

## TITLE XIII. WORKERS' COMPENSATION CODE

### CHAPTER 1. MASHANTUCKET PEQUOT TRIBAL WORKERS' COMPENSATION COMMISSION

#### Section 1. Definitions

As used in this Chapter, unless the context otherwise provides:

a. "Arising Out of and in the Course of His Employment" means an accidental injury happening to an employee or an occupational disease of an employee originating while he has been engaged in the line of his duty in the business or affairs of the employer upon the employer's premises, or while engaged elsewhere upon the employer's business or affairs by the direction, express or implied, of the employer, provided:

(1) a personal injury shall not be deemed to arise out of the employment unless causally traceable to the employment other than through weakened resistance or lowered vitality;

(2) in the case of an accidental injury, a disability or a death due to the use of alcohol or narcotic drugs shall not be construed to be a compensable injury. "Narcotic drugs" means any illegal or controlled substance, but does not include drugs prescribed in the course of medical treatment or in a program of research operated under the direction of a physician or pharmacologist;

(3) for aggravation of a pre-existing injury or occupational disease, compensation shall be allowed only for that proportion of the disability or death due to the aggravation of the pre-existing injury or occupational disease as may be reasonably attributed to the injury upon which the claim is based.

b. "Commission" means the Mashantucket Pequot Tribal Workers' Compensation Commission.

c. "Commissioner" means the Mashantucket Pequot Tribal Compensation Commissioner who has jurisdiction in the matter referred to in the context.

d. "Compensation" means benefits or payments mandated by this Code, including, but not limited to, indemnity, medical and surgical aid or hospital and nursing service required under Section 15 of Chapter 2, and any type of payment for disability, whether for total or partial disability of a permanent or temporary nature, death benefit, funeral expense, payments made under the provisions of Sections 12 and 14 of Chapter 2, or any adjustment in benefits or payments required by this Chapter.

e. "Date of the Injury" means, for an occupational disease, the date of total or partial incapacity to work as a result of such disease.

f. "Dependent" means a member of the injured employee's family or next of kin who was wholly or partly dependent upon the earnings of the employee at the time of the injury.

g. "Dependent in Fact" means a person determined to be a dependent of an injured employee, in any case where there is no presumptive dependent, in accordance with the facts existing at the date of the injury.

h. "Disfigurement" means impairment of or injury to the beauty, symmetry or appearance of a person that renders the person unsightly, misshapen or imperfect, or deforms the person in some manner, or otherwise causes a detrimental change in the external form of the person.

i. "Employee" means any person who has entered into or works under any contract of service or apprenticeship with the employer, whether the contract contemplated the performance of duties within or without the Mashantucket Pequot Reservation or is a salaried officer or paid member of the Mashantucket Pequot Tribal Public Safety Department. "Employee" shall not be construed to

include any person to whom articles or material are given to be treated in any way on premises not under the control or management of the person who gave them out or one whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business.

j. "Employer" means the Mashantucket Pequot Tribal Nation, its enterprises, governmental divisions or departments thereof, including the Mashantucket Pequot Gaming Enterprise and Pequot Pharmaceutical Network, but does not include any tribal entity formally incorporated under the laws of any state.

k. "Full-Time Student" means any student enrolled for at least 75% of a full-time student load at a post secondary educational institution which has been approved by a state-recognized or federally-recognized accrediting agency or body. "Full-time student load" means the number of credit hours, quarter credits or academic units required for a degree from such institution, divided by the number of academic terms needed to complete the degree.

l. "He" or "His" means he or she, his or her.

m. "Medical and Surgical Aid or Hospital and Nursing Service", when requested by an injured employee and approved by the Commissioner, includes treatment by prayer or spiritual means through the application or use of the principles, tenets or teachings of any established church without the use of any drug or material remedy, provided sanitary and quarantine regulations are complied with, and provided all those ministering to the injured employee are bona fide members of such church.

n. "Member" includes all parts of the human body referred to in Section 12 of Chapter 4.

o. "Nursing" means the practice of nursing by a registered nurse under the direction of a licensed physician or dentist.

p. "Occupational Disease" includes any disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such, and includes any disease due to or attributable to exposure to or contact with any radioactive material by an employee in the course of his employment.

q. "Personal Injury" or "Injury"

(1) "Personal injury" or "Injury" includes, in addition to accidental injury which may be definitely located as to the time when and the place where the accident occurred, an injury to an employee which is causally connected with his employment and is the direct result of repetitive trauma or repetitive acts incident to such employment, and occupational disease.

(2) "Personal injury" or "Injury" shall not be construed to include:

(a) an injury to an employee which results from his voluntary participation in any activity the major purpose of which is social or recreational, including, but not limited to, athletic events, parties and picnics, whether or not the employer pays some or all of the cost of such activity;

(b) a mental or emotional impairment, unless such impairment arises from a physical injury or occupational disease; or

(c) a mental or emotional impairment which results from a personnel action, including, but not limited to, a transfer, promotion, demotion, or termination.

r. "Physician" includes any person duly licensed and authorized to practice a healing art including the practice of medicine, osteopathy, chiropractic, podiatry, naturopathy, and optometry.

s. "Presumptive Dependents" means the following persons who are conclusively presumed to be wholly dependent for support upon a deceased employee:

(1) a wife upon a husband with whom she lives at the time of his injury or from whom she receives support regularly;

(2) a husband upon a wife with whom he lives at the time of her injury or from whom he receives support regularly;

(3) any child under the age of 18, or over the age of 18 but physically or mentally incapacitated from earning, upon the parent with whom he is living or from whom he is receiving support regularly, at the time of the injury of the parent;

(4) any unmarried child who has attained the age of 18 but has not attained the age of 22 and who is a full-time student, upon the parent with whom he is living or from whom he is receiving support regularly, provided, any child who has attained the age of 22 while a full-time student but has not completed the requirements for, or received, a degree from a post secondary educational institution shall be deemed not to have attained the age of 22 until the first day of the first month following the end of the quarter or semester in which he is enrolled at the time, or if he is not enrolled in a quarter or semester system, until the first day of the first month following the completion of the course in which he is enrolled or until the first day of the third month beginning after such time, whichever occurs first.

t. "Previous Disability" means an employee's pre-existing condition caused by the total or partial loss of, or loss of use of, any member of his body resulting from accidental physical injury, occupational disease or congenital causes, or other permanent physical impairment.

u. "Scar" means the mark left on the skin after the healing of a wound or sore, or any mark, damage or lasting effect resulting from past injury.

**Section 2. Workers' Compensation Commission. Chief Commissioner and Commissioners. Appointment by the Mashantucket Pequot Tribal Council. Terms of Office. Removal**

a. There shall be a Mashantucket Pequot Workers' Compensation Commission to administer the Mashantucket Pequot Tribal Workers' Compensation Code. There shall be one full-time Mashantucket Pequot Tribal Workers' Compensation commissioner, and part-time commissioners as are necessary to effectively carry out the duties of the Commission. Commissioners shall be appointed by the Tribal Council and shall serve for a term of three years. The full-time commissioner shall serve as chief commissioner of the tribal Workers' Compensation Commission. On or before the date of the expiration of the term of each commissioner or upon the occurrence of a vacancy in the office of any commissioner for any reason, the Tribal Council shall appoint a competent person to fill that office.

b. Each commissioner shall be sworn to a faithful performance of his duties. The Tribal Council may remove any commissioner for cause. The chief commissioner shall devote all of his time to the duties of his office and shall not be otherwise gainfully employed.

**Section 3. Salary of Compensation Commissioners**

The Tribal Council shall determine the annual salary and compensation of the commissioners.

**Section 4. Powers and Duties of Commissioners**

The commissioner shall hear all claims and questions arising under this Code. The commissioner shall have power to summon and examine under oath such witnesses, and may direct the production of, and examine or cause to be produced or examined, such books, records, vouchers, memoranda, documents, letters, contracts or other papers in relation to any matter at issue as he may find proper, and shall have the power to order depositions. He shall have power to certify to official acts and shall have all powers necessary to enable him to perform the duties imposed upon him by the provisions of this Code.

**Section 5. Notice of Availability of Compensation; Regulations. Employer-sponsored Plan for Medical Care and Treatment**

a. The chief commissioner shall adopt regulations specifying the minimum information to be contained in a notice of the availability of compensation which shall be posted in the workplace by each employer.

b. On or after the enactment of this Code, the employer or any insurer acting on behalf of an employer, may establish a plan, subject to the approval of the chief commissioner, under subsection (c) of this Section, setting forth the provision of medical care which the employer provides for the treatment of any injury or illness under this Code. Each plan shall contain such information as the chief commissioner shall require, including, but not limited to:

- (1) a listing of all persons who will provide services under the plan, along with appropriate evidence that each person listed has met any licensing, certification or registration requirement necessary for the person to legally provide the required service;
- (2) a designation of the times, places and manners in which the services will be provided;
- (3) a description of how the quality and quantity of medical care will be managed and directed as is reasonably necessary to control the employer's workers' compensation costs, track occupational injuries and diseases, and account for workers' compensation claims; and
- (4) such other provisions as the employer and the employees may agree to, subject to the approval of the chief commissioner.

The election by an employee covered by a plan established under this subsection to obtain medical care and treatment from a provider of medical services who is not listed in the plan shall suspend his right to compensation, subject to the order of the chief commissioner.

c. The plan established by subsection (b) of this Section may include, but not be limited to the following standards:

- (1) the ability of the plan to provide all medical and health care services that may be required under this Code in a manner that is timely, effective and convenient for the employees;
- (2) the inclusion in the plan of all categories of medical service and of an adequate number of providers of each type of medical service in accessible locations to ensure that employees are given an adequate choice of providers;
- (3) the provision in the plan for appropriate financial incentives to reduce service costs and utilization without a reduction in the quality of service;
- (4) the inclusion in the plan of fee screening, peer review, service utilization review and dispute resolution procedures designed to prevent inappropriate or excessive treatment; and
- (5) the inclusion in the plan of a procedure by which information on medical and health care service costs and utilization will be reported to the chief commissioner in order for him to determine the effectiveness of the plan.

**Section 6. Booklet to be Distributed Explaining Code**

The chief commissioner shall prepare, publish and distribute an illustrated booklet explaining, in informal and readily understandable language, employee benefits and responsibilities under the Mashantucket Pequot Tribal Workers' Compensation Code. The chief commissioner shall prepare, publish and distribute revisions to such booklet whenever changes in the tribal Workers' Compensation Law necessitates such revision.

