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TITLE 85 - WORKERS' COMPENSATION

CHAPTER 1

GENERAL PROVISIONS

§ 1. Short title

This Act shall be known and may be cited as the Cherokee Nation Workers' Compensation Act Amendments of 2010.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 2. Definitions

In this Title, 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 undesignated 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. **"Acting in the course of employment"** means:

a. **"Acting in the course of employment"** means the worker acting at his or her employer's direction or in the furtherance of his or her employer's business which shall include time spent going to and from work on the jobsite, insofar as such time is immediate to the actual time that the worker is engaged in the work process in areas controlled by his or her employer, except parking area. It is not necessary that at the time an injury is sustained by a worker he or she is doing the work on which his or her compensation is based or that the event is within the time limits on which industrial insurance or medical aid premiums or assessments are paid.

b. **"Acting in the course of employment"** does not include:

i. Time spent going to or coming from the employer's place of business in an alternative commute mode, notwithstanding that the employer (i) paid directly or indirectly, in whole or in part, the cost of a fare, pass, or other expense associated with the alternative commute mode; (ii) promoted and encouraged employee use of one or more alternative commute modes; or (iii) otherwise participated in the provision of the alternative commute mode.

ii. An employee's participation in social activities, recreational or athletic activities, events, or competitions, and parties or picnics, whether or not the employer pays some or all of the costs thereof unless: (i) The participation is during the employee's working hours, not including paid leave; (ii) the employee was paid monetary compensation by the employer to participate; or (iii) the employee was ordered or directed by the employer to participate or reasonably believed the employee was ordered or directed to participate.

3. **"Alternative commute mode"** means (a) a carpool or vanpool arrangement whereby a group of at least two but not more than fifteen persons including passengers and driver, is transported between their places of abode or termini near those places, and their places of employment or educational or other institutions, where the driver is also on the way to or from his or her place of employment or educational or other institution; (b) a bus, ferry, or other public transportation service; or (c) a nonmotorized means of commuting such as bicycling or walking.

4. **"Artificial member"** means a fabricated substitute replacing or enhancing a diseased or missing part of the body, to include eye(s) and/or teeth.

5. **"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.

6. **"Award"** means the administrative or arbitration finding or decision determining the amount of compensation due a claimant.

7. **"Claimant"** means a person who claims benefits pursuant to the provisions of the Workers' Compensation Act.

8. **"Compensation"** means indemnity benefits, payments for medical expenses, mileage and other expenses associated with medical treatment, and death benefits paid pursuant to this Title.

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. "**Employee**" means every person in the service of an employer as defined herein, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. In the event of the death of an employee the legal heirs or representatives may be deemed to be the employee for purposes of this Title.

a. Subject to paragraph (b) of this subdivision, the following persons may be excluded from the definition of employee:

i. any person who would be an independent contractor under Internal Revenue Service law and regulations.

ii. any person who is employed as a domestic servant or as a casual worker in and about a private home or household, which private home or household had a gross annual payroll in the preceding calendar year of less than Ten Thousand Dollars (\$10,000.00) for such workers.

iii. any person for whom an employer is liable under any Act of Congress for providing compensation to employees for injuries, disease or death arising out of and in the course of employment including, but not limited to, the Federal Employees' Compensation Act, the Federal Employers' Liability Act, the Longshoremen's and Harbor Workers' Act and the Jones Act, to the extent his employees are subject to such Acts.

iv. any person who is employed in agriculture or horticulture by an employer who had a gross annual payroll in the preceding calendar year of less than One Hundred Thousand Dollars (\$100,000.00) cash wages for agricultural or horticultural workers.

v. any person who is a licensed real estate sales associate or broker, paid on a commission basis.

vi. agricultural employees who are not engaged in operation of motorized machines shall be exempt from coverage of workers' compensation.

vii. an employer with five or less total employees, all of whom are related by blood or marriage to the employer, will be exempt from the Workers' Compensation Act.

viii. any person providing or performing voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitative therapy, transportation, lodging or reimbursement for incidental expenses.

b. Employees eligible to be excluded under paragraph (a) of this subdivision may be covered by this Title if the employer elects coverage as to the employee or as to the class of employees of that employer pursuant to this chapter by purchasing and accepting a valid workers' compensation insurance policy or endorsement, or by written notice to the group self-insurer of which the employer is a member.

