

TITLE 4E CHAPTER ONE

Section 4E-1-1 PURPOSE

There shall be a "Tribe Occupational Injury Ordinance" for all covered employees and workers of the Tribe, exercising its inherent sovereign authority, adopts this system, establishing a Tribal Occupational Injury Ordinance.

Section 4E-1-2 DEFINITIONS

In this program, unless the context otherwise requires:

1. "ADMINISTRATOR" means the insurance company providing coverage or its designee.
2. "ADOPTION" means persons adopted by decree of a recognized Court of law.
3. "AVERAGE WEEKLY WAGE" means the average of the employee's wages earned during the thirteen (13) calendar weeks preceding the date of injury, not including unreported tips and/or bonuses. Overtime is not to be considered in computing wages unless it is regular and frequent throughout the year. The thirteen weeks prior to the date of injury are presumed representative, regardless of the wages earned. In the event that an employee is employed for less than thirteen (13) consecutive calendar weeks immediately preceding the date of injury, the average weekly wage shall be determined by multiplying the employee's daily wage by the number of days normally worked in the business of the employer. Daily wage is the actual daily wage of the employee in the employment engaged in at the date of the injury.

If the employee's work week is fewer than five days per week or if there is an irregular number of days worked per week, the total number of days that an employee actually performed any of the duties of employment in the last 13 weeks is to be divided by the number of weeks in which the employee actually performed such duties, multiplied by the employee's daily wage.

4. "BENEFIT" means the findings or decision of the Administrator or designee regarding the amount of medical and lost time benefits due to an injured employee or the dependent of a deceased employee under the rules of the Tribal Addendum.
5. "CHILD" includes dependent biological child(ren) and dependent legally adopted child(ren), but does not include married child(ren).
6. "CLAIMANT" means the injured covered employee, or in the event of death of the covered employee, dependents of the deceased.
7. "COURSE OF EMPLOYMENT" means the Tribe's employment of the covered employee at the time the injury occurred. An injury must be directly related to their employment by the Tribe in order that a claim be payable. Claim for injuries that occur during social or recreational activities are not payable, unless the employee was paid for their attendance at the activity by the Tribe.

8. "COMPENSATION": means lost time wages while disabled or unable to work due to a work related injury or illness. This also includes if the employer is unable to accommodate modified duty work within physical restrictions assigned by the treating physician.
9. "COVERED EMPLOYEE" AND "WORKER" means:
 - a) Every person in the employment of the Tribe, but does not include independent contractors or volunteers.
 - b) Excluded, as not in the employ of the Tribe are consultants, independent contractors and all other persons not considered under common law to be employed by the Tribe unless written contractual agreement between the Tribe and an entity provides for occupational benefits. In the event of such a contract the contract shall be specific as to whom, when, where, and why this coverage is provided by the Tribe, and all third parties and/or covered employees shall agree to all terms, conditions, and provisions of this program.
10. "INJURY" means an injury directly related to their employment and includes occupational disease and death. Injury is defined in two categories: 1) Traumatic; 2) Cumulative. "Traumatic" is defined as a sudden, specific incident. "Cumulative" is defined as a repetitive motion injury occurring over a period of time. Where this plan contains conflicting references to injury and occupational disease, the references to occupational disease shall prevail.
11. "NET WEEKLY EARNINGS" means Gross Weekly Wage less all state and federal taxes.
12. "NON-SCHEDULED INJURIES" mean injuries that result in permanent partial disability or permanent total disability which are not defined as scheduled member injuries.
13. "OCCUPATIONAL DISEASE" means a disease, which is directly related to the employment. a disease is not directly related to the employee's employment if an employee would have been equally exposed to such a hazard outside of the employment.
14. "Tribe" means The Flandreau Santee Sioux Tribe, a federally recognized Indian tribe; the Tribe; acting at all times pursuant to its Constitution and Ordinances in a governmental capacity. References herein to the Tribe include any of its enterprises, subdivisions, or other operations.
15. "SCHEDULED MEMBER INJURIES" means injuries that result in permanent partial impairment to the shoulder, arm, hand, thumb, finger, hip, leg, foot, toes, eyes, or ear.
16. "SPOUSE" means legally married; or a common law marriage where the parties are holding themselves out, as husband and/or wife, provided both of them have not previously been married, or, if either of them has been previously married, said prior marriage has been terminated by death, annulment, or dissolution.