**Section 7. Workers' Compensation Chief Commissioner. Powers and Duties. Budget. Report of Expenses**

a. The chief commissioner may hear any matter arising under this Code. The chief commissioner shall prepare the forms used by the commission and cause to be published decisions of the commission. The chief commissioner shall be provided with sufficient staff to assist him in the performance of his duties. The chief commissioner may, within available appropriations, appoint acting tribal Workers' Compensation commissioners on a per diem basis from qualified members of the bar of the Mashantucket Pequot Tribal Court which shall have all the powers and duties of a compensation commissioner.

b. In addition, the tribal Workers' Compensation chief commissioner shall:

- (1) adopt such rules as he deems necessary for the conduct of the internal affairs of the Mashantucket Pequot Tribal Workers' Compensation Commission;
- (2) adopt regulations to carry out his responsibilities under this Code;
- (3) prepare and adopt an annual budget and plan of operation;
- (4) prepare and submit an annual report to the Tribal Council;
- (5) establish an organizational structure and such divisions for the commission, consistent with this Code, as he deems necessary for the efficient and prompt operation of the commission;
- (6) establish policy for all matters over which the commission has jurisdiction, including rehabilitation, education and statistical support;
- (7) control the hearing calendars of the compensation commissioners;
- (8) direct and supervise all administrative affairs of the commission;
- (9) collect and analyze statistical data concerning the administration of the Mashantucket Pequot Tribal Workers' Compensation Commission;
- (10) direct and supervise the implementation of a uniform case filing and processing system that will include, but not be limited to, the ability to provide data on the number of cases having multiple hearings, the number of postponed hearings and hearing schedules;
- (11) establish staff development, training and education programs designed to improve the quality of service provided by the Commission, including, but not limited to, a program to train staff in the screening of hearing requests;
- (12) develop standard forms for requesting hearings and standard policies regarding limits on the number of informal hearings that will be allowed under this Chapter, and limits on the number of postponements that will be permitted before a formal hearing is held pursuant to Section 11 of Chapter 2;
- (13) develop guidelines for expediting disputed cases; and
- (14) evaluate the performance of each commissioner biannually and make the performance evaluation of any commissioner available to the Tribal Council and to the members of the Judicial Review Committee. Any information disclosed to such persons shall be used by such persons only for the purpose for which it was given and shall not be disclosed to any other person.

c. In furtherance of the effective implementation of this Code, it is anticipated that the chief commissioner also will do the following:

- (1) establish
  - (a) an approved list of practicing physicians, surgeons, podiatrists, optometrists and dentists from which an injured employee shall choose for

examination and treatment under the provisions of this Chapter, which shall include, but not be limited to, classifications of approved practitioners by specialty, and

(b) standards for the approval and removal of physicians, surgeons, podiatrists, optometrists and dentists from the list by the commissioner;

(2) establish

(a) standards for approving all fees for services rendered under this Code by attorneys, physicians, surgeons, podiatrists, optometrists, dentists and other persons, and

(b) a fee schedule setting the fees payable by the employer or its insurance carrier for services rendered under this Code by an approved physician, surgeon, podiatrist, optometrist or dentist, provided the fee schedule shall not apply to services rendered to a claimant who is participating in an employer's managed care plan pursuant to Section 5 of Chapter 1. The fee schedule shall limit the annual growth in total medical fees to the annual percentage increase in the consumer price index for all urban workers or a comparable index approved by the chief commissioner. Payment of the established fees by the employer or its insurance carrier shall constitute payment in full to the practitioner, and the practitioner may not recover any additional amount from the claimant to whom services have been rendered, and publish annually thereafter, and

(c) publish annually guidelines for the maximum fees payable by a claimant for any legal services rendered by an attorney in connection with the provisions of this Code, which fees shall be approved in accordance with the standards established by the chief commissioner pursuant to this subsection;

(3) may establish an ongoing training program designed to assist the commissioners in the fulfillment of their duties pursuant to the provisions of Section 4 of Chapter 1, which program shall include instruction in the following areas: discovery, evidence, statutory interpretation, medical terminology, legal decision writing and the purpose and procedures of informal and formal hearings.

d. The chief commissioner may appoint, in consultation with the Tribal Council, such supplementary advisory panels as the chief commissioner deems necessary and appropriate to the effective implementation of this Code.

e. The chief commissioner, as soon as practicable after September first of each year, shall submit to the Tribal Council an estimated budget of expenditures which shall include all direct and indirect costs incurred by the commission for the succeeding fiscal year commencing on October first next. The commission, for the purposes of administration, shall not expend more than the amounts specified in such estimated budget for each item of expenditure except as authorized by the Tribal Council. The chief commissioner shall include in his annual report to the Tribal Council a statement showing the actual expenses of administering the Mashantucket Pequot Tribal Workers' Compensation Code for the preceding fiscal year.

f. The chief commissioner and the Tribe's chief financial officer shall, as soon as practicable after September first in each year, ascertain the total amount of expenses incurred by the Commission, including, in addition to the direct cost of personnel services, the cost of maintenance and operation, and all other direct and indirect costs, incurred by the Commission during the preceding fiscal year in connection with the administration of the Mashantucket Pequot Tribal Workers' Compensation Code. An itemized statement of the expenses as so ascertained shall be submitted to the Tribal Council.

**Section 8. Successor Shall Complete Acts Upon Death or Incapacitation of Chief Commissioner or Commissioner**

If the chief commissioner or any commissioner dies or becomes incapacitated for any reason before the final settlement of any matter in which he had been acting in his official capacity, his successor in office shall continue such matter to its completion.

**CHAPTER 2. BASIC RIGHTS, LIABILITIES AND REMEDIES**

**Section 1. Jurisdiction. Waiver of Sovereign Immunity. Employer's Liability. Notice of Availability of Compensation**

a. The tribal court shall have jurisdiction over claims arising under this Law, provided that all remedies have been exhausted.

b. The Tribe hereby waives its sovereign immunity from suit for actions arising under this law and brought in tribal court against an "employer" as that term is defined by XIII M.P.T.L. ch. 1, Section 1(j). Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribe or its tribal enterprises from suit in state or federal court or in any action before any state or federal agency, or in any other forum or context.

c. An employer shall not be liable to any action for damages on account of personal injury sustained by an employee arising out of and in the course of his employment or on account of death resulting from personal injury so sustained, but an employer shall secure compensation for his employees as provided under this Code, except that compensation shall not be paid when the personal injury has been caused by the willful and serious misconduct of the injured employee or as a result of being under the influence of narcotic drugs or alcohol. All rights and claims between employer and employees, or any representatives or dependents of such employees, arising out of personal injury or death sustained in the course of employment are abolished other than rights and claims given by this Code, provided nothing in this Section shall prohibit any employee from securing, by agreement with his employer, additional compensation from his employer for the injury or from enforcing any agreement for additional compensation.

d. If an employee is injured on the Mashantucket Pequot Reservation but his employer has not provided workers' compensation coverage for said injury, the employee shall have a cause of action in the tribal court for the workers' compensation payments the employee would have been entitled to had coverage been provided in accordance with the laws of the jurisdiction of employer's principal place of business. The tribal court may award the present worth of any probable future benefits as well as costs and attorney's fees. In addition, the employee shall not be barred from receiving other damages for such injuries from the employer and the employer shall not be entitled to assert as a defense thereto any bar to such suits otherwise available to employers who have provided workers' compensation coverage under this or any other workers' compensation law. The employee's recovery is limited to the greater of the alternate theories of recovery hereunder.

e. Employers shall post in a conspicuous place a notice of availability of compensation, in type of not less than 10 point boldface. The notice shall contain, at a minimum, the information required by regulations adopted pursuant to Section 5 of Chapter 1.

**Section 2. Discharge or Discrimination Prohibited. Right of Action**

a. No employer who is subject to the provisions of this Code shall discharge, or cause to be discharged, or in any manner discriminate against any employee because the employee has filed a claim for workers' compensation benefits or otherwise exercised the rights afforded to him pursuant to the provisions of this Code.

b. Any employee who is so discharged or discriminated against may bring a civil action in the tribal court pursuant to this Law for the reinstatement of his previous job, payment of back wages and re-establishment of employee benefits to which he would have otherwise been entitled if he had not been discriminated against or discharged. In hearing cases arising under this Law, the tribal court shall be guided by the procedures and shall apply the standard of review and calculation of damages set forth in VIII M.P.T.L., the Employment Review Code.

c. Any employee who has been discharged for being absent from work beyond the period of time provided for under the employer's leave of absence policy shall not be deemed to have been discriminated against and shall not have a right of action for an alleged violation of the provisions of this Section.

### **Section 3. Report of Injury to Employer**

Any employee who has sustained an injury in the course of his employment shall immediately report the injury to his employer, or some person representing his employer. If the employee fails to report the injury immediately, the commissioner may reduce the award of compensation proportionately to any prejudice that he finds the employer has sustained by reason of the failure, provided the burden of proof with respect to such prejudice shall rest upon the employer.

### **Section 4. Notice of Claim for Compensation. Notice Contesting Liability**

a. No proceedings for compensation under the provisions of this Chapter shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident or within three years from the first manifestation of a symptom of the occupational disease, as the case may be, which caused the personal injury, provided, if death has resulted within two years from the date of the accident or first manifestation of a symptom of the occupational disease, a dependent or dependents, or the legal representative of the deceased employee, may make claim for compensation within the two-year period or within one-year from the date of death, whichever is later. Notice of a claim for compensation may be given to the employer or the commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting from the accident, or the date of the first manifestation of a symptom of the occupational disease and the nature of the disease, as the case may be, and the name and address of the employee and of the person in whose interest compensation is claimed. As used in this Section, "manifestation of a symptom" means manifestation to an employee claiming compensation, or to some other person standing in such relation to him that the knowledge of the person would be imputed to him, in a manner that is or should be recognized by him as symptomatic of the occupational disease for which compensation is claimed.

b. Whenever liability to pay compensation is contested by the employer, he shall file with the commissioner, on or before the 28th day after he has received a written notice of claim, a notice in accord with a form prescribed by the chief commissioner stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested. The employer shall send a copy of the notice to the employee in accordance with Section 24 of this Chapter. If the employer or his legal representative fails to file the notice contesting liability on or before the 28th day after he has received the written notice of claim, the employer shall commence payment of compensation for such injury or death on or before the 28th day after he has received the written notice of claim provided, however, that the employer may contest the employee's right to receive compensation on any grounds or the extent of his disability within one year from the receipt of the written notice of claim; provided further that the employer shall not be required to commence payment of compensation when the written notice of claim has not been properly served in accordance with Section 25 of this Chapter, or when the written notice of claim fails to include a warning that:

(1) the employer, if he has commenced payment for the alleged injury or death on or before the 28th day after receiving a written notice of claim, shall be precluded from contesting liability unless a notice contesting liability is filed within one year from the receipt of the written notice of claim, and

(2) the employer shall be presumed, but such presumption shall be rebuttal, to have accepted the compensability of the alleged injury or death unless the employer either files a notice contesting liability on or before the 28th day after receiving a written notice of claim or commences payment for the alleged injury or death on or before such 28th day. The employer shall be entitled, if he prevails, to reimbursement from the claimant of any compensation paid by the employer on and after the date the Commissioner receives written notice from the employer or his legal representative, in accordance with the form prescribed by the commissioner, stating that the right to compensation is contested. Notwithstanding the provisions of this subsection, an employer who fails to contest liability for an alleged injury or death on or before the 28th day after receiving a written notice of claim and who fails to commence payment for the alleged injury or death on or before such 28th day, shall be presumed, but such presumption shall be rebuttal, to have accepted the compensability of the alleged injury or death.

c. Failure to provide a notice of claim under subsection (a) of this Section shall not bar maintenance of the proceedings if

(1) there has been a hearing or a written request for a hearing or an assignment for a hearing within a one-year period from the date of the accident or within a three-year period from the first manifestation of a symptom of the occupational disease, as the case may be, or

(2) if a voluntary agreement has been submitted within the applicable period, or

(3) if within the applicable period, an employee has been furnished with medical or surgical aid for the injury with respect to which compensation is claimed as provided in Section 5 of this Chapter, provided, however, that payment for the alleged injury under the employer's group health plan shall not be deemed to be furnishing medical or surgical aid for purposes of this subsection. No defect or inaccuracy of notice of claim shall bar maintenance of proceedings unless the employer shows that he was ignorant of the facts concerning the personal injury and was prejudiced by the defect or inaccuracy of the notice. Upon satisfactory showing of ignorance and prejudice, the employer shall receive allowance to the extent of the prejudice.

