

HANNAHVILLE INDIAN COMMUNITY  
 Title V Chapter 2  
 Workers' Compensation Code

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**HANNAHVILLE INDIAN COMMUNITY**  
**Title V Chapter 2**  
**Workers' Compensation Code**

**5.2.101 Title**

This Code shall be known as the "Hannahville Indian Community Workers' Compensation Code" or the "Workers' Compensation Code."

**5.2.102 Authorization; purpose and intent; application and scope; jurisdiction.**

- (1) Authorization. This Code is authorized pursuant to Article V of the Tribal Constitution.
- (2) Purpose and intent. The Tribal Council of the Hannahville Indian Community desires to continue to provide its employees with workers' compensation benefits that are substantially similar to the rights and remedies which it has previously made available to its employees under workers' compensation insurances, and which are available to employees who work for Michigan employers. The Hannahville Indian Community Workers' Compensation benefits provided for under this Code are provided through a self-funded, self-insurance program of the Hannahville Indian Community, a tribal sovereign government, and nothing in this Code shall be construed to operate as an authorization for private suit against the Community nor as a waiver of the Community's sovereignty unless such waiver is expressly provided. Although valid claims for workers' compensation benefits shall be regarded as general obligations of the tribal government, this grant of benefits shall not be deemed a consent by the Community to the levy of any judgment, lien, or attachment upon the trust or other property of the Community other than upon income or chattels specifically pledged or assigned.
- (3) Application; exclusions; scope; limitations.
  - (a) The Hannahville Indian Community as employer; application, scope & exclusions. This Code applies to the Hannahville Indian Community (the "Community" or the "Tribe") as an employer, including all its federally or tribally chartered corporations, tribally authorized organizations, elective boards, regularly constituted committees appointed by the Tribal Council whose members receive a regular stipend, but excluding enterprises owned by the Tribe which are organized under State law and excluding volunteers. Only those provisions of Michigan law specifically enumerated and adopted shall be held to apply to the Tribe. However, in no case, shall the Community be held liable for payment of any claim or amount of compensation which, according to State of Michigan law, could or would be covered by the Second Injury Fund, differential benefits fund, or supplemental benefits fund. [Patterned on MCLA § 418.115].

- (b) Other employers. All employers, as required and defined by MCLA §§ 418.101, 418.111, 418.115, 418.118, 418.119, 418.121, 418.131, 418.151, 418.155, and 418.161, of the Michigan Workers' Disability Compensation Act of 1969, or the Act of another state or tribe who operate within the jurisdictional and/or exterior boundaries of the Hannahville Indian Community, whether by contract with the Hannahville Indian Community, by partnership agreement, or who are licensed to do business upon the fee or trust lands of the Hannahville Indian Community, shall be required to purchase workers' compensation insurance or show evidence of satisfactory self-insurance, the provisions of which are currently in effect. Such insurance shall be specifically applicable to all work done upon tribal lands. **Provided, however,** that the Hannahville Indian Community as an employer **shall not** be held to be a "principal," within the meaning of MCLA § 418.171, nor shall the Community be in any way held to be liable to the employees of employers who do not comply with this provision.
- (4) Injuries occurring outside exterior boundaries of Hannahville Indian Community; jurisdiction; benefits.
- (a) The Community shall have jurisdiction over all controversies arising out of injuries which are compensable under this Code, whether such injuries occur within the exterior boundaries of the Hannahville Indian Community or within or without the State of Michigan, and where the injured employee is an employee of the Community at the time of injury. The employee or his dependents shall be entitled to the compensation and other benefits provided by this Code. [Patterned on MCLA § 418.845].
- (b) If an employee or the employee's dependents receive workers' compensation benefits from an employer, a carrier, a principal, or a subcontractor under the law of the State of Michigan, or of any other jurisdiction for the same personal injury for which benefits are payable under this Code, the amount recovered shall be credited against the benefits payable under this Code. [P-418.846].

### **5.2.103 Construction; definitions; exceptions, limitations, exclusions.**

- (1) Construction. The provisions of this Code are to be strictly construed in accordance with the intent and purposes stated herein, giving due consideration to principles of fairness to both the employer and the employee. State of Michigan case law may be consulted for guidance but shall not be held to be determinative unless specifically enacted, particularly where to so hold would be violative of legislative intent, would result in a patently absurd result, or would be inherently unfair to either the employer or the employee, or both, or would compromise the sovereignty of the Tribe.

- (2) Definitions. Unless otherwise indicated, the following words shall mean, or include:
- (a) **“carrier”** – as appropriate, the Hannahville Indian Community as self-insured employer, any other self-insured employer subject to this Code, any body appointed to administer the Community’s workers’ compensation system, a third party administrator and any insurance carrier which may insure all or part of a subject employer’s risk, or all of these entities.
  - (b) **“claim”** - notice of an injury or disease and a claim for benefits alleging that the injury complained of was work-related. [ P-418.381].
  - (c) **“date of disablement”** - subject to § 5.2.113(1), or as otherwise defined in this Code, the date the workers’ compensation judge may determine on hearing of the claim. [ P-418.425].
  - (d) **“disability”** - a significant and substantial limitation of an employee's wage earning capacity in work suitable to his or her skills, qualifications, and training resulting from a personal injury or work-related disease. The establishment of disability does not create a presumption of wage loss.
  - (e) **“maximum allowable recovery amount”** – the maximum amount, exclusive of medical costs, that a self-insured employer or insurer subject to this Code shall be liable to pay as work loss benefits to an injured worker. The maximum allowable recovery amount for which a self-insured employer shall be responsible shall not be more than \$350,000.00 per claim for work loss benefits unless there is an excess loss insurance policy in effect, but benefits in excess of \$350,000.00 shall then be paid only to the extent of the limits of such policy. The Tribal Council may adjust the maximum allowable recovery amount from time to time by Tribal Council resolution. Such adjustments shall be applicable to all pending and future claims until further action of the Tribal Council, or as specified by the Tribal Council at the time of resolution. The maximum allowable recovery amount shall not exempt an excess loss carrier from liability in respect to coverages for which the self-insured employer has contracted that are greater than the maximum allowable recovery amount.
  - (f) **“misdemeanor”** - an act designated as an offense under state or tribal law.
  - (g) **“personal injury”** - an injury, that shall include a disease or disability that is due to causes and conditions which are characteristic of and peculiar to the business of the employer and which arises out of and in the course of employment with an employer who is or was subject to this act at the time or times during which the injury was incurred. An ordinary disease of life to which the public is generally exposed outside of the employment is not compensable. Mental disabilities and conditions of the aging process,

including but not limited to arthritis, heart and cardiovascular conditions, shall only be compensable if contributed to, aggravated, or accelerated by the employment in a substantially significant manner. Mental disabilities shall be compensable only when arising out of actual events of employment, not unfounded perceptions thereof. A hernia to be compensable must be clearly recent in origin and result from a strain arising out of and in the course of the employment, which shall be promptly reported to the employer. [P-418.411].

- (h) **“the state”** - the State of Michigan.
- (i) **“totally disabled”** - a person who is unable to perform any work for which he/she might receive any compensation.
- (j) **“work-related injury”** – a personal injury arising out of and in the course of actual employment. Injuries occurring during travel to and from home and the workplace, unless directly related to pre-approved, work-related, and reimbursable travel, do not come within the definition of work-related injury.

#### **5.2.104 Private employers; voluntary assumption of coverage.**

Any private employer not otherwise included in § 5.2.102 may assume liability for compensation and benefits imposed by this Code upon employers. The purchase and acceptance by an employer of a valid workers’ compensation insurance policy, except in the case of domestics and agricultural employees, constitutes an assumption by him of such liability without any further act on his part, which assumption of liability shall take effect from the effective date of the policy and continue only as long as the policy remains in force, in which case the employer shall be subject to no liability other than workers’ compensation as provided for in this Code. Agricultural and domestic employees, as defined by MCLA §§ 418.118 and 418.155, may be voluntarily included by specific endorsement to a workers’ compensation policy in those cases where such coverage is not required. [418.121].

#### **5.2.105 Harassment; retaliation; consistent discharges to evade Code; presumption, penalty.**

- (1) A worker shall not be harassed nor terminated from employment for filing a claim for compensation under this Code.
- (2) Any employer subject to the provisions of this Code who consistently discharges employees and replaces such discharged employees without a work stoppage before the time in which a redemption can be granted under this Code will be presumed to have discharged them to evade the provisions of this Code and is guilty of a civil violation for which damages may be set in an amount not to exceed \$1,000.00, by the workers’ compensation judge. Provided, however, that

this subsection does not authorize a private cause of action by third parties. [418.125].

**5.2.106 Exclusive remedy; exception; employee and employer defined.**

- (1) Exclusive remedy; exception. The right to recovery of benefits as provided in this Code shall be the employee's exclusive remedy against the employer for any work-related injury or occupational disease. Self-inflicted or intentional injuries, including, without limitation, injuries arising out of assaults, assault and/or battery, other violations of criminal law, or which are suffered while the employee is under the influence of alcohol or drugs, or which are the result of violations of the Hannahville Indian Community Drug & Alcohol policy, shall **not** be compensable. [P-418.131; 418.305].
- (2) Employee, employer, defined. As used in this section and § 5.2.142, employee includes the person injured, his or her personal representatives, and any other person to whom a claim accrues by reason of the injury to, or death of, the employee. Employer also includes the employer, the employer's insurer and a service agent or third party administrator to a self-insured employer insofar as they furnish, or fail to furnish, safety inspections or safety advisory services incident to providing workers' compensation insurance or incident to a self-insured employer's liability servicing contract. [418.131].

**5.2.107 Compensation; waiver of right, validity.**

Unless otherwise provided in this Code, no agreement by an employee to waive his or her rights to compensation under this Code shall be valid. [418.815].

**5.2.108 Employee; action for personal injury or death, defenses abolished; employee's intentional misconduct.**

- (1) In a claim for benefits for injury sustained by an employee in the course of his or her employment or for death resulting from personal injuries so sustained it shall not be a defense:
  - (a) That the employee was negligent, unless it shall appear that such negligence was willful.
  - (b) That the injury was caused by the negligence of a fellow employee.
  - (c) That the employee assumed the risks inherent in or incidental to, or arising out of his or her employment, or arising from the failure of the employee to provide and maintain safe premises and suitable appliances. [418.141].
- (2) Exception; employee's misconduct; intentional self-injury. An employee who is injured as a result of his illegal, and/or intentional and willful misconduct shall not receive compensation under this Code. If an employer refuses to pay

benefits due to an allegation of intentional self-injury or willful misconduct, the employer shall issue a Notice of Dispute with the notice of refusal. An employee has a duty to inform the employer of any medical restrictions or condition of which he or she is aware that would impair his or her ability to perform work. After having notified the employer of the nature and extent of these restrictions and unless then specifically ordered by the employer to perform work outside his or her restrictions, an employee who performs work that is in excess of any medically prescribed restrictions which an employee has shall be held to have done so intentionally, and any benefits to which the employee may be otherwise entitled shall be diminished by an amount that the workers' compensation judge determines is attributable to the employee's intentional action. [P-418.305].

**5.2.109 Report of injury.**

- (1) It shall be the duty of every employee and every supervisor who is an employee of an employer subject to this Code to promptly report to the workers' compensation manager and/or, workers' compensation administrator, as appropriate, all injuries, including diseases, which arise out of and in the course of the employment whether or not such injuries result in any of the following:
  - (a) disability extending beyond 7 consecutive days, not including the date of injury.
  - (b) death.
  - (c) specific losses.
- (2) It shall be the duty of the workers' compensation manager to assure that the employer, third party administrator, or carrier, as appropriate, is informed of all claims for benefits made in respect to injuries that are alleged to be work-related. [P- R 408.31].