11. "**Cumulative trauma**" means an injury resulting from employment activities which are repetitive in nature and engaged in over a period of time and which is supported by objective medical evidence. This term shall not include stress-related and mental health issues unless accompanied by injury.

12. "**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.

13. **"Employer"** means Cherokee Nation, its agencies, commissions, subsidiaries, and any business entity wholly-owned by Cherokee Nation regardless of where the entities are located, or where the employees are located, within or without the territorial limits of Cherokee Nation, any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in Cherokee Nation in any work covered by the provisions of this Title, by way of trade or business, or who contracts with one or more employees, the essence of which is the personal labor of such employee or employees.

14. **"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.

15. "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 employee.

16. **"Impairment"** means an anatomical or functional abnormality, as determined by the health-care provider approved by the employer existing after the date of maximum medical improvement based on objective medical evidence evaluated in accordance with 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 healthcare providers' determination. This term shall not include stress-related and mental health issues unless accompanied by injury.

17. **"Indemnity benefits"** means payments awarded pursuant to 85 CNCA § 46.

18. a. **"Injury"** means physical damage to the body or part of the body resulting from an accident, occupational disease or cumulative trauma sustained or incurred while acting in the course and scope of employment.

b. An injury other than cumulative trauma is compensable only if it is caused by a specific incident that is identifiable by time, place, and occurrence.

c. Injury includes 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. Such injury shall be compensable only if it is demonstrated that the exertion necessary to produce the harm was extraordinary and unusual in comparison to other occupations and that the occupation was the major cause of the harm.

d. Injury 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.

e. Injury shall not include the ordinary, gradual deterioration or progressive degeneration caused by the aging process, unless the employment is the cause of the deterioration or degeneration and is supported by objective medical evidence; nor shall it include injury incurred while engaging in, performing or as the result of engaging in or performing any recreational or social activities.

f. An injury must be supported by objective medical evidence.

19. "**Maximum medical improvement**" means the 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.

20. "**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 Title.

21. "**Objective medical evidence**" means evidence which meets the criteria of Federal Rule of Evidence 702, Testimony by Experts, and all U.S. Supreme Court case law applicable thereto.

22. "**Occupational disease**" means only that disease or illness which is due to causes and conditions characteristic of or peculiar to the particular trade, occupation, process or employment in which the employee is exposed to such disease. An occupational disease arises out of the employment only if the employment was the cause of the resulting occupational disease and such is supported by objective medical evidence, as defined in this section. This term shall not include stress-related and mental health issues unless accompanied by injury.

23. "**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 (2) thereof.

24. "**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.

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

26. "**Settlement**" means the execution of a release of all claims and an agreement concerning compensation.

27. "**Temporary total disability**" means the inability of the claimant, by reason of an injury, 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.

28. "**Temporary partial disability**" means the limited ability of the claimant who is back at work, but by reason of an injury, unable to perform the amount or type of work he or she previously engaged in, prior to the date of his or her maximum medical improvement, as determined by the health-care provider selected by the employer.

29. "**Week**" means seven (7) calendar days.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 3. Acknowledgment of Title

A. All employees shall be conclusively presumed to have acknowledged the exclusive applicability of the terms, conditions and provisions of this Title, and that Cherokee Nation is a sovereign Nation for the purposes of workers' compensation, governed by the laws set forth by the Council of 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 Title to their workers and shall post in a conspicuous location a notice as follows:

NOTICE TO WORKERS

All employees are hereby notified that Cherokee Nation is a sovereign Nation for purposes of workers' compensation, governed by the laws set forth by the Tribal Council of 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 employee. 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.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 4. 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. Provided further, the sovereign immunity of Cherokee Nation or other employer shall not be raised as a defense when a claim is brought properly under the provisions of this Title.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 5. Payment of benefits

The employer shall administer this Title in accordance with the terms and conditions as described herein, and shall process properly approved payments of compensation as provided for in this Title. All compensation and benefits payable under this Title shall not exceed Five Million Dollars and Zero Cents (\$5,000,000.00) per claim including all expenses associated with the claim, including defense costs.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 6. Employer-Power and duties-Joint agreements

A. 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.

B. The employer 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 Title. Payments for expenses associated with these activities shall be made at the direction of the employer through its workers' compensation program.