## **Section 5. Medical and Surgical Aid; Hospital and Nursing Service**

a. The employer, as soon as he has knowledge of an injury, shall provide a competent physician or surgeon to attend the injured employee and, in addition, shall furnish any medical and surgical aid or hospital and nursing service, including medical rehabilitation services, as the physician or surgeon deems reasonable or necessary.

b. The employee shall select the physician or surgeon from an approved list of physicians and surgeons prepared by the chief commissioner. If the employee is unable to make the selection, the employer shall do so, subject to ratification by the employee or his next of kin. If the employer has a full-time staff physician or if a physician is available on call, the initial treatment required immediately following the injury may be rendered by that physician, but the employee may thereafter select his own physician from the list as provided by this Chapter for any further treatment without prior approval of the commissioner. The commissioner may, without hearing, at the request of the employer or the injured employee, when good reason exists, or on his own

motion, authorize or direct a change of physician or surgeon or hospital or nursing service provided pursuant to subsection (a) of this Section.

c. The pecuniary liability of the employer for the medical and surgical service required by this Section shall be limited to the charges that prevail in the same community or similar communities for similar treatment of injured persons of a like standard of living when the similar treatment is paid for by the injured person. The liability of the employer for hospital service shall be the amount it actually costs the hospital to render the service, as determined by the commissioner. All disputes concerning liability for hospital services in workers' compensation cases shall be settled by the commissioner in accordance with this Code.

d. If the employer fails to promptly provide a physician or surgeon or any medical and surgical aid or hospital and nursing service as required by this Section, the injured employee may obtain a physician or surgeon, selected from the approved list prepared by the chief commissioner, or such medical and surgical aid or hospital and nursing service at the expense of the employer.

e. Persons who supply professional services to injured employees entitled to medical care pursuant to this Law shall be presumed to agree to the following conditions:

(1) the employer or its insurance carrier will receive an early original report of injury, and such regular subsequent progress reports from the attending physician as may be reasonably required in each case;

(2) no fee will be charged by the attending physician for the completion of any forms or for routine progress reports submitted to the employer or insurance carrier, unless where a detailed report is requested or indicated, requiring a significant expenditure of time by the attending physician, a reasonable additional fee for such time will be appropriate;

(3) all charges for medical, surgical, hospital and nursing services, except those for expert testimony, shall be solely the responsibility of the employer or carrier, and no claim will be made against the injured employee for all or part of a fee.

#### **Section 6. Employee's Option to Obtain Medical Care at Employee's Expense. Refusal of Employee to Accept or Obtain Reasonable Medical Care**

a. At his option, the injured employee may refuse the medical and surgical aid or hospital and nursing service provided by his employer and obtain the same at his own expense.

b. If it appears to the commissioner that an injured employee has refused to accept and failed to obtain reasonable medical and surgical aid or hospital and nursing service, all rights of compensation under the provisions of this Chapter shall be suspended during such refusal and failure.

#### **Section 7. Medical Examination of Injured Employee. Medical Reports**

a. An injured employee shall submit himself to examination by a reputable practicing physician or surgeon, at any time while claiming or receiving compensation, upon the reasonable request of the employer or at the direction of the commissioner. The examination shall be performed to determine the nature of the injury and the incapacity resulting from the injury. The physician or surgeon shall be selected by the employer from an approved list of physicians and surgeons prepared by the chief commissioner and shall be paid by the employer. At any examination requested by the employer or directed by the commissioner under this Section, the injured employee shall be allowed to have in attendance any reputable practicing physician or surgeon that the employee obtains and pays for himself. The employee shall submit to all other physical examinations as required by this Chapter. The refusal of an injured employee to submit himself to a reasonable examination under this Section shall suspend his right to compensation during such refusal.

b. Any medical reports resulting from an examination requested by an employer or directed by the commissioner under this Section shall be furnished within 30 days after the completion of the reports, at the same time and in the same manner, to the employer and the employee or his attorney. All other medical reports concerning any injury of an employee sustained in the course of his employment shall be furnished to the employer, employee or attorney.

**Section 8. Waiting Period. When Compensation Begins. Penalty for Late Payment of Permanent Partial Disability Benefits**

a. No compensation shall be payable for total or partial incapacity under the provisions of this Code on account of any injury which does not incapacitate the injured employee for a period of more than three days from earning full wages at his customary employment. If the incapacity continues for a period of more than three days but less than seven days, compensation shall begin at the expiration of the first three days of total or partial incapacity. If the incapacity continues for a period of seven days, compensation shall begin from the date of the injury.

b. The injured employee shall be entitled to full wages for the entire day of the injury and that day shall not be counted as a day of incapacity.

c. If the employee is entitled to receive compensation for permanent disability to an injured member in accordance with the provisions of Section 12 of Chapter 4, the compensation shall be paid to him beginning not later than 30 days following the date of the maximum improvement of the member or members and, if the compensation payments are not so paid, the employer shall, in addition to the compensation rate, pay interest at the rate of 10% per annum on such sum or sums from the date of maximum improvement. The employer shall ascertain at least monthly whether employees are entitled to compensation because of a loss of wages as a result of the injury and, if there is a loss of wages, shall pay the compensation. The chief commissioner shall adopt regulations for the purpose of assuring prompt payment by the employer or his insurance carrier.

**Section 9. Voluntary Agreements**

a. If an employer and an injured employee, or in case of fatal injury his legal representative or dependent, at a date not earlier than the expiration of the waiting period, reach an agreement in regard to compensation, such agreement shall be submitted in writing to the commissioner by the employer with a statement of the time, place and nature of the injury upon which it is based; and, if such commissioner finds such agreement to conform to the provisions of this Code, he shall so approve it. A copy of the agreement, with a statement of the commissioner's approval thereof, shall be delivered to each of the parties and thereafter it shall be as binding upon both parties as an award by the commissioner. The commissioner's statement of approval shall also inform the employee or his dependent, as the case may be, of any rights the individual may have to participate in a rehabilitation program under the provisions of this Code. He shall retain the original agreement, with his approval thereof, in his office and, if an application is made to the tribal court for an execution, he shall, upon the request of said court, file in the court a certified copy of the agreement and his statement of approval thereof.

b. Before discontinuing or reducing payment on account of total or partial incapacity under any such agreement, the employer, if it is claimed by or on behalf of the injured person that his incapacity still continues, shall notify the chief commissioner and the employee, by certified mail, of the proposed discontinuance or reduction of such payments, with the date of such proposed discontinuance or reduction and the reason therefor, and, such discontinuance or reduction shall not become effective unless specifically approved in writing by the chief commissioner. The employee may request a hearing on any such proposed discontinuance or reduction within 10 days of receipt of such notice. Any such request for a hearing shall be given

priority over requests for hearings on other matters. The commissioner shall not approve any such discontinuance or reduction prior to the expiration of the period for requesting a hearing or the completion of such hearing, whichever is later.

c. In any case where the commissioner finds that an employer has discontinued or reduced any payments made in accordance with this Section without the approval of the commissioner, such employer shall be required to pay to the employee the total amount of all payments so discontinued or the total amount by which such payments were reduced, as the case may be, and shall be required to pay interest to the employee, at a rate of 10% per annum on any payments so discontinued or on the total amount by which such payments were reduced, as the case may be, plus reasonable attorney's fees incurred by the employee in relation to such discontinuance or reduction.

Such notice of intention to discontinue or reduce payments shall be in substantially the following form:

**MASHANTUCKET PEQUOT TRIBAL WORKERS' COMPENSATION COMMISSION**  
**NOTICE TO COMMISSIONER AND EMPLOYEE**  
**OF INTENTION TO DISCONTINUE OR REDUCE PAYMENTS**

To: Chief Commissioner of Mashantucket Pequot Workers' Compensation Commission and \_\_\_\_\_, Employee:

You are hereby notified that the undersigned employer intends on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ to discontinue or reduce the payments of compensation to the above-named employee for the following reason:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_  
Employer

By \_\_\_\_\_  
Agent or Insurer (official position)

I HEREBY CERTIFY that the above named employee is able to return to usual work on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ . There will not be permanent loss or loss of use of the employee's \_\_\_\_\_ by assumption of such work duties.  
(member)

\_\_\_\_\_  
Attending Physician or Surgeon

The following information shall be provided:

Date of Injury \_\_\_\_\_

Date of Award or Approval of Agreement \_\_\_\_\_

Date when mailed by Respondent \_\_\_\_\_

The employee may request a hearing by the commissioner on the discontinuance or reduction set forth in this notice within 10 days of receipt of this notice.

## **Section 10. Discontinuance or Reduction of Payments under Oral Agreements**

No employer shall discontinue or reduce payment on account of total or partial incapacity under any oral agreement or in any case where the employer's acceptance of compensability has been presumed under subsection (b) of Section 4 of this Chapter because of failure to file a timely notice contesting liability, if it is claimed by or on behalf of the injured person that his incapacity still continues, unless such employer notifies the commissioner and the employee of the proposed discontinuance or reduction in the manner prescribed in Section 9(c) of this Chapter and the commissioner specifically approves such discontinuance or reduction in writing.

