

Yurok Tribal Code, Business and Labor

YUROK TRIBE WORKERS’ COMPENSATION ORDINANCE

Pursuant to its authority under Article IV, Section 5 of the Yurok Constitution, as certified on November 24, 1993, the Yurok Tribal Council hereby enacts the following ordinance for purpose of addressing work-related injuries, establishing workers’ compensation system for tribal employees and complying with Section 12.5 of the Tribal-State Gaming Compact between the Yurok Tribe and the State of California, published in the Federal Register on October 31, 2016 at 81 Fed. Reg. 75427.

TABLE OF CONTENTS

GENERAL PROVISIONS 2

 SECTION 4001. Short Title 2

 SECTION 4002. Findings 2

 SECTION 4003. Purpose 3

 SECTION 4004. Scope 3

 SECTION 4005. Exclusive Remedy 3

 SECTION 4005. Sovereign Immunity 3

 SECTION 4007. Severability 4

 SECTION 4008. Effective Date 4

 SECTION 4009. Repeal of Conflicting Ordinance Provisions 4

 SECTION 4010. Definitions 4

CHAPTER 1. CLAIMS ADMINISTRATION 7

 SECTION 4101. Claims Administrator Duties 7

 SECTION 4102. Claims Closure 9

 SECTION 4103. Confidentiality 9

CHAPTER 2. REPORTING OBLIGATIONS AND STATUTE OF LIMITATIONS 10

 SECTION 4201. Right to Notice 10

 SECTION 4202. Employee Reporting Obligations 11

 SECTION 4203. Statute of Limitations 11

CHAPTER 3. LIMITATIONS AND EXCLUSIONS 12

 SECTION 4301. Limitations 12

 SECTION 4302. Burden of Proof 12

 SECTION 4303. Compensability Exclusions 13

CHAPTER 4. WORKERS’ COMPENSATION BENEFITS 14

SECTION 4401. Comparability of Benefits	14
SECTION 4402. Medical Benefits	14
SECTION 4403. Temporary Disability Benefits	15
SECTION 4404. Permanent Impairment Benefits.....	16
SECTION 4405. Supplemental Job Displacement Voucher Benefits.....	16
SECTION 4406. Death Benefits	17
SECTION 4407. Medicare Set Asides.....	17
CHAPTER 5. DISPUTE RESOLUTION PROCESS	18
SECTION 4501. Dispute Resolution – Preliminary Requirements	18
SECTION 4502. Arbitration.....	19
CHAPTER 6. SUBROGATION AND RECOVERY	20
SECTION 4601. Subrogation Liens	20
SECTION 4602. Right to Reimbursement of Funds Paid in Error	21
SECTION 4603. Payments Induced by Fraud or Misrepresentation of a Material Fact.....	21

GENERAL PROVISIONS

SECTION 4001. Short Title

This ordinance shall be referred to as the “Yurok Workers’ Compensation Ordinance.”

SECTION 4002. Findings

The Yurok Tribal Council finds and declares that:

- (a) The Yurok Workers’ Compensation Ordinance has been adopted by the Council after careful thought and consideration pursuant to the Constitution of the Yurok Tribe in which the power and authority granted under Article IV, Section 5(a) states that the Council may “enact legislation, rules, and regulations not inconsistent with this constitution to further the objectives of the Yurok Tribe...”
- (b) There is a need to provide benefits for Employees who sustain injuries in the course and scope of employment, which includes sure and prompt medical treatment and fair, adequate, and reasonable income benefits to Employees and/or to Dependents.
- (c) In providing these benefits, the Yurok Tribe must also provide a fair and just administrative system for the delivery of medical and income benefits to injured Employees and / or to Dependents that eliminates the need for litigation and the adversary nature of the compensation proceedings, to the greatest extent possible.
- (d) It is beneficial to the Yurok Tribe and to all Employees to restore the injured Employee physically and economically to a pre-injury and/or self-sufficient status in an expeditious manner, to the greatest extent practicable.

- (e) It is necessary to provide the sole and exclusive source and means by which Employees and/or their Dependents may seek and qualify for remedies for Compensable Injuries.

SECTION 4003. Purpose

The purpose of the Yurok Workers' Compensation Ordinance is to establish a systematic and uniform procedure for administering workers' compensation benefits to all Employees of the Yurok Tribe, and to:

- (a) create and maintain a system for addressing workers' compensation claims fairly and in general conformity with accepted workers' compensation practices of the Yurok Tribe;
- (b) clearly define standards for compensability, available workers' compensation benefits, and a uniform procedure to administer same; and
- (c) provide a workers' compensation program that is equitable to all Employees and to the Yurok Tribe.

SECTION 4004. Scope

The Yurok Workers' Compensation Ordinance shall apply to all Employees of the Yurok Tribe including the Employees of its entities and businesses who sustain injuries, illnesses, or other conditions arising out of and occurring in the scope of employment, regardless of whether those injuries are sustained on or off the reservation and shall also apply to any Dependents who may be entitled to benefits or recovery under the terms of this Ordinance.

SECTION 4005. Exclusive Remedy

The Yurok Workers' Compensation Ordinance shall be the sole and exclusive method for obtaining compensation from the Yurok Tribe including its entities and businesses for any injuries, illness, condition, or death Arising out of Employment by the Tribe. The liability of the Tribe is limited to compensation provided under this Ordinance. Such liability shall not be expanded, broadened, enhanced, or otherwise increased except by amendment of this Ordinance by the Tribal Council.

