

An Act

LEGISLATIVE ACT 31-05

AN ACT AMENDING THE WORKERS' COMPENSATION ACT

BE IT ENACTED BY THE CHEROKEE NATION:

ARTICLE 1. WORKERS' COMPENSATION

SECTION 1. TITLE AND CODIFICATION.

This Act shall be known as The Cherokee Nation Workers' Compensation Act Amendment of 2005.

SECTION 2. PURPOSE.

- A. This Act amends the Workers' Compensation Act, LA 8-04 by making style changes and adding detail to the dispute resolution procedures, and changes the limit for compensation.

SECTION 3. DEFINITIONS.

- A. Definitions. In this Act, unless the context otherwise requires:

1. "Accident" means an unforeseen event occurring without the will or design of the person whose mere act causes it; a sudden, unexpected, unusual, or undesigned occurrence; or the effect of an unknown cause or, the cause, being known, an unprecedented consequence of it, provided, however, that no incident shall be considered an accident that does not involve a sudden and discernable physical trauma or event, and provided that the accident must occur during the course and scope of employment.
2. "Act of God" means an act occasioned exclusively by forces of nature without the interference of human agency.
3. "Artificial member" means a fabricated substitute replacing or enhancing a diseased or missing part of the body, to include eye(s) and/or teeth.
4. "Average weekly wage" means the earnings of the claimant in the employment in which he or she was working at the time of the injury during the period ninety-one (91) days immediately preceding the date of the injury, divided by thirteen (13) weeks. If the claimant has been employed for less than ninety-one (91) days, then the "average weekly wage" shall mean the actual earnings of the claimant in the employment in which he or she was working at the time of the injury divided by the actual number of weeks the employee worked. Volunteers shall be paid medical benefits only.
5. "Award" means the administrative or arbitration finding or decision determining the amount of compensation due a claimant.
6. "Child" includes dependent natural children, step-children, adopted children and acknowledged children born out of wedlock, but does not include

- married children unless they are otherwise dependents.
7. "Claimant" means the covered injured worker or dependents of same in the event of death of the worker.
 8. "Compensation" means indemnity benefits, payments for medical expenses, mileage and other expenses associated with medical treatment, and death benefits. Volunteers shall be paid medical benefits only.
 9. "Controlled substance" means any drug so designated or defined by Cherokee Nation, federal, and/or other applicable laws where availability or possession of such substance is restricted or prohibited.
 10. "Course and scope of employment" shall mean the time, place and circumstances under which the accident or injury occurred. An injury must arise out of and be in the course and scope of employment in order that a claim be compensable.
 11. "Covered person," "covered employee," and "covered worker" means every person employed in the service of an employer as defined herein. This definition may include volunteers provided that a premium is paid for such volunteers, provided that whether or not a premium is paid for volunteers is at the sole discretion of the employer. However, volunteers shall be eligible only for the payment of medical benefits. This definition shall not include consultants, independent contractors, nor any other person not directly employed by an employer.
 12. "Cumulative trauma" means an injury resulting from employment activities which are repetitive in nature and engaged in over a period of time. This term shall not include stress-related and mental health issues.
 13. "Death" is any fatality caused by an injury that occurred in the course and scope of employment.
 14. "Dependents" are the following persons, and they only shall be deemed dependents under the provisions of this Act:
 - a. The widow/widower, if living with the deceased at the time of his or her death, or legally entitled to be supported by him or her as a dependent;
 - b. A child under eighteen (18) years of age, unmarried and dependent upon the deceased; or a child incapable of self-support and dependent upon the deceased; or a child enrolled as a full-time student in college and who is under twenty-three (23) years of age;
 - c. A parent or grandparent, if actually dependent upon the deceased;
 - d. A grandchild, brother or sister, only if under eighteen (18) years of age; unmarried and dependent upon the deceased, or incapable of self-support and dependent upon the deceased, or who is enrolled as a full-time student in college and who is under twenty-three (23) years of age and who is otherwise dependent on the deceased;
 - e. Any other person may be considered to be a dependent upon a showing of clear and convincing evidence that a legally sanctioned relation of dependency existed at the time of death.
 15. "Earnings" means money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer.

16. "Employer" means ~~either the Cherokee Nation, its agencies, commissions, and subsidiaries, or~~ any business entity wholly owned by the Cherokee Nation.
17. "Health care provider" means a person licensed to practice medicine by any state within the United States, or foreign country if the injury occurs outside of the United States, including a pharmacy dispensing prescribed medication; ~~a hospital or other accredited medical facility, licensed or certified chiropractors and other recognized, properly licensed, or certified medically related practitioners.~~
18. "Human Resources Department" shall mean the department or office responsible for administration of personnel, human resources, and benefits for the applicable, respective employer of the covered employee.
19. "Impairment" means an anatomical or functional abnormality existing after the date of maximum medical improvement as determined by the health-care provider selected by the employer based on a medically or scientifically demonstrable finding and based upon the most recent edition of the American Medical Association's guide to the evaluation of permanent impairment or comparable publications of the American Medical Association existing at the time of the health-care providers' determination. This term shall not include stress-related and mental health issues.
20. "Indemnity benefits" means payments awarded pursuant to Sections ~~45 and~~ 47 of this Act.
21. "Injury" or "injuries" means disability resulting from an accident or occupational disease or cumulative trauma resulting from the course and scope of employment, and may include heart-related or vascular injury, illness or death only if resultant from stress in excess of that experienced by a person in the conduct of everyday living. Such stress must arise out of and in the course of a claimant's employment. This term shall not include stress-related or mental health issues or mental injury that is unaccompanied by physical injury, except in the case of rape which arises out of and in the course of employment.
22. "Maximum medical improvement" means the ~~date~~ medical status after which further recovery from or lasting improvement to an injury can no longer be reasonably anticipated based upon reasonable medical probability as determined by the health care provider selected by the employer.
23. "Minor employee" shall mean an individual aged seventeen (17) or younger working at an occupation legally permitted. Such minor shall be deemed at the age of majority for the purpose of this Act.
24. "Occupation" means any ~~vocation~~ occupation for which ~~the~~ a claimant is or becomes reasonably fitted to engage by education, training, or experience.
25. "Occupational disease" means a bodily disease or illness ~~which~~ that results directly from the employment ~~for an employer~~ or the conditions under which work was performed, ~~which is shown~~ The disease need not have been foreseen or expected but after its contraction must appear to have had its origin in a risk connected with the employment and to have flowed from the source as a natural consequence. This term shall not include stress-related and mental health issues. It must be proven to a reasonable degree of medical certainty to be:
 - A. a natural incident of the work, and
 - B. a result of the exposure occasioned by the nature of the employment, and which can

C. _____ fairly traced to the hazard to which the worker would not have been equally exposed to outside of the employment.

~~The disease need not have been foreseen or expected but after its contraction must appear to have had its origin in a risk connected with the employment and to have flowed from the source as a natural consequence. This term shall not include stress related and mental health issues.~~

26. "Parent or grandparent" means the natural or adoptive father or mother or the natural or adoptive grandfather or grandmother of the deceased employee.

27. "Permanent partial disability" means a condition whereby a claimant, by reason of injury arising out of and in the course and scope of employment, suffers a permanent impairment as defined by the American Medical Association.