## **Section 11. Hearing of Claims**

If an employer and his injured employee, or his legal representative, as the case may be, fail to reach an agreement in regard to compensation under the provisions of this Chapter, either party may notify the commissioner of the failure. Upon such notice, or upon the knowledge that an agreement has not been reached in a case in which a right to compensation may exist, the commissioner shall schedule an early hearing upon the matter, giving both parties notice of time and place not less than 10 days prior to the scheduled date; provided the workers' compensation commissioner may, on finding an emergency to exist, give such notice as he finds reasonable under the circumstances. If no agreement has been reached within 30 days after the date notice of claim for compensation was received by the commissioner, as provided in Section 4 of this Chapter, a formal hearing shall be scheduled on the claim and held within 30 days after the end of the first 30 day period, except that if an earlier hearing date has previously been scheduled, the earlier date shall prevail. Sufficient notice of the hearing may be given to the parties in interest by a brief written statement in ordinary terms of the date, place and nature of the injury upon which the claim for compensation is based.

## **Section 12. Informal Hearings**

In any informal hearing held by the commissioner in regard to compensation under the provisions of this Chapter, any recommendations made by the commissioner at the informal hearing shall be reduced to writing and, if the parties accept such recommendations, the recommendations shall be as binding upon both parties as an award by the commissioner. The commissioner shall not postpone any such informal hearing if one party fails to attend unless both parties agree to the postponement.

## **Section 13. Conduct of Hearings**

Both parties may appear at any hearing, either in person or by attorney or other accredited representative, and no formal pleadings shall be required, beyond any informal notices that the commission approves. In all cases and hearings under the provisions of this Chapter, the commissioner shall proceed, so far as possible, in accordance with the rules of equity. He shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but shall make inquiry, through oral testimony, deposition testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of this Chapter. No fees shall be charged to either party by the commissioner in connection with any hearing or other procedure, but the commissioner shall furnish at cost: (1) certified copies of any testimony, award or other matter which may be of record in his office, and (2) duplicates of audio cassette recordings of any formal hearings. The commissioner may order fees and traveling expenses for witnesses subpoenaed by the commissioner, such fees and expenses to be paid by the party in whose interest the witnesses are subpoenaed.

**Section 14. Payments under Group Medical Policy not Defense to Claim for Benefits. Health Insurer's Duty to Pay. Lien**

a. Where an employer contests the compensability of an employee's claim for compensation, proof of payment made under a group health, medical or hospitalization plan or policy shall not be a defense to a claim for compensation under this Chapter.

b. Where an employer contests the compensability of an employee's claim for compensation, and the employee has also filed a claim for benefits or services under the employer's group health, medical, disability or hospitalization plan or policy, the employer's health insurer may not delay or deny payment of benefits due to the employee under the terms of the plan or policy by claiming that treatment for the employee's injury or disease is the responsibility of the employer's workers' compensation insurer. The health insurer may file a claim in its own right against the employer for the value of benefits paid by the insurer within two years from payment of the benefits. The health insurer shall not have a lien on the proceeds of any award or approval of any compromise made by the commissioner pursuant to the employee's compensation claim, unless the health insurer actually paid benefits to or on behalf of the employee.

**Section 15. Initial Liability of Last Employer. Reimbursement**

If an employee suffers an injury or disease for which compensation is found by the commissioner to be payable according to the provisions of this Chapter, the employer who last employed the claimant prior to the filing of the claim, or the employer's insurer, shall be initially liable for the payment of such compensation. The commissioner shall, within a reasonable period of time after issuing an award, on the basis of the record of the hearing, determine whether prior employers, or their insurers, are liable for a portion of such compensation and the extent of their liability. If prior employers are found to be so liable, the commissioner shall order such employers or their insurers to reimburse the initially liable employer or insurer according to the proportion of their liability. Reimbursement shall be made within 10 days of the commissioner's order with interest, from the date of the initial payment, at 10% per annum. If no appeal from the commissioner's order is taken by any employer or insurer within 10 days, the order shall be final and may be enforced in the same manner as a judgment of the tribal court.

**Section 16. Award as Judgment. Interest. Attorney's fee. Procedure on Discontinuance or Reduction**

a. As soon as may be after the conclusion of any hearing, but no later than 120 days after such conclusion, the commissioner shall send to each party a written copy of his findings and award. The commissioner shall, as part of the written award, inform the employee or his dependent, as the case may be, of any rights the individual may have to participate in a rehabilitation program under the provisions of this Chapter. He shall retain the original findings and award in his office.

b. If no appeal from his decision is taken by either party within 20 days thereafter, such award shall be final and may be enforced in the same manner as a judgment of the tribal court. The court may issue execution upon any uncontested or final award of a commissioner in the same manner as in cases of judgments rendered in the tribal court; and, upon the filing of an application to the court for an execution, the commissioner in whose office the award is on file shall, upon the request of the clerk of the court, send to him a certified copy of such findings and award. In cases where, through the fault or neglect of the employer or insurer, adjustments of compensation have been unduly delayed, or where through such fault or neglect, payments have been unduly delayed, the commissioner may include in his award interest at an interest rate of 12 % per annum and a reasonable attorney's fee.

c. Payments not commenced within 35 days after the filing of a written notice of claim shall be presumed to be unduly delayed unless a notice to contest the claim is filed in accordance with Section 4 of this Chapter. In cases where there has been delay in either adjustment or payment, which delay has not been due to the fault or neglect of the employer or insurer, whether such delay was caused by appeals or otherwise, the commissioner may allow interest at such rate, not to exceed 10 % per annum. In cases where the claimant prevails and the commissioner finds that the employer or insurer has unreasonably contested liability, the commissioner may allow to the claimant a reasonable attorney's fee. No employer or insurer shall discontinue or reduce payment on account of total or partial incapacity under any such award, if it is claimed by or on behalf of the injured person that his incapacity still continues, unless such employer or insurer notifies the commissioner and the employee of such proposed discontinuance or reduction in the manner prescribed in Section 9(c) of this Chapter, and the commissioner specifically approves such discontinuance or reduction in writing.

d. The commissioner shall render his decision within 14 days of receipt of such notice and shall forward to all parties to the claim a copy of his decision not later than seven days after his decision has been rendered. If the decision of the commissioner finds for the employer or insurer, the injured person shall return any wrongful payments received from the day designated by the commissioner as the effective date for the discontinuance or reduction of benefits. Any employee whose benefits for total incapacity are discontinued under the provisions of this Section, and who is entitled to receive benefits for partial incapacity as a result of an award, shall receive those benefits commencing the day following the designated effective date for the discontinuance of benefits for total incapacity. In any case where the commissioner finds that the employer or insurer has discontinued or reduced any such payment without having given such notice and without the commissioner having approved such discontinuance or reduction in writing, the commissioner shall allow the claimant a reasonable attorney's fee together with interest at the rate of 10 % per annum on the discontinued or reduced payments.

#### **Section 17. Enforcement of Order. Appeals to the Tribal Court. Payment of Award During Pendency of Appeal**

a. The tribal court, on application of a commissioner, may enforce, by appropriate decree or process, any provision of this Code or any proper order of a commissioner.

b. At any time within 20 days after entry of an award by or decision of the commissioner, either party may appeal therefrom to the tribal court. Such action in the tribal court shall be governed by the Mashantucket Pequot Tribal Laws.

c. The tribal court shall hear the appeal on the record of the hearing before the commissioner, provided, if it is shown to the satisfaction of the tribal court that additional evidence or testimony is material and that there were good reasons for failure to present it in the proceedings before the commissioner, the tribal court may hear additional evidence or testimony.

d. The tribal court shall issue its decision, affirming, modifying or reversing the decision of the commissioner. The decision of the tribal court shall include its findings, conclusions of law and award. Any decision of the tribal court, in the absence of an appeal therefrom, shall become final after a period of 20 days has expired from the issuance of the court's judgment or decision.

e. When any appeal is pending, and it appears to the tribal court that any part of the award appealed from is not affected by the issues raised by the appeal, the tribal court may, on motion or of its own motion, render a judgment directing compliance with any portion of the award not affected by the appeal; or if the only issue raised by the appeal is the amount of the average weekly wage for the purpose of determining the amount of compensation, as provided in Section 14 of this Chapter, the commissioner shall, on motion of the claimant, direct the payment of the portion of the compensation payable under his award that is not in dispute, if any, pending final

adjudication of the disputed portion thereof. In all appeals in which one of the parties is not represented by counsel, and in which the party taking the appeal does not prosecute the case within a reasonable time from the date of appeal, the tribal court may, of its own motion, affirm, reverse or modify the award.

f. During the pendency of any appeal of an award made pursuant to this Chapter, the claimant shall receive all compensation and medical treatment payable under the terms of the award to the extent the compensation and medical treatment are not being paid by any health insurer or by any insurer or employer who has been ordered to pay a portion of the award.

g. If, upon completion of the appeal process, the claimant is found to have a compensable injury, the employer or insurer shall be responsible for payment of the compensation on the claim pursuant to subsection (f) of this subsection, plus interest at the rate of 10% per annum. If the final adjudication results in the denial of compensation to the claimant, and he has previously received compensation on the claim, the claimant shall reimburse all sums previously expended, plus interest at the rate of 10% per annum. Upon any such denial of compensation, the commissioner who originally heard the case or his successor shall conduct a hearing to determine the repayment schedule for the claimant.

#### **Section 18. Certification of Cases for the Mashantucket Pequot Tribal Court**

When, in any case arising under the provisions of this Chapter, the commissioner is of the opinion that the decision involves principles of law which are not free from reasonable doubt and which public interest requires shall be determined by the Mashantucket Pequot Tribal Court, in order that a definite rule be established applicable to future cases, the commissioner may, on its own motion and without any agreement or act of the parties or their counsel, certify such case for the opinion of the Mashantucket Pequot Tribal Court. Upon a certification so made, no costs or fees shall be taxed to either party.

#### **Section 19. Appeal of Decision of Tribal Court**

Any party aggrieved by the decision of the tribal court upon any question or questions of law arising in the proceedings may appeal the decision to the Mashantucket Pequot Court of Appeals.

#### **Section 20. Costs of Appeal. Interest Added to Award Affirmed on Appeal**

No costs shall be taxed in favor of either party on any appeal either in the tribal court or in the Court of Appeals and no party shall be liable to pay any fees or costs in connection therewith, provided however, whenever such appeal is found by the court to be either frivolous or taken for the purpose of vexation or delay, the court may tax costs in its discretion against the person so taking the appeal.

#### **Section 21. No Right Against Fellow Employee; Exception**

If an employee or, in case of his death, his dependent, has a right to benefits or compensation under this Code on account of injury or death from injury caused by the negligence or wrong of a fellow employee, such right shall be the exclusive remedy of such injured employee or dependent and no action may be brought against such fellow employee, unless such wrong was willful or malicious or the action is based on the fellow employee's negligence in the operation of a motor vehicle. For purposes of this Section, contractors' mobile equipment such as bulldozers, power shovels, rollers, graders or scrapers, farm machinery, cranes, diggers, forklifts, pumps, generators, air compressors, drills or other similar equipment designed for use principally off public roads are not "motor vehicles" if the claimed injury involves such equipment.

