TITLE VII

PONCA TRIBE OF NEBRASKA
TRIBAL OCCUPATIONAL INJURY ORDINANCE

Section 7-1-1 Forward.

There shall be a Tribal Occupational Injury Ordinance for all covered employees and workers of the Ponca Tribe of Nebraska. The Ponca Tribe of Nebraska, exercising its inherent sovereign authority, adopts this system, establishing a Tribal Occupational Injury Ordinance.

Section 7-1-2 Acknowledgment of Program and Notice To Employees.

1. All covered employees, workers and persons asserting a claim shall be conclusively presumed to have elected to take occupational injury benefits in accordance with the tenets, conditions and provisions of this program (including the schedule of benefits) by virtue of employment with the Ponca Tribe of Nebraska, exclusive of any other claims the employee may have with regards to the injury. All covered employees and/or persons asserting a claim for occupational injury benefits acknowledge that the Ponca Tribe of Nebraska is, in fact, a federally recognized Indian Tribe and for the purposes of occupational injury benefits, is exercising its inherent sovereign authority. This Tribal Occupational Injury Ordinance applies regardless of locations of injury.

2. The Ponca Tribe of Nebraska shall be responsible for posting a notice of this program in a conspicuous location (See Supplement I).

3. A copy of this program will be made available to the employee or the employee's representative upon request.

Section 7-1-3 Administration of Program.

1. To establish a systematic and uniform procedure for administration of Occupational Injury Benefits to employees of the Ponca Tribe of Nebraska.

2. To provide medical treatment for injured workers and fair income benefits to injured workers and their dependents.

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3. To create a process whereby disputes over compensation can be resolved in a fair and unbiased manner; and

4. To restore the injured worker physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable.

Section 7-1-4 Definitions.

In this program, unless the context otherwise requires:

1. "ADMINISTRATOR" means the insurance company (Sovereign Nation Workers’ Compensation and Employers’ Liability Policy) providing coverage or its designee, including any third party administrator.

2. "ADOPTION" means persons adopted by decree of a recognized Court of law.

3. "AVERAGE WEEKLY WAGE" means the average of the employee's wages earned during the twenty-six (26) calendar weeks preceding the date of injury, not including unreported tips and/or bonuses. Overtime is not to be considered in computing wages unless it is regular and frequent throughout the year. The twenty-six weeks prior to the date of injury are presumed representative, regardless of the wages earned. In the event that an employee is employed for less than twenty-six (26) consecutive calendar weeks immediately preceding the date of injury, the average weekly wage shall be determined using the actual number of weeks the employee worked divided by the gross wages earned during those weeks. If the employee's work week is fewer than five (5) days per week or if there is an irregular number of days worked per week, the total number of days that an employee actually performed any of the duties of employment in the last twenty-six (26) weeks is to be divided by the number of weeks in which the employee actually performed such duties, multiplied by the employee's daily wage.

4. "BENEFIT" means the findings or decision of the Administrator or designee regarding the amount of medical and lost time benefits due to an injured employee or the dependent of a deceased employee under the rules of the Tribal Occupational Injury Ordinance.
5. "CHILD" includes dependent biological child(ren) and dependent legally adopted child(ren), but does not include married child(ren). Children must also be under eighteen (18) years of age or under twenty-five (25) years of age and enrolled as a full-time student in an accredited educational institution or be physically or mentally incapable of self support and wholly dependent on the deceased employee until age twenty-five (25).

6. "CLAIM" means a written request for worker's compensation benefits under this ordinance.

7. "CLAIMANT" means the injured covered employee, or in the event of death of the covered employee, dependents of the deceased.

8. "COURSE OF EMPLOYMENT" means the Ponca Tribe of Nebraska employment of the covered employee at the time the injury occurred. An injury must be directly related to their employment by the Ponca Tribe of Nebraska in order that a claim be payable. Claim for injuries that occur during social or recreational activities are not payable, unless the employee was paid for their attendance at the activity by the Ponca Tribe of Nebraska.

9. "COMPENSATION" means lost time wages due to inability to work due to a work related injury. This also includes if the employer is unable to accommodate modified duty work within physical restrictions assigned by the treating physician.

10. "COVERED EMPLOYEE" AND "WORKER" means:

   a) Every person in the employment of the Ponca Tribe of Nebraska, but does not include volunteers or independent contractors.

   b) Excluded as not in the employment of the Ponca Tribe of Nebraska are consultants, independent contractors and all other persons not considered under "employees" by the Ponca Tribe of Nebraska unless a written contractual agreement between the Ponca Tribe of Nebraska and the entity provides for occupational benefits. In the event of such a contract, the contract shall be
specific as to whom, when, where, and why this coverage is provided by the Ponca Tribe of Nebraska, and all third parties and/or covered employees shall agree to all terms, conditions, and provisions of this program.

