. Failure to file the claim petition within 30 days will result in loss of the right of the Employee to pursue those benefits affected by the denial or discontinuance.

- f. Determination of Claim.<sup>68</sup> Upon receipt of a claim petition, the Hearing Examiner shall notify the Employee and Ordinance Administrator by letter including notice that the parties have 45 days to submit their written evidence. The Hearing Examiner shall review 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 have 30 days to make a written determination and served that determination on all parties. The determination of the Hearing Examiner shall be final upon the issues presented by the evidence unless either party files a written request for a hearing with the Hearing Examiner 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.
- g. Right of on the Record Hearing.<sup>69</sup> 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. Upon receipt of a request for a hearing, the Court shall schedule a hearing before the Court at the earliest date available. At the option of the Community Council, the hearing may be conducted before a panel of three individuals, one of whom shall be a Hearing Examiner and the remaining two shall be members of the Community. Each panel member has an equal vote in determining the outcome of the hearing. If the Community 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 the formal rules of evidence and shall conduct the hearing in as informal a 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. The decision shall be rendered and served on all parties 30 days from the date of the hearing.
- h. Appeal.<sup>70</sup> There should be no further review of factual decisions made by the

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<sup>68</sup> Note of Amendment: The Community Council amended this subsection on November 12, 1997, by Resolution Number 97-11-12-124, to set a deadline to submit written evidence.

<sup>69</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to permit the Hearing Examiner to order mediation. The Community Council amended this subsection again on November 12, 1997, by Resolution Number 97-11-12-124, to: remove the ability to require mediation; and set the time for issuing a decision.

<sup>70</sup> Note of Amendment: The Community Council added this subsection on September 5, 1995, by Resolution Number 95-9-5-94. It amended this subsection on November 12, 1997, by Resolution Number

panel or Hearing Examiner. A decision concerning legal issues may be appealed by either party to the Tribal Court. The appeal must be filed with the Ordinance 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 the factual record is inadequate. The written decision of the Tribal Court shall be rendered and served on all parties within 30 days and shall be final. The address for the Tribal Court is: Prairie Island Tribal Court, Attn: Clerk of Court, 5636 Sturgeon Lake Road, Welch, MN 55089; Phone: 651-385-4161; Fax: 651-267-4009; or as listed on the website for the Court, if different.

- i. 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 the filing of the memorandum with the Court, the agreement becomes binding and enforceable by the parties.
- j. Method of Service—Notices, Orders, and Decisions. All notices, decisions, or orders provided for in this Ordinance may be served personally or by United States 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.
- k. Right to Legal Counsel. Employees may be represented by an attorney at any stage of the proceedings outlined in this subsection. 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 paragraphs (f), (g), and (i). 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.

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97-11-12-124, to set the time for issuing a decision. The Community Council amended this subsection again on September 12, 2000, by Resolution Number 00-9-12-99, to add the address for the Court. The Community Council updated the address for the Court on July 26, 2023, by Resolution Number 23-07-26-132, including a reference to the address on the website.

- l. Recoupment of Overpayment.<sup>71</sup> 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 for the same injury. 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 Community Council to bring an action at law against the Employee to collect benefits paid as a result of the intentional misrepresentation.
- m. Discovery.<sup>72</sup> 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 business enterprises.
- n. 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 Community or its Community Council.
- o. Permanent Impairment Benefits.<sup>73</sup> The amount of Permanent Impairment Benefits are determined through the Minnesota Department of Labor and Industry Disability Schedules in Chapter 5223. Impairment schedules are based on the date of Injury.

#### **Section 10. Records.**<sup>74</sup>

- a. Records of the Ordinance Administrator. The Ordinance Administrator shall maintain a record of all Injuries, illnesses, and deaths, and all actions take on those reports in secure storage. The Ordinance Administrator shall preserve such records consistent with their record retention policies.
- b. Records of the Workers' Compensation Court. The Workers' Compensation Court shall maintain a record of all matters heard by the Court under this Ordinance in

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<sup>71</sup> Note of Amendment: The Community Council amended this subsection on July 26, 2023, by Resolution Number 23-07-26-132, to limit recoupment to payments for the same injury.