## **Section 22. Action for Minors and Incompetents**

When any employee affected by the provisions of this Code or any person entitled to compensation thereunder is a minor or mentally incompetent, his parent or duly appointed guardian may, on his behalf, perform any act or duty required or exercise any right conferred by the provisions of this Code with the same effect as if such person were legally capable to act in his own behalf and had so acted. The commissioner may, for just cause shown, authorize or direct the payment of compensation directly to a minor or to some person nominated by the minor and approved by the commissioner, which person shall act in behalf of such minor.

## **Section 23. Acknowledgment by Employees having Certain Physical Conditions**

Whenever any person being engaged in the service or having a contract of employment, or desiring to enter into the service or contract of employment, has any physical condition which imposes upon his employer or prospective employer a further or unusual hazard, it shall be permissible for the person to execute in writing for himself or his dependents, or both, an acknowledgment of the physical condition. No acknowledgment shall become effective unless it plainly describes the physical condition, nor until a commissioner finds that the person who signed the acknowledgment fully understood its meaning and, if the person is a minor, that one of the parents or a guardian of the minor has approved the acknowledgment in writing, or until the commissioner, in writing, approves the acknowledgment, files it in the office of the commissioner, and furnishes each of the parties thereto with a copy of the acknowledgment. No acknowledgment shall be a bar to a claim by the person signing it, or his dependents, for compensation for any injury arising out of and in the course of his employment, or death resulting from the injury, which injury shall not be found to be attributable in a material degree to the particular condition described in the acknowledgment. A physical condition for which an acknowledgment may be executed pursuant to this Section, shall not include an occupational disease, susceptibility to an occupational disease or a recurrence of an occupational disease.

## **Section 24. Manner of Serving Notices**

Unless otherwise specifically provided, or unless the circumstances of the case or the rules of the commission direct otherwise, any notice required under this Chapter to be served upon an employer, employee or the commissioner shall be by written or printed notice, by personal service or by registered or certified mail addressed to the person upon whom it is to be served at his last-known residence or place of business. Notices in behalf of a minor shall be given by or to his parent or guardian or, if there is no parent or guardian, then by or to such minor.

# **CHAPTER 3. INSURANCE**

## **Section 1. Insurance Requirements for Persons Engaged in Business Activities on the Mashantucket Pequot Reservation, and Contractors on Tribal Projects and Renewals of Tribal Business Licenses**

a. Notwithstanding any provision of any tribal law, any person who engages in business activities on the Mashantucket Pequot Reservation, and any business which enters into any contract or agreement with the Mashantucket Pequot Tribe for the construction, remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any project shall provide in writing to the chief commissioner sufficient evidence of compliance with the Tribe's workers' compensation insurance and self-insurance requirements.

b . No Mashantucket Pequot tribal governmental department or division or enterprise may engage in any business activity, renew a license or permit a business to operate on the Reservation unless the business first presents sufficient evidence of current compliance with the Mashantucket Pequot Workers' Compensation insurance coverage requirements of this Section.

c. This Section shall not be construed to create any liability on the part of the Mashantucket Pequot Tribe or any subdivision thereof to pay workers' compensation benefits, or to indemnify any employer or any insurer who pays workers' compensation benefits.

d. For purposes of this Section, "sufficient evidence" means

(1) a certificate of self-insurance issued by the chief commissioner of the Mashantucket Pequot Tribal Workers' Compensation Commission; or

(2) certificate of compliance issued by the chief commissioner of the Mashantucket Pequot Tribal Workers' Compensation Commission. The chief commissioner may find sufficient evidence if the employer presents proof of current compliance with insurance coverage required by the jurisdiction in which such employer has his principal place of business.

## **Section 2. Provisions Required in Liability Insurance Policies**

No policy of insurance against liability shall be made unless the same covers the entire liability of the employer thereunder and contains an agreement by the insurer that, as between the employee and the insurer, notice or knowledge of the occurrence of injury by the insured shall be deemed notice or knowledge by the insurer, that jurisdiction of the insured for the purposes of this Code shall be jurisdiction of the insurer and the insurer shall in all things be bound by and subject to the findings, awards and judgments rendered against such insured; and also that, if the insured becomes insolvent or is discharged in bankruptcy during the period that the policy is in operation, or the compensation, or any part of it, is due and unpaid or if an execution upon a judgment for compensation is returned unsatisfied, an injured employee or other person entitled to compensation under the provisions of this Code may enforce his claim to compensation against the insurer to the same extent that the insured could have enforced his claim against such insurer had he paid compensation.

## **Section 3. Additional Liability. Penalty for Undue Delay. Penalty for Noncompliance with Insurance Requirements. Penalty for Defrauding Workers' Compensation Insurance Carrier**

a. If an employer willfully fails to conform to any other provision of this Chapter, he shall be fined not more than \$250 for each such failure.

b. Whenever through the fault or neglect of an employer or insurer, the adjustment or payment of compensation due under this Chapter is unduly delayed, or either party to a claim under this Code has unreasonably, and without good cause, delayed the completion of the hearings on such claim, the delaying party or parties may be assessed a civil penalty of not more than \$500 by the chief commissioner hearing the claim for each such case of delay. Any appeal of a penalty assessed pursuant to this subsection shall be taken in accordance with the provisions of Section 18 of Chapter 2.

c. If, upon investigation of a complaint or inspection of information available to the Workers' Compensation Commission, the chief commissioner has reason to believe that an employer is not in compliance with the insurance and self-insurance requirements of this Code, the chief commissioner shall conduct a hearing, after sufficient notice to the employer, wherein the employer shall be required to present sufficient evidence of his compliance with said requirements. Whenever the chief commissioner finds that the employer is not in compliance with

said requirements he may assess a civil penalty of up to \$10,000 against the employer. Any appeal of a penalty assessed pursuant to this subsection shall be taken in accordance with the provisions of Section 18 of Chapter 2.

d. Any employer who, with the intent to injure, defraud or deceive any insurance company insuring the liability of such employer under this Code, knowingly misrepresents one or more employees as independent contractors, or knowingly provides false, incomplete or misleading information to such company concerning the number of employees, for the purpose of paying a lower premium on a policy obtained from such company, shall be assessed a civil penalty of up to \$10,000, removed from the list of licensed tribal businesses for a period of two years, and reported to Mashantucket Pequot Tribe's Office of Risk Management.

#### **Section 4. Proceedings against Delinquent Insurance Companies or Employers**

Whenever the chief commissioner finds that any insurance company or association insuring the liability of an employer under the provisions of this Chapter is conducting such business improperly or is dilatory in investigating and adjusting claims or making payments, or fails to comply with the provisions of this Chapter or the rules, methods or procedure and forms adopted by the chief commissioner shall be notified in writing, setting forth the facts, and thereupon the chief commissioner shall fix a time and place for a hearing thereon, giving reasonable notice to such company or association of such hearing, and, if he finds the allegations to be true, he may either suspend for a time or revoke the license of such company or association to transact such business on the Reservation. Whenever the chief commissioner has reason to believe that any employer who has furnished proof of his financial ability or filed with the commissioner security for the performance of the obligations of this Chapter in accordance with this law is dilatory in investigating or adjusting claims or in making payments, or fails to comply with the provisions of this Chapter or the rules, methods of procedure and forms adopted by the commissioner, the commissioner shall be notified in writing, setting forth the facts, and thereupon the commissioner shall fix the time and place for a hearing thereon, giving reasonable notice to the such employer, and, if he finds the allegations to be true, then, after ten days from the notice of such findings to such employer, the compliance of such employer with the terms of Section 1 of this Chapter shall be, as to any future injuries, null and void.

### **CHAPTER 4. ADMINISTRATION OF PAYMENT OF COMPENSATION, FINES AND PENALTIES**

#### **Section 1. Disposition of Fines and Penalties**

Any fines or penalties collected under this Code shall be paid over to the Mashantucket Pequot Tribal Workers' Compensation Commissioner and used for the administration and operation of the Mashantucket Pequot Tribal Workers' Compensation Commission.

#### **Section 2. Civil Action to Recover Civil Penalties**

a. If any civil penalty is not paid within 90 days of its imposition or within 90 days of the final disposition of an appeal, as the case may be, the chief commissioner may bring a civil action in the name of the Mashantucket Pequot Tribe in the tribal court to recover double the amount of the civil penalty together with reasonable attorney's fees and costs as taxed by the court.

b. An affidavit sworn to or affirmed by the chief commissioner, or by the commissioner who imposed the civil penalty referred to in the affidavit, stating the name of the commissioner who imposed the civil penalty, the amount of the civil penalty, the name of the violator against whom the civil penalty was imposed, whether or not an appeal was taken, the disposition of the

appeal and whether or not the penalty was paid, shall constitute prima facie proof of the facts contained in the affidavit. Copies of the records of the Workers' Compensation Commission, certified by the chief commissioner, containing the name of the tribal commissioner who imposed a civil penalty, the amount of the civil penalty, the name of the violator against whom the civil penalty was imposed, whether or not an appeal was taken, the disposition of the appeal and whether or not the penalty was paid, shall constitute prima facie proof of the facts contained in the records.

### **Section 3. Obligations not to be Evaded**

No contract or agreement, expressed or implied, no rule, regulation or other device shall in any manner relieve any employer, in whole or in part, of any obligation created by this Code, except as herein set forth.

### **Section 4. Fraudulent Claim or Receipt of Benefits. Penalties**

a. Any person or his representative who makes or attempts to make any claim for benefits, receives or attempts to receive benefits, prevents or attempts to prevent the receipt of benefits or reduces or attempts to reduce the amount of benefits under this Code based in whole or in part upon the intentional misrepresentation of any material fact including, but not limited to, the existence, time, date, place, location, circumstances or symptoms of the claimed injury or illness; or the intentional nondisclosure of any material fact affecting such claim or the collection of such benefits, shall be liable for treble damages in tribal court.

b. Any person, including an employer, who intentionally aids, abets, assists, promotes or facilitates the making of, or the attempt to make, any claim for benefits or the receipt or attempted receipt of benefits under this Code by another person in violation of subsection (a) of this Section, shall be liable for the same penalties as the person making or attempting to make the claim or receiving or attempting to receive the benefits.

### **Section 5. Principal Employer, Contractor and Subcontractor**

When any principal employer procures any work to be done wholly or in part for him by a contractor, or through him by a subcontractor, and the work so procured to be done is a part or process in the trade or business of such principal employer, and is performed on the Mashantucket Pequot Reservation and is in, on or about premises under his control, such principal employer shall be liable to pay all compensation under this Code to the same extent as if the work were done without the intervention of such contractor or subcontractor. The provisions of this Section shall not extend immunity to any principal employer from a civil action brought by an injured employee or his dependent under the provisions of Section 6 of this Chapter to recover damages resulting from personal injury or wrongful death unless such principal employer has paid compensation benefits under this Chapter to such injured employee or his dependent for the injury or death which is the subject of the action.

