

Original Enactment Date: August 19, 2010
Subject: Workers' Compensation Claims

SILETZ WORKERS' COMPENSATION CLAIMS ORDINANCE

Siletz Tribal Code §5.500

CHAPTER 1: GENERAL PROVISIONS

§ 5.500 PURPOSE

This Ordinance shall be known and cited as the "Workers' Compensation Claim Ordinance" The purpose of the Ordinance is to establish the rights and benefits of employees of the Confederated Tribes of Siletz Indians of Oregon, and tribal arms and entities to which the Tribal Council makes this Ordinance applicable, for on-the job bodily injuries due to accidents or occupational disease as set forth herein.

§ 5.501 NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Ordinance shall be deemed or construed as waiver by the Siletz Tribe and/or any of its affiliated entities of the Sovereign Immunity of the Siletz Tribe, a federally recognized Indian tribe. Any waiver of the Siletz Tribe's sovereign immunity must take place as expressly provided by tribal law. The State of Oregon's statutory workers' compensation system shall not apply to employees of the Siletz Tribe or any of its affiliated entities or arms. The Siletz Tribe does not consent to the jurisdiction of any state Workers' Compensation Appeals Board or to the jurisdiction of any other court of law or equity, except as expressly authorized from time-to-time by the Tribal Council as provided for by tribal law.

§ 5.502 INSURANCE

Every employer must insure itself for the benefits provided under this Ordinance, but are allowed Self-Insured Retention levels in accordance with the ordinance. Any insurance company issuing a policy insuring benefits hereunder shall: (1) require a loss prevention/control program sufficient to enable the Siletz Tribe and its arms and entities to provide a safe workplace for all tribal workers; (2) assist the employer in reducing hazards in the workplace and in the implementation of continued safety policies and procedures.

§ 5.503 DEFINITIONS

Pronouns of the masculine gender used in this Ordinance shall apply to both sexes. Unless stated otherwise in specific section of the Ordinance, time limits shall be calculated using calendar days.

Unless the context otherwise requires, the definitions which follow govern the construction and meaning of the terms used in this Ordinance:

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- (a) “Administrator” shall mean either the Insurance company providing coverage hereunder, any subcontractor appointed by said Insurance Company, or subcontractor,.
- (b) “Attending Physician” shall mean the Physician, Family Nurse Practitioner, Physician Assistant or other approved medical care provider that is responsible for planning, provision, and oversight of medical treatment to a covered worker who sustains a covered injury.
- (c) “Average Weekly Wage” shall be as follows:
 - (1) For covered workers hired to regular full or part time position expected to last at least 13 weeks, the average weekly wage shall be calculated based on the preceding thirteen (13) weeks of the covered worker’s actual wage earning from a covered employer. In the case of a worker who has not worked for a covered employer within the immediate preceding thirteen (13) weeks, the average weekly wage shall be calculated based on the salary level the worker was hired at or is currently receiving.
 - (2) For covered workers hired on a temporary, emergency or special projects basis who has continuously worked for a minimum of thirteen (13) weeks, the average weekly wage shall be calculated as provided in subparagraph 1, above.
 - (3) For covered workers hired on a temporary, emergency, or special projects basis who have not continually worked for the preceding 13 weeks, the average weekly wage shall be calculated by taking the expected total gross wages and divide by the expected number of work weeks.
 - (4) For purposes of this definition, the work week shall be as defined by the personnel manual or policy applicable to the covered employee at the time of injury.
 - (5) “Benefits” shall mean the indemnity and medical payments provided by this Ordinance. “Indemnity” shall mean total disability and partial disability income benefits and impairment payments; and “Medical” shall mean medical expense, mileage, and other expenses associated with medical treatment.
 - (6) “Child” includes dependent natural legitimate children, dependent stepchildren, adopted children and acknowledged illegitimate children; but does not include married children unless they are shown to be dependent.

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- (7) "Claimant" means the injured covered worker, or in the event of death of the covered worker, dependents of the deceased.
- (8) "Consulting Physician" shall mean the Physician, other health care provider or other care expert that is retained by the Administrator to assist the Administrator in carrying out his duties and responsibilities under this Ordinance. Such activities may include, but are not limited to, determination of the validity of a claim; review of an attending physician's diagnosis and treatment plans; determination of MMI; determination of impairment rating. At the discretion and expense of the Administrator, an injured worker maybe required to be seen by the consulting physician to assist in making any required recommendations to the Administrator.
- (9) "Course and Scope of Employment" shall mean the employer's employment of the covered worker at the time the injury occurred. An injury must arise out of and be in the course and scope of employment, and the worker must be acting in the furtherance of the employer's interest at the time of the incident and/or accident, in order for a claim to be compensable.
- (10) "Covered Employer" and Employer" shall mean the Siletz Tribe, its agencies, and any Tribal arms, entities, corporations and enterprises.
- (11) "Covered Worker" and Worker" means every person who has entered into the employment of or performs work for an employer, works under contract of service, express or implied, or apprenticeship, for an employer, every executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a corporation, including a person holding an official position, or standing in a representative capacity of the employer, including officials elected or appointed by the Siletz Tribe, compensated monetarily or otherwise, except as hereinafter specified. The terms covered worker and worker shall not include an independent contractor working under contract for an employer, whether that contract be express or implied. Covered workers shall include all persons employed by the employer regardless of where they work, whether it be on or off the Siletz Reservation or Siletz trust lands. Covered workers shall include volunteers or other persons providing work for an employer who do so without receiving compensation, including but not limited to committee members. Covered workers shall not include volunteer positions covered by a tribal accident insurance policy.

