

**TITLE 11  
WORKERS' COMPENSATION**

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**TITLE 11**  
**WORKERS' COMPENSATION CODE**  
(adopted by NPTEC 2/27/07, amended 1/11/2011)

**CHAPTER 11-1 – GENERAL PROVISIONS**

**§11-1-1 PURPOSE.** The purpose of this Title, which shall be known as the Nez Perce Tribe Workers' Compensation Code, is to provide sure and certain relief for employees of the Nez Perce Tribe who are injured in the course and scope of their employment with the Tribe, regardless of questions of fault. The relief provided in this Title is, therefore, to the exclusion of every other remedy, proceeding, or compensation, except those specifically provided in this Title.

**§11-1-2 LIMITED WAIVER OF SOVEREIGN IMMUNITY.** The Tribe hereby agrees to waive its sovereign immunity for the sole and limited purpose of enforcement of the terms of this Title. This waiver is expressly limited to enforcement of the provisions of this Title, including the dollar amounts set forth herein. This limited waiver is not, and should not be construed as, a blanket waiver of the Tribe's sovereign immunity.

**§11-1-3 ADMINISTRATION.** This Title shall be administered by the Nez Perce Tribe Workers' Compensation Advisory Council ("Advisory Council") or its successor.

**§11-1-4 TIME CALCULATIONS .** Unless otherwise stated in specific sections of this Title, all time limits shall be calculated using calendar days.

**§11-1-5 DEFINITIONS.**

A. The definitions in this section govern the construction and meaning of terms used in this Title. Pronouns of one gender include the other gender, and singular terms include the plural.

1. "Advisory Council" means the entity organized in accordance with Chapter 11-2 of this Title to administer the Nez Perce Tribe Workers' Compensation Benefits System.
2. "Arbitrator" means the person who hears appeals from final decisions of the Claim Administrator in accordance with the provisions contained in Chapter 11-9 of this Title.
3. "Attending Physician" means the physician, or other medical care provider, who is responsible for the planning, provision and oversight of medical treatment to a covered worker who sustains a covered injury.
4. "Average Weekly Wage" means the following:
  - a. For a covered worker hired to a regular full-time 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 earnings 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.

- b. For a covered worker hired on a temporary, on-call, emergency, or special-project basis who has continuously worked for a minimum of 13 weeks, the Average Weekly Wage shall be calculated as provided in subparagraph a., above.
  - c. For a covered worker hired on a temporary, emergency, or special-project basis who has not continuously worked for the preceding 13 weeks, the Average Weekly Wage shall be calculated by taking the worker's expected total gross wages and dividing by the expected number of work weeks.
  - d. For purposes of this definition, the work week shall be as defined by the human resource manual or personnel policy applicable to the covered worker at the time of injury.
5. "Benefits" means the indemnity and medical payments provided by this Title. "Indemnity benefits" shall mean total disability and partial disability income benefits and impairment payments. "Medical benefits" shall mean medical expenses, mileage, and other expenses associated with medical treatment.
  6. "Child" or "Children" means dependent natural legitimate children, dependent stepchildren, and adopted children, but does not include married children unless they are shown to be dependents.
  7. "Claim Administrator" or "Workers' Compensation Claim Administrator" means the third-party administrator appointed pursuant to NPTEC resolution and authorized to administer claims under this Title.
  8. "Claimant" means the injured covered worker or, in the event of death of the covered worker, dependents of the deceased covered worker.
  9. "Consulting Physician" means the physician, other health care provider, or other health care expert that is retained by the Claim Administrator to assist the Claim Administrator in carrying out the Claim Administrator's duties and responsibilities under this Title. 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; and determination of impairment rating. At the discretion and expense of the Claim Administrator, an injured worker may be required to be seen by the Consulting Physician to assist in making any required recommendations to the Claim Administrator.
  10. "Course and Scope of Employment" means the Employer's employment of the covered worker at the time the injury occurred. An injury must arise from the course and scope of the covered worker's employment in order for a claim to be compensable. An employee is in the course and scope of his/her employment while entering or leaving the employer's buildings and parking areas within thirty (30) minutes of the employee's assigned work schedule.

11. “Covered Employer” and “Employer” shall mean the Tribe, its agencies, and any Tribal enterprises.
12. “Covered Worker” and “Worker” means any person who has entered into the employment of the employer and who is compensated by the employer, regardless of where they work, unless otherwise excepted by this Title.
  - a. The terms “Covered Worker” and “Worker” shall include Tribal officials whether elected or appointed.
  - b. The terms “Covered Worker” and “Worker” shall not include independent contractors working under contract for the Employer, whether that contract is express or implied.
13. “Death” means any fatality of the covered worker proximately and directly caused by an injury received during the course and scope of employment or by an occupational disease.
14. “Dependents” means any of the following persons, and they shall be deemed to be the only recognizable dependents under the provisions of this Title.
  - a. The widow or widower of a deceased worker, if married to the deceased worker at the time of the deceased worker’s death.
  - b. A child under 18 years of age, an unmarried child under 23 years of age enrolled as a full-time student in an accredited educational institution at the time of the covered worker’s injury, or a child of any age if the child is incapable of self-support and would have been considered a dependent of the deceased worker for income tax purposes.
  - c. Any of the following persons who were wholly dependent on the earnings of the covered worker for support at the time of the covered worker’s injury, if the relation of dependency existed at the time of injury, and the person would have been considered a dependent of the deceased worker for income tax purposes:
    - i. a grandchild under 18 years of age, or an unmarried grandchild under 23 years of age enrolled as a full-time student in an accredited educational institution at the time of the covered worker’s injury, or a grandchild of any age if the grandchild is incapable of self-support;
    - ii. a parent or grandparent;
    - iii. brother or sister, niece or nephew only if under 18 years of age, or unmarried and under 23 years of age and enrolled as a full-time student in an accredited educational institution at the time of the covered worker’s injury, or said relatives of any age if

incapable of self-support.