### **Section 6. Liability of Third Persons to Employer and Employee**

When any injury for which compensation is payable under the provisions of this Code has been sustained under circumstances creating in a third person other than the employer a legal liability to pay damages for the injury, the injured employee may seek compensation but the payment or award of compensation shall not affect the claim or right of action of the injured employee against the third person, but the injured employee may proceed at law against the third person to recover damages for the injury; and any employer having paid, or having become

obligated to pay, compensation may bring an action against the third person to recover any amount that he has paid or has become obligated to pay as compensation to the injured employee. If either the employee or the employer brings an action against the third person, he shall immediately notify the other, in writing, by personal presentation or by registered or certified mail, of the action, and the other may join as a party plaintiff in the action and, if the other fails to join as a party plaintiff, his right of action against the third person shall abate. In any case in which an employee brings an action against a third party in accordance with the provisions of this Section, and the employer is a party defendant in the action, the employer may join as a party plaintiff in the action.

The bringing of any action against an employer shall not constitute notice to the employer within the meaning of this Section. If the employer and the employee join as parties plaintiff in the action and any damages are recovered, the damages shall be so apportioned that the claim of the employer, as defined in this Section, shall take precedence over that of the injured employee in the proceeds of the recovery, after the deduction of reasonable and necessary expenditures, including attorneys' fees, incurred by the employee in effecting the recovery.

The rendition of a judgment in favor of the employee or the employer against the third party shall not terminate the employer's obligation to make further compensation which the Commissioner thereafter deems payable to the injured employee. If the damages, after deducting the employee's expenses as provided in this subsection, are more than sufficient to reimburse the employer, damages shall be assessed in his favor in a sum sufficient to reimburse him for his claim, and the excess shall be assessed in favor of the injured employee. No compromise with the third person by either the employer or the employee shall be binding upon or affect the rights of the other, unless assented to by him.

For the purposes of this Section, the claim of the employer shall consist of : the amount of any compensation which he has paid on account of the injury which is the subject of the suit; and an amount equal to the present worth of any probable future payments which he has by award become obligated to pay on account of the injury. The word "compensation," as used in this Section, shall be construed to include incapacity payments to an injured employee, payments to the dependents of a deceased employee, sums paid out for surgical, medical and hospital services to an injured employee, the burial fee provided by Section 9(a)(1) of Chapter 4, and payments made under the provisions of Section 17 of this Chapter. Each employee who brings an action against a third party shall include in his complaint:

- a. the amount of any compensation paid by the employer on account of the injury which is the subject of the suit; and
- b. the amount equal to the present worth of any probable future payments which the employer has, by award, become obligated to pay on account of the injury.

Notwithstanding the provisions of this Section, when any injury for which compensation is payable under the provisions of this Code has been sustained under circumstances creating in a third person other than the employer a legal liability to pay damages for the injury and the injured employee has received compensation for the injury from his employer or its workers' compensation insurance carrier, the employer or insurance carrier shall have a lien upon any judgment received by the employee against the third party or any settlement received by the employee from the third party, provided the employer or insurance carrier shall give written notice of the lien to the third party prior to such judgment or settlement.

#### **Section 7. Payment of Compensation. Commutation into Monthly, Quarterly or Lump Sums**

Compensation payable under this Code shall be paid at the particular times in the week and in the manner the commissioner may order, and shall be paid directly to the persons entitled to receive them unless the commissioner, for good reason, orders payment to those entitled to act for

such persons; but, when he finds it just or necessary, the commissioner may approve or direct the commutation, in whole or in part, of weekly compensation under the provisions of this Chapter into monthly or quarterly payments, or into a single lump sum, which may be paid to the one then entitled to the compensation, and the commutation shall be binding upon all persons entitled to compensation for the injury in question. In any case of commutation, a true equivalence of value shall be maintained, with due discount of sums payable in the future; and, when commutation is made into a single lump sum, the commissioner may direct that it be paid to any savings bank, trust company or life insurance company, to be held in trust for the beneficiary or beneficiaries and paid in conformity with the provisions of this Code.

#### **Section 8. Day when Compensation Payments become Due. Penalty for Late Payments**

Payments agreed to under a voluntary agreement shall commence on or before the 10<sup>th</sup> day from the date of agreement. Payments due under an award shall commence on or before the 10<sup>th</sup> day from the date of such award. Any employer who fails to pay within the prescribed time limitations of this Section shall in addition to the compensation award, pay interest at a rate of 10% per annum on such sums and any other interest or penalty imposed pursuant to the provisions of this Code.

#### **Section 9. Death Resulting from Accident or Occupational Disease. Dependents. Compensation**

a. Compensation shall be paid to dependents on account of death resulting from an accident arising out of and in the course of employment or from an occupational disease as follows:

- (1) \$10,000 shall be paid for burial expenses. If there is no one wholly or partially dependent upon the deceased employee, the burial expenses of \$10,000 shall be paid to the person who assumes the responsibility of paying the funeral expenses.
- (2) To those wholly dependent upon the deceased employee at the date of his injury, a weekly compensation equal to 75% of the average weekly earnings of the deceased calculated pursuant to Section 14. of this Chapter, after such earnings have been reduced by any deduction for federal or state taxes, or both, and for applicable Federal Insurance Contributions Act deductions.
- (3) If the surviving spouse is the sole presumptive dependent, compensation shall be paid until death or remarriage.
- (4) If there is a presumptive dependent spouse surviving and also one or more presumptive dependent children, all of which children are either children of the surviving spouse or are living with the surviving spouse, the entire compensation shall be paid to the surviving spouse in the same manner and for the same period as if the surviving spouse were the sole dependent. If, however, any of the presumptive dependent children are neither children of the surviving spouse nor living with the surviving spouse, the compensation shall be divided into as many parts as there are presumptive dependents. The shares of any children having a presumptive dependent parent shall be added to the share of the parent and shall be paid to the parent. The share of any dependent child not having a surviving dependent parent shall be paid to the father or mother of the child with whom the child may be living, or to the legal guardian of the child, or to any other person, for the benefit of the child, as the commissioner may direct.
- (5) If the compensation being paid to the surviving presumptive dependent spouse terminates for any reason, or if there is no surviving presumptive dependent spouse at the time of the death of the employee, but there is at either time one or more

presumptive dependent children, the compensation shall be paid to the children as a class, each child sharing equally with the others. Each child shall receive compensation until the child reaches the age of 18 or dies before reaching age 18, provided the child shall continue to receive compensation up to the attainment of the age of 22 if unmarried and a full-time student, except any child who has attained the age of 22 while a full-time student but has not completed the requirements for, or received, a degree from a post secondary educational institution shall be deemed not to have attained age 22 until the first day of the first month following the end of the quarter or semester in which he is enrolled at the time, or if he is not enrolled in a quarter or semester system, until the first day of the first month following the completion of the course in which he is enrolled or until the first day of the third month beginning after such time, whichever occurs first. When a child's participation ceases, his share shall be divided among the remaining eligible dependent children, provided if any child, when he reaches the age of 18 years, is physically or mentally incapacitated from earning, his right to compensation shall not terminate but shall continue for the full period of incapacity.

(6) In all cases where there are no presumptive dependents, but where there are one or more persons wholly dependent in fact, the compensation in case of death shall be divided according to the relative degree of their dependence. Compensation payable under this subsection shall be paid for not more than 312 weeks from the date of the death of the employee. The compensation, if paid to those wholly dependent in fact, shall be paid at the full compensation rate. The compensation, if paid to those partially dependent in fact upon the deceased employee as of the date of the injury, shall not, in total, be more than the full compensation rate nor less than \$20 weekly, nor, if the average weekly sum contributed by the deceased at the date of the injury to those partially dependent in fact is more than \$20 weekly, not more than the sum so contributed.

(7) When the sole presumptive dependents are, at the time of the injury, nonresident aliens and the deceased has in this state some person or persons who are dependent in fact, the commissioner may in his discretion equitably apportion the sums payable as compensation to the dependents.

b. The dependents of any deceased employee shall be paid compensation on account of the death retroactively to the date of the employee's death. The cost of the payment or adjustment shall be paid by the employer or his insurance carrier.

c. The dependents of any deceased employee who was injured in an accident arising out of and in the course of employment and who died, as a result of those injuries shall be paid compensation, under the provisions of this Section, effective as of the date of death of any such employee. Notwithstanding the provisions of subsection (a) of this Section, the weekly compensation rate for such dependents shall equal the amount of compensation the injured employee was receiving prior to death pursuant to Section 10 of this Chapter.

#### **Section 10. Compensation for Total Incapacity**

a. If any injury for which compensation is provided under the provisions of this Chapter results in total incapacity to work, the injured employee shall be paid a weekly compensation equal to 75% of his average weekly earnings as of the date of the injury, calculated pursuant to Section 14 of this Chapter, after such earnings have been reduced by any deduction for federal or state taxes, or both, and for applicable Federal Insurance Contributions Act deductions, but in no case more than \$715. Compensation paid for total incapacity shall not continue longer than the

period of total incapacity or the date on which the employee attains age 72, which is earlier, provided that nothing herein shall be construed to deny benefits to an employee age 72 or older at the date of injury.

b. The following injuries of any person shall be considered as causing total incapacity and compensation shall be paid accordingly:

- (1) total and permanent loss of sight of both eyes, or the reduction to one-tenth or less of normal vision;
- (2) the loss of both feet at or above the ankle;
- (3) the loss of both hands at or above the wrist;
- (4) the loss of one foot at or above the ankle and one hand at or above the wrist;
- (5) any injury resulting in permanent and complete paralysis of the legs or arms or of one leg and one arm;
- (6) any injury resulting in incurable imbecility or mental illness.

c. An employee who has suffered the loss or loss of the use of one of the members of his body, or part of one of the members of his body, or the reduction of vision in one eye to 1/10 or less of normal vision, shall not receive compensation for the later injury in excess of the compensation allowed for the injury when considered by itself and not in conjunction with the previous incapacity except as provided in this Chapter.

d. Notwithstanding any provision of Mashantucket Pequot Tribal Laws to the contrary, compensation paid to an employee for an employee's total incapacity shall be reduced while the employee is entitled to receive old age insurance or disability benefits pursuant to the Federal Social Security Act. The amount of each reduced workers' compensation payment shall equal the excess, if any, of the workers' compensation payment over the old age insurance or disability benefits pursuant to the Federal Social Security Act.