28. "Permanent total disability" means incapacity, because of accidental injury or occupational disease, to earn any wages in any employment for which the employee may become physically suited and reasonably fitted by education, training or experience including vocational rehabilitation, loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof.

29. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

~~29~~30. "Preexisting condition" means anatomical or functional abnormality, or impairment whether physical or mental, which existed prior to the events giving rise to a claim.

~~30~~31. "Settlement" means the execution of a release of all claims and an agreement concerning compensation.

~~34~~32. "Temporary total disability" means the inability of the claimant, by reason of an injury arising out of and in the course and scope of his or her employment, to perform his or her duties prior to the date of his or her maximum medical improvement, as determined by the health-care provider selected by the employer. In the event that a claimant disagrees with the determination of the employer's selected health-care provider, the claimant may seek, at the claimant's expense, an opinion from another health-care provider of the claimant's choosing. In cases where the opinion of the employer's selected health-care provider differs from the opinion of the claimant's chosen health-care provider, the determination of temporary total disability shall be determined by the third-party administrator.

~~32~~33. "Week" means seven calendar days.

B. Each employer may adopt additional standard operating procedures for the orderly administration of its respective workers' compensation program. Standard operating procedures adopted by one employer shall not be applied to the workers' compensation program of other employers.

SECTION 4. ACKNOWLEDGMENT OF ACT.

A. All covered workers ~~including those employed by an employer~~ shall be conclusively presumed to have acknowledged the exclusive applicability of the terms, conditions and provisions of this Act, and that the Cherokee Nation is a sovereign Nation for the purposes of workers' compensation, governed by the laws

set forth by the Council of the Cherokee Nation and that no other workers' compensation law, including but not limited to that of the State of Oklahoma, is applicable to injuries or death sustained by them.

- B. The employer, including human resources offices of the respective employers, shall be responsible for explaining the provisions of this Act to their workers and shall post in a conspicuous location a notice as follows:

NOTICE TO WORKERS

All covered workers are hereby notified that the Cherokee Nation is a sovereign Nation for purposes of workers' compensation, governed by the laws set forth by the Tribal Council of the Cherokee Nation and that no other workers' compensation law, including that of the State of Oklahoma, is applicable to injuries or death sustained by a covered worker. If you do not fully understand the terms, conditions, and provisions of the Cherokee Nation Workers' Compensation Act, contact your supervisor or the human resources office for further details. The right to receive workers' compensation pursuant to the provisions of the Act for injuries or death sustained by a claimant shall be the exclusive remedy against the employer. The employer shall not be required to pay for an injury, death, or disability if (1) an injury is occasioned by the willful intention of the injured employee to bring about injury to himself or herself or another; or (2) if an injury results directly from the willful failure of the injured employee to use a guard or protection against accident furnished for use by the employer; or (3) such claim is otherwise excluded by the Act.

SECTION 5. INSURANCE; SOVEREIGN IMMUNITY.

The employer may provide insurance for any or all of the benefits provided herein. To the extent no coverage is provided, the employer shall be deemed to be self-insured and therefore responsible for payment of those benefits. Nothing herein shall be deemed to be an acknowledgment of jurisdiction of a court or a waiver of sovereign immunity in any proceeding of any state, tribe, the United States or any other jurisdiction; ~~or a waiver of sovereign immunity in any proceeding~~. Provided further, the sovereign immunity of the Cherokee Nation or other employer shall not be raised as a defense to the claims of an injured employee or his dependents if such claim is brought properly under the provisions of this Act.

SECTION 6. PAYMENT OF BENEFITS.

The employer ~~or third party administrator~~ shall administer this Act in accordance with the terms and conditions as described herein, and shall process properly approved payments of compensation as provided for in this Act. All compensation and benefits payable under this act shall not exceed One Million Dollars and Zero Cents (\$1,000,000.00) per claim including all expenses associated with the claim, including defense costs.

SECTION 7. EMPLOYER; POWER AND DUTIES; JOINT AGREEMENTS.

- A. The employer ~~or third party administrator~~ shall be empowered to request medical reports, records and notes, police reports, autopsy reports and special investigations, engage the services of adjusters, third party administrators and/or consultants, and perform other activities as may be needed to process any claim for compensation or to further the intent of this Act. Payments for expenses associated with these activities shall be made at the direction of the employer ~~or third party administrator~~ through its workers' compensation program.
- B. Complete and accurate administrative records and claim files shall be maintained on all activities relating to any workers' compensation program. All closed files shall be preserved for five (5) years from the date of closure.
- C. The employer ~~and/or third party administrator~~ shall have the power to make a final decision on claims filed under this Act within a reasonable time.

- D. ~~If the employer and the claimant shall reach a final agreement as to the facts with relation to an injury, and the resulting disability for which compensation is claimed under this Act, agrees with the final decision of employer, a memorandum of such agreement, in form as prescribed by the employer, signed by both the employer or the employer's authorized representative and the employee or the employee's authorized representative, shall be placed in the workers' compensation casefile. This agreement shall be deemed binding upon the parties thereto, and such~~ Such joint agreements may be made during any phase of a workers' compensation claim.

SECTION 8. ~~ARBITRATION.~~ RESERVED.

- A. ~~The third party administrator shall make final written determinations and awards concerning commencement and termination of benefits, including permanent total disability benefits, temporary total disability benefits, medical payments, and permanent partial disability benefits. Such determinations may be reviewed through arbitration pursuant to this section.~~

- B. ~~1. A covered person, aggrieved by any final written decision regarding a final award of benefits may request a review of the decision through binding arbitration subject to the provisions of this section. The arbitrator shall be mutually agreed upon by the claimant and the employer or third party administrator and shall be chosen from a list of qualified arbitrators. In any such review, the claimant shall bear the cost of his or her attorney, if any.~~

- ~~2. The covered person's right to be heard is contingent upon compliance with all requirements, including filing deadlines provided herein.~~

C. ~~Request for Arbitration~~

- ~~1. A covered person disputing a decision rendered by the employer or third party administrator may within twenty (20) calendar days after the issuance of the written decision by the employer or third party administrator, request, in writing, that arbitration be scheduled between the covered person and the applicable employer or third party administrator. The request for arbitration shall be sent to the employer's director of human resources or his or her designee.~~

- ~~2. The covered person's signed request for arbitration must include:~~

- ~~a. The name and mailing address of the covered person;~~
- ~~b. A brief summary of the relevant facts;~~
- ~~c. A brief statement of the disputed issues;~~
- ~~d. A brief statement of the relief sought; and~~
- ~~e. A copy of the final written decision the covered person seeks to have reviewed.~~

- D. ~~1. The arbitrator shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five (5) days before the hearing. Appearance at the hearing waives such notice. The arbitrator may adjourn the hearing from time to time as necessary.~~

- ~~2. The arbitrator shall postpone the hearing to a time not later than the date fixed by the agreement for making the award, unless the parties consent to a later date, upon any of the following:~~

- ~~a. request of a party and for good cause;~~
- ~~b. their own motion.~~

- ~~3. The arbitrator may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear; provided that nothing herein will prevent the arbitrator from entering a default judgment.~~
- ~~4. The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.~~
- ~~E. Where there is no rule or procedure in this Act governing the conduct of proceedings at arbitration, the rules of the American Arbitration Association shall apply. Compliance with said rules of the American Arbitration Association shall not be deemed a waiver of the Cherokee Nation's sovereign immunity.~~
- ~~F. The covered person shall be required to pay, and submit with the request for arbitration, a One Hundred Dollar (\$100.00) filing fee in order to obtain arbitration; provided that said One Hundred Dollar (\$100.00) fee shall be refunded to the covered person if said person prevails at arbitration. If the covered person receives a settlement through arbitration, the covered person's settlement will be reduced by one half (1/2) of the costs of arbitration. If a settlement is not reached, the employer shall pay all arbitration fees. However, if the arbitrator or the Judicial Appeals Tribunal determines that the request for arbitration is frivolous, all costs of arbitration may be borne by the non-prevailing party as determined by the arbitrator or Judicial Appeals Tribunal.~~
- ~~G. Review by arbitration shall result in a written arbitration decision concerning the award or denial of benefits. The decision shall be reviewable only as designated in Article 2 of this Act.~~

SECTION 9. COMPENSATION AS EXCLUSIVE REMEDY.