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- (12) “Death” is any fatality of the covered worker proximately and directly caused by work injury or occupational disease.
- (13) “Dependants” are the following persons, and they shall be deemed to be the only recognizable dependents under the provisions of this Ordinance:
- (A) The widow or widower, if legally married and living with the deceased at the time of deceased’s death and legally entitled to be supported by the deceased as a dependent defined by the most recent federally filed 1040 tax return. For purposes of this Ordinance, a covered worker may, in a written self-declaration to be provided by the employer, designate a person as their domestic partner, which person shall be treated as a dependent widow(er) if the person was living with the deceased covered worker at the time of his/her death and listed on the most recently federally filed 1040 tax return.
 - (B) A child, natural or adopted, under 18 years of age, or incapable of self-support and unmarried; or a child under 25 years of age enrolled as a full-time student in an accredited education institute at the time of the covered worker’s death.
- (14) “Disability” means the inability of the covered worker to obtain and/or retain wages equivalent to the pre-injury wage rate as a result of a direct loss of functional capacity compromising that individual’s ability to perform the necessary duties of the job. This functional loss must be directly and materially attributable to a compensable work-related injury and/or occupational disease and must be supported by the worker’s attending physician and, if requested by the Administrator, the consulting physician. “Partial Disability” is distinguished as any incapacity less than 100% inability as defined above.
- (15) “Impairment” means any anatomic or functional abnormality or loss existing after Maximum Medical Improvement (MMI) as defined herein that results from a compensable injury and/or occupational disease and is reasonably presumed to be permanent based on reasonable medical probability.
- (16) “Injury” shall mean any physical impairment, including, without limitation, death and/or occupational disease as further herein defined. “Arising out of and in the course of employment” excludes an injury sustained while a covered worker is at home or preparing for work. “Injury” excludes any injury resulting primarily from the natural aging process, or normal daily activities, or an injury sustained during voluntary recreational or social activities. The injury must arise out of

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and in the course of employment, requiring medical services or resulting in disability or death; and is further defined as a specific, traumatic incident at a definite time and place, while in the course of employment, that produces an immediate onset of pain and is established by medical evidence supported by objective findings.

- (17) "Intoxication" means blood alcohol content in excess of .02 percent or conviction of the offense of driving while intoxicated (or its equivalent) by any jurisdiction or, loss of the normal use of one's mental and/or physical faculties resulting from the voluntary introduction into the body of (1) an alcoholic beverage; (2) a controlled substance; (3) a mind-altering drug and/or hallucinogenic; (4) an abusable glue or aerosol pain; or (5) any other similar substance.
- (18) "Maximum Medical Improvement" (MMI) means the earlier of:
- (A) The point which further material recovery from or last improvement to an injury can no longer reasonably be anticipated, based on the reasonable medical probability; or
 - (B) The expiration of 36 months from the date Incapacity Income Benefits begin to accrue.
- (19) "Occupational Disease" shall be only those diseases which arise out of and in the course and scope of the worker's employment. Such diseases shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment. Such disease must be incidental to the character of the business, occupation, or process in which the worker was employed and not independent of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which a worker has or would have been equally exposed outside of said occupation is not compensable as an occupational disease.
- (20) "Policy" shall mean any Tribal Workers Benefit Policy of Insurance issued to the Siletz Tribe, or other employer, by any private or public entity.
- (21) "Settlement" shall mean the date the release of all claims is executed and the monetary terms of the agreement met.
- (22) "Tribal Court" shall mean the Siletz Tribal Court.

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- (23) "Tribal Member" shall mean any person listed on the Siletz Tribe's enrollment list.
- (24) "Tribal Workers Benefit System" shall mean this Ordinance, any and all rules and regulations promulgated hereunder, as well as the functions of the Administrator.
- (25) "Tribe" and "Tribal" mean the Confederated Tribes of Siletz Indians of Oregon, also known as the Siletz Tribe, a federally recognized Indian tribe, its agencies, arms, entities, and any Tribal corporation and enterprise.

§ 5.504 ACKNOWLEDGMENT OF ORDINANCE

All covered workers and persons asserting a claim shall be conclusively presumed to have elected to take workers benefits in accordance with the tenets, conditions, and provisions of this Ordinance by virtue of employment with the Siletz Tribe or other employers as defined herein. Tribal employees and employees of tribal arms, entities, or enterprises will be required to acknowledge this Ordinance as a condition of their employment. All covered workers and/or persons asserting a claim for workers benefits acknowledge that the Siletz Tribe is a federally recognized American Indian Tribe and is exercising its inherent sovereign authority in providing workers benefits under this code.

The employer shall be responsible for and shall have posted in a conspicuous location a notice as follows:

NOTICE TO TRIBAL GOVERNMENT AND ENTERPRISE EMPLOYEES

AS EMPLOYEES OF THE TRIBE OR ITS ARMS, ENTITIES, OR ENTERPRISES, YOU ARE INSURED FOR ON-THE-JOB INJURIES UNDER THE TRIBAL WORKERS COMPENSATION CLAIM ORDINANCE

If you are injured or sustain an occupational disease while at work, you may be entitled to benefits as provided by the Tribal Workers Compensation Ordinance. NOTIFY YOUR EMPLOYER IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT. If you fail to do so, you may lose your benefits under the Tribal Workers Benefits System. In no event shall benefits be paid to a worker who failed to notify their employer within three (3) days after sustaining such work-related injury, except in cases where an extraordinary reason prevented the worker from reporting the injury or occupational disease to the employer in a timely manner.

It is your responsibility to file a claim for benefits under the Ordinance with the Administrator of the System. You are required to file a claim for any injuries or occupational disease no more than thirty (30) days after you have knowledge thereof. It is your responsibility to obtain any necessary forms from the Tribal Workers Benefits System Claim Administrator at:

Your exclusive remedy for any work connected injury or disease is through the Tribal Workers Benefits System. The State's Workers Compensation System has no authority to accept a claim from you under the Tribal Workers Benefit Code as you are employed by the Confederated Tribes of Siletz Indians of Oregon or one of its arms, entities or enterprises, and the Siletz Tribe is a sovereign Indian Nation employer, which has placed tribal workers' compensation claims exclusively under the jurisdiction of its own Tribal Workers Benefits System.