**5.2.110 Workers' Compensation Judge.**

The position of workers' compensation judge is hereby created. The workers' compensation judge shall serve for an indefinite term and shall be selected by the judicial committee with confirmation by the Tribal Council. The workers' compensation judge shall exercise final decision in regard to all disputed matters that come before him or her. Tribal preference shall be given to tribal members who fulfill the following qualifications. Substantive qualifications of the workers' compensation judge shall include the following:

- (1) Knowledge of this Code.
- (2) Knowledge of the Michigan Workers' Compensation Disability Act.
- (3) A basic understanding of human anatomy and physiology.

- (4) A significant portion of the applicant's personal practice shall have been in active workers' compensation trial and/or appellate practice representing employers or claimants.
- (5) Knowledge of Michigan rules of evidence.
- (6) Skills with regard to fact finding.
- (7) Applicant shall be an attorney at law licensed to practice in the state of Michigan or shall have been a hearing referee who immediately prior to the effective date of this Code was acting as such, and, if an attorney, shall be a member in good standing of the State Bar of Michigan. [P-418.210; 418.211].

**5.2.111 Practice and Procedure; oaths; subpoenas; examination of book and records; contempt; filings; petition for hearing; forwarding copy to court and respondent; respondent to file written response; return of incomplete petition or written response; medical records; proof of compliance; notice of intention to call witnesses; willful noncompliance; standard of proof; location of hearing; opinion and order; extension of time.**

- (1) Disputed benefits; questions of law. Any dispute or controversy regarding compensation or other benefits under this Code shall be submitted to the workers' compensation judge and all questions arising under this Code shall be determined by the workers' compensation judge. A Notice of Dispute is a dispute regarding compensation under this Code. [P-418.841(1)].
- (2) Summary Practice. Practice and procedure under this Code shall be as summary as reasonable. The workers' compensation judge shall have the power to administer oaths, to subpoena witnesses, and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. Any witness, party or attorney who refuses to obey a subpoena, who refuses to be sworn or testify, who fails or refuses to sign necessary releases, or who fails to produce any papers, books, or documents relating to any matter under investigation, or any witness, party, or attorney who is guilty of any contempt while in attendance at any hearing held under this Code may be punished as for contempt of court in accord with applicable law.
  - (a) Subpoenas; authority to issue. Attorneys representing parties may issue subpoenas as necessary to secure relevant evidence to pursue their case. Unrepresented claimants shall present their request for issuance of subpoenas to the workers' compensation judge for consideration and issuance, as appropriate. [P-418.853].

(3) Filings, general. All pleadings, transcripts, briefs, motions, and other documents necessary to presentation of a case to the court shall be in writing. Filing may be accomplished by hand delivery, by mailing, or by facsimile transmission followed by delivery of the original document, which shall be sent to the workers' compensation judge at the tribal court. All documents received after business hours shall be considered filed the next regular business day. Each document shall be labeled with the claimant's social security number and a docket number, if assigned. [R 418.2].

(a) Time extensions. In his or her discretion, the workers' compensation judge, for good cause shown, may grant reasonable extensions of time in which to file briefs, documents, motions and records. [R 418.8].

[1] Exception. No extension of time shall be granted in which to file a claim pursuant to § 5.2.134.

(4) Hearings.

(a) Request for hearing; contents. A request for hearing shall be made by petition to the workers' compensation judge with simultaneous service to the opposing party. A request for hearing in regard to a disputed claim shall be made within 60 days of the date the dispute is received by the worker. It shall not be a defense to the efficacy of service for the petitioner to claim that he or she failed or refused to pick up the mail or that the notice was returned to sender unclaimed. Within 30 days of receiving a completed petition for hearing from a claimant, the respondent, the employer, carrier, or third party administrator, as appropriate, shall file a written response to the application for hearing. Any petition for hearing or any written response which is determined by the workers' compensation judge to be incomplete shall be returned by the judge with an explanation of the additional information needed.

[1] Medical records. At the time of filing a petition for hearing, the petitioner shall provide the respondent and the judge with any medical or other records that are relevant to the claim and in existence at the time of filing. The parties shall submit proof of compliance with this subsection with the workers' compensation judge.

[2] Factual allegations. The petition for hearing shall contain factual information concerning the nature of the injury, the date of injury, the names and addresses of any witnesses, except employees currently employed by the employer, the names and addresses of any doctors, hospitals, or other health care providers who treated the employee with regard to the personal injury, the name and address of the employer, the dates on which the employee was unable to work because of the personal injury, whether the employee has any other employment at the time of, or subsequent to, the date of the personal injury and the names

and addresses of such employers, and any other information required by the workers' compensation judge.

[3] Response; contents. The written response shall specify any legal grounds supporting the respondent's position, any factual matters that are disputed, whether there was a medical examination of the claimant and who performed it, and any other relevant information required by the workers' compensation judge.

[4] Witnesses; notice. Each party shall notify the other of the intention to call witnesses who are currently employed by the employer.

[5] Sanctions. The willful failure of a party to comply with this section shall prohibit the party from proceeding under this Code. [418.222; 418.223].

(b) Judicial inquiry; standard of proof; location of proceedings; modification of errors.

[1] Judicial inquiry, investigation. The workers' compensation judge shall make such inquiries and investigations as he or she considers necessary at the hearing.

[2] Standard of proof. A claimant shall prove his or her entitlement to compensation and benefits under this Code by a preponderance of the evidence.

[3] Hearing location. The location of the hearing shall be in the Hannahville Indian Community court room unless all parties consent to another, more convenient location.

[4] Decision; modification, correction of errors. If the parties stipulate within 30 days of entry of a decision to modify or correct errors in the decision issued, the judge shall modify or correct errors in the decision in accordance with the stipulations. All such stipulations must comply with the provisions of this Code. [418.851]

(c) Order and Opinion. The workers' compensation judge, in addition to a written order, shall file a concise written opinion stating his or her reasoning for the order including any findings of fact and conclusions of law. The order and opinion shall be part of the record of the hearing. [418.847]

**5.2.111a Findings of fact and conclusions of law; certification of questions of State of Michigan law; standard of proof; redetermination; transcript and brief; modification of errors.**

- (1) Findings conclusive. Findings of fact and conclusions of law made by the workers' compensation judge acting within his or her powers, shall be conclusive. To the extent allowed by MCR 7.305(B)(1), and to the extent that the judge relies upon Michigan law, the judge shall, upon application of any party to a case arising under this Code, certify questions of Michigan law to the Michigan Supreme Court.
- (2) Standard of proof. Findings of fact shall be supported by competent, material and substantial evidence on the whole record. Substantial evidence means evidence, considering the whole record, as a reasonable mind will accept as adequate to justify the conclusion by a preponderance of the evidence. Whole record means the entire record of the hearing including all evidence in favor of and all the evidence against a certain determination.
- (3) Redetermination; time for filing. Within 20 days of a final decision by the workers' compensation judge, any party may request a redetermination by filing a petition with the workers' compensation judge. Granting of a request for redetermination shall be within the discretion of the workers' compensation judge. The party requesting the redetermination shall bear the expenses associated with the request, including the costs of transcripts for both parties. If benefits have previously been ordered, the petition for a redetermination shall not operate as a stay to the payment of medical benefits or the weekly benefit to claimant as required by the terms of the award. [418.861a (2)-(4)].
  - (a) Redetermination hearing; time. A hearing may be set at any time not more than 15 days after all briefs have been filed relating to a redetermination of the issues. The hearing shall be limited to oral argument on the briefs and transcripts, unless new, previously unconsidered evidence, has been discovered which might not have been discovered at the time of the original hearing in the exercise of due diligence by either party. [418.861a (9)].
  - (b) Briefs; time for filing. Not more than 30 days after receiving the transcript the party seeking redetermination shall file its response with the workers' compensation judge and provide a copy to the other party.
  - (c) Opposing party, time for filing brief; cross claim. In addition to filing its reply brief within the 30 days, the opposing party may file a cross claim and brief in support, specifying the findings of fact and conclusions of law contained in the record that support the position of that party. [418.861a (5), (6)].
  - (d) Cross claims; response; time. A party responding to a cross claim shall have 30 days after receiving a copy of the brief in support of a cross claim to file its reply brief. The reply brief shall specify the findings of fact and conclusions of law in the record that support that party's position. [418.861a (7)].

### **5.2.112 Confidentiality of records; exceptions.**

Information concerning the injury and benefits paid to an individual worker are confidential and exempt from disclosure under any freedom of information act. This includes, but is not limited to, all forms, records, and reports filed with the court or maintained by the employer concerning the injury or benefits paid to a worker. An employee shall be entitled to inspect and obtain a copy of any record relating to a claim maintained by him or her for benefits under this Code. An employer subject to this Code shall be entitled to inspect and obtain a copy of any record maintained by any health care provider in regard to an employee if the employee's receipt of services from that provider are the subject of, or may be related to a claim for benefits under this Code. A claimant shall sign any releases thought to be necessary in order to obtain the release of such records. A claimant's refusal to release such records or to sign necessary releases in regard to such records in a timely manner shall be cause for the suspension of any benefits during the period of such refusal. The employer shall issue a Notice of Dispute in regard to such suspension of benefits at the time that benefits are suspended. Disclosure may be ordered by the workers' compensation judge in order to give effect to the provisions of this Code. [P-418. 230].

### **5.2.113 Compensation for personal injury or death resulting from personal injury arising out of and in the course of employment; time or date of injury; compensation for mental disabilities and conditions of aging process; presumption; injury incurred in pursuit of social or recreational activity; disability defined; determining entitlement to weekly wage loss benefits; notice to the Michigan Department of Labor and Economic Growth Bureau of Workers' and Unemployment Compensation Agency (the "Michigan Unemployment Compensation Agency, or its successor organization"); priorities in finding employment; notice of employee refusing offer of employment; suspension of benefits; reasonable employment defined; payment of benefits to person incarcerated in penal institution or confined in mental institution; discrimination prohibited; personal injuries and work-related occupational injuries or diseases to which section is applicable.**

- (1) Injuries; single events; occupational. An employee, who develops an occupational injury or receives a personal injury arising out of and in the course of employment through employment with an employer who is subject to this Code at the time of the injury, shall be paid compensation as provided in this Code. In the case of death resulting from the injury to the employee, compensation shall be paid to the employee's dependents as provided in this Code. Time of injury or date of injury as used in this Code in the case of an injury attributable to a single event shall be the date upon which that injury occurred. In the case of an injury not attributable to a single event the date of injury shall be the last day of work in the employment in which the employee

was last subjected to the conditions that resulted in the employee's disability or death.

