



Picayune Rancheria
of the

CHUKCHANSI INDIANS

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FICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS AMENDED WORKERS' COMPENSATION ORDINANCE

Section 1. Title.

This Ordinance shall be known as the "Workers' Compensation Ordinance."

Section 2. Purpose and Authority.

2.1 Purpose. This Ordinance shall establish procedures to administer and define the Tribe's workers' compensation program, in a manner that is fair to both employees and the Tribe.

2.2 Authority. This Ordinance is enacted pursuant to the authority granted at Article V, Sections (a) and (b) of the Tribal Constitution.

Section 3. Definitions.

3.1 "Administrator" shall mean the agency that is responsible for managing the Tribe's workers' compensation program. Responsibilities include, but are not limited to: Determining the compensability of claims; making payments to injured workers, medical providers and others; managing a trust account for the purpose of dispensing the Tribe's worker's compensation liabilities; and, making reports to the Tribe regarding their program and individual claims. The Administrator's duties are more fully described at Section 7.0 below.

3.2 "Agency" shall mean any governmental agency or department of the Picayune Rancheria of the Chukchansi Indians.

3.3 "Child or Children" shall mean the child of an Employee, under the age of eighteen (18) including, an unborn child, a child legally adopted prior to the injury, a child toward whom the Employee stands in loco parentis, an illegitimate child, and a stepchild, if such stepchild was, at the time of the injury, a member of the Employee's family and substantially dependent upon the Employee for support. A child does not include any married children unless they are Dependents.

3.4 "Claimant," for the purposes of this Ordinance, shall mean any person who is employed by the Tribe, its agencies or enterprises, except for independent contractors, who suffers an injury, specific or cumulative, arising from that employment or occurring in the course and scope of that employment and makes a claim for such injury pursuant to this Ordinance.



3.5 "Compensable Injury" shall mean a Work Injury to an Employee when that injury arises and occurs during a period of employment, and while performing the duties of the employment in or on the premises of the Employer, or wherever the employer requires the Employees to perform the employment activities as more fully described in this Ordinance. Injury caused by a third person, or by a fellow Employee intended to injure the Employee for personal reasons, does not arise out of the Employment and is not a Compensable Injury under this Ordinance.

3.6 "Days" shall mean calendar days unless otherwise provided.

3.7 "Dependent" shall mean the father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half-sister, half-brother, niece or nephew or any other extended family member as approved by the Administrator, who, at the time of the Compensable Injury that causes the Employee's death, is actually and necessarily dependent in whole or in part upon the earnings of the Employee.

3.8 "Disability" shall mean incapacity to earn wages in the open labor market caused by a Work Injury.

3.9 "Employee" shall mean a person, other than an independent contractor, employed by or in the service of the Picayune Rancheria of the Chukchansi Indians, its agencies and enterprises, under any contract of hire, express or implied, oral or written, where the Tribe, its agency, or enterprise, has the power or right to control and direct such individual in return for which such individual receives a salary or wages. For purposes of this Ordinance, Employee shall not include independent contractors, or outside consultants.

3.10 "Employer" shall mean the Tribe, its agencies and enterprises.

3.11 "Independent Medical Examination" ("IME"), for purposes of this Ordinance, shall mean a medical examination and/or evaluation of the employee scheduled by the Employer or Administrator, at the Employer's expense, for the purpose of obtaining medical information or opinion.

3.12 "Reservation" shall mean all land held or owned by the Tribe, including all lands held in trust by the United States of America which the Tribe controls, whether or not such land has reservation status.

3.13 "Spouse" shall mean a husband or wife of the Employee.

3.14 "Tribal Council" shall mean the Tribal Council of the Picayune Rancheria of the Chukchansi Indians.

3.15 "Tribal Enterprise" shall mean all enterprises owned and/or operated by the Picayune Rancheria of the Chukchansi Indians, including, but not limited to, the Chukchansi Gold Resort & Casino.

3.16 "Tribe" shall mean the Picayune Rancheria of the Chukchansi Indians.



3.17 "Tribe's Insurer" shall mean the insurance carrier under contract with the Chukchansi Gold Resort & Casino or the Tribe to insure for Compensable Injuries to Employees.