15. “Disability” means the inability of the covered worker to obtain and/or retain wages equivalent to the worker’s pre-injury wages as a result of a direct loss of functional capacity compromising that worker’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 Claim Administrator, the Consulting Physician. “Partial Disability” refers to the amount by which the covered worker’s ability to obtain and/or retain pre-injury wages is reduced as a result of a direct loss of functional capacity compromising that worker’s ability to perform the necessary duties of the job.
16. “Idiopathic Injury” means an injury which is either peculiar to the individual or arising spontaneously from an obscure or unknown cause. This includes epileptic attacks, diabetic seizures, heart disease, cardiovascular or respiratory conditions, heart attack, the failure or occlusion of any coronary blood vessels, stroke, thrombosis, allergic disorders, auto-immune diseases, etc.
17. “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.
18. “Injury” shall mean any physical or mental impairment, including, without limitation, death and/or occupational disease, arising in the course and scope of the covered worker’s employment.
  - a. The term “injury” does not include an injury sustained while a covered worker is at home or preparing for work unless the activity was undertaken at the direction of the employer.
  - b. The term “injury” does not include an injury resulting primarily from the natural aging process, or normal daily activities, or an injury sustained during voluntary recreational or social activities.
19. " Intoxication" means a blood alcohol content in excess of .02 percent or the loss of the normal use of one’s mental and/or physical faculties resulting from the voluntary introduction into the body of: an alcoholic beverage; a controlled substance; a mind-altering drug and/or hallucinogenic substance; glue, aerosol paint, or any other inhalant; a prescribed drug in excess of, or in violation of, the prescribed amount; or any other similar substance. This definition does not apply to Nez Perce Tribal Police officers whose consumption of such substances is consistent with the Nez Perce Tribal Police Department’s policy and procedures for undercover assignments.
20. “Maximum Medical Improvement.”

- a. “Maximum Medical Improvement” (“MMI”) means the earlier of:
- i. the point after which no further material recovery from an injury, or the last improvement to an injury, can be anticipated based on reasonable medical probability; or
  - ii. the expiration of 36 months from the date disability income benefits begin to accrue.
- b. MMI can be determined without regard to subjective complaints of pain by the patient. Once the date of MMI has been determined (except cases in which a covered worker is medically unable to continue working) no further determinations of other dates of MMI for that personal injury are permitted. A determination of MMI is not rendered ineffective by the worsening of the covered worker’s medical condition and recovery thereafter.
21. “Nez Perce Tribe Workers’ Compensation Benefit System” shall mean this Title, any and all rules and regulations promulgated hereunder, as well as the functions of the Claim Administrator, the Advisory Council, and the arbitrator selected to adjudicate disputes under Chapter 11-9 of this Title.
22. “Occupational Disease” means only those diseases which arise out of and in the course and scope of the worker’s employment. To be compensable, such diseases must have a direct causal connection with the worker’s employment and must result 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.
23. “Parent or Grandparent” means the natural or adoptive father, mother, grandfather, or grandmother of the covered worker.
24. “Policy” means any workers’ compensation policy of insurance issued to the Tribe, or any other covered employer.
25. “Scheduled Weeks” means 156 weeks and is the maximum number of weeks that a covered worker shall be entitled to disability benefits under this Title.
26. “Settlement” means the date the release of all claims is executed and the monetary terms of the agreement met.
27. “Spouse” means the person married to the covered worker at the time of the death or injury to the covered worker.

28. "Tribal Court" means the Nez Perce Tribal Court.
29. "Tribe" and " Tribal" mean, or refer to, the Nez Perce Tribe, a federally-recognized American Indian tribe, its agencies, and any Tribal enterprises.
30. "Volunteer" means a person who gives his or her services to the Tribe without any express or implied promise of remuneration including unpaid interns. A volunteer who suffers an Injury, as defined in this Title, that arises from the course and scope of that person's voluntary service to the Tribe may receive Medical Benefits but will not receive Indemnity Benefits.

**§11-1-6 WORKERS' COMPENSATION INSURANCE REQUIRED.** Every Employer must insure for the benefits provided under this Title but are allowed self-insured retention levels in accordance with the rules of the Advisory Council. Any insurance company issuing a policy insuring benefits hereunder shall: (a) require a loss prevention/control program sufficient to enable the Tribe to provide a safe workplace for all tribal workers; and (b) assist the Employer in reducing hazards in the workplace and in the implementation of continued safety policies and procedures.

**§11-1-7 ACKNOWLEDGMENT OF PROVISIONS IN THIS TITLE.** All covered workers and/or persons asserting a claim under this Title shall be conclusively presumed to have elected to take workers' compensation benefits in accordance with the provisions of this Title by virtue of their employment by the Tribe or other covered employer. All covered workers and/or persons asserting a claim under this Title acknowledge that the Tribe is a federally-recognized American Indian tribe and is exercising its inherent sovereign authority in providing workers' compensation benefits under this Title.

**§11-1-8 POSTING OF NOTICE.** Each covered employer shall post the following notice in a conspicuous location in each of the employer's offices or work areas:

# NOTICE TO TRIBAL EMPLOYEES

**→All on-the-job injuries must be reported within one (1) business day.**

**→All claims for Workers' Compensation benefits must be filed within 30 (thirty) calendar days.**

As employees of the tribe or its enterprises, you are insured for on-the-job injuries under the Nez Perce Tribe Workers' Compensation Code which is contained in Title 11 of the Nez Perce Tribal Code. If you are injured or sustain an occupational disease while at work, you may be entitled to benefits as provided by the Nez Perce Tribe Workers' Compensation Code.