11. "DEPENDENT" shall be defined as those individuals residing in the same household, prior to the date of loss or onset of disease, and that are economically dependent upon earnings of the employee at the time of the compensable injury which caused the employee's death as determined by the Administrator.

13. "DOMESTIC PARTNER" means a partner of the same sex or opposite sex relationships as defined in the criteria listed on the Domestic Partnership Affidavit. An Affidavit must be on file in the HRM Office in order to claim this relationship.

12. "EMPLOYER" under this ordinance refers to the Ponca Tribe of Nebraska administration, a federally recognized Indian Tribe acting at all times pursuant to its Constitution and Bylaws in a governmental capacity.

13. "INJURY" means an injury directly related to their employment and includes occupational disease and death. In addition to, damage to or destruction of artificial member, dental appliances, teeth, hearing aids and eyeglasses/contacts, when a covered injury is sustained, if no physical injury is sustained the damaged appliance will not be covered. Injury is defined in two categories: 1) Traumatic, 2) Cumulative. "Traumatic" is defined as a sudden, specific incident. "Cumulative" is defined as a repetitive motion injury occurring over a period of time. Where this plan contains conflicting references to injury and occupational disease, the references to occupational disease shall prevail.

14. "MAXIMUM MEDICAL IMPROVEMENT" means the date after which no significant recovery from or significant lasting improvement to a personal injury can reasonably be anticipated, based upon reasonable medical probability.
15. "NON-SCHEDULED INJURIES" mean injuries that result in permanent partial disability or permanent total disability which are not defined as scheduled member injuries.

16. "OCCUPATIONAL DISEASE" means a disease, which is directly related to the employment. A disease is not directly related to the employee's employment if an employee would have been equally exposed to such a hazard outside of the employment.

17. "OCCUPATIONAL INJURY BENEFITS" include weekly benefits and medical benefits further defined as follows:
   a) "MEDICAL" means medical expense and other expenses associated with medical treatment reasonably related to the work injury. Medical mileage expense will be paid at the current federal rate.

   b) "WEEKLY BENEFIT" means 66 2/3 percent of the employee's Average Weekly wage. In the case of temporary partial disability, the weekly benefit amount is 66 2/3 percent of the difference between the employee's average gross weekly earnings at the time of the injury and the employee's earnings while temporarily working at the lesser paying job. The maximum weekly benefit payable is $750.00.

   c) "TEMPORARY TOTAL DISABILITY BENEFITS" (TTD benefits) means the weekly benefit paid when an injury results in three (3) or more calendar days of disability with a two (2) week retroactive period.

   d) "TEMPORARY PARTIAL DISABILITY BENEFITS" (TPD benefits) means the weekly benefits paid if the employee returns to work at a lesser paying job, because of the injury but before the employee reaches maximum medical improvement.

   e) "PERMANENT PARTIAL DISABILITY BENEFITS" (PPD benefits) means the weekly benefits paid for the partial loss of a scheduled member or a non-scheduled member.
f) "PERMANENT TOTAL DISABILITY BENEFITS" (PTD benefits) means the weekly benefits paid for a non-scheduled injury when the job-related injury leaves an employee totally and permanently incapacitated. This means that the employee's physical disability causes the employee to be unable to secure anything more than sporadic employment resulting in an income of less than 90% of their average weekly wage at the time of injury.

g) "DEATH BENEFITS" means the weekly benefits paid to dependents as a result of any fatality of the employee as a direct result of their employment.

18. "SCHEDULED MEMBER INJURIES" mean injuries that result in permanent partial impairment to the shoulder, arm, hand, thumb, finger, hip, leg, foot, toes, eyes, or ears as defined in Section 7-1-22.

19. "SPOUSE" means person to whom you are legally married or domestic partner.

Section 7-1-5 Right to Occupational Injury Benefits.

1. Every covered employee, or the employee's dependents in case of death, who sustains an injury directly related to their employment shall be entitled to receive benefits under this program.

2. Except in the case of acute medical emergencies, the Ponca Tribe of Nebraska has the right to select the employee's health care provider. The "authorization to treat" form (Form O) is required for ALL medical appointments. This form must be obtained prior to the appointment and returned to the employer prior to the start of the next scheduled shift.

3. The Administrator shall pay usual and customary expenses for necessary medical emergencies and/or authorized medical treatment reasonably related to the compensable injury.

Section 7-1-6 Exclusions From Coverage.

The following shall be excluded from coverage under this program:

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1. No benefit of any nature shall be payable for injury and/or death resulting from self-inflicted injury or willful injury of another. If the injury follows repeated documented violations of work rules, it may be regarded as a self-inflicted injury. If the injury resulted from a documented violation of safety policies, determined after a thorough investigation by the Safety Committee, it may be regarded as a self-inflicted injury and therefore not compensable.

2. No benefit shall be payable for the death or permanent disability of an employee if the employee's death or permanent disability is caused by, aggravated, or continued by, an unreasonable refusal or neglect to submit to or follow any competent or reasonable surgical treatment or medical aid or advice by a qualified health care provider.