<sup>72</sup> Note of Amendment: The Community Council amended this subsection on September 5, 1995, by Resolution Number 95-9-5-94, to exclude financial information of the Community and its enterprises from discovery.

<sup>73</sup> Note of Amendment: The Community Council added this Section on July 26, 2023, by Resolution Number 23-07-26-132.

<sup>74</sup> Note of Amendment: The Community Council added this Section on July 26, 2023, by Resolution Number 23-07-26-132.

secure storage. The Court shall preserve such records consistent with its record retention policies and the record retention policies of the Tribal Court.

**Section 11. Miscellaneous Provisions.**<sup>75</sup>

- a. Limited Waiver of Sovereign Immunity. Enactment of this Ordinance shall not be construed as a waiver of sovereign immunity except as to the limits of compensation provided for in Section 5(c).
- b. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of this Ordinance, or the application of the provision to other persons or circumstances is not affected.
- c. Effective Date. This Ordinance shall become effective on October 1, 2023.

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<sup>75</sup> Note of Amendment: The Community Council added this Section on July 26, 2023, by Resolution Number 23-07-26-132, to centralize miscellaneous provisions.

**RULES PROMULGATED PURSUANT TO  
PRAIRIE ISLAND INDIAN COMMUNITY  
WORKERS' COMPENSATION ORDINANCE  
EFFECTIVE OCTOBER 1, 2023<sup>1</sup>**

Capitalized terms below are defined in the Prairie Island Indian Community Workers' Compensation Ordinance, Section 3. Definitions.

**Rule 001. Responsibility Assumed by Employer:**<sup>2</sup>

Pursuant to Section 5(c), the limited waiver of sovereign immunity is valid only for the amount of any retention amount (self-insured amount) for any available excess insurance, or two million dollars, whichever is less, during the annum in which the Injury occurs. The annum for purpose of this rule shall run from October 1 through September 30.

**Rule 002. Amount of Benefits - Total Liability:**<sup>3</sup>

Pursuant to Section 7(a)(2), a totally disabled Employee shall receive compensation equal to 70% of the Employee's Average Weekly Wage subject to the maximum weekly benefit set by the Minnesota Department of Labor and Industry.

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<sup>1</sup> Note Adoption and Amendment: The Community Council adopted the Rules Promulgated Pursuant to Prairie Island Indian Community Workers' Compensation Ordinance ("Rules") on September 5, 1995, by Resolution Number 95-9-5-93. The Community Council amended and/or restated the Rules on:

- September 6, 1996, by Resolution Number 96-9-6-86;
- October 1, 1997, by Resolution Number 97-10-1-105;
- September 14, 1998, by Resolution Number 98-9-14-101;
- September 28, 1999, by Resolution Number 99-9-28-90;
- September 12, 2000, by Resolution Number 00-9-12-99; and
- September 26, 2002, by Resolution Number 02-09-26-75.

The Community Council restated the Rules on October 1, 2009, affirming the Rules that were adopted by Resolution Number 02-09-26-75; the Community Council reconfirmed, ratified, adopted, and reauthorized the 2009 Rules on March 15, 2023, by Resolution Number 23-3-15-49. The Community Council amended these Rules on July 26, 2023, by Resolution Number 23-07-26-133, to increase the usability of these Rules and of tribal law, to make substantive changes to the Rules, and to add Notes of Amendment summarizing the history of these Rules. The Notes of Amendment are for convenience only and should not be relied on as mandatory authority. The 2023 amendment includes notes of its non-technical changes to the Rules.

<sup>2</sup> Note of Amendment: The Community Council amended this Rule on July 26, 2023, by Resolution Number 23-07-26-133, to clarify and increase the per annum amount.

<sup>3</sup> Note of Amendment: The Community Council amended this Rule on July 26, 2023, by Resolution Number 23-07-26-133, to set the maximum benefit amount at the amount set by the Minnesota Department of Labor and Industry.



**Rule 003. Adjustment of Benefits:**<sup>4</sup>

Benefits payable under Section 7(a) for Permanent and Total disability benefits shall be increased at a rate of 2% 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 Section 7(b)(2), a partially disabled Employee shall receive 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 disabled condition, subject to the maximum amount payable for total disability.