- (2) Mental disabilities; conditions of aging. Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions, shall only be compensable if contributed to or aggravated or accelerated by the employment in a substantially significant manner. Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof. In finding that these types of injuries are compensable, the workers' compensation judge shall make specific and detailed findings of fact in regard to each of these types of injuries, including, without limitation, how and in what manner they are or were work-related.
- (3) Injuries on employer's premises not during actual work hours. An employee going to or from his or her work, while on the premises where the employee's work is to be performed, and within a reasonable time before and after his or her working hours while on the premises, is presumed to be in the course of his or her employment. Notwithstanding this presumption, an injury incurred in the pursuit of an activity the major purpose of which is social or recreational is not covered under this Code whether or not the employer excused the employee from work with pay to attend the function or otherwise encouraged or permitted, but did not require, attendance at the function.
- (4) Injuries; de minimis effect on job duties. A work-related injury that has a de minimis effect on an employee's job-related duties shall not be compensable under the wage related provisions of this Code and shall not be construed to be either a partial or a complete disability.
- (5) Weekly wage loss determination. If disability is established, entitlement to weekly wage loss benefits shall be determined pursuant to this section and as follows:
  - (a) Reasonable employment, transitional work. If an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan Unemployment Compensation Agency, or its successor organization and the employee refuses that employment without good and reasonable cause, the employee shall be considered to have voluntarily removed himself or herself from the work force and is no longer entitled to any wage loss benefits under this Code during the period of such refusal. Subject to subsection (8) of this section, a bona fide offer of reasonable employment which the employee is required to accept shall mean that an employee is required to accept any transitional work offered by any employer, which is within his or her capabilities to perform, including any training which is necessary to qualify the employee to perform those duties. At the election of the employer, offers of work made by the employer shall have preferred status, and the refusal of such work

shall be cause for suspension of benefits during the period of such refusal. The employer shall issue a Notice of Dispute in regard to such suspension of benefits at the time that benefits are suspended.

- (b) Weekly wage loss benefit differential. If an employee is employed and the weekly wage of the employee in any week is less than that which the employee received before the date of injury, the employee shall receive weekly benefits under this Code equal to 80% of the difference between the injured employee's after-tax average weekly wage before the date of injury and the after-tax weekly wage which the injured employee is able to earn after the date of injury as computed by the State of Michigan Weekly Rate Benefit Tables of the Michigan Workers' Compensation Disability Act in effect from time to time and as amended. Provided, however, that the principal total amount of compensation which any injured employee may receive shall not be more than the maximum allowable recovery amount.
- (c) No wage loss benefit. If an employee is employed and the weekly wage of the employee is equal to or more than the weekly wage the employee received before the date of injury, the employee is not entitled to any wage loss benefits under this Code for the duration of such employment.
- (d) Twenty-six week rule. If the employee, after having been employed pursuant to this subsection for 26 weeks or more loses his or her job through no fault of the employee, the employee shall receive compensation under this Code pursuant to the following:
  - [1] If, after exhaustion of an employee's unemployment benefit eligibility the workers' compensation judge determines for any employee covered under this subdivision, that the employments since the time of injury have not established a new wage earning capacity, the employee shall receive compensation based upon his or her wage at the original date of injury. There is a presumption of wage earning capacity established for employments totaling 52 weeks or more.
  - [2] The employee must still be disabled as determined pursuant to this Code. If the employee is still disabled, he or she shall be entitled to wage loss benefits based on the difference between the normal and customary wages paid to those persons performing the same or similar employment, as determined at the time of termination of the employment of the employee, and the wages paid at the time of the injury.
  - [3] If the employee becomes reemployed and the employee is still disabled, he or she shall then receive wage loss benefits as provided in subsection (b) of this section.

- (e) If the employee, after having been employed pursuant to this subsection for less than 26 weeks loses his or her job for minor violations of work rules the employee shall receive compensation based upon his or her wage at the original date of injury.
- (6) Notice to Michigan Unemployment Compensation Agency, or its successor organization. A carrier, the employer, or third party administrator, as appropriate, shall notify the Michigan Unemployment Compensation Agency or its successor organization, of the name of any injured employee who is unemployed and to which the employer is paying benefits under this Code.
- (7) Refusal of transitional work; suspension of benefits. Upon notification by the Michigan Unemployment Compensation Agency or its successor organization, to the employer in writing of the name of any employee who refuses any bona fide offer of transitional employment, the employer may immediately, with filing of a Notice of Dispute, suspend the benefits of the employee pursuant to subsection (5)(a) of this section.
- (8) Reasonable employment, definition; judicial determination. "Reasonable employment," as used in this section means work that is within the employee's capacity to perform that poses no clear and proximate threat to that employee's health and safety, and that is within a reasonable distance from that employee's residence. The employee's capacity to perform shall not be limited to jobs in work suitable to his or her qualifications and training. In any determination by the workers' compensation judge as to whether the claimant justifiably refused any offer of employment, the judge shall consider the totality of the circumstances, including but not limited to whether or not the claimant diligently sought, accepted or refused transitional work which the employee was able to perform during the course of his or her disability.
- (9) Incarceration, confinement to mental institution, no weekly benefits. Weekly benefits shall not be payable to a person during the period of any incarceration in a penal institution for violation of the criminal laws of any jurisdiction or to a person who is confined in a mental institution pending trial for a violation of the criminal laws of any jurisdiction.
- (10) Discriminatory discharge. An employer shall not discharge an employee, or in any manner discriminate against an employee, because the employee filed a petition or instituted, or caused to be instituted, a proceeding under this Code or because of the exercise by the employee on behalf of himself or herself or others of a right afforded by this Code.
- (11) Willful and false representation. No compensation shall be payable for an injury or disease if the employee at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, or thereafter, willfully and falsely represents in writing that he or she has not previously

suffered from the condition or disease which is the cause of the disability or death. An employee has an affirmative duty to divulge in writing the nature and extent of any injury or disease of which he or she knows, should know, or could have reasonably discovered at the time of hire if that disease or injury in any way impairs or would impair the employee's ability to do the work for which he or she is being hired. Where an occupational injury or disease is significantly and substantially aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is significantly and substantially aggravated, prolonged, accelerated or contributed to by a work-related injury or disease, the compensation payable shall be a proportion only of the compensation that would be payable if the work-related injury or disease were the sole cause of the disability or death. Such reduction in compensation is to be effected by reducing the number of weekly payments or the amounts of such payments, as under the circumstances of the particular case may be in the best interests of the claimant and the employer. [P-418.401].

- (12) This section shall apply to injuries and work-related diseases occurring on or after the effective date of this Code. [P-418.301; 418.401; 418.431].

**5.2.114 Wage loss payments; computations.**

- (1) No compensation shall be paid under this Code for any injury that does not incapacitate the employee from earning full wages, for a period of at least 1 week, but if incapacity extends beyond the period of 1 week, compensation shall begin on the 8<sup>th</sup> day after the injury. If incapacity continues for 2 weeks or longer, or if death results from the injury, compensation shall be computed from the date of the injury. [418.311].
- (2) In computing periods of disability and of compensation, a week shall be computed as 7 days and a day as 1/7 of a week, without regard to Sundays, holidays and working days. [R 408.31a].

**5.2.115 Wage loss benefit rate defined; tables.**

State of Michigan wage rate tables, pursuant to MCLA § 418.313, and as amended from time to time, shall be used in converting the average weekly wage into the weekly wage in regard to injured employees. [418.313].

**5.2.116 Continuing Report of Injury; Medical care; fees; advisory committee; investigations; utilization review.**

- (1) Medical care; fees. The employer shall furnish, or cause to be furnished, to an employee who receives a personal injury arising out of and in the course of employment, reasonable and necessary medical, surgical, and hospital services and medicines, or other attendance or treatment recognized by the laws of the State of Michigan or Wisconsin, or such other licensing jurisdiction as legal,

when they are needed as is found by the workers' compensation judge to be reasonable. Provided, however, that "appliances" shall not include acquisition of any vehicle in which to transport an injured employee, but shall include appliances necessary to accommodate transportation in a vehicle. Attendant or nursing care shall not be ordered in excess of 56 hours per week if the care is to be provided by the employee's spouse, brother, sister, child, parent, or any combination of these persons. The employer shall also supply to the injured employee dental service, crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatus, and other appliances necessary to cure, so far as reasonably possible, and relieve from the effects of the injury. If the employer fails, neglects, or refuses so to do, the employee shall be reimbursed for the reasonable expense paid by the employee, or payment may be made on behalf of the employee to persons to whom the unpaid expenses may be owing, by order of the workers' compensation judge. Attorney's fees may be assessed on medical costs at the contingent rate agreed to by the employee, but all attorney's fees shall be the employee's expense. [418.315; R408.31(5)].

- (2) Employee's election to treat with physician of choice; employer's objection. After 28 days from the inception of medical care as provided in this section, the employee may treat with a physician of his or her own choice by giving to the employer the name of the physician and his or her intention to treat with the physician. The employee shall obtain and promptly furnish a report to the employer, insurance company or third party administrator, as appropriate. The report shall set forth the history obtained, the diagnosis, the prognosis, and other information reasonably necessary to properly evaluate the injury, the disability, and the necessity for further rehabilitation or treatment. Thereafter, at reasonable intervals of not more than 60 days, an employee shall obtain and furnish a current medical report, paid for by the employer or carrier, as appropriate, containing the same information, together with an itemized statement of the charges for services rendered to date. Payment is not required to be made to the physician until the reports and itemized charges have been furnished. Medical fees shall not exceed fees considered usual and reasonable for the services performed. In regard to specific losses the report shall identify the date and extent of the losses. The employer or the employer's carrier may file a petition objecting to the named physician selected by the employee and setting forth reasons for the objection. If the employer or carrier can show cause why the employee should not continue treatment with the named physician of the employee's choice, after notice to all parties and a prompt hearing by the workers' compensation judge, the workers' compensation judge may order that the employee discontinue treatment with the named physician or pay for the treatment received from the physician from the date the order is mailed. [418.315(1); R 408.31(5)].
- (3) Schedules of medical costs; maximums. Except as otherwise provided in this Code, all fees and other charges for any treatment or attendance, service, devices, apparatus, or medicines under subsection (1) of this section are subject to rules promulgated by the Michigan Department of Labor and Economic

Growth Workers' Compensation Agency (the "Michigan Workers' Compensation Agency or its successor organization") pursuant to the administrative procedures act of 1969, 1969 PA 306, MCLA §§ 24.201 to 24.328. The rules promulgated establish schedules of maximum charges for the treatment or attendance, service, devices, apparatus, or medicines, and are annually revised. A health facility or health care provider shall be paid either its usual and customary charge for the treatment or attendance, service, devices, apparatus, or medicines, or the maximum charge established under the rules, whichever is less. [418.315(2)].

- (4) Excessive costs; unjustified care; review. If the employer, a carrier, or third party administrator, as appropriate, determines that a health facility or health care provider has made any excessive charges or required unjustified treatment, hospitalization, or visits, the health facility or health care provider shall not receive payment for the excessive fees or unjustified treatment, hospitalization, or visits, and is liable to return the fees or charges already collected. The workers' compensation judge may review the records and medical bills of a health facility or health care provider determined not to be in compliance with the schedule of charges or to be requiring unjustified treatment, hospitalization, or office visits. [418.315(4)].
- (5) Utilization review. As used in this section, "utilization review" means the initial evaluation by the employer, a carrier, or third party administrator, of the appropriateness in terms of both the level and the quality of health care and health services provided an injured employee, based on medically accepted standards. A utilization review shall be accomplished pursuant to the system established by the Michigan Workers' Compensation Agency or its successor organization, that identifies the utilization of health care and health services above the usual range of utilization for the health care and health services based on medically accepted standards and provides for acquiring necessary records, medical bills, and other information concerning the health care or health services. [418.351(5)].
- (6) Acceptance of payment; consent to review. By accepting payment under this section, a health facility or health care provider shall be considered to have consented to submitting necessary records and other information concerning health care or health services provided for utilization review pursuant to this section. The health facilities and health care providers shall be considered to have agreed to comply with any decision of the workers' compensation judge pursuant to subsection (7). A health facility or health care provider that submits false or misleading records or other information to the employer, a carrier, or third party administrator is guilty of a civil offense which may result in the assessment of damages in an amount not to exceed \$1,000.00, and may be otherwise prosecuted as allowed by applicable law. [418.315(6)].