3. No benefit shall be payable for injury where refusal or failure of the injured employee to obey written or verbal instructions by the employer, or failure or refusal to use a safety device or appliance furnished by the employer, which if obeyed or used, would have reasonably prevented or significantly reduced the likelihood of injury or death.

4. No benefit of any nature shall be payable for injury and/or death caused or contributed to by the employee's use of any illegal substance, including but not limited to narcotics and hallucinogens, or any gas or fumes taken or inhaled voluntarily, or by voluntary poisoning, or willful intoxication or abuse of any prescription medication.

5. No benefit shall be payable for any covered employee injured or killed while intoxicated regardless of whether or not the intoxicated condition was the proximate cause of the injury or death. Therefore, it is necessary only to prove that the covered employee was intoxicated at the time of the injury to deny benefits under this Tribal Ordinance, but the burden to prove intoxication shall at all times rest with the employer.

6. No benefit shall be payable for psychological or mental injuries.
7. Off-work but on premise. An employee shall not be a covered employee if the employee suffers an injury at his place of employment outside his beginning and ending work time in which he/she receives wages, unless it falls under course of Employment.

8. An injury occurring to an employee while on the way to or from work is not within the course of employment except when such travel is directly connected with the employee's work. This exception will not apply if the employee deviates from a reasonably direct route of travel, or is not acting in the interest of the employer at the time of injury.

9. For traumatic injury: The claim shall be denied if there is no specific incident which caused the injury, and if the employee is not performing employment related duties. The claims shall also be denied if not reported within 48 hours from the time the injury occurred.

10. For cumulative injury: The claim shall be denied if the employee fails to report a claim within 30 days from the initial onset of pain or injury. The claim shall also be reduced for cumulative injury based on the employee's length of employment.

11. Compensation shall not be paid for any period during which the employee is incarcerated, regardless of the nature of the penal institution in which the employee is incarcerated, and regardless of the reasons for or period of such incarceration. Such incarceration shall not begin the running of any time period during which an employee is eligible for benefits.

12. Compensation shall not be paid for any period during which the employee:

   a. does not have authorization from the company's physician / provider to be off work (the employee is responsible for providing evidence to prove their claim);

   b. is terminated for misconduct, declines or quits work offered by the employer within the employee's physical restrictions;

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c. fails to cooperate with reasonable medical or vocational rehabilitation; and or fails to make a diligent effort to find employment;

d. fails to report any other employment or wages.

13. Non-Compliance: If the Administrator determines that there is an issue of non-compliance by the employee with authorized medical treatment, the Administrator will notify the employee in writing they have 7 days to contact them to resolve the non-compliant issue or the Occupational Injury Benefits will be denied from the date of the letter forward.

14. Documented evidence that the employee has failed to follow physician's restrictions on two or more occasions, while either at work or outside the workplace will result in a denial of future Occupational Injury Benefits.

15. Any employee who leaves the employment of a covered employer and who later seeks employment with the same employer or another covered employer shall declare in writing whether the employee is claiming any injury under this section from the prior employment. Failure to declare a claim of prior injury shall be deemed a claim of no injury and any subsequent injury under this section shall be determined.

16. Claims due to tobacco use or second-hand smoke in the workplace shall not be compensable.

17. Claims due to injuries caused by mold in the workplace shall not be compensable.

This section shall not be construed to require the employee to undergo unreasonably invasive medical procedures, nor to require the employer to provide vocational rehabilitation.

Section 7-1-7 Aggravation of Pre-Existing Injury.

For the purpose of settlement for permanent partial or permanent total disability, the amount of the benefit for that disability as set forth in the schedule of benefits may be reduced or denied in its entirety by the Administrator for pre-existing disability, whether work related or not. Apportionment for
prior, medically documented disability ratings may be used in calculating any permanent partial or permanent total disability.

Section 7-1-8 Disclosure of Pre-Existing Disabilities.

1. If requested, all employees of the Ponca Tribe of Nebraska shall disclose any pre-existing physical or mental disorder or disability known to the employee that would prevent them from performing in a reasonable and safe manner the activities involved in the position applied for or in which they work. Following such request, failure by the employee to disclose, prior to commencement of employment, a physical condition which prevented the employee from safely performing the work for which the employee was hired and which was a substantial contributing factor to the injury shall exclude the employee from coverage under the provisions of this Ordinance.

2. Any claim resulting from an employment related aggravation of a pre-existing condition which was not disclosed as required under this worker benefit program may be declined by the Administrator under this program if the claimant had knowledge of the pre-existing condition and failed to disclose the pre-existing condition as required by subsection (1).

Section 7-1-9 Benefits as an Exclusive Remedy.

The right to receive benefits pursuant to the provisions of this program for injuries sustained by a covered injured employee regardless where the injury occurred shall be the exclusive remedy against the Ponca Tribe of Nebraska, its agents, officials and employees.