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§ 5.505 NOTIFICATION TO EMPLOYER OF INJURY BY WORKER

Any covered worker and/or person claiming benefits under this Ordinance must notify his supervisor, department director or the human resources director of any and all injuries immediately, and no later than three (3) days from the date of occurrence. Failure to report such on-the-job injury shall result in the worker's forfeiture of benefits under this Ordinance, unless the claimant can demonstrate an extraordinary reason that prevented the reporting of the injury or occupational disease in a timely manner.

The supervisor/department director/ human resources director receiving the report of the incident or accident shall submit the report to the Administrator within seven (7) days of receipt from the covered worker. In addition, the supervisor/ department director/ human resources director receiving the report shall prepare, or have prepared by the covered worker's direct supervisor, and submit an incident report on the circumstances surrounding the on-the-job injury, including the identification of those who may have witnessed the incident or accident.

§ 5.506 TIME LIMITS FOR REPORTING OF INCIDENTS AND FILING OF CLAIMS

Claims for injury shall be made by the covered worker to the Administrator within thirty (30) days of the date of occurrence. For purposes of this Ordinance, a covered worker filing a claim for benefits under this Ordinance with the human resources office shall constitute filing a claim with the Administrator.

Claims for occupational disease shall be made by the covered worker to the Administrator within thirty (30) days from the date of first notice to the claimant by a physician or from the date of manifestation of symptoms, whichever is earliest, but in no event longer than six (6) months from the date the worker terminates his employment with the Siletz Tribe or a tribal arm, entity, corporation or enterprise.

Failure to give notice of injury to the employer as required by section § 5.505, or to file a claim with the Administrator, within the time limit set forth in this section shall constitute a forfeiture by the covered worker, or his representatives in case of death, of all benefits available and payable under this Ordinance.

§ 5.507 BURDEN OF PROOF

The burden of proof shall rest upon the covered person, or his dependents in the case of death, to prove:

- (a) That the injury alleged was a result of an incident, accident or occupational disease;
- (b) That it arose out of the covered person's employment;
- (c) That it arose while in the course and scope of employment and arose proximately out of covered employment; and

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- (d) That it arose while in the furtherance of the employer's interests.

§ 5.508 RIGHT TO WAIVE DEFENSES

The Administrator and/or Insurer shall have the right and power to waive any and all defenses affecting the compensability of a covered injury under this Ordinance.

§ 5.509 GUARDIAN FOR MINOR OR INCOMPETENT

Any person who is mentally incompetent and/or under the age of 18 and is entitled to receive compensation under this Ordinance, shall be appointed a guardian or other representative by the Siletz Tribe if a guardian has not been appointed in a prior action, or if the person's parent(s) and/or custodian(s) are unable or unwilling to act in that capacity.

CHAPTER 2: ADMINISTRATIVE DUTIES AND POWERS

§ 5.510 CUSTODIAN DUTIES

The Administrator or its designee shall be the payor of the workers benefits and all authorized disbursements there from shall be paid by the Administrator or a representative with its stated authority, and shall be the custodian of all claim files and related documents.

§ 5.511 PAYMENT AND DISTRIBUTION OF BENEFITS

The Administrator shall administer this Ordinance in accordance with the terms and conditions described herein, and any rules promulgated by the Administrator, and remit payment for all matters of benefit claims as provided for in this Ordinance. Further, the Administrator shall have the authority to determine the distribution of benefit checks.

§ 5.512 TRIBAL WORKERS BENEFIT SYSTEM ADMINISTRATOR POWERS AND DUTIES

The Administrator for the Tribal Workers Benefit System shall be empowered to request medical reports, police reports, autopsy reports, and special investigations, engage the services of adjusters and consultants, and perform other activities as required to process any claim for benefits or to further this Ordinance. If necessary, the Administrator may use the subpoena process of the Siletz Tribal Court Rules and Procedures to compel production of relevant documents.

In the case of death of a covered worker, the Administrator shall have the right to request the performance of an autopsy on the decedent from an appropriate official licensed to perform autopsies, and further the Administrator shall have the right to request any and all reports made from such autopsies. If requested, the legal beneficiaries of the deceased worker are entitled to have a representative present at

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any autopsy ordered by the Administrator. The Administrator may seek an Order from the Siletz Tribal Court to compel such an autopsy.

Retain a consulting physician for purposes of assisting the Administrator to carry out the duties and powers of this Ordinance.

Complete and accurate administrative records and claim files shall be maintained on all activities relating to the claims made under the Policy. All closed files shall be preserved for not less than six (6) years.

§ 5.513 ACCEPTANCE/DENIAL OF CLAIM

Upon receiving a claim for benefits from an injured worker, the Administrator shall promptly investigate the claim and begin payment of compensation within 21 days of a valid claim or the Administrator shall send the claimant written notice, within 21 days, that further investigation is needed and the reasons for further investigation. The Administrator shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant in writing that the claim is denied.

CHAPTER 3: COVERAGE AND COMPENSABILITY

§ 5.514 ENTITLEMENT OF BENEFITS

Any claimant for benefits under this Ordinance shall be responsible for filing their claim with the Administrator.

Coverage exists under the Ordinance for a covered worker's injury without regard to fault or negligence if the injury arises out of and in the course and scope of employment and if the worker was acting in furtherance of the employer's interest at the time of the injury and/or incident, including, without limitation, any covered worker whose work at the time of injury was subject to the Longshore and Harbor Workers Compensation Act (33 U.S.C. §§ 901-950), the Jones Act (46 U.S.A. appx. § 688), or any other Federal Workers Compensation Acts. If an injury is an occupational disease as defined herein, the employer in whose employ the worker was last injuriously exposed to the hazards of the disease is considered to be the employer of the worker for purposes of obtaining benefits under this Ordinance.