- (7) Appeal; utilization review determination. If it is determined, pursuant to a utilization review, that a health facility or health care provider improperly over-utilized or otherwise rendered or ordered inappropriate health care or health services, or that the cost of the health care or health services was inappropriate, the health facility or health care provider may appeal to the workers' compensation judge regarding that determination. [418.315(7)].
- (8) Standard of utilization review. The criteria or standards established for the utilization review shall be as established by rules promulgated by the Michigan Workers' Compensation Agency or its successor organization. [418.315(8)].
- (9) Written defense of costs. If a health facility or health care provider provides health care or a health service that is not usually associated with, is longer in duration in time than, is more frequent than, or extends over a greater number of days than that health care or service usually does with the diagnosis or condition for which the patient is being treated, the health facility or health care provider may be required by the employer, carrier, or third party administrator, as appropriate, to explain the necessity or indication for the reasons why in writing. [418.315(9)].

#### **5.2.117 Medical or vocational rehabilitation services.**

- (1) Vocational rehabilitation services. An employee who has suffered an injury covered by this Code shall be entitled to prompt vocational rehabilitation services. When as a result of the injury he/ she is unable to perform work for which he/she has previous training or experience, the employee shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him or her to useful employment. If such services are not voluntarily accepted, and pursuant to § 5.2.113(5)(a) of this Code, the employee shall be issued a Notice of Dispute and shall no longer be entitled to any wage loss benefits under this Code during the period of such refusal. The employer shall issue a Notice of Dispute in regard to such suspension of benefits at the time that benefits are suspended. The workers' compensation judge, upon a motion made by either the employee or the employer, as appropriate, and after an opportunity to be heard, may refer the employee to a facility designated by the workers' compensation judge for evaluation of the need for and kind of service, treatment or training necessary and appropriate to render the employee fit for a remunerative occupation. Upon receipt of such report, the workers' compensation judge may order that the training, services, or treatment recommended in the report be provided at the expense of the employer. The workers' compensation judge may also order that any employee participating in vocational rehabilitation shall receive additional payments for transportation or any extra and necessary expenses during the period arising out of his or her program of vocational rehabilitation. Vocational rehabilitation training, treatment, or service shall not extend for a period of more than 52 weeks except in cases when, by special order of the workers' compensation judge, after review, the period may be extended for an additional

52 weeks or portion thereof. If there is an unjustifiable refusal to accept rehabilitation pursuant to a decision of the workers' compensation judge, the judge shall order a loss or reduction of compensation in an amount to be determined by him or her for each week of the period of refusal, except for specific compensation payable under § 5.2.129(2). Provided, however, that the employer shall not be liable for providing rehabilitation and training services to either a partially or totally disabled employee which represent a personal choice of the employee rather than rehabilitation and training necessitated as a result of the work related injury. [418.319; referencing 418.361(1), (2)].

- (2) Medical rehabilitative care; unreasonable refusal to accept. Except for specific loss benefits payable under § 5.2.129(2), if, after hearing, which may be on petition or motion by either the employer or employee, there is an unjustifiable refusal by the employee, as determined by the workers' compensation judge, to accept palliative corrective procedures, including surgery, reasonably calculated to restore full or significant function, the workers' compensation judge shall order a loss or reduction of compensation in an amount to be determined by him or her for each week of the period of refusal.

**5.2.118      Dependents' benefits; compensation for death immediately resulting from personal injury.**

- (1) Subject to § 5.2.128 relating to unemployment security benefits, and subject to the total maximum allowable recovery amount and maximum and minimum rates of compensation under this Code, in 1 of the methods provided in this section, if death immediately results from the work-related injury of an employee, the employer shall pay, or cause to be paid to the dependents of the employee who were wholly dependent upon the employee's earnings for support at the time of the injury, a weekly payment equal to 80% of the employee's after-tax average weekly wage, for a period of 500 weeks from the date of death. If at the expiration of the 500-week period any such wholly or partially dependent person is less than 18 years of age, a workers' compensation judge may order the employer to continue to pay the weekly compensation or some portion thereof until the wholly or partially dependent person reaches the age of 18, at which time benefits shall cease. If the employee leaves dependents only partially dependent upon his or her earnings for support at the time of injury, the weekly compensation to be paid shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as 80% of the amount, contributed by the employee to the partial dependents bears to the annual earnings of the deceased at the time of injury. [418.321; referencing 418.375].
- (2) Subject to maximum allowable recovery amounts, the minimum weekly benefit for death shall be 50% of the state average weekly wage as determined under MCLA § 418.355, and as amended from time to time. [418.356(2)].

**5.2.119      Persons dependent for support upon deceased employee at the time of injury.**

- (1) Conclusive dependents. The following persons shall be presumed to be wholly dependent for support upon a deceased employee: a child under the age of 16 years, or over 16 years of age if physically or mentally incapacitated from earning, upon the parent with whom he/she is living at the time of the death of that parent. In the event of the death of an employee who has at the time of death a living child by a former spouse or a child who has been deserted by such deceased employee under the age of 16 years, or over, if physically or mentally incapacitated from earning, such child shall be conclusively presumed to be wholly dependent for support upon the deceased employee, even though not living with the deceased employee at the time of death, and in all cases the death benefit shall be divided between or among all of the children of the deceased employee, and all other persons, if any, who are wholly dependent upon the deceased employee, in equal shares, a dependent spouse taking the same share as a child. In all cases mentioned in this section the total sum due a dependent spouse and his or her own children shall be paid directly to the spouse for his or her own use, and for the use and benefit of his or her own children. If during the time compensation payments shall continue, the workers' compensation judge shall find that the spouse is not properly caring for such children, the workers' compensation judge shall order the shares of such children to be thereafter paid to their guardian or legal representative for their use and benefit, instead of to their father or mother. In all cases the sums due to the children by the former spouse of the deceased employee shall be paid to their guardians or legal representatives for the use and benefit of such children.
- (2) Other dependents. In all other cases, questions of dependency in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury. Where a deceased employee leaves a person wholly dependent upon him or her for support, such person shall be entitled to the whole death benefit and persons partially dependent, if any, shall receive no part while the person wholly dependent is living. All persons wholly dependent upon a deceased employee, whether by conclusive presumption or as a matter of fact, shall be entitled to share equally in the death benefit in accordance with the provisions of this section. If there is no one wholly dependent or if the death of all persons wholly dependent shall occur before all compensation is paid, and there is but 1 person partially dependent, such person shall be entitled to compensation according to the extent of his or her dependency; and if there is more than 1 person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency. A person shall not be considered a dependent unless such person bears to the deceased employee the relation of spouse, lineal descendant including stepchildren and adopted children, ancestor, or sibling. [418.331].

**5.2.120 Remarriage of dependent spouse; compensation payable, recipients.**

- (1) Compensation shall cease upon the payment to a remarried spouse of the balance of any compensation due, but not to exceed the sum of \$500.00. Further

compensation due, if any, shall be payable to the minor children and/or physically or mentally incapacitated dependents who were either wholly or partially dependent upon the deceased for support at the time of the workers' death as provided in § 5.2.119. The workers' compensation judge shall determine the amount of compensation that shall be payable weekly to these dependents for the remaining weeks of compensation. Where, at the expiration of the 500 week period, and subject to maximum allowable recovery amounts, any wholly or partially dependent person is less than 18 years of age, the workers' compensation judge may order the employer to continue to pay the weekly compensation, or some portion thereof, until such wholly or partially dependent person reaches the age of 18. The payment of compensation to any dependent child shall cease when the child reaches the age of 18 years or when the child reaches the age of 16 years and thereafter is self-supporting for 6 months. If the child ceases to be self-supporting thereafter, the dependency shall be reinstated. Such remaining compensation, if any, shall be payable to the person either wholly or partially dependent upon the deceased employee for support at the time of the employee's death, as provided in the case of the remarriage of a dependent spouse. [418.335].

**5.2.121 Time for determining existence and extent of dependency; death benefit; recipients.**

Questions as to who constitutes dependents and the extent of their dependency shall be determined as of the date of the injury to the employee, and their right to any death benefit shall become fixed as of that time, irrespective of any subsequent change in conditions, except as otherwise specifically provided in §§ 5.2.118, 5.2.119 and 5.2.120. The death benefit shall be directly recoverable by and payable to the dependents who are entitled to it or their legal guardians or trustees. In case of the death of a dependent, his or her proportion of the compensation shall be payable to the surviving dependents pro rata. Upon the death of all dependents compensation shall cease. No person shall be excluded as a dependent who is a nonresident alien. An injured employee's dependents shall not be parties in interest to any claim, its collection, or settlement, that is brought by the employee during his or her life for benefits. [418.341].

**5.2.122 Last sickness and burial expenses; duty to pay, amount, claims, compelling payment.**

If death results from the injury, the employer shall pay, or cause to be paid, the reasonable expense of the employee's last sickness, funeral, and burial. The cost of the funeral and burial shall not exceed \$6,000.00 or the actual cost, whichever is less. Any person who performed such service or incurred such liability may file an application with the workers' compensation judge who may order the employer to pay such sums. [418.345].

**5.2.123 Total disability; computation of compensation; presumption.**

During periods of total disability and subject to the maximum allowable recovery

amount, the employer shall pay the injured employee a weekly compensation of 80% of the employee's after-tax average weekly wage, but not more than the maximum weekly rate of compensation, as provided for in § 5.2.126. Compensation shall be paid for the duration of the disability. [P-418.351].

**5.2.124 Determination of dependency upon injured living employee; presumptions; fact questions; relatives; dependency changes.**

(1) For the purposes of §§ 5.2.123-5.2.126 and §§ 5.2.128 and 5.2.129, dependency shall be determined as follows: [P-418.361 FN1].

(a) The following shall be presumed to be dependent for support upon an injured living employee:

[1] If living with the injured employee at the time of injury, a child under the age of 16 years, or over that age, but less than 18, if physically or mentally incapacitated from earning.

(b) In all other cases questions of dependency shall be determined in accordance with the actual facts, as the facts may be at the time of the injury, except as provided in subsection (3) of this section. No person shall be considered a dependent unless such person is the injured employee's spouse, lineal descendant including step-children and adopted children, ancestor, or sibling. Except as to those presumed to be dependents, no person shall be deemed a dependent who receives less than 1/2 of his support from an injured employee.

(2) Weekly payments to an injured employee shall be reduced by the dependency amount when any of the following occur:

(a) A dependent child or other dependent becomes 16 and for a period of 6 months is self-supporting.

(b) A dependent reaches the age of 18 years.

(c) A dependent is deceased.

(d) A dependent spouse is divorced by final decree from the injured employee.

(3) An increase in payments shall be made for increased numbers of dependents as defined in this Code who were not so dependent at the time of the injury of an employee. Provided, however, that a change in marital status subsequent to the date of injury shall not result in an increase in payments. [418.353].