The right to receive workers' compensation pursuant to the provisions of this Act for injuries or death sustained by a claimant shall be the exclusive remedy against the employer. The employer shall not be required to pay for an injury, death, or disability if (1) an injury is occasioned by the willful intention of the injured employee to bring about injury to himself or herself or another; or (2) if an injury results directly from the willful failure of the injured employee to use a guard or protection against accident furnished for use by the employer, or (3) the injury is otherwise excluded by this Act. No stress-related or mental health issues shall be compensable under this Act except where otherwise explicitly provided. There shall be no coverage for employees acting outside any restriction dictated by an attending physician, surgeon, hospital, or other medical facility.

SECTION 10. FALSE STATEMENT OR REPRESENTATION.

If, in order to obtain any compensation under the provisions of this Act, any claimant who knowingly makes a false statement or representation, including any material omission, such claimant shall forfeit all rights to such compensation upon proof that the offense was committed, and may be referred to the appropriate law enforcement agency. Further, any such claimant may be immediately dismissed from employment without progressive discipline.

SECTION 11. MEDICAL INFORMATION.

- A. Information obtained by the attending physician, surgeon, hospital or other medical facility or personnel while in attendance of an injured worker shall not be a privileged communication if such information is determined by the employer or ~~third party administrator~~ to be necessary for a proper understanding and evaluation of the claim. Workers' compensation information is not subject to the federal Health Information Portability and Accountability Act.
- B. The employer or ~~third party administrator~~ shall have the right to request a full and complete report and any and all records from the physician, surgeon, hospital or other medical facility

or personnel at times and in the form and details as deemed necessary and shall have a right to present specific questions required to evaluate the claim.

- C. By the covered worker's election to make a claim under this Act, the covered worker acknowledges the right of the employer ~~or third-party administrator~~ to obtain such information. Each covered worker shall sign any and all releases and waivers as needed to enable the employer to obtain any and all related medical records. Receipt of benefits shall be denied until the employee signs the necessary paperwork.
- D. The employer ~~or third-party administrator~~ shall maintain all information obtained pursuant to this Section as confidential information, except that the employer ~~or third-party administrator~~ may release information to the claimant, the employer's insurance provider, any third-party administrator, the attorneys representing either the employer or any of the entities stated in this subsection, and any arbitrator reviewing the claim.

SECTION 12. REPORT OF ACCIDENT; FILING OF CLAIM.

- A. All claims for any compensation or benefits under the Workers' Compensation Act shall be commenced with the filing of a notice of injury with the employee's respective human resources office. When an injury or accident occurs, the injured worker shall immediately, or as soon as possible thereafter, report the accident and the injury resulting therefrom in accordance with the applicable employer's policies and procedures.
- B. All accidents resulting in injury or death must be reported upon an approved injury report form in order for a claim to be officially filed. In no event will an employer retaliate against an employee for reporting an accident or injury or giving notice of such an occurrence. The claim shall be deemed filed when it is actually received by the person so designated to receive such claims by the applicable employer. For the purposes of this Act, retaliation shall be defined as taking the following actions against the claimant without good cause and based on the employee's reporting of the accident, injury, or occurrence: any form of formal discipline; dismissal; demotion; suspension; reprimand; warning of possible dismissal; refusal to hire; reduction in rank; a decision reducing pay, benefits, or awards; or a less-than-satisfactory performance evaluation.
- C. All parties to a claim shall cooperate with any applicable loss-control program.

SECTION 13. DISCLOSURE OF PREEXISTING CONDITION.

- A. All covered workers shall disclose at the request of the employer any preexisting condition at the time of hire and before commencing employment.
- B. Any claim for aggravation of a preexisting condition which was not disclosed may be denied by the employer under this Act if that person had knowledge of the preexisting condition and failed to disclose the preexisting condition.

SECTION 14. RIGHT TO COMPENSATION AND MEDICAL TREATMENT BENEFITS.

- A. Every claimant coming within the provisions of this Act who is killed or injured while in the course and scope of his or her employment, wherever the injury or death occurred, unless the injury or death was purposely self-inflicted or otherwise limited or excluded by the terms and conditions of this Act, shall be entitled to receive, and shall be paid compensation as provided in this Act.
- B. The employer shall pay for treatment by a health-care provider reasonably required at the time of the injury, and during any period of disability attributable thereto, provided that such treatment is medically necessary and reasonable and is not covered by any other valid and collectible insurance or other benefit program, including the United States Public Health Service Indian Health Services Program, to which the claimant is otherwise entitled.

SECTION 15. TIME LIMIT FOR FILING OF CLAIMS.

- A. No claims for injury or death shall be allowed unless filed with the person so designated for receiving such claims by the employer within thirty (30) days from the date of occurrence.
- B. Claims for occupational disease shall be made within ninety (90) days from date of diagnosis by a physician.

SECTION 16. BURDEN OF PROOF.

Except as set forth in Section 17, the claimant shall have the burden to prove by a preponderance of the evidence:

- A. That an injury exists or that a death has occurred; and
- B. That the injury complained of or death was the result of a work-related accident or occupational disease; and
- C. That it arose in the course and scope of his or her employment.

SECTION 17. PRESUMPTIONS.

When a covered worker is killed by accident under circumstances indicating that the accident took place within time and place limits of employment and no clear and convincing evidence is present to exclude coverage as provided herein, it shall be presumed that death arose out of employment and compensation shall be paid.

SECTION 18. ACTING UNDER EMPLOYER'S DIRECTIONS.

Any covered person who is injured or killed while following the directions of his or her employer shall be considered to have been in the course and scope of his or her employment and in furtherance of the employer's interests and shall be entitled to compensation.

SECTION 19. GOING TO AND RETURNING FROM WORK; INJURIES OCCURRING OUTSIDE CHEROKEE NATION.

- A. *An accident or injury occurring to a covered worker while on the way to or from work shall not be covered unless (1) the employer pays travel expenses as permitted by the employer's travel policies and procedures or (2) the employee is assigned a special task outside regular working hours.*
- B. From and after the passage and effective date of this Act, all the provisions of this Act shall apply to employers and to employees, irrespective of where the accident resulting in injury may occur, whether within or without the territorial limits of the Cherokee Nation, if the said employee was acting in the course of such employment and performing work outside the territorial limits of the Cherokee Nation under direction of such employer. In such case, the injured employee may commence and maintain his or her action for benefits and compensation in the Cherokee Nation as provided in this Act, and the Cherokee Nation courts are hereby vested with jurisdiction thereof as fully as if such injury or accident had occurred within the Cherokee Nation. This section shall preclude the injured employee from recovering any benefits or compensation provided under any workers' compensation law or similar law, no matter how titled, of the state, territory, country, or other jurisdiction where the injury occurred, and if such action be so commenced in such other jurisdiction, the Cherokee Nation may raise the defense of sovereign immunity.

