

Chapter 13
ONEIDA WORKER'S COMPENSATION LAW
Latiyótashe Kayanláhsla
where they work their laws

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13.1-0. Purpose and Policy

13.1-1. The purpose of this law is to set up a system of compensation and medical benefits for employees of the Oneida Tribe who suffer compensable injuries in the employment of the Oneida Tribe. The law is not remedial in any sense and is not to be given a broad liberal construction in favor of any claimant or employee. The Oneida Tribe will compile and apply its own benefit schedule which will mandate the benefit levels applied to applicable injuries. The Oneida Tribe will mandate employee responsibilities and supply literature to employees explaining such. The Oneida Tribe will develop a timely appeals process whereby an employee may seek a third party for a final decision.

1-2. It is the policy of the Oneida Tribe to protect the employees of the Oneida Tribe and over which the Oneida Tribe extends its jurisdiction.

13.2-0. Adoption, Amendment, Repeal

13.2-1. This law is adopted by the Oneida Business Committee by resolution #BC 07-07-99B and amended by resolution BC-06-25-14-B.

13.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or Oneida General Tribal Council.

13.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

13.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this law are hereby repealed unless specifically re-enacted after adoption of this law.

13.2-5. Nothing in this law, including any assertion of right or privilege, shall waive or be construed to work as a constructive waiver of the Oneida Tribe's sovereign immunity from suit by any party.

13.3-0. Definitions. This Article shall govern the definitions of words or phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

13.3-2. *Employee.* Every person, including all officials and minors, in the service of the Oneida Tribe, therein whether elected or under any appointment or contract to hire, express or implied, or written, injured within or outside of the Oneida Tribe. The Oneida Tribe may require a bond from a contractor to protect it against compensation to employees of such contractor or

employees of a subcontractor under him. Any peace officer shall be considered an employee while engaged in the enforcement of peace or in the pursuit and capture of those charged with crime.

13.3-3. *Employer.* The Oneida Tribe its divisions, departments, programs, enterprises of other subdivisions of the Oneida Tribe.

13.3-4. *Oneida Tribe.* The Oneida Tribe of Indians of Wisconsin, a federally recognized Indian tribe and acting at all times pursuant to its Constitution and Bylaws in a governmental capacity.

13.3-5. *Injury or personal injury.* Physical or mental harm to an employee caused by accident or disease which arises from exposure to conditions or circumstances beyond those common to occupational and/or non-occupational life and is predominantly work related.

13.3-6. *Physical Harm.* Any injury arising out of and in the course of employment, unusual or peculiar to work, including specific injury, repetitive traumatic injury, or occupational disease, which arises from exposure to conditions or circumstances beyond those common to occupational and/or non-occupational life and is predominantly work related.

13.3-7. *Accidental Injury.* Any injury, not expected and not deemed to be willful.

13.3-8. *Mental Harm.* Any injury arising out of and in the course of employment which includes mental harm or emotional stress or strain without physical trauma, which arises from exposure to conditions or circumstances beyond those common to occupational and/or non-occupational life and is predominantly work related. Common occupational life includes, but is not limited to, transfers, promotions, termination, disciplinary action and activities identified within a job description or business unit general activities.

13.3-9. *Burden and Standard of Proof.* Except where explicitly stated otherwise, the burden of proof is on the party advancing a particular claim or defense, and the standard of proof is by a preponderance or greater weight of the evidence.

13.3-10. *Waiver of Privilege.* Application for or acceptance of any benefits under this law shall constitute a waiver of privilege by the employee or the employee's dependents.

13.3-11. *Administrator.* The person or entity designated and charged with the day-to-day administration of this law.

13.3-12. *Covered Injury/Accidents.* Mental or physical harm to an employee caused by accident or disease and arising out of and in the course of employment. Injury includes mental harm or emotional stress or strain without physical trauma, which arises from exposure to conditions or circumstances beyond those common to occupational and/or non-occupational life and is predominantly work related, extraordinary and unusual.

13.3-13. *Not Covered Injury/Accidents.* No compensation is allowed for:

- (a) an injury or death due to the employee's knowingly self inflicted injury, including suicide, or commission of a criminal offense,
- (b) any injury, occupational disease or death when the proximate cause is the employee's intoxication from alcohol, or impairment by a non-prescribed controlled drug or abuse of a prescription drug, except where the employee is an innocent victim,
- (c) refusal or non-cooperation of the employee of a blood alcohol or drug test when it is requested for reasonable cause,
- (d) any injury caused by or contributed to by an illegal or non-prescribed controlled substance confirmed by a positive confirmation or blood alcohol test.
- (e) gross negligence of the injured employee, including horseplay or other willful behavior,
- (f) disobedience by the injured employee of instructions, whether verbal or written, from the employer with instruction, which if followed, would reasonably prevent or significantly reduce the likelihood of the injury or death,

- (g) work performed by or as an independent contractor,
- (h) injury or death of an employee of a subcontractor or independent contractor whether insured or uninsured for workers' compensation liability even though the injury may occur on the Reservation,
- (i) activities of the employee during meal/lunch/dinner breaks while off employer's premises,
- (j) the employee's failure, prior to commencement of employment, to disclose a physical condition which prevented the employee from safely performing the work for which the employee was hired and which was a substantial contributing factor to the injury,
- (k) environmental illness, or chemical sensitivity caused by agents to which the general public at the employer's premises are exposed,
- (l) idiopathic injury, meaning an injury or condition arising from an obscure or unknown cause,
- (m) an injury or illness secondary to a psychiatric condition,
- (n) the natural deterioration of tissue, organ, or other body part,
- (o) voluntary participation in an employer-sponsored recreation or fitness activity,
- (p) injuries caused by the act of a third person intended to injure the employee because of reasons personal to the employee that are not directed against the employee as an employee or because of the employment.