§ 5.515 DISCLOSURE OF PRE-EXISTING DISABILITIES/CONDITIONS

All workers shall disclose any pre-existing physical or mental disorder and/or disability that could potentially affect or impair the worker's ability to perform in a reasonable and safe manner the activities involved in the position in which they work. The content of such disclosure shall be made promptly by the covered worker after submitting a claim for benefits under this Ordinance.

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Any claim resulting from an employment-related aggravation of a pre-existing condition which was not disclosed as required under this Ordinance shall be declined by the Administrator under this Ordinance if the claimant had knowledge of the pre-existing condition and failed to disclose such condition.

§ 5.516 MENTAL TRAUMA INJURIES

Mental traumas, disorders, and/or conditions, even if manifested in physical symptoms and/or related to stress, are not compensable injuries under this Ordinance, except that mental trauma is only recoverable if resulting from accidental physical injury traceable to a definite time, place, and cause rather than from repetitive mental trauma.

Regardless of § 5.516(a), a mental trauma or emotional injury that arises principally from a personnel action, including, without limitation, a transfer, promotion, demotion, or termination is not a compensable injury under this code.

§ 5.517 GOING TO AND RETURNING FROM WORK

An accident and/or incident occurring to a worker while on the way to or from work, including lunch break, is not within the course and scope of employment except when such traveling is directly connected with the worker's work and in furtherance of the employer's interest. This exception will not apply if the worker deviates from a reasonably direct route of travel and/or is not acting in the interests of the employer.

§ 5.518 BENEFITS PRECLUDED BY NEGLIGENCE AND/OR REFUSAL OF WORKER TO SUBMIT TO TREATMENT

No benefits shall be payable for the death and/or disability of a worker if the worker's death and/or disability is caused by, or the worker's disability aggravated, caused or continued by, an unreasonable refusal and/or neglect to submit to and/or follow any competent or reasonable surgical or medical treatment, medical aid, or advice. A worker who has refused and/or neglected to submit to medical and/or therapeutic treatment, or to take medications prescribed, will be deemed to have reached Maximum Medical Improvement as defined herein. Any such existence of a disability that could have been reasonably treated to success with reasonable medical probability will be discontinued in determining the appropriate incapacity rating as described herein.

Any covered worker entitled to benefits under this Ordinance shall be presumed to have reached Maximum Medical Improvement if such claimant has refused and/or neglected to seek appropriate medical treatment within three (3) months from the date of occurrence or from the last date of prior treatment. Any worker who refuses to authorize release of medical records or complete forms as requested by the Administrator that have been deemed necessary to properly adjudicate the claim shall forfeit benefits under this Ordinance.

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§ 5.519 BENEFITS NOT PAYABLE

Benefits will not be payable by the Tribe, arm, entity or enterprise thereof, or by an employer, in the following situations:

(a) Injury or Death by Consumption and/or Application of Drugs and/or Chemicals.

No benefits of any nature shall be payable for injury and/or death caused or contributed to by any drug, including narcotics and hallucinogens, whether organic or chemical in nature, or any gas, vapors, and/or fumes taken and/or inhaled voluntarily, or by voluntary poisoning, except those drugs prescribed by a physician or other practitioner licensed to prescribe such medication.

(b) Intoxication.

No benefits of any nature shall be payable for any covered worker injured or killed while intoxicated as defined in section §5.503 (17) regardless of whether or not the intoxicated condition was the proximate cause of the injury or death. It is only necessary to prove that the covered worker was intoxicated at the time of the incident or accident to deny benefits under this Ordinance. All workers accepting employment with an employer and under this Ordinance, agree to submit to post-incident/post-accident drug and alcohol screening as authorized in the applicable Tribal, arm, entity or enterprise personnel policies, and agree to waive any privilege associated with the results of said tests.

(c) False Statement or Representation to Obtain Coverage; Penalty and Forfeiture.

If, in order to obtain any benefits under the provisions of this Ordinance, any person willfully makes a false statement or representation, they shall forfeit all rights to compensation, benefits, or payment upon proof that the offense was committed. Any claim resulting from an employment-related aggravation of a pre-existing condition which was not disclosed as required under this Ordinance will be declined by the Administrator pursuant to § 5.515.

(d) Injuries Resulting from Self-Inflicted Injuries, Willful Misconduct, "Horseplay," or Safety Violation.

No benefits of any nature shall be payable for any covered worker's injury or death caused by a covered worker's willful intention to injure himself or another. An injury sustained during "horseplay" is not incurred in the course and scope of employment and thus such an injury under this Ordinance is not compensable. In addition, the willful disregard of a safety order from the employer to the worker to wear or use a safety device and/or to perform work in a certain manner may cause such person to forfeit all rights to compensation, benefits, or payment upon proof that the offense was committed and that such disregard or performance was the direct and proximate cause of the injury, death, and/or occupational disease. A covered worker's willful disabling of safety devices on

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equipment constitutes a willful intention to injure himself thereby precluding eligibility for their benefits under this Ordinance.

(e) **Injuries Resulting from Natural Causes.**

No benefits of any nature shall be payable for any covered worker injured or killed when the injury or death results from natural causes, i.e., heart attack, stroke or other natural function failure, which does not arise out of the course and scope of employment while the worker was acting in furtherance of the employer's interest.

(f) **Recreational, Social, or Athletic Activities.**

(1) No benefits shall be payable for any covered worker injured or killed if the injury or accident occurred as a result of the worker's voluntary participation in an off-duty, recreational, social, or athletic activity not constituting part of the worker's work-related duties, except where these activities are expressly required by the employment.

(2) No benefits under this Ordinance shall be payable to any covered worker if the injury, disease, or death arises from participation in voluntary physical fitness activities during the regular work day, regardless of whether the employee is or is not compensated for the time in which the physical fitness activities take place.