Section 7-1-10 Choice of Remedy as Waiver of Alternate Remedy.

1. An employee or the employee's dependents or legal representative, who accepts occupational injury benefits, waives the right to exercise any other legal remedy.

2. An employee or the employees' dependents or legal representative, who exercises any other legal remedy against an employee, agent, or official of the Ponca Tribe of Nebraska, waives any right to occupational injury benefits.
Section 7-1-11 Access to Medical Record and Medical Reports.

1. An employee, by filing a claim under this program, waives any claim to doctor/patient privilege. The Authorization to Release Medical Records form (Form B) must accompany the First Report of Occupational Injury form (Form A).

2. The Ponca Tribe of Nebraska or the Administrator shall have the right to present specific questions required to evaluate the claim, and to request a full and complete report from the employee's physician or surgeon or other medical worker at any time and in the form and detail as deemed necessary.

3. The employee shall provide the Ponca Tribe of Nebraska or the Administrator with Form B to obtain any medical information. Failure to execute a waiver or release for such medical information will result in an automatic denial of all benefits.

Section 7-1-12 Report of Injury.

1. No compensation shall be due under this Ordinance unless the employer has clear reason to know of the injury or the employee provides the Human Resource Department with notice of the injury within 48 hours for traumatic injuries and within 30 days after the onset of a cumulative injury. A traumatic or cumulative injury or occupational disease is deemed to have occurred when the employee knows or has reason to know that the injury or disease is related to the employee's work activities, or when the injury or disease causes the employee to be unable to work, whichever occurs first.

2. All incidents resulting in death must be reported by our Human Resource Department to the Administrator within seventy-two (72) hours of the time of occurrence or knowledge of the alleged occurrence by the Ponca Tribe of Nebraska.

3. When an injury or occupational disease occurs, the employee or claimant must also file their claim with
the Human Resource Department to be forwarded to the Administrator within the same time specified by Section 7-1-13.

4. Time limits shall be calculated using calendar days.

Section 7-1-13 Time Limit for Filing of Claim.

1. Traumatic and Cumulative injuries. No compensation benefits shall be paid or awarded under this Ordinance unless the written claim for benefits is made within thirty (30) calendar days from the date of the claimed injury or onset of symptoms in the case of cumulative injury. Within thirty (30) calendar days of the date of the written notice of claim, the employee must seek treatment, or no benefits will be payable hereunder.

2. A claim for benefits will be precluded from being processed where more than one (1) year has elapsed from the date of last medical treatment for a covered injury or where more than one (1) year has elapsed from the date after the employee has reached maximum medical improvements, and the employee has not prosecuted the claim.

3. In the case of occupational disease, no compensation benefits shall be paid or awarded under this Ordinance unless the employee or the employee's dependents or representative file a claim within ninety (90) days from the date of discovery of the disease and its probable relationship to the employment, but in no event longer than ninety (90) days from the date employee terminates employment with the Ponca Tribe of Nebraska or ninety (90) days after the date of death, whichever occurs first.

Section 7-1-14 False Statement or Representation to Obtain Benefits and Forfeiture.

Any person who willfully makes a false statement or representation in order to obtain any benefits under this program shall forfeit all rights to such benefits.

1. The employee shall repay such compensation that the employee is not entitled to and is received because of clerical error, mistaken identity, innocent misrepresentation mistakenly acted upon, or any other
circumstance of a similar nature and not induced by fraud.

a. Recoupment may be made from any future payments due the employee on any workers benefit claim. Or if no future payments are due to the employee a payment plan shall be arranged between the Administrator and employee.

b. The Administrator or employer must make a claim for such repayment or recoupment within one year of when the compensation is paid or the repayment shall be barred.

c. The Ponca Tribal Court may waive, at its discretion and in whole or in part, the amount of such timely claim where the recovery would be against equity and good conscience.

2. Whenever the payment of compensation to a worker has been induced by proven fraud, the recipient shall repay any such compensation together with a penalty of fifty percent (50%) of the total of any such payments.

a. Recoupment may be made from any future payments due the worker on any worker benefit claim. Or if no future payments are due to the employee a payment plan shall be arranged between the Administrator and employee.

3. The Administrator or employer shall make a claim for repayment or recoupment within one (1) year of discovery of the fraud.

Section 7-1-15 Medical Examination of Employee; Periodic Independent Medical Examinations; Effect of Refusal or Obstruction of Examination or Treatment.

1. An employee shall have only one treating health care provider at a time coordinating the employee's medical care. All medical appointments must be approved and authorized by the employer, except in acute emergency situations. Any change in a health care provider must be approved by the Administrator prior to engagement of a new health care provider, except in emergency situations. Services rendered by a health care
provider prior to such approval shall not be the responsibility of the employer and shall not be paid.