The burden of proof to meet this definition of "not covered injury/accident" under this section shall be on the employer.

13.3-14. *Decrease in Benefits.*

- a. If an employee fails to use a safety device, or obey a reasonable written or printed rule of the employer that has been placed in a conspicuous position in the workplace or in the employee handbook, compensation will be decreased by 15% for the first injury, and 25% for each subsequent injury.
- b. If an employee fails to utilize providers or network providers designated by the employer, reimbursement for expenses will be decreased by a minimum of 50%, except in the case of a medical emergency.

13.3-15. *Maximum Medical Improvement.* The date after which no significant recovery from or significant lasting improvement to a personal injury can reasonably be anticipated, based upon reasonable medical probability.

13.3-16. *Average Daily Wage.* The indemnity benefit paid as a result of a fractional week of disability.

13.3-17. *Judiciary.* The Judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

13.4-0. General Provisions

13.4-1. The Oneida Tribe hereby authorizes the Risk Management Office of the Finance Division to enter into agreements to create a self-funded, self-insurance program for the Oneida Tribe operated solely for the benefit of the employees of the Oneida Tribe. The Oneida Tribe may retain the option of insuring its liability in some corporation, association or organization authorized to transact the business of workers' compensation insurance in the State of Wisconsin. The Oneida Tribe may self-insure at its discretion and administer its program of self insurance or may contract with any private agency, business firm, or corporation to administer any part of the program. The Oneida Workers Compensation program will consist of:

- (a) Definition of terms
- (b) Benefit explanation
 - (1) Benefits available - Medical and Disability
 - (2) Benefit schedule
 - (3) Benefit calculation
 - (4) Employee responsibilities, reporting, early return to work, medical network use etc.
- (c) Appeals process

13.4-2. The Risk Management Office in conjunction with the Oneida Human Resources Benefits Office is hereby delegated responsibility for development of regulations to implement this program. All regulations shall conform to the requirements of the insurer of the program, or this law. Conflicts between the insurer and this law shall be resolved in favor of this law where minimum and/or maximum limits are prescribed regarding benefit levels.

13.4-3. A claim against the Oneida Worker Compensation program shall be the exclusive remedy against the Oneida Tribe, a Tribal entity, or Tribal employee for any claim of loss covered by the program. An individual who has made a claim against the program shall be precluded from bringing any other claim, civil action or proceeding for damages arising from the same occurrence against the Oneida Tribe, a Tribal entity, or a Tribal employee.

13.5-0. Disability

13.5-1. *Preexisting Disabilities.* If an employee suffers a compensable injury while receiving or entitled to receive compensation for a previous injury in the same employment, the employee is not entitled to compensation for both injuries at the same time unless the subsequent injury is permanent. If an employee receives a permanent schedule injury after having sustained another permanent injury in the same employment, the employee is entitled to compensation for both injuries, but compensation will be paid by extending the period, not by increasing weekly compensation payments. When previous and subsequent permanent injuries result in total permanent disability, compensation is payable, but payments made for the previous injury are to be deducted from the total compensation payments due. However, if the permanent injury for which compensation is claimed results only in the aggravation or increase of a previously sustained permanent injury or physical condition, regardless of the source or cause of the previously sustained injury or physical condition, the Administrator will determine the extent of the previously sustained permanent injury or physical condition, as well as the extent of the aggravation or increase resulting from the subsequent permanent injury and will award compensation only for that part of the injury, or physical condition resulting from the subsequent permanent injury. Awards and compensation will deduct uncompensated permanency in their calculation.

13.5-2. *Third Party Liabilities.* An employee or the employee's dependents may bring a third-party action to recover damages, notwithstanding the employer's or insurer's payment of or liability to pay compensation. If a third-party action is settled, the employer or insurer will receive reimbursement for workers' compensation and medical benefits, supplies, and funeral expenses paid to the employee or dependents. Liability of the employer or insurer for payment of further benefits or expenses is terminated. Liability is terminated even if the employee or the dependents have not received any compensation, medical benefits, supplies, or expenses. In the event that the judgment against a third party is less than the employer's liability, the employee or dependents can collect the judgment and repay the employer or insurer for benefits previously received. Nothing in this section shall prevent an employee from taking the compensation he or

she may be entitled to under it and also maintaining a civil action against any physician, chiropractor, psychologist or podiatrist for malpractice.

13.5-3. *Assumption of Risk.* Employees will not be held to have assumed the risks of the employment in any case where the violation by the employer, agents, or employees of any rule, direction, or regulation made by any public officer or commission contributed to the injury or death of an employee. The employee will not be held to have assumed the risk of any defect in the place of work furnished to the employee, or in the tool, implement or appliance furnished by the employer, when the defect was, prior to injury, known to the employer, or by the exercise of ordinary care might have been known by the employer in time to have repaired the same or to have discontinued the use of the defective working place, tool, implement, or appliance. The burden of proving that the employer was not knowledgeable of such defects is upon the employer.