**Notify your employer immediately of any injuries, no matter how slight.** If you fail to do so, you may lose your benefits under the Nez Perce Tribe Workers' Compensation Code. In no event shall benefits be paid to a worker who failed to notify their employer within one (1) business day 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 with the Claim Administrator.** You are required to file a claim for any injury 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 Nez Perce Tribe Workers' Compensation Claim Administrator at:

**Your exclusive remedy for any work-related injury or disease is through the Nez Perce Tribe Workers' Compensation Code.** The Workers' Compensation system of any State cannot accept a claim from you under the Nez Perce Tribe Workers' Compensation Code as you are employed by the Nez Perce Tribe, a sovereign Indian nation employer.

**§11-1-9 NOTIFICATION TO EMPLOYER OF INJURY BY WORKER.**

A. All covered workers must immediately notify their supervisor, department director, or the human resources office of any and all injuries, and in no event no later than the next business day after the date of occurrence. Failure to timely report an on-the-job injury shall result in a forfeiture of benefits under this Title, unless the claimant can demonstrate an extraordinary reason that prevented the reporting of the injury or occupational disease in a timely manner.

B. When a supervisor or department director receives a report of an on-the-job injury, the supervisor or department director must submit the report to their human resources office no later than the next business day after receiving the report.

C. The human resources office must submit reports of on-the-job injuries to the Claim Administrator no later than two (2) business days after receiving a report.

D. Within the time set by the Claim Administrator, the worker's supervisor or department director shall prepare and submit to the human resources office an incident report on the circumstances surrounding the on-the-job injury, including the identification of people who may have witnessed the incident or accident.

**§11-1-10 TIME LIMIT FOR REPORTING INCIDENTS AND FILING CLAIMS.**

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

B. Claims for occupational disease shall be made by the covered worker to the Claim Administrator within thirty (30) days from date of first notice to the worker by a physician.

C. Failure to give notice of injury to the employer, or to file a claim with the Claim Administrator, within the time limits set forth in this chapter shall constitute a forfeiture by the covered worker, or his representatives in case of death, of all benefits available and payable under this Title.

**§11-1-11 BURDEN OF PROOF.** The burden of proof shall rest upon the claimant to prove that any injury arose in the course and scope of the covered worker's employment.

**§11-1-12 RIGHT TO WAIVE DEFENSES.** The Claim Administrator and/or the worker's compensation insurer shall have the right and power to waive any and all defenses affecting the compensability of a covered injury under this Title.

**§11-1-13 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 Title, shall be appointed a guardian or other representative by the Tribal Court if a guardian has not been appointed in a prior action.

**CHAPTER 11-2 – WORKERS' COMPENSATION ADVISORY COUNCIL**

**§11-2-1 ESTABLISHMENT.** There is hereby established a Nez Perce Tribe Workers' Compensation Benefit Advisory Council ("Advisory Council") whose purpose is to administer

the Nez Perce Tribe Workers' Compensation Benefit System. The Advisory Council will also cooperate in the prevention of injuries and occupational diseases to workers and, in the event of injury or occupational disease, their rehabilitation or restoration to health and vocational opportunity.

**§11-2-2 MEMBERSHIP.**

A. The Advisory Council shall be comprised of seven (7) members holding the following positions:

1. the Human Resources Manager for the government of the Tribe, or a designee from that department;
2. the Human Resources Manager for Tribal Enterprises, or a designee from that department;
3. the Human Resources Manager for Nimiipuu Health, or a designee from that department;
4. the Human Resources Manager for the Tribal Housing Authority, or a designee from that department;
5. the Tribal Finance Manager, or a designee from that department;
6. the Tribal Executive Director, or a designee from that department; and
7. the Managing Attorney of the Office of Legal Counsel, or a designee from that department.

**§11-2-3 POWERS OF THE ADVISORY COUNCIL.** The Advisory Council shall have the following duties and powers:

- A. to meet on a quarterly basis unless the Advisory Council determines that additional, or more frequent, meetings are necessary to fulfill its duties under this Title;
- B. to recommend rules and regulations to the Nez Perce Tribal Executive Committee for the implementation and administration of this Title;
- C. to review quarterly the benefits provided under this Title and to make recommendations to the Nez Perce Tribal Executive Committee for amendments to benefit levels or any other needed revisions to this Title deemed advisable by the Advisory Council;
- D. to develop programs and to cooperate with the Claim Administrator for the preparation and presentation of information and educational programs designed to prevent injuries and occupational diseases to covered workers;
- E. to take any and all other actions deemed reasonable and necessary for the implementation of this Title including, but not limited to, recommending rates and reserve levels to the Nez Perce Tribal Executive Committee;

F. to make recommendations to the Nez Perce Tribal Executive Committee regarding selection of consultants deemed necessary to carry out the provisions of this Title;

G. to make recommendations to the Nez Perce Tribal Executive Committee regarding appointment of the Claim Administrator; and

H. to make recommendation to the Nez Perce Tribal Executive Committee regarding the selection of the insurance company to provide the workers' compensation benefits that are set forth in this Title.

### **CHAPTER 11-3 – DUTIES AND POWERS OF THE CLAIM ADMINISTRATOR**

**§11-3-1 CUSTODIAL DUTIES.** The Claim Administrator or its designee shall be the payor of the workers' compensation benefits and all authorized disbursements therefore shall be paid by the Claim Administrator or a representative with its stated authority. The Claim Administrator also shall be the custodian of all claim files and related documents.