**5.2.125 Coordination of benefits; weekly benefits; reduction of employer's obligation; other insurances; social security benefits.**

- (1) Applicability of section. Subject to the maximum allowable recovery amount, this section is applicable when either weekly or lump sum payments are made to an employee as a result of liability pursuant to §§ 5.2.123, 5.2.129, or 5.2.144 with respect to the same time period for which old-age insurance benefit payments under the Social Security Act, 42 U.S.C. 301 to 1397f; payments under a self-insurance plan, a wage continuation plan, or a disability insurance policy provided in whole or in part by the employer; or pension or retirement payments pursuant to a plan or program established or maintained by the employer, are also received or being received by the employee. An employee's accrued sick leave shall be held to be a wage continuation plan for purposes of this Code. Except as otherwise provided in this section, the employer's obligation to pay or cause to be paid weekly benefits other than specific loss benefits under §§ 5.2.129(2) and (3) shall be reduced by the following amounts:
- (a) Social Security Act. Fifty percent of the amount of the old-age insurance benefits received or being received under the Social Security Act. [418.361(3)]
  - (b) Employer provided self-insurance plan, wage continuation or disability plan. The after-tax amount of the payments received or being received under a self-insurance plan, a wage continuation plan, or under a disability insurance policy provided by the same employer from whom benefits under §§ 5.2.123, 5.2.129, or 5.2.144 are received if the employee did not contribute directly to the plan or to the payment of premiums regarding the disability insurance policy. If such self-insurance plans, wage continuation plans, or disability insurance policies are entitled to repayment in the event of a workers' compensation benefit recovery, the employer or carrier, as appropriate, shall satisfy such repayment out of funds the employer or carrier has received through the coordination of benefits provided for under this section. Notwithstanding the provisions of this subsection, attorney fees shall be paid by the employee to the attorney who secured the workers' compensation recovery. Notwithstanding the foregoing, attorneys fees shall not be paid nor attributable to such self-insurance or wage continuation plans, nor to benefits paid by disability insurance plans. [418.821(b) FN3].
  - (c) Employer provided pro-rata share of disability insurance. The proportional amount, based on the ratio of the employer's contributions to the total insurance premiums for the policy period involved, of the after-tax amount of the payments received or being received by the employee pursuant to a disability insurance policy provided by the same employer from who benefits under §§ 5.2.123, 5.2.129, or 5.2.144 are received, if the employee did contribute directly to the payment of premiums regarding the disability insurance policy. [418.354(1)(b)].
  - (d) Employer provided pension or retirement benefits. The after-tax amount of the pension or retirement payments received or being received pursuant to a

plan or program established or maintained by the same employer from whom benefits under §§ 5.2.123, 5.2.129, or 5.2.144 are received, if the employee did not contribute directly to the pension or retirement plan or program. Subsequent increases in a pension or retirement program shall not affect the coordination of these benefits. [418.354(1)(c)].

- (e) Employer provided pro-rata share of pension or retirement plan or program. The proportional amount, based on the ratio of the employer's contributions to the total contributions to the plan or program, of the after-tax amount of the pension or retirement payments received or being received by the employee pursuant to a plan or program established or maintained by the same employer from whom benefits under §§ 5.2.123, 5.2.129, or 5.2.144 are received, if the employee did contribute directly to the pension or retirement plan or program. Subsequent increases in a pension or retirement program shall not affect the coordination of these benefits. [418.354(1)(e)].
  - (f) Section 401(a) Plans. Those employers who do not provide a pension plan, the proportional amount, based on the ratio of the employer's contributions to the total contributions made to a qualified profit sharing plan under section 401(a) of the internal revenue code [FN4] or any successor to section 401(a) of the Internal Revenue Code covering a profit sharing plan which provides for the payment of benefits only upon retirement, disability, death, or other separation of employment to the extent that benefits are vested under the plan. [418.354(1)(f)].
- (2) To satisfy any remaining obligations under §§ 5.2.123, 5.2.129, or 5.2.144 the employer shall pay or cause to be paid to the employee the balance due in either weekly or lump sum payments after the application of subsection (1) of this section. [418.354(2)].
  - (3) In the application of subsection (1) of this section any credit or reduction shall occur pursuant to this section and all of the following:
    - (a) The employer, a carrier, or third party administrator, as appropriate, shall give notice to an employee of possible eligibility for social security benefits and the requirements for establishing proof of application for those benefits. Such notification shall include notice of the employer's intent to suspend benefits upon the employee's reaching the age at which he or she will reach full retirement age according to the Social Security Administration if the employee does not apply for social security benefits. Notification shall be promptly mailed to the employee 60 days before the date on which by reason of age the employee may be entitled to social security benefits. A copy of the notification of possible eligibility and notice of intent to discontinue benefits shall be filed with the workers' compensation judge by the employer or carrier. [P-418.354(3)(a)].

(b) Within 30 days after receipt of the notification of possible employee eligibility, which receipt shall be held to be effective 3 days after mailing, the employee shall:

[1] Make application for social security benefits.

[2] Provide the employer or carrier with proof of that application.

[3] Provide the employer or carrier with an authority for release of information which shall be utilized by the employer or carrier to obtain necessary benefit entitlement and amount information from the social security administration. The authority for release of information shall be effective for 1 year.

[4] Failure of the employee to provide the proof of application or the authority for release of information as prescribed in subsection (3) of this section shall allow the employer, or carrier to suspend the compensation benefits payable to the employee under §§ 5.2.123, 5.2.129, or 5.2.144 until the proof of application and the authority for release of information is provided. A Notice of Dispute shall be issued when benefits are suspended under this subsection and a copy shall be provided to the workers' compensation judge. Compensation benefits withheld shall be reimbursed to the employee upon the providing of the required proof of application, or the authority for release of information, or both. If the employer or carrier is required to submit a new authority for release of information to the social security administration in order to receive information necessary to comply with this section, the employee shall provide the new authority for release of information within 30 days of a request by the employer or carrier. Failure to provide the new authority for release of information shall allow the employer or carrier to suspend benefits until the authority for release of information is provided as prescribed in this subsection. A Notice of Dispute shall be issued when benefits are suspended under this subsection and a copy shall be provided to the workers' compensation judge. Compensation benefits withheld shall be reimbursed to the employee upon the providing of the new authority for release of information. [P-418.354(3)].

(4) Authorized release; failure to supply; sanctions. Within 30 days after either the date of first payment of compensation benefits under §§ 5.2.123, 5.2.129 or 5.2.144 or 30 days after the date of application for any benefit under subsection (1)(b), (c), (d), or (e) of this section, whichever is later, the employee shall provide the employer or carrier as appropriate, with a properly executed authority for release of information which shall be utilized by the employer or carrier to obtain necessary benefit entitlement and amount information from the appropriate source. The authority for release of information is effective for 1

year. Failure of the employee to provide a properly executed authority for release of information shall allow the employer or carrier to suspend the compensation benefits payable under §§ 5.2.123, 5.2.129, or 5.2.144 to the employee until the authority for release of information is provided. A Notice of Dispute shall be provided to the employee and the workers' compensation judge with notice of suspension of benefits. Compensation benefits suspended shall be reimbursed to the employee upon providing the required authority for release of information. If the employer or carrier is required to submit a new authority for release of information to the appropriate source in order to receive information necessary to comply with this section, the employee shall provide a properly executed new authority for release of information within 30 days after a request by the employer or carrier. Failure of the employee to provide a properly executed new authority for release of information shall allow the employer or carrier to suspend benefits under §§ 5.2.123, 5.2.129, or 5.2.144 until the authority for release of information is provided as prescribed in this subsection. Compensation benefits withheld shall be reimbursed to the employee upon the providing of the new authority for release of information. [418.354(6)].

- (5) Cost of living; no credit. A credit or reduction under this section shall not occur because of an increase granted by the social security administration as a cost of living adjustment. [418.354(7)].
- (6) Determination of benefit amount; credit. Except as provided in §§ (2), (3), and (4), a credit or reduction of benefits otherwise payable for any week shall not be taken under this section until there has been a determination of the benefit amount otherwise payable to the employee under §§ 5.2.123, 5.2.129, or 5.2.144 and the employee has begun receiving the benefit payments. [418.354(8)].
- (7) Recapture of Overpayments. Except as otherwise provided in this Code, any benefit payments under the Social Security Act, or any fund, policy, or program as specified in subsection (1) which the employee has received or is receiving during a period in which the employee was receiving unreduced compensation benefits under §§ 5.2.123, 5.2.129, or 5.2.144 shall be considered to have created an overpayment of compensation benefits for that period. The employer or carrier shall calculate the amount of the overpayment and send a notice of overpayment and a request for reimbursement to the employee. Failure by the employee to reimburse the employer or carrier within 30 days after the mailing date of the notice of request for reimbursement shall allow the employer or carrier to discontinue 50% of future weekly compensation payments under §§ 5.2.123, 5.2.129, or 5.2.144. In addition, in order to reimburse itself for any such overpayments, the Community, in addition to the right of withholding provided by this subsection, shall retain the right to administratively withhold any per capita payments otherwise due to an injured tribal member who is receiving benefits pursuant to this Code. The compensation payments withheld shall be credited against the amount of the overpayment. Payment of the appropriate

compensation benefit shall resume when the total amount of the overpayment has been withheld. [P-418.354(9)].

- (8) Notice of credit to workers' compensation judge. The employer or carrier taking a credit or making a reduction as provided in this section shall immediately report to the workers' compensation judge the amount of any credit or reduction, and as requested by the workers' compensation judge, furnish to the judge satisfactory proof of the basis for a credit or reduction. A hearing is not necessary to initiate the coordination of benefits. [418.354(10)].
- (9) Social Security Disability (SSDI) funds provided by employer. Disability insurance benefit payments under the Social Security Act shall be considered to be payments from funds provided by the employer and to be primary payments on the employer's obligation under §§ 5.2.123, 5.2.129, or 5.2.144 as old-age benefit payments under the Social Security Act are considered pursuant to this section. The coordination of social security disability benefits shall commence on the date of the award certificate of the social security disability benefits. Any accrued social security disability benefits shall not be coordinated. However, social security disability insurance benefits shall only be so considered if section 224 of the Social Security Act, 42 U.S.C. 424a, is revised so that a reduction of social security disability insurance benefits is not made because of the receipt of workers' compensation benefits by the employee. [418.354(11)].
- (10) Early application for benefits. Nothing in this section shall be considered to compel an employee to apply for early federal social security old-age insurance benefits or to apply for early or reduced pension or retirement benefits. [418.354(12)].
- (11) After-tax amount. As used in this section, "after-tax amount" means the gross amount of any benefit under subsections (1)(b), (1)(c), (1)(d), or (1)(e) of this section, reduced by the prorated weekly amount which would have been paid, if any, under the Federal Insurance Contributions Act, 26 U.S.C. 3101 to 3126, State Income Tax, if applicable, and Federal Income Tax, calculated on an annual basis using as the number of exemptions the disabled employee's dependents plus the employee, and without excess itemized deductions. In determining the "after-tax amount" the tables provided for in MCLA § 418.313(2) [FN5], or as amended from time to time, shall be used. The gross amount of any benefit under subsections (1)(b), (1)(c), (1)(d), or (1)(e) shall be presumed to be the same as the average weekly wage for purposes of the table. The applicable 80% of after-tax amount as provided in the table will be multiplied by 1.25 which will be conclusive for determining the "after-tax amount" of benefits under subsections (1)(b), (1)(c), (1)(d), or (1)(e) of this section. [418.354(13)].
- (12) Coordination of benefits applies to any disability pension plan provided in whole or in part by the employer and in proportion to the employer contribution, unless there is specific language in the plan prohibiting coordination.

- (13) Specific loss payments; exception. This section shall not apply to payments made to an employee as a result of liability pursuant to §§ 5.2.129 (2) and (3) for the specific loss period set forth therein. It is the intent of the Tribal Council that, because benefits under §§ 5.2.129(2) and (3) are benefits which recognize human factors substantially in addition to the wage loss concept, coordination of benefits should not apply to such benefits. [418.354(16)].