2. The Administrator may reduce or suspend the benefits of an employee whose actions interfere with or prolong the employee's recovery, including where the employee fails to timely seek appropriate medical attention, or reports ongoing treatment by a treating physician when in fact such treatment is not occurring, or who fails or refuses to seek treatment with the employer's approved medical providers. If an employee misses two (2) consecutive scheduled appointments without authorization from the Administrator it could result in a suspension of all benefits.

3. An employee entitled to benefits shall submit to independent medical examinations at a place reasonably convenient for the employee, if and when requested by the Administrator.

4. The request for medical examination shall fix a time and place for such examination, having regard to the convenience of the employee, the employee's physical condition and ability to attend. The employee may have a health care provider present at the examination if procured and paid for by the employee.

5. If the employee refuses to submit to the medical examination or obstructs the examination, the employee's right to benefits shall be suspended until the examination has been made, and no benefits shall be payable during or for such period of refusal.

Section 7-1-16 Waiting Period.

No weekly benefits shall be allowed under the provisions of this program for any injury or occupational disease injury, which results in a disability lasting less than three (3) consecutive days. If the worker's disability lasts for more than fourteen (14) days following the date of the injury, weekly benefits shall be allowed from the date of disability. The date of injury is not considered as a "date of disability" to count towards the waiting period. An employee may not recover weekly benefits for the period of time that they are compensated by annual or sick leave, at the employee's option. Annual or sick leave time taken shall apply against the waiting period of weekly benefits. If the employee files for and receives short
term or long term disability benefits through their employer for a Worker Benefit Claim, the employee has waived their rights to recover compensation under the Ordinance.

Section 7-1-17 Temporary Total Disability (TTD).

1. Temporary Total Disability (TTD) benefits are payable until an injured employee returns to work, is medically capable of returning to employment substantially similar to employment in which the employee was engaged at the time of injury or until the date the employee reaches maximum medical improvement, as defined in Section 7-1-21 whichever occurs first. If the employer offers work within the employee’s restrictions and the employee refuses to accept the work, the employee shall not be paid TTD benefits during the period of refusal. TTD benefits will end on the date the physician releases an employee to full duty work, or in the case of modified duty work, the date the employer notifies the employee of work availability.

2. Where an employee is entitled to benefits under this section and death ensues from any cause unrelated to the injury for which benefits were paid, all unaccrued benefits shall cease and all liability of the Ponca Tribe of Nebraska shall terminate.

3. If an employee is terminated for a specific cause and the employer has documentation that they have light duty work available within the employee's physical restrictions, the employee is not entitled to compensation under the Occupational Injury Benefits.

Section 7-1-18 Temporary Partial Disability (TPD).

1. Temporary Partial Disability (TPD) benefits are payable when the employee returns to work at a lesser paying job, because of the injury. TPD benefits are payable pursuant to the following:

a) If the employer offers the employee work within the employee's restrictions, the employee shall accept the work and be paid temporary partial benefits based strictly on wage loss. If the employee refuses to accept the work, the employee shall not be paid TPD benefits during the period of the refusal.
b) If work is not offered by the Ponca Tribe of Nebraska and the employee elects to perform work with a different employer, the employee shall be paid TPD benefits.

2. As long as the employer allows the employee to make up any missed time for medical appointments, TPD benefits will not be paid for any missed time for those medical appointments.

3. Where an employee is entitled to benefits under this section and death ensues from any cause unrelated to the injury for which benefits were paid, all unaccrued benefits shall cease and all liability of the Ponca Tribe of Nebraska shall terminate.

Section 7-1-19 Permanent Partial Disability (PPD).

1. When an injury results in a permanent disability, the employee may be entitled to Permanent Partial Disability (PPD) benefits based upon the degree of permanent disability. Benefits begin at the termination of TTD or TPD benefits. If all of the weeks have accrued at the time of the payment, a lump sum payment will be issued. If the weeks have not accrued, the benefits will be paid out weekly until all weeks owed are exhausted. There are two types of permanent partial disability benefits:

a) Scheduled member disabilities - An employee's entitlement to PPD benefits when a scheduled member is involved is based on functional impairment as assigned by a health care provider. The schedule shown in Section 7-1-22 represents the number of weeks of benefits payable for 100% loss, or loss of use, of the body member. If the PPD rating is less than 100%, the percentage rating is multiplied by the number of weeks shown in the schedule of benefits to determine the PPD benefits payable.

b) Non-scheduled member disabilities - An employee's entitlement to PPD benefits when a scheduled member is involved is based on functional impairment as assigned by a health care provider.
The number of weeks for a body as a whole are 400.

2. Where an employee is entitled to benefits under this section and death ensues from any cause unrelated to the injury for which benefits were paid, all unaccrued benefits shall cease and all liability of the Ponca Tribe of Nebraska shall terminate.

Section 7-1-20 Permanent Total Disability (PTD).

1. Permanent Total Disability (PTD) must be demonstrated by objective medical evidence. PTD applies only to unscheduled injuries and the factors set forth in (Section 7-1-19) are used to determine if an employee is entitled to PTD benefits.