SECTION 4006. Sovereign Immunity Preserved

- (a) In accordance with the Yurok Tribe's Supreme Ordinance, nothing in the Yurok Workers' Compensation Ordinance shall be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuits in tribal, federal, or state court, or as authorization for a claim for monetary damages against the Tribe.
- (b) The State of California's statutory workers' compensation system shall not apply to any Employees, nor shall any claims for workers' compensation benefits be subject to the California Labor Code, or any other workers' compensation laws, statutes, or regulations, or the Workers' Compensation Appeals Board of California (WCAB), or to the jurisdiction of any other court of law or equity.

SECTION 4007. Severability

If any provision of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this Ordinance are severable.

SECTION 4008. Effective Date

This ordinance shall take effect immediately after its adoption by Council.

SECTION 4009. Repeal of Conflicting Ordinance Provisions

All prior ordinance provisions previously enacted by the Tribal Council and inconsistent with the provisions of this ordinance are hereby repealed. If the provisions of this ordinance conflict with the provisions of any other previously enacted ordinance, the provisions of this ordinance shall control.

SECTION 4010. Definitions

- (a) “Administrator” means the agency responsible for managing the claims under the Yurok Tribe’s Workers’ Compensation Ordinance.
- (b) “Arise out of Employment” or “Arising out of Employment” means that an incident giving rise to occupational injury or illness must be causally related to the conditions and obligations of employment. Risks that are personal to the Claimant, for purposes of determining compensability, will not be construed to arise out of employment.
- (c) “Child” or “Children” means the child of an Employee, and shall also include an unborn child, a child legally adopted prior to the injury, a child toward whom the Employee legally stands in place of the parent, 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 person might also qualify as a child according to tribal custom as determined by the applicable Tribal law as interpreted by the Tribal Council or its appointed legal representative. A child will remain eligible for Death Benefits if they are:
 - (1) under the age of eighteen (18);
 - (2) under the age of twenty-three (23) and enrolled as a full-time student in an accredited university, college, or vocational school; or
 - (3) developmentally disabled and incapable of caring for themselves and are totally dependent on the Employee for primary support and maintenance.
- (d) “Claimant” means an Employee or a Dependent who follows the appropriate protocol to submit a claim for workers’ compensation benefits under this Ordinance, and who the Administrator determines has sustained a Compensable Injury.
- (e) “Compensable Injury” means a specific (resulting from one incident or exposure) or cumulative (result of repetitive or continuous activity or exposure) injury, illness, or condition, including damage to artificial limbs, dentures, hearing aids, eyeglasses, and medical braces of all types (provided that such damage is incidental to an injury), where such injury, illness, or condition meets the standards in this Ordinance. Where the primary injury, illness, or condition meets the standards set forth in this Ordinance, consequential injuries alleged to be

attributed to the Compensable Injury will be compensable only where there is objective medical evidence submitted by a physician or other medical professional approved by the Administrator which directly correlates such a consequence to the original injury, and where there is no intervening or superseding event.

- (f) “Course of Employment” means taking place within the period of employment, at a place where the Employee is reasonably expected to be, and while fulfilling his or her occupational duties or engaged in something incidental thereto. Injuries sustained while going to or coming from work will not be covered unless the journey itself is part of the service to the employer and there was no substantial deviation.
- (g) “Days” means calendar days unless otherwise expressly specified.
- (h) “Death Benefits” means funeral expenses and monetary compensation provided to a deceased Employee’s Dependents where the death of the Employee is the direct and causal result of a Compensable Injury.
- (i) “Dependent” or “Dependents” means the Spouse and/or Children of the deceased Employee, or to other family members if such family members were wholly dependent upon the deceased Employee at the time of death, at the sole decision of the Administrator.
- (j) “Employee” means a person employed by or in service of the Yurok Tribe or any of its entities, enterprises, agencies, offices, or departments under any contract of hire, express or implied, oral or written, under which such individual receives a salary or wages. Employee shall not include any person who qualifies as an independent contractor, contractor, outside consultant, or volunteer.
- (k) “Idiopathic” means injury to an Employee that arises spontaneously from an unknown or obscure etiology or cause, or a risk or injury that is peculiar to the Employee, the cause of which is precipitated not by an event that can be causally linked to employment specifically, but rather an activity of daily living.
- (l) “Independent Medical Examination” means an evaluation by a physician with Qualified Medical Examiner certification or equivalent qualifications, to resolve disagreements or disputes or otherwise performed to determine industrial causation, extent or existence of injury, disease, or illness, medical status, work status, permanent and stationary status, level of any impairment, entitlement to benefits, apportionment, or other similar attribute of an injury, illness, or condition.
- (m) “Permanent Partial Impairment” means a level of permanent disability at the time a permanent and stationary status (P&S) and/or maximum medical improvement (MMI) is achieved, as determined by a treating physician or as the result of an Independent Medical Examination using the *American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment*, which results in a whole person impairment rating of less than seventy percent (70%).
- (n) “Permanent Total Impairment” means a level of permanent disability at the time a permanent and stationary status (P&S) and/or maximum medical improvement (MMI) is achieved, as

determined by a treating physician or as the result of an Independent Medical Examination using the *AMA Guides to the Evaluation of Permanent Impairment*, which results in a whole person impairment rating of seventy percent (70%) or higher. There shall be no presumptions of Permanent Total Impairment under this Ordinance.