(g) **Injuries Caused by Deliberate Actions of Third Parties.**

No benefits of any nature shall be payable for any covered worker injured or killed as the result of an act of a third party, including co-workers, who intended to injure the worker because of reasons personal to that worker and not directed at the worker for reasons related/relevant to his employment.

(h) **Secondhand Smoke.**

No benefits under this Ordinance shall be payable to or on behalf of any covered worker injured or killed as a result of exposure to or injury by secondhand smoke.

CHAPTER 4: BENEFITS – GENERAL PROVISIONS

§ 5.520 RIGHT TO COMPENSATION AND MEDICAL TREATMENT BENEFITS

Every covered worker coming within the provisions of this Ordinance who is injured, and in the event of a worker's death, the dependents of every such covered worker, arising out of and in the course and scope of employment and while acting in furtherance of the employer's interest at the time of the incident and/or accident, unless the injury is otherwise limited or excluded by the terms and conditions of

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this Ordinance, shall be entitled to receive, and shall be paid, for loss sustained on account of the injury, death and/or occupational disease, such benefits as provided under this Code.

§ 5.521 WORKERS BENEFIT AS EXCLUSIVE REMEDY

The rights and remedies provided by the provisions of this Ordinance for a worker on account of injury or occupational disease for which benefits under this Ordinance are recoverable, shall be the exclusive and only rights and remedies of such worker, the worker's personal or legal representative, dependents, or next of kin, at common law or otherwise, on account of such injury and/or occupational disease against the employer, the employer's representatives, insurer, guarantor or surety, for any matter relating to the occurrence of or payment for an injury or death covered under this Ordinance. To that end, all civil causes of action against the covered employer and its employees, arising from said injuries or death, and the jurisdiction of all courts over such causes of action are hereby abolished and barred, except as specifically provided by this code.

§ 5.522 EFFECT OF COMPENSATION PAID IN OTHER JURISDICTIONS OR THIRD PARTY RECOVERY

An injured worker who pursues and recovers compensation under laws of another jurisdiction or from a third party shall notify the Administrator. The injured worker forfeits compensation under this code in proportion to their recoveries from the other jurisdiction or third party.

§ 5.523 LIABILITY OF THIRD PARTIES - SUBROGATION

The employer and/or their representative, insurer, guarantor, or surety shall be subrogated to the common law rights of the worker to pursue any claims for compensation against any third party that is liable for the death of, or injuries to, said worker arising out of and in the course and scope of employment and while the worker was acting in the furtherance of the employer's interest to the extent of the benefits bestowed upon the said worker.

In case of recovery, the Administrator shall enter judgment for distribution of the proceeds thereof as follows:

- (a) A sum sufficient to repay the employer and/or the Administrator for the amount of the compensation actually paid to the worker under this Ordinance up to that time;
- (b) A sum sufficient to pay the employer the present worth, computed at the current legal interest rate for court judgments and decrees, of the future payments of compensation for which the employer is liable, but the sum is not the final adjudication of the future payments which the worker is entitled to receive and if the sum received by the employer is in excess of the amount required to pay the compensation, the excess shall be paid to the worker.
- (c) The balance, if any, shall be paid over to the worker.

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For subrogation purposes hereunder, any payment made to a covered worker, his guardian, parent, next of kin, or legal representative, by or on behalf of any third party, his or its principal or agent liable for, connected with, or involved in causing an injury to such worker shall be considered as having been so paid as damages resulting from and because said injury was under circumstances creating a legal liability against said third party, whether such payment be made under a covenant not to sue, compromise settlement, denial of liability, or otherwise.

§ 5.524 ASSIGNABILITY OF BENEFITS – ATTACHMENT OF LIENS

Benefits received under this Ordinance are not assignable, except that a legal beneficiary may, assign the right to death benefits. Income from death benefits are subject only to the following liens or claims, to the extent of any income or death benefits that are unpaid on the date the Administrator receives written notice of the lien, judgment, or claim in the following order of priority:

- (a) Court-ordered child support issued or recognized by the Siletz Tribal Court;
- (b) A subrogation interest established under this Ordinance; and
- (c) Debts owed to the Siletz Tribe or agencies or offices of the Tribe.

§ 5.525 AGGRAVATION OF PRE-EXISTING DISEASE OR CONDITION

If a covered worker is suffering from a pre-existing disease and/or injury at the time an occupational incident, accident and /or disease occurs or arises in the course and scope of employment with the worker was acting in furtherance of the employer's interest at the time of the injury and/or incident, and the pre-existing disease and/or injury is aggravated thereby, the aggravation of the disease or injury is, subject to provisions herein, compensable under this Ordinance. The amount of the award for that disability as set forth in this Ordinance may be reduced or denied in its entirety by the Administrator in consideration of the following:

- (a) A prior settlement from any source for the same impairment;
- (b) The difference between the degree of impairment of the worker before the covered accident and/or occupational disease and the degree of impairment after the covered accident or occupational disease; or
- (c) The benefits to be paid for impairments and/or disabilities would be in excess of 100% of the whole person. For purposes of this subsection, benefits include those benefits or payments made under this Ordinance, benefits from the worker's compensation laws of any other jurisdiction or payments from third parties.

§ 5.526 TERMINATION OF BENEFITS UPON DEATH

Where a worker is entitled to compensation under this Ordinance for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation,

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payments of the unpaid balance for such injury shall cease and all liability for such compensation thereafter shall terminate.

CHAPTER 5: BENEFITS

§ 5.530 VOCATIONAL REHABILITATION

Vocational rehabilitation benefits or training are not mandatory under this Ordinance, but may, at the discretion of the Administrator, be ordered pursuant to his authority established herein.

§ 5.531 WAITING PERIOD

An initial waiting period of three (3) consecutive calendar days is to accrue before the covered worker shall be entitled to benefits under this chapter. If the covered worker misses more than fourteen (14) consecutive calendar days, the first three (3) calendar days can be considered for benefits if the covered worker received no other compensation during this time including but not limited to, sick time, vacation time, and personal time off (PTO).