2. Where an employee is entitled to benefits under this section and death ensues from any cause unrelated to the injury for which benefits were paid, all unaccrued benefits shall cease and all liability of the Ponca Tribe of Nebraska shall terminate.

3. PTD benefits could cease or be reduced once the employee is eligible for and receiving Social Security Income (SSI).

Section 7-1-21 Maximum Medical Improvement and Rating; Termination of Benefits.

When an injured or disabled employee's physical condition reaches the point after which no significant recovery from or significant lasting improvement to a personal injury can reasonably be anticipated, based upon reasonable medical probability, the following procedures will be applicable:

1. The employee is considered to have reached maximum medical improvement and the employee's condition shall then be considered stationary and ratable.

2. On claims where compensation has been paid, the employee shall be notified in writing by the Administrator that the employee's condition is stationary and ratable. If the physician assigns a permanent partial disability rating as a result of the injury, the notice shall also include whether a functional impairment rating has been assigned to the
injury and the amount that the Administrator determines is due under Section 7-1-22. This notice is referred to as the notice of Maximum Medical Improvement.

3. The Administrator shall make the initial permanent partial disability payment within thirty (30) days of service of notice of *maximum medical improvement* unless the Administrator disputes the rating. If such a dispute exists, the Administrator shall notify the employee in writing regarding this.

4. The employee may request an appeal of a notice of maximum medical improvement under the procedure for disputed claims in Section 7-1-24.

**Section 7-1-22 Schedule of Benefits.**

1. Scheduled Member Injuries:
   
   1. **SHOULDER** 250 weeks
   2. **ARM** 250 weeks  
      a) 2/3 of arm between shoulder & elbow
   3. **HAND Total** 190 weeks
   4. **THUMB**  
      a) Total 60 weeks  
      b) More than one phalange 60 weeks  
      c) At distal phalange 30 weeks
   5. **INDEX FINGER**  
      a) Including metacarpal 35 weeks  
      b) More than one phalange 35 weeks  
      c) At distal phalange 17.5 weeks
   6. **SECOND FINGER**  
      a) Including metacarpal 30 weeks  
      b) More than one phalange 30 weeks  
      c) At distal phalange 15 weeks
   7. **THIRD FINGER**  
      a) Including metacarpal 25 weeks  
      b) More than one phalange 25 weeks  
      c) At distal phalange 12.5 weeks

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8. FOURTH FINGER
   a) Including metacarpal 20 weeks
   b) More than one phalange 20 weeks
   c) At distal phalange 10 weeks

9. HIP 220 weeks

10. LEG
    a) 2/3 of leg between hip & knee 220 weeks

11. FOOT
    a) At ankle 150 weeks

12. GREAT TOE
    a) Including metatarsal 40 weeks
    b) Loss of more than one phalange 40 weeks
    c) Loss of one phalange 20 weeks

13. OTHER TOES
    c) Including metatarsal 15 weeks
    b) Loss of more than one phalange 15 weeks
    c) Loss of one phalange 7.5 weeks

14. ONE EYE
    a) Total Blindness 140 weeks
    b) With other eye lost prior to injury 200 weeks

15. EARS
    a) Total deafness, one ear 50 weeks
    b) Total deafness, both ears 175 weeks

16. FOR LOSS OF BOTH SHOULDERS, OR BOTH ARMS, OR BOTH HANDS, OR BOTH LEGS, OR BOTH HIPS, OR BOTH EYES, OR ANY TWO THEREOF, CAUSED BY A SINGLE INJURY

   400 weeks

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

2. Non-Scheduled Injuries/Industrial Disability shall be paid on the basis of 400 weeks. Permanent total disability benefits for non-scheduled injuries are

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payable as long as the employee remains permanently totally disabled or until age 65 whichever occurs first.

3. Permanent partial disability ratings are to be secured from a qualified health care provider in accordance with the AMA guidelines or other nationally recognized rating method.

4. Once the Administrator has obtained a permanent partial disability rating the employee may obtain a permanent partial disability rating from a qualified health care provider of the employee's choice at the Tribe's expense, subject only to the approval of the fee by the Administrator. This opinion must be scheduled within thirty (30) days from the employee's notice of maximum medical improvement. Once the rating is received from the employee's physician of choice, if there is a difference between the two ratings, then the rating average will be taken. This will be the final rating.

Section 7-1-23 Compensation for Death.

If an injury sustained by a worker results in the worker's death within two (2) years following the injury, benefits shall be paid in the amount and to the dependents (as defined in Section 7-1-23.2a,2b). (Death resulting from occupational disease shall be brought within the time limit of Section 7-1-13 (3)):

1. If there are no eligible dependents, benefits shall be limited to the burial expenses, not to exceed $5,000, and the expenses provided for medical and hospital services for the deceased, together with any accrued benefits up to the time of death, and shall be payable to the estate of the deceased.