**5.2.126      Adjustment of maximum weekly rate; establishment as percentage of state average weekly wage.**

- (1) Maximum weekly rate; annual adjustment. The maximum weekly rate shall be adjusted once each year in accordance with the increase or decrease in the average weekly wage in covered employment, as determined by the Michigan Unemployment Compensation Agency, or its successor organization. [418.355(1)].
- (2) Time for computation. The maximum weekly rate for injuries occurring within that year shall be the Michigan established percentage of the state weekly wage as of the prior June 30, adjusted to the next higher multiple of \$1.00, or as otherwise amended from time to time by the State of Michigan. Provided, however, that the adjustment shall only apply to compensation for injuries occurring in the year in which the adjustment is made.

**5.2.127      Reserved for future use.**

**5.2.128      Receipt of unemployment security benefits; reduction of workers' compensation benefits.**

Net weekly benefits payable under §§ 5.2.123 or 5.2.129, or lump sum benefits under § 5.2.144 shall be reduced by 100% of the amount of benefits paid or payable to the injured employee under the Michigan Employment Security Act, Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being §§ 421.1 to 421.67a of the Michigan Compiled Laws, or the unemployment laws of another jurisdiction, for identical periods of time and that are chargeable to the same employer. [418.358].

**5.2.129      Partial incapacity, computation of compensation; total and permanent disability, specific loss, definitions. Subject to the maximum allowable recovery amount, the following rates of compensation shall apply:**

- (1) Partial disability. While the disability for work resulting from a work-related injury is partial, the employer shall pay, or cause to be paid to the injured employee weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the injury and the after-tax weekly wage which the injured employee is able to earn after the injury, but not more than the maximum weekly rate of compensation, as determined under § 5.2.126. Compensation shall be paid for the duration of the

disability. However, an employer shall not be liable for compensation under §§ 5.2.123 or 5.2.130 or this subsection for such periods of time that the employee is unable to obtain or perform work because of imprisonment or commission of a crime.

(2) Specific loss. In cases included in the following schedule, the disability in each case shall be considered to continue for the period specified. Compensation paid for a specific injury, as set forth in this section, shall be paid regardless of whether the employee returns to work. When the specific loss period expires, a worker may receive general disability benefits if found to have a continuing general disability. Compensation shall be 80% of the after-tax average weekly wage subject to the maximum allowable recovery amount and maximum and minimum rates of compensation under this Code for the loss of the following:

- (a) Thumb, 65 weeks.
- (b) First finger, 38 weeks.
- (c) Second finger, 33 weeks.
- (d) Third finger, 22 weeks.
- (e) Fourth finger, 16 weeks.

[1] The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of 1/2 of that thumb or finger, and compensation shall be 1/2 of the amount above specified.

[2] The loss of more than 1 phalange shall be considered as the loss of the entire finger or thumb. The amount received for more than 1 finger shall not exceed the amount provided in this schedule for the loss of a hand.

- (f) Great toe, 33 weeks.
- (g) A toe other than the great toe, 11 weeks.

[1] The loss of the first phalange of any toe shall be considered to be equal to the loss of 1/2 of that toe, and compensation shall be 1/2 of the amount above specified.

[2] The loss of more than 1 phalange shall be considered as the loss of the entire toe.

- (h) Hand, 215 weeks.

(i) Arm, 269 weeks.

[1] An amputation between the elbow and wrist that is 6 or more inches below the elbow shall be considered a hand, and an amputation above that point shall be considered an arm.

(j) Foot, 162 weeks.

(k) Leg, 215 weeks.

[1] An amputation between the knee and foot 7 or more inches below the tibial table (plateau) shall be considered a foot, and an amputation above that point shall be considered a leg.

(l) Eye, 162 weeks.

[1] Eighty percent loss of vision of 1 eye shall constitute the total loss of that eye.

(3) The amounts specified in this section are all subject to the same limitations as to the maximum allowable recovery amount and maximum and minimum rates of compensation as stated in this Code. In case of the loss of one (1) member while compensation is being paid for the loss of another member, compensation shall be paid for the loss of the second member for the period provided in this section. Payments for the loss of a second member shall begin at the conclusion of the payments for the first member.

(4) Loss shall be measured after any correction whether for an industrial or specific loss, and for general as well as total and permanent disability purposes. If, after hearing, which may be on petition or motion by either the employer or employee, there is an unjustifiable refusal, as determined by the workers' compensation judge, by the employee to accept or to access palliative corrective procedures, including surgery, reasonably calculated to restore full or significant function, the workers' compensation judge shall order a loss or reduction of compensation in an amount to be determined by him or her for each week of the period of refusal. [418.361]. *Cain v Waste Mgmt, Inc*, 465 Mich 509, 638 NW2d 98 (2002). This provision is an extension of the opinion which "suggests" that the tests applies to all of the above sub§§.

(5) The minimum weekly benefit for 1 or more losses stated in subsections (1) and (2) of this section shall be 25% of the state average weekly wage as determined under § 1.126. [P-418.356(3)].

**5.2.130 Weekly loss in wages, average weekly wage, definition, computation; maximum compensation payable.**

- (1) Weekly wage loss. The weekly loss in wages referred to in this Code shall consist of the percentage of the average weekly earnings of the injured employee computed according to this section as fairly represents the proportionate extent of the impairment of the employee's earning capacity in all employments with the same employer covered by this Code in which the employee was working at the time of the injury. The weekly loss in wages shall be fixed as of the time of the injury, and determined considering the nature and extent of the injury. The compensation payable, when added to the employee's wage earning capacity after the injury in the same or other employments, shall not exceed the employee's average weekly earnings paid by the employer under this Code at the time of the injury.
- (2) Average weekly wage. As used in this Code, "average weekly wage" means the weekly wage earned by the employee at the time of the employee's injury in all employment with the same employer, inclusive of overtime, premium pay, and cost of living adjustment, and exclusive of any fringe or other benefits which continue during the disability. Any fringe or other benefit which does not continue during the disability shall be included for purposes of determining an employee's average weekly wage to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit amount which is greater than  $\frac{2}{3}$  of the state average weekly wage at the time of injury. The average weekly wage shall be determined by computing the total wages paid in the highest paid 39 weeks of the 52 weeks immediately preceding the date of injury, and dividing by 39.
- (3) If the employee worked less than 39 weeks in the employment in which the employee was injured, the average weekly wage shall be based upon the total wages earned by the employee with that employer divided by the total number of weeks actually worked. For purposes of this subsection, only those weeks in which work is performed shall be considered in computing the total wages earned and the number of weeks actually worked.
- (4) If an employee sustains a compensable injury before completing his or her first work week, the average weekly wage shall be calculated by determining the number of hours of work per week contracted for by that employee multiplied by the employee's hourly rate, or the weekly salary contracted for by the employee.
- (5) If the hourly earnings of the employee cannot be ascertained, or if the pay has not been designated for the work required, the wage, for the purpose of calculating compensation, shall be taken to be the usual wage for similar services if the services are rendered by paid employees.
- (6) The average weekly wage as determined under this section shall be rounded to the nearest dollar. [418.371].

**5.2.131 Dual employment; liability for benefits.**

- (1) Employer of injury. An employer subject to this Code, in whose employ an employee was working at the time of a work-related injury or a work-related injury resulting in death, is liable only for the injured employee's weekly work loss attributable to that employment, and all of the medical, rehabilitation, and burial benefits which are attributable to that employer. [418.372; 418.435].

**5.2.132 Nondisability pension or retirement benefits; presumption.**

- (1) An employee who terminates active employment and is receiving nondisability pension or retirement benefits under either a private or governmental pension or retirement program, including old-age benefits under the Social Security Act, 42 U.S.C. 301 to 1397f, that was paid by or on behalf of an employer from whom weekly benefits under this Code are sought shall be presumed not to have a loss of earnings or earning capacity as the result of a compensable injury or disease under this Code. This presumption may be rebutted only by a preponderance of the evidence that the employee is unable, because of a work-related disability, to perform work suitable to the employee's qualifications, including training or experience. This standard of disability supersedes other applicable standards used to determine disability under this Code.
- (2) This section shall not be construed as a bar to an employee receiving medical benefits under § 5.2.116 upon the establishment of a causal relationship between the employee's work and the need for medical treatment. [418.373].

**5.2.133 Death not immediately following injury, effect on weekly payments or undetermined application for benefits; death benefits.**

- (1) Death prior to expiration of benefits; benefits. The death of the injured employee before the expiration of the period within which he/she would receive weekly payments shall be considered to end the disability and all liability for the remainder of such payments which he/she would have received in case he/she had lived shall be terminated, but the employer shall thereupon be liable for the following death benefits in lieu of any further disability indemnity.
- (2) Dependents' benefits upon subsequent death of employee. Subject to the maximum allowable recovery amount, if the injury received by the employee was the proximate cause of his or her death, and the deceased employee leaves dependents, as specified in this Code, wholly or partially dependent on him or her for support, the death benefit shall be a sum sufficient, when added to the indemnity which at the time of death has been paid or becomes payable under the provisions of this Code to the deceased employee, to make the total compensation for the injury and death, exclusive of medical, surgical, hospital services, medicines, and rehabilitation services, and expenses furnished as provided in §§ 5.2.116 and 5.2.117 equal to the full amount which the

dependents would have been entitled to receive under the provisions of § 5.2.118, in case the injury had resulted in immediate death. Such benefits shall be payable in the same manner as they would be payable under the provisions of § 5.2.118 had the injury resulted in immediate death.

- (3) Death due to unrelated cause prior to or during pendency of application; dependents' benefits. If an application for benefits has been filed but has not been decided by the workers' compensation judge, and the claimant dies from a cause unrelated to his or her injury, the proceedings may be continued in the name of his or her personal representative. In that case, the benefits payable up to the time of death shall be paid to the same beneficiaries and in the same amounts as would have been payable if the employee had suffered a compensable injury resulting in death. [418.375].

**5.2.134 Notice of injury; Claim for compensation; statute of limitations; times for filing.**

Notice of injury shall be given and a claim shall be made within the times prescribed in this section.

- (1) Notice of injury. An employee shall provide notice of injury in writing to the employer within 90 days after the occurrence of the injury, or within 90 days after the employee knew, or should have known, or could have reasonably discovered, the injury. Failure to give such notice shall raise a rebuttable presumption that the injury was not work-related. Notice of injury, standing alone, does not constitute a claim.
- (2) Claim. A proceeding for compensation for an injury under this Code shall not be maintained unless:
  - (a) a claim for compensation for work-related injury has been made in writing, to the employer; or
  - (b) a written claim has been made to the workers' compensation judge.
- (3) Statute of Limitations. A claim for benefits alleging that an injury is work-related shall not be valid or effectual for any purpose under this Code unless made within 2 years after the later of:
  - (a) the date of injury; or
  - (b) the date the employee knew, or should have known, or could have reasonably discovered, the injury or disability; or
  - (c) the last day of employment with the employer against whom the claim is being made. [418.381; 418.441].