C. 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.

D. The employer shall make a final decision on claims filed under this Title within a reasonable time.

E. If the claimant agrees with the final decision of the employer, a memorandum of such agreement signed by both the employer and the employee shall be placed in the workers' compensation case file. This agreement shall be deemed binding upon the parties thereto. Such joint agreements may be made during any phase of a workers' compensation claim.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 7. Compensation as exclusive remedy

The right to receive workers' compensation pursuant to the provisions of this Title for injuries or death sustained by a claimant shall be the exclusive remedy against the employer.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 8. Limitations

A. The employer shall not be required to pay for an injury, death, or disability in the following circumstances:

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. 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. an injury results directly from unsanitary or injurious practices;
4. the refusal of a claimant to submit to any reasonable surgical treatment or medical aid;
5. the employee is acting outside any restriction dictated by a health care provider;
6. an injury or death caused by a prank, horseplay or similar willful, reckless, or intentional behavior, except for injury or death to innocent victims;
7. stress-related or mental health issues except when accompanied by physical injury or resulting from a case of rape which arises out of and in the course of employment;
8. 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. **"Act of God"** means an act occasioned exclusively by forces

of nature without the interference of human agency.

9. injury or death that results from natural causes, i.e., heart attack, stroke, or other natural body function failures which are not work-related.

10. the injury is otherwise excluded by this Title.

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. Substance-abuse-related injury or death.

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

2. 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 employee 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 employee; or

b. Subjective observations of the employee, by co-workers, supervisors, medical or emergency personnel or other witnesses, the statements, behavior or actions of the employee or other direct or circumstantial evidence establishes by clear and convincing evidence that the employee'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 employee; or

c. Such use or abuse of alcohol, controlled substances or chemicals, by the employee resulted in a criminal conviction by any lawful jurisdiction.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 9. False statement or representation

If, in order to obtain any compensation under the provisions of this Title, any claimant knowingly makes a false statement or representation, including any material omission, such claimant shall forfeit all rights to such compensation and will be liable for restitution upon proof that the offense was committed, and may be referred

to the appropriate law enforcement agency. A violation under this section shall be a crime. Further, any such claimant may be immediately dismissed from employment without progressive discipline.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 10. 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 to be necessary for a proper understanding and evaluation of the claim.

B. The employer 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 employee's election to make a claim under this Title, the employee acknowledges the right of the employer to obtain such information. Each employee 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 shall maintain all information obtained pursuant to this section as confidential information, except that the employer may release information to the claimant, the employer's insurance provider, a third-party administrator working on the case, the attorneys representing either the employer or any of the entities stated in this subsection, and any arbitrator reviewing the claim.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 11. Filing of claim

A. All claims for any compensation or benefits under the Workers' Compensation Act shall be commenced within two (2) years from the date of the injury, and shall commence upon the filing of a notice of injury with the human resources office of the respective employer. The employer shall publish a form that must be used when filing.

B. All parties to a claim shall cooperate with any applicable loss-control program.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 12. Retaliation

In no event will an employer retaliate against an employee for reporting an accident or injury or giving notice of such an occurrence. For the purposes of this Title, 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.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 13. Right to compensation and medical treatment benefits

A. Except as provided in 85 CNCA § 9, every claimant coming within the provisions of this Title who is killed or injured while in the course and scope of his or her employment, wherever the injury or death occurred shall be entitled to receive, and shall be paid compensation as provided in this Title.

B. Unless prohibited by other law, 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.

C. Employers may agree to a traditional Indian healer for supplementary treatment but not medical determinations.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 14. Time limit for filing of claims

A. No claims for injury or death shall be allowed unless notice of the claim is filed with the department so designated per the Human Resource policy, 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.

C. All claims for any compensation or benefits under the Workers' Compensation Act shall be commenced within two (2) years from the filing of a notice of injury with the human resources office of the respective employer. The employer shall publish a form that must be used when filing.

D. All claims for any compensation or benefits under the Workers' Compensation Act shall be deemed closed upon a decree of final order issued by an arbitrator, or upon agreed settlement on a full and final release, or in the alternative, two (2) years from the date the notice of injury was given if the employee thereafter fails to seek medical treatment of the injury complained of in the notice of injury.

E. A claim may be reopened upon an application based upon a change in condition for the worse only if filed within three (3) years from the date of the last determination of maximum medical improvement or forever be barred.