**§11-3-2 PAYMENT AND DISTRIBUTION OF BENEFITS.** The Claim Administrator shall administer this Title in accordance with the terms and conditions described herein, and any rules adopted by the Nez Perce Tribal Executive Committee, shall remit all benefit payments as provided for in this Title, and shall have the authority to determine the distribution of benefit checks.

**§11-3-3 ADDITIONAL GUIDELINES.** If necessary, and to the extent they are not contrary to any provisions of this Title, the workers' compensation provisions contained in Title 72 of the Idaho Code may be utilized as guidelines by the Claim Administrator.

#### **§11-3-4 ADMINISTRATIVE POWERS AND DUTIES.**

A. The Claim Administrator 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 Title.

B. In the case of death of a covered worker, the Claim Administrator shall have the right to request the performance of an autopsy on the decedent from an appropriate official licensed to perform autopsies, and 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 any autopsy ordered by the Claim Administrator.

C. The Claim Administrator shall have the power to retain a consulting physician for purposes of assisting the Claim Administrator in carrying out its duties and powers under this Title.

D. The Claim Administrator shall have the duty to maintain complete and accurate administrative records and claim files on all activities relating to the claims made under the Policy. The Claim Administrator shall retain and preserve all closed files for not less than six (6) years.

**§11-3-5 ACCEPTANCE/DENIAL OF CLAIM.** Upon receiving a claim for benefits, the Claim Administrator shall promptly investigate the claim and begin payment of

compensation within 21 days of receipt of the claim if the Claim Administrator determines that the claim is valid.

A. If the Claim Administrator cannot complete its investigation within 21 days, the Claim Administrator shall send the claimant written notice that further investigation is needed and the reasons for further investigation. The written notice must be sent within 21 days of receipt of the claim.

B. The Claim 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 11-4 – COVERAGE AND COMPENSABILITY**

**§11-4-1 ENTITLEMENT TO BENEFITS.** Claimants seeking benefits under this Title shall be responsible for filing a timely claim with the Claim Administrator.

### **§11-4-2 MENTAL TRAUMA.**

A. Mental traumas, disorders, and/or conditions, even if manifested in physical symptoms and/or related to stress, are not compensable injuries under this Title, except those that result from accidental injury traceable to a definite time, place, and cause (rather than from repetitive mental trauma), or from an unusual traumatic event as established by a licensed psychiatrist or psychologist, and the mental injury was caused by or occurs subsequent to or simultaneous with such accidental injury or unusual traumatic event.

B. Regardless of section §11-4-2 A, a mental trauma or emotional injury that arises principally from a personnel action is not a compensable injury under this Title. Personnel actions include, but are not necessarily limited to transfers, promotions, demotion, disciplinary actions, work performance evaluations, and terminations.

C. Treatment for mental injury determined compensable under this Title shall be limited to six (6) months after the covered worker's physical injury has healed to maximum medical improvement.

**§11-4-3 GOING TO AND RETURNING FROM WORK.** An accident and/or incident occurring while a worker is on the way to or from work, including lunch break, is not within the course and scope of employment except when such travel is directly connected with the worker's employment and in furtherance of the employer's interest. Travel is not directly connected with the worker's employment and in furtherance of the employer's interest: if the worker deviates from a reasonably direct route of travel; or if the worker is not acting in the interests of the employer.

### **§11-4-4 BENEFITS PRECLUDED BY NEGLIGENCE AND/OR REFUSAL OF WORKER TO SUBMIT TO TREATMENT.**

A. No benefits shall be payable for the death and/or disability of a worker if the worker's death 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 reasonable surgical or medical treatment, medical aid, or advice. A worker who has refused and/or neglected to submit to and/or follow medical and/or therapeutic treatment, or to take medications as prescribed, will be presumed to have reached Maximum Medical Improvement. Any disability that could have been

treated with a reasonable medical probability of success will be discounted in determining the appropriate impairment rating under this Title.

B. Any covered worker otherwise entitled to benefits under this Title shall be presumed to have reached Maximum Medical Improvement if such worker has refused and/or neglected to seek appropriate medical treatment within six (6) months from: the date the injury or occupational disease occurred; or the date on which the worker last received medical treatment for the injury or occupational disease.

C. If an injured covered worker undertakes activities on or off the job which exceed recommendations of the treating physician, and cause the condition to worsen, the covered worker may not receive benefits for the aggravation. However, the covered worker may receive compensation for the aggravated condition if the employer demanded the covered worker to do things in excess of the treatment recommendations.

**§11-4-5 INJURY OR DEATH FROM 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. However, no benefits under this Title shall be payable in the event the worker's injury or death was caused by the intentional abuse of prescribed drugs in excess of the prescribed therapeutic amounts.

**§11-4-6 INTOXICATION.** No benefits of any nature shall be payable for, or on behalf of, any covered worker who is injured or killed while intoxicated or if the covered worker has any controlled substance in his/her body at the time of the injury or death, regardless of whether 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 Title. All covered workers agree: to submit to post-incident/post-accident drug and alcohol screening as authorized in the applicable Tribal personnel policies; and to waive any confidentiality or other privilege associated with the results of said tests. This provision does not apply to Nez Perce Tribal Police officers whose consumption of such substances is consistent with the Nez Perce Tribal Police Department's policy and procedures for undercover assignments.

**§11-4-7 PENALTIES FOR FALSE STATEMENT OR REPRESENTATION TO OBTAIN COMPENSATION.** If, in order to obtain any benefits under the provisions of this Title, any person willfully makes a false statement or representation, they shall forfeit all rights to compensation, benefits, or payment.