13.5-4. *Employee Requirements.* No compensation is allowed for an injury or death due to the employee's knowingly self inflicted injury, intoxication, or commission of a criminal offense. A 15% reduction in compensation is allowed for the knowing failure to use a safety appliance, obey a reasonable written or printed rule of the employer that has been placed in a conspicuous position in the workplace or in the employee handbook.

13.6-0. Workers Compensation Benefits

13.6-1. *Employer's Liabilities: Exclusivity.* With respect to any employee who sustains injury or death arising out of and in the course of employment with the employer, such employer shall be liable for the payment of compensation to such employee, the employee's surviving spouse or children, or personal representative, as provided in this law. The liability of an employer to an employee, *the employee's surviving spouse or children*, or the personal representative of an employee for personal injury or death sustained by the employee in the course of employment is prescribed by this law and is exclusive. This law replaces any and all rights and remedies an employee, *the employee's surviving spouse or children*, or an employee's personal representative may have under federal, tribal or state law, common law or the workers' compensation statutes of any state against any employer for personal injury or death arising out of and in the course of employment.

13.6-2. *Total Disability.* An employee is totally disabled if the employee is unable to perform any available work activities, due to an injury sustained during the course of employment with the employer. The amount of benefits for total disability shall be determined and published by rule promulgated hereunder.

13.6-3. *Partial Disability.* An employee is partially disabled if, as a result of an injury sustained during the course of employment with the employer, the employee is unable to earn the equivalent of the employee's average weekly wage. The amount of benefits for partial disability shall be determined and published by rule promulgated in accordance with levels set forth in sec. 6-10.

13.6-4. *Waiting Period.* Compensation, other than payment of medical benefits, will be allowed for temporary disabilities beginning with the third day of disability. Compensation will be allowed for the first seven calendar days only if the disability continues for longer than 14 days after the date of injury.

13.6-5. *Timing of Payments.* The first weekly installment of compensation for temporary disability is due 14 days after the disability begins and the injured employee notifies the employer that he/she is disabled with medical proof of the disability. Not later than 15 days from

the date that the first installment of compensation is due, the employer or insurer must tender to the employee or dependents all compensation due.

13.6-6. *Employee's Average Wage.*

(a) *Employees Average Weekly Wage.* Earnings of the injured employee in the employment in which the employee working at the time of the injury during the 52 week-period immediately preceding the date of the injury, divided by the number of weeks worked. Whenever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, those allowances will be considered as part of the employee's earnings as well as any compensation to the employee which is subject to Federal income tax:

(1) If the injured employee lost seven or more days during this period although not in the same week, the earnings for the remainder of the 52 weeks will be divided by the number of weeks and parts thereof remaining after the time lost have been deducted.

(2) If the employment prior to the injury extended over a period of less than 52 weeks, the aforementioned method of computation will apply if the results are just and fair to both parties.

(3) If the employee has worked for the employer a short period of time or if the employment is of a casual nature, average weekly wage will be determined by using the average weekly amount during the 52 weeks prior to the injury that was being earned by a person in the same grade employed at the same work by the same employer.

(b) *Employee's Average Daily Wage.* If the disability period involves a fractional week, the indemnity shall be paid for each day of such week at the rate of one-sixth of the weekly indemnity.

13.6-7. *Death Benefits.*

(a) Compensation varies according to the employees' wage up to the maximum wage in effect at the time of injury. The maximum death benefit is four times the average annual earnings to a maximum of one hundred twenty five thousand dollars (\$125,000.00). The benefits are payable monthly the benefits are payable monthly and decreased by the amount of indemnity benefit previously paid.

(b) *Benefits to the Surviving Spouse.* 50% of the weekly wage will be paid to the dependent spouse who is the sole dependent of the deceased. The spouse must have lived with the deceased at the time of death and excludes common law spouse.

(c) *Benefits to a Surviving Spouse and One or More Dependent Children.* 66 $\frac{2}{3}$ % of weekly wage.

(d) *Benefits to Unmarried Children under Age 21.* 66 $\frac{2}{3}$ % of weekly wage if the unmarried child is dependent upon the parent and living with the deceased parent at the time of death or upon whom state laws impose the obligation to support the child. Dependency terminates when the child attains the age of 21.

(e) *Benefits to Unmarried Children over Age 21.* 66 $\frac{2}{3}$ % of weekly wage if the child has never married and is physically or mentally incapacitated from earning his or her own support until the disability ends or the maximum is paid whichever occurs first.

13.6-8. *Dependency Terminates.* Upon the marriage of the dependent or upon maximum benefit payout whichever comes first. Dependency will not be reinstated due to divorce. Benefits will continue to be paid for children if the dependent spouse remarries until the dependent children's dependency ceases or the maximum benefit is paid, whichever occurs first. Child includes

stepchildren, legally adopted children, posthumous children and acknowledged children born out of wedlock when there has been obligation support legally imposed by the state.

13.6-9. *Miscellaneous Benefits.* Burial expenses payable by the employer are not to exceed \$5000 and paid upon the submission of proof of expense.

13.6-10. *Weekly Indemnity.* The weekly indemnity will be as follows:

(a) *Permanent Total Disability.* For injuries resulting in permanent total disability, compensation equals 66 $\frac{2}{3}$ % of the employee's average weekly wage, benefits computed on the basis of the employee's wage subject to weekly maximums and minimums appropriate to the time of injury.

(b) *Permanent Partial Disability - Impairment.* Sixty percent (60%) of wages for specified periods up to \$175 per week, or if the injury is not scheduled, a period proportionate to the degree of disability but not over 500 weeks or \$150,000 whichever occurs first.