2. If there are eligible dependents, death benefits are payable on a monthly basis as follows:

   a) The surviving spouse or domestic partner if living with the deceased employee at the time of deceased employee's death will receive 50% of the benefits, until remarriage or until age 65, whichever occurs first. If there is no surviving
spouse then 100% of the benefits will go to the children.

b) Any unmarried child under 18 years of age; or any unmarried child under 25 years of age who is wholly dependent on the deceased employee and is enrolled as a full-time student in an accredited educational institution; or any unmarried child who is physically or mentally incapable of self support and wholly dependent on the deceased employee until age 25, will split the remaining 50% of benefits equally.

c) If no surviving spouse, domestic partner or children then 100% of the benefits would be equally divided between surviving dependents as defined on page 3.

3. Death Benefit:

a) Death benefits are limited to the amount covered under the Tribe’s current insurance plan and are based off of the deceased employee’s wage at the time of injury/death.

b) Burial Expense shall not exceed the amount covered under the Tribe’s current insurance plan.

c) If the number of eligible dependents changes, benefits will be redistributed equally to the remaining eligible dependents.

Section 7-1-24 Procedures For Disputed Claims.

1. In the event of any dispute over payment, denial or termination of benefits payable under this program, the claimant shall have the right to appeal the disputed claim as follows:

a) Claimant must request reconsideration by the Administrator. The reconsideration request must be made in writing, specifying what action is in dispute, why the claimant disagrees with the Administrator's action and the desired result. Any additional supporting documentation or evidence to be considered must be submitted by the claimant with the reconsideration request unless an extension of time to submit such

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evidence is specifically requested in the reconsideration request. The request for reconsideration must be filed within thirty (30) calendar days of the date of the Administrator's adverse action or decision. A reconsideration request is deemed filed upon mailing by regular or certified mail. Failure to request reconsideration within that time period is deemed a waiver of any further rights of appeal herein.

b) Upon denial of the reconsideration request or an adverse decision of the reconsideration request, the claimant may request a hearing before the Ponca Tribal Court. The hearing request must be made in writing and shall contain a plain, concise statement of the disputed action of the Administrator, the date of the action and the claimant's reasons for appeal. Any issues not raised in the request for hearing application by either party are deemed waived. Any new supporting documentation or evidence to be considered must be submitted by the claimant with the hearing request unless an extension of time to do so is specifically requested in the hearing request. A request for hearing must be filed by mail or hand-delivered within fourteen (14) calendar days of the date of the Administrator's adverse decision to the Ponca Tribal Court. A hearing request is deemed filed upon mailing by certified mail. Failure to request a hearing within the above time period shall be deemed a waiver of any further right of appeal herein.

2. The burden of proof, throughout the above appeal process, rests on the covered worker to prove that the worker sustained an injury which is directly related to the employment and that the employee is entitled to the benefits claimed under this program.

3. A claimant may be represented in an appeal by any person. Attorney fees shall be limited to twenty-five (25%) of the first $2,000 of increased benefit and twenty (20) percent of the remaining increased benefit obtained by a claimant or the maximum fee of $4,500. "Increased benefit" means any benefits above those provided by the original decision of the
Administrator. It is the claimant's responsibility to pay the representative.

4. Hearing procedures before the Ponca Tribal Court:

a) Upon filing of a request for hearing before the Ponca Tribal Court, a copy of the hearing request and all supporting evidence submitted by the employee shall be sent by the Ponca Tribal Court to the Administrator within fourteen (14) calendar days of receipt of the hearing request. The Administrator, as the adverse party in this proceeding, shall have fourteen (14) calendar days to file a written response with the Ponca Tribal Court, with a copy to the employee. Any issues not raised at the time of hearing by either party are deemed waived.

b) A claimant or the claimant's representative shall have the right, in all matters presented before the Ponca Tribal Court, to cross-examine all witnesses and to review all evidence of any nature, as may relate to the matter under consideration. However, attorney fees are limited as provided in Section 7-1-24(3).

c) The Ponca Tribal Court, the Ponca Tribe of Nebraska, the Administrator and the claimant shall have the right to cross-examine all witnesses and to perform such discovery activity as may be deemed necessary to fully explore all aspects surrounding the occurrence and injury.

d) The Ponca Tribal Court shall not be bound by the rules of evidence or by technical or formal rules of procedure and may conduct investigations in such a manner that is best calculated to ascertain the substantial rights of the parties and to carry out the spirit of the Ponca Tribe of Nebraska Tribal Occupational Injury Ordinance. Either party may request development of further medical evidence. The Administrator has the right to designate an examining medical expert at the Administrator's expense. Failure of the employee to comply with any reasonable request for examination will result in dismissal of employee's appeal with prejudice.
5. A full and complete record shall be kept of all proceedings held before the Ponca Tribal Court for investigation, appeals, or the taking of testimony by an electronic recording means. A party may request the proceeding be reported by a certified stenographer at the requesting party's expense.