A. The employer is entitled to take any action permitted by law to recover any payment or benefits paid under this Title to a covered worker where the payment or benefit was based upon the fraudulent or false statements or misrepresentation by the covered worker.

B. The employer's recovery of all, or a portion of, benefits paid based upon the fraudulent or false statements or misrepresentation by the covered worker will not preclude prosecution of the covered worker under any applicable criminal statutes.

**§11-4-8 INJURIES RESULTING FROM SELF-INFLICTED INJURIES OR WILLFUL MISCONDUCT.** No benefits of any nature shall be payable for a worker's injury or

death caused by the worker's willful intention to injure himself or another. The willful disregard of an 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, benefit, or payment upon proof that such disregard or performance was the direct and proximate cause of the injury, death, and/or occupational disease. A worker's willful disabling of safety devices on equipment constitutes a willful intention to injure himself.

**§11-4-9 RECREATIONAL, SOCIAL OR ATHLETIC ACTIVITIES.**

A. No benefits shall be payable under this Title if the injury, occupational disease, or death 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 such activities are expressly required by the employer.

B. No benefits shall be payable under this Title if the injury, occupational disease, or death arises from participation in voluntary physical fitness activities during the regular work day, regardless of whether the covered worker is compensated for the time in which the physical fitness activities take place.

**§11-4-10 INJURIES CAUSED BY THIRD PARTIES.** No benefits shall be payable under this Title 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 because of reasons related to his/her employment. Payment of benefits by the Claims Administrator when the injuries were caused by a third party shall not constitute a waiver of rights as contained in Section 5.4 of this code. (section amended by NPTEC 6/23/15)

**§11-4-11 IDIOPATHIC CLAIMS.** Injury or death resulting from a natural cause such as a heart attack, stroke or other natural function failure, which does not arise in the course and scope of employment and while the worker was acting in the furtherance of the employer's interest, is not compensable.

A. Respiratory, heart, and cardiovascular conditions and related injuries are not compensable unless the work being performed was extraordinary and unusual compared with the covered worker's regular work, and the work being performed is found to be the primary cause of the condition. "Primary cause" means that the work being performed was responsible for more than 50% of the resulting injury or condition.

B. An injury resulting directly from idiopathic causes is not compensable unless the employment places the covered worker in a position of increased danger. This would include falls from unprotected heights (ladders, scaffolds, roofs), falls involving the hazardous attributes of industrial machinery or equipment, or episodes occurring while driving during the course and scope of employment.

C. In the event of a claim that the worker's employment was a contributing cause of the idiopathic injury, the work being performed would have had to have been extraordinary and unusual compared with the covered worker's regular work in order to be considered compensable. In addition, medical evidence must establish that the extraordinary and unusual work was the primary cause of the condition. "Primary cause" means that the work being performed was responsible for more than 50% of the resulting injury or condition.

**§11-4-12 OTHER LIMITATIONS ON BENEFITS.**

- A. No benefits shall be payable under this Title for secondhand smoke claims.
- B. Benefits will be paid for a maximum of twelve (12) visits for physical therapy, chiropractic, or any other treatment for any injury caused by repetitive motion or any other condition that does not have a clear physical manifestation including, but not limited to: soft tissue damage; carpal tunnel syndrome; tennis elbow; and lower back pain.

**CHAPTER 11-5 – GENERAL PROVISIONS REGARDING BENEFITS****§11-5-1 RIGHT TO COMPENSATION AND MEDICAL TREATMENT**

**BENEFITS.** Every covered worker who is injured, and in the event of a worker's death, the dependents of every covered worker who is killed, in the course and scope of employment and while acting in the 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 this Title, is entitled to receive, and shall be paid, for loss sustained on account of the injury, death and/or occupational disease, the benefits provided under this Title.

**§11-5-2 EXCLUSIVE REMEDY.** The rights and remedies provided to workers in this Title are the exclusive and only rights and remedies of such workers, their personal or legal representative(s) or dependent(s), on account of injuries arising out of and in the course and scope of employment. Workers have no other remedies against the employer, the employer's representative, insurer, guarantor or surety, for any matter relating to the occurrence of an injury or payment for any injury covered under this Title, including any other benefits or compensation that a worker may attempt to obtain from a third party that may be able to seek indemnification from the covered employer.

**§11-5-3 EFFECT OF WORKERS' COMPENSATION PAID IN OTHER**

**JURISDICTIONS.** A covered worker who pursues and recovers compensation under the workers' compensation laws of another jurisdiction, in violation of §11-5-2, is barred from recovering under this Title.

**§11-5-4 LIABILITY OF THIRD PARTIES – SUBROGATION.**

A. A covered worker may pursue a complaint against a third party for damages resulting from a work-related injury caused by the negligence of the third party or by negligence attributable to the third party, but the employer and/or its insurer, guarantor, or surety shall be subrogated to the common law rights of the worker to pursue such complaint. Therefore, a covered worker may not bring such a suit without first notifying the employer and/or its insurer, guarantor, or surety.

B. In case of a recovery against a third party, the Claim Administrator or arbitrator selected under Chapter 9 of this Title shall distribute of the proceeds such recovery as follows:

1. to the employer, a sum sufficient to repay the employer for the benefits actually paid to the worker under this Title up to that time;
2. to the employer, 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 likely to be liable to the worker, even though that 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 the employer is actually required to pay in compensation to the worker, the excess shall be paid to the worker;

3. the balance, if any, shall be distributed to the worker or, in the case of death, to the worker's dependents, if any; and
4. NPTEC retains the right to make decisions in respect to the Claimant's obligation to repay the benefits paid under this Code. (subsection amended by NPTEC 6/23/15)

C. For subrogation purposes hereunder, any payment made to a covered worker, his guardian, dependent, 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.