(c) *Temporary Disability.* Compensation will be allowed for injuries producing only temporary total disability to work or temporary partial disability to work beginning with the eighth day of disability, except for medical benefits. Compensation will be allowed for the first three calendar days only if the disability continues for longer than 14 days after the date of injury *and results in 21 consecutive days off work or employment.* The first weekly installment of compensation for temporary disability is due 14 days after the disability begins. Not later than 15 days from the date that the first installment of compensation is due, the employer or insurer must tender to the employee or dependents all compensation due. The maximum compensation will be *based on 50 weeks of average weekly wage or one year's salary whichever occurs first as further identified in subsections (d) and (e) of this section.*

(d) *Temporary Total Disability.* The employee will receive temporary total disability compensation benefits equal to 60 percent of the average weekly wage not to exceed 200 weeks.

(g) *Temporary Partial Disability.* The employee may receive temporary partial disability benefits equal to 60 percent of the difference between the average weekly wage and actual weekly wage, not to exceed 50 weeks or one year's average weekly wage, whichever occurs first.

(h) *Permanent Disabilities.* Minimum percentages of loss of use for amputation level, losses of motion, sensory losses and surgical procedures as set out herein. The percentages assume that the member, the back, etc., was previously without disability. Only percentages exceeding seven and one half percent (7 $\frac{1}{2}$ %) will be deemed compensable.

13.6-11. *Permanent Partial Disability Schedule.* In cases included in the following schedule of permanent partial disabilities indemnity shall be paid for the healing period and in addition, for the period specified, at the rate of two-thirds of the average weekly earnings of the employee, to be computed as provided in sec. 6-6:

DISABILITY	BENEFIT
Loss of arm at shoulder	500 weeks
Loss of arm at elbow	450 weeks
Loss of a non-dominant hand	400 weeks
Loss of the dominant hand	450 weeks
Loss of a palm where the thumb remains	325 weeks
Loss of a thumb and the metacarpal bone thereof	160 weeks

Loss of a thumb at the proximal joint	120 weeks
Loss of a thumb at the distal joint	50 weeks
Loss of all fingers on one hand at their proximal joints	225 weeks
Loss of index finger and the metacarpal bone thereof	60 weeks
Loss of index finger at the proximal joint	50 weeks
Loss of index finger at the second joint	30 weeks
Loss of index finger at the distal joint	12 weeks
Loss of middle finger and the metacarpal bone thereof	45 weeks
Loss of middle finger at the proximal joint	35 weeks
Loss of middle finger at the second joint	20 weeks
Loss of middle finger at the distal joint	8 weeks
Loss of ring finger and the metacarpal bone thereof	26 weeks
Loss of ring finger at the proximal joint	20 weeks
Loss of ring finger at the second joint	15 weeks
Loss of ring finger at the distal joint	6 weeks
Loss of little finger and the metacarpal bone thereof	28 weeks
Loss of little finger at the proximal joint	22 weeks
Loss of little finger at the second joint	16 weeks
Loss of little finger at the distal joint	6 weeks
Loss of leg at the hip	500 weeks
Loss of leg at the knee	425 weeks
Loss of a foot at the ankle	250 weeks
Loss of great toe with the metatarsal bone thereof	84 weeks
Loss of great toe at the proximal joint	25 weeks
Loss of great toe at the distal joint	12 weeks
Loss of second toe with the metatarsal bone thereof	25 weeks
Loss of second toe at the proximal joint	8 weeks
Loss of second toe at the second joint	6 weeks
Loss of second toe at the distal joint	4 weeks
Loss of the third, fourth or little toe with the metatarsal bone thereof	20 weeks
Loss of the third, fourth or little toe at the proximal joint	6 weeks
Loss of the third, fourth or little toe at the second or distal joints	4 weeks
Loss of an eye by enucleation or evisceration	275 weeks
Total impairment of one eye for industrial use	250 weeks
Total deafness from accident or sudden trauma	330 weeks
Total deafness of one ear from accident of sudden trauma	55 weeks
Loss of movement due to injury to spine	500 weeks

13.6-12. *Denial of Liability.* If the employer denies liability, the employer must inform the employee or dependents of the denial. Notice of the denial must be made in writing and mailed not later than 30 days after the employer's knowledge of the injury and the employee's provision of medical proof.

13.6-13. *Apportionment.* If any portion of the permanent impairment rating is attributable to a preexisting condition, whether previously rated or not, the employee shall receive permanent impairment benefits only for that portion of the permanent injury attributable solely to the work injury.

13.6-14. *Occupational Deafness.* This means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment. "Noise" means sound capable of producing occupational deafness. "Noisy employment" means employment in a circumstance of which an employee is subjected to noise beyond those common to occupational and/or non-occupational life and is predominantly work related.

(a) No benefits shall be payable for temporary total or temporary partial disability under this section for loss of hearing due to prolonged exposure to noise.

(b) No payment shall be made to an employee under this section unless the employee shall have worked in the noisy employment for a total period of at least 180 days for the employer from whom the employee claims compensation.

(c) The employer is liable for the entire occupational deafness to which his or her employment has contributed; but if previous deafness is established by a hearing test or other competent evidence, whether or not the employee was exposed to noise within the 2 months preceding such test, the employer is not liable for previous loss so established nor is the employer liable for any loss for which compensation has previously been paid.

(d) No compensation may be paid for tinnitus.