§5.532 TOTAL DISABILITY AND PARTIAL DISABILITY INCOME BENEFITS

- (a) When the worker is disabled from work duty as determined by the consulting physician, or in the Administrator's discretion, the attending physician, by reason of a compensable injury or occupational disease, benefits shall be payable as follows:
- (1) If the covered worker is 100% disabled, benefits are payable at 66-2/3 % of the worker's pre-injury average weekly wage.
 - (2) If the covered worker is less than 100% disabled, benefits are payable at 66-2/3% of the difference between the worker's pre-injury average weekly wage and the wage the covered worker is earning or capable of earning in his partially disabled condition.
- (b) Except as provided herein, such benefits will continue to be paid in accordance with the terms of this Ordinance until which time the earliest of the following occur:
- (1) The expiration of 36 months from the date of occurrence, or in the case of an occupational disease, 36 months from the earliest of the first manifestation of the symptoms or notification from a physician that the illness is inherent or related to the worker's occupation;
 - (2) The consulting physician, or in the discretion of the Administrator, the attending physician, declares that the worker has reached Maximum Medical Improvement;
 - (3) The claimant is incarcerated;

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- (4) A full, unrestricted release is provided by the consulting physician, or in the discretion of the Administrator, the attending physician.
- (5) A modified or light duty release is provided by the consulting physician, or in the discretion of the Administrator, the attending physician, and a bona fide job offer of suitable work consistent with the worker's disability is rejected;
- (6) A new or intervening incident is the proximate cause of disability;
- (7) Benefits are refused by the worker;
- (8) Presumption of MMI or abandonment of medical treatment as defined by section § 5.518 of this Ordinance;
- (9) Suspension of benefits by the Administrator for reasons authorized in this Ordinance or by the authority of the arbitration panel established under this Ordinance;
- (10) The worker's earning capacity is reduced for reasons other than the disability from the work-related injury;
- (11) The covered worker dies from any cause not resulting from the injury for which he was entitled to compensation under this section, and the covered worker's estate is not entitled to any further benefits as defined by this Ordinance.

§ 5.533 IMPAIRMENT BENEFITS

At the expiration of 36 months from the date of the incident, accident and/or occupational disease, the worker is presumed to have reached MMI regardless of disability and/or current medical status. The consulting physician, or in the discretion of the Administrator, the attending physician, is to provide an impairment rating in accordance with the most current edition of the American Medical Association (AMA) based on reasonable medical probability. In addition, at this time the consulting physician, or in the discretion of the Administrator, the attending physician is required to provide a treatment plan for reasonable and necessary future medical needs. The attending physician's impairment rating and treatment may be subject to review and revision by the consulting physician at the discretion of the Administrator.

For the purposes of converting the impairment rating into a monetary figure only, this Ordinance will mirror the State's award schedule for permanent partial disability, provided that all such ratings be converted to a whole person rating and defining that 100% whole person equals \$200,000.

A rating may not be issued prior to the declaration of MMI. The Administrator may reserve issuance of payment under the following conditions:

- (a) Contribution of prior impairment ratings;

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- (b) Clarification by the Administrator of this Ordinance as to the validity of the date for MMI;
- (c) Similar rating or MMI issues to be resolved by the consulting physician or, if necessary, the arbitration panel established under this Ordinance.

The rating recognized by the arbitration panel is binding. The rating will not be retroactively paid for weeks accrued in resolving the rating issue subsequent to the date of MMI. Such benefits will become effective the date of the ruling and commence at that time.

Notwithstanding provisions herein, the Administrator shall retain the right and discretion to order Lump Sum Settlements by way of Compromise and Release.

§ 5.534 BENEFIT ISSUANCE PERIOD

Except as provided herein:

- (a) All benefits under this chapter are to be issued bi-weekly.
- (b) There shall be no acceleration of benefits under this Ordinance.
- (c) Any settlement issued on behalf of a covered worker shall be executed by signed memorandum only.

§ 5.535 NOT TO EXCEED PRE-INJURY AVERAGE WEEKLY WAGE

In no event may the worker's incapacity income benefits, or other income sources supplement the loss income exceed 100% of the worker's pre-injury average weekly wage, as may be increased by a tribally approved cost of living adjustment.

§ 5.536 BENEFIT OFFSETS

The Administrator is entitled to reduce benefits payable to covered workers under this Ordinance in an amount equal to employee payments paid for by the employer for any pecuniary wages in the form of social security, long-term and short term disability, employer elected salary contribution, vacation or sick leave, or any other entitlement of a similar nature paid in whole or in part by the employer. Further, if any overpayment is made under this chapter to the covered worker of any disability income benefits as set forth in § 5.529 of this Ordinance, such shall be deducted from any benefits payable under functional impairment benefits as set forth in § 5.530 of this Ordinance; or in the case where no functional impairment benefits are payable, then such overpayment of benefits may be deducted through payroll deductions.

CHAPTER 6: DEATH BENEFITS

§ 5.540 DISTRIBUTION OF DEATH BENEFITS

- (a) When death ensues to the covered worker by reason of a compensable injury or occupational disease, benefits shall be payable to the dependents who were dependant as defined in § 5.503 on the earnings of the worker for support at the time of his injury, compensation upon the basis of 66-2/3% of the worker's average weekly wage, commencing from the date of death as follows:
- (1) If there are no children entitled to benefits, then all to the surviving spouse for the projected probable life span of the decedent based on established mortality tables, the life of the surviving spouse or until remarriage., whichever comes first, provided that upon remarriage two years' benefits shall be paid to the surviving spouse in a lump sum. To be an eligible "surviving spouse" under this Ordinance, the surviving spouse must have been married and living with the decedent at the time of the compensable injury, proof of eligibility may be required. If there are surviving eligible dependents, the surviving spouse shall be entitled to one-half of death benefits. If there is a surviving spouse, one-half of death benefits paid to each surviving eligible dependent in equal shares.
 - (2) If there is no surviving spouse, equal share of all to dependents as defined in §5.503.
- (b) Where a worker is entitled to compensation under this Ordinance for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability thereafter shall terminate.