SECTION 20. AGGRAVATION OF PREEXISTING CONDITION.

- A. If a covered worker is suffering from a preexisting condition at the time an accident occurs and the preexisting condition is aggravated, the worker is eligible for compensation to the

extent of the aggravation only, subject to the provisions of Section 13.

- B. For the purpose of settlement for permanent partial or permanent total disability, the amount of the award for that disability as set forth in Section 47 may be reduced or denied in its entirety by the employer ~~or third party administrator~~ in consideration of the following:
1. A prior settlement or award from any source for the same preexisting condition;
 2. The difference between the degree of disability of the covered worker before the accident or occupational disease and the workers' present degree of disability.

SECTION 21. OCCUPATIONAL DISEASE.

An occupational disease, as defined in Section 3 shall be eligible for compensation only if there is a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause.

SECTION 22. UNSANITARY OR INJURIOUS PRACTICES OR REFUSAL OF A CLAIMANT TO SUBMIT TO TREATMENT.

- A. No compensation shall be payable for the death of a covered worker if his or her death is caused by an unreasonable refusal to submit to any reasonable surgical treatment or medical aid.
- B. The employer may reduce or suspend the compensation of a claimant who persists in unsanitary or injurious practices tending to imperil or retard his or her recovery or who refuses to submit to medical or surgical treatment reasonably necessary to promote his or her recovery.
- C. No compensation of any kind shall be paid for an injury or death caused by a prank, horseplay or similar willful, reckless, or intentional behavior, except for injury or death to innocent victims.

SECTION 23. SUBSTANCE ABUSE RELATED INJURY OR DEATH.

No compensation of any kind shall be paid for any injury or death substantially related, as defined in Section 24, to the intentional use or abuse, by the covered worker, of alcohol, controlled substances or chemicals, which shall include the use or abuse of prescription drugs where the covered person does not have a valid prescription or where the covered person was not properly taking prescription drugs as prescribed.

SECTION 24. DETERMINATION OF SUBSTANCE ABUSE.

The use or abuse of alcohol, controlled substances or chemicals shall be deemed substantially related to an injury or death if:

- A. Objective testing of the breath, blood, saliva, hair, or urine or testing by other federally accepted means, of the covered worker demonstrates the use or abuse of alcohol, controlled substances or chemicals and any competent evidence establishes that it is more probable than not that the use or abuse of alcohol, controlled substances or chemicals contributed to the occurrence of the accident that caused the injury or death to the covered worker; or
- B. Subjective observations of the covered worker, by co-workers, supervisors, medical or emergency personnel or other witnesses, the statements, behavior or actions of the covered worker or other direct or circumstantial evidence establishes by clear and convincing evidence that the covered worker's use or abuse of alcohol, controlled substances or chemicals contributed to the occurrence of the accident that caused the injury or death to the

covered worker; or

- C. Such use or abuse of alcohol, controlled substances or chemicals, by the covered worker resulted in a criminal conviction by any lawful jurisdiction.

SECTION 25. INJURY OR DEATH BY ACT OF GOD OR NATURAL CAUSES.

- A. Injury or death deemed an “Act of God” which arises within the course and scope of employment shall be considered compensable only if the employment puts the employee at a greater risk of injury or death by Act of God than is the risk to the general population.
- B. Injury or death which results from natural causes, i.e., heart attack, stroke, or other natural body function failures which are not work-related are not compensable.

SECTION 26. PERIODIC MEDICAL EXAMINATION OF CLAIMANT; EFFECT OF REFUSAL OR OBSTRUCTION OF EXAMINATION OR TREATMENT.

- A. A claimant entitled to compensation shall submit himself or herself for medical examination selected and paid for by the employer from time to time at a place reasonably convenient for the worker, if and when requested by the employer. The worker shall be required to submit to continuing medical treatment by medical providers selected by the claimant and approved by the employer. The employer shall not be liable for treatment provided by non-approved providers or providers not selected by the employer.
- B. The request for the medical examination shall fix a time and place having regard for the convenience of the claimant, his or her physical condition and ability to attend. The claimant may have a physician present at the examination if procured and paid for by the claimant.
- C. If the claimant refuses to submit to the medical examination or obstructs the examination, his or her right to compensation shall be suspended until the examination has been made, and no compensation shall be payable during or for such period. If the claimant refuses to submit to the medical examination or obstructs the examination within ninety (90) days, all benefits shall be permanently forfeited.
- D. Any physician who conducts or is present at the medical examination may be requested by the employer to testify as to the result thereof; and the reasonable cost of this appearance shall be at the expense of the employer. Should a physician be called to testify by the claimant, the costs of the appearance of such physician shall be at the expense of the claimant.
- E. A claimant must have prior approval from the employer in order for claimant to change physicians.

SECTION 27. CLAIMS AGAINST THIRD PERSONS.

- A. If a claimant entitled to compensation under this Act is injured or killed by the negligence or wrong doing of another, such claimant may pursue his or her remedy against such other person while receiving compensation under this Act.
- B. The employer shall have the right of subrogation for the amount of compensation and administrative costs paid or incurred under this Act.
- C. If the claimant entitled to compensation under this Act does not pursue a remedy against such other person by instituting an action within twelve (12) months after the cause of action accrues, the claim against such other person may be brought by the employer. Such a claim shall be controlled by the employer and shall be limited to the compensation and administrative costs paid or incurred by the employer.

- D. If a claimant proceeds against such other person, compensation shall be paid as provided in this Act, and the employer shall have a lien on the amount actually collectable from such other person to the extent of such compensation and administrative costs paid or incurred.
- E. Compromise of any claim by the claimant at an amount less than the compensation paid shall be made only with written approval of the employer.

SECTION 28. WAITING PERIOD; PAID LEAVE; OVERPAYMENTS.

- A. Benefits shall be paid under the provisions of this Act only for an injury which results in a claimant's disability for more than three (3) consecutive days. No benefits shall be paid for the first three (3) consecutive days of disability. A claimant may not recover indemnity benefits for the period of time that he or she is compensated by paid leave. No employer shall allow a claimant to collect more than 100% of his or her regular earnings. Paid leave time taken shall apply against any waiting period for indemnity payments. Whether or not paid leave may be used to supplement or in lieu of workers' compensation leave and benefits shall be determined by the policies and procedures of the applicable employer.
- B. Overpayments can be deducted from future benefit payments if the employee remains off work. At the employer's option, the employee may present a check to the employer for any overpaid amount within five (5) days of returning to work, or the employer shall recover overpayment of benefits by deducting the amount from the employee's paycheck.
- C. While on workers' compensation leave, the employee shall not accrue annual or sick leave.

SECTION 29. TEMPORARY TOTAL DISABILITY.