F. Post-termination injury claims shall be filed within sixty (60) days of termination of employment, provided that nothing herein shall extend any limitation period set forth in this section.

G. The claim shall be deemed filed when it is actually received by the human resources office of the respective employer.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 15. Burden of proof

A. Except as set forth in subsection (B), the claimant shall have the burden to prove by a preponderance of the evidence:

1. that an injury exists or that a death has occurred; and

2. that the injury complained of was the result of a work-related accident or occupational disease; and
3. that it arose in the course and scope of his or her employment.

B. Unless the employer presents clear and convincing evidence in rebuttal, when an employee is killed under circumstances indicating that the death took place within time and place limits of employment it shall be presumed that death arose out of employment and compensation shall be paid pursuant to 85 CNCA § 32.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 16. Acting under employer's directions

Any employee 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.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 17. Going to and returning from work

An accident or injury occurring to a employee 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.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 18. Injuries occurring outside Cherokee Nation

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 Cherokee Nation. In the event that an injury occurs outside the territorial limits of Cherokee Nation, the injured employee may commence and maintain his or her action for benefits and compensation in Cherokee Nation as provided in this act, and Cherokee Nation courts are hereby vested with jurisdiction thereof as fully as if such injury or accident had occurred within 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, Cherokee Nation may raise the defense of sovereign immunity.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 19. 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 Title if that person had knowledge of the preexisting condition and failed to disclose the preexisting condition.

C. If an employee 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 subsections B and D.

D. For the purpose of settlement for permanent partial or permanent total disability, the amount of the award for that disability as set forth in 85 CNCA § 46 may be reduced or denied in its entirety by the employer 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 employee before the accident or occupational disease and the worker's present degree of disability.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 20. Occupational disease

An occupational disease, as defined in 85 CNCA § 2 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.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§§ 21 thru 24. Reserved

§ 25. Periodic medical examination of claimant-Effect of refusal or obstruction of examination or treatment

A. A claimant entitled to compensation shall submit to 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 health care providers selected by the claimant or employer 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 health care provider 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 health care provider 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 health care provider be called to testify by the claimant, the costs of the appearance of such health care provider shall be at the expense of the claimant.

E. A claimant must have prior approval from the employer in order for claimant to change health care provider.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 26. Claims against third persons

A. Where the compensable injury is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated to the right of the employee against such third party to the extent of the compensation payable under this act by the employer;

B. Reasonable attorney fees and other proper disbursements incurred in obtaining a recovery or in effecting a compromise settlement shall be prorated between the employer and employee. The employer shall pay that proportion of the attorney fees and other proper disbursements that the amount of compensation paid or payable at the time of recovery or settlement bears to the total recovery or settlement.

C. Any recovery against such third person in excess of the compensation theretofore paid by the employer shall be paid forthwith to the employee, and, adding reasonable interest, shall be treated as an advance payment by the employer on account of any future installments of compensation.

D. If the claimant entitled to compensation under this Title does not pursue a remedy against such other person by instituting an action within six (6) months after the cause of action accrues, the employer shall be subrogated to the rights of the employee to maintain the action against such third party, and may recover damages for the injury to the same extent that the employee might.

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.

F. The employee, employer, and carrier have a duty to cooperate with each other in investigating and prosecuting claims and potential claims against third-party tortfeasors by producing nonprivileged evidence and allowing inspection of premises, but only to the extent necessary for such purpose. Unless previously public information, such documents and the results of such inspections are confidential and exempt from the provisions of the Freedom of Information Act and shall not be used or disclosed for any other purpose.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 27. Waiting period-Overpayments-Paid leave-Absence

A. Benefits shall be paid under the provisions of this Title 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 one-hundred percent (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 unless required by the employment contract or specifically allowed by employer in this circumstance.

D. While on a leave-of-absence for a work-related injury, an employee may not be separated from employment as a result of the employer's no-fault absence policy during the first eighteen (18) months absence from work.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 28. Temporary total disability

A. Payment. Temporary total disability shall be paid at seventy-two percent (72%) of the "average weekly wage" which shall in no case exceed Seven Hundred Seventeen Dollars and Zero Cents (\$717.00). Temporary total disability shall in no case be paid in excess of one-hundred fifty-six (156) weeks.