#### **Section 11. Benefits after Relapse from Recovery. Recurrent Injuries**

If any employee who receives compensation under Section 10 of this Chapter returns to work after recovery from his injury and subsequently suffers total or partial incapacity caused by a relapse from the recovery from, or a recurrence of, the injury, the employee shall be paid a weekly compensation equal to 75% of his average weekly earnings as of the date of the original injury or at the time of his relapse or at the time of the recurrence of the injury, whichever is the greater sum, calculated pursuant to Section 14 of this Chapter, after such earnings have been reduced by any deduction for federal or state taxes, or both, and for applicable Federal Insurance Contributions Act deductions, and provided (a) the compensation shall not continue longer than the period of total or partial incapacity following the relapse or recurrent injury and (b) no employee eligible for compensation for specific injuries set forth in Section 12 of this Chapter shall receive compensation under this Section.

#### **Section 12. Compensation for Partial Incapacity**

a. If any injury for which compensation is provided under the provisions of this Chapter results in partial incapacity, the injured employee shall be paid a weekly compensation equal to 75% of the difference between the wages currently earned by an employee in a position comparable to the position held by the injured employee before his injury, after such earnings have been reduced by any deduction for federal or state taxes, or both, and for applicable Federal Insurance Contributions Act deductions in accordance with Section 14 of this Chapter, and the amount he is able to earn after the injury, after such amount has also been reduced by any such deductions, except that when

- (1) the physician attending an injured employee certifies that the employee is unable to perform his usual work but is able to perform other work,
- (2) the employee is ready and willing to perform other work in the same locality, and
- (3) no other work is available, the employee shall be paid his full weekly compensation subject to the provisions of this Section.

For purposes of this subsection, compensation paid under this subsection shall not be more than \$623 and shall not continue longer than the period of partial incapacity or longer than 520 weeks, or beyond the date on which the employee attains age 72, whichever is earlier. If the employer procures employment for an injured employee that is suitable to his capacity, the wages offered in such employment shall be taken as the earning capacity of the injured employee during the period of the employment.

b. With respect to the following injuries, the compensation, in addition to the usual compensation for total incapacity but in lieu of all other payments for compensation, shall be 75% of the average weekly earnings of the injured employee, calculated pursuant to Section 14 of this Chapter, after such earnings have been reduced by any deduction for federal or state taxes, or both, and for applicable Federal Insurance Contributions Act deductions, but in no case more than \$623. All of the following injuries include the loss of the member or organ and the complete and permanent loss of use of the member or organ referred to:

<b>MEMBER</b>	<b>INJURY</b>	<b>WEEKS OF COMPENSATION</b>
Arm		
Master arm	Loss at or above elbow	208
Other arm	Loss at or above elbow	194
Hand		
Master hand	Loss at or above wrist	168
Other hand	Loss at or above wrist	155
One Leg	Loss at or above knee	155
One foot	Loss at or above ankle	125
Hearing	Both ears	104
	One ear	35
One eye	Complete and permanent loss of sight in, or reduction of sight to one-tenth or less of normal vision	157
Thumb*	On master hand	63
	On other hand	54
Fingers**	First Finger	36
	Second Finger	29
	Third Finger	21
	Fourth Finger	17
Toes***	Great Toe	28
	Other toes	9
Back	Number of weeks which the proportion of incapacity represents to a maximum of 374 weeks.	
Heart		520
Brain		520

Carotid artery		520
Pancreas		416
Liver		347
Stomach		260
Loss of bladder		233
Speech		163
Lung		117
Cervical spine		117
Kidney		117
Rib cage	Bilateral	69
Testis		35
Mammary		35
Nose	Sense and respiratory function	35
Jaw	Mastication	35
Penis		35 – 104
Coccyx Actual removal		35
Sense of smell		17
Sense of taste		17
Spleen In addition to scar		13
Gall bladder		13
Tooth Minimum		1
Loss of drainage duct of eye	(If corrected by prosthesis)	17 for each
Loss of drainage duct of eye	(If uncorrected by prosthesis)	33 for each
Pelvis	Percentage of back	
Ovary		35
Uterus		35-104
Vagina		35-104

If the injury consists of the loss of a substantial part of a member resulting in a permanent partial loss of the use of a member, or if the injury results in a permanent partial loss of function, the commissioner may, in his discretion, in lieu of other compensation, award to the injured employee the proportion of the sum provided in this subsection for the total loss of, or the loss of the use of, the member or for incapacity or both that represents the proportion of total loss or loss of use found to exist, and any voluntary agreement submitted in which the basis of settlement is such proportionate payment may, if otherwise conforms to the provisions of this Chapter, be approved by the chief commissioner in his discretion. Notwithstanding the provisions of this subsection, the complete loss or loss of use of an organ which results in the death of an employee shall be compensable pursuant only to Section 9 of this Chapter.

c. In addition to compensation for total or partial incapacity or for a specific loss of a member or use of the function of a member of the body, the chief commissioner, not earlier than one year from the date of the injury and not later than two years from the date of the injury or the surgery date of the injury, may award compensation equal to 75% of the average weekly earnings of the injured employee, calculated pursuant to Section 14 of this Chapter after such earnings have been reduced by any deduction for federal or state taxes, or both, and for applicable Federal Insurance Contributions Act deductions, but not more than \$589 for up to 208 weeks, for any permanent significant disfigurement of, or permanent significant scar on the face, head or neck, or on any other area of the body which handicaps the employee in obtaining or continuing to work. The commissioner may not award compensation under this subsection when the disfigurement was caused solely by the loss of or the loss of use of a member of the body for which compensation is provided under subsection (b) of this Section or for any scar resulting from an inguinal hernia operation or any spinal surgery.

- d. In making any award under this subsection, the commissioner shall consider
- (1) the location of the scar or disfigurement;
  - (2) the size of the scar or disfigurement;
  - (3) the visibility of the scar or disfigurement due to hyper pigmentation or depigmentation, whether hypertrophic or keloidal;
  - (4) whether the scar or disfigurement causes a tonal or textural skin change, causes loss of symmetry of the affected area or results in noticeable bumps or depressions in the affected area; and
  - (5) other relevant factors. Notwithstanding the provisions of this subsection, no compensation shall be awarded for any scar or disfigurement which is not located on
    - (a) the face, head or neck; or
    - (b) any other area of the body which handicaps the employee in obtaining or continuing to work.

In addition to the requirements contained in Section 11 of Chapter 2, the commissioner shall provide written notice to the employer prior to any hearing held by the commissioner to consider an award for any scar or disfigurement under this subsection.

e. Any award or agreement for compensation made pursuant to this Section shall be paid to the employee, or in the event of the employee's death, whether or not a formal award has been made prior to the death, to his surviving spouse or, if he has no surviving spouse, to his dependents in equal shares or, if he has no surviving spouse or dependents, to his children, in equal shares, regardless of their age.

### **Section 13. Additional Benefits for Partial Permanent Disability**

a. In addition to the compensation benefits provided by Section 12 of this Chapter for specific loss of a member or use of the function of a member of the body, or any personal injury covered by this Chapter, the commissioner, after such payments provided by said Section 12 have been paid for the period set forth in said Section, may award additional compensation benefits for such partial permanent disability equal to 75 % of the difference between the wages currently earned by an employee in a position comparable to the position held by such injured employee prior to his injury, after such wages have been reduced by any deduction for federal or state taxes, or both, and for the Federal Insurance Contributions Act in accordance with Section 14 of this Chapter, and the weekly amount which such employee will probably be able to earn thereafter, after such earnings have been reduced by any deduction for federal or state taxes, or both, and for applicable Federal Insurance Contributions Act deductions, to be determined by the Commissioner based upon the nature and extent of the injury, the training, education and experience of the employee, the availability of work for persons with such physical condition and at the employee's age, but not more than \$589. If evidence of exact loss of earnings is not available, such loss may be computed from the proportionate loss of physical ability or earning power caused by the injury. The duration of such additional compensation shall be determined upon a similar basis by the commissioner, but in no event shall the duration of such additional compensation exceed the lesser of (1) the duration of the employee's permanent partial disability benefits; or (2) 520 weeks. Additional benefits provided under this Section shall be available only to employees who are willing and able to perform suitable work for the employer.

b. Notwithstanding the provisions of subsection (a) of this Section, additional benefits provided under this Section shall be available only when the nature of the injury and its effect on the earning capacity of an employee warrant.

**Section 14. Determination of Average Weekly Wage of Injured Worker. Concurrent Employment. Publication of Wage Tables. Maximum Weekly Compensation**

a. For the purposes of this Chapter, the average weekly wage shall be ascertained by dividing the total wages received by the injured employee from the employer in whose service he is injured during the 52 calendar weeks immediately preceding the week during which he was injured, by the number of calendar weeks during which, or any portion of which, the employee was actually employed by the employer, but, in making the computation, absence for seven consecutive calendar days, although not in the same calendar week, shall be considered as absence for a calendar week. When the employment commenced otherwise than at the beginning of a calendar week, that calendar week and wages earned during that week shall be excluded in making the computation. When the period of employment immediately preceding the injury is computed to be less than a net period of two calendar weeks, the employee's weekly wage shall be considered to be equivalent to the average weekly wage prevailing in the same or similar employment in the same locality at the date of the injury except that, when the employer has agreed to pay a certain hourly wage to the employee, the hourly wage so agreed upon shall be the hourly wage for the injured employee and his average weekly wage shall be computed by multiplying the hourly wage by the regular number of hours that is permitted each week in accordance with the agreement. For the purpose of determining the amount of compensation to be paid in the case of a minor under the age of 18 who has sustained an injury entitling him to compensation for total or partial incapacity for a period of 52 or more weeks, or to specific indemnity for any injury under the provisions of Section 12 of this Chapter, the Commissioner may add 50 % to his average weekly wage, except in the case of a minor under the age of 16, the Commissioner may add 100% to his average weekly wage. Where the injured employee has worked for more than one employer as of the date of the injury, his average weekly wages shall be calculated upon the basis of wages earned from all such employers in the period of concurrent employment not in excess of 52 weeks prior to the date of the injury, but the employer in whose employ the injury occurred shall be liable for all medical and hospital costs and a pro rata portion of the compensation rate based upon the ratio of the amount of wages paid by him to the total wages paid the employee in that average week but not less than an amount equal to the minimum compensation rate prevailing as of the date of the injury.

b. Each August 15<sup>th</sup>, the chief commissioner shall publish tables of the average weekly wage and 75% of the average weekly wage after being reduced by any deduction for federal or state taxes, or both, and for the Federal Insurance Contributions Act, to be effective the following October first. Such tables shall be conclusive for the purpose of determining 75% of the average weekly earnings of an injured employee after such earnings have been reduced by any deduction for federal or state taxes, or both, and for the federal Insurance Contributions Act made from such employee's total wages received during the period of calculation of the employee's average weekly wage for purposes of this Chapter. The chief commissioner may recommend to the Tribal Council for approval annual adjustments of the maximum weekly compensation levels provided under this Code, and such recommendation shall be based on generally acceptable economic indicators of the cost of living.