- (d) Extension of time. If an employee claims benefits for a work-related injury and is compensated for the disability by workers' compensation or is provided transitional work by the employer because of the disability, the period of time within which a claim shall be made for benefits under this Code shall be extended by the time during which the benefits are paid or the transitional work is provided.
- (4) Incapacity or death. In case of the death of the employee, the claim shall be made within 2 years after death, or within 2 years after the date of injury, whichever is sooner.
- (5) Payment limitations. Subject to the provisions of this section, if any compensation is sought under this Code the following limitations shall apply.
  - (a) Two-Year-Back Rules. Work-loss and medical benefits payments shall not be made for any period of time earlier than 2 years immediately preceding the date on which the employee filed an initial petition for a hearing with the workers' compensation judge. If payment of compensation is made, other than medical expenses, and an application for further compensation is later filed in regard to the same benefits, no compensation shall be ordered for any period which is more than 1 year prior to the date of filing of such application. [418.381(2); 418.833(1)].
  - (b) Limitation on recovery for attendant or nursing care. Payment for nursing or attendant care shall not be made for any period which is more than 1 year before the date an initial petition for a hearing is filed with the workers' compensation judge. This rule shall not apply if the worker is seeking payment for a different category of benefits.
- (6) The receipt by an employee of any other occupational or nonoccupational benefit does not suspend the duty of the employee to comply with this section. [P-418.381].
- (7) Where a claimant files a petition for hearing after an initial petition has been dismissed for lack of prosecution or the employee voluntarily withdraws the petition, or other valid reason, the proper date to be used for determining compensation in respect to subsections (5)(a) and (b) of this section is the date of the later petition.

### **5.2.135 Unintentional errors.**

A notice of injury or a claim for compensation made under the provisions of this Code shall not be held invalid or insufficient because of any inaccuracy in stating the time, place or cause of the injury, unless it is shown that it was the intention to mislead, and the employer or carrier, was, in fact, misled. [P-418.383].

**5.2.136 Physical examinations, necessity, records, presence of employee's physician, refusal, evidence.**

After the employee has given notice of injury and from time to time thereafter during the continuance of his or her disability, if requested by the employer or the carrier, the employee shall submit to an examination by a physician or surgeon authorized to practice medicine under the laws of the states of Michigan or Wisconsin, or such other licensing jurisdiction as is found to be reasonable by the workers' compensation judge. The cost of such examination, including physicians' fees and travel expenses will be furnished and paid for by the employer or the carrier. If an examination relative to the injury is made, the employee or his or her attorney shall be furnished, within a reasonable time after the examination, a complete and correct copy of the record of every such physical examination relative to the injury performed by the physician making the examination on behalf of the employer or the carrier. The employee shall have the right to have a physician provided and paid for by himself or herself present at the examination. If the employee refuses to submit to the examination, or in any way obstructs the same, his or her right to compensation shall be suspended and the compensation during the period of suspension may be forfeited. A Notice of Dispute shall be issued to the employee and to the workers' compensation judge with the notice of suspension of compensation. Any physician who makes or is present at any such examination may be required to testify under oath as to the results. If the employee has had other physical examinations relative to the injury but not at the request of the employer or the carrier, he or she shall furnish to the employer or the carrier a complete and correct copy of the record of each such physical examination. Upon request by the employer or carrier, the employee shall provide the names and addresses of all medical providers, whether or not the employee believes or alleges that treatment is or is not related to the injury, and shall furnish the employer or carrier, as appropriate, with all releases needed to obtain copies of such medical records. Copies of any such record obtained under authority of these releases shall be supplied to the employee. If a party fails to provide a medical record or the names and addresses of medical providers or the necessary releases requested, that party shall be precluded from taking the medical testimony of that provider only. The opposing party may, however, elect to take the deposition of the provider whose medical record has not been supplied. [P-418.385].

**5.2.137 Payment of compensation; recipient; time; records; reports; penalty payment.**

- (1) Compensation shall be paid promptly and directly to the person entitled to it and shall become due and payable on the fourteenth day after the employer has notice or knowledge of the work-related injury, disability or death, on which date all compensation then accrued shall be paid. Thereafter compensation shall be paid in weekly installments. Every employer, third party administrator or carrier, as appropriate, shall keep a record of all payments made under this Code and of the time and manner of making the payments and shall furnish reports, based upon these records, to the workers' compensation judge as he or she require. Weekly payments shall be made payable and mailed directly to the

injured employee or his or her dependent. When the claimant is represented by counsel, the accrued compensation shall be made payable to the person or persons entitled to it and mailed to the attorney representing the person or persons. [418.801; R 408.48(2)].

- (2) If weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, in cases where there is not an ongoing dispute, \$50.00 per day shall be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500.00 in total may be added pursuant to this subsection.
- (3) If medical bills or travel allowance are not paid within 30 days after the employer, the third party administrator or carrier, as appropriate, has received notice of nonpayment by certified mail, in cases where there is no ongoing dispute, \$50.00 or the amount of the bill due, whichever is less, shall be added and paid to the worker for each day over 30 days in which the medical bills or travel allowance are not paid. Not more than \$1,500.00 in total may be added pursuant to this subsection.
- (4) An employer who has notice or knowledge of the work-related injury, disability or death and fails to give notice to the carrier shall pay the penalty provided for in subsection (2) for the period during which the employer failed to notify the carrier.
- (5) When weekly compensation is paid pursuant to an award by the workers' compensation judge, interest on the compensation shall be paid at the rate of 10% per annum, or such rate as may be in effect from time to time pursuant to the Michigan Workers' Compensation statute, from the date each payment was due, until paid. [P-418.801].

**5.2.138 Records of injuries; contents; reports; time; manner.**

Every employer who is subject to this Code shall keep a record of all incidents causing injury, death or disability of any employee arising out of and in the course of employment, which record shall include the name, address, age, wages, time and cause of accident, nature and extent of injury and disability. [418.805].

**5.2.139 Injured employee's savings or insurance, other benefits; consideration in fixing compensation prohibited.**

Any savings or insurance of the injured employee, or any contribution made by the injured employee to any benefit fund or protective association independent of this Code, shall not be taken into consideration in determining the compensation to be paid under this Code, nor shall benefits derived from any other source than those paid or caused to be paid by the employer in whole or in part, as provided in this Code, be considered in

fixing the compensation under this Code, except as provided in §§ 5.2.125, 5.2.128 and 5.2.132. [418.811].

**5.2.140 Assignments, attachments, garnishments, debts; insolvency, priority of compensation claim; attorney fees.**

(1) Assignments; attachments; garnishments. A payment under this Code shall not be assignable or subject to attachment or garnishment or be held liable in any way for a debt. With the exception of the Hannahville Indian Community as an employer, in the case of the insolvency of an employer, liability for compensation under this Code shall constitute a first lien upon all the property of the employer liable for the compensation, paramount to all other claims or liens, except for wages and taxes, which lien shall be enforced by order of the workers' compensation judge.

(a) Exception; inclusions. This section shall not apply to or affect the validity of an assignment made to an insurance company; health maintenance organization licensed under former Act No. 264 of the Public Acts of 1974, or part 210 of Act No. 368 of the Public Acts of 1978, as amended, being sections 333.21001 to 333.21099 of the Michigan Compiled Laws; or a medical care and hospital service corporation organized or consolidated under former Act No. 108 or 109 of the Public Acts of 1939, or any successor organization making an advance or payment to an employee under a group disability or group hospitalization insurance policy which provides that benefits shall not be payable under the policy for a period of disability or hospitalization resulting from accidental bodily injury or sickness arising out of or in the course of employment. When a group disability or hospitalization insurance company; health maintenance organization licensed under former Act No. 264 of the Public Acts of 1974, or part 210 of Act No. 368 of the Public Acts of 1978, as amended; or a medical care and hospital service corporation organized or consolidated under former Act No. 108 or 109 of the Public Acts of 1939, or any successor organization enforces an assignment given to it as provided in this section, it shall pay, pursuant to rules established by the workers' compensation judge, a portion of the attorney fees of the attorney who secured the workers' compensation recovery.

[1] Definition. As used in this section, "insurance company" includes a self-insurer. If an insurance company insures both workers' compensation and group disability or group hospitalization, it shall be permitted the adjustment provided in this section.

[2] Labor management health and welfare funds. A labor management health and welfare fund shall be entitled to the same rights of assignment as an insurance company is entitled to under this section. [418.821].

**5.2.141 Injured minors or incompetents, representation by guardians or next friends.**

If an injured employee is mentally incompetent or is a minor at the time when any right or privilege accrues to him under this Code, his guardian or next friend may claim and exercise in his behalf such right or privilege. [418.823].

**5.2.142 Third party liability.**

- (1) Where the injury for which compensation is payable under this Code was caused under circumstances creating a legal liability in some person other than a natural person in the same employ or the employer to pay damages in respect to the injury, the acceptance of compensation benefits or the taking of proceedings to enforce compensation payments shall not act as an election of remedies but the injured employee or his or her dependents or personal representative may also proceed to enforce the liability of the third party for damages in accordance with this section. If the injured employee or his or her dependents or personal representative does not commence the action within 1 year after the occurrence of the personal injury, then the employer or carrier, within the period of time for the commencement of actions prescribed by statute, may enforce the liability of such other person in the name of that person. Not less than 30 days before the commencement of an action by any party under this section, the parties shall notify, by certified mail at their last known address, as appropriate, the injured employee, or in the event of the employee's death, his or her known dependents or personal representative or known next of kin, his or her employer, the third party administrator, and the carrier. Any party in interest shall have a right to join in the action.
- (2) Prior to the entry of judgment, either the employer or carrier or the employee or the employee's personal representative may settle their claims as their interest shall appear and may execute releases therefor.
- (3) Settlement and release by the employee is not a bar to action by the employer or carrier to proceed against the third party for any interest or claim it might have.
- (4) If the injured employee or his or her dependents or personal representative settle their claim for injury or death or commence proceedings thereon against the third party before the payment of workers' compensation, such recovery or commencement of proceedings shall not act as an election of remedies and any moneys so recovered shall be applied as herein provided.
- (5) In an action to enforce the liability of a third party, the plaintiff may recover any amount which the employee or his or her dependents or personal representative would be entitled to recover in an action in tort. Any recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, shall first reimburse the employer or carrier for any

amounts paid or payable under this Code to date of recovery and the balance shall immediately be paid to the employee or his or her dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payments of compensation benefits.

- (6) Expenses of recovery shall be the reasonable expenditures, including attorney fees, incurred in effecting recovery. Attorney fees, unless otherwise agreed upon, shall be divided among the attorneys for the plaintiff as directed by the workers' compensation judge. Expenses of recovery shall be apportioned by the judge between the parties as their interests appear at the time of the recovery.
- (7) Compensation benefits referred to in this section shall in each instance include but not be limited to all expenses incurred under §§ 5.2.116 and 5.2.122.
- (8) The furnishing of, or failure to furnish, safety inspections or safety advisory services incident to providing workers' compensation insurance, or pursuant to a contract providing for safety inspections or safety advisory services between the employer and a self-insurance service organization or a union shall not subject the insurer or self-insured service organization, or their agents or employees, or the union, its members or the members of its safety committee, to third party liability for damages for injury, death or loss resulting from those actions or omissions. [418.827].

**5.2.143 Compensation; acceptance; effect.**

Neither the payment of compensation nor the accepting of compensation by the employee or his dependents shall be considered as a determination of the rights of the parties under this Code. [418.831].

**5.2.144 Lump sum payments; proposed redemption agreements; notification, contents, waiver of requirements; fees, disposition.**

- (1) Subject to the approval of a workers' compensation judge, after 6 months' time has elapsed from the date of a personal injury, any liability resulting from the personal injury may be redeemed by the payment of a lump sum by agreement of the parties. If special circumstances are found which in the judgment of the workers' compensation judge requires the payment of a lump sum, the workers' compensation judge may direct at any time in any case that the deferred payments due under this Code be commuted on the present worth at 10% per annum, or such rate as may be in effect from time to time pursuant to the Michigan Workers' Compensation statute, to 1 or more lump sum payments and that the lump sum payments shall be made by the employer or carrier. When a proposed redemption agreement is filed, it may be treated as a lump sum application, within the discretion of a workers' compensation judge. The filing of a proposed redemption agreement or lump sum application shall not be considered an admission of liability and if the workers' compensation judge

treats a proposed redemption agreement as a lump sum application under this section, the employer shall be entitled to a hearing on the question of liability.