B. Notice. 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 any employment while receiving temporary total disability benefits.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 29. Temporary partial disability

A. Payment. Except for particular cases mentioned in 85 CNCA v35, an injured worker shall be paid at seventy-two percent (72%) of the difference between the employee's average weekly wage and the employee's wage-earning capacity thereafter in the same employment or otherwise, if less than before the injury, during continuance of such partial disability, but not to exceed one-hundred fifty-six (156) weeks. In the case of soft tissue injuries entitlement to temporary partial benefits is limited to twelve (12) weeks.

B. Notice. Any person receiving temporary partial 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.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 30. Condition permanent-Termination of benefits

When a claimant's injury reaches maximum medical improvement as defined in subdivision 1:

1. The claimant's injury shall be considered permanent and stationary;
2. 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.
3. The employer 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.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 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.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 32. Death benefits

A. If an injury or occupational disease sustained by an employee proximately results in his or her death following his or her injury or diagnosis of occupational disease, compensation shall be paid as follows:

1. If there are eligible dependents at the time of the employee'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 Seven Hundred Seventeen Dollars (\$717.00). 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 Seven Hundred Seventeen Dollars (\$717.00), 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 Seven Hundred Seventeen Dollars (\$717.00), the aggregate weekly income benefits payable to all beneficiaries shall not exceed Seven Hundred Seventeen Dollars (\$717.00). Such benefits may be paid through a structured settlement or lump sum as agreed by the employer and beneficiaries.

2. Payments of death benefits to an employee's spouse shall continue 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 (\$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 (\$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.

C. 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 subsection G.

1. First to the surviving widow or widower, if there are no children. If dependent children exist at time of employee'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 Seven Hundred Seventeen Dollars (\$717.00), or if two (2) dependent children, seventy percent (70%) of the average weekly wage not to exceed Seven Hundred Seventeen Dollars (\$717.00), or if three (3) children, ninety percent (90%) of the average weekly wage not to exceed Seven Hundred Seventeen Dollars (\$717.00) or if four (4) or more children, a weekly benefit of Seven Hundred Seventeen Dollars (\$717.00) to be equally distributed among such dependent children;

3. To a parent or parents, if dependent upon the deceased employee 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 Seven Hundred Seventeen Dollars (\$717.00) if only one (1) parent; or fifty percent (50%) of the deceased's average weekly wage not to exceed Seven Hundred Seventeen Dollars (\$717.00) to be divided equally between both parents if both are dependent upon the deceased covered worker;

4. If there is 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 Seven Hundred Seventeen Dollars (\$717.00).

D. If a deceased minor employee has no other dependents, his or her parent(s), guardian(s), or adoptive parent (s) are entitled to death benefits as defined in subsection G.

E. In no case shall death benefits exceed Two Hundred Thousand Dollars (\$200,000.00).

F. 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.

G. In respect to death benefits under this section, the following definitions shall apply:

1. **"Child"** means a natural or adopted son or daughter of the employee under eighteen (18) years of age; or a natural or adopted son or daughter of an employee eighteen (18) years of age or over and physically or mentally incapable of self-support; or any natural or adopted son or daughter of an employee eighteen (18) years of age or over who is actually dependent; or any natural or adopted son or daughter of an employee between eighteen (18) and twenty-three (23) years of age who is enrolled as a full-time student in any accredited educational institution. The term "child" includes a posthumous child, a child legally adopted or one for whom adoption proceedings are pending at the time of death, an actually dependent stepchild or an actually dependent acknowledged child born out of wedlock.

2. **"Dependent"** means:

a. a surviving spouse as defined in this section;

b. a child as defined in this section; or

c. any other person dependent in fact upon the employee and refers only to a person who receives one-half (1/2) or more of his support from the employee.

3. **"Parent"** means a mother or father, a stepparent, a parent by adoption and a parent-in-law, if actually dependent in each case except as provided in paragraph (1) of this subsection.

4. **"Surviving spouse"** means only the employee's spouse living with or actually dependent upon the employee at the time of his injury or death, or living apart for justifiable cause or by reason of desertion by the employee;

H. All questions of relationship and dependency shall be determined as of the time of injury for purposes of income benefits for injury, and as of the time of death for purposes of income benefits for death.