(e) Compensation for permanent partial disability due to occupational deafness may be paid only if the loss of hearing exceeds 30% of binaural hearing loss.

(f) Hearing impairment determinations will be made using the methods and Hearing Impairment Tables identified in regulations.

13.6-15. *Vision Loss.* Vision loss determinations will be made using methods and Vision Impairment Tables identified in regulations.

13.7-0. Termination of Benefits

13.7-1. Receipt of Social Security Retirement Benefits by the employee will be considered conclusive evidence of retirement, and the liability of the employer for payment of further disability benefits will cease.

13.7-2. Once begun, temporary total disability benefits may not be terminated by the employer unless:

(a) the employee has returned to work, with any employer in a similar position;

(b) the employee has died;

(c) the employee has refused to undergo a medical examination as prescribed in sec. 8-5;

(d) the employee has received 250 weeks of benefits or has been paid the maximum compensation allowed;

(e) the employee has refused modified, early return to work, light duty or transitional job assignment;

(f) Employee receives Social Security Retirement Benefits;

(g) the employee is unable or unavailable to work for reasons unrelated to the compensable injury;

(h) the employee is terminated for misconduct;

(i) the employee fails to cooperate with reasonable medical or vocational rehabilitation;

(j) the employee fails to maintain contact with the employer at least two times per month, at reasonable intervals identified by the employer from the date of medical assessment.

This section shall not be construed to require the employee to undergo surgery nor to require the employer to provide vocational rehabilitation.

13.7-3. *Maximum and Minimum Weekly Compensation Payments.* To be reviewed on a periodic basis, payments for death, temporary and permanent total disability, and for temporary partial disability are computed on the basis of the employee's average weekly wage, within the following limits:

(a) *Maximum Weekly Wage for Temporary, Permanent, Total & Death Benefits:*

(1) For injuries occurring after December 31, 1999, the average weekly benefit must not be more than \$500.00 or less than \$50

(2) In no case will the weekly compensation payable exceed the average weekly wages of the employee at the time of death

(b) *Maximum Wage for Permanent Partial Only.* For injuries occurring after December 31, 1999, the maximum weekly benefit will be \$175.00.

13.7-4. *Claims of Creditors.* Compensation awards are subject to child support income withholding and other remedies available for the enforcement of a child support order. The maximum amount that may be withheld is one-half of the compensation award.

13.8-0. Medical and Surgical Aid

13.8-1. *Choice of Provider.* The choice of a provider is generally made by the employer. Provided that, the employee may select a physician, surgeon, or other provider and the employer may be required to reimburse 50% of reasonable expenses.

13.8-2. *Benefits.* The employer must supply free of charge to the employee, all reasonable and necessary first aid, medical, surgical and hospital services incurred by the employee as a direct result of a compensable injury. Benefits payable under any policy of no-fault automobile insurance will be primary to benefits payable by the employer. The employer may require the employee to seek services, equipment and medicines at, or from, specified medical providers and facilities. Non compliance with these requirements will reduce or relieve the employer of liability of medical payments until such time compliance is met. Compensation will not be paid to an employee who refuses medical treatment. Likewise, any permanent disability from this refusal is noncompensable. The employer will supply the employee with the group of physicians they can access. In cases of an emergency the employee can elect the physician of their choice. However when the emergency passes, the employee must seek follow up medical attention from the specified physicians supplied by the employer. If the employer requires the employee to submit to treatment outside the county of employment, and further than 30 miles from the place of employment the employer must also pay reasonable travel expenses, not to exceed the limits of the employers travel policies. The employer must supply the following services and supplies:

(a) Medical

(b) Surgical

(c) Psychological

(d) Podiatric

(e) Dental

(f) Hospital treatment

(g) Prescription Medicines

(h) Medical and surgical supplies

(i) Crutches

(j) Artificial limbs (liability for repair and replacement is limited to the effects of normal wear and tear)

(i) Appliances

(k) Training in use of artificial limbs and appliances

13.8-3. *Utilization Review.* The employer liability for medical, surgical, hospital, and nursing care will be limited to those charges that prevail in the same community for similar services to injured persons of like standard of living when the service is paid for by the injured person.

13.8-4. *Fee Schedules.* Fee schedules may be followed as negotiated by the employer with any provider network or individual, or clinics but may not exceed the fee schedule of the state of the employment.

13.8-5. *Independent Medical Exams.* An employee must, if requested in writing by the employer submit to reasonable exams by medical practitioner, chiropractor, podiatrist, psychologists, dentists, or vocational experts, provided and paid for by the employer. Expenses will be paid by the employer, including transportation.

13.8-6. *Refusal to Submit.* If the employee refuses to submit to or in any way obstructs the examination, the responsibility of the employer for payment of medical expenses incurred after the scheduled date of the examination will cease. Likewise, the employer's responsibility for payment of all other benefits accruing ceases immediately upon the failure to appear.

13.8-7. *Rehabilitation.* "Physical rehabilitation" means the restoration of the seriously injured person as soon as possible to a condition of gainful employment. The Administrator or the employer may contract for the services of a rehabilitation consultant to assist the employee in rehabilitation and return-to-work efforts. Rehabilitation may be provided to the employee at the sole option of the administrator and the employer at the expense of the employer or insurer. It is administered by the Employee Benefits Department, who also may provide transportation. At the option of the Administrator and the employer, the employee may receive temporary total benefits while the employee is actively engaged in a program of rehabilitation which is reasonable and designed to restore the employee to gainful employment. Initial rehabilitation plan may not exceed 26 weeks, and only the employer may extend the period of the plan for an additional 26 week period.