**Section 15. Average Weekly Wage of Worker with an Occupational Disease**

For the purposes of this Chapter, in the case of an occupational disease the average weekly wage shall be calculated as of the date of total or partial incapacity to work. However, in the case of an occupational disease which manifests itself at a time when the worker has not worked during the 26 weeks immediately preceding the diagnosis of such disease, the claimant's average weekly wage shall be considered to be equivalent to the greater of the average weekly wage determined

pursuant to Section 14 of this Chapter; or the average weekly wage earned by the claimant during the 52 calendar weeks last worked by the claimant, which wage shall be determined in accordance with said Section 14 of this Chapter.

**Section 16. Replacement of Artificial Aids**

Each employer subject to the provisions of this Chapter shall be liable for the payment of damages accidentally sustained by an employee in the course of his employment to artificial legs, feet, arms or hands. Such payments shall consist of the cost of the replacement or repair of such artificial aid. The employer shall also repair or replace eyeglasses, contact lenses, hearing aids and artificial teeth, where damage to such eyeglasses, contact lenses, hearing aids and artificial teeth is accompanied by bodily injury about the face or head.

**Section 17. Compensation for Time Lost During and Expense of Medical Treatment. Reimbursement of Wages Lost Due to Appearance at Informal Hearing. Payments to Prevailing Claimants in Contested Cases. Medical Attention Outside Regular Work Hours**

a. A person receiving medical attention under the provisions of this Chapter and required to be absent from work for medical treatment, examination, laboratory tests, x-rays or other diagnostic procedures, and not otherwise receiving or eligible to receive weekly compensation, shall be compensated for the time lost from the job for required medical treatment and tests at the rate of his average earnings, but not less than at the minimum wage established by law, provided the amount payable in anyone week shall not exceed the weekly compensation rate of the individual. Time lost from the job shall include necessary travel time from the place of work to the place of treatment, the time for the treatment and any other time that is necessary for the treatment, examination or laboratory test.

b. When a claimant is given notice to appear at a conference or an informal hearing before a commissioner and does appear, he shall be entitled to reimbursement of wages lost by reason of the appearance if he is not then receiving compensation as provided in this subsection. When liability or extent of disability is contested by formal hearing before the commissioner, the claimant shall be entitled, if he prevails on final judgment, to payment for services rendered him by a competent physician or surgeon for examination, x-ray, medical tests and testimony in connection with the claim, the commissioner to determine the reasonableness of the charges, and he shall be entitled to receive payment of 1/5 of the weekly compensation, as computed in accordance with Section 14 of this Chapter, for each day, or part thereof, that he is in attendance at the formal hearing if he is not then receiving compensation.

**Section 18. Transfer to Suitable Work During Period of Treatment or Rehabilitation or because of Physical Incapacity**

Where an employee has suffered a compensable injury, which disables him from performing his customary or most recent work, his employer at the time of such injury may transfer him to full-time work suitable to his physical condition where such work is available, during the time that the employee is subjected to medical treatment or rehabilitation or both and until such treatment is discontinued on the advice of the physician conducting the same or of the therapist in charge of the rehabilitation program or until the employee has reached the maximum level of rehabilitation for such worker in the judgment of the commissioner under all of the circumstances, whichever period is the longest.

**Section 19. Allowance for Advance Payments**

In fixing the amount of any compensation under this Chapter, due allowance shall be made for any sum which the employer has paid to any injured employee or to his dependents on account of the injury, except such sums as the employer has expended or directed to be expended for medical, surgical or hospital service.

**Section 20. Modification of Award or Voluntary Agreement**

Any award of, or voluntary agreement concerning, compensation made under the provisions of this Chapter shall be subject to modification, upon the request of either party and in accordance with the procedure for original determinations, whenever it appears to the commissioner, after notice and hearing thereon, that the incapacity of an injured employee has increased, decreased or ceased, or that the measure of dependence on account of which the compensation is paid has changed, or that changed conditions of fact have arisen which necessitate a change of such agreement or award in order properly to carry out the spirit of this Chapter. The commissioner shall have the power to open and modify any award or voluntary agreement, and shall retain jurisdiction over claims for compensation, awards and voluntary agreements, for any proper action thereon, during the whole compensation period applicable to the injury inquest, provided that such authority and jurisdiction shall cease upon filing an appeal in the tribal court.

**Section 21. Exemption and Preference of Compensation**

All sums due for compensation under the provisions of this Chapter shall be exempt from attachment and execution and shall be nonassignable before and after award. The rights of compensation granted by this Chapter, reckoned at their present value, shall have the same preference against the assets of an insolvent employer as may be allowed by law to a claim for the unpaid wages of workers earned within three months.

**Section 22. Award of Fees and Expenses**

a. Whenever any fees or expenses are to be paid by the employer or insurer and not by the employee under the provisions of this Code, the commissioner may make an award directly in favor of the person entitled to the fees or expenses, which award shall be filed in tribal court, shall be subject to appeal and shall be enforceable by execution. The award may be combined with an award for compensation in favor of or against the injured employee or the dependent or dependents of a deceased employee or may be the subject of an award covering only the fees and expenses.

b. All fees of attorneys, physicians, or other persons for services under this Code shall be subject to the approval of the commissioner.

**LEGISLATIVE HISTORY REVISIONS TO TITLE XIII.  
WORKERS' COMPENSATION CODE**

**A. Background**

Title XIII of the Mashantucket Pequot Tribal Laws was enacted in 1997 pursuant to TCR062797-06 of 06, entitled the "Mashantucket Pequot Workers' Compensation Code." Tribal Council's purpose in adopting the Workers' Compensation Code was to:

“define the basic rights of employees who work for the Tribe and are injured while on the job and the liabilities of the employer to provide a remedy to compensate the employee for such injury, to encourage the prevention of work-related injuries, to establish a Tribal Workers’ Compensation Commission to administer the tribal system in a more efficient and responsive manner, to provide an opportunity for review of the Tribe’s Workers’ Compensation Commission’s decisions in the tribal court, and to require employers who do work for the Tribe on the Reservation to provide workers’ compensation coverage for their employees.”

In its continuous review of tribal laws and in an effort to maintain updated coverage and compensation for employees and address issues or ambiguities that have arisen, the Judicial Committee conducted an extensive review of the Workers’ Compensation Code and recommended changes to the Tribal Council.

The following is a summary of the amendments to XIII Workers’ Compensation Code and the intent of Tribal Council in adopting these amendments.

## **B. Summary of Amendments**

### **1. Jurisdiction and Waiver of Sovereign Immunity from Suit**

Prior to the amendments, the Workers’ Compensation Code did not have an express waiver of sovereign immunity. It is important that all of the tribal laws reflect consistent and uniform grants of jurisdiction, as required by I M.P.T.L. Judiciary. In addition, the areas in which the Tribe waives its sovereign immunity should be clearly and expressly defined. The Workers’ Compensation Code generally provides for tribal court review of decisions of the Workers’ Compensation Commissioner. However, in light of the recent amendment to I M.P.T.L., Judiciary, it is prudent to clarify the tribal court’s jurisdiction over all claims arising under the Workers’ Compensation Code.

The amendments state that the tribal court has jurisdiction over workers’ compensation claims subsequent to all other remedies being exhausted. Language also is included stating that the Tribe waives its sovereign immunity from suit, as an “employer,” for claims brought in tribal court. The tribal court shall use the Employment Review Code (VIII M.P.T.L.) as a guide concerning procedures and calculation of damages in discriminatory discharge claims.

### **2. Discharge or Discrimination Prohibited. Right of Action**

Prior to the amendments, the Workers’ Compensation Code was unclear under which tribal law an employee who is discharged or discriminated against may bring a civil action against the employer in tribal court pursuant to the Workers’ Compensation Code.

The amendments clarify that an employee may bring a civil action in tribal court against the employer “pursuant to this law,” meaning the Mashantucket Pequot Workers’ Compensation Code.

### **3. Medical and Surgical aid; Hospital and Nursing Services**

Prior to the amendments, the Workers’ Compensation Code did not include language regarding reports of injury and the fee thereof, or language waiving the employee from any obligation of payment of any medical expenses resulting from an injury. The comparable state provisions require that the medical provider may not take any action against the employee for any portion of a medical bill. The Workers’ Compensation system was operating under the *assumption* that the medical provider can not go after the employee, and must accept the reasonable charge to be paid by the employer/insurer.

The amendments include language requiring production of medical reports by professionals rendering services due to the injury, to the employer and/or insurance carrier at no cost. Language is also included clarifying the regulations and validating that all medical expenses incurred as a result of an injury under the Workers' Compensation Code are to be paid by the employer's insurance carrier. Further, no action against an employee for said medical expenses is allowed. The Tribe's Workers' Compensation Code is closely tailored to the State Workers' Compensation statute but it is not the same; nor has the Tribe adopted the state regulations governing the compensation system. Medical providers in the State know and are accustomed to these limitations, and the Tribe wants to ensure consistent treatment for its employees.

#### **4. Compensation for Total Incapacity.**

Prior to the amendments, the Workers' Compensation Code provided for a maximum rate of \$678.00 for total incapacity. This rate was based on the maximum rate applicable to claims under Connecticut law at the time this Code was passed. The state of Connecticut has raised its maximum rate each October 1<sup>st</sup> since that time. Due to the increase in the State's maximum rate, and to local and national cost of living increases since the inception of this Code, the Chief Commissioner of the Workers' Compensation Commission has recommended an adjustment to the maximum rate.

Prior to the amendments the Workers' Compensation Code provided that payments for total incapacity shall not continue past the age of 72. The intent of this law was to stop paying people at age 72 who had already been receiving compensation for a period of time, on the assumption that the employee would have stopped working by age 72. However, the Tribe and the Gaming Enterprise employ many individuals who are over age 72, and the law should provide appropriate benefits to employees who are 72 years or older when injured on the job.

The amendments will increase the maximum weekly compensation for total incapacity from \$678 to \$715. The amendments will also include language allowing benefits to individuals who are 72 years or older when injured.

#### **5. Compensation for Partial Incapacity.**

Prior the amendments, the Workers' Compensation Code provided for a maximum rate of \$589 for partial incapacity. This rate was based on the maximum rate applicable to claims under Connecticut law at the time this Code was passed. The state of Connecticut has raised its maximum rate each October 1<sup>st</sup> since that time. Due to the increase in the State's maximum rate, and to local and national cost of living increases since the inception of this Code, the Chief Commissioner of the Workers' Compensation Commission has recommended an adjustment to the maximum rate.

This amendment will increase the maximum weekly compensation rate for partial incapacity from \$589 to \$623.

#### **6. Body Parts – Female Genitalia.**

Prior to the amendments, the Workers' Compensation Code did not include certain parts of the female genitalia on its list of body parts for permanent impairment. The state of Connecticut Code recently amended its list of body parts for permanent impairment to include certain female genitalia.

The amendments include the female genitalia recently added to the State's list of body parts for permanent impairment in Tribe's list of same.