I. A person ceases to be dependent when the person's income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time the original determination of actual dependency was made, it would not have supported a finding of dependency. If the present annual income of a dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be dependent shall be presumed to be no longer dependent three (3) years after the time as of which the person was found to be dependent. This presumption may be overcome by proof of continued dependency as defined in this section.

J. Change in dependents. Upon the cessation of income benefits under this section to or for the benefit of any person, the income benefits payable to the remaining persons who continue to be entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 33. Reserved

§ 34. Artificial members

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

B. Where an injury results in a loss of one or more eyes, teeth, or limbs of the body, the employer shall furnish such prosthetic devices as may be necessary, as determined by the employer in the treatment and rehabilitation of the injured worker.

C. Where a worker sustains an injury which results in damage to a prosthetic device with which such worker is equipped, the employer shall be responsible for repair or replacement of such device.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 35. Soft tissue injuries

A. Nonsurgical-In case of a nonsurgical soft tissue injury, neither temporary total compensation, nor temporary partial compensation shall not exceed twelve (12) weeks.

B. Surgical-A claimant who has been recommended by a treating physician for surgery for a soft tissue injury may petition the employer for an extension of temporary total compensation and the employer may authorize such an extension if the treating physician indicates that such an extension is appropriate and as agreed to by all parties. In the event the surgery is not performed, the benefits for the extension period shall be terminated as of the date of cancellation of the surgery.

C. For purposes of this section, "**soft tissue injury**" means damage to one or more of the tissues that surround bones and joints. "**Soft tissue injury**" includes, but is not limited to: sprains, strains, contusions, tendonitis, and muscle tears. Cumulative trauma is to be considered a soft tissue injury.

D. "**Soft tissue injury**" does not include any of the following:

1. injury to or disease of the spine, spinal disks, spinal nerves or spinal cord, where corrective surgery is performed;
2. brain or closed-head injury as evidenced by:
 - a. sensory or motor disturbances,
 - b. communication disturbances,
 - c. complex integrated disturbances of cerebral function,
 - d. episodic neurological disorders, or
 - e. other brain and closed-head injury conditions at least as severe in nature as any condition provided in paragraphs a through d of this subdivision; or
3. Total knee replacement.

E. In all cases of soft tissue injury, the employee shall only be entitled to appropriate and necessary medical

care and temporary total disability, unless there is objective medical evidence of a permanent anatomical abnormality.

F. If claimant returns to work at the same job the claimant is not entitled to permanent partial disability.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 36. 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.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 37. Disfigurement benefits

An additional sum not to exceed Twenty Thousand Dollars (\$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.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 38. Fee schedule

A. Health providers may submit such charges and duration of treatment to the employer for review.

B. Such charges and duration of treatment shall be limited to the usual, customary, and reasonable charges of health care providers in the same trade area for comparable treatment of a person with similar injuries and the duration of treatment.

C. Usual, customary, and reasonable charges shall be presumed to be that of the workers' compensation fee schedule applied in the jurisdiction where treatment is provided.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 39. 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 (\$10,000.00).

B. Where an employee 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.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 40. 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 may be terminated immediately.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 41. Eyewear

The employer shall pay for frames and/or lenses of a like kind and quality which were damaged as a result of an injury to the claimant, but shall not pay for vision correction examinations unless an injury to the claimant's eye(s) caused a change in vision.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 42. Clothing

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

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 43. Travel for treatment

A. A claimant shall be compensated for travel from his or her home address, as designated on the claim form, to a treatment facility at a rate consistent with the travel allowance authorized by the employer which shall in no case be higher nor more than twenty-five percent (25%) lower than the prevailing federal reimbursement rate. Provided that the employer shall not be liable for travel which is wholly within the limits of the city or town of claimant's residence.

B. A claimant shall be compensated for meals and lodging when required to travel more than one hundred (100) miles from his or her home address, as designated on the claim form, to a treatment facility at a rate consistent with the per diem allowance authorized by the employer which shall in no case be higher nor more than twenty-five percent (25%) lower than the prevailing federal reimbursement rate.

C. All claims for payment or reimbursement must be supported by documentation.

D. In order to be reimbursed for such travel expenses, the claimant must provide the supporting documentation to the employer within ten (10) days after the date on which the travel occurred.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 44. 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 Title, 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.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 45. Reserved

§ 46. 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 subdivision 4 of this subsection times the percentage of permanent impairment. The gross average weekly wage shall in no case exceed Five Hundred Thirteen Dollars and Twelve Cents (\$513.12).