- A. Temporary total disability shall be paid at seventy-two percent (72%) of the "average weekly wage" which shall in no case exceed Five-Hundred-Twenty-Eight Dollars and Zero Cents (\$528.00). Temporary total disability shall in no case be paid in excess of one-hundred-fifty-six (156) weeks.
- B. Volunteers shall be eligible for medical benefits only.

SECTION 30. CONDITION PERMANENT; TERMINATION OF BENEFITS.

When a claimant's injury reaches maximum medical improvement as defined in Section 3(A):

- A. The claimant's injury shall be considered permanent and stationary;
- B. Once the claimant is notified that he or she has reached maximum medical improvement, the claimant shall provide notice to the employer within twenty-four (24) hours of receipt of documentation that he or she has reached maximum medical improvement. The employee shall inform the employer after receiving said documentation, and benefits shall cease said following business day. Should the employee fail to report to the employer on the next business day, the employee shall be deemed to be absent without leave, and should the employee, once released to return to work, fail to report to the employer within twenty-four (24) consecutive working hours, the employee may be terminated for job abandonment.
- C. The employer or ~~third party administrator~~ shall issue a close claim letter or respective payment to close the claim after receiving documentation that the claimant has reached maximum medical improvement or after receiving a signed settlement.

SECTION 31. NOTICE BY CLAIMANT OF ABSENCE FROM LOCALITY.

Any claimant leaving the locality in which he or she is receiving medical treatment, without prior written approval from the employer, may forfeit his or her right to compensation during such time.

SECTION 32. DEATH BENEFITS.

- A. If an injury or occupational disease sustained by a covered worker proximately results in his or her death following his or her injury or diagnosis of occupational disease, compensation shall be paid to the persons entitled thereto, as follows:
1. If there are eligible dependents at the time of the covered worker's death, payment shall consist of weekly death benefits computed as seventy-two percent (72%) of the deceased's average weekly wage, but the gross average weekly wage shall in no case exceed Five-Hundred Twenty-Eight Dollars and Zero Cents (\$528.00). The maximum weekly income benefits payable to all beneficiaries varies depending upon the deceased's average weekly wage. If the deceased's average weekly wage is less than Five-Hundred Twenty-Eight Dollars and Zero Cents (\$528.00), the aggregate weekly income benefits payable to all beneficiaries shall not exceed one-hundred percent (100%) of the deceased's average weekly wage. If the deceased's average weekly wage is equal to or greater than Five-Hundred Twenty-Eight Dollars and Zero Cents (\$528.00), the aggregate weekly income benefits payable to all beneficiaries shall not exceed Five-Hundred Twenty-Eight Dollars and Zero Cents (\$528.00). Such benefits shall be paid through a structured settlement.
 2. Payments of death benefits to an employee's spouse shall continue until the spouse remarries or until the death of the spouse.
 3. If there are no eligible dependents, compensation shall be limited to direct payment of funeral expenses, not to exceed Eight-Thousand Dollars and Zero Cents (\$8,000.00), and compensation benefits due up to the time of his or her death, payable to the estate of the deceased.
 4. In no case shall death benefits exceed Two-Hundred Thousand Dollars and Zero Cents (\$200,000.00).
- B. If an employee dies as a result of a compensable injury or occupational disease, any unapproved portion of an award or order shall abate.

SECTION 33. LINE OF DEPENDENCY; PAYMENT OF BENEFITS.

- A. The line of dependency for payment of death benefits shall be in the order set out below; provided each qualifies as a dependent under the terms and conditions as defined in Section 3(A).
1. First to the surviving widow or widower, if there are no children. If dependent children exist at time of covered worker's death, payment is to widow or widower, subject to the provisions of this Section.
 2. If no surviving widow or widower, to a dependent child, fifty percent (50%) of the deceased's average weekly wage not to exceed Five-Hundred Twenty-Eight Dollars and Zero Cents (\$528.00), or if two dependent children, seventy percent (70%) of the average weekly wage not to exceed Five-Hundred Twenty-Eight Dollars and Zero Cents (\$528.00), or if three children, ninety percent (90%) of the average weekly wage not to exceed Five-Hundred Twenty-Eight Dollars and Zero Cents (\$528.00) or if four or more children, a weekly benefit of Five-Hundred Twenty-Eight Dollars and Zero Cents (\$528.00) to be equally distributed among such dependent children;
 3. To a parent or parents, if dependent upon the deceased covered worker and if there

are no surviving widow or widower or eligible children, twenty-five percent (25%) of the deceased's average weekly wage not to exceed Five-Hundred Twenty-Eight Dollars and Zero Cents (\$528.00) if only one parent; or fifty percent (50%) of the deceased's average weekly wage not to exceed Five-Hundred Twenty-Eight Dollars and Zero Cents (\$528.00) to be divided equally between both parents if both are dependent upon the deceased covered worker;

4. If there are no eligible dependent widow or widower, children or parents, the death benefit shall be equally distributed among all other eligible dependents at twenty-five percent (25%) of the deceased workers' average weekly wage, subject to the maximum of Five-Hundred Twenty-Eight Dollars and Zero Cents (\$528.00).
 5. If there are no eligible dependents, no benefits shall be paid except as provided in Section 32(A)(3).
- B. If a minor covered worker has no other dependents, his or her parent(s), guardian(s), or adoptive parent(s) are entitled to death benefits as defined in Section 32(A).
- C. In no case shall death benefits exceed Two-Hundred Thousand Dollars and Zero Cents (\$200,000.00).

SECTION 34. APPORTIONMENT OF COMPENSATION.

Compensation to a dependent widow or widower shall be for the use and benefit of the widow or widower and the dependent children; and the employer may, at the time of award, apportion the compensation between them in such a way as it deems best for the interest of all dependents.

SECTION 35. ARTIFICIAL MEMBERS.

In all cases where the injury is such as to permit the use of artificial members, including teeth and eyes, the employer shall pay all reasonable expenses connected with the artificial member.

SECTION 36. REPLACEMENT OF ARTIFICIAL MEMBERS.

Where a compensable injury arises out of the course of employment and results in a loss of one or more eyes, teeth, or limbs of the body, the employer or third party administrator shall furnish such prosthetic devices as may be necessary, as determined by the employer or third party administrator, in the treatment and rehabilitation of the injured worker. Where a worker sustains a compensable injury arising out of the course of his or her employment which results in damage to a prosthetic device with which such worker is equipped, the employer or third party administrator shall repair or replace such device.

SECTION 37. HERNIA; OPERATIONS.

- A. A claimant, in order to be entitled to compensation for a hernia, must prove by a preponderance of the evidence:
1. That the hernia is of recent origin;
 2. That this appearance was accompanied by pain;
 3. That this was immediately preceded by some accident suffered in the course and scope of employment; and
 4. That it did not exist prior to the date of the alleged injury.
- B. If the claimant, after establishing his or her right to compensation for a hernia, as provided above, elects to be operated upon, the operating fee and reasonable hospital expenses shall be paid by the employer.
- C. If the claimant elects not to be operated upon and the hernia becomes strangulated, the results of the strangulation shall not be compensable.

- D. Benefits for a hernia shall be limited to nine (9) weeks of temporary total disability, and should the claimant be released to return to work prior to the end of the nine (9) weeks, the claimant shall be compensated only for the number of weeks during which the physician restricted the claimant from work.

SECTION 38. DISFIGUREMENT BENEFITS.