- (o) “Psychiatric Injury” means a mental disorder diagnosed pursuant to the *American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders*, which is medically attributable to employment by a preponderance of evidence, and which resulted in its entirety from a specific, traumatic employment event.
- (p) “Spouse” means the Employee’s legal husband or wife or domestic partner if the domestic partner cohabitated with the Employee at the time of the Compensable Injury.
- (q) “Temporary Partial Disability” means a non-permanent medical status that results in the Employee being able to perform modified or light work duties or reduced hours at the direction of or as determined by a physician approved by the Administrator, that results in diminished earnings when compared with the pre-injury average weekly wage.
- (r) “Temporary Total Disability” means a non-permanent medical status that results in the Employee being physically unable to perform any work at the direction of or as otherwise determined by a physician approved by the Administrator, that results in a complete loss of earnings.
- (s) “Tribal Medical Provider Network” or “TMPN” means the list of medical providers who are approved by the Tribe or the Administrator to render professional medical treatment, care, or services under this Ordinance.
- (t) “Tribe” means the Yurok Tribe, including any of its entities, enterprises, corporations, offices, agencies, branches, subdivisions, committees, or subparts, or any officers or employees acting at the direction of the Tribal Council.
- (u) “Supplemental Job Displacement Voucher” means the amount payable to a Claimant as compensation for the anticipated costs of vocational retraining or rehabilitation in order to return to gainful employment, where the Claimant sustains Permanent Partial Impairment as the result of a Compensable Injury and does not receive a bona fide offer of permanent modified or alternative work from the Tribe.
- (v) “Written Decision” means any of the following, when reduced to writing and sent to an Employee or Claimant or Dependent:
 - (1) the finding(s) and/or decision(s) of the Administrator to accept or deny, in full or in part, any aspect of a workers’ compensation claim; or
 - (2) determinations of entitlement by the Administrator of any available workers’ compensation benefit; or
 - (3) decisions made by the Administrator to close the claim; or

- (4) any other written finding, decision, or award under this Ordinance.

CHAPTER 1. CLAIMS ADMINISTRATION

SECTION 4101. Claims Administrator Duties

The Administrator is authorized to act and shall act on behalf of the Tribe in receiving, processing, and administering Workers' Compensation claims, including payment of benefits under this Ordinance. If the Administrator fails, or is alleged to have failed, to perform any of the duties or responsibilities outlined below will not as a matter of law or operation create any cause of action by any third party, nor will the right to benefits or recovery for any Employee and/or Claimant be expanded or presumed in such an event. The Administrator as an agent of the Tribe is entitled to the same protection from the unconsented jurisdiction of state or federal courts or administrative boards as the Tribe would be afforded.

- (a) The Administrator's general responsibilities include, but are not limited to:
 - (1) determining compensability and advising Claimants in writing of that determination or any limitations under the Ordinance that may impact their claim;
 - (2) making payments to Claimants under this Ordinance where required;
 - (3) processing and paying bills and reports submitted by authorized medical providers and other vendors;
 - (4) managing a trust account for the purpose of administering the Tribe's workers' compensation liabilities;
 - (5) making reports to the Tribe or its designated representatives regarding its program and information on claims where requested;
 - (6) making reports to the excess insurance carrier regarding its program and individual claims where required;
 - (7) participating in file reviews at the request of the Tribe or its designated representatives; and
 - (8) ensuring compliance with Medicare reporting where required.
- (b) The responsibility of the Administrator to make determinations and decisions on behalf of the Tribe shall require the following:
 - (1) conduct a thorough investigation of each claim filed, and complete initial contacts within seventy-two (72) hours of receipt of the claim or as soon as otherwise practicable;

- (2) issue a Written Decision to the Claimant within thirty (30) Days of receipt of the claim advising of the decision to either accept, deny, or further investigate a claim;
 - (A) where the claim is accepted, the Administrator shall establish a reserve on the file to reflect the anticipated exposure of the claim, with a detailed analysis of how the reserve was calculated, including an estimate of the benefits due and the duration and frequency of those benefits.
 - (B) where the claim is denied, the Administrator shall include in the Written Decision the specific basis for the denial and the steps for initiating the Tribe's dispute resolution process under this Ordinance.
 - (C) should the Administrator determine that further investigation is required, a detailed plan of action regarding the purpose of the investigation and what is sought to be discovered shall be established, best efforts shall be made to complete the investigation expeditiously, and under such circumstances a Written Decision outlining compensability should be made within ninety (90) Days from the date the claim was filed. During the pendency of this investigation, the Tribe through its Administrator shall be responsible for payment of up to ten thousand dollars (\$10,000.00) payable to medical providers for treatment relative to injuries filed and reported as part of the claim.
- (3) retain full medical control over workers' compensation claims for their duration. The Administrator shall determine the reasonableness and necessity of medical care and charges and shall determine amounts payable under this Ordinance. The Administrator shall promptly approve or disapprove any referrals, procedures, surgeries, or other medical requests made by approved and authorized medical providers. Disapproval of such requests shall not be arbitrary, but instead based upon sufficient justification, including but not limited to medical evidence to the contrary, peer review, utilization review, surveillance video, etc. A Claimant may request a referral to an alternate medical provider selected from the Tribal Medical Provider Network, and such request shall not be unreasonably disapproved by the Administrator;
- (4) determine the eligibility and compensation rate payable for benefits under this Ordinance, including Temporary Total Disability, Temporary Permanent Disability, Permanent Partial Disability, Permanent Total Disability, Supplemental Job Displacement Voucher, or Death Benefits.
 - (A) In the case of Death Benefits, the Administrator shall determine the eligibility of Dependents and the terms of any benefits payable.
 - (B) In the event of the need to allocate benefits between Dependents, the Administrator shall make the necessary allocation, based on the obligations, legal or otherwise, of the deceased Employee.