4. Benefits for total loss of use.

a.	ARM	196.5 weeks
b.	HAND	157.2 weeks
c.	THUMB	47.15 weeks
d.	FIRST FINGER (Index finger)	27.87 weeks
e.	SECOND FINGER	23.58 weeks
f.	THIRD FINGER	15.72 weeks
g.	FOURTH FINGER	12.15 weeks
h.	LEG	196.5 weeks
i.	FOOT	157.2 weeks
j.	GREAT TOE	23.58 weeks
k.	ONE TOE	7.86 weeks
l.	EYE-ONE	
	(1) Total blindness	196.5 weeks
m.	EAR	
	(1) Total deafness, one ear	78.6 weeks
	(2) Total deafness, both ears	235.8 weeks
n.	BODY AS A WHOLE	357.3 weeks

B. Permanent partial disability.

1. Upon the establishment of the percentage of permanent partial disability in accordance with this Title, such evaluation of the permanent partial disability shall be binding for any and all proceedings occurring under this Title. This evaluation of the percentage of permanent partial disability shall be made by a physician selected by the designated Third Party Administrator or the physician of the employer's choice.

2. 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 weekly or bi-weekly or through a structured settlement or, at the employer's election, as a lump sum. For other non-scheduled permanent impairments, a calculation of percentage of permanent partial disability shall be made by a physician selected by the Third Party Administrator or the physician of the employer's choice.

3. 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 Five Hundred Thirteen Dollars and Twelve Cents (\$513.12).

4. 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 Five Hundred Thirteen Dollars and Twelve Cents (\$513.12).

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 Seven Hundred Seventeen Dollars (\$717.00) 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 or death.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

CHAPTER 2

DISPUTE RESOLUTION

§ 47. Arbitration

A. A final decision made pursuant to 85 CNCA § 6 may be reviewed through arbitration pursuant to this section and the Cherokee Nation Arbitration Act, 12 CNCA § 1301 et seq.

1. An employee disputing a final decision rendered by the employer may within twenty (20) calendar days after the issuance of the written decision by the employer request, in writing, that arbitration be scheduled between the employee 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 employee's request for arbitration must include:

a. The name and mailing address of the employee;

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 employee 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 Supreme Court 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 Supreme Court shall randomly select an arbitrator from the list pursuant to procedures adopted by the Supreme Court.

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

3. In furtherance of Cherokee Nation's policy to simplify and expedite claims under this Title, arbitrators and Courts shall give deference to unrepresented employees by excusing honest, non-material or correctable mistakes. Filing deadlines are deemed to be material and non-correctable for purposes of this paragraph.

C. Arbitration costs.

1. The employee 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 employee if said person prevails at arbitration.

2. Cost of arbitration shall be paid by the employer.

3. If the arbitrator determines that the request for arbitration is frivolous, some or all of the prevailing party's attorney fees and costs of arbitration may be borne by the non-prevailing party as determined by the arbitrator.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 48. Administrative record

A. The right to file an appeal of the arbitration award shall be forever barred unless the appeal is filed within thirty (30) days of the date of the award. All awards of arbitration will be deemed final upon the expiration of thirty (30) days from the date the award is issued.

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

1. The administrative case file, 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.

C. Arbitration proceedings shall be 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, recordings of an individual proceeding, as certified by the arbitrator, may be submitted to the 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.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 49. Transmission of record to reviewing court-Stipulations

Within thirty (30) days of the filing of the arbitration appeal, the employer or arbitrator shall compile and transmit to the District Court the original or a certified copy of the record, as specified by 85 CNCA § 49, of the proceeding under review. 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.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 50. Review without jury-Additional testimony

The review shall be conducted by the 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 12 CNCA § 1323 or 1324 which are not shown in the record, testimony thereon may be taken by the Court.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.

§ 51. Time computations

In computing any period of time prescribed or allowed by this Title, 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 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 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.

History

Source. LA 08-04, eff. April 21, 2004.

Amended. LA 31-05, eff. October 16, 2005.

Amended. LA 21-06, eff. October 19, 2006.

Amended. LA 20-10, eff. August 15, 2010.