An additional sum not to exceed Twenty-Thousand Dollars and Zero Cents (\$20,000.00) may be paid to a claimant for serious permanent disfigurement resulting from an injury. The application of the claimant will be reviewed by the employer or third party administrator and an award made as the employer or third party administrator deems just. Disfigurement benefits shall not be paid in the event of the claimant's death.

SECTION 39. FEE SCHEDULE.

Whoever renders medical, surgical, or other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatuses, or emergency treatment, may submit such charges and duration of treatment to the employer or designated third party administrator for review.

Such charges and duration of treatment shall be limited to the usual, customary, and reasonable charges and duration of treatment as prescribed and limited by a schedule of fees and treatment for all medical providers to be adopted, after notice, by the employer or designated third party administrator. Said fee and treatment shall be based on the usual, customary, and reasonable medical charges of health care providers in the same trade area for comparable treatment of a person with similar injuries and the duration of treatment prevailing in Oklahoma for persons with similar injuries. The fee and treatment schedule shall be reviewed biennially by the employer or designated third party administrator and, after such review, and notice, the employer or designated third party administrator shall be empowered to amend or alter said fee and treatment schedule to ensure its adequacy.

SECTION 40. VOCATIONAL REHABILITATION SERVICES.

- A. In addition to the compensation provided, a claimant who is unable to return to his or her former job because of his or her injury may receive reasonable vocational rehabilitation services, including counseling and training, as the employer deems necessary to restore him or her to suitable employment. Such additional benefits shall not exceed Ten-Thousand Dollars and Zero Cents (\$10,000.00).
- B. Where a covered person agrees to accept or is ordered to receive vocational rehabilitation services, the covered person admits that he or she is incapable of performing the job duties of his or her former position. Upon written agreement accepting vocational rehabilitation services or upon the filing of an order to enter vocational rehabilitation services, whichever comes first, the employee shall be deemed to have voluntarily resigned his or her job position.

SECTION 41. MODIFIED DUTY.

The employer may offer an employee a temporary modified duty position on a case-by-case basis. If the employee refuses the modified duty assignment, then the temporary total disability benefits cease.

SECTION 42. EYEWEAR.

The employer shall pay for frames and/or lenses of a like kind and quality which were damaged as a result of an accident which results in a compensable injury to the claimant during the course and scope of his or her employment, but shall not pay for eye examinations unless there is a potential injury to the claimant's eye(s) from the accident.

SECTION 43. CLOTHING.

A claimant who incurs damage to an article of clothing worn during an accident which results in a compensable injury shall be paid the replacement value for clothing of a like kind and quality.

SECTION 44. TRAVEL FOR TREATMENT.

- A. A claimant shall be compensated for travel as designated in this subsection at a rate consistent with the travel allowance authorized by the employer which shall in no case be higher than the prevailing federal reimbursement rate.
 - 1. Where the claimant is required to travel more than fifty (50) miles from his or her home address, as designated on the claim form, to a treatment facility, the claimant shall be reimbursed for mileage.
 - 2. Mileage, meals, and lodging may be reimbursed only upon pre-approval of the employer.
- B. All claims for payment or reimbursement must be supported by documentation.
- C. *In order to be reimbursed for such travel expenses, the claimant must provide the supporting documentation to the employer within ten (10) days of the date on which the travel occurred. Failure to provide the supporting documentation within the stated time frame may result in denial of reimbursement.*

SECTION 45. INDEMNITY BENEFITS EXEMPT FROM CREDITORS AND WRITS.

- A. Except for amounts due pursuant to a court of competent jurisdiction for the payment of child support, indemnity benefits shall be exempt from claims of creditors and from any writs of attachment, garnishment or execution.
- B. Indemnity benefits shall be paid only to a claimant or his or her personal representative or such other person(s) as the employer may, under the terms of this Act, appoint to receive or collect the same, or an individual designated by an order of a court of competent jurisdiction.
- C. Indemnity benefits shall be diverted for payment of child support only pursuant to an order of a court of competent jurisdiction.

SECTION 46. TEMPORARY TOTAL DISABILITY NOTIFICATION.

Any person receiving temporary total disability benefits must report in writing to the employer any change in a material fact or the amount of income he or she is receiving or any changes in his or her employment status or medical status occurring during the period of such receipts. Benefits shall cease if an employee participates in other similar employment while receiving temporary total disability benefits.

SECTION 47. PERMANENT PARTIAL DISABILITY; PERMANENT TOTAL DISABILITY.

- A. Scheduled Benefits
 - 1. A schedule of benefits is hereby established.
 - 2. A total loss of use of a member exists whenever, by reason of injury, such member no longer possesses any substantial utility as a member of the body as determined by a medical provider chosen by the employer.
 - 3. Permanent partial disability benefits are measured by multiplying the gross average weekly wage times the number of weeks reflected as in the Benefits for Total Loss of Use in subsection (4) of this section times the percentage of permanent impairment. The gross average weekly wage shall in no case exceed Three-Hundred Seventy-Five

Dollars and Zero Cents (\$375.00). A calculation of the percentage of permanent partial disability shall be made by the designated third-party administrator or the physician of the employer's choice.

4. Benefits for Total Loss of Use:

a.	ARM	200 weeks
b.	HAND	155 weeks
c.	THUMB	47 weeks
d.	FIRST FINGER (Index finger)	30 weeks
e.	SECOND FINGER	25 weeks
f.	THIRD FINGER	16 weeks
g.	FOURTH FINGER	12 weeks
h.	LEG	195 weeks
i.	FOOT	155 weeks
j.	GREAT TOE	24 weeks
k.	ONE TOE	8 weeks
l.	EYE-ONE	
	(1) Total blindness	200 weeks
m.	EAR	
	(1) Total deafness, one ear	78 weeks
	(2) Total deafness, both ears	300 weeks
n.	BODY AS A WHOLE	355 weeks

B. Permanent Partial Disability

- For other non-scheduled permanent impairments, a calculation of percentage of permanent partial disability is made by the insurance company or physician of the employer's choice. A calculation of the percentage of permanent partial disability shall be made by the designated third-party administrator or the physician of the employer's choice.
- If an injury has left a claimant with a non-scheduled permanent bodily impairment, indemnity benefits for a specified number of weeks is payable, without regard to presence or absence of wage loss in the future, and such benefits shall be paid through a structured settlement or, at the employer's election, as a lump sum.
- Permanent partial disability benefits, for an injury to a scheduled member, are calculated by multiplying the gross average weekly wage times the number of weeks provided for in the Benefits for Total Loss of Use times the percentage of permanent impairment, but the gross average weekly wage shall in no case exceed Three-Hundred-Seventy-Five Dollars and Zero Cents (\$375.00).
- Permanent partial disability benefits for injury to the body as a whole are calculated by multiplying the gross average weekly wage times the number of weeks provided in the Benefits for Total Loss of Use times the percentage of permanent impairment. The gross average weekly wage shall in no case exceed Three-Hundred Seventy-Five Dollars and Zero Cents (\$375.00).

C. Permanent Total Disability

An award of permanent total disability shall be in lieu of all lesser indemnity benefits that may be applicable to the injury that created the condition of permanent total disability. Permanent total disability shall be paid at seventy-two percent (72%) of the "average weekly wage" but shall in no case exceed Five-Hundred-Twenty-Eight Dollars and Zero Cents (\$528.00) per week. Permanent total disability benefits shall be paid only during the period of continuous total disability and shall end upon the claimant's ability to resume gainful employment.