3.18 "Work Injury" shall include any physical injury, illness or disease arising out of and in the course and scope of employment, including injuries to artificial members, dentures, hearing aids, eyeglasses, and medical braces of all types; provided, however that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated unless injury to them is incident to an injury covered by this Ordinance. Work Injuries under this section shall be either:

3.18.1 "Traumatic," defined as a sudden specific incident occurring as a result of one incident or exposure which causes disability or need for medical treatment; or

3.18.2 "Cumulative," defined as a repetitive motion injury occurring from physical activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of a cumulative injury is the date upon which the Employee first suffered disability and knew, or in the exercise of reasonable diligence should have known, that the disability was caused by his present or prior employment.

3.19 "Written Decision" shall mean that any finding, decision, or award shall be reduced to written form by the Workers' Compensation Appeal Board ("Appeal Board"); or the finding(s) and decision(s) of the Administrator to accept in full or in part, or deny in full or in part, any claim submitted by a Claimant regarding a Work Injury.

Section 4. Scope.

4.1 This Ordinance shall apply to all Employees of the Picayune Rancheria of the Chukchansi Indians, its agencies and enterprises, including the Chukchansi Gold Resort & Casino.

4.2 All Employees of the Tribe, its agencies and enterprises, are covered for Compensable Injuries whether the incident and Work Injury occurred on or off the reservation. Benefits are limited as indicated in this Ordinance.

Section 5. Exclusive Remedy.

This Ordinance provides the exclusive procedure for compensation liability against the Tribe for injuries sustained in the course and scope of employment. The liability of the Tribe for all injuries arising out of and in the course of employment is limited to the compensation provided to injured Employees and/or Dependents pursuant to this Ordinance. Such liability shall not be expanded except by written amendment of this Ordinance by the Tribal Council.

Section 6. Reporting Obligations.

6.1 An Employee must report any injury, no matter how slight, to his/her supervisor within twenty-four (24) hours of the incident which caused the Work Injury. No compensation or medical benefits will be paid if a Work Injury is not reported within thirty (30) days of the Employee's knowledge that the injury sustained is related to his/her employment. Date of Employee's knowledge can be inferred by the date the Work Injury was alleged to occur, the date an Employee first received medical treatment for the Work Injury, or first lost time from work due to the Work Injury. If the Work Injury incapacitates the Employee to the extent that the Employee is unable to notify Employer of the injury, the thirty (30) days will not begin to run until the incapacity ends. Another person, on behalf of the Employee, may report a Work Injury.

6.2 A supervisor, receiving a report or notice of a Work Injury from the Employee, or another person acting on behalf of the Employee, shall promptly report the claim to the Administrator.

Section 7. Administrator.

7.1 The Administrator shall act on behalf of the Tribe in receiving and processing workers' compensation claims under this Ordinance. The responsibility of the Administrator to make determinations and decisions will include, but not be limited, to the following:

7.1.1 Making determinations regarding the responsibility of the Employer based upon investigation and available information.

7.1.2 Make determinations regarding accepting or denying a claim.

7.1.3 Determining the reasonableness and necessity of medical care and charges and determining appropriate amounts payable under this Ordinance. The Administrator will also approve or disapprove any change of primary physician, referral to a referral physician, or surgical procedure.

7.1.4 Determining the compensation rate payable for temporary total, temporary partial, permanent partial disability, and for dependency, based on information supplied by the Employer and/or Employee.

7.1.5 Determining the length of time during which temporary total disability or temporary partial disability benefits are payable.

7.1.6 Determining the eligibility of Dependents and the term of any dependency benefits payable.

7.1.7 In the event of the need to allocate dependency benefits between Dependents living in different households, the Administrator will make the necessary allocation, based on the obligations, legal or otherwise, of the decedent.

7.1.8 If an Employee's claim is subject to the limitations of Section 13, the Administrator shall advise the Employee and Employer of the effect of this limitation in writing.

7.1.9 Vigorously pursue any cause of action, in all proper venues, resulting from an attempt or act of fraud upon Employer as identified in this Ordinance.

7.2 Benefits payable to Employees pursuant to this Ordinance shall be comparable to those mandated for comparable employees under state law.

Section 8. Independent Medical Examination.