- (5) vigorously pursue any cause of action for subrogation or other claim for recovery which may apply.

SECTION 4102. Claims Closure

A claim that has been permanently closed will relieve the Tribe of any and all further liability associated with that claim, including any Medicare liens. The Administrator will permanently close a workers' compensation claim when any of the following circumstances occur:

- (a) the Administrator has paid a settlement to the Claimant under a general compromise and release. Nothing in this Ordinance shall impair the rights of the parties to compromise any claim for benefits due under this Ordinance or on account of a Compensable Injury. No settlement shall be paid without a general release signed by both parties and approved by the Tribe or its designated representative;
- (b) the Administrator has extended all workers' compensation benefits due under this Ordinance to any Claimant or Dependent;
- (c) an Employee, Dependent, Claimant, or any authorized representative thereof fails to appeal a Written Decision within the applicable Statute of Limitations;
- (d) a Claimant has unreasonably failed to follow-up with medical treatment or has failed to present for two consecutive medical appointments without good cause shown to the Administrator;
- (e) a claim has been presumed abandoned by Administrator, meaning no medical treatment authorized by the Administrator has been sought or pursued within one (1) year from the last date of authorized medical treatment by the Administrator. Once a claim has been determined by the Administrator to have been presumptively abandoned, no further medical treatment or care under this Ordinance will be afforded;
- (f) the Claimant has reached the point where no further material improvement would reasonably be expected from medical treatment, and all other benefits payable or due under this Ordinance have otherwise been exhausted or paid;
- (g) upon discovery of any issues impacting compensability or continuing benefits under this Ordinance resulting in a Written Decision;
- (h) an order or final decision rendered under the appellate process prescribed in this Ordinance;
- (i) any other reason determined by the Administrator or otherwise authorized by the Tribe or its designated representative.

SECTION 4103. Confidentiality

- (a) The information in the claim files, including any records, reports, or investigative materials pertaining to any claim under this Ordinance shall be deemed the exclusive property of the Tribe through its Administrator and is considered strictly confidential and shall not be open to public inspection or otherwise released. The following exceptions are allowed:
 - (1) a Claimant or authorized representative, upon the presentation of signed authorization of the Claimant, may receive copies of medical reports.
 - (2) in the event of arbitration under this Ordinance, any evidence used by the Administrator in arriving at the Written Decision shall be made available to the arbitrator.
 - (3) physicians or medical providers authorized by the Administrator may, at the discretion of the Administrator, inspect information contained within the claim files to facilitate determinations or recommendations relative to treatment or compensability.
- (b) The Administrator shall have the right to request full and complete medical records or reports from an Employee’s physicians or health care providers at any time and shall have the right to present specific related questions in order to appropriately or thoroughly evaluate the claim.

CHAPTER 2. REPORTING OBLIGATIONS AND STATUTE OF LIMITATIONS

SECTION 4201. Right to Notice

Any Employee, Dependent, Claimant, or their representative(s) who asserts any claim for remedy or benefit under the workers’ compensation afforded by the Tribe shall be conclusively presumed to do so in accordance with the tenants, conditions, and provisions of this Ordinance by virtue of employment with the Tribe. The Tribe is exercising its inherent sovereign authority in providing any benefits or remedies under this Ordinance. The Tribe shall provide the following notice to all Employees:

NOTICE TO EMPLOYEES

AS EMPLOYEES OF THE TRIBE OR ITS ENTERPRISES, YOU ARE INSURED FOR ON-THE-JOB INJURIES UNDER THE YUOK TRIBE WORKERS’ COMPENSATION ORDINANCE

If you are injured or sustain an occupational disease while at work, you may be entitled to benefits as provided by the Yurok Tribe Workers’ Compensation Ordinance. NOTIFY YOUR EMPLOYER IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT. If you fail to do so, you may lose your entitlement to benefits under this Ordinance. In no event shall benefits be paid to a worker who failed to notify their employer within thirty (30) Days after sustaining such work-related injury.

It is your responsibility to ensure a claim for benefits under this Ordinance is filed with the Tribe’s Administrator. You are required to file a claim for any work-related injuries, illnesses, or

occupational diseases no more than thirty (30) days after you have knowledge of them. It is your responsibility to obtain and complete any necessary forms.

Your exclusive remedy for any work-related injury, illness, or disease is through this Ordinance. The State’s Workers Compensation System has no authority to accept a claim from you as you are employed by the Tribe, a sovereign Indian Nation employer, which is exclusively under the jurisdiction of its own workers’ compensation system.