**§11-5-5 ASSIGNABILITY OF BENEFITS – ATTACHMENT OF LIENS.** Benefits received under this Title are not assignable, except that a legal beneficiary may assign the right to death benefits. Benefits are subject only to the following liens or claims, to the extent any income or death benefits are unpaid on the date the Claim 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 Tribal Court;
- B. a subrogation interest established under this Title; and
- C. debts owed to the Tribe.

**§11-5-6 AGGRAVATION OF PRE-EXISTING DISEASE OR CONDITION.** If a covered worker is suffering from a pre-existing injury or disease at the time of an injury or occupational disease which arises in the course and scope of the worker's employment and while the worker was acting in furtherance of the employer's interest, and the pre-existing injury or disease is aggravated thereby, the aggravation is subject to the provisions of this Title. The amount of the disability award under this Title may be reduced or denied in its entirety by the Claim 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 injury or occupational disease and the degree of impairment after the covered injury or occupational disease; and
- 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 Title, benefits from the workers' compensation laws of any other jurisdiction, and payments from third parties.

**§11-5-7 PRESUMPTIONS REGARDING OCCUPATIONAL ILLNESS AND DISEASE.** Full-time firefighters and law enforcement officials, after five (5) years of

continuous employment with the Tribe, shall receive the benefit of a rebuttable presumption that the following occupational illnesses or diseases are caused by their employment and are therefore compensable injuries/illnesses pursuant to this Title: heart trouble, pneumonia, hernia, tuberculosis, hepatitis, acquired immune deficiency syndrome (AIDS), and cancer. The presumption is controlling absent any evidence that the illnesses or disease is caused other than by the worker's employment with the Tribe. The Tribe shall require firefighters and law enforcement officers to have an annual physical to be eligible for this presumption. The presumption will be nullified if a firefighter or law enforcement officer uses tobacco products.

**§11-5-8 TERMINATION OF BENEFITS UPON DEATH.** Where a worker is entitled to compensation under this Title, and death ensues from any cause not resulting from the injury for which the worker was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability for such compensation thereafter shall terminate.

## **CHAPTER 11-6 – VOCATIONAL REHABILITATION, DISABILITY, AND IMPAIRMENT BENEFITS**

**§11-6-1 WAITING PERIOD.** An initial waiting period of seven (7) consecutive calendar days will accrue before the covered worker shall be entitled to benefits under this chapter.

**§11-6-2 VOCATIONAL REHABILITATION.** Vocational rehabilitation benefits or training are not mandatory under this Title, but the ordering of such benefits is within the discretion of the Claim Administrator, in accordance with Chapter 3 of this Title, or may be required under rules promulgated by the Nez Perce Tribal Executive Committee.

### **§11-6-3 DISABILITY BENEFITS.**

A. When a worker is disabled from work as determined by the consulting physician, or in the Claim Administrator's discretion, the attending physician, by reason of a compensable injury or occupational disease, disability benefits shall be payable as follows:

1. if the covered worker is 100% disabled, disability benefits are payable at 70% of the worker's pre-injury average weekly wage; or
2. if the covered worker is less than 100% disabled, disability benefits are payable at 70% of the difference between a worker's pre-injury average weekly wage and the wage the covered worker is earning or capable of earning in his/her partially disabled condition.

B. Except as provided in this Title, disability benefits will continue to be paid in accordance with the terms of this Title until the time at which the earliest of the following occurs:

1. the expiration of 156 weeks from the date of the occurrence, or in the case of an occupational disease, 156 weeks from the earlier of either the first manifestation of the symptoms or notification from a physician that the illness is inherent in or related to the worker's occupation;
2. the consulting physician, or in the discretion of the Claim Administrator, the attending physician, declares that the worker has reached Maximum Medical Improvement;

3. the covered worker is incarcerated;
4. the attending physician provides a full, unrestricted release;
5. The attending physician provides a modified or light duty release, and the worker rejects a bona fide job offer of suitable work consistent with the worker's disability;
6. a new or intervening incident is the proximate cause of disability;
7. the worker refuses benefits;
8. a presumption of MMI based on neglect or refusal to submit to medical treatment as set forth in §11-4-5 of this Title;
9. a suspension of benefits by the Claim Administrator for reasons authorized in this Title or by the authority of the arbitrator selected under Chapter 9 of this Title;
10. a reduction of the worker's earning capacity for reasons other than the disability from the work-related injury; or
11. the covered worker dies from any cause not resulting from the injury for which the worker was entitled to compensation under this section, and the worker's estate is not entitled to any further benefits as defined in this Title.

#### **§11-6-4 IMPAIRMENT BENEFITS.**

A. At the expiration of 156 weeks from the date of the injury, the worker is presumed to have reached MMI regardless of disability and/or current medical status. At that time, the attending physician is to provide: an impairment rating based on reasonable medical probability and in accordance with the most current edition of the *Guides to the Evaluation of Permanent Impairment* published by the American Medical Association (the "AMA Guidelines"); and a treatment plan for reasonable and necessary future medical needs. The attending physician's impairment rating and treatment plan may be subject to review and revision by the consulting physician at the discretion of the Claim Administrator.

B. Impairment ratings are to be converted to the covered worker as a whole, and impairment ratings assigned to a specific body part are to be converted in accordance with the *AMA Guidelines*.