13.8-8. *Vocational Rehabilitation.* Vocational Rehabilitation may be provided to the employee at the sole option of the administrator and the employer at the expense of the employer or insurer. It is administered by the Employee Benefits department, who also may provide transportation. At the option of the Administrator and the employer, the employee may receive temporary total benefits while the employee is actively engaged in a program of rehabilitation which is reasonable and designed to restore the employee to gainful employment. Initial rehabilitation plan may not exceed 52 weeks, and only the employer may extend the period of the plan for an additional 26 week period.

13.8-9. *Refusal to Undergo Rehabilitation.* Failure by the employee to cooperate in rehabilitation efforts will result in a 50% (percent) reduction in temporary total or temporary partial benefits. Refusal by the employee to undergo rehabilitation will terminate the responsibility of the employer for payment of all benefits and medical expenses thereafter.

13.9-0. Notices, Reports and Limitations

13.9-1. *Notice of the Injury.* No compensation shall be due under this law unless, the employee, or another on behalf of the employee, reports the injury to the employee's supervisor, manager or the employers designated representative within 48 hours of the accident causing the injury. No compensation or medical benefits will be paid if a written notice of injury is not given to the employer within 10 calendar days of the date the employee first reports the injury. If the injury incapacitates the employee, the 10 day time limitation will not begin until the incapacity ends. A repetitive traumatic injury is deemed to have occurred when the employee knows or has reason to know that the injury caused the employee to be unable to work, whichever occurs first.

13.9-2. *First Report of Injury.* Upon actual knowledge of the occurrence of an injury or upon written or verbal notice from the employee or another on behalf of the employee, the employer will complete a report of injury and file it with the Administrator within 48 hours.

13.9-3. *Limitations of Claims.* No compensation benefits shall be paid or awarded under this Law unless the written claim for benefits is made within 180 days of the date of the claimed injury. In the case of mental or physical incapacity or minority, the period of limitation shall be extended for 180 days from the date that the incapacity ceases.

13.10-0. Administration and Claims Procedures

13.10-1. *Administrator.* The Business Committee shall have the authority to designate an Administrator, enter into contracts for administrative services and expend such funds as is necessary to pay for all administrative costs incurred in furtherance of this law. The Administrator will act on behalf of the Oneida Tribe in receiving and processing workers' compensation claims. The Administrator is responsible for determinations and decisions not limited to the following:

- (a) Make determinations based on investigations and available medical information regarding the liability of the employer and approve or deny the claim. The Administrator will notify the employer and employee of its determination within the time constraints listed previously.
- (b) Determine amounts payable according to fee schedules, compliance with provider arrangements, and disability schedule.
- (c) Utilizing the appropriate guidelines the Administrator will determine the compensation rate payable for temporary total disability, temporary partial disability, permanent partial disability and dependency.
- (d) The Administrator will determine the length of time during which temporary total disability or temporary partial disability benefits are payable. The Administrator will also determine the amount of permanent partial disability benefits payable.
- (e) Determination of the eligibility of dependents and the term of any dependency benefits payable.
- (f) Determine the claims of creditor allocations,
- (g) Notify the employee and employee in writing of the preexisting limitations when applicable.

13.10-2. *Timing of Payments.*

- (a) *Indemnity Payments.* The first weekly installment of compensation is due 14 days after the disability begins. Not later than 15 days from the date that the first installment of compensation is due, the employer or insurer must tender to the employee or dependents all compensation due. Once temporary or permanent total disability benefits have begun, they must continue to be paid on a regular basis on the date the employee would have received wages from the employer had the employee continued working subject to discontinuance and the limitations otherwise provided for under this law. Payment of temporary partial disability benefits is due 10 days following the date the employer or employee sends wage verification to the Administrator.
- (b) *Medical Expenses.* Payment or reimbursement of medical expenses are due within 30 days after receipt by the Administrator of itemized billing and medical records or reports documenting the reasonableness and necessity of the medical service(s).

13.10-3. *Denial of Claim.* A denial of primary liability or a denial of a period of total or partial disability, permanent impairment disability or medical benefits must:

- a. be made in writing by the Administrator
- b. contain the specific reason for the denial in language easily readable and understandable to a person of average intelligence and education,
- c. clearly state the facts forming the basis for the denial.

The denial must include information identifying the employee, the date of claimed injury, claim number, the name and telephone number of the person making the decision, and instruction to the employee of the rules and time limitations for challenging the denial.

13.10-4. *Discontinuance of Benefits.* The Administrator may discontinue weekly compensation benefits by serving a written notice on the employee. The notice must identify the employee, the date of claimed injury, claim number, the type of benefits being reduced or discontinued, the effective date of the discontinuance and the reason for the discontinuance. The notice must be written in language easily readable and understandable to a person of average intelligence and education and contain sufficient detail to inform the employee of the factual basis for discontinuance. The notice must also include an itemization of previous benefits paid, the name and telephone number of the person making the decision and copies of any evidence, medical or otherwise upon which the discontinuance is based. The Administrator shall enclose a claim petition with instruction for completion and filing.