§ 5.541 REDISTRIBUTION OF DEATH BENEFITS

If a legal beneficiary as defined in §5.534 dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with §5.534.

If all legal beneficiaries cease to be eligible, any duty to pay the remaining death benefits payable under §5.534 shall cease immediately.

§ 5.542 VERIFICATION OF ELIGIBILITY FOR DEATH BENEFITS

Upon request from the Administrator, all persons claiming to be eligible for death benefits shall furnish all necessary documentation to support their claim of eligibility.

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§ 5.543 BURIAL BENEFITS

If death results from a compensable injury, the person and/or entity who incurred the liability for the costs of the burial shall be reimbursed for the actual costs incurred for such reasonable burial expenses.

CHAPTER 7: MEDICAL BENEFITS

§ 5.550 ENTITLEMENT TO MEDICAL BENEFITS

All covered workers are entitled to reasonable health care, supplies and reasonably necessary transportation incurred for such services. Medical benefits are payable from the date the compensable injury or accident occurred and will cease effective the date the claim closes.

§ 5.551 RIGHT TO SELECT PHYSICIAN; EMPLOYER SELECTION

Except in an emergency, all health care must be approved or recommended by the employer or Administrator. Health care treatment must be offered promptly and be reasonably suited to treat the injury. If the worker has reason to be dissatisfied with the care offered, he should communicate the basis of such dissatisfaction to the Administrator, in writing, following which the Administrator may agree to alternate care reasonably suited to treat the injury. If the Administrator and the worker cannot agree on alternate care, Administrator may, upon application and the reasonable proofs of the necessary thereof, allow and order other such care. Any non-authorized treatment of the covered worker is not payable under this section and shall be at the worker's sole expense.

Chiropractic, osteopathic, naturopathic, acupuncture, or other non-traditional forms of treatment must be pre-approved by the Administrator and approved by the attending physician. Duration of treatment and/or number of visits to such medical providers shall be subject to Administrator's approval, who may rely upon the advice of the consulting or attending physician.

After notice and opportunity for hearing, Administrator may issue a decision relieving the Administrator of the duty to pay for health care furnished by a health care provider or any other person selected in a manner inconsistent with the requirements of this Ordinance.

§ 5.552 RELEASE OF MEDICAL-RELATED INFORMATION

Any worker, employer or insurance carrier or its agents making or defending a claim for benefits agrees to release all information to which the worker, employer, carrier, or its agents have access concerning the worker's physical or mental condition relative to the claim and further waives any privilege for the release of such information. The information shall be made available to any party or the party's representative upon request, and includes any third-party health care providers. Any institution or person releasing the information to a party or the party's representative shall not be liable for criminal or civil damages by reason of the release of the information.

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§ 5.553 MEDICAL EXPENSES

Expenses shall be limited to those usual and customarily charged in the community, or like community, for similar services. Charges believed to be excessive or unnecessary may be denied by the Administrator. Any institution or person rendering treatment to a worker under this Ordinance agrees to be bound by such charges as allowed by the Administrator and shall not recover in law or equity any amount in excess of that set by the Administrator.

§ 5.554 SETTLEMENT OF FUTURE MEDICAL EXPENSES

The worker may negotiate settlement of future medical expenses. For purposes of settling the future medical expenses, the basis for settlement will be the value of the current and future medical plan. Settlements under this section are not to exceed \$100,000 unless approved by Employer.

CHAPTER 8: ADJUDICATION OF DISPUTES

§ 5.560 APPEALS FROM DECISIONS OF THE ADMINISTRATOR

The Administrator shall administer this Ordinance in accordance with the terms and conditions set forth in this Ordinance. Any appeals from final decisions of the Administrator shall follow the procedures as set forth in this Ordinance.

§ 5.561 DISPUTE RESOLUTION

- (a) The Administrator shall make final written determinations and awards concerning commencement and termination of benefits, including permanent total disability benefits, temporary total disability benefits, medical payments, and permanent partial disability benefits. Such determination may be reviewed through arbitration pursuant to this section.
- (b)
 - (1) A claimant, aggrieved by any final written decision regarding a final award of benefits may request a review of the decision through binding arbitration subject to the provisions of this section. The arbitrator shall be mutually agreed upon by the claimant and the Tribe or the Administrator and shall be chosen from a list of qualified arbitrators. In any such review, the claimant shall bear the cost of his or her attorney, if any.
 - (2) The claimant's right to be heard is contingent upon compliance with all requirements, including filing deadlines provided herein.
- (c) Request for Arbitration

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- (1) A claimant disputing a decision rendered by the Administrator may within twenty (20) calendar days after the issuance of the written decision by the Tribe or Administrator, request, in writing, that arbitration be scheduled between the claimant and the Tribe or Administrator. The request for arbitration shall be sent to the Tribe's Director of Human Resources or his/her designee.
- (2) The claimant's signed request for arbitration must include:
 - A. The name and mailing address of the claimant;
 - B. A brief summary of the relevant facts;
 - C. A brief statement of the disputed issues;
 - D. A brief statement of the relief sought; and
 - E. A copy of the final written decision the covered person seeks to have reviewed.
- (d)
 - (1) The arbitrator shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five (5) days before the hearing. Appearance at the hearing waives such notice. The arbitrator may adjourn the hearing from time to time as necessary.
 - (2) The arbitrator shall postpone the hearing to a time not later than the date fixed by the agreement for making the award, unless the parties consent of a later date, upon any of the following:
 - A. The request of a party for good cause; or
 - B. Their own motion.
 - (3) The arbitrator may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear; provided that nothing herein will prevent the arbitrator from entering a default judgment.
 - (4) The parties are entitled to be heard, to present evidence material to the controversy and to cross examine witnesses appearing at the hearing.
- (e) Where there is no rule or procedure in this Act governing the conduct of proceedings at arbitration, the rules of the American Arbitration Association shall apply. Compliance with said rules of the American Arbitration Association shall not be deemed a waiver of the [insert name of Tribe] sovereign immunity.
- (f) The claimant shall be required to pay, and submit with the request of arbitration, a Two-hundred-Dollar (\$200.00) filing fee in order to obtain arbitration; provided that said Two-