SECTION 4202. Employee Reporting Obligations

- (a) An Employee must report any injury, illness, or condition that is potentially related to employment, no matter how slight, to his or her supervisor immediately. A failure to adhere to this requirement could affect the compensability of the Employee’s claim. If an Employee’s supervisor is unavailable, immediate notice shall be provided to the insurance department.
- (b) If an Employee is incapacitated, another person may report the injury on the Employee’s behalf, immediately or as soon as practicable. In no event will any claim for benefits be accepted if filed or submitted after the expiration of the Statute of Limitations set forth in this Ordinance.
- (c) An Employee wishing to procure any benefits under this Ordinance must complete the required forms to initiate a claim. These claim forms include, but are not limited to:
 - (1) an Employer’s First Report of Injury;
 - (2) a signed statement from Employee as to how the incident occurred and the specific body parts affected, or illness or condition claimed;
 - (3) a post-accident investigation report;
 - (4) a Medical Authorization Release including a list of prior treatment providers; and
 - (5) an occupational injury questionnaire.
 - (A) A Supervisor, receiving a report or notice of any injury, illness, or condition that is potentially related to employment from an Employee, or on an Employee’s behalf as described in Section (b) above, must promptly provide notice to the Tribe’s designated individual or department within twenty-four (24) hours of receipt, or the next business day in the event of office closure.
 - (B) An Employee must cooperate in post-injury or post-accident drug screens where required by the Tribe in order to qualify as a Claimant eligible to receive workers’ compensation benefits under this Ordinance.

SECTION 4203. Statute of Limitations

- (a) Filing a Claim. No claim for workers' compensation benefits will be accepted and no benefits shall be afforded under this Ordinance if a claim is not reported within thirty (30) Days of the incident or accident giving rise to the injury, illness, or condition. If the specific date of incident or accident cannot be determined by the Employee or the Administrator, or in the case of cumulative injury or trauma, no claim for workers' compensation benefits will be accepted and no benefits shall be afforded under this Ordinance if a claim has not been reported within thirty (30) Days from the date that the Employee either knew, or in the exercise of reasonable diligence should have known that the injury, illness, or condition was related to employment.
- (b) Appealing a Written Decision. If any Employee, Claimant, Dependent, or their representative(s) disagree with any Written Decision of the Administrator, they may appeal in writing within thirty (30) Days. Failure to submit an appeal within this timeframe will render the Administrator's decision final and binding, with no further rights to appeal.
- (c) Reopening a Claim. The Administrator has discretion to reopen a closed claim with new, additional, or previously undiscovered medical findings. In no case shall the Administrator's discretion be permitted once a claim has been closed for one (1) year.

CHAPTER 3. LIMITATIONS AND EXCLUSIONS

SECTION 4301. Limitations

- (a) The liability of the Tribe for a claim shall be limited to the compensation for Compensable Injuries, or to the compensation for death of the Employee to Dependents where the Compensable Injury proximately caused the death.
- (b) Any compensation, settlement offer, or award, including an arbitral award, paid or otherwise owed to any Claimant or Dependent shall be subject to each and every one of the following limitations and conditions:
 - (1) the Employee or Dependent(s) have properly complied with the requirements of this Ordinance;
 - (2) no compensation shall be available from any individual Tribal representative;
 - (3) no injunctive, declaratory, or other relief shall be available;
 - (4) no punitive damages in any amount shall be available;
 - (5) no interest of any kind shall be available;
 - (6) any offer of settlement made by the Tribe, its Administrator, or any workers' compensation insurance carrier or agent shall be automatically withdrawn when the Claimant initiates arbitration under this Ordinance.

SECTION 4302. Burden of Proof

The burden of proof shall rest upon the Employee, or Dependents in the case of any work-related death of an Employee, to prove that:

- (a) the injury, illness, disease, or condition alleged was a result of Compensable Injury;
- (b) the Compensable Injury Arises out of Employment;
- (c) the Compensable Injury was in the Course of Employment; and
- (d) no other limitations or exclusions apply.

SECTION 4303. Compensability Exclusions

No claim for workers' compensation benefits will be accepted, nor will payment of any workers' compensation benefits be paid or continued, nor will any incident or accident otherwise qualify as a Compensable Injury if the Tribe finds or discovers any of the following:

- (a) the claim was not filed within the Statute of Limitations under this Ordinance;
- (b) the Compensable Injury did not both Arise out of Employment and occur within the Course of Employment;
- (c) the injury, illness, or disease claimed is determined to have been proximately caused by intoxication due to alcohol, illegal drugs, or the unlawful use of any other controlled substance;
- (d) the injury was intentionally self-inflicted;
- (e) the Employee unreasonably refused to obey written safety instructions or utilize required personal protective equipment (PPE) or other safety apparatus, where adherence would have prevented or significantly reduced the likelihood of injury or death;
- (f) the Employee committed suicide;
- (g) the injury resulted from an altercation in which the Employee was the initial aggressor;
- (h) the injury occurred during the commission of a felony, crime, or misdemeanor by the Employee;
- (i) the injury arose out of voluntary participation in an off-duty recreational, social, or athletic activity that is not part of the Employee's usual and customary duties;
- (j) the claim was filed after notice of termination or layoff and the Administrator determined it to be retaliatory in nature;
- (k) the injury is deemed to have been Idiopathic;

- (l) the injury resulted from participation in horseplay, however this shall not apply to an Employee who was a victim of horseplay as opposed to being an active participant;
- (m) the injury is a Psychiatric Injury, or is otherwise to be any other emotional or mental injury, except where:
 - (1) such injury is the direct result of a sudden and extraordinary, severe, or extreme employment event; or
 - (2) such injury is the predominant and proximate result of a serious Compensable Injury.
- (n) an Employee refuses to cooperate in the investigation of the claim, thus impeding the Administrator's right to discovery;
- (o) any aspect of the claim or benefit is based on a misrepresentation or willful omission of material fact;
- (p) the injury is determined to have been a flare-up or exacerbation of a pre-existing injury, illness, or condition where no aggravation or worsening of symptoms are attributable to any attribute of employment or where work just served as the stage for the incident to occur without specific industrial causation.