13.10-5. *Claim Petition.* The Administrator shall provide the employee with a claim petition form with every notice of reduction, denial or discontinuance of benefits. If an employee objects to the denial of a claim or to a reduction or discontinuance of benefits, the employee may file a claim petition with the Hearing Body within 21 days of the receipt by the employee of the reduction, denial or discontinuance. The claim petition shall contain the name of the employee, the date of injury, claim number, the type of benefits being sought, the basis of the claim for benefits and any evidence, medical or otherwise, in support of the employee's claim. Failure to file the claim petition within 30 days will result in loss of right of the employee to pursue those benefits affected by the reduction, denial or discontinuance.

13.10-6. *Settlements.* No lump sum settlement is allowed in any case of permanent total disability on an estimated life expectancy, except on consent of all parties, after hearing and finding by the appointed body that the interests of the injured employee will be conserved. Settlements will not be paid for permanency of less than 7½ percent.

13.10-7. *Method of Service.* All notices, decisions, or orders provided for in this law may be served personally or by the United States mail. Time periods shall be calculated starting on the day following the beginning of the period, and shall include weekends and holidays.

13.10-8. *Recoupment of Overpayment.* Payment of compensation made under a mistake of fact or law by the employer or Administrator may be recouped from future payments of compensation to the employee, whether for the same injury or not, or from the employee's wages with the employer, if any. Overpayments may not be recouped against medical expenses due or payable.

13.10-9. *Fraud and Misrepresentation.* Intentional misrepresentation by an employee resulting in benefits paid under this law shall allow the employer to bring an action at law in any court of competent jurisdiction against the employee to collect benefits paid as a result of the intentional misrepresentation.

13.10-10. In cases where it is determined that periodic benefits granted by the federal social security act are paid to the employee because of disability, the benefits payable under this law shall be reduced as set out in this section. This provides that any offset is taken on the compensation benefits rather than the social security benefits. The injured worker is to receive the same total amount from the continued benefits that he or she would have received before the

offset was figured on the worker's compensation benefits but not less than the benefits payable under this law. Attorney fees and costs are not offset.

(a) For each dollar that the total monthly benefits under this law, excluding attorney fees and costs, plus the monthly benefits payable under the social security act for disability exceed 75% of the employee's average current earnings as determined by the social security administration, the benefits payable under this law shall be reduced by the same amount so that the total benefits payable shall not exceed 75% of the employee's average current earnings. However, no total benefit payable under this law and under the federal social security act may be reduced to an amount less than the benefit payable under this law.

(b) No reduction under this section shall be made because of an increase granted by the social security administration as a cost of living adjustment.

(c) Failure of the employee, except for excusable neglect, to report social security disability payments within 30 days after written request shall allow the employer or insurance carrier to reduce weekly compensation benefits payable under this law by 75%. Compensation benefits otherwise payable shall be satisfactory proof of the basis for reduction.

(d) The reduction prescribed by this section shall be allowed only as to payments made on or after July 1, 1980, and shall be computed on the basis of payments made for temporary total, temporary partial, permanent total, and permanent partial disability.

(e) No reduction shall take into account payments made under the social security act to dependents of an employee.

13.11-0. Hearing Body and Authority

13.11-1. *Designation of Hearing Body.* The Judiciary is delegated the responsibility to create an original hearing body with the authority to hear, determine and review all claims for compensation until such time as a determination can be made regarding the need for a permanent hearing body to hear issues arising under this law. The hearing body also has the authority to require medical services for injured employees, approve claims for medical services, attorney fees, and charges for nurses and hospitals. Additionally, the hearing body has the power to approve agreements, modify or change awards, make conclusions of facts and rulings of law, certify questions of law, and approve deductions in the compensation made by employers for amounts paid in excess of the amount required by law. The hearing body can also approve agreements between an employer and an employee or the employee's dependents for the cash payment of compensation in a lump sum or, in the case of a person under 18 years of age, to order cash payments. Physical examination, administering oaths and witness subpoenas can also be ordered by the hearing body. Lastly the hearing body is authorized to assess and collect any penalties.

13.11-2. *Appeals Process.* If the employer, injured employee, or dependents disagree in regard to the Administrator's determination of compensation payable, extent of disability, the continuance of payments under the agreement or the amount to be paid because of a change in condition, either party may petition the hearing body for resolution of the dispute. The petition must be submitted within 21 days after the Administrator mails a copy of their determination regarding compensation payable, extent of disability, the continuance of payments under the agreement or the amount to be paid because of a change in condition. The hearing body will determine whether to hear the appeal. If the hearing body decides to hear the appeal, the hearing body will notify the parties and their respective representatives in writing of the time and place

of the hearing. If the hearing body determines not to hear the appeal, the hearing body will issue and order to that effect and notify the parties and their representatives in writing of that order. Upon the filing of an application, the hearing body will set a hearing date and notify the employer, employee, and attorneys of record. The hearing body will consider evidence, hear witnesses, receive exhibits and make its determination based on the preponderance of evidence and credibility of the evidence and witnesses. The burden of proof in any hearing of the appeals process will be on the employee or dependents. The cost of legal representation at any hearing of the appeals process will be the responsibility of the employee or dependents. The hearing of all claims for compensation for injuries will be held on the Reservation. All decisions of the hearing body are final. The decision must be issued in writing, and copies must be mailed to all interested parties. The decision must detail the final determination of the hearing body on all issues.

13.11-3. Examination; Competent Witnesses.