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hundred-Dollar (\$200.00) fee shall be refunded to the claimant if said person prevails at arbitration. If the claimant receives a settlement through arbitration, the claimants settlement will be reduced by one-half (1/2) of the costs of arbitration. If a settlement is not reached, the Tribe shall pay all arbitration fees. However, if the arbitrator determines that the request for arbitration is frivolous; all costs of arbitration may be borne by the non-prevailing party as determined by the arbitrator.

- (g) Review by arbitration shall result in a written decision concerning the award or denial of benefits. The decision of the arbitrator is final.

§ 5.562 MEDIATION

The Administrator may, at its sole discretion, require that a disputed determination made by the Administrator be subject to mediation prior to a hearing before the Appeals Board. Mediation is binding only upon all parties reaching a written agreement. The Administrator shall appoint an independent mediator for this purpose.

§ 5.563 REQUEST FOR ARBITRATION OR MEDIATION

Requests for mediation or arbitration may be made by forwarding a written request to:

**Confederated Tribes of Siletz Indians
Human Resources
P.O. Box 549
Siletz, OR 97380**

Written requests shall be served by first class, certified, or overnight mail.

§ 5.564 DISCOVERY

All medical reports relating to the claimed injury must be filed with the arbitrator and served on all parties at least fifteen (15) days prior to the hearing date, if the reports have not been previously disclosed.

Either party may request disclosure of witness statements, if any such statements exist, at least fifteen (15) days prior to the hearing date.

Upon written request by a party, depositions may be ordered by the arbitrator. The arbitrator shall have authority to order depositions of party witnesses, including current Employees of the Tribe, its agencies and enterprises. Fees incurred in taking any such deposition shall be borne by the party requesting the deposition. Claimant's refusal to submit to any deposition ordered by the arbitrator may be grounds for denial of the appeal.

§ 5.565 CONDUCT OF HEARING

The arbitrator shall consider evidence, hear witnesses and receive exhibits in keeping with its goals of making a just and final determination.

(a) EVIDENCE

When written evidence is offered in lieu of oral evidence, one copy of said written evidence shall be filed with the arbitrator and one copy shall be served on all parties at least thirty (30) days prior to the hearing of Claimant's appeal, the arbitrator may waive this time requirement.

Medical evidence must be in the form of a written report. The reports should include the following information, where applicable:

- (1) Date of the examination;
- (2) History of the injury;
- (3) Patient's complaints;
- (4) A listing of all documents reviewed, or relied upon, for formulation of the physician's opinion;
- (5) Patient's medical history and residuals thereof, if any;
- (6) Findings on examination;
- (7) Diagnosis;
- (8) Opinion as to the nature, extent, and duration of disability and work limitations, including whether or not the disability is permanent and/or stationary;
- (9) Cause of the disability;
- (10) Treatment indicated;
- (11) Apportionment of disability, if any;
- (12) Basis for all medical opinions;
- (13) Signature of physician.

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When considering evidence, greater weight shall be given to medical reports that contain all pertinent information than to those reports that do not contain such information.

(b) **ADDITIONAL RULES OF EVIDENCE**

Additional evidentiary rules may be promulgated as needed by the arbitrator.

§ 5.566 STANDARD OF PROOF

The arbitrator shall weigh the evidence, testimony of witnesses, and exhibits and make its decision on the basis of the preponderance of the evidence and credibility of the evidence and witnesses.

§ 5.567 BURDEN OF PROOF

The burden of proof in any hearing before the arbitrator shall be on the Employee or Dependent. Upon request, a Dependent who has filed a claim, must furnish the Administrator with proof, satisfactory to the Administrator, of the nature, amount, and extent of the contribution Employee made to Dependent's support. Dependent shall have the burden of proof on such issue in any hearing before the Appeals Board.

§ 5.568 LAW TO APPLY

Any claim presented pursuant to this Ordinance shall be determined in accordance with Tribal law and the principles of law applicable to similar claims arising under applicable federal law. To the extent that Tribal law differs from federal law, Tribal law shall be applied. Oregon statutory law may be used as a non-binding source of guidance, if the Appeals Board so desires. Any use of Oregon statutory law for guidance shall be liberally construed in favor of the Employer.

§ 5.569 EFFECT OF REQUEST FOR HEARING

- (a) During pendency of the action, the Employee or Dependent shall continue to receive all benefits approved by the Administrator in its original written decision, but shall not receive any new benefits claimed before the arbitrator.
- (b) Payments made to Claimant during the pendency of the action shall not be recouped or recovered by the Administrator or the Employer, except in cases of fraud.

§ 5.570 SEVERABILITY

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

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§ 5.571 EFFECTIVE DATE, AMENDMENT

This Ordinance shall be effective on August 20, 2010 and any amendments to this Ordinance shall become effective on the date such amendments are adopted by the Tribe.

This Ordinance may be amended in accordance with applicable Tribal law.

§ 5.572 SOVEREIGN IMMUNITY

Nothing hereunder is intended to be or shall be interpreted to be a waiver of sovereign immunity of the Confederated Tribes of Siletz Indians, or its agencies or enterprises, from unconsented suit in Tribal, Federal, or State court, or administrative proceeding except to the extent expressly stated herein.