**Rule 005. Duration of Benefits:**

Pursuant to Section 7(c)(2), 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 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

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<sup>4</sup> Note of Amendment: The Community Council amended this Rule on October 1, 1997, by Resolution Number 97-10-1-105, to reduce the rate of increase from 4% to 2% per year. It amended this Rule on July 26, 2023, by Resolution Number 23-07-26-133, to specify application to Permanent and Total disability benefits.

**Rule 007. Commencement of Compensation:**<sup>5</sup>

Pursuant to Section 7(a)(3), 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 eighth day of disability.

**Rule 008. Health Care Benefits-Provider:**<sup>6</sup>

Pursuant to 7(e)(1), “health care provider” means only the designated medical providers listed as follows, or their successors:

<b>Allina Medical Clinic</b> <b>1110 Yankee Doodle Road</b> <b>Eagan, MN 55121</b> <b>Phone: 651-454-3970</b>	<b>M Health Fairview Clinic</b> <b>319 S Main Street</b> <b>River Falls, WI 54022</b> <b>Phone: 715-425-6701</b>	<b>Ellsworth Mayo Clinic</b> <b>530 W. Cairns Street</b> <b>Ellsworth, WI 54011</b> <b>Phone: 715-273-5061</b>
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<b>Mayo Clinic Health System</b> <b>701 Hewitt Blvd</b> <b>Red Wing, MN 55066</b> <b>Phone: 651-267-5000</b>	<b>Allina Health Hastings Clinic</b> <b>1880 N Frontage Road</b> <b>Hastings, MN 55033</b> <b>Phone: 651-438-1800</b>
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**EMERGENCY ROOM PROVIDER**

**Mayo Red Wing Hospital**  
**701 Hewitt Blvd**  
**P.O. Box 95**  
**Red Wing, MN 55066**  
**Phone: 651-267-5700**

**Rule 009. Notice of Injury:**<sup>7</sup>

Pursuant to Section 8, immediately but no later than 7 days after the occurrence of the Injury, Employees must follow these three steps when giving notice of injury:

1. Inform your supervisor of your Injury.

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<sup>5</sup> Note of Amendment: The Community Council amended this Rule on October 1, 1997, by Resolution Number 97-10-1-105, to compute a total disability that is longer than seven days from the eighth day of disability.

<sup>6</sup> Note of Amendment: The Community Council re-designated the listed medical providers on October 1, 1997, by Resolution Number 97-10-1-105; on September 14, 1998, by Resolution Number 98-9-14-101; on September 28, 1999, by Resolution Number 99-9-28-90; on September 12, 2000, by Resolution Number 00-9-12-99, and on September 26, 2002, by Resolution Number 02-09-26-75. On July 26, 2023, by Resolution Number 23-07-26-133, the Community Council again re-designated the listed medical providers and included their successors as designated providers.

<sup>7</sup> Note of Amendment: The Community Council amended this Rule on October 1, 1997, by Resolution Number 97-10-1-105, to require immediate notice of injury. The Community Council amended this Rule again on September 28, 1999, by Resolution Number 99-9-28-90, to require notice of injury within 7 days.

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

**Rule 010. “Zero-Tolerance” Positions:**<sup>8</sup>

Pursuant to Section 6(c), the following departments and positions are designated as “zero-tolerance”:

- Public Works Department
- Utilities/Wastewater Department
- Land & Environment Department
- Police Officers
- Community Resource Officers
- Family Services Department
- Family Health Manager
- Community Health Representative
- Education Department
- Grounds crew and landscape equipment operators
- Positions that require a commercial driver’s license
- Positions that are otherwise licensed or regulated by Federal, State, Tribal, or other local laws, which prohibit the use of any intoxicating substances

**Rule 011. Medical Care Benefits – Medical Marijuana:**<sup>9</sup>

Pursuant to Section 7(e)(8), coverage for participating in a state or tribal medical marijuana program or purchasing medical marijuana is limited to the coverage available and allowable, if any, under the Workers’ Compensation Statute of the State of the Minnesota and the Minnesota Department of Labor and Industry.

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<sup>8</sup> Note of Amendment: The Community Council added this Rule on July 26, 2023, by Resolution Number 23-07-26-133.

<sup>9</sup> Note of Amendment: The Community Council added this Rule on July 26, 2023, by Resolution Number 23-07-26-133.