- (a) Any physician, chiropractor, psychologist, podiatrist, or vocational expert who is present at any examination may be required to testify as to the results thereof.
- (b) Any physician, chiropractor, psychologist, podiatrist, or vocational expert who attended a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may be required to testify before the hearing body when it so directs.
- (c) The testimony of any physician, chiropractor, psychologist, or podiatrist who is licensed to practice where he or she resides or practices in any state and the testimony of any vocational expert may be received in evidence in compensation proceedings.
- (d) Expert medical or vocational testimony may be provided by written report on a form to be drafted by the employer so long as that expert is available for cross examination.

13.11-4. Costs. Costs for all proceedings before the hearing will be awarded and taxed as provided by the law in ordinary Judiciary court actions and paid by the Oneida Tribe. However, if the hearing body determines that any proceedings have been brought, prosecuted, or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who brought, prosecuted, or defended them.

13.12-0. Accident Reports Required

13.12-1. Employer must keep a record of all accidents causing the death or disability of any employee that occur while the employee is performing services during the course of employment. The record must state:

- (a) name, address, age and wages of the employee;
- (b) time and cause of the accident
- (c) nature and extent of the injury
- (d) any other information that may be deemed necessary

13.13-0. Occupational Diseases

13.13-1. *Coverage.* "Occupational disease" means a disease arising out of and in the course of employment. Ordinary diseases of life to which the general public is exposed outside of the employment are not compensable.

Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of "occupational disease." No employee of any covered employer will have any right to any other method, form or amount of compensation or damages for the contraction of an occupational disease or for injury, disability, loss of service or death resulting from the disease,

arising out of and in the course of employment, or determination thereof, in any manner other than as provided. Unless otherwise specifically provided, no employer and no officer, director, agent, or employee of the employer will be held civilly liable for the contraction of an occupational disease or for injury, disability, loss of service or death of any employee due to an occupational disease.

13.13-2. *Nature of Employment.* The disease must have resulted from the nature of the employment in which the employee was engaged and must have actually been contracted while so employed. The nature of employment means:

- (a) that it involves a particular hazard of such disease that distinguishes it from the usual run of occupations; or
- (b) the incidence of such disease is substantially higher in the occupation in which the employee was so engaged than in the usual run of occupations; or
- (c) in the case of death, unless death follows continuous disability from the disease and results within 250 weeks after the last work related exposure.

No compensation is allowed for any condition of physical illness, mental illness or stress, disability, disablement or death for which compensation is recoverable on account of an accidental injury. Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of “occupational disease”.

13.13-3. *Nature of Injury.* An employer will not be liable for any compensation for an occupational disease unless such disease is due to the nature of an employment in which the hazards of such disease actually exist, and which hazards are characteristic thereof and peculiar to the trade, occupation, process, or employment, and such disease actually arises out of the employment, and unless disablement or death results within three years in case of pneumoconiosis, or within one year in case of any other occupational disease, after the last injurious exposure to such disease in such employment, or in case of death, unless death follows continuous disability from such disease commencing within the period above limited for which compensation has been paid or awarded or timely claim made and results within six years after such exposure. In any case where disablement or death was caused by latent or delayed pathological conditions, blood, or other tissue changes or malignancies due to occupational exposure to x-rays, radium, radioactive substances or machines, or ionizing radiation the employer will not be liable for any compensation unless claim is filed within 30 days after disablement or death. “Disablement” means the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease. “Disability” means the state of being incapacitated.

13.13-4. *Statute of Limitations - Date of injury.* For occupational diseases other than pneumoconiosis and radiation, date of injury is the date of the last exposure to the hazards of the disease in the employment of the employer in whose employment the employee was last exposed to the hazards of the disease. For purposes of pneumoconiosis and radiation, date of injury means the date of the last exposure to the hazards of the disease in the employment of the employer in whose employment the employee was last exposed to the hazards of the disease in each of at least 12 months, within a period of five years prior to the date of the injury.

Written notice of the contraction of an occupational disease must be given to the employer by the employee or by someone on such employee's behalf within 30 days after the first distinct manifestation, or in the event of death, within 30 days after the death.

13.13-5. *Burden of Proof* There is no presumption that disablement or death from any cause of infirmity is the result of an occupational disease or that an occupational disease will result in disablement or death. Anyone claiming compensation or other benefits has the burden of establishing entitlement to the benefits.

13.13-6. *Time Limit on Filing Claims.* Claims will be denied unless an employee's claim for compensation is filed within two years after the date of disablement. Dependents must file claim within two years after the date of death. There is no limitation of time against any person who is mentally incompetent or minor dependent, as long as there is in place a guardian or trustee.

13.13-7. *Lung Diseases - Emphysema.* Compensation will not be payable for pulmonary emphysema or other types of emphysema unless it is proved by clear and convincing medical evidence to a reasonable probability that the emphysema was caused solely by the employment. If it is proved that the emphysema was aggravated and contributed to by the employment, compensation will be payable for the resulting condition of the worker, but only to the extent that the condition was so aggravated.

13.13-8. *Awards.*

(a) *Amount of Compensation.* Waiting periods will follow those listed in Article VI. The compensation and benefits provided for occupational diseases are paid in the same manner as compensation and benefits for injuries as listed in Article VI. Where an employee claims to be suffering from both an injury and an occupational disease, the administrator shall determine whether the disease or the injury or both, are related to the disability and shall order compensation awarded for both injury and disease not to exceed the amount payable for the total percentage of disability.

(b) *Aggravation.* Aggravation of an occupational disease by any other disease or infirmity that is not of itself compensable reduces compensation to the proportion of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as the occupational disease bears to all the causes of the disability or death. The reduction is effected by reducing the number of weekly or monthly payments or the amounts of the payments.

end.

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