8.1 Whenever the right to compensation under this Ordinance exists in favor of an Employee, the Employee shall, upon the written request of the Employer and/or Administrator, submit at reasonable intervals to examination by a practicing physician, provided and paid for by the Employer, the Employer or Administrator shall provide Employee with a panel of at least three (3) physicians from which to select a treating physician. Additionally, Employee shall submit to examination at reasonable intervals by any physician selected by the Employer or Administrator.

8.2 If the Employee unreasonably fails to appear for a scheduled IME, the Employer shall no longer be responsible for payment of workers' compensation related expenses.

Section 9. Appeal.

9.1 If a workers' compensation claim is rejected by the Administrator, appeal may be made to the Workers' Compensation Appeal Board consistent with this Ordinance and appellate procedures approved by the Workers' Compensation Appeal Board. The Appeal Board will hear the issue(s) de novo.

9.2 The Employee shall forward a written request for an appeal to the Administrator. All requests for appeal must be received, in writing, within thirty (30) calendar days of the postmarked date of the rejection of the workers' compensation claim. The Administrator shall immediately notify and forward all requests for appeal to the Workers' Compensation Appeal Board. Failure to request a hearing within the 30-day time period specified herein renders the Administrator's decision final.

9.4 The Workers' Compensation Appeal Board shall calendar a hearing within ninety (90) calendar days of its receipt of a request for an appeal. Upon written request of either party, the Appeal Board may grant an extension of the initial hearing date of up to ninety (90) days.

9.5 Upon setting a hearing date the Appeal Board shall send written notice via certified mail to all parties to the appeal informing them of the hearing date at least thirty (30) days prior to the hearing.

9.6 While not required, parties to an appeal may be represented by legal counsel at the appeal hearing at their own expense.



9.7 Nothing in this Ordinance shall impair the rights of the parties to compromise and settle any liability that is claimed to exist under this Ordinance on account of injury, disease or death, subject to the provisions herein. After reaching a compromise, a copy of the release or compromise agreement signed by both, Employee and Administrator, shall be presented to the Workers' Compensation Appeal Board, for approval. If approved, the Administrator shall enter an award based on the release or compromise agreement.

Section 10. Discovery and Evidence.

10.1 To the extent the Workers' Compensation Appeal Board deems discovery is reasonable and necessary to ensure a fair and accurate presentation of relevant facts, the Workers' Compensation Appeal Board shall permit pre-hearing discovery. The applicable law of the Tribe shall serve as a guideline for the conduct of discovery, and the Federal Rules of Civil Procedure shall serve as a guideline for the conduct of discovery to the extent there is no applicable Tribal law. However, the Workers' Compensation Appeal Board need not adhere to, in every respect, the Federal Rules of Civil Procedure regarding authorizing depositions, written interrogatories and production of other forms of evidence.

10.2 Request for a discovery period. Additional discovery time will be permitted only upon the request of a party to the appeal action and approval by the Workers' Compensation Appeal Board. If a discovery period is requested by a party to the appeal, the Workers' Compensation Appeal Board shall determine the necessity thereof and may reschedule the appeal hearing date for no later than one hundred and eighty (180) calendar days from the date the Workers' Compensation Appeal Board received notice of the request for an appeal hearing but no sooner than sixty (60) calendar days from the date notice of the request for an appeal hearing was received by the Appeal Board.

10.3 Discovery Period. If discovery is required, discovery shall be permitted for a sixty (60) day period from the date notice is given by the Workers' Compensation Appeal Board.

10.4 Admissibility of evidence shall be determined in accordance with applicable Tribal law, to the extent there is no applicable Tribal law, the Federal Rules of Evidence shall provide guidance. The Workers' Compensation Appeal Board shall make the final determination regarding admissibility of evidence.

10.5 All documentary evidence must be submitted to the Workers' Compensation Appeal Board and all parties fifteen (15) days prior to a hearing or it will not be considered by the Appeal Board. All communications and submissions must be sent via certified mail to the Appeal Board and the parties to the appeal with proof of service.

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

- i. Date of the examination;
- ii. History of the injury;
- iii. Patient's complaints;

- iv. A listing of all documents reviewed, or relied upon, for formulation of the physician's opinion;
- v. Patient's medical history and residuals thereof, if any;
- vi. Findings on examination;
- vii. Diagnosis;
- viii. Opinion as to the nature, extent, and duration of disability and work limitations, including whether or not the disability is permanent and/or stationary;
- ix. Cause of the disability;
- x. Treatment indicated;
- xi. Apportionment of disability, if any;
- xii. Basis for all medical opinions;
- xiii. Signature of the physician.