C. A rating may not be issued prior to the declaration of Maximum Medical Improvement. The Claim Administrator may reserve issuance of payment under the following conditions:

1. contribution for prior impairment ratings;
2. clarification by the Claim Administrator as to the validity of the date for MMI;
3. similar impairment rating issues or MMI issues remain to be resolved by the consulting physician or, if necessary, the arbitrator selected under

## Chapter 9 of this Title.

D. The rating recognized by the arbitrator selected under Chapter 9 of this Title is binding. The rating will not be retroactively paid for weeks accrued in resolving the rating issue subsequent to the date of Maximum Medical Improvement. Such benefits will become effective the date of the ruling and commence at that time. Benefits will not be withheld beyond a reasonable time period in clarification of the rating and MMI date.

E. Benefits will be payable based on the impairment rating issued to the covered worker multiplied by \$300,000.

F. A lump sum settlement for impairments will be given for those covered workers who receive an impairment rating of 15% or less of the covered worker as a whole.

**§11-6-5 BENEFIT ISSUANCE PERIOD.** Except as provided herein:

A. Disability and impairment benefits under this Chapter are to be issued bi-weekly and shall not exceed 100% of the worker's pre-injury average weekly wage.

B. Except as otherwise provided in this Title, there shall be no acceleration of disability or impairment benefits.

**CHAPTER 11-7 – DEATH BENEFITS**

**§11-7-1 ENTITLEMENT TO DEATH BENEFITS.** When a covered worker dies as a result of a compensable injury, the worker's dependents are entitled to death benefits.

A. Death benefits shall be payable to the worker's dependents based on 70% of the worker's average weekly wage per week for a maximum of \$300,000.00 commencing from the date of death.

1. If there are no children entitled to death benefits, then all to the surviving spouse for the life of the surviving spouse, or until the spouse remarries, whichever occurs first.
2. If there are surviving dependent children and a surviving spouse, the surviving spouse shall be entitled to one-half of death benefits for the life of the surviving spouse, or until the spouse remarries, whichever occurs first, and the other half of the death benefits shall be paid to each dependent child in equal shares.
3. If there is no surviving spouse, then the death benefits shall be paid to the worker's surviving dependent children in equal shares.
4. If there is no surviving spouse or surviving dependent child, death benefits shall be paid to any surviving dependent grandchildren in equal shares until the grandchild is no longer a dependent, or until the grandchild dies, whichever occurs first.
5. If there is no surviving spouse, dependent child, or dependent grandchild, the death benefits shall be paid in equal shares to any other surviving dependent(s).

6. If a deceased worker is not survived by any eligible dependents, the Employer's duty to pay death benefits under this chapter, except burial benefits, shall cease immediately.

B. Where a worker is entitled to compensation under this Title for an injury, and death ensues from any cause not resulting from the injury for which the worker was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability of the employer shall terminate.

C. In the event a covered worker's death occurs after a period of disability, any disability benefits paid to the worker shall be deducted from the death benefits to which the worker's dependents may be entitled.

#### **§11-7-2 REDISTRIBUTION OF DEATH BENEFITS.**

A. If an eligible dependent dies or otherwise becomes ineligible for death benefits, those benefits shall be redistributed to the remaining legal beneficiaries in accordance with section §11-7-1A.

B. If all eligible dependents cease to be eligible, any duty to pay the remaining death benefits payable under section §11-7-1A shall cease immediately.

**§11-7-3 VERIFICATION OF ELIGIBILITY FOR DEATH BENEFITS.** Upon request from the Claim Administrator, all persons claiming to be eligible for death benefits shall furnish all necessary documentation to support their claim of eligibility.

**§11-7-4 BURIAL BENEFITS.** If death results from a compensable injury, the person and/or entity who incurs liability for the costs of the burial shall be paid \$5,000.00 to cover burial expenses. This burial benefit payment shall not be reduced as a result of any burial benefit paid by any other source.

### **CHAPTER 11-8 – MEDICAL BENEFITS**

**§11-8-1 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.

#### **§11-8-2 EMPLOYER'S RIGHT TO SELECT DOCTOR.**

A. Except in an emergency where the employer or Claim Administrator agent cannot be reached immediately, the employer retains the right to approve and/or recommend all health care treatment. Health care treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the worker. If the worker has reason to be dissatisfied with the care offered, the worker should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the worker may agree to alternate care reasonably suited to treat the injury. If the employer and the worker cannot agree on alternate care, the arbitrator selected under Chapter 9 of this Title may allow and order such alternate care upon application and reasonable proof of the necessity thereof. Any non-authorized treatment of the covered worker is not payable under this section and shall be at the worker's sole expense.

B. Employer retains the right to approve all chiropractic, osteopathic, naturopathic, acupuncture, or other non-traditional forms of treatment and to have such forms of treatment approved by the attending physician. Duration of treatment and/or number of visits to such medical providers shall be subject to the approval of the Claim Administrator, who may rely upon the advice of the consulting or attending physician.

C. After notice and opportunity for a hearing, the arbitrator selected under Chapter 9 of this Title may issue a decision relieving the Claim 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 chapter.

**§11-8-3 RELEASE OF MEDICAL-RELATED INFORMATION.** Any worker, employer, or insurance carrier or their agents making or defending a claim for benefits agrees to the release of all information to which the worker, employer, insurance carrier, or their 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, including any third-party health care providers. Any institution or person releasing such information to a party or the party's representative shall not be liable criminally or for civil damages by reason of the release of the information.

**§11-8-4 MEDICAL EXPENSES.** Medical expenses shall be limited to the usual and customary amounts charged in the community, or like community, for similar services. Charges believed to be excessive or unnecessary may be denied by the Claim Administrator.

**§11-8-5 SETTLEMENT OF BENEFIT AMOUNTS.** The covered employer and the claimant may negotiate settlement of future medical expenses, income loss, impairment, death benefit and other benefits under this Title that are owed to the covered worker or to the worker's estate. For purposes of settling future medical expenses, the basis for settlement will be the value of the current and future medical treatment plan but will not exceed \$100,000 unless approved by the Advisory Council.