ARTICLE 2.
Dispute Resolution

SECTION 48. ARBITRATION.

A. A final decision made pursuant to Section 7. C. may be reviewed through arbitration pursuant to this section and the Cherokee Nation Arbitration Act.

1. A covered person disputing a final decision rendered by the employer may within 20 calendar days after the issuance of the written decision by the employer request, in writing, that arbitration be scheduled between the covered person and the applicable employer. The request for arbitration shall be sent to the employer's director of human resources or his or her designee.

2. The covered person's request for arbitration must include:

- a. The name and mailing address of the covered person;
- b. A brief summary of the relevant facts;
- c. A brief statement of the disputed issues;
- d. A brief statement of the relief sought; and
- e. A copy of the final written decision the covered person seeks to have reviewed.
- f. A signed declaration that the information submitted is true and correct to the best of the claimant's knowledge.

B. Request for Arbitration

1. A single arbitrator from a list of qualified arbitrators maintained by the Judicial Appeals Tribunal may be mutually agreed upon by the claimant and the employer. If an arbitrator cannot be selected from the list the parties may agree on any other arbitrator. If the parties cannot select an arbitrator, then the Clerk of the Judicial Appeals Tribunal shall randomly select an arbitrator from the list pursuant to procedures adopted by the Judicial Appeals Tribunal.

2. The covered person's right to be heard is contingent upon compliance with all requirements, including filing deadlines provided herein.

C. The covered person shall be required to pay, and submit with the request for arbitration, a One-Hundred-Dollar (\$100.00) filing fee in order to obtain arbitration; provided that said One-Hundred-Dollar (\$100.00) fee shall be refunded to the covered person if said person prevails at arbitration. If the covered person receives a settlement through arbitration, the covered person's settlement will be reduced by one-half (1/2) of the costs of arbitration. If a settlement is not reached, the employer shall pay all arbitration fees. However, if the arbitrator or the Court determines that the request for arbitration is frivolous, all costs of arbitration may be borne by the non-prevailing party as determined by the arbitrator or Court. In any such review, the claimant shall bear the cost of his or her attorney, if any.

REVIEW BY THE JUDICIAL APPEALS TRIBUNAL

SECTION 48. ~~FILING FOR REVIEW BY JUDICIAL APPEALS TRIBUNAL.~~

- A. ~~Any party, including the employer, aggrieved by a final arbitration order rendered as a result of arbitration as provided for in Section 8 of this Act is entitled to certain, speedy, and adequate judicial review thereof pursuant to the provisions of this Article. Exhaustion of administrative remedies, including an arbitration review of the employer's final decision pursuant to Section 8 of this Act, shall be a jurisdictional prerequisite to review of a claim by the Cherokee Nation Judicial Appeals Tribunal.~~
- B. ~~Judicial Appeals Tribunal review of a claim filed under this Act shall be initiated by filing a Petition in Error with the Court Clerk of the Judicial Appeals Tribunal, within thirty (30) days of the covered person's receipt of the final arbitration decision rendered pursuant to Section 8 of this Act, except that when the arbitration decision is alleged to be predicated upon corruption, fraud or other illegal means, the application shall be made within thirty (30) days after such grounds are known or should have been known to the appealing party. Said Petition in Error shall be accompanied by a non-refundable filing fee in the sum of Fifty Dollars (\$50.00). The form and content of the Petition in Error shall state:~~
- ~~1. the claimant's name, address, and social security number;~~
 - ~~2. the date and description of the injury, accident, or last exposure;~~
 - ~~3. the specific reasons the petitioner feels that the final arbitration decision rendered pursuant to Section 8 of this Act is in error. General allegations will not be accepted. General allegations of error include statements that the decision of the arbitrator is "against the clear weight of the evidence or contrary to law." The party or parties appealing to the Judicial Appeals Tribunal will be bound by the allegations of error contained in the Petition in Error and will be deemed to have waived all others; and~~
 - ~~4. a brief statement of the relief sought.~~
- C. ~~Copies of the Petition in Error shall be served upon all parties, including the third party administrator, if any, and proof of such service shall be filed with the Court Clerk of the Judicial Appeals Tribunal. Service and proof of service of the Petition in Error shall be completed as prescribed in the Judicial Appeals Tribunal Rules and Procedures. The Court, in its discretion, may permit other interested persons to intervene.~~
- D. ~~In any proceedings for review brought by a party aggrieved by a final arbitration decision, the prevailing party may be entitled to recover from the non-prevailing party any court costs and reasonable attorney fees, only if the court determines that the position of the non-prevailing party is frivolous. Requests by prevailing parties for payment of attorney fees and costs shall be filed by motion with a copy served on all other parties within ten (10) days of the filing of the final Judicial Appeals Tribunal order. A responsive pleading may be filed within ten (10) days of the date the motion requesting payment of attorney fees is filed with the Judicial Appeals Tribunal.~~
- E. ~~No response to a Petition in Error is necessary. A motion to dismiss an appeal for lack of jurisdiction may be filed by the non-appealing party. Appeals to the Judicial Appeals Tribunal shall be strictly on the record made at the arbitration. No new evidence shall be allowed.~~
- F. ~~Decisions on Worker's Compensation Act cases shall be heard by the Judicial Appeals Tribunal en banc.~~
- G. ~~Whether or not oral argument is permitted shall be determined by the Judicial Appeals Tribunal in its discretion. If permitted, oral argument shall be limited to ten (10) minutes to each side unless the time is enlarged by leave of the Court. Any party failing to appear when the appeal is called for oral argument shall be deemed as having waived the right to~~

~~argue the case, and the appeal shall be considered as being submitted on the record. If a basis of the appeal involves medical evidence, other disputed questions of fact, or if there is controlling or significant appellate authority, three copies of the relevant document(s), relevant portions of the transcript, deposition testimony, or decisions shall be presented to the Judicial Appeals Tribunal at the time of oral argument and shall be exchanged with opposing parties prior to oral argument.~~

~~H. Any party to the appeal may request a record of the oral argument proceedings. The party demanding the record shall be responsible for ensuring that a court reporter is present. Any party requesting that a transcript be prepared, shall bear the costs associated with the preparation.~~

~~I. Cherokee Nation Workers' Compensation Act appeals to the Judicial Appeals Tribunal shall be governed by the applicable appellate rules as adopted by the Judicial Appeals Tribunal. Where no such appellate Court rule exists, the Federal Rules of Appellate Procedure in civil cases shall apply.~~

SECTION 49. ADMINISTRATIVE RECORD.

A. The administrative record in an appeal of an arbitration award to the District Court ~~proceeding~~ shall include:

1. The administrative casefile, including all documents, pleadings, motions, and intermediate rulings made in the administrative decision and the arbitration review;
2. Evidence received or considered at the arbitration proceeding;
3. A statement of matters officially noticed;
4. Questions and offers of proof, objections, and rulings thereon;
5. Proposed findings and exceptions;
6. The final arbitration decision appealed, and any other decision, opinion, or report entered by the arbitrator presiding over the hearing; and
7. All other evidence or data submitted to the arbitrator in connection with consideration of the case, provided all parties have had access to such evidence.