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

10.8 Standard of Proof. The Appeal Board shall weigh the evidence, testimony of witnesses, and exhibits and make its decision on the basis of the preponderance of the evidence standard.

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

10.11 Law to Apply. All claims presented pursuant to this Ordinance shall be determined in accordance with Tribal law. Principles of law and case law in similar claims arising under applicable federal, state, or other tribal law may be used as a non-binding source of guidance, at the discretion of the Workers' Compensation Appeal Board.

Section 11. Final Determination of the Workers' Compensation Appeal Board.

11.1 The Workers' Compensation Appeal Board shall notify the parties to the appeal of its decision in writing no more than sixty (60) calendar days after the date of the hearing.

11.2 Any final determination of the Workers' Compensation Appeal Board must represent the concurrence of a majority of the Appeal Board members.

11.3 If an award is issued against the Employer, every effort shall be made to pay the award within thirty (30) calendar days of the date of issuance of the award.

11.4 No attorney's fees, costs or punitive damages shall be awarded to any Employee or Dependent in such an action.



11.5 All decisions by the Workers' Compensation Appeal Board are final and not eligible for further appeal.

Section 12. Effect of Request for Appeal Hearing.

12.1 During the pendency of the appeal hearing, the Employee or Dependent shall continue to receive all benefits approved by the Administrator in its original written decision, but shall not receive any new benefits claimed before the Appeal Board.

12.2 Except in cases of fraud, payments made to Employee or Dependent during the pendency of the action shall not be recouped or recovered by the Administrator or the Employer.

Section 13 The Workers' Compensation Appeal Board.

13.1 Independent Arbitrators. The Tribal Council shall appoint three (3) independent arbitrators to serve on the Workers' Compensation Appeal Board to hear appellate issues and make necessary determinations related to compensability of a Work Injury, medical care or charges, extent of Disability, Dependency, or any other issue that may arise under this Ordinance. The Appeal Board will hear the issue(s) de novo.

13.2 Members. The Workers' Compensation Appeal Board shall consist of three (3) members; to include one (1) Tribal member, who may or may not be a Tribal Council member, one (1) non-managerial Employee, and one (1) member of the local community who has knowledge of labor law and is not a Tribal member.

13.3 Service on Other Boards or Committees. Workers' Compensation Appeal Board members may not serve concurrently on any other board or committee of the Picayune Rancheria.

13.4 Terms. The terms of the members of the Appeal Board shall be for two (2) years and shall be staggered. The Tribal Council shall designate two (2) of the three (3) members appointed to serve a term of two (2) years and one (1) of the three (3) members appointed to serve terms of one (1) year. There shall be no limit to the number of consecutive terms a member of the Appeal Board may serve.

13.5 Workers' Compensation Appeal Board terms shall begin and end on the fourth Monday of the month of February. Appeal Board appointments shall be made annually on the fourth Monday of the month of February at a duly convened meeting of the Tribal Council. The Tribal Council shall appoint members of the Appeal Board as soon as practically possible following any vacancy. Appointments to the Appeal Board shall be made by written resolution adopted at a meeting of the Tribal Council.

13.6 Compensation. Compensation for service on the Workers' Compensation Appeal Board shall be established by the Tribal Council annually at the time of the Tribal Council's approval of the annual budget. If no action is taken by the Tribal Council at that time, the compensation shall remain the same as the previous year.

Section 14. Acts Outside the Course or Scope of Employment.

14.1 Employees determined to be acting outside of the course or scope of their employment shall not be afforded coverage under this Ordinance.

14.2 For purposes of this Ordinance, an accident occurring to an Employee while on the way to or from work is not within the due course or scope of employment.

14.3 Liability for compensation shall not exist against the Tribe for any injury sustained by an Employee if the injury is caused by any of the following:

14.3.1 Intoxication of any kind or the unlawful use of a controlled substance by the injured Employee.

14.3.2 Employee willfully, deliberately, or through gross negligence caused his or her own injury or death.

14.3.3 An altercation in which the injured Employee is the initial physical aggressor.

14.3.4 The commission of a crime by the injured Employee and the Employee is found to have committed such act by a preponderance of the evidence.