**§11-8-6 PETITION TO REOPEN CLAIM.** Once a claim for medical benefits or disability benefits under this Act has been closed, the worker may petition the administrator to re-open the claim for benefits within one (1) year after the date of claim closure based upon an objective material worsening of the underlying condition. The administrator will investigate and accept or deny the petition to re-open in the same manner as new claims submitted. (Added by NPTEC 6/23/15)

## CHAPTER 11-9 – ADJUDICATION OF DISPUTES

### §11-9-1 APPEALS FROM DECISIONS OF THE CLAIM ADMINISTRATOR.

A. The Claim Administrator shall administer this Title in accordance with its terms and conditions and specifically in accordance with Chapter 11-3. Any appeals from final decisions of the Claim Administrator shall follow the procedures set forth in this Title, Chapter 2-5 of the Tribal Code, and any other applicable rules and regulations adopted by the Nez Perce Tribal Executive Committee. If necessary, and to the extent they are not contrary to any provisions of this Title, the workers' compensation provisions contained in Title 72 of the Idaho Code may be utilized as guidelines by the arbitrator or by the trier of fact in a Tribal Court proceeding.

B. This code shall be interpreted neither in favor of the claimant or the Tribe. This code shall be interpreted neutrally. (Subsection added by NPTEC 6/23/15)

C. Consulting physicians and treating physicians' opinions shall be given equal weight. (Subsection added by NPTEC 6/23/15)

D. During any administration of claims under this code, or during the pendency of any appeal of a claim's decision, the claimant is prohibited from contacting NPTEC regarding the administration of the claim. (Subsection added by NPTEC 6/23/15)

## **§11-9-2 APPEAL PROCESS.**

### **A. First Level – Binding Arbitration.**

1. Any claimant shall appeal a final decision of the Claim Administrator by filing a contested claim within thirty (30) calendar days with the arbitrator or with Human Resources, and, if requested in writing, an administrative hearing shall be held. The Claim Administrator may seek a declaratory decision that the actions of the Claim Administrator are in compliance with this Title and may request a hearing in writing. Any claimant appealing a decision of the Claim Administrator shall bear the burden of proof that the Claim Administrator's decision was not in compliance with, or was in violation of, this Title. The Claims Administrator's decision shall not be disturbed on appeal so long as the decision is supported by substantial evidence. Claimant's burden of proof shall be by a preponderance of the evidence. (Subsection amended by NPTEC 6/23/16)
2. The arbitrator will conduct all hearings and render a written decision in the dispute in accordance with the Administrative Procedures set forth in Chapter 2-5 of the Nez Perce Tribal Code. The decision of the arbitrator shall be final and binding on all parties except for an appeal to the Tribal Court as provided in this section.
3. The arbitrator for appeals from decisions of the Claim Administrator shall be a hearing officer under contract with a Tribal entity for the purpose of hearing employment grievances that arise under the Human Resource Manual, so long as that person is experienced with workers' compensation claims and appeals. If that person does not have experience with workers' compensation claims and appeals, the arbitrator shall be selected in accordance with the rules of the American Arbitration Association, or its successor.

### **B. Second Level – Tribal Court.**

1. Any and all appeals from a decision of the arbitrator shall be submitted to and heard by the Tribal Court in accordance with the Administrative Procedures set forth in Chapter 2-5 of the Nez Perce Tribal Code.
2. The decision of the Tribal Court shall be final, and there shall be no further appeal of the Tribal Court's decision.

**§11-9-3 RIGHT TO REPRESENTATION.**

A. Claimants and the Claim Administrator shall have the right to be represented by an attorney in all matters presented before an arbitrator and/or the Tribal Court, and to cross-examine all witnesses and to review all evidence of any nature that may be related to the matter under consideration.

B. In the event either party chooses to be represented by an attorney during the arbitration, that party must provide notice of the representation at least five (5) business days before any hearing or other proceeding before the arbitrator. The notice must be given in writing to the involved Human Resources Office, and to the other party's attorney if the other party is known to be represented by an attorney.

C. An arbitrator who hears appeals under this Title shall not be bound by formal rules of evidence or by technical or formal rules of procedure and may conduct investigations in such a manner as, in the arbitrator's judgment, is best calculated to ascertain the substantial rights of the parties and to promote the spirit and intent of the Nez Perce Tribe Workers' Compensation Benefit System. A full and complete record shall be kept of all proceedings before the arbitrator including all of the documentary evidence submitted and a tape recording of the proceedings.

**§11-9-4 ATTORNEY FEES AND OTHER ARBITRATION COSTS.**

A. If the arbitrator awards benefits to the claimant in excess of the Claim Administrator's original benefit determination (as communicated to the claimant), the claimant's attorney's fees will be approved with a maximum limit of 10% of the total benefit award, or \$5,000.00 (five thousand dollars), whichever is less. An award of attorney's fees to the claimant shall be over and above any benefits paid or provided to the claimant pursuant to this Title. Disputes over attorney fees must be filed with the arbitrator in accordance with Rule 51 of the Tribal Rules of Civil Procedure contained in Chapter 2-2 of the Nez Perce Tribal Code.

B. The claimant and the Claim Administrator may engage the services of physicians or experts for hearing purposes at the respective party's expense. The Claimant's costs for such physicians or experts may be reimbursable, in the discretion of the arbitrator, if the arbitrator awards benefits to the claimant in excess of the Claim Administrator's original benefit determination (as communicated to the claimant). The opinions of such consultants will be considered in a contested case, notwithstanding the provisions of this Title authorizing the employer to approve and/or recommend all health care treatment.