6. Hearings will be held at the next Tribal Court after receipt of a written hearing request, unless a request for extension of time has been filed by a party. In no event will an employee be deprived of a hearing.

7. All parties shall have the right to request a continuance of the hearing after it has first convened for the purpose of further developing evidence.

8. The Ponca Tribe of Nebraska may utilize Tribally approved attorneys as legal counsel during this hearing. A written decision will be issued by the Ponca Tribal Court within ninety (90) days of the hearing, which will become final and binding on the parties.

9. During the pendency of the appeal, claimant shall continue to receive all benefits approved by the Administrator in its original written decision, but shall not receive any new benefits claimed in the appeal. Payments made to claimant during the pendency of an appeal shall not be recouped or recovered by the Administrator or the Ponca Tribe of Nebraska.

10. Any award agreed to by the claimant for benefits under this program shall constitute a full and final settlement and all benefits shall cease upon settlement, except where the award provides for other than a lump sum settlement. If other than a lump sum settlement, the terms of the award agreement shall apply.

Section 7-1-25 Experts

1. The employee may engage the services of medical or vocational experts for purposes of a disputed claim, at the employee's cost, which is not reimbursable regardless of the ultimate outcome of the dispute. The opinions of such experts will be considered in a
disputed case, notwithstanding the lack of authorization under this system.

Section 7-1-26 Liability Of Third Person To Injured Employee; Subrogation Powers.

1. If a covered employee entitled to benefits under this system is injured or killed by the negligence or wrongful actions of another person(s) not in the employ of the Ponca Tribe of Nebraska, such injured employee, or dependents in the event of death, may pursue a remedy against such other person while receiving benefits under this system. If the employee entitled to benefits under this system or dependents do not pursue a remedy against such other person by instituting an action within one year after the cause of action accrues, the claim against such other person shall be deemed assigned to the Tribal Ordinance. Such a claim so assigned may be prosecuted or compromised by the Administrator for benefits paid. Acceptance of benefits under this ordinance constitutes an assignment of the employee's rights to the employer to the extent of benefits paid or payable.

2. If employee or dependents proceed against such other person, occupational injury benefits shall be paid as provided in this program and the Tribal Occupational Injury Ordinance shall have a lien on the amount recovered from such other person to the extent occupational injury benefits were owed or paid. Compromise of any claim by the covered employee or the employee's dependents at an amount less than the weekly benefits owed or paid shall be made only with written approval of the Administrator of the Tribal Occupational Injury Ordinance.

3. The Administrator of the Tribal Occupational Injury Ordinance shall have the right of subrogation for the amount of occupational injury benefits paid under this program, upon the resolution of a claim or completion of a settlement with the claimant.
Section 7-1-27 Schedule of Benefits Payable for Cumulative or Repetitive Arm Injury, Including Carpal Tunnel Syndrome.

Benefits for cumulative or repetitive arm injury, including carpal tunnel syndrome will be reduced if the worker has been employed (based on date of hire) for a limited time as follows:

1. Workers are not eligible for compensation when employed full time for a period up to 4 mos.

2. Workers receive 25% of eligible compensation for a claim made while employed full time for a period of 4-8 mos.

3. Workers receive 50% of eligible compensation for a claim made while employed full time for a period of 8-12 mos.

4. Workers receive 75% of eligible compensation for a claim made while employed full time for a period of 12-18 mos.

5. Workers are eligible for full compensation for a claim after being employed full time more than 18 mos.

6. The time frames, which are provided above should be pro rated for workers who are employed on a part time basis.
NOTICE TO EMPLOYEES

YOUR EMPLOYER IS INSURED UNDER THE Ponca Tribe of Nebraska TRIBAL OCCUPATIONAL INJURY ORDINANCE

If you have an injury or occupational disease arising out of and in the course of your employment with the Tribe, you may be entitled to benefits as provided by the Ponca Tribe of Nebraska Tribal Occupational Injury Ordinance.

NOTIFY YOUR SUPERVISOR IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT.

If you fail to do so, you may lose your benefits under the Tribal Occupational Injury Ordinance. In no event shall benefits be paid to an employee who failed to notify their employer within thirty (30) days after sustaining such work related injury.

Your exclusive remedy for any such work connected injury or disease is through the Ponca Tribe of Nebraska Tribal Occupational Injury Ordinance. The State Workman’s Comp Commissioner will not accept a claim from you as you are employed by a sovereign Indian Nation which has exclusive jurisdiction over its own Tribal Occupational Injury Ordinance.
NOTICE TO EMPLOYERS

You are required to display this poster conspicuously in a manner that will be of greatest benefit to employees.

It is your responsibility to file a claim on behalf of your employee.

You are required to report any injuries or notification of occupational disease as soon as possible, and in no event, more than ten (10) days after you have knowledge thereof.

It is your responsibility to obtain any necessary forms from the following:

Sovereign Nation Workers’ Compensation and Employers’ Liability Policy

17 State Street, 29th Floor
New York, NY 10004

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