B. ~~Oral arbitration~~ Arbitration proceedings shall be electronically recorded by audio and may also be recorded by video at the option of the arbitrator. Such recordings shall be maintained for such time so as to protect the record through judicial review. Copies of the recordings shall be provided by the arbitrator at the request of any party to the proceeding. Costs of copying the recordings shall be borne by the party requesting the copy. For judicial review, ~~electronic recordings of an individual proceeding, as certified by the arbitrator, may be submitted to the Judicial Appeals Tribunal~~ District Court by the arbitrator as part of the record of the proceedings under review without transcription unless otherwise required to be transcribed by the Court. ~~When the Judicial Appeals Tribunal orders the electronic recordings be transcribed, the appealing party shall be responsible for procuring the transcription. In such case, the cost of transcriptions shall be taxed and assessed against the party petitioning for judicial review of the final arbitration decision. Parties to any proceeding may have the proceedings transcribed by a court reporter at their own expense.~~

SECTION 50. TRANSMISSION OF RECORD TO REVIEWING COURT; STIPULATIONS.

Within thirty (30) days of the filing of the ~~Petition in Error~~ arbitration appeal, the employer or arbitrator shall compile and transmit to the ~~Judicial Appeals Tribunal~~ District Court the original or a certified copy of the ~~entire record, as specified by Section 49, of the proceeding under review.~~ For purposes of this section, "record" shall include such information as specified by Section 49 of this Act. By stipulation of all parties to the review proceeding, the record may be shortened. Any party

unreasonably refusing to stipulate to limit the record may be taxed by the Court for the additional costs resulting therefrom. The Court may require or permit subsequent corrections or additions to the record when deemed desirable. ~~The costs, if any, of compiling and transmitting the record on appeal to the Judicial Appeals Tribunal shall be paid by the party petitioning for review of the arbitration decision.~~

SECTION 51. REVIEW WITHOUT JURY; ADDITIONAL TESTIMONY.

The review shall be conducted by the ~~Judicial Appeals Tribunal~~ District Court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the arbitrator pursuant to Sections 23 or 24 of the Cherokee Nation Arbitration Act which are not shown in the record, testimony thereon may be taken by the ~~Judicial Appeals Tribunal~~ Court.

SECTION 52. ~~SETTING ASIDE, MODIFYING OR VACATING OF ARBITRATION DECISION; REMAND; AFFIRMANCE.~~

A. ~~In any proceeding for the review of a final arbitration decision, the Judicial Appeals Tribunal, in the exercise of proper judicial discretion or authority, may vacate an arbitration award if:~~

1. ~~The award was procured by corruption, fraud or other illegal means;~~
2. ~~There was evident partiality by an arbitrator appointed or corruption in the arbitrator or misconduct prejudicing the rights of any party;~~
3. ~~The arbitrator exceeded his or her powers; or~~
4. ~~The arbitrator refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the requirements of this Act, as to prejudice substantially the rights of a party.~~

B. ~~When vacating the award on the grounds in subsection A of this section, the court may order a rehearing before a new arbitrator chosen by the Court.~~

C. ~~If the application to vacate the award is denied and no motion to modify or correct the award is pending, the court shall confirm the award.~~

D. ~~A decision of the Judicial Appeals Tribunal shall be final and shall not be subject to further review by any state, tribal, or federal government body or court.~~

SECTION ~~53~~52. TIME COMPUTATIONS.

In computing any period of time prescribed or allowed by this Act, the day of the act, default, or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Cherokee Nation or any other day when the receiving office does not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Cherokee Nation, or any other day, when the receiving office does not remain open for public business until 4:00 p.m. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays as defined by the Cherokee Nation or any other day when the receiving office does not remain open for public business until 4:00 p.m., shall be excluded in the computation.

SECTION 54. ~~MOTIONS.~~

A. ~~All motions made in any proceeding under this Act shall be made in writing and shall be filed and served not later than five (5) days before the time specified for the hearing set by the Judicial Appeals Tribunal. When a motion is supported by affidavit, the affidavit shall be served with the motion. Responses to any motions filed in a proceeding under this Act must be filed within fifteen (15) days of receipt of the motion and must be served on all parties. Failure to respond to a motion may result in the motion being deemed confessed.~~

~~B. Motions for extension of time are not favored and shall not be routinely granted. A motion to extend time must: (1) be filed prior to the terminal date; (2) be mailed or faxed to opposing counsel and no oral or letter requests will be considered; and (3) include the following information: (a) the due date which the movant wishes to extend; (b) the specific reason why with due diligence it is impossible to meet the prescribed deadline; (c) the amount of time requested; and (d) whether there have been prior delays or extensions granted during the course of the proceeding.~~

~~C. An appeal may be dismissed on motion of the parties or on the presiding official's own motion at any stage of the process. An appeal may be dismissed because of untimeliness of the appeal, absence of an appealable order, mootness, waiver, abandonment, or acquiescence in the judgment, failure to comply with this Act or the rules of the Judicial Appeals Tribunal, or other grounds deemed appropriate by the Court. A party bringing an appeal may move for dismissal of that appeal at any time prior to the filing of a decision, and no grounds need be stated in a motion for a voluntary dismissal.~~

SECTION 53. REPEALS.

Legislative Act 8-04 is amended by striking the text herein that is stricken and adding the text herein that is underlined.

SECTION 54. PROVISIONS AS CUMULATIVE.

The provisions of this Act shall be cumulative to existing law except where stated otherwise herein.

SECTION 55. EFFECTIVE DATE.

This Act shall be in full force and effect according to its terms from and after its enactment.

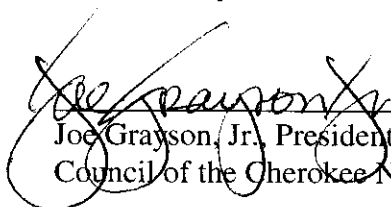
SECTION 56. SEVERABILITY.

The provisions of this Act are severable, and if any part or provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Act.


SECTION 57. Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

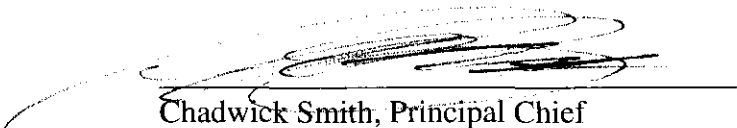
Enacted by the Council of the Cherokee Nation on the 12th day of September, 2005.


Joe Grayson, Jr., President
Council of the Cherokee Nation


ATTEST:


Audra Smoke-Conner, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 16th day of September, 2005.


Chadwick Smith, Principal Chief
Cherokee Nation

ATTEST:


Callie Catcher, Secretary/Treasurer
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Bill John Baker	<u>Nay</u>	Melvina Shotpouch	<u>Yea</u>
Audra Smoke-Connor	<u>Yea</u>	Meredith A. Frailey	<u>Yea</u>
S. Joe Crittenden	<u>Yea</u>	John F. Keener	<u>Yea</u>
Jackie Bob Martin	<u>Yea</u>	Cara Cowan	<u>Yea</u>
Phyllis Yargee	<u>Absent</u>	Buel Anglen	<u>Yea</u>
David W. Thornton, Sr.	<u>Yea</u>	William G. "Bill" Johnson	<u>Yea</u>
Don Garvin	<u>Yea</u>	Charles "Chuck" Hoskin	<u>Yea</u>
Linda Hughes O'Leary	<u>Yea</u>		