17. "OCCUPATIONAL INJURY BENEFITS" include weekly benefits and medical benefits further defined as follows:
- a) "MEDICAL" means medical expense and other expenses associated with medical treatment reasonably related to the work injury. Medical mileage expense will be paid at the rate of \$.25 per mile.
 - b) "WEEKLY BENEFIT" means 66 2/3 percent of the employee's Average Weekly wage. In the case of temporary partial disability, the weekly benefit amount is 66 2/3 percent of the difference between the employee's average gross weekly earnings at the time of the injury and the employee's while temporarily working at the lesser paying job. The maximum weekly benefit payable is \$873.00.
 - c) "TEMPORARY TOTAL DISABILITY BENEFITS" (TTD benefits) means the weekly benefit paid when an injury results in four (4) or more calendar days of disability.
 - d) "TEMPORARY PARTIAL DISABILITY BENEFITS" (TPD benefits) means the weekly benefits paid if the employee returns to work at a lesser paying job, because of the injury but before the employee reaches maximum medical improvement.
 - e) "PERMANENT PARTIAL DISABILITY BENEFITS" (PPD benefits) means the weekly benefits paid for the partial loss of a scheduled member or a non-scheduled member.
 - f) "PERMANENT TOTAL DISABILITY BENEFITS" (PTD benefits) means the weekly benefits paid for a non-scheduled injury when the job-related injury leaves an employee totally and permanently incapacitated. This means that the employee's physical disability, in combination with the employee's age, education, training and experience, causes the employee to be unable to secure anything more than sporadic employment resulting in an insubstantial income.
 - g) "DEATH BENEFITS" means the weekly benefits paid to dependents as a result of any fatality of the employee arising out of and in the course of employment.
18. "WORKER BENEFIT COMMITTEE" means the committee defined herein.
19. "MAXIMUM MEDICAL IMPROVEMENT" means the date after which no significant recovery from or significant lasting improvement to a personal injury can reasonably be anticipated, based upon reasonable medical probability.
20. "Tribal Court" shall mean the Flandreau Santee Sioux Tribal Court.

Section 4E-1-3

ACKNOWLEDGEMENT OF PROGRAM AND NOTICE TO
EMPLOYEES

1. All covered employees, workers, and persons asserting a claim shall be conclusively presumed to have elected to take occupational injury benefits in accordance with the tenets, conditions, and provisions of this program (including the schedule of benefits) by virtue of employment with the Tribe, exclusive of any other claims, the employee may have with regards to the injury. All covered employees and/or persons asserting a claim for occupational injury benefits acknowledge that the Tribe, in fact, a federally recognized Indian Tribe and for the purposes of occupational injury benefits, is exercising its inherent sovereign authority.
2. The Tribe shall be responsible for posting a notice of this program in a conspicuous location.
3. A copy of this program will be made available to the employee or the employee's representative upon request.

Section 4E-I-4

ADMINISTRATION OF PROGRAM

1. The Administrator shall annually, on or before November 30, make a report to the Tribe for the preceding fiscal year. The report shall include:
 - A. A statement of the number of benefits made; and
 - B. A general statement of the causes of injuries for which the benefits were made; and
 - C. A detailed statement of disbursements from the insurance; and
 - D. An explanation of the rate setting formula; and
 - E. Other matters which the Administrator deems proper to call to the attention of the Tribe, including recommendations.
2. The Administrator shall provide the Tribe with a quarterly report providing information as to employees injured and amounts paid for weekly and medical benefits.

Section 4E-1-5

RIGHT TO OCCUPATIONAL INJURY BENEFITS

1. Every covered employee, or the employee's dependents in case of death, who sustains an injury directly related to their employment shall be entitled to receive benefits under this program.
2. Except in the case of acute medical emergencies, the Tribe has the right to select the employee's health care provider. The "authorization to treat" form is required for ALL medical appointments. This form must be obtained prior to the appointment and returned to the supervisor or to the Employee Benefits Office prior to the start of the next scheduled shift.

3. The Administrator shall pay usual and customary expenses for necessary medical emergencies and/or authorized medical treatment reasonable related to the compensable injury.

Section 4E-1-6 EXCLUSIONS FROM COVERAGE

The following shall be excluded from coverage under this program:

1. No benefit of any nature shall be payable for injury and/or death resulting from self-inflicted injury or willful injury of another. If the injury follows repeated documented violations of work rules, it may be regarded as a self-inflicted injury. If the injury resulted from a documented violation of safety policies, determined after a thorough investigation by the Human Resources Director, it will be regarded as a self-inflicted injury and therefore not compensable. In order for this exclusion to apply, the employer shall be required to show that the employee knew or reasonably should have known of the safety policies or workplace safety rules, whether as a result of a safety training program, exposure to an employer safety manual with which the employee was directed to conduct their employment activities, or other reasonable means customarily used by the employer to inform employees of its safety policies and work rules.
2. No benefit shall be payable for the death or permanent disability of an employee if the employee's death or permanent disability is caused by, aggravated, or continued by, an unreasonable refusal or neglect to submit to or follow any competent or reasonable surgical treatment or medical aid or advice by a qualified health care provider.
3. No benefit shall be payable for injury where refusal or failure of the injured employee to obey written or verbal instructions by the employer, or failure or refusal to use a safety device or appliance furnished by the employer, which if obeyed or used, would have reasonably prevented or significantly reduced the likelihood of injury or death.
4. No benefit of any nature shall be payable for injury and/or death caused or contributed to by the employee's use of any illegal substance, including but not limited to narcotics and hallucinogens, or any gas or fumes taken or inhaled voluntarily, or by voluntary poisoning, or abuse of any prescription medication.
5. No benefit shall be payable for any covered employee injured or killed while intoxicated regardless of whether or not the intoxicated condition was the proximate cause of the injury or death. Therefore, it is necessary only to prove that the covered employee was intoxicated at the time of the injury to deny benefits under this Tribal Ordinance, but the burden to prove intoxication shall at all times rest with the employer.
6. Mental injuries, unless resulting from a physical injury, are not covered by this Tribal Ordinance.
7. For purposes of hourly employees, injuries that occur on tribal property before clocking in for a shift or after clocking out completing a shift are not covered by this Tribal Ordinance.