- (2) The carrier or third party administrator, as appropriate, shall notify the employer in writing of the proposed redemption agreement not less than 10 business days before a hearing on the proposed redemption agreement is held. The notice shall include all of the following:
  - (a) The amount and conditions of the proposed redemption agreement.
  - (b) The procedure available for requesting a private informal managerial level conference.
  - (c) The name and business phone number of a representative of the carrier familiar with the case.
  - (d) The time and place of the hearing on the proposed redemption agreement and the right of the employer to object to it.
- (3) The workers' compensation judge may waive the requirements of subsection (2) of this section if the carrier provides evidence that a good faith effort has been made to provide the required notice or if the employer has consented in writing to the proposed redemption. [418.835(1)-(3)].

**5.2.145 Redemption agreements; approval; hearing purpose; factors.**

All redemption agreements and lump sum applications shall be approved or rejected by the workers' compensation judge. The purpose of a hearing by a workers' compensation judge in such a hearing is to pass on the propriety of the redemption, rather than on the legitimacy of the claim. [418.837(1)]; *Farrell v Campbell, Wyant & Cannon Foundry Co., Division of Textron, Inc.* (1974) 220 N.W. 2D 450, 392 Mich. 344

- (1) A redemption agreement shall only be approved by a workers' compensation judge if the workers' compensation judge finds all of the following:
  - (a) That the redemption agreement serves the purpose of this Code, is just and proper under the circumstances, and is in the interests of the injured employee.
  - (b) That the redemption agreement is voluntarily agreed to by all parties. If an employer has received adequate notice of the proposed redemption and does not object in writing or in person to the proposed redemption agreement, the employer shall be considered to have agreed to the proposed agreement.
  - (c) That the injured employee is fully aware of his or her rights under this Code and the consequences of a redemption agreement.

- (2) In making a determination under subsection (1) of this section, factors to be considered by the workers' compensation judge shall include, but not be limited to, all of the following:
  - (a) Any other benefits the injured employee is receiving or is entitled to receive and the effect a redemption agreement might have on those benefits.
  - (b) The nature and extent of the injuries and disabilities of the employee.
  - (c) The age and life expectancy of the injured employee.
  - (d) Whether the injured employee has any health, disability, or related insurance.
  - (e) The number of dependents of the injured employee.
  - (f) The marital status of the injured employee.
  - (g) Whether any other person may have any claim on the redemption proceeds.
  - (h) The amount of the injured employee's average monthly expenses.
  - (i) The intended use of the redemption proceeds by the injured employee.
- (3) The factors considered by the workers' compensation judge in making a determination under this section and the responses of the injured employee shall be placed on the record.
- (4) An employer shall be considered a party for purposes of this section. [418.836].
- (5) Unless review by the workers' compensation judge is sought and granted within 15 days after the date the workers' compensation judge's order is mailed to the parties, the order shall be final. [418.837(3)].

**5.2.146 Liability of employer or carrier regarding claim; reimbursement.**

- (1) The liability of an employer or carrier regarding a claim under this Code shall be determined by the workers' compensation judge at the time of the award of benefits.
- (2) If an employer or carrier originally determined to be liable pursuant to subsection (1) of this section is subsequently determined to not be liable or not to the same extent as originally determined, that employer or carrier shall be reimbursed by the liable party or parties with interest at 12% per annum. [418.852].

**5.2.147 Statement of injured employee.**

If the employer, carrier, or any agent of either takes a written statement from an injured employee, the statement cannot be used as evidence against the employee unless a copy is given to him or her within a reasonable time after the statement is taken. [P-418.855].

**5.2.148 Cost of hearing; fees of attorneys and physicians; disagreement as to fees; application for hearing; order; review; maximum attorney fees; rules; special order awarding fees; computation of attorney fees; limitation on fees; reduction in fees.**

- (1) Costs of hearing; transcripts. The cost of a hearing including the cost of recording shall be paid by the employer unless the claim is found by the judge to have been brought fraudulently, frivolously, or without substantial merit, in which case the costs shall be assessed against the party in error. In the case of a redetermination, the costs of a hearing, including the costs of recording testimony presented at the hearing shall be paid by the party requesting the redetermination. Unless otherwise agreed among the parties, costs of transcription of testimony taken at a hearing or deposition shall be borne by the party or parties requesting the transcription. The payment of fees for all attorneys and physicians for services under this Code shall be subject to the approval of the workers' compensation judge. In the event of disagreement as to such fees, an interested party may apply to the judge for a hearing. The judge's decision shall be final. [P-418.858(1)].
- (2) Attorney Fees. The workers' compensation judge may prescribe maximum attorney fees and the manner in which the amount may be determined or paid by the employee; but the maximum attorney fees prescribed by the workers' compensation judge shall not be based upon a weekly benefit amount after coordination which is higher than 2/3 of the state average weekly wage at the time of the injury. But if this would result in a fee of less than \$500.00, the claimant may agree to pay a sum, as specified in a written agreement between the claimant and the attorney prior to the filing of an application for hearing, so that the total fee received by the attorney would be not more than \$500.00. When fees are requested in excess of that provided by rule, the workers' compensation judge may award the fees by special order. [418.858(2)].
  - (a) Plaintiff's Attorneys; limitation of fees. The limitation in this subsection as to fees applies to attorneys, including combined charges of attorneys who combine their efforts toward enforcement or collection of any compensation claim. [R 408.44(1)].

[1] Trial; completion of proofs. In a case tried to completion of proofs closed or compensation voluntarily paid, an attorney, before computing the fee, shall deduct from the accrued compensation the reasonable expenses incurred on plaintiff's behalf. The fee that the judge may approve shall not be more than 30% of the balance. [R 408.44(2)].

- [2] Redemption. In a case involving a redemption of liability, the attorney, before computing the fee, shall deduct the reasonable expenses incurred on plaintiff's behalf from the total settlement. The fee the judge may approve is as follows:
- [i] Of the first \$25,000.00, a fee of not more than 15%.
  - [ii] Of any amount more than \$25,000.00, a fee of not more than 10%. [R 408.44(3) (a & b)].
  - [iii] In a case where benefits are being voluntarily paid at the time of redemption, and no application for hearing is pending, not more than a 10% attorney fee will be allowed. [408.44(10)].
- [3] Reasonable expenses. Reasonable expenses, as used in this subsection, include all of the following:
- [i] Medical examination and witness fee, including the cost of a subpoena.
  - [ii] Any other medical witness fees, including the cost of a subpoena.
  - [iii] Costs of recording and transcription services. [ R 408.44(5)].
- [4] Lack of progress dismissal. In a case dismissed for lack of progress or prosecution or in which the petition for hearing is withdrawn for reasons other than voluntary payment or other meritorious reasons and further action is taken by the same attorney or law firm, the fee that the judge may approve in cases specified under subsection (a)[1] of this section shall not be more than 25% of the balance; in subsection (a)[2][i-ii] of this section, of the first \$25,000.00, not more than 12 ½ %, and of any amount more than \$25,000.00, 10% of the balance. [R 408.44(7)].
- [5] Insurance company contribution to fee. A group disability or hospitalization insurance company that enforces an assignment given to it as provided in this Code shall pay a part of the fee of the attorney who secured the compensation recovery in the same proportion that the group insurance company payments bear to the total compensation recovery upon which the attorney's fee is based. [R 408.44(8)].
- (3) The workers' compensation judge may reduce attorney fees in cases where applications for hearing have been dismissed, or where, in the discretion of the workers' compensation judge, such action is appropriate. [418.858(3)].

**5.2.149 Vexatious claims or proceedings; discipline.**

- (1) The workers' compensation judge upon his or her own motion, or the motion of any party, may dismiss a claim for review, assess costs, or take other disciplinary action when it has been determined that the claim or any of the proceedings with regard to the claim was vexatious by reason of either of the following:
  - (a) That the claim was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined; or
  - (b) That any pleading, motion, argument, petition, brief, document, or appendix filed in the cause or any testimony presented in the cause was grossly lacking in the requirements of propriety or grossly disregarded the requirements of a fair presentation of the issues. [418.861b].
- (2) The workers' compensation judge may assess costs against either party, including their attorneys, in the event that he or she finds that a party has acted unjustly to hinder or delay proceedings, has initiated and/or maintained frivolous or vexatious proceedings, has filed or presented any testimony that was grossly lacking in the requirements of propriety, grossly disregarded the requirements of a fair presentation of the case, or has otherwise acted to mislead the court.

#### **5.2.150 Examination by impartial physician.**

The workers' compensation judge may appoint a duly qualified impartial physician to examine the injured employee and to report. The fee for this service shall be a reasonable and customary fee and traveling expenses at the tribally approved rate currently in effect. [418.865].

#### **5.2.151 Disputed claims; late payment penalty.**

The following subsections govern the administration and enforcement of the penalty provisions under § 5.2.137 of this Code.

- (1) Under § 5.2.137(1) of this Code, the compensation shall be paid promptly and directly to the person entitled to compensation. Weekly benefits and travel allowance for medical examination, treatment, or rehabilitation, become due and payable on the fourteenth day after the employer has notice or knowledge of the disability or death. On that date, all compensation which has accrued shall be paid. If benefits are not paid within 30 days of becoming due and payable, then the employer shall pay to the employee \$50.00 per day for each day after 30 that the benefits remain unpaid, not to exceed \$1,500.00. [R 408.33(2)(a)].
- (2) If a case is in litigation and the employer agrees to pay benefits on a voluntary basis, the judge shall specify the weekly compensation rate, the time period for which accrued benefits have become due, and which medical bills shall be paid by the employer as a result of the injury or disability. If the benefits are not paid

within 30 days of the date the agreement is formalized by the judge, then the employer shall pay to the employee \$50.00 per day for each day after 30 days that the benefits remain unpaid, not to exceed \$1,500.00. [R 408.33(2)(b)].

- (3) Medical bills become due and payable on the day the employer receives the bill. If there is a dispute resulting in a delay in paying the medical bills, the administrator shall advise the employee and the medical provider of the reasons for the delay in writing. If there is no dispute and the bill remains unpaid after 30 days, the employer shall pay to the employee \$50.00 per day for each day after 30 days that the bill remains unpaid, not to exceed \$1,500.00. [R 408.33(2)(c)].
- (4) Any employee who may be entitled to penalty payments under § 5.2.137 of this Code and who has not received the payments may file a petition for hearing. [P-R 408.33(2)(f)].
- (5) Penalty amounts due an injured employee shall be paid in a separate check. Penalty amounts are not part of the basic benefits to which an employee is entitled for purposes of loss or assessment. Benefits, allowances, or bills are presumed to have been paid within 30 days if a check is mailed within 27 days of becoming due and payable under this Code. [R 408.33(2)(g)].

**5.2.152 No supplementation of benefits.**

So as not to encumber future generations and to encourage redemptions, the Tribal Council hereby determines that there will be no supplementation of benefits.

**5.2.153 Effective date; retroactivity; effect of invalidity of provision.**

This Code is made effective as of October 1, 2002, and applies to all pending and future claims subsequent to October 1, 2002. If any section is found to be invalid, all other provisions shall remain and shall be given full effect.

**Amended on February 6, 2012 and further amended on February 14, 2012 by Tribal Council in regular and special session for immediate effect and application to all claims current and pending as well as to prospective claimants.**