CHAPTER 4. WORKERS' COMPENSATION BENEFITS

SECTION 4401. Comparability of Benefits

Workers' Compensation Benefits payable to any Employee or Claimant or Dependent under this Ordinance shall be comparable to those mandated for comparable employees or dependents under California state law; provided however that nothing in this Ordinance is intended to nor shall be construed as an agreement, express or implied, to be subject to any provision of California state law, nor does the Tribe make any waiver of sovereign immunity, express or implied.

SECTION 4402. Medical Benefits

- (a) A Claimant shall be entitled to all medical, surgical, hospital, or dental treatment and any therapy, durable medical equipment, medications, diagnostic testing, radiology, and any other related medical service, as requested or prescribed by a provider authorized and approved by the Administrator and on the Tribal Medical Provider Network.
- (b) The Administrator on behalf of the Tribe shall retain medical control for the life of the claim, subject to the following:
 - (1) Life threatening, Serious, or Severe Injury. Where an Employee has sustained a serious or severe injury which requires immediate emergency medical attention, the Employee should

go to the nearest emergency room or urgent care facility. All subsequent treatment is subject to the medical control of the Tribe through its Administrator and/or to the Tribal Medical Provider Network.

- (2) Minor Injury. Where an Employee has sustained a minor Injury and has been directed to go to a health care provider for one-time first aid or similar care.
- (c) Where deemed appropriate by an approved medical provider authorized by the Administrator, when a condition reaches maximum medical improvement (MMI) and/or a permanent and stationary (P&S) status, and future and/or supportive medical benefits is necessary, such benefits shall be provided for the duration provided for in the report, subject to any applicable provisions of this Ordinance.
- (d) The algorithms and treatment recommendations prescribed by the American College of Occupational and Environmental Medicine (ACOEM) guidelines may be used to determine the appropriateness of a recommended treatment but shall have no binding affect upon the Tribe.
- (e) Neither the Tribe nor the Administrator shall be responsible for any bill or amount in excess of what is allowable under the California fee schedule for similar bills in the statutory system.

SECTION 4403. Temporary Disability Benefits

- (a) The Tribe has established a Return-to-Work program. Best efforts will be made to accommodate light duty or modified work duty as prescribed by an authorized and approved physician.
- (b) Where light duty or modified duty results in diminished wages compared to the pre-injury average weekly wage of the Claimant, Temporary Partial Disability (TPD) benefits will be paid. The amount of TPD will be sixty-six and two-thirds percent (66 2/3%) of the difference between actual weekly earnings during the period of modified and/or light duty and the pre-injury average weekly wage, subject to any recognized maximums.
- (c) Where no light duty or modified duty can be accommodated under the Tribe's Return-to-Work program, or where Claimant is deemed temporarily totally disabled by an authorized and approved physician, Temporary Total Disability (TTD) benefits will be paid. The amount of TTD benefits will be sixty-six and two-thirds percent (66 2/3%) of the pre-injury average weekly wage, subject to any recognized maximums, subject to the following:
 - (1) TTD benefits shall not be paid during the first three (3) days of lost earnings unless a Claimant is hospitalized or is deemed temporarily totally disabled for fourteen (14) days or more;
 - (2) the maximum duration of TTD benefits payable is one-hundred four (104) weeks;

- (3) no TTD benefits will be paid under any of the following circumstances:
- (A) claimant is incarcerated;
 - (B) claimant does not have authorization by an approved medical provider to be off work;
 - (C) claimant is terminated for misconduct, quits work, or declines a bona fide offer of light or modified duties by the Tribe; or
 - (D) claimant receives wages from any source during any period where an approved physician had determined Claimant to be temporarily totally disabled.
- (d) A Claimant's pre-injury average weekly wage shall be calculated by adding all reported earnings for one year preceding the date of injury and dividing the resulting amount by fifty-two (52), unless:
- (1) claimant has been employed for less than a year, in which case the pre-injury average weekly wage shall be calculated by adding all reported earnings for the actual period worked prior to the date of injury and dividing the resulting amount by the number of applicable weeks worked; or
 - (2) claimant has worked for less than a week, in which case the pre-injury average weekly wage will be calculated by multiplying the Claimant's hourly rate by the number of hours for which they were hired or expected to work.

SECTION 4404. Permanent Impairment Benefits

- (a) Permanent Partial Disability benefits will be paid pursuant to the schedule of benefits recognized for similar injuries under comparable California workers' compensation law.
- (b) Permanent Total Disability benefits will be paid to a Claimant for life or until a settlement is reached, but they shall not inure to any Dependent upon death of the injured Claimant.
- (c) The Tribe shall not be responsible for any portion of Permanent Partial Disability or Permanent Total Disability that is attributable to a condition, disease, illness, or injury that the Administrator finds is pre-existing or non-industrial in nature.
- (d) In no event shall Permanent Partial Disability for any and all injuries combined exceed an aggregate total of 100% of whole person impairment under the *AMA Guides to the Evaluation of Permanent Impairment*.