8. An injury occurring to an employee while on the way to or from work is not within the course of employment except when such travel is directly connected with the employee's work. This exception will not apply if the employee deviates from a reasonably direct route of travel, or is not acting in the interest of the employer at the time of injury.
9. For traumatic injury: the claim shall be denied if there is no specific incident which caused the injury, and if the employee is not performing employment related duties.
10. For cumulative injury: the claim shall be denied if the employee fails to report a claim within 30 days from the initial onset of pain or injury. The claim shall also be reduced for cumulative injury based on the employee's length of employment.
11. Compensation shall not be paid for any period during which the employee is incarcerated, regardless the nature of the penal institution in which the employee is incarcerated, and regardless the reasons for or period of such incarceration. Such incarceration shall not toll the running of any time period during which an employee is eligible for benefits.
12. Compensation shall not be paid for any period during which the employee:
 - a. declines or quits work within the employee's physical restrictions;
 - b. is terminated for misconduct;
 - c. fails to make a diligent effort to find employment;
 - d. fails to maintain contact with the employer at least two times per month; or
 - e. fails to cooperate with reasonable medical or vocational rehabilitation if requested;
 - f. does not have authorization from the company's physician provider to be off work;
 - g. fails to report other employment.
13. Non-Compliance: if the Administrator determines that there is an issue of non-compliance by the employee with authorized medical treatment, the Administrator or the Employee Benefits Office will notify the employee in writing they have 7 days to contact the Employee Benefits Office to resolve the non-compliant issue or the "Worker's Benefits" will be denied from the date of the letter forward.
14. Documented evidence that the employee has failed to follow physician's restrictions on two or more occasions, while either at work or outside the work place will result in a denial of future occupational injury benefits.

This section shall not be construed to require the employee to undergo unreasonably invasive medical procedures, nor to require the employer to provide vocational rehabilitation.

Section 4E-1-7 AGGRAVATION OF PRE-EXISTING INJURY

For the purpose of settlement for permanent partial or permanent total disability, the amount of the benefit for that disability as set forth in the schedule of benefits may be reduced or denied in its entirety by the Administrator for pre-existing disability, whether work related or not. Apportionment for prior medically documented disability ratings may be used in calculating any permanent partial or permanent total disability.

Section 4E-1-8 DISCLOSURE OF PRE-EXISTING DISABILITIES

1. If requested, all employees of the Tribe shall disclose any pre-existing physical or mental disorder or disability known to the employee that would prevent them from performing in a reasonable and safe manner the activities involved in the position applied for or in which they work. Following such request, failure by the employee to disclose, prior to commencement of employment, a physical condition which prevented the employee from safely performing the work for which the employee was hired and which was a substantial contributing factor to the injury shall exclude the employee from coverage under the provisions of this ordinance.
2. Any claim resulting from an employment related aggravation of a pre-existing condition which was not disclosed as required under this worker benefit program may be declined by the Administrator under this program if the claimant had knowledge of the pre-existing condition and failed to disclose the pre-existing condition as required by subsection (1).

Section 4E-1-9 BENEFITS AS AN EXCLUSIVE REMEDY

The right to receive benefits pursuant to the provisions of this program for injuries sustained by a covered injured employee regardless where the injury occurred shall be the exclusive remedy against the Tribe, its agents, officials and employees.

Section 4E-1-10 CHOICE OF REMEDY AS WAIVER OF ALTERNATE REMEDY

1. An employee or the employee's dependents or legal representative, who accepts occupational injury benefits, waives the right to exercise any other legal remedy.
2. An employee or the employees' dependents or legal representative, who exercises any other legal remedy against an employee, agent, or official of the Tribe, waives any right to occupational injury benefits.

Section 4E-1-11 ACCESS TO MEDICAL RECORD AND MEDICAL REPORTS

1. An employee, by filing a claim under this program, waives any claim to doctor/patient privilege.
2. The Tribe or the Administrator shall have the right to present specific questions required to evaluate the claim, and to request a full and complete report from the employee's physician or surgeon or other medical worker at any time and in the form and detail as deemed necessary.

3. The employee shall assist the Tribe or the Administrator in obtaining any medical information by providing patient's waivers as requested. Failure to execute a waiver or release for such medical information will result in an automatic denial of all benefits.

Section 4E-1-12 REPORT OF INJURY

1. No compensation shall be due under this Ordinance unless the employer has clear reason to know of the injury or the employee provides the employer with notice of the injury to the employer's supervisor within 30 days after the occurrence of the injury. A traumatic or cumulative injury or occupational disease is deemed to have occurred when the employee knows or has reason to know that the injury or disease is related to the employee's work activities, or when the injury or disease causes the employee to be unable to work, whichever occurs first.
2. All incidents resulting in injury or death must be reported to the Administrator within ten (10) working days of the date of occurrence or knowledge of the alleged occurrence by the Tribe.
3. When an injury or occupational disease occurs, the employee or claimant must also file their claim with the Administrator within the time specified in Section 4E-1-12(1).
4. Time limits shall be calculated using calendar days.

Section 4E-1-13 TIME LIMIT FOR FILING CLAIM

1. Traumatic and Cumulative injuries: no compensation benefits shall be paid or awarded under this Ordinance unless the written claim for benefits is made within thirty (30) days from the date of the claimed injury or onset of symptoms in the case of cumulative injury. Within 30 days of the date of the written notice of claim, the employee must seek treatment, or no benefits will be payable hereunder. In addition, a claim for benefits will be precluded from being processed where more than one year has elapsed from the date of last medical treatment for a covered injury or where more than one year has elapsed from the date after the employee has reached maximum medical improvements, and the employee has not prosecuted the claim.
2. In the case of occupational disease, no compensation benefits shall be paid or awarded under this Ordinance unless the employee or the employee's dependents or representative file a claim within ninety (90) days from the date of discovery of the disease and its probable relationship to the employment, but in no event longer than ninety (90) days from the date employee terminates employment with the Tribe or ninety (90) days after the date of death, whichever occurs first.

Section 4E-1-14 FALSE STATEMENT OR REPRESENTATION TO OBTAIN BENEFITS AND FORFEITURE

Any person who willfully makes a false statement or representation in order to obtain any benefits under this program shall forfeit all rights to such benefits.

1. The employee shall repay such compensation that the employee is not entitled to and received because of clerical error, mistaken identity, innocent misrepresentation mistakenly acted upon, or any other circumstance of a similar nature and not induced by fraud.
 - a. Recoupment may be made from any future payments due the employee on any workers benefit claim. Or if no future payments are due to the employee, a payment plan shall be arranged between the Administrator and employee.
 - b. The Administrator or employer must make a claim for such repayment or recoupment within one year of when the compensation is paid or the repayment shall be barred.
 - c. The Worker Benefit Committee may waive, at its discretion and in whole or in part, the amount of such timely claim where the recovery would be against equity and good conscience.
2. Whenever the payment of compensation to a worker has been induced by proven fraud, the recipient shall repay any such compensation together with a penalty of fifty percent (50%) of the total of any such payments.
 - a. Recoupment may be made from any future payments due the worker on any worker benefit claim. Or if no future payments are due to the employee, a payment plan shall be arranged between the Administrator and employee.
3. The Administrator or employer shall make a claim for repayment or recoupment within one year of discovery of the fraud.

Section 4E-1-15 MEDICAL EXAMINATION OF EMPLOYEE; PERIODIC
INDEPENDENT MEDICAL EXAMINATIONS; EFFECT OF
REFUSAL OR OBSTRUCTION OF EXAMINATION OR
TREATMENT

1. An employee shall have only one treating health care provider at a time coordinating the employee's medical care. All medical appointments must be approved and authorized by the Employee Benefit Office, except in acute emergency situations. Any change in a health care provider must be approved by the 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 and shall not be paid.
2. The Administrator may reduce or suspend the benefits of an employee whose actions interfere with or prolong the employee's recovery, including where the employee fails to timely seek appropriate medical attention, or reports ongoing treatment by a treating physician when in fact such treatment is not occurring, or who fails or refuses to seek treatment with the employer's approved medical providers. If an employee fails to attend two consecutive, authorized scheduled appointments without prior approval from the Administrator or the Employee Benefits Office, will result in a suspension of all benefits.

3. An employee entitled to benefits shall submit to independent medical examinations at a place reasonably convenient for the employee, if and when requested by the Administrator or the Worker Benefit Committee.
4. The request for medical examination shall fix a time and place for such examination, having regard to the convenience of the employee, the employee's physical condition and examination if procured and paid for by the employee.
5. If the employee refuses to submit to the medical examination or obstructs the examination, the employee's right to benefits shall be suspended until the examination has been made, and no benefits shall be payable during or for such period of refusal.

Section 4E-1-16 WAITING PERIOD

No weekly benefits shall be allowed under the provisions of this program for any injury or occupational disease injury, which results in a disability lasting less than four (4) consecutive days. If the worker's disability lasts for more than fourteen (14) consecutive days following the date of the injury, weekly benefits shall be allowed from the date of disability. The date of injury is not considered as a "date of disability" to count towards the waiting period. An employee may not recover weekly benefits for the period of time that they are compensated by annual PTO, at the employee's option. PTO taken shall apply against the waiting period of weekly benefits. If the employee files for and receives short term or long-term disability benefits through their employer for a Worker benefit Claim, the employee has waived their rights to recover compensation under the ordinance.

Section 4E-1-17 TEMPORARY TOTAL DISABILITY (TTD)

1. Temporary Total Disability (TTD) benefits are payable until an injured employee returns to work, is medically capable of returning to employment substantially similar to employment in which the employee was engaged at the time of injury or until the date the employee reaches maximum medical improvement, as defined in 97.01.020, whichever occurs first. If the employer offers work within the employee's restrictions and the employee refuses to accept the work, the employee shall not be paid TTD benefits during the period of refusal. TTD benefits will end on the date the physician releases an employee to full duty work, or in the case of modified duty work, the date the employer notifies the employee of work availability. All compensation checks are sent through the Employer.
2. Where an employee is entitled to benefits under this section and death ensues from any cause unrelated to the injury for which benefits were paid, all unaccrued benefits shall cease and all liability of the Tribe shall terminate.
3. If an employee is terminated for a specific cause and the employer has documentation that they have light duty work available within the employee's physical restrictions, the employee is not entitled to compensation under the Workers' Benefits.

Section 4E-1-18 TEMPORARY PARTIAL DISABILITY (TPD)

1. Temporary Partial Disability (TPD) benefits are payable when the employee returns to work at a lesser paying job, because of the injury. TPD benefits are payable pursuant to the following:
 - a. If the employer offers the employee work within the employee's restrictions, the employee shall accept the work and be paid temporary partial benefits based strictly on wage loss. If the employee refuses to accept the work the employee shall not be paid TPD benefits during the period of the refusal.
 - b. If work is not offered by the Tribe and the employee elects to perform work with a different employer, the employee shall be paid TDP benefits.
2. As long as the employer allows the employee to make up any missed time for medical appointments, TPD benefits will be paid for any missed time for those medical appointments.
3. Where an employee is entitled to benefits under this section and death ensues from any cause unrelated to the injury for which benefits were paid, all unaccrued benefits shall cease and all liability of the Tribe shall terminate.

Section 4E-1-19 PERMANENT PARTIAL DISABILITY (PPD)

1. When an injury results in a permanent disability, the employee may be entitled to Permanent Partial Disability (PPD) benefits based upon the degree of permanent disability. Benefits begin at the termination of TTD or TPD benefits. If all of the weeks have accrued at the time of the payment, a lump sum payment will be issued. If the weeks have not accrued, the benefits will be paid out weekly until all weeks owed are exhausted. There are two types of permanent partial disability benefits:
 - a. Scheduled member disabilities – an employee's entitlement to PPD benefits when a scheduled member is involved is based on functional impairment as assigned by a health care provider. The schedule shown in this ordinance represents the number of weeks of benefits payable for 100% loss, or loss of use, of the body member. If the PPD rating is less than 100%, the percentage rating is multiplied by the number of weeks shown in the schedule of benefits to determine the PPD benefits payable.
 - b. Non-scheduled member disabilities – an employee's entitlement to PPD benefits when a scheduled member is involved is based on functional impairment as assigned by a health care provider. The number of weeks for a body as a whole are 500 weeks.
2. Where an employee is entitled to benefits under this section and death ensues from any cause unrelated to the injury for which benefits were paid, all unaccrued benefits shall cease and all liability of the Tribe shall terminate.

Section 4E-1-20 PERMANENT TOTAL DISABILITY (PTD)

1. Permanent Total (PTD) must be demonstrated by objective medical evidence. PTD applies only to unscheduled injuries and the factors set forth in the ordinance are used to determine if an employee is entitled to PTD benefits.
2. Where an employee is entitled to benefits under this section and death ensues from any cause unrelated to the injury for which benefits were paid, all unaccrued benefits shall cease and all liability of the Tribe shall terminate.

Section 4E-1-21 MAXIMUM MEDICAL IMPROVEMENT AND RATING;
TERMINATION OF BENEFITS

When an injured or disabled employee's physical condition reaches the point after which no significant recovery from or significant lasting improvement to a personal injury can reasonably be anticipated, based upon reasonable medical probability, the following procedures will be applicable:

1. The employee is considered to have reached maximum medical improvement and the employee's condition shall then be considered stationary and ratable.
2. On claims where compensation has been paid, the employee shall be notified in writing by the Administrator that the employee's condition is stationary and ratable. If the physician assigns a permanent partial disability rating as a result of the injury, the notice shall also include whether a functional impairment rating has been assigned to the injury and the amount that the Administrator determines is due under the ordinance. This notice is referred to as the notice of maximum medical improvement.
3. The Administrator shall make the initial permanent partial disability payment **within fourteen (14) days of service of notice of maximum medical improvement unless the Administrator disputes the rating. If such a dispute exists, the Administrator shall notify the employee in writing regarding this.**
4. The employee may request an appeal of a notice of maximum medical improvement under the procedure for disputed claims as set forth herein.