14.3.5 Voluntary participation in any off-duty recreational, social, or athletic activity not constituting a part of the Employee's work related duties, including but not limited to, activities sponsored by Employer, except where these activities are expressly required by the Employer.

14.3.6 Stress or mental anguish.

14.4 Heart attacks, strokes, seizures, diabetes, and other such injuries shall be presumed non-industrial in nature, rebuttable only by the findings of an IME at the Administrator's discretion.

Section 15. Benefits.

15.1 The amount and level of benefits paid under this Ordinance are as detailed in the Insurance Policy contract between the Tribe and the Tribe's Insurer.

15.2 No compensation under this section shall be payable subsequent to the death or retirement of the injured Employee.

15.3 No compensation under this section shall be payable upon incarceration of Employee.

Section 16. Statute of Limitations.

Except as otherwise provided herein, the right to benefits for disability, death or permanent impairment under this Ordinance shall be barred unless a claim therefore is filed within thirty (30) days after the occurrence of the Compensable Injury. The time for filing a Claim shall not begin to run until the Employee or Dependent is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the compensable injury.

Section 17. Claim Closure.

An Employee's claim shall be closed when the Administrator determines that the injured Employee has reached the point where no further material improvement would reasonably be expected from medical treatment, or for the reasons stated in this Ordinance.

Section 18. Recovery of Payments Made Due to Error, Mistake, Erroneous Adjudication or Fraud.

18.1 Whenever any payment of compensation under this Ordinance is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstances of a similar nature not induced by fraud, the recipient thereof shall repay it. The Administrator must make a claim for such repayment or recoupment within one (1) year of making any such payment or it will be deemed that any claim therefor has been waived. Upon the approval of the Tribal Council the Administrator may waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

18.2 Whenever any payment of compensation under this Ordinance has been made pursuant to a determination by the Administrator and timely appeal therefrom has been made which results in a final decision that the Employee or Dependent is not entitled to such payments, the Employee or Dependent shall repay such sums. Subject to approval by the Tribal Council, the Administrator may waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

18.3 Whenever any payment of benefits under this Ordinance has been induced by fraud, the recipient thereof shall repay any such payment together with a penalty of fifty percent (50%) of the total of any such payments. The Administrator must make a claim for such repayment or recoupment within one (1) year after discovery of the fraud, or any such payment or any such claim shall be deemed to have been waived.

Section 19. Confidentiality of Claims Files.

Information contained in the claims files and records of injured Employees under the provisions of this Ordinance shall be deemed confidential and shall not be open to public inspection. The Employee, Dependents or representatives of the same, be it an individual or an organization, may review a claim file, or receive specific information therefrom, upon the presentation of the signed authorization of the claimant. The Employer, or its duly authorized representatives, may review any files of their own



injured Employees in connection with any pending claims. Physicians treating or examining Employees claiming benefits under this Ordinance or physicians giving medical advice to the Administrator regarding any claim may, at the discretion of the Administrator, inspect the claims files and records of the injured Employee. Other persons may make such inspection, at the Administrator's discretion, when such persons are rendering assistance to the Administrator at any stage of the proceedings on any matter pertaining to administration of this Ordinance.

Section 20. Severability.

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

Section 21. Sovereign Immunity.

Nothing in this Ordinance shall provide or be interpreted to provide a waiver of sovereign immunity of the Tribe or any entity of the Tribe, or their government officers, agents, and employees, from unconsented suit in Tribal, Federal, or State court, or administrative proceeding except to the extent expressly stated herein.

Section 22. Amendments.

This Ordinance may be amended only pursuant to a duly enacted Resolution of the Tribal Council.

Section 23 Effective Date.

This Ordinance shall become effective immediately upon adoption by the Tribal Council of the Picayune Rancheria of the Chukchansi Indians. Any prior Workers' Compensation Ordinance shall be repealed and replaced in its entirety, however such repeal shall not abate or prevent any pending claims from being commenced pursuant to the previous Workers' Compensation Ordinance, provided such claims are proper and occurred prior to the effective date of this Amended Workers' Compensation Ordinance.