SECTION 4405. Supplemental Job Displacement Voucher Benefits

- (a) Supplemental Job Displacement benefits shall be included as an extra percentage of Permanent Partial Disability where the Employer was either unable to accommodate the

permanent modified duties prescribed by the physician authorized by the Administrator at the time maximum medical improvement (MMI) is opined or would not have been able to accommodate had the Employee still been employed at the time MMI was reached.

- (b) Where the Administrator permits, in lieu of paragraph (a) above, Supplemental Job Displacement benefits may be paid to the Claimant in the form of a voucher, the amount of which depends on the percentage of Permanent Partial Disability sustained, as follows:
 - (1) for a permanent impairment rating of less than 15%, a maximum amount of \$4,000.00
 - (2) for a permanent impairment rating of 15% through 25%, a maximum amount of \$6,000.00
 - (3) for a permanent impairment rating of 26% through 49%, a maximum amount of \$8,000.00
 - (4) for a permanent impairment rating of 50% through 99%, a maximum amount of \$10,000.00.
 - (5) for a 100% impairment rating, the Claimant will be considered Permanently Totally Disabled, and therefore not eligible for any Supplemental Job Displacement benefits.

SECTION 4406. Death Benefits

- (a) Where all other conditions of this Ordinance have been met, Death Benefits will be payable to Dependents of the deceased Claimant as determined by the Administrator.
- (b) The amount of Death Benefits owed to Dependent(s) will be generally comparable to those provided to similar dependents under California workers' compensation law.
- (c) The Administrator is authorized to pay Death Benefits on a bi-weekly basis, at a rate commensurate to what would have been paid under Temporary Total Disability benefits but for the death, or alternatively can be paid in a lump sum at a reasonable present day value calculation determined by the Administrator and subject to the acquiescence of the Dependent(s).

SECTION 4407. Medicare Set Asides

- (a) The Medicare/Medicaid SCHIP Extension Act (MMSEA) sets forth reporting requirements for insurers where criteria established under the Act have been met. The Tribe recognizes those requirements (*see, e.g. Section 7.1 of the NGHP User Guide*), and nothing herein shall prevent the Administrator from protecting Medicare's interests where required to do so.
- (b) Where a Claimant is entitled to supportive medical care after Maximum Medical Improvement (MMI) is achieved, such supportive care, including treatment and duration, will only be provided as specified by a medical provider authorized by the Administrator.

- (c) Where a claim has been closed due to abandonment, award, or settlement, neither the Tribe, nor its insurer, nor the Administrator shall have any further obligation to pay benefits under this Ordinance, inclusive of any subsequent Medicare liens.

CHAPTER 5. DISPUTE RESOLUTION PROCESS

SECTION 4501. Dispute Resolution – Preliminary Requirements

- (a) **Written Appeal Required.** In the event of any disagreement or dispute on any Written Decision, an Employee or Claimant or Dependent or their representative(s) must submit a written appeal to the Administrator within thirty (30) Days from the date of the Written Decision. Failure to submit a written appeal will render the Written Decision final and binding, and any further appeals under this Ordinance shall be permanently waived.
- (b) **Contents of Written Appeal.** Any written appeal submitted must include the following information, at a minimum, as a condition precedent to being considered, and no written appeal will be deemed valid unless the following requirements are met:
 - (1) the name of the Employee or Dependents and the claim number assigned by the Administrator;
 - (2) the Employee’s or Dependent(s)’ physical address;
 - (3) the reason(s) for the disagreement or dispute; and
 - (4) any applicable evidence to be considered to support the basis for the disagreement or dispute.
- (c) **Availability of an Independent Medical Examination.** Where the basis for the disagreement or dispute is surrounding any medical determination relative to any claim under this Ordinance, the Administrator shall arrange for an Independent Medical Examination (IME), subject to the following provisions:
 - (1) the costs for the IME shall be borne by the Tribe through its Administrator;
 - (2) any further appeal will be stayed pending the written findings of the IME;
 - (3) the IME’s findings will be final. Where the Administrator determines the IME’s findings to be incomplete or to not have adequately or appropriately addressed the nature of the disagreement or dispute, a supplemental report may be requested;
 - (4) an Employee who unreasonably fails to present for a scheduled IME hereby waives the rights to any further disagreements or disputes surrounding any medical determination under this Ordinance; and

- (5) in instances where an Employee is reasonably unavailable as determined by the Administrator, an IME can be requested to review the disagreement or dispute with a copy of all medical records applicable to the claim that are in the Administrator's possession, along with any other applicable evidence submitted to support the basis for the disagreement or dispute.
- (d) Administrator Review of Written Appeal. Upon the receipt of any written appeal submitted by an Employee or Claimant or Dependent or their authorized representative(s), the Administrator shall:
- (1) certify whether the written appeal satisfies the contents requirements pursuant to Section 1501(b);
 - (2) if certified, the Administrator shall respond in writing within ninety (90) Days advising whether the Written Decision giving rise to the written appeal will be upheld, amended, overturned, or otherwise reconsidered, along with the justification for same;
 - (3) if not certified, the Administrator shall respond in writing advising of the defects and provide an opportunity to re-submit the written appeal. An opportunity to re-submit does not extend the thirty (30) Day requirement for written appeals from the date of the Written Decision.
 - (4) Where the Administrator has not responded in writing within ninety (90) Days, the Written Decision that preceded the written appeal shall stand.