Section 4E-1-22 SCHEDULE OF EVENTS

1. Scheduled Member Injuries:

| | |
|--|-----------|
| 1. SHOULDER | 250 weeks |
| 2. ARM | |
| 1. 2/3 of arm between shoulder and elbow | 250 weeks |
| 3. HAND | |
| 1. Total | 190 weeks |

4. THUMB

- | | |
|---------------------------|----------|
| 1. Total | 60 weeks |
| 2. More than one phalange | 60 weeks |
| 3. At distal phalange | 30 weeks |

5. INDEX FINGER

- | | |
|---------------------------|------------|
| 1. Including metacarpal | 35 weeks |
| 2. More than one phalange | 35 weeks |
| 3. At distal phalange | 17.5 weeks |

6. SECOND FINGER

- | | |
|---------------------------|----------|
| 1. Including metacarpal | 30 weeks |
| 2. More than one phalange | 30 weeks |
| 3. At distal phalange | 15 weeks |

7. THIRD FINGER

- | | |
|---------------------------|------------|
| 1. Including metacarpal | 25 weeks |
| 2. More than one phalange | 25 weeks |
| 3. At distal phalange | 12.5 weeks |

8. FOURTH FINGER

- | | |
|---------------------------|----------|
| 1. Including metacarpal | 20 weeks |
| 2. More than one phalange | 20 weeks |
| 3. At distal phalange | 10 weeks |

9. HIP 220 weeks

10. LEG

- | | |
|------------------------------------|-----------|
| 1. 2/3 of leg between hip and knee | 220 weeks |
|------------------------------------|-----------|

11. FOOT

- | | |
|-------------|-----------|
| 1. At ankle | 150 weeks |
|-------------|-----------|

12. GREAT TOE

- | | |
|-----------------------------------|----------|
| 1. Including metatarsal | 40 weeks |
| 2. Loss of more than one phalange | 40 weeks |
| 3. Loss of one phalange | 20 weeks |

13. OTHER TOES

- | | |
|-----------------------------------|-----------|
| 1. Including metatarsal | 15 weeks |
| 2. Loss of more than one phalange | 15 weeks |
| 3. Loss of one phalange | 7.5 weeks |

14. ONE EYE

- | | |
|--|-----------|
| 1. Total blindness | 140 weeks |
| 2. With other eye lost prior to injury | 200 weeks |

15. EARS

- | | |
|------------------------------|-----------|
| 1. Total deafness, one ear | 50 weeks |
| 2. Total deafness, both ears | 175 weeks |

16. FOR LOSS OF BOTH SHOULDERS, OR BOTH ARMS, OR BOTH HANDS, OR BOTH FEET, OR BOTH LEGS, OR BOTH HIPS, OR BOTH EYES, OR ANY TWO THEREOF, CAUSED BY A SINGLE INJURY
- 500 weeks

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

2. Non-Scheduled Injuries/Industrial Disability shall be paid on the basis of 500 weeks. Permanent total disability benefits for non-scheduled injuries are payable as long as the employee remains permanently totally disabled or until age 65 which ever occurs first.
3. Permanent partial disability ratings are to be secured from a qualified health care provider in accordance with the AMA guidelines or other nationally recognized rating method.
4. Once the Administrator has obtained a permanent partial disability rating the employee may obtain a permanent partial disability rating from a qualified health care provider of the employee's choice at the Tribe's expense, subject only to the approval of the fee by the Administrator. This opinion must be scheduled within 30 days from the employee's notice of maximum medical improvement. Once the rating is received from the employee's physician of choice, if there is a difference between the two ratings, then the rating average will be taken. This will be the final rating.

Section 4E-1-23 COMPENSATION FOR DEATH

If an injury sustained by a worker results in the worker's death within two (2) years following the injury, benefits shall be paid in the amount and to the dependents as defined herein. Death resulting from occupational disease shall be brought within the time limits of two (2) years following date of death:

1. If there are no eligible dependents, benefits shall be limited to the burial expenses, not to exceed \$5,000, and the expenses provided for medical and hospital services for the deceased, together with any accrued benefits up to the time of death, and shall be payable to the estate of the deceased.
2. If there are eligible dependents, death benefits are payable equally on a monthly basis as follows:
 1. The surviving spouse if living with the deceased employee at the time of deceased employee's death, until remarriage or until age 65, whichever occurs first.
 2. An unmarried child under 18 years of age; or an unmarried child under 25 years of age who is wholly dependent on the deceased employee and is enrolled as a full-time student in an accredited educational institution; or an unmarried child who is physically or mentally incapable of self support and wholly dependent on the deceased employee until age 25.
3. Death Benefit
 1. Death benefits are limited to a maximum of \$873.00 per week.
 2. Burial Expense not to exceed \$5,000.
 3. If the number of eligible dependents changes, benefits will be redistributed equitably to the remaining eligible dependents.

Section 4E-1-24 PROCEDURES FOR DISPUTED CLAIMS

1. In the event of any dispute over payments, denial or termination of benefits payable under this program, the claimant shall have the right to appeal the disputed claim as follows:

Claimant must request reconsideration by the Administrator. The reconsideration request must be made in writing, specifying what action is in dispute, why the claimant disagrees with the Administrator's action and the desired result. Any additional supporting documentation or evidence to be considered must be submitted by the claimant with the reconsideration request unless an extension of time to submit such reconsideration must be filed within thirty (30) calendar days of the date of the Administrator's adverse action or decision. A reconsideration request is deemed filed upon mailing by regular or certified mail. Failure to request reconsideration within that time period is deemed a waiver of any further rights of appeal herein.

 1. Upon denial of the reconsideration request or an adverse decision of the reconsideration request, the claimant may request a hearing before the Worker Benefit Committee. The hearing request must be made in writing and shall contain a plan, concise statement of the disputed action of the Administrator, the date of the action and the claimant's reasons for appeal. Any issues not raised in the request for hearing application by either party are deemed waived. Any new supporting documentation or evidence to be considered must be submitted by the claimant with the hearing request unless an extension of time to do so is specifically requested in the hearing request. A request for hearing must be filed by mail or hand-delivered within fourteen (14)

calendar days of the date of the Administrator's adverse decision to the Worker Benefit Committee, c/o Executive Director, Flandreau Santee Sioux Tribe, Box 283, Flandreau, South Dakota 57028. A hearing request is deemed filed upon mailing by regular or certified mail. Failure to request a hearing within the above time period shall be deemed a waiver of any further right of appeal herein.

2. Upon denial of benefits or other adverse decision by the Worker Benefit Committee, the claimant may appeal to Tribal Court. A request for appeal must be made in writing and shall contain a plain, concise statement of the disputed decision, the date thereof, and the claimant's reasons or grounds for appeal. The Administrator shall be named as the adverse party in the proceedings. The request for appeal must be filed by mail or hand-delivered to the Tribe's Clerk of Court within thirty (30) calendar days of the date of the adverse decision by the Worker Benefit Committee. The Tribe's Clerk of Court, within ten (10) calendar days of receipt, mails a copy of the appeal request to the Administrator. The appeal shall be solely based on the record and not a de novo trial.
2. The burden of proof, throughout the above appeal process, rests on the covered worker to prove that the worker sustained an injury which is directly related to the employment and that the employee is entitled to the benefits claimed under this program.
3. A claimant may be represented in an appeal by any person. Attorney fees shall be limited to twenty-five (25) percent of the first \$2,000 of increased benefit twenty (20) percent of the remaining increased benefit obtained by a claimant or the maximum fee of \$4,500. "Increased benefit," means any benefits above those provided by the original decision of the Committee. It is the claimant's responsibility to pay the representative.
4. Hearing procedures before the Worker's Benefit Committee.
 1. Upon filing of a request for hearing before the Worker Benefit Committee, a copy of the hearing request and all supporting evidence submitted by the employee shall be sent by the Tribe's Executive Director to the Administrator within fourteen (14) calendar days of receipt of the hearing request. The Administrator, as the adverse party in this proceeding, shall have fourteen (14) calendar days to file a written response with the Worker Benefit Committee and in the event that disqualification(s) result in less than a quorum, alternate members shall be temporarily appointed to serve by the Executive Board.
 2. Any member of the Worker Benefit Committee having any personal interest in any claim or appeal presented before the Worker Benefit Committee shall be disqualified for cause. A claimant shall have the right to challenge for cause any member of the Worker Benefit Committee and in the event that disqualification(s) result in less than a quorum, alternate members shall be temporarily appointed to serve by the Tribal Executive Board.
 3. A claimant's representative shall have the right, in all matters presented before the Worker Benefit Committee, to cross-examine all witnesses and to review all evidence of any nature, as may relate to the matter under consideration. However, attorney fees are limited as provided herein.

Section 4E-1-26 WORKER BENEFIT COMMITTEE MEMBERSHIP

1. The Worker Benefit Committee shall be comprised of five members. Members shall be those administrative employees of the Tribe, Royal River Casino and Hotel. One member of the Committee shall serve as Chairperson. Three (3) members will constitute a quorum.
2. The Worker Benefit Committee shall receive no additional expenses or compensation other than their regular salary from the Tribe. Expenses for training in the area of occupational injury benefits shall be paid by the Tribe.

Section 4E-1-27 LIABILITY OF THIRD PERSON TO INJURED EMLPOYEE;
SUBROGATION POWERS

1. If the covered employee entitled to benefits under this system is injured or killed by the negligence or wrongful actions of another person(s) not in the employ of the Tribe, such injured employee, or dependents in the event of death, may pursue a remedy against such other person while receiving benefits under this system. If the employee entitled to benefits under this system or dependents do not pursue a remedy against such other person by instituting an action within one year after the cause of action accrues, the claim against such other person shall be deemed assigned to the Tribal Ordinance. Such a claim so assigned may be prosecuted or compromised by the Administrator for benefits paid. **Acceptance of benefits under this ordinance constitutes an assignment of the employee's rights to the employer to the extent of benefits paid or payable.**
2. If employee or dependents proceed against such other person, occupational injury benefits shall be paid as provided in this program and the Tribal Ordinance shall have a lien on the amount recovered from such other person to the extent occupational injury benefits were owed or paid. Compromise of any claim by the covered employee or the employee's dependents at an amount less than the weekly benefits owed or paid shall be made only with written approval of the Administrator of the Tribal Ordinance.
3. The Administrator of the Tribal Ordinance shall have the right of subrogation for the amount of occupational injury benefits paid under this program, upon the resolution of a claim or completion of a settlement with the claimant.

Section 4E-1-28 SCHEDULE OF BENEFITS PAYABLER FOR CUMULATIVE OR
REPETITIVE ARM INJURY, INCLUDING CARPAL TUNNEL
SYNDROME

Benefits for cumulative or repetitive arm injury, including carpal tunnel syndrome will be reduced if the worker has been employed (based on date of hire) for a limited time as follows:

1. Workers are not eligible for compensation when employed full time for a period up to 4 mos.
2. Workers receive 25% of eligible compensation for a claim made while employed full time for a period of 4-8 mos.
3. Workers receive 50% of eligible compensation for a claim made while employed full time for a period of 8-12 mos.

4. Workers receive 75% of eligible compensation for a claim made while employed full time for a period of 12-18 mos.
5. Workers are eligible for full compensation for a claim after being employed full time more than 18 mos.
6. The time frames, which are provided above should be lengthened appropriately for workers who are employed on a part time basis.

Section 4E-1-29

NOTICE TO EMPLOYEES

YOUR EMPLOYER IS INSURED UNDER THE FLANDREAU SANTEE SIOUX TRIBE TRIBAL ORDINANCE. If you have any injury or occupational disease arising out of and in the course of your employment with the Tribe, you may be entitled to benefits provided by the Flandreau Santee Sioux Tribe Tribal Ordinance.

NOTIFY YOUR SUPERVISOR IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT.

If you fail to do so, you may lose your benefits under the Tribal Ordinance. In no event shall benefits be paid to an employee who failed to notify their employer within thirty (30) days after sustaining such work related injury.

Your exclusive remedy for any such work connected injury or disease is through the Flandreau Santee Sioux Tribe's Ordinance. The State Work Comp Commissioner will not accept a claim from you as you are employed by a sovereign Indian nation which has exclusive jurisdiction over its own Tribal Ordinance.

Flandreau Santee Sioux Tribe

P.O. Box 283 Flandreau, SD 57028

Ph. 605-997-3891

Fax 605-997-3878



RESOLUTION NO. 04-12

WHEREAS, the Flandreau Santee Sioux Tribe is a recognized Indian tribe organized pursuant to a Constitution and By-laws approved by the Secretary of the Interior and Commissioner of Indian Affairs on April 24, 1936, amended February 7, 1941, and further amended November 16, 1967, and further amended November 14, 1984, and further amended May 17, 1997, and

WHEREAS, Article III of said Constitution and By-laws provides that the governing body of the Tribe shall be the Executive Committee, and


WHEREAS, the workers compensation insurance policy covering employees of the Royal River Casino requires certain Ordinances as the administration of workers compensation claims, and

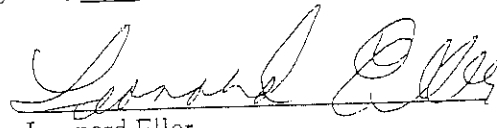
WHEREAS, said Ordinances are necessary to comply with insurance policy provisions and provide employees all rights and remedies under the policy, and

NOW THEREFORE BE IT RESOLVED, an Ordinance is hereby adopted to govern workers compensation claims of any persons subject to employment by the Flandreau Santee Sioux tribe or any of its entities including the Royal River casino effective 03-22-04.

CERTIFICATION

The foregoing Resolution was duly enacted and adopted on this 22 day of MARCH 2004 by the Flandreau Santee Sioux Executive Committee at which a quorum was present by a vote of 5 for, 0 against, 1 not voting.


Charlene Bell Kokesh
Tribal Secretary


Leonard Eller
Tribal President