SECTION 4502. Arbitration

- (a) Timeframe to Request Arbitration. Where the requirements of Section 4501 of this Ordinance have been met, an Employee or Claimant or Dependent or their authorized representative(s) may request final arbitration within thirty (30) Days from:
 - (1) the Administrator's response in writing to the written appeal under Section 1502(d)(2) above; or
 - (2) the ninetieth (90th) Day of the written appeal if the Administrator has not responded under Section 4502(d)(4).
- (b) A failure to make a timely request for arbitration for any reason will forever bar further appellate remedy and will render the Administrator's Written Decision final and binding.
- (c) Selection of Arbitrator. The Tribe shall appoint an independent arbitrator to preside over the arbitration process, including all related hearings.
- (d) Applicable Law. The internal laws of the Tribe shall govern all aspects of the arbitration, provided however that an appointed independent arbitrator may use comparable California

state workers' compensation law as a non-binding source of reference in resolving disputes or rendering findings.

- (e) **Timing of Arbitration Hearing.** Where a timely request for arbitration is made, an arbitration hearing shall be scheduled within sixty (60) days of the request. The arbitrator shall:
 - (1) have the authority to extend the hearing date no more than one hundred and eighty (180) Days;
 - (2) be bound by this Ordinance and any other laws, civil procedures, regulations, or practices of the Tribe;
 - (3) take all steps necessary to ensure an equitable, orderly, and expeditious review;
 - (4) in no instance make any ruling or otherwise take any action that subjects or purports to subject the Tribe or Administrator to any law, court, forum, or venue outside of this Ordinance;
 - (5) regulate all aspects of the arbitration including, but not limited to, the administering of applicable oaths and affirmations, admissibility of evidence, and admissibility of expert or lay witness testimony;
 - (6) issue findings in writing to the parties within thirty (30) Days from the date of the arbitration hearing.

- (f) **Rules of Arbitration.** Parties that wish to submit evidence or have it reviewed as part of the arbitration hearing must submit true copies to the opposing party no later than fifteen (15) days prior to the hearing date. By submitting to the arbitration hearing, parties hereby acknowledge this represents the final appellate process for any workers' compensation claim and presumptively agree to abide by the arbitrator's written findings. Neither consent to arbitration nor agreement to participate in the arbitration hearing shall be construed as a waiver of the Tribe's sovereign immunity, nor does the Tribe consent to enforcement of this provision by any other court, forum, or venue, except as provided by this Ordinance.

- (g) **Enforcement of Arbitration Findings to Tribal Council.** Parties to the arbitration may request a hearing before Tribal Council where necessary to enforce the arbitrator's findings. Under no circumstance will any assets or revenues of the Tribe be used to satisfy any arbitration findings. Tribal Council, as a means of enforcement of the arbitrator's written findings, may only use the following sources to satisfy a judgment:
 - (1) a valid policy of workers' compensation insurance up to the available limit;
 - (2) funds specifically set aside or designated by the Tribe for payment of workers' compensation benefits; or
 - (3) proceeds of any other applicable insurance policies.

CHAPTER 6. SUBROGATION AND RECOVERY

SECTION 4601. Subrogation Liens

Nothing in this Ordinance shall impair the rights of the Tribe or the Administrator to file a subrogation lien in any action or to enter as a plaintiff to pursue any recovery to which the Tribe may be entitled.

SECTION 4602. Right to Reimbursement of Funds Paid in Error

If the Tribe or the Administrator make any payment under this Ordinance a result of clerical error, mistaken identity, negligent misrepresentation of an immaterial fact, or other similar circumstance that is not the subject of fraud or intentional misrepresentation, the Tribe or the Administrator hereby reserve their respective rights to request reimbursement of any such payment to any recipient, but they may waive such right at their sole discretion.

SECTION 4603. Payments Induced by Fraud or Misrepresentation of a Material Fact

If the Tribe or the Administrator have been fraudulently induced to make any payments under this Ordinance, either by a willful omission or intentional misrepresentation of a material fact, the recipient shall be required to repay such payment, along with a penalty of fifty percent (50%) of the payment amount, provided that the demand for repayment must be made within one (1) year of discovering the fraud.

C*E*R*T*I*F*I*C*A*T*I*O*N

THE FOREGOING ORDINANCE, ENTITLED THE _____ ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUROK TRIBAL COUNCIL ON _____, 20____, AT WHICH QUORUM WAS PRESENT, AND THIS ORDINANCE WAS ADOPTED BY A VOTE OF ___ FOR, ___ OPPOSED AND ___ ABSTENTIONS IN ACCORDANCE WITH ARTICLE IV, SECTION 5(j) OF THE CONSTITUTION OF THE YUROK TRIBE.

DATED THIS ___ DAY OF _____ 20__

Joseph L. James, Chairperson

Yurok Tribal Council

ATTEST:

Sherri K. Provolt, Secretary